PPF Restructuring and Insolvency Team
Guidance note 11
Scheme rescue notices and the PPF's approach

Contents

1. Background

1.1. A Pension Protection Fund (PPF) assessment period commences when a qualifying insolvency event occurs in relation to the employer of an eligible scheme.

1.2. Sometimes, the long-term aim is for the employer to continue as a going concern and remain responsible for the scheme. The PPF's approach to situations where the scheme is to be rescued and remain whole is set out in Guidance Note 5 - Company Voluntary Arrangements.

1.3. It is also possible that a new prospective employer is prepared to rescue the scheme, even when the assessment period is underway. However, in some circumstances due to the operation of legislative restrictions, certain rescue steps cannot be completed while the assessment period is underway. For this reason, scheme rescues of this type can involve a degree of conditionality.

1.4. Whilst the PPF is supportive of a rescue culture, this is balanced against a need to ensure that it is protected from situations where a rescue could potentially create risks for the PPF in the future, where examples could include a rescue by a shell vehicle that makes no contributions and subsequently fails, but in the intervening period, the PPF's position has deteriorated because of PPF Drift.

1.5. This guidance therefore sets out the PPF's approach in such circumstances in view of the conditional nature of these rescues and the need to protect the position of the PPF.

1.6. It is important to stress that the PPF does not expect to see the rescue process used to avoid or mitigate regulatory intervention. The PPF's view is that a scheme rescue should not be used as a substitute for regulatory enforcement action in relation to acts that have caused detriment to the scheme.

2. Duty to issue notices confirming status of scheme

2.1. If there has been a qualifying insolvency event in relation to an employer of an eligible scheme, but:
(i) the employer has been rescued as a going concern and either:
a. retains responsibility for meeting the pension liabilities under the scheme and
b. no compromise of the scheme's liabilities has been entered into; or
(ii) another person or persons ***has*** or ***have*** assumed responsibility for meeting the employer's pension liabilities under the scheme,
an insolvency practitioner must confirm that a scheme rescue has occurred.

2.2. In these circumstances, the IP appointed to deal with the insolvent employer should file a "Section 122 – Pension Scheme Status Notice (Withdrawal Notice)".

2.3. The PPF must determine whether to approve the withdrawal notice. If it does so, it must issue a determination notice. While the PPF will take reasonable steps to satisfy itself that a scheme rescue has occurred, the effectiveness of the mechanisms designed to implement the rescue are ultimately matters for the trustee.

2.4. The PPF's determination notice will become binding 28 days after issue unless an application is made within that time for it to be reviewed. After the relevant procedures have been completed and all rights of review exhausted, the determination notice will become binding and the assessment period will come to an end.

2.5. The PPF's preference is for the "rescue" to be planned pre-insolvency, taking such steps as necessary to implement it prior to an assessment period commencing. This may include introducing a "clean" new employer into a "last man standing" structure to provide continuity and a corporate vehicle that can be acquired. Other examples include the use of Flexible/Scheme Apportionment Arrangements to apportion pension liabilities to an alternative employer ahead of the insolvency of the original employer. Typically, these instruments cannot be executed by schemes in a PPF assessment period so pre-planning can save a lot of work and cost.

3. PPF considerations in relation to conditional scheme rescues

3.1. Before approving any section 122 notice, the PPF has a statutory obligation to satisfy itself:
a. that the insolvency practitioner or former insolvency practitioner who issued the notice was required to issue it; and
b. that it is in the prescribed form and contains the prescribed information.

3.2. Rescues that involve a new employer being attached to a scheme that is in assessment will typically be conditional. This is because the steps to complete the scheme rescue can usually only be taken once the scheme rescue notice has become binding and the scheme has exited the PPF assessment process.

3.3. Accordingly, the PPF is a key stakeholder in the process and takes an active role in scheme rescues. This ensures that permissible scheme rescues can exit smoothly through the PPF assessment process while objections or concerns are discussed as soon as possible. To best support this approach the PPF will:
a. expect to be consulted by the parties at an early stage in the process;

b. need to be satisfied with the rationale for the rescue and the implementation mechanics themselves; and
c. consent to the rescue proceeding where appropriate, for example by providing a letter of non-objection with such consent documented in the rescue agreement.

3.4. The level of engagement in the rescue process and satisfaction of these criteria will form part of the PPF's assessment when deciding whether to approve a section 122 withdrawal notice arising from a scheme rescue.

3.5. Satisfying the requirements of paragraph 3.4 (b) above will, amongst other things, need to ensure:
a. there is an irrevocable agreement that the new employer will assume responsibility for meeting the employer's pension liabilities under the scheme; and
b. that the steps contemplated for it to assume that responsibility will be taken as soon as possible.

4. A worked example of the rescue of a scheme out of an assessment period by a new employer

4.1. The employer of an eligible scheme enters administration (a qualifying insolvency event), triggering a PPF assessment period.

4.2. The administrators sell the business as a going concern and were successful in finding a purchaser that also wanted to adopt responsibility for the scheme.

4.3. The purchaser has a strong financial covenant. The scheme trustees, The Pensions Regulator and the PPF are prepared to support the potential new employer's aim of taking responsibility for the scheme.

4.4. The administrators of the insolvent employer, the scheme trustees and the potential new employer enter into an irrevocable rescue agreement, including a requirement for a letter of non-objection from the PPF as a condition precedent. This agreement also includes the necessary procedural steps and other documentary requirements to complete the entire rescue process as soon as possible (wherever possible automatically immediately after the end of the assessment period).

4.5. The PPF will provide its consent to the rescue and satisfy the condition precedent in the binding rescue agreement. The rescue cannot proceed without this condition being satisfied.

4.6. The administrators will have sufficient comfort that the purchaser is going to rescue the scheme enabling them to submit the section 122 withdrawal notice.

4.7. As the PPF has been engaged at an early stage in the process and has provided its consent, it is able to approve the section 122 withdrawal notice.

4.8. No review of the PPF's decision to approve the notice is made and therefore upon the expiry of the 28-day period, the PPF's determination notice becomes binding and:
- the scheme then exits the PPF assessment period; and

- all remaining steps of the scheme rescue can be completed with the purchaser adopting responsibility for the scheme.

Contact details

Malcolm Weir
Director of Restructuring & Insolvency
malcolm.weir@ppf.co.uk
020 8633 4940

Mike Ridley
Head of Restructuring
mike.ridley@ppf.co.uk
020 8633 4998

Mark Allen
Senior Case Manager
mark.allen@ppf.co.uk
020 8633 5823

Ann Kirkby
Case Advisor
ann.kirkby@ppf.co.uk
020 8633 5942

The Pension Protection Fund
Restructuring & Insolvency Team
Renaissance,
12 Dingwall Road
Croydon, CR0 2NA

November 2023

See **www.ppf.co.uk** for further information.