

Status: Point in time view as at 01/10/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Financial Services Act 1986 (Repealed), Part V is up to date with all changes known to be in force on or before 24 May 2023. 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)

SCHEDULES

SCHEDULE 1

INVESTMENTS AND INVESTMENT BUSINESS

Modifications etc. (not altering text)

- C1 Sch. 1 amended by S.I. 1988/496, art. 4
- C1 Sch. 1 amended by S.I. 1988/803, art. 5

PART V

INTERPRETATION

- 28 (1) In this Schedule—
- (a) “property” includes currency of the United Kingdom or any other country or territory;
 - (b) references to an instrument include references to any record whether or not in the form of a document;
 - (c) references to an offer include references to an invitation to treat;
 - (d) references to buying and selling include references to any acquisition or disposal for valuable consideration.
- (2) In sub-paragraph (1)(d) above “disposal” includes—
- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
 - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
 - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.
- (4) In sub-paragraph (3) above “company” has the same meaning as in paragraph 1 above, “shares” and “debentures” include any investments falling within paragraph 1 or 2 above and “share warrants” and “debenture warrants” means any investment which falls within paragraph 4 above and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.

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29 For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.

[^{F1}30 (1) For the purposes of this Schedule a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest.

(2) A qualifying capital interest means an interest in relevant shares of the body corporate which the member holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

(3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.

(4) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.

(5) In this paragraph “equity share capital” has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.]

Textual Amendments

F1 Sch. 1 para. 30 substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, **Sch. 10 para. 36(3)**

31 In this Schedule “a joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

32 Where a person is an exempted person as respects only part of the investment business carried on by him anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Part III or IV of this Schedule applies to anything done by him in the course of business in respect of which he is not exempt.

33 In determining for the purposes of this Schedule whether anything constitutes an investment or the carrying on of investment business section 18 of the ^{M1}Gaming Act 1845, section 1 of the ^{M2}Gaming Act 1892, any corresponding provision in force in Northern Ireland and any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable shall be disregarded.

Marginal Citations

M1 1845 c. 109.

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M2 1892 c. 9.

[^{F234} (1) For the purposes of this Schedule arrangements are not a collective investment scheme if—

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;
- (b) they constitute a complying fund;
- (c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property—
 - (i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it at any time after the end of the period of five years beginning with the date on which the shares in question were issued;
 - (ii) comprises relevant shares which do not fall within sub-paragraph (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in sub-paragraph (i) above expired;
 - (iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and
 - (iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and
- (d) the arrangements would meet the conditions described in section 75(5)(c) of this Act were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included in the property to which the arrangements relate.

(2) For the purposes of this paragraph—

- (a) “shares” means investments falling within paragraph 1 of this Schedule;
- (b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither—
 - (i) a claim for relief made in accordance with section 306 of the Income and Corporation Taxes Act 1988 has been disallowed; nor
 - (ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and
- (c) arrangements shall be regarded as constituting a complying fund if they provide that—
 - (i) the operator will, so far as practicable, make investments each of which, subject to each participant’s individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
 - (ii) the minimum subscription to the arrangements made by each participant must be not less than £2,000.]

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Textual Amendments

F2 Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7

[^{F3}35] For the purposes of this Schedule the following are not collective investment schemes–

- (a) arrangements where the entire contribution of each participant is a deposit within the meaning of section 5 of the Banking Act 1987 or a sum of a kind described in subsection (3) of that section;
- (b) arrangements under which the rights or interests of the participants are represented by the following–
 - (i) investments falling within paragraph 2 of this Schedule which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or
 - (ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of this Schedule provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) above or are issued by a single other issuer; or
 - (iii) investments falling within paragraph 3 of this Schedule issued by the same government, local authority or public authority; or
 - (iv) investments falling within paragraph 4 of this Schedule which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of this Schedule or within sub-paragraph (i), (ii) or (iii) above;
- (c) arrangements which would fall within paragraph (b) above were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which–
 - (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
 - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in sub-paragraph (i) above;

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- (d) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;
 - (e) arrangements under which the rights and interests of participants are rights and interests in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987.
- [arrangements where—
- ^{F4}(f) (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, or child (including, in Northern Ireland, adopted child) or step-child under the age of eighteen of such an employee or former employee) of any of the following bodies corporate, that is to say, The National Grid Company plc, Electricity Association Services Limited or any other body corporate in the same group as either of them [^{F5}being arrangements which are] operated by any of those bodies corporate; and
 - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) above) in or of a body corporate which is an electricity successor company for the purposes of Part II of the Electricity Act 1989 or a body corporate which would be regarded as connected with such an electricity successor company for the purposes of paragraph 20 above.

and for the purposes of this paragraph references to former employees shall have the same meaning as in the Financial Services Act 1986 (Electricity Industry Exemptions) Order 1990.]]

Textual Amendments

- F3** Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7
- F4** Para. 35(f) added by S.I. 1990/1493, art. 2
- F5** Words in Sch. 1 para. 35(f)(i) substituted by S.I. 1991/1516, art. 2.

VALID FROM 01/01/1997

- ^{F6}36 (1) For the purposes of this Schedule, arrangements are not a collective investment scheme if they are operated by a body corporate, a body corporate connected with it or a relevant trustee, for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
 - (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.

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- (3) In this paragraph, “a relevant trustee” means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements mentioned in sub-paragraph (1) above which were made by, or by a body corporate connected with, that body corporate.
- (4) In this paragraph “shares” and “debentures” include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraphs 1, 2, 4 or 5.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
 - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company..]

Textual Amendments

F6 Sch. 1 para. 36 inserted (1.1.1997) by S.I. 1996/2996, art. 3(2)

VALID FROM 06/02/1997

- [^{F7}37 For the purposes of this Schedule, arrangements are not a collective investment scheme if—
- (a) the purpose of the arrangements is that participants should receive, by way of reward, payments or other benefits in respect of the introduction by any person of other persons who become participants;
 - (b) the arrangements are such that the payments or other benefits referred to in paragraph (a) above are to be wholly or mainly funded out of the contributions of other participants; and
 - (c) the only reason why the arrangements have either or both of the characteristics mentioned in section 75(3) of this Act is because, pending their being used to fund those payments or other benefits, contributions of participants are managed as a whole by or on behalf of the operator of the scheme.]

Textual Amendments

F7 Sch. 1 para. 37 inserted (6.2.1997) by S.I. 1997/32, art. 2(2)

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VALID FROM 01/05/2001

[^{F8}38 For the purpose of this Schedule, arrangements are not prevented from being a collective investment scheme merely because they constitute a limited liability partnership.]

Textual Amendments

F8 Sch. 1 para. 38 inserted (1.5.2001) by S.I. 2001/1421, art. 2(4)

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