When two or more employers participate in a pension scheme, a multi-employer scheme, and one of them "leaves" the scheme and the scheme is in deficit, the leaving employer becomes liable for a debt on the employer under s75 of the Pensions Act 1995 and the Pension Schemes (Employer Debt) Regulations 2005, SI 2005/678.

The trigger for the liability for a pension debt is an "employment cessation event", which occurs, simplified, when in relation to a multi-employer scheme, an employer has ceased to employ at least one person who is an active member of the scheme, and at least one other employer, who is not a defined contribution employer, continues to employ at least one active member of the scheme.

There is a "period of grace" of not over thirty six months from the employment-cessation event or, if earlier, the day on which the employer employs a person who is an active member of the scheme, if on or not later than three months after the event the employer written notice to the trustees of his intention during the period of grace to employ at least one person who will be an active member of the scheme: SI 2005/678 reg 6A.

The amount of the debt is calculated as the cost of buying annuities as estimated by the scheme's actuary. The debt attributable to the leaving employer will be its proportion of the debt for the scheme as a whole based on the amount of its liabilities in relation to the total liabilities unless either one of the following arrangements (1 to 6) are made or one of the following two exemptions (7 and 8) apply. In each of cases 1 to 6 "the employer" is one leaving the scheme.

The original arrangements were first established by the Occupational Pension Schemes (Employer Debt etc.) (Amendment) Regulations 2005, SI 2005/2224, which amended the Employer Debt with effect from 2 September 2005.

<u>1 scheme apportionment arrangement</u> (SI 2005/678 reg 6B)

The trustees and the employer may, before or after the date as at which the debt is to be calculated, agree the leaving employer's share of the debt, which may be nil. The remaining debt, if there is more than one remaining employer, is apportioned amongst some or all of them. The arrangement must satisfy the funding test (see below).

<u>2 regulated apportionment arrangement</u> (SI 2005/678 reg 7A)

This is similar to 1 and applies to scheme already in or in the trustees' opinion likely to go into a Pension Protection Fund (PPF) assessment period. Such an apportionment cannot me made unless the Pensions Regulator (TPR) approves it and the PPF does not object to it

<u>3 withdrawal arrangement</u> (SI 2005/678 reg 6C)

The withdrawing employer must pay Amount A, which is its share of the scheme's deficit on a scheme specific funding basis, and one or more guarantors, who may be or include the remaining employers in the scheme, guarantee Amount B, which is the balance of the s75 debt. The funding test must be satisfied and (on the DWP's principle of micro-management and active disbelief in trust law) the trustees must be satisfied that the guarantor has sufficient financial resources to honour the guarantee.

<u>4 approved withdrawal arrangement</u> (SI 2005/678 reg 7)

This is similar to 3 and applies if Amount A is less than the scheme specific deficit. The funding test must be satisfied and the arrangement must be approved by TPR.

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5 flexible apportionment arrangement (SI 2005/678 reg 6E)

This is broadly similar to 1, but (a) a debt is not triggered, so there is no need for it to be calculated, and (b) what are apportioned amongst one or more remaining employers are the leaving employer's liabilities, actual or contingent, as though its employees had been employed by the remaining employers. The remaining employers would pay the debt, including the apportioned liabilities, when their own debts are triggered. The funding test must be satisfied.

6 deferred debt arrangements (SI 2005/678 reg 6F)

Although this arrangement was aimed at industry wide pension schemes, in which the employers are not associated with each other, it may be used by multi-employer schemes with associated employers. The trustees may agree an arrangement with the employer, if the scheme is not being wound up or in a PPF assessment period and the trustees are satisfied that a PPF assessment period would be unlikely and the employer's covenant unlikely to weakened within twelve months of the arrangement taking effect. While the arrangement is in force, the liability to pay the s75 debt is deferred and the employer remains an employer in relation to the scheme, retaining its responsibilities including scheme funding. The regulation specifies the events on which the deferred arrangement terminates.

funding test (SI 2005/678 reg 2(4A))

The funding test is met (paraphrasing the statutory definition) where the trustees are reasonably satisfied that the remaining employers will be reasonably likely to be able to fund the scheme and that it will have sufficient and appropriate assets to cover its technical provisions (Eurospeak for liabilities), and, in the case of a scheme apportionment arrangement, the effect of the arrangement will not be to adversely affect the security of members' benefits.

exemptions for restructuring

These two additional mechanisms do not require an employment cessation event.

The two exemptions and the (micro-managed) procedures for them are in regs 6ZA to 6ZD were inserted into the 2005 regulations by Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010, SI 2010/725 with effect from 15 April 2008. The effect of the exemptions is that there is no employment cessation event if there is a restructuring within regs 6ZB or 6ZC.

7 general exemption (SI 2005/678 reg 6ZB)

The new employer takes responsibility for existing employer's liabilities on the trustees being satisfied that it is at least as likely as the existing employer to meet them.

8 de minimis exemption (SI 2005/678 reg 6ZC)

There are not more than two employees or (if higher) 3% of the members with accrued rights and the annual amount of pension in respect of them does not exceed £20,000 in the year from 6 April 2010 increased by £500 pa for each subsequent year and the trustees are satisfied that the scheme is fully funded on the PPF basis.

exemption procedures

The regulations prescribe detailed procedures, consisting of seven steps for the general exemption and five for the de minimis, which must be completed in the right order and in accordance with the regulations.

There is no "best" arrangement or exemption but the most appropriate one for each set of circumstances.

END