



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Individually recognised overseas schemes

272 Individually recognised overseas schemes

- (1) The Authority may, on the application of the operator of a collective investment scheme which—
 - (a) is managed in a country or territory outside the United Kingdom,
 - (b) does not satisfy the requirements prescribed for the purposes of section 264,
 - (c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and
 - (d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,make an order declaring the scheme to be a recognised scheme.
- (2) Adequate protection must be afforded to participants in the scheme.
- (3) The arrangements for the scheme's constitution and management must be adequate.
- (4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.
- (5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—

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- (a) any rule of law, and
 - (b) any matters which are, or could be, the subject of rules, applicable in relation to comparable authorised schemes.
- (6) “Comparable authorised schemes” means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
- (a) authorised unit trust schemes;
 - (b) authorised open-ended investment companies;
 - (c) both such unit trust schemes and such companies.
- (7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.
- (8) The operator of the scheme must—
- (a) if an authorised person, have permission to act as operator;
 - (b) if not an authorised person, be a fit and proper person to act as operator.
- (9) The trustee or depositary (if any) of the scheme must—
- (a) if an authorised person, have permission to act as trustee or depositary;
 - (b) if not an authorised person, be a fit and proper person to act as trustee or depositary.
- (10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.
- (11) The name of the scheme must not be undesirable or misleading.
- (12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (13) 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.
- (14) But a scheme is to be treated as complying with subsection (13) 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 that subsection.
- (15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

273 Matters that may be taken into account

For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;
- (b) any director of the operator, trustee or depositary;
- (c) any person exercising influence over the operator, trustee or depositary;
- (d) any body corporate in the same group as the operator, trustee or depositary;

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- (e) any director of any such body corporate;
- (f) any person exercising influence over any such body corporate.

274 Applications for recognition of individual schemes

- (1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.
- (2) The application—
 - (a) must be made in such manner as the Authority may direct;
 - (b) must 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;
 - (c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (4) Different directions may be given, and different requirements imposed, in relation to different applications.
- (5) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

275 Determination of applications

- (1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.
- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.
- (3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

276 Procedure when refusing an application

- (1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.
- (2) If the Authority decides to refuse the application—
 - (a) it must give the applicant a decision notice; and
 - (b) the applicant may refer the matter to the Tribunal.

277 Alteration of schemes and changes of operator, trustee or depositary

- (1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.

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- (2) Effect is not to be given to any such proposal unless—
 - (a) the Authority, by written notice, has given its approval to the proposal; or
 - (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.
- (3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—
 - (a) by the operator, trustee or depositary (as the case may be); or
 - (b) by the person who is to replace him.