

SCHEDULE 2

Regulation 15

Enforcement of disclosure requirements

Right to issue restrictions notice

1.—(1) This paragraph applies if—

- (a) a notice under regulation 10 (duty to investigate) or 11 (duty to keep information up to date) is served by an eligible Scottish partnership on a person who has a relevant interest in the eligible Scottish partnership, and
- (b) the person fails to comply with that notice within the time specified in it.

(2) The eligible Scottish partnership may give the person a notice under this paragraph (a “warning notice”) informing the person that it is proposing to issue the person with a notice (a “restrictions notice”) with respect to the relevant interest.

(3) The eligible Scottish partnership may issue the restrictions notice if, by the end of the period of one month beginning with the day on which the warning notice was given—

- (a) the person has not complied with the notice served under regulation 10 or 11, and
- (b) the eligible Scottish partnership has not been provided with a valid reason sufficient to justify the person's failure to comply with the notice served under that regulation.

(4) A restrictions notice is issued on a person by sending the notice to the person.

(5) The effect of a restrictions notice is set out in paragraph 3.

(6) In deciding whether to issue a restrictions notice, the eligible Scottish partnership must have regard to the effect of the notice on the rights of third parties in respect of the relevant interest.

Relevant interests

2.—(1) For the purposes of this Schedule, a person has a relevant interest in an eligible Scottish partnership if the person—

- (a) holds any interest in the eligible Scottish partnership,
- (b) holds any voting rights in the eligible Scottish partnership, or
- (c) holds the right to appoint or remove any of the persons who are entitled to take part in the management of the eligible Scottish partnership.

(2) References to the “relevant interest” are to the interest or right in question.

(3) Parts 2 and 3 of Schedule 1 apply for the interpretation of sub-paragraph (1) save that, where the relevant interest is by virtue of paragraph 15 or 16 of that Schedule treated for the purposes of that Schedule as held by a person other than the person who in fact holds the interest, both the holder and the other person are to be regarded for the purposes of this Schedule as having the relevant interest.

Effect of restrictions notice

3.—(1) The effect of a restrictions notice issued under paragraph 1 with respect to a relevant interest is as follows—

- (a) any transfer of the interest is void,
- (b) no rights are exercisable in respect of the interest,
- (c) except in a liquidation or a sequestration of the eligible Scottish partnership under the Bankruptcy (Scotland) Act 2016, no payment may be made of sums due from the eligible Scottish partnership in respect of the interest, whether in respect of capital or otherwise.

(2) An agreement to transfer an interest that is subject to the restriction in sub-paragraph (1)(a) is void.

(3) Sub-paragraph (2) does not apply to an agreement to transfer the interest on the making of an order under paragraph 7 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).

(4) An agreement to transfer any associated right (otherwise than in a liquidation) is void.

(5) Sub-paragraph (4) does not apply to an agreement to transfer any such right on the making of an order under paragraph 7 made by virtue of sub-paragraph (3)(b) of that paragraph (removal of restrictions in case of court-approved transfer).

(6) An “associated right”, in relation to a relevant interest, is a right to receive payment of any sums due from the eligible Scottish partnership in respect of the relevant interest.

(7) The provisions of this paragraph are subject to any directions given under paragraph 4.

Protection of third party rights

4.—(1) The court may give a direction under this paragraph if, on application by any person aggrieved, the court is satisfied that a restrictions notice issued by the eligible Scottish partnership under paragraph 1 unfairly affects the rights of third parties in respect of the relevant interest.

(2) The direction is given for the purpose of protecting those third party rights.

(3) The direction is a direction that certain acts will not constitute a breach of the restrictions placed on the relevant interest by the restrictions notice.

(4) An order containing a direction under this paragraph—

(a) must specify the acts that will not constitute a breach of the restrictions, and

(b) may confine the direction to cases where those acts are done by persons, or for purposes, described in the order.

(5) The direction may be given subject to such terms as the court thinks fit.

Breach of restrictions

5.—(1) A person commits an offence if the person does anything listed in sub-paragraph (2) knowing that the interest is subject to restrictions.

(2) The things are—

(a) exercising or purporting to exercise any right to dispose of a relevant interest,

(b) exercising or purporting to exercise any right to dispose of any right to be issued with a relevant interest, or

(c) voting in respect of a relevant interest (whether as holder of the interest or as proxy) or appointing a proxy to vote in respect of a relevant interest.

(3) A person who has a relevant interest that the person knows to be subject to restrictions commits an offence if the person—

(a) knows a person to be entitled (apart from the restrictions) to vote in respect of the interest, whether as holder or as proxy,

(b) does not know the person to be aware of the fact that the interest is subject to restrictions, and

(c) fails to notify the person of that fact.

(4) A person commits an offence if the person—

- (a) either has a relevant interest that the person knows to be subject to restrictions or is entitled to an associated right, and
 - (b) enters in that capacity into an agreement that is void by virtue of paragraph 3(2) or (4).
- (5) References in this Schedule to an interest being “subject to restrictions” are to an interest being subject to restrictions by virtue of a restrictions notice under paragraph 1.

- 6.—**(1) A person guilty of an offence under paragraph 5 is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction—
 - (i) in England and Wales, to a fine,
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (2) The provisions of paragraph 5 are subject to any direction given under paragraph 4 or 7.

Relaxation of restrictions

- 7.—**(1) An application may be made to the court for an order directing that the relevant interest cease to be subject to restrictions.
- (2) An application for an order under this paragraph may be made by the eligible Scottish partnership in question or by any person aggrieved.
- (3) The court must not make an order under this paragraph unless—
- (a) it is satisfied that the information required by the notice served under regulation 10 or 11 has been disclosed to the eligible Scottish partnership and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or
 - (b) the relevant interest is to be transferred for valuable consideration and the court approves the transfer.
- (4) An order under this paragraph made by virtue of sub-paragraph (3)(b) may continue, in whole or in part, the restriction mentioned in paragraph 3(1)(c) so far as it relates to a right acquired or offer made before the transfer.
- (5) Where any restrictions continue in force under sub-paragraph (4)—
- (a) an application may be made under this paragraph for an order directing that the relevant interest cease to be subject to those restrictions, and
 - (b) sub-paragraph (3) does not apply in relation to the making of such an order.

Orders for sale

- 8.—**(1) The court may order that the relevant interest subject to restrictions be sold subject to the court's approval as to the sale.
- (2) An application for an order under sub-paragraph (1) may only be made by the eligible Scottish partnership in question.
- (3) If the court makes an order under this paragraph, it may make such further order relating to the sale or transfer of the interest as it thinks fit.
- (4) An application for an order under sub-paragraph (3) may be made—
- (a) by the eligible Scottish partnership in question,
 - (b) by the person appointed by or in pursuance of the order to effect the sale, or
 - (c) by any person with an interest in the relevant interest.

(5) On making an order under sub-paragraph (1) or (3), the court may order that the applicant's costs (in Scotland, expenses) be paid out of the proceeds of sale.

9.—(1) If a relevant interest is sold in pursuance of an order under paragraph 8, the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of those who are beneficially interested in the relevant interest.

(2) A person who is beneficially interested in the relevant interest may apply to the court for the whole or part of those proceeds to be paid to that person.

(3) On such an application, the court must order the payment to the applicant of—

- (a) the whole of the proceeds of sale together with any interest on the proceeds, or
- (b) if another person was also beneficially interested in the relevant interest at the time of the sale, such proportion of the proceeds (and any interest) as the value of the applicant's interest bears to the total value of the relevant interest.

(4) If the court has ordered under paragraph 8 that the costs (in Scotland, expenses) of an applicant under that paragraph are to be paid out of the proceeds of sale, the applicant is entitled to payment of those costs (or expenses) out of the proceeds before any person receives any part of the proceeds under this paragraph.

The power of an eligible Scottish partnership to withdraw restrictions notice

10. An eligible Scottish partnership that issues a person with a restrictions notice under paragraph 1 must by notice withdraw the restrictions notice if—

- (a) it is satisfied that there is a valid reason sufficient to justify the person's failure to comply with the notice served under regulation 10 or 11,
- (b) the notice served under regulation 10 or 11 is complied with,
- (c) it discovers that the rights of a third party in respect of the relevant interest are being unfairly affected by the restrictions notice, or
- (d) being a Scottish qualifying partnership, it delivers a notice to the registrar under regulation 8(1) (effect of a Scottish partnership ceasing to be a qualifying partnership).

Content of a warning notice

11. A warning notice given under paragraph 1 of this Schedule must—

- (a) specify the date on which the warning notice is given;
- (b) be accompanied by a copy of the notice given under regulation 10 or 11 to which the warning notice relates;
- (c) identify the addressee's relevant interest in the eligible Scottish partnership by reference to the right in question;
- (d) state that the eligible Scottish partnership will consider reasons provided to it as to why the addressee failed to comply with the notice given under regulation 10 or 11;
- (e) explain the effect of a restrictions notice; and
- (f) state that, by virtue of a restrictions notice, certain acts or failures to act may constitute an offence.

Content of a restrictions notice

12. A restrictions notice issued under paragraph 1 of this Schedule must—

- (a) specify the date on which the restrictions notice is issued;

- (b) be accompanied by a copy of the warning notice which preceded the restrictions notice;
- (c) identify the addressee's relevant interest in the eligible Scottish partnership by reference to the right in question;
- (d) explain the effect of the restrictions notice;
- (e) state that, by virtue of the restrictions notice, certain acts or failures to act may constitute an offence; and
- (f) state that an aggrieved person may apply to the court for an order directing that the relevant interest cease to be subject to restrictions.

Failure to comply with a regulation 10 or 11 notice: valid reason

13. An eligible Scottish partnership must take into account any incapacity of the addressee of a notice given under regulation 10 or 11 in deciding what counts as a “valid reason” sufficient to justify the addressee's failure to comply with the notice.

Withdrawal of a restrictions notice

14. Where an eligible Scottish partnership is required to withdraw a restrictions notice under paragraph 10 of this Schedule by notice (a “withdrawal notice”), the withdrawal notice must—

- (a) be given within the period of 14 days beginning with the day the eligible Scottish partnership became required to withdraw the restrictions notice under that paragraph;
- (b) specify the date on which the withdrawal notice is given;
- (c) identify the addressee's relevant interest in the eligible Scottish partnership by reference to the right in question; and
- (d) state that the relevant interest is no longer subject to restrictions.

Offences for failing to comply with notices

15.—(1) A person to whom a notice under regulation 10 or 11 is addressed commits an offence if the person—

- (a) fails to comply with the notice, or
- (b) in purported compliance with the notice—
 - (i) makes a statement that the person knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular.

(2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.

(3) A person does not commit an offence under sub-paragraph (1)(a) (or sub-paragraph (2) as it applies in relation to that sub-paragraph) if the person proves that the requirement to give information was frivolous or vexatious.

(4) A person guilty of an offence under this paragraph is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months or to a fine (or both);
 - (ii) in Scotland and Northern Ireland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).

Offences for failing to provide information

- 16.—(1) A person commits an offence if the person—
- (a) fails to comply with a duty under regulation 14 or 15, or
 - (b) in purported compliance with such a duty—
 - (i) makes a statement that the person knows to be false in a material particular, or
 - (ii) recklessly makes a statement that is false in a material particular.
- (2) Where the person is a legal entity, an offence is also committed by every officer of the entity who is in default.
- (3) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months or to a fine (or both);
 - (ii) in Scotland and Northern Ireland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).

Changes to legislation:

There are currently no known outstanding effects for the The Scottish Partnerships (Register of People with Significant Control) Regulations 2017, SCHEDULE 2.