



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVII

#### COLLECTIVE INVESTMENT SCHEMES

#### [<sup>F1</sup>CHAPTER 3A

#### AUTHORISED CONTRACTUAL SCHEMES

#### *[<sup>F1</sup>Co-ownership schemes: rights and liabilities of participants*

#### Textual Amendments

- F1** Pt. XVII Ch. 3A inserted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, **3(12)** (with reg. 24)

#### 261M. Contracts

- (1) In this section “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).
- (2) The relevant participants are—
  - (a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
  - (b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.
- (3) The operator on behalf of the relevant participants may—

*Status: Point in time view as at 06/04/2021.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Co-ownership schemes: rights and liabilities of participants is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) exercise rights under an authorised contract;
  - (b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
  - (c) take action in relation to the enforcement of any judgment given in such proceedings.
- (4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.
- (5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.
- (6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.
- (7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depository of the scheme concerned.

#### **261N. Effect of becoming or ceasing to be a participant**

- (1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.
- (2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.
- (3) In this section—
- (a) “authorised contract” has the meaning given in section 261M(1); and
  - (b) each of the following is a “relevant scheme”—
    - (i) a stand-alone co-ownership scheme; and
    - (ii) a sub-scheme of an umbrella co-ownership scheme.

#### **261O. Limited liability**

- (1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.
- (2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.
- (3) In this section—
- (a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;
  - (b) “authorised contract” has the meaning given in section 261M(1); and
  - (c) “relevant scheme” has the meaning given in section 261N(3).

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## **261P. Segregated liability in relation to umbrella co-ownership schemes**

- (1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.
- (2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.
- (3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.
- (4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.]

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