

SCHEDULE 1

References to people with significant control over an eligible Scottish partnership

PART 3

Interpretation of Schedule 1

Introduction

10. This Part sets out rules for the interpretation of this Schedule, save that paragraph 17(1) does not apply to the interpretation of paragraph 2.

Joint interests and joint arrangements

11.—(1) If two or more persons hold a right jointly, each of them is treated for the purposes of this Schedule as holding that right.

(2) If the right held by a person and the right held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(3) A “joint arrangement” is an arrangement between the holders of a right 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.

(4) “Arrangement” has the meaning given by paragraph 16(3).

The right to surplus assets of an eligible Scottish partnership on a winding up

12. To the extent that the holding of a right to any surplus assets of an eligible Scottish partnership on a winding up is not expressly provided for, each partner in the eligible Scottish partnership shall be treated as holding the right to an equal share in any surplus assets on a winding up.

Right held “indirectly”

13.—(1) A person holds a right “indirectly” if the person has a majority stake in a legal 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 has a “majority stake” in B if—

(a) A holds a majority of the voting rights in B,

(b) A is a member of B and has the right 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, dominant influence or control over B within the meaning of section 1162 of the Companies Act 2006.

(3) In the application of this paragraph to the right 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 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.

(4) In this paragraph—

- (a) references to the right to appoint to or remove a majority of the board of directors of a legal entity are 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, and
- (b) references to a board of directors, in the case of an entity that does not have such a board, are to be read as references to the equivalent management body of that entity.

Voting rights and the right to appoint or remove persons entitled to take part in management

14.—(1) A reference to the voting rights in a legal 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 a legal 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;
- (b) a reference to exercising more than 25% of the voting rights in the entity is to 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) The voting rights in a legal entity are to be reduced by any rights held by the entity itself.

(4) The right to appoint or remove a majority of the persons who are entitled to take part in the management of an eligible Scottish partnership includes the right to appoint or remove those persons who hold a majority of the voting rights at meetings of the management body of the eligible Scottish partnership.

Rights held by nominees

15. A right held by a person as nominee for another is to be treated for the purposes of this Schedule as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

16.—(1) Where a person controls a right, the right is to be treated for the purposes of this Schedule 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,
- (b) in accordance with that person's directions or instructions, or
- (c) with that person's consent or concurrence.

(3) “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.

(4) 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).

Rights exercisable only in certain circumstances etc.

17.—(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 continue to obtain, or
- (b) when the circumstances 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⁽¹⁾,
- (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989⁽²⁾, or
- (c) 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 are temporarily incapable of exercise are to continue to be taken into account.

Rights attached to shares held by way of security

18. Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person—

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person’s instructions, and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person’s interests.

Meaning of “significant influence or control”

19. Regard must be had to any guidance on the meaning of “significant influence and control” issued for the purposes of this Schedule by the Secretary of State.

(1) 1986 c.45.

(2) S.I. 1989/2405 (N.I. 19).