

Declaration to be made in the case of treatment of pre-acquisition profits or losses in a manner otherwise prohibited by section 118 (1)

205. (1) Where the restricted activity is to provide in a company's financial statements a treatment that is otherwise prohibited by section 118 (1) of the profits or losses attributable to shares of a subsidiary of the company for the period referred to in section 118 (2) as the "pre-acquisition period", the declaration shall state—

(a) the amount of the profits or losses that will be subject to the alternative treatment and the amount so stated is referred to in this section as the "proposed distribution";

(b) the total amount of the company's assets and liabilities as stated in its last statutory financial statements or interim financial statements properly prepared as of a date specified in the declaration, and the date so specified shall be the date which is the latest practicable date before the date of making of the declaration and in any event shall not be a date more than 3 months before the date of such making;

(c) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that, if the company were to make the proposed distribution within 2 months after the date of the making of the declaration, the company would be able to pay or discharge its debts and other liabilities included in the financial statements referred to in paragraph (b) as they fall due during the period of 12 months after the date of that distribution.

(2) In determining whether or not a company will be able to pay or discharge its debts and other liabilities as they fall due, the declarants shall be required to consider the likelihood (in circumstances where the following are relevant) either that the company will be called upon to pay moneys on foot of a guarantee given or, as the case may be, that security given will be realised.

(3) The reference in subsection (1)(b) to a company's last statutory financial statements or interim financial statements or to their being properly prepared shall be read in accordance with section 121.

(4) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is commenced; if a failure to comply with this subsection occurs, a like power to that under section 203 (4) is available to the court to declare valid for all purposes the carrying on of the activity.