

*Status: Point in time view as at 10/06/2021.*

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## SCHEDULES

### [<sup>F1</sup>SCHEDULE 33A

Section 235

#### PROMOTION STRUCTURES

##### Textual Amendments

- F1** Sch. 33A inserted (with effect in accordance with s. 121(6) of the amending Act) by Finance Act 2021 (c. 26), Sch. 30 para. 10

*Cases in which a person is a member of a promotion structure.*

- 1 A person (“A”) is a member of a promotion structure if A falls within—
- (a) the case described in paragraph 2 (multiple entity promoter),
  - (b) the case described in paragraph 3 (acting for a non-resident promoter),
  - (c) the case described in paragraph 4 (control of another promoter), or
  - (d) the case described in paragraph 5 (transfer of promotion business).

*Multiple entity promoter*

- 2 (1) A falls within this case if—
- (a) A and one or more other persons carry out activities between them that if carried out by a single person would cause that person to be a promoter within the meaning of section 235(2) or (3), and
  - (b) each of the persons carrying out those activities is closely related to at least one other of those persons.
- (2) A person (“D”) is closely related to another person (“E”) if—
- (a) D is able to secure that E acts in accordance with D's wishes (or vice versa),
  - (b) E typically acts in accordance with D's wishes,
  - (c) it is reasonable to expect that E will act in accordance with D's wishes,
  - (d) a third person is able to secure that D and E act in accordance with the third person's wishes,
  - (e) D and E typically act in accordance with a third person's wishes,
  - (f) it is reasonable to expect that D and E will act in accordance with a third person's wishes, or
  - (g) the 50% investment condition is met in relation to D and E.
- (3) The 50% investment condition is met in relation to D and E if—
- (a) D has a 50% investment in E (or vice versa), or
  - (b) a third person has a 50% investment in each of D and E.

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- (4) Subsections (3) to (9) of section 259ND of TIOPA 2010 apply for the purposes of determining whether a person has a “50% investment” in another person, and references in those subsections to X% are to be read as references to 50%.

*Acting for a non-resident promoter*

- 3 (1) A falls within this case if A acts under the instruction or guidance of a person (“O”) who carries on a business as a promoter and who is resident outside the United Kingdom, and—
- (a) A does any of the things mentioned in sub-paragraph (2) under that instruction or guidance, or
  - (b) A receives remuneration (of any kind) from O in connection with the business carried on by O.
- (2) The things referred to in sub-paragraph (1)(a) are—
- (a) being a promoter;
  - (b) facilitating any activity by virtue of which a person would be a promoter (for example, by facilitating the organisation of relevant arrangements or by facilitating the making of a relevant proposal available for implementation).
- (3) For the purposes of sub-paragraph (1)(b), reference to A receiving remuneration from O includes—
- (a) A receiving any payment or benefit as a consequence of instructions given by O (whether or not O is the source of that payment or benefit);
  - (b) A receiving any payment or benefit as a consequence of any arrangements that O made or participated in the making of, or that are referable to the business carried on by O (which may include relevant arrangements, or arrangements implementing a relevant proposal, promoted by O or which are otherwise referable to that business).
- (4) For the purposes of this paragraph a person is a promoter if the person meets the description of a promoter in section 235(2) or (3) (whether or not the person carries on a business).

*Control of another promoter*

- 4 (1) A falls within this case if—
- (a) A is an individual who controls, or has significant influence over, a body corporate or a partnership (“B”) that carries on a business as a promoter, and
  - (b) A meets the personal condition or the corporate condition.
- (2) The personal condition is that, at any time after A first controlled or had significant influence over B—
- (a) A was subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
  - (b) A was bankrupt, or A's estate had been sequestrated under the Bankruptcy (Scotland) Act 2016,
  - (c) A was the subject of an individual voluntary arrangement under Part 8 of the Insolvency Act 1986,

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- (d) A's estate was subject to a protected trust deed (see section 163 of the Bankruptcy (Scotland) Act 2016),
  - (e) A was subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order,
  - (f) A was subject to a debt relief order, or
  - (g) A was subject to a debt relief restrictions order or interim debt relief restrictions order.
- (3) The corporate condition is that at any time A controlled, or had significant influence over, a person (other than B) that carried on business as a promotor that was—
- (a) a body corporate or a partnership that was dissolved or became insolvent,
  - (b) a body corporate that became dormant,
  - (c) a company formed and registered under the Companies Act 2006 (see section 1 of that Act) that made an application under section 1003 of that Act to strike the company's name off the register, or
  - (d) a company formed and registered under that Act in respect of which the registrar (within the meaning of that Act) has published a notice under section 1000(3) or 1001(1) of that Act, if two months have passed since the publication of that notice.
- (4) For the purposes of this paragraph, the circumstances in which a body corporate or partnership becomes insolvent include—
- (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
  - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (e) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
  - (f) if a bank administration order takes effect under Part 3 of that Act, or
  - (g) on the occurrence of any corresponding circumstances which have effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.
- (5) For the purposes of this paragraph, a body corporate is dormant if—
- (a) in the case of a body corporate incorporated in the United Kingdom, it is dormant within the meaning given by section 1169 of the Companies Act 2006, or
  - (b) in any other case, it would be dormant within the meaning of that section if the body corporate were incorporated in the United Kingdom.
- (6) Sub-paragraphs (5) to (11) of paragraph 13A of Schedule 34 (meaning of “control” and “significant influence”) apply to this paragraph as they apply to Part 2 of that Schedule.
- (7) In this paragraph—

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“bankruptcy restrictions order” or “interim bankruptcy restrictions order” means such an order (or as the case may be, undertaking) under—

- (a) Schedule 4A to the Insolvency Act 1986,
- (b) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
- (c) Part 13 of the Bankruptcy (Scotland) Act 2016 (asp 21);

“debt relief order” means such an order under—

- (a) Part 7A of the Insolvency Act 1986, or
- (b) Part 7A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));

“debt relief restrictions order” or “interim debt relief restrictions order” means such an order (or as the case may be, undertaking) under—

- (a) Schedule 4ZB to the Insolvency Act 1986, or
- (b) Schedule 2ZB to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

*Transfer of promotion business*

- 5 (1) A falls within this case if—
- (a) there has been a relevant transfer to A, or
  - (b) there has been a relevant transfer to a body corporate or partnership that A controls, or has significant influence over.
- (2) For the purposes of sub-paragraph (1) “relevant transfer” means a transfer of—
- (a) the whole of the business of a person carrying on business as a promoter;
  - (b) any part of such a business that relates to the promotion of relevant arrangements or relevant proposals;
  - (c) property, rights or liabilities of such a business that are connected with the promotion of relevant arrangements or relevant proposals.
- (3) In sub-paragraph (2) “transfer” means any transfer in substance (whether or not the transfer is formal or for consideration, and whether or not the transfer is direct).
- (4) Sub-paragraphs (5) to (11) of paragraph 13A of Schedule 34 (meaning of “control” and “significant influence”) apply to this paragraph as they apply to Part 2 of that Schedule.]

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