
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 378

The Pensions Regulator (Financial Support Directions, etc.) Regulations (Northern Ireland) 2005

Interpretation

2.—(1) In these Regulations—

“the Order” means the Pensions (Northern Ireland) Order 2005;

“Article 75 debt” means a debt due, or a debt which might become due, from the employer in relation to the scheme under Article 75 of the 1995 Order⁽¹⁾ (deficiencies in the scheme assets);

“business associate” means a person referred to in—

- (a) Article 39(6)(b) (persons to whom the Regulator may issue a financial support direction - individuals) who is involved in the carrying on of any business, or
- (b) Article 39(6)(c) (persons to whom the Regulator may issue a financial support direction - non-individuals);

“calculation date” means the date specified by the Regulator, by reference to which the value of the resources of a person to whom Article 39(6) applies will be calculated;

“entity” means an employer or a business associate;

“entity value” means the fair value of the entity;

“entity value difference” (“EVD”) means the difference between the entity value at the calculation date and the aggregate of that entity’s net assets as set out in the FSD reference accounts and any identified FVDs;

“fair value” means the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction;

“fair value difference” (“FVD”) means the difference between the fair value of an asset or liability at the calculation date and the amount at which that asset or liability is recorded in the FSD reference accounts;

“FSD reference accounts” means the accounts used to establish the net assets of the relevant entity for the purposes of the value of resources calculation which shall be—

- (c) the entity’s most recent individual accounts, or, where the Regulator and the entity agree, subsequent accounts prepared on a basis consistent with the most recent individual accounts, taking into account any changes required in order to comply with generally accepted accounting practice, or
- (d) in the case of an entity not subject to Article 234 of the Companies Order⁽²⁾ (duty to prepare individual accounts), that entity’s most recent set of approved accounts, or where the Regulator and the entity agree, subsequent accounts prepared on a basis consistent with the most recent approved accounts, taking into account any changes required in order to comply with generally accepted accounting practice;

(1) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(2) Articles 234 to 235C were substituted for Articles 234 and 235 by regulation 2 of [S.R. 2004 No. 496](#)

“individual accounts” means accounts prepared in accordance with Article 234 of the Companies Order;

“net assets” (“NA”) means the aggregate of the entity’s assets less the aggregate of its liabilities (and liabilities shall include any provision for liabilities made in individual accounts prepared in accordance with either Article 234A (Companies Order individual accounts) or Article 234B (IAS individual accounts) of the Companies Order, or any similar provision for liabilities made in the accounts of any entity to which the Companies Order does not apply);

“property” has the same meaning as in Article 49(7) (restoration orders – meaning of “property”);

“related employer balances” (“Eb”) means any amount which has been taken into account in the calculation of the value of the resources of the employer which, were it also to appear in the calculation of the value of the resources of a business associate, would result in the value of the resources of the business associate and the employer together being overstated or understated by that amount; and such an amount may include (but is not limited to)—

- (e) any direct or indirect investment in the share capital of the employer;
- (f) any liability of a business associate relating to the employer’s liabilities to the extent that the corresponding liability is deducted in the calculation of the value of the employer’s resources;
- (g) any subordinated employer funding, and
- (h) provisions made by the business associate against any amounts owed by the employer to the business associate, to the extent that the corresponding liability is deducted in the calculation of the value of the employer’s resources;

“relevant pension scheme related balances” (“P”) means any assets or liabilities included within the FSD reference accounts of the entity which relate to the scheme in relation to which Article 39 (financial support directions) applies, including any assets or liabilities relating to the scheme’s deficit or surplus net of any related deferred tax asset or liability together with any other creditor or prepayment balances related to the scheme in question as calculated in accordance with the generally accepted accounting practice used for the FSD reference accounts;

“subordinated employer funding” means any amounts included within the calculation of the value of the resources of the business associate that have been treated as subordinated liabilities of the employer in the calculation of the value of the employer’s resources;

“subordinated liabilities” (“Se”) means any liabilities included within the FSD reference accounts of the employer which in the event of the entity being wound up would rank for payment after the unsecured creditors whether as a matter of general law or contract or otherwise.

(2) In these Regulations, any reference to a numbered Article is a reference to the Article of the Order bearing that number.