

NEWSLETTER NO. 57 : NOVEMBER 2003

This Newsletter contains:

- 1. GOVERNMENT ACTUARY ANNUAL REPORT**
- 2. PARTICIPATING EMPLOYER AGREEMENTS**
- 3. OFFICE CLOSURE: CHRISTMAS AND NEW YEAR**

1. Government Actuary Annual Report

A copy of the 30th June 2003 Annual Report by the Government Actuary prepared under section 28 of the Superannuation Schemes Act 1989 has been tabled in the House and a copy is attached to the email. It will also shortly be available on the website www.isu.govt.nz. I would be happy to respond to any comments or questions that people may have on the report.

2. Participating Employer Agreements

In Newsletter 11 (18th April 1989) the then Government Actuary advised the industry that the Superannuation Schemes Act 1989 did not contain any provision for the advice of new participating employers being given to the Government Actuary, although it did require copies of trust deed amendments to be sent to the Government Actuary within 14 days of execution.

Types of Participating Employer Agreements

In the market there is a range of documents used to admit participating employers. Some of the different forms of these documents are as follows:

1. Under some trust deeds, a new participating employer can be admitted to a scheme merely by the new employer signing a pro forma application form which is then countersigned on behalf of the trustees. The agreement sometimes takes the form of a deed, entered into by the trustees and the new participating employer, which binds that employer into the obligations imposed on employers by the trust deed.
2. Sometimes the document signed by a new employer may specify some details which are left open in a trust deed. This could be where, for instance, a trust deed provides that the contribution payable by an employer is at the level specified in the application by that employer to participate in the scheme.
3. Occasionally, a participating employer document will alter the terms of a trust deed insofar as it affects that particular employer. This can occur where the trust deed allows that a participating employer agreement may override some of the terms of the deed, insofar as they affect that employer.

4. In a few cases, the deed itself is altered so as to allow the participation of a new employer (possibly on terms that are unique to that employer) and some trust deeds explicitly state that the execution of a new participating agreement is an amendment to the trust deed.

The first, second and fourth examples seem clear as to whether trust deed amendments are involved - the first and second examples do not involve deed amendments, while the last example obviously does. The third example may or may not be regarded as an amendment to the trust deed - whether it is will depend upon the precise wording of the deed.

The current practice, outlined in the next two sections, distinguishes between participating employer documents which are trust deed amendments and such documents which are not trust deed amendments.

Practice with Participating Employers in Registered Schemes

The practice which should apply to registered schemes is that trustees should only forward to the Government Actuary a copy of those participating employer documents which involve a trust deed amendment. Each one should be lodged within 14 days of it being signed. (This is, in fact, just the normal procedure for trust deed amendments with registered schemes - refer section 12 of the Superannuation Schemes Act 1989).

A subsequent amendment to a participating agreement will of course be subject to Sections 9 and 12 of the Act and a copy of the original participating agreement is to be forwarded where it is not already held on my files.

Participating employer agreements which are not trust deed amendments need not be sent.

No advice is required in respect of the withdrawal of a participating employer from a registered scheme (unless the withdrawal itself involves a new trust deed amendment).

Of course at any stage I can ask to see participating employer agreements in respect of any particular scheme.

Completion of New Participation Agreements

Some participation agreements have a format which requires boxes to be ticked. An unfortunate error, such as an incorrect tick or some erroneous or illegible handwritten comment, could lead to the need for written consent for a subsequent amendment from members affected. It is recommended that Trustees of master trust products review their administration procedures to ensure sufficient safeguards are in place to minimise such errors.

3. Office Closure: Christmas and New Year

The office will be closed from 25th December 2003 to 4th January 2004 inclusive.



David Benison
Government Actuary