HERBERT SMITH FREEHILLS COMMENTS ON IMPACT OF PROPOSED CHANGES TO UK INSOLVENCY REGIME ON DEFINED BENEFIT PENSIONS SCHEMES

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Deals and cases

Responding to news that the Government has published draft legislation proposing amendments to the UK's insolvency regime Rachel Pinto, pensions partner at Herbert Smith Freehills, focuses on the impact likely to be had on Defined Benefit schemes and sponsors, and on the Pensions Protection Fund.

She says:

"This is the most significant change to UK insolvency law for over 30 years. Whilst the changes to the insolvency regime may come as welcome news for distressed DB sponsors the same cannot be said for the pension schemes themselves or the Pension Protection Fund.

"Ordinarily, DB schemes are unsecured creditors and these changes will make their position even more perilous. In particular, the restrictions on issuing statutory demands or winding-up petitions and the introduction of a new moratorium are likely to make it virtually impossible for schemes to take action in the short term to enforce debts that have or that may become due from their sponsor. By the time action can be taken, it may be too late.

"In addition, the new restructuring mechanism that is set to be introduced means that DB schemes and the PPF may also have no say over corporate restructuring plans.

"The only silver lining for DB schemes and the PPF is that the legislation is designed to help viable businesses survive this crisis. If it achieves this, while individual schemes might suffer greater losses in some cases, when looked at in aggregate DB schemes and the PPF may actually benefit from the stay of execution afforded to distressed scheme sponsors by these measures."

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