



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER VIII

COLLECTIVE INVESTMENT SCHEMES

Recognition of overseas schemes

86 Schemes constituted in other member States

- (1) Subject to subsection (2) below, a collective investment scheme constituted in a member State other than the United Kingdom is a recognised scheme if it satisfies such requirements as are prescribed for the purposes of this section.
- (2) Not less than two months before inviting persons in the United Kingdom to become participants in the scheme the operator of the scheme shall give written notice to the Secretary of State of his intention to do so, specifying the manner in which the invitation is to be made; and the scheme shall not be a recognised scheme by virtue of this section if within two months of receiving the notice the Secretary of State notifies—
 - (a) the operator of the scheme; and
 - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,that the manner in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Secretary of State under subsection (2) above—
 - (a) shall be accompanied by a certificate from the authorities mentioned in subsection {2}(b) above to the effect that the scheme complies with the

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- conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
- (b) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
 - (c) shall contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Secretary of State under subsection (2) above shall give the reasons for which he considers that the law in force in the United Kingdom will not be complied with and give particulars of the rights conferred by subsection (5) below.
- (5) A person on whom a notice is served by the Secretary of State under subsection (2) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The Secretary of State may in the light of any representations made in accordance with subsection (5) above withdraw his notice and in that event the scheme shall be a recognised scheme from the date on which the notice is withdrawn.
- (7) Rules under section 48 above shall not apply to investment business in respect of which the operator or trustee of a scheme recognised under this section is an authorised person by virtue of section 24 above except so far as they make provision as respects—
- (a) procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it;
 - (b) matters incidental to those mentioned in paragraph (a) above.
- (8) For the purposes of this section a collective investment scheme is constituted in a member State if—
- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law ; or
 - (b) it takes the form of an open-ended investment company incorporated under that law.
- (9) If the operator of a scheme recognised under this section gives written notice to the Secretary of State stating that he desires the scheme no longer to be recognised under this section it shall cease to be so recognised when the notice is given.

87 Schemes authorised in designated countries or territories

- (1) Subject to subsection (3) below, a collective investment scheme which is not a recognised scheme by virtue of section 86 above but is managed in and authorised under the law of a country or territory outside the United Kingdom is a recognised scheme if—
- (a) that country or territory is designated for the purposes of this section by an order made by the Secretary of State; and
 - (b) the scheme is of a class specified by the order.
- (2) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which collective investment schemes of the class to be specified by the order are authorised and supervised in that country or territory affords to investors in the United Kingdom

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protection at least equivalent to that provided for them by this Chapter in the case of an authorised unit trust scheme.

- (3) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Secretary of State that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Secretary of State notifies the operator that the scheme is not to be recognised.
- (4) The notice given by the operator under subsection (3) above—
 - (a) shall contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
 - (b) shall contain or be accompanied by such information and documents as may be prescribed.
- (5) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published; and regulations made by virtue of this subsection may make provision whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.
- (6) An order under subsection (1) above may contain such transitional provisions as the Secretary of State thinks necessary or expedient and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

88 Other overseas schemes

- (1) The Secretary of State may, on the application of the operator of a scheme which—
 - (a) is managed in a country or territory outside the United Kingdom ; but
 - (b) does not satisfy the requirements mentioned in section 86(1) above and in relation to which there is no relevant order under section 87(1) above,make an order declaring the scheme to be a recognised scheme if it appears to him that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 81 above and satisfies the following provisions of this section.
- (2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.
- (3) Subject to subsection (4) below, the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Secretary of State may take into account any matter relating to—
 - (a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;
 - (b) any director or controller of the operator or trustee ;
 - (c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.
- (4) Subsection (3) above does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by

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or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which he is a member or by any prohibition imposed under section 65 above.

- (5) If the operator is not an authorised person he must have a representative in the United Kingdom who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.
- (6) The name of the scheme must not be undesirable or misleading ; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in this subsection.
- (8) Subsections (2) to (5) of section 77 above shall apply also to an application under this section.
- (9) So much of section 82 above as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the solicitor's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him, shall give at least one month's notice to the Secretary of State.
- (10) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published.

89 Refusal and revocation of recognition

- (1) The Secretary of State may at any time direct that a scheme shall cease to be recognised by virtue of section 87 above or revoke an order under section 88 above if it appears to him—
 - (a) that it is undesirable in the interests of the participants or potential participants in the United Kingdom that the scheme should continue to be recognised ;
 - (b) without prejudice to paragraph (a) above, that the operator or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
 - (c) in the case of an order under section 88 that any of the requirements for the making of the order are no longer satisfied.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any matter relating to the scheme the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.

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- (3) In the case of an operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may give such a direction or revoke such an order as is mentioned in subsection (1) above at the request of the operator or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.
- (5) Where the Secretary of State proposes—
 - (a) to notify the operator of a scheme under section 87(3) above; or
 - (b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1) above,he shall give the operator written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (6) below.
- (6) A person on whom a notice is served under subsection (5) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (7) The Secretary of State shall have regard to any representations made in accordance with subsection (6) above in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

90 Facilities and information in the United Kingdom

- (1) The Secretary of State may make regulations requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified in the regulations, such facilities as he thinks desirable in the interests of participants and as are specified in the regulations.
- (2) The Secretary of State may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any investment advertisement issued or caused to be issued by him in the United Kingdom in which the scheme is named.