



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER VIII

COLLECTIVE INVESTMENT SCHEMES

Preliminary

75 Interpretation

- (1) In this Act " a collective investment scheme " means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) above (in this Act referred to as " participants ") do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3) below.
- (3) Those characteristics are—
 - (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.

Status: This is the original version (as it was originally enacted).

- (4) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (3) above in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) Arrangements are not a collective investment scheme if—
- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised unit trust schemes and recognised schemes) and 10 of Schedule 1 to this Act;
 - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time ; and
 - (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (3) above and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (6) The following are not collective investment schemes—
- (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;
 - (c) arrangements where each of the participants is a body corporate in the same group as the operator ;
 - (d) arrangements where—
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and
 - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) of Schedule 1 to this Act) in or of a member of that group ;
 - (e) arrangements where the receipt of the participants' contributions constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the Banking Act 1979 and does not constitute a transaction prescribed for the purposes of section 2 of that Act by regulations made by the Treasury;
 - (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
 - (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons ;
 - (h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 to this Act;

Status: This is the original version (as it was originally enacted).

- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
 - (j) contracts of insurance;
 - (k) occupational pension schemes.
- (7) No body incorporated under the law of, or of any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.
- (8) In this Act—
- " a unit trust scheme " means a collective investment scheme under which the property in question is held on trust for the participants;
 - " an open-ended investment company " means a collective investment scheme under which—
 - (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
 - (b) the rights of the participants are represented by shares in or securities of that body which—
 - (i) the participants are entitled to have redeemed or repurchased, or which (otherwise than under Chapter VII of Part V of the Companies Act 1985 or the corresponding Northern Ireland provision) are redeemed or repurchased from them by, or out of funds provided by, that body ; or
 - (ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate ;
 - " trustee ", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the United Kingdom, means any person who (whether or not under a trust) is entrusted with the custody of the property in question ;
 - " units " means the rights or interests (however described) of the participants in a collective investment scheme ;
 - " the operator ", in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company.
- (9) If an order under section 2 above amends the references to a collective investment scheme in Schedule 1 to this Act it may also amend the provisions of this section.