

## SCHEDULE 1

Regulations 3(2) and 26(1)

Persons who have significant influence or control over another

### PART 1

Contractual or other arrangements with an individual

#### Application

1. This Part applies to a person (the associate) where the person who owns or tenants the land (the recorded person) is an individual who has entered into a contract or other arrangement under which—

- (a) the recorded person owns or tenants the land for or on behalf of the associate, or
- (b) the associate has the right to exercise, or actually exercises, significant influence or control over the recorded person's dealings with the land.

#### Exceptions

2. This Part does not apply where one or more of the following is, or are, the only contractual or other arrangements between the person and the individual—

- (a) the person's contract or arrangement with the individual is one to which another Part of this schedule applies,
- (b) the person's relationship to the individual is that of—
  - (i) a creditor of the individual (such as the holder of a standard security), or
  - (ii) a paid professional advisor to the individual (such as a solicitor or an accountant),
- (c) the person is the landlord of the individual,
- (d) the land is owned in common by the person and the individual,
- (e) the land is tenanted jointly by the person and the individual,
- (f) the person's contract or arrangement with the individual is in the form of concluded missives for the sale of the land by the individual to the person where the title to the land has not been transferred to the person,
- (g) the person has been appointed under a power of attorney granted by the individual in accordance with section 15 of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”)(**1**)
- (h) the person has been appointed as a guardian in respect of the individual under a guardianship order (within the meaning of section 58(4) of the 2000 Act),
- (i) the person's contract or arrangement with the individual is one to which the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010(**2**) apply,
- (j) the person's contract or arrangement with the individual is that of a service agreement (that is, where the person is the employee of the individual and occupation or possession of the land is provided to the person by the individual in return or part return for the performance by the person of services under an employment agreement),

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(1) 2000 asp 4.

(2) S.I. 2010/2960. Regulation 5 sets out the contracts to which these regulations apply.

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- (k) the person's contract or arrangement with the individual is as a liferenter under a proper liferent registered or recorded under section 51 of the Land Registration (Scotland) Act 2012(3),
- (l) the person's contract or arrangement with the individual is an agreement as to the financial provision to be made on divorce or the dissolution of a civil partnership, between the person and the individual, as the case may be,
- (m) the person's contract or arrangement with the individual is a cohabitation agreement (that is, an agreement between two persons living together as if they are spouses),
- (n) the person has a personal real burden (within the meaning of section 122(1) of the Title Conditions (Scotland) Act 2003(4)) over the land that is owned or tenanted by the individual,
- (o) the person is the holder of a licence which grants the right to use or exploit land, or any part of land owned or tenanted by the individual,
- (p) the person possesses a right of occupation over land owned or tenanted by the individual without any form of payment or other consideration being required in return.

## PART 2

### Partnerships

#### Application

3. This Part applies to a person (the associate) where—
- (a) the person who owns or tenants the land (the recorded person)—
    - (i) does so as a partner in a partnership or on its behalf, or
    - (ii) is a partnership, and
  - (b) the associate—
    - (i) is a general partner of the recorded person, but is not registered as owning or leasing the land,
    - (ii) is a general partner of another partnership which is (of itself) a partner of the recorded person,
    - (iii) is an individual who has significant influence or control over a relevant entity which is a partner of the recorded person,
    - (iv) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or a partnership in which the recorded person is a partner.

#### Exceptions

4. This Part does not apply to a person where that person's relationship to the partnership is only that of—
- (a) a paid professional advisor to the partnership (such as a solicitor or an accountant),
  - (b) a creditor of the partnership (such as the holder of a standard security),
  - (c) an administrator of the partnership in insolvency proceedings, or

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(3) 2012 asp 5.

(4) 2003 asp 9.

- (d) a member of the judiciary presiding over proceedings in connection with the partnership.

## **Interpretation of Part 2**

- 5. For the purposes of this Part—
  - (a) “relevant entity” means any body corporate or other entity (whether incorporated or not) that is a legal person under the law by which it is governed, other than a person of a type listed in schedule 2,
  - (b) examples of significant influence and control include, in particular, where a person—
    - (i) has the right to unilaterally take or veto decisions about the governance and running of a partnership,
    - (ii) has the right to appoint or remove any partners of a partnership without application to a court, or
    - (iii) is able to influence the decision-making of a partnership without holding any formal governance position within the partnership, particularly in respect of the partnership’s dealings with land,
  - (c) for the purposes of paragraph (3)(b)(iv), a person (A) does not exercise significant influence and control over a recorded person or the partnership if A is also a recorded person under paragraph 3(a).

## **PART 3**

### **Trusts**

#### **Application**

- 6. This Part applies to a person (the associate) where—
  - (a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, a trust, and
  - (b) the associate—
    - (i) is a trustee of the trust, but is not registered as being the owner or tenant of the land,
    - (ii) is an individual who has significant influence or control over a relevant entity which is a trustee of the recorded person,
    - (iii) is an individual who has the right to exercise, or who actually exercises, significant influence or control over the recorded person or the trust.

#### **Exceptions**

- 7.—(1) This Part does not apply where—
  - (a) the recorded person owns or tenants the land as a trustee of a trust created for the purposes of insolvency or sequestration,
  - (b) the recorded person owns or tenants the land for or on behalf of a partnership to which Part 2 of this schedule applies,
  - (c) the recorded person owns or tenants the land for or on behalf of the members of an unincorporated body of persons to which Part 4 of this schedule applies.
- (2) This Part does not apply where a person’s relationship to the trust is only that of—
  - (a) a paid professional advisor to the trust (such as a solicitor or an accountant),

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- (b) a creditor of the trust (such as the holder of a standard security), or
- (c) a member of the judiciary presiding over proceedings in connection with the trust,
- (d) a member of a body which has the right to exercise, or actually exercises significant influence or control over the trust by virtue of a function conferred by an enactment.

### **Interpretation of this Part**

**8.—**(1) For the purposes of this Part—

- (a) “relevant entity” means any body corporate or other entity (whether incorporated or not) that is a legal person under the law by which it is governed, other than a person of a type listed in schedule 2,
- (b) examples of significant influence and control include, in particular, where a person—
  - (i) has the right to appoint or remove a trustee of a trust (other than by application to a court),
  - (ii) has the right to direct the distribution of assets or funds of a trust,
  - (iii) has the right to direct investment decisions of a trust,
  - (iv) has the right to amend a trust deed,
  - (v) has the right to revoke a trust, or
  - (vi) otherwise has significant influence or control over the decision-making of a trustee or trust, particularly in respect of the trustee’s or trust’s dealings with the land.

(2) For the purposes of paragraph 6(b)(iii), a person (A) does not exercise significant influence and control over a recorded person or the trust if A is also a recorded person in accordance with paragraph 6(a).

## **PART 4**

### **Unincorporated bodies**

#### **Application**

**9.** This Part applies to a person (the associate) where—

- (a) the person who owns or tenants the land (the recorded person) does so as a trustee of, or otherwise on behalf of, the members of an unincorporated body of persons, and
- (b) the associate—
  - (i) is responsible for the general control and management of the administration of the body, and
  - (ii) is not registered as owning or leasing the land.

#### **Exceptions**

**10.** This Part does not apply to a person where that person’s relationship to the body is only that of—

- (a) a paid professional advisor to the body (such as a solicitor or an accountant),
- (b) a creditor of the body (such as the holder of a standard security),
- (c) a member of the judiciary presiding over proceedings to remove a member of the body from any trust established to hold property on the body’s behalf.

## Interpretation of Part 4

11. For the purposes of this Part a person is responsible for the general control and management of the administration of a body if they hold an office or other official position in that regard (such as chair, treasurer or secretary, however that may be described).

## PART 5

### Overseas entities

#### Application

12. This Part applies to a person (the associate) where—

- (a) the person which owns or tenants the land (the recorded person) is an overseas entity, and
- (b) the associate—
  - (i) directly or indirectly holds more than 25% of the voting rights in the recorded person,
  - (ii) directly or indirectly holds the power to appoint or remove a majority of the board of directors of the recorded person (or if it doesn't have a board, the equivalent management body),
  - (iii) has the right to exercise, or actually exercises, significant influence or control over a partnership or unincorporated body which is not a legal entity or a trust, but in respect of which head (i) or (ii) would apply if the partnership, body or trust were an individual, or
  - (iv) otherwise has the right to exercise, or actually exercises, significant influence or control over the decision-making of the recorded person, particularly in respect of its dealings with the land.

#### Exceptions

13.—(1) This Part does not apply to a person where the person's relationship to the overseas entity is only that of—

- (a) a director of the entity (who is not an employee of the entity),
- (b) an employee (other than a director) acting in the course of the person's employment or as a nominee for the entity,
- (c) a paid professional advisor to the entity (such as a solicitor or an accountant),
- (d) a person acting under a third party commercial or financial agreement (such as a customer or a supplier),
- (e) a creditor of the entity (such as the holder of a standard security),
- (f) a person exercising a function under an enactment (such as a regulator, liquidator or receiver).

(2) For the purpose of sub-paragraph (1)(a), a person whose responsibilities differ materially or in significant respects from those generally expected of a director of an entity which is comparable to the recorded person is not to be considered a director.

(3) This Part does not apply to a person ("O") where—

- (a) O is an overseas entity which is part of a chain of overseas entities (such as is described in paragraph 22(1)(b)) that includes the recorded person, and

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- (b) a person, other than an overseas entity, holds the right, or power in, the recorded person through O or the chain of overseas entities of which O forms part.
- (4) For the purposes of sub-paragraph (3), a person holds a right or power in the recorded person through O by virtue of holding a majority stake—
  - (a) in O, or
  - (b) in each overseas entity that is part of the chain of overseas entities that includes O.

### **Interpretation of Part 5**

**14.** Paragraphs 15 to 25 set out the meaning of certain expressions and the rules for the interpretation of this Part.

**15.** Examples of significant influence and control include, in particular, where—

- (a) a person has absolute rights to take or veto decisions related to the running of the business of the overseas entity,
- (b) a person’s recommendations are always or almost always followed by shareholders who hold the majority of the voting rights in the overseas entity, or
- (c) a person is significantly involved in the management and direction of the overseas entity.

**16.** “Legal entity” means a body corporate, partnership or an unincorporated body that is a legal person under the law by which it is governed.

**17.** “Overseas entity” means a legal entity, other than a person listed in schedule 2, which is incorporated or constituted under, and governed by, a law other than the law of the United Kingdom.

**18.—(1)** For the purposes of paragraphs 19 and 23, “arrangement” includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
- (b) any convention, custom or practice of any kind.

(2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

**19.—(1)** If rights held by a person or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Part as holding the combined rights of both of them.

(2) A “joint arrangement” is an arrangement between the holders of rights that they will exercise all or substantially all the rights conferred by their respective rights jointly in a way that is pre-determined by the arrangement.

**20.—(1)** A reference to the voting rights in an overseas entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters.

(2) In relation to an overseas entity that does not have general meetings at which matters are decided by the exercise of voting rights—

- (a) a reference to exercising voting rights in the entity is to be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company incorporated under the Companies Acts,
- (b) a reference to exercising more than 25% of the voting rights in the entity is to be read as a reference to exercising the right under the constitution of the entity to block changes to the overall policy of the entity or to the terms of its constitution.

(3) In applying this Part, the voting rights in an overseas entity are to be reduced by any rights held by the entity itself.

**21.—**(1) A reference to a power to appoint or remove a majority of the board of directors of an overseas entity is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

(2) References to a board of directors, in the case of an overseas entity that does not have such a board, are to be read as references to the equivalent management board of that entity.

**22.—**(1) A person holds a right “indirectly” if the person has a majority stake in an overseas entity and that entity—

- (a) holds that right, or
- (b) is part of a chain of legal entities—
  - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
  - (ii) the last of which holds that right.

(2) For these purposes, a person (“A”) has a “majority stake” in a legal entity (“B”) if—

- (a) A holds a majority of the voting rights in B,
- (b) A is a member of B and has the power to appoint or remove a majority of the board of directors of B,
- (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
- (d) A has the right to exercise, or actually exercises, control over B.

(3) In the application of this paragraph to the power to appoint or remove a majority of the board of directors, a legal entity is to be treated as having the right to appoint a director if—

- (a) a person’s appointment as a director follows necessarily from that person’s appointment as director of the legal entity, or
- (b) the directorship is held by the legal entity itself.

**23.—**(1) Where a person controls a right, the right is to be treated for the purposes of this Part as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

(2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person, in accordance with that person’s directions or instructions, or
- (b) with that person’s consent or concurrence.

**24.—**(1) Rights that are exercisable only in certain circumstances are to be taken into account only—

- (a) when the circumstances have arisen, and for so long as they are extant, or
- (b) when whether the circumstances arise or not are within the control of the person having the rights.

(2) But rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings are not to be taken into account even while the entity is in those proceedings.

(3) “Relevant insolvency proceedings” means—

- (a) administration within the meaning of the Insolvency Act 1986<sup>(5)</sup>, or
  - (b) proceedings under the insolvency law of another country or territory during which an entity's assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but which are temporarily incapable of exercise are to continue to be taken into account.

**25.**—(1) An individual does not meet a condition mentioned in paragraph 12 in relation to an overseas entity by virtue only of being a foreign limited partner.

(2) An individual does not meet a condition mentioned in paragraph 12 in relation to an overseas entity by virtue only of directly or indirectly holding a right in, or in relation to a foreign limited partner which (in its capacity as such) would meet the condition if it were an individual.

(3) Sub-paragraphs (1) and (2) do not apply for the purposes of determining whether the requirement set out in the condition mentioned in paragraph 12(b)(iii) is met.

- (4) In this paragraph “foreign limited partner” means an individual who—
- (a) participates in a foreign limited partnership as a limited liability participant, or
  - (b) directly or indirectly, holds shares or a right in or in relation to a legal entity which participates in a foreign limited partnership as a limited liability participant.
- (5) For the purposes of sub-paragraph (4)—
- (a) a “foreign limited partnership” is an arrangement which—
    - (i) is established under the law of a country or territory outwith the United Kingdom,
    - (ii) consists of at least one person who has unlimited liability for the debts and obligations of the arrangement, and
    - (iii) consists of at least one person who has no, or limited, liability for the debts and obligations of the arrangement so long as that person does not take part in the management of the arrangement's business,
  - (b) a “limited liability participant” is a person who—
    - (i) has no, or limited, liability for the debts and obligations of the foreign limited partnership for so long as that person does not take part in the management of the foreign limited partnership's business, and
    - (ii) does not take part in the management of the foreign limited partnership's business.

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(5) 1986 c.45.