The Consultative Committee
of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

<u>"PENSIONS INSOLVENCY"</u>

*This Memorandum has been prepared by the Consultative Committee of Accountancy Bodies – Ireland ("*CCAB-I*") to alert members of the profession to the mechanisms introduced by the Pensions Insolvency Payment Scheme 2010.*

This Memorandum is not a comprehensive guide to the Scheme's detailed requirements. It should be read in conjunction with, and not as a substitute for, the Scheme. Members are advised that it may be appropriate, in considering the application of the Scheme provisions in particular circumstances, to seek legal advice.

No responsibility for loss occasioned to any person acting, or refraining from action, as a result of material in this publication can be accepted by the CCAB-I.

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INTRODUCTION

1. The Pensions Insolvency Payment Scheme 2010 – S.I. 4 of 2010 ("PIPS") was established in the overall context of a potential rebalancing of interests between members of a defined benefit pension scheme in receipt of pensions and those members of the scheme who have yet to reach pensionable age.

2. The Occupational Pension Schemes (Wind-Up) Regulations 2009 – S.I. 509 of 2009, made by the Minister for Social and Family Affairs on Friday, 11th December 2009, provide the statutory framework under which the trustees of a defined benefit scheme can opt to have pensions paid under the PIPS.

3. Generally, the terms used in the Scheme have the meaning assigned to them by the Pensions Act, 1990, as amended.

APPLICATION FOR CERTIFICATION

4. In addition to completing the relevant application form, the trustees must submit therewith (*Article 4*):

> *"(a) a completed application in such form as shall be determined and made available by the Minister;*
>
> *(b) the certification by the Board under Article 5 that the defined benefit scheme concerned is an eligible pension scheme;*
>
> *(c) a statement, in writing, that the trustees agree to comply with and be bound by the terms of this Scheme, should the eligible pension scheme be certified as a participating pension scheme by the Minister in accordance with this Scheme;*
>
> *(d) a statement from the eligible pension scheme's actuary of the value of the scheme's assets, on the basis of the assets' realisable market value on the date the assets were valued;*
>
> *(e) a completed payment administrator nomination form in such form as shall be determined, having regard to paragraph (4), and made available by the Minister;*
>
> *(f) such information as will enable the Minister to assess the cost of making payments under this Scheme in respect of the eligible pension scheme should it become a participating pension scheme;"*

5. There is a "double insolvency test" at the date of winding up:

   (i) The pension scheme does not meet the statutory funding standard – i.e. is in deficit; and
   (ii) The sponsoring employer is insolvent.

6. At its sole discretion, the Pensions Board can certify *(Article 5*) the applicant scheme as an "eligible pension scheme".

PARTICIPATION

7. Matters to be covered in the application by an eligible pension scheme to the Minister for Finance ("the Minister") to become a "participating pension scheme" include (*Article 6*), inter alia:

   (i) The scheme's actuary valuation of its assets; and
   (ii) Details of the proposed payment administrator and the estimated costs of administration

8. The Minister requests the National Treasury Management Agency to calculate the actuarial assessed cost, as well as payment administrator costs and "fixed costs of the Minister" (*Article 7*). This calculation forms the basis of the quotation (and any later amended quotation) to the scheme.

9. Should the trustees accept the quotation, the Minister can certify the scheme to be a participating pension scheme. Once the quoted premium has been paid to the Minister, the trustees are deemed to have discharged fully their responsibilities toward the pensioners concerned (*Article 9*).

EXCLUSION FROM PIPS

10. Article 12 gives a general power to the Minister to exclude a scheme where he considers "…there is an overriding public interest…" to do so.

11. Additionally, the Minister may exclude schemes, businesses and employees that, in his opinion, have :

   (i) Contrived the qualifying conditions; or

(ii) Wilfully contributed to the pension scheme deficit or the employer insolvency.

EFFECTIVE DATE

12. The PIPS came into force on Monday, 1^{st} February 2010.

13. Section 22, Social Welfare and Pensions Act 2009, provides the Minister for Social and Family Affairs shall, not later than 3 years after 1^{st} February 2010, conduct a review of the operation of the PIPS.

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