UK Financial Promotions Regime: Changes to Exemptions

Overview:

As a recap, the UK Financial Promotions regime is designed to protect individual investors from misleading or inaccurate promotions and help them make informed decisions by imposing restrictions on such promotions by companies. A "financial promotion" is any communication of an invitation or inducement to invest. This regime applies to investment information for theatre productions which is sent to potential investors.

The two main exemptions (certified high-net-worth individuals and sophisticated investor) used by producers to help raise finance without the regulatory burden and cost of complying with the full promotions regime have been amended to reflect economic and social changes since the original introduction of the regime in 2001.

Key changes to the Exemptions:

Certified High Net Worth individual

In order to qualify for the "high-net-worth individual" exemption, an individual must meet the below financial thresholds:

- income of at least £170,000 (up from £100,000) in the last financial year, or
- net assets of at least £430,000 (up from £250,000) throughout the last financial year.

Self-Certified Sophisticated Investor

Under current rules: "Self-certified sophisticated investors" refers to those who:

- Worked in private equity or in the provision of finance for small or medium sized companies in the previous two years.
- Served as the director of a company that has an annual turnover of at least £1 million in the previous two years.
- Made more than one investment in an unlisted company in the previous two years.
- Belonged to a network or syndicate of business angels for at least the last six months.

After the amendments take effect:

- It will no longer be possible to qualify as a Self-Certified Sophisticated Investor on the basis of having made investments in an unlisted company. In some instances investors have relied on this where they have made previous production investments.
- The company turnover required to satisfy the 'company director' criteria will increase from £1 million to £1.6 million.

Process changes and Documents

Previously investors just had to sign a statement, but they now need to complete additional information showing the basis for their exemption using a standard template. The templates for the new investor statements are found in Schedules 1 and 2 of the draft 2023 Order (draft order link here).

A producer raising funds will also be required to include some disclosures about the company (i.e. the company address, contact information and registration details) so that a prospective investor can undertake basic due diligence.

Effective date

Comes into force 31 January 2024. By way of reminder an investor should sign the exemption statement prior to receiving the financial promotion. However, a producer can make a follow-up financial promotion relating to the same production investment opportunity within 12 months of the initial promotion.