



COLLECTIVE INVESTMENT SCHEMES ACT 2008
COLLECTIVE INVESTMENT SCHEMES (DEFINITION)
ORDER 2008

Approved by Tynwald on 17th July 2008

Coming into operation on 1st August 2008

In exercise of the powers conferred on the Financial Supervision Commission by section 1(5) of the Collective Investment Schemes Act 2008^(a), and of all other enabling powers, the following Order is hereby made:-

Citation, commencement and interpretation

1. (1) This Order may be cited as the Collective Investment Schemes (Definition) Order 2008 and shall come into operation on 1st August 2008.
- (2) In this Order, “the Act” means the Collective Investment Schemes Act 2008.

Characteristics of arrangements which do not amount to a collective investment schemes under section 1 of the Act

2. Arrangements do not amount to a collective investment scheme if –
 - (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares, debentures, government securities, instruments, certificates representing securities, long-term insurance or units in relation to authorised or recognised collective investment schemes (as those terms are defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008^(b));
 - (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 section 1(3)(a) of the Act and have those mentioned in section 1(3)(b) 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.

Arrangements which do not amount to a collective investment schemes under section 1 of the Act

3. The following are not collective investment schemes -

(a) 2008 c.7

(b) SD 367/08

- (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 as that term is defined in Class 2 of Schedule 1 to the Regulated Activities Order 2008) 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 governing body, manager or administrator;
- (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 or of another body corporate in the same group as that body corporate; and
 - (ii) the property to which the arrangements relate consists of cash or near cash or of securities (as that term is defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008) in or of a member of that group, and in this paragraph, "near cash" means -
 - (A) money in a current account with a deposit taker (as that term is defined in Class 1 of Schedule 1 to the Regulated Activities Order 2008);
 - (B) money in a deposit account with, or on short term loan to, a deposit taker which can be withdrawn on not more than 7 days' call; and
 - (C) investments falling within Part I of Schedule 1 to the Trustee Investments Act 1961 (an Act of Parliament) (National Savings investments, etc.) and equivalent investments issued or guaranteed by the Government of any country or territory.
- (e) arrangements where the entire contribution of each participant is a deposit (as that term is defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008) or a sum -
 - (i) paid by a deposit taker;
 - (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
 - (iii) paid by one company to another at a time when the same person would be treated as the controller of both of them if, in the definition of controller in section 26 of the Act, the percentage referred to in paragraph (d) of that definition was 50 per cent;
 - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person, and in this sub-paragraph "close relative" means a child, step-child, parent, stepparent, brother, sister, step-brother, step-sister or spouse of such person;
- (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 certificates representing securities (as that term is defined in Part 1 of Schedule 2 to the Regulated Activities Order 2008);
- (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;
- (l) a limited partnership formed under the law of the Island whose interests are admitted to the Official List of the UK Listing Authority, and in this paragraph “interests” means –
 - (i) limited partnership interests of an irredeemable nature however termed; and
 - (ii) depositary receipts or similar certificates representing such interests.”.

4. No body incorporated under the law of the Island, or 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.

Made this 23rd day of June 2008.

R V Penn

Chairman

John Aspden

Chief Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the types of arrangements which do not amount to a collective investment scheme under section 1 of the Collective Investment Schemes Act 2008.