



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER VIII

COLLECTIVE INVESTMENT SCHEMES

Authorised unit trust schemes

77 Applications for authorisation

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme shall be made by the manager and trustee, or proposed manager and trustee, of the scheme and the manager and trustee shall be different persons.
- (2) Any such application—
 - (a) shall be made in such manner as the Secretary of State may direct; and
 - (b) shall contain or be accompanied by such information as he may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

78 Authorisation orders

- (1) The Secretary of State may, on an application duly made in accordance with section 77 above and after being furnished with all such information as he may require under that section, make an order declaring a unit trust scheme to be an authorised unit trust scheme for the purposes of this Act if—
 - (a) it appears to him that the scheme complies with the requirements of the regulations made under section 81 below and that the following provisions of this section are satisfied; and
 - (b) he has been furnished with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of those requirements as relate to its contents.
- (2) The manager and the trustee must be persons who are independent of each other.
- (3) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another member State, the affairs of each must be administered in the country in which it is incorporated, each must have a place of business in the United Kingdom and, if the manager is incorporated in another member State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 86 below.
- (4) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which the manager or trustee is a member or by a prohibition imposed under section 65 above.
- (5) 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.
- (6) 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 manager 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.
- (7) The Secretary of State shall inform the applicants of his decision on the application not later than six months after the date on which the application was received.
- (8) On making an order under this section the Secretary of State may issue a certificate to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

79 Revocation of authorisation

- (1) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme if it appears to him—
 - (a) that any of the requirements for the making of the order are no longer satisfied ;
 - (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised ; or
 - (c) without prejudice to paragraph (b) above, that the manager or trustee of the scheme has contravened any provision of this Act or any rules or

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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.

- (2) For the purposes of subsection (1)(6) above the Secretary of State may take into account any matter relating to the scheme the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.
- (3) In the case of a manager or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1)(c) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme at the request of the manager 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 order should be revoked or that revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

80 Representations against refusal or revocation

- (1) Where the Secretary of State proposes—
 - (a) to refuse an application for an order under section 78 above; or
 - (b) to revoke such an order otherwise than at the request of the manager or trustee of the scheme,he shall give the applicants or, as the case may be, the manager and trustee of the scheme 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 (2) below.
- (2) A person on whom a notice is served under subsection (1) 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.
- (3) The Secretary of State shall have regard to any representations made in accordance with subsection (2) above in determining whether to refuse the application or revoke the order, as the case may be.

81 Constitution and management

- (1) The Secretary of State may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of the participants in any such scheme.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
 - (a) as to the issue and redemption of the units under the scheme;
 - (b) as to the expenses of the scheme and the means of meeting them;
 - (c) for the appointment, removal, powers and duties of an auditor for the scheme ;

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- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme ;
 - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records ;
 - (f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Secretary of State ; and
 - (g) with respect to the amendment of the scheme.
- (3) Regulations under this section may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed; but regulations under this section shall be binding on the manager, trustee and participants independently of the contents of the deed and, in the case of the participants, shall have effect as if contained in it.
- (4) Regulations under this section shall not impose limits on the remuneration payable to the manager of a scheme.
- (5) Regulations under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

82 Alteration of schemes and changes of manager or trustee

- (1) The manager of an authorised unit trust scheme shall give written notice to the Secretary of State of—
- (a) any proposed alteration to the scheme ; and
 - (b) any proposal to replace the trustee of the scheme ;
- and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the regulations made under section 81 above.
- (2) The trustee of an authorised unit trust scheme shall give written notice to the Secretary of State of any proposal to replace the manager of the scheme.
- (3) Effect shall not be given to any such proposal unless—
- (a) the Secretary of State has given his approval to the proposal; or
 - (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) above without the Secretary of State having notified the manager or trustee that the proposal is not approved.
- (4) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 78(2) to (4) above.

83 Restrictions on activities of manager

- (1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) below.
- (2) Those activities are—
- (a) acting as manager of—
 - (i) a unit trust scheme;

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- (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body ; or
 - (iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled ;
 - (b) activities for the purposes of or in connection with those mentioned in paragraph (a) above.
- (3) A prohibition under section 65 above may prohibit the manager of an authorised unit trust scheme from inviting persons in any specified country or territory outside the United Kingdom to become participants in the scheme.

84 Avoidance of exclusion clauses

Any provision of the trust deed of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

85 Publication of scheme particulars

- (1) The Secretary of State may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make available to the public on request a document (" scheme particulars ") containing information about the scheme and complying with such requirements as are specified in the regulations.
- (2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if—
 - (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations ; or
 - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.
- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.