

AUTHORISED SCHEMES

Currently, only authorised schemes of a particular type are eligible for authorisation under section 3 of the FSA (see regulation 6). Definitions of these types of schemes may be found in regulation 3 of the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 2005](#).

I Procedures and Requirements for Authorisation

To obtain an Order under section 3 of the FSA declaring a scheme to be an authorised scheme, the proposed manager and the trustee must apply to the Commission in accordance with section 2 of the FSA, using the [Application form for Authorisation of a Scheme – Open Ended Investment Company](#) or the [Application form for Authorisation of a Scheme – Unit Trust](#) (as appropriate). The application must be accompanied by the appropriate application fee. The relevant application form requires information and documents to be provided so that the Commission may satisfy itself that the requirements of section 3 of the FSA have been complied with.

The provisions of section 3 of the FSA include a requirement that both the proposed manager and trustee of the scheme must be "authorised persons". This term is defined in section 31(1) of the FSA as "a person holding a licence granted under section 3 of the Investment Business Act 1991 or such other classes of permitted persons (within the meaning of that Act) as may be prescribed".

So far as proposed managers are concerned, they must hold an investment business licence. Therefore, if an application is being made by a proposed manager who does not hold an investment business licence it will need to obtain such a licence from the Commission (see Section 2 for a description of the Commission's licensing policy and criteria for managers of authorised schemes).

Only banking institutions licensed under section 6 of the Banking Act 1998 are eligible to act as trustees of authorised schemes. Consequently, a banking institution wishing to act as trustee of an authorised scheme is not required to hold an investment business licence.

An application for authorisation must also be accompanied by a certificate signed by an advocate to the effect that the contents of the scheme's constitutional documents comply with the requirements of the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 2005](#). However, it is recommended that when applying for authorisation the application form should be accompanied by a final draft of the scheme's constitutional documents, so that the Commission may raise any comments or queries on them, before the constitutional documents are executed and the advocate's certificate given.

If the Commission is satisfied that the scheme's application has been made in accordance with the provisions of section 2 and that all the requirements of section 3 of the FSA have been complied with, it may make an Order declaring a scheme to be an authorised scheme. This process normally takes between one and

two months, but in any event the Commission is required to inform the applicants of its decision not later than six months after the date on which the application for authorisation was received.

2 Alterations to Authorised Schemes after Authorisation

Once a scheme has been granted authorisation, any proposed alteration to the scheme, or any proposal to replace either the manager or trustee, must be notified in writing to the Commission in accordance with the provisions of section 7 of the FSA. If an alteration is proposed to be made to the documents constituting the scheme, the notice must be accompanied by a certificate signed by an advocate to the effect that the change will not affect compliance of the documents constituting the scheme with the requirements of [the Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 2005](#). No proposed change or alteration covered by section 7 of the FSA may take effect unless either the Commission has approved the proposal, or one month has elapsed since the date that notice was given and the Commission has not notified the manager or trustee that the proposed alteration is not approved. Finally, it should be noted that neither the manager nor the trustee of an authorised scheme may be replaced except by persons who comply with the requirements of sub-sections 3(3) to (5) of the FSA.

3 Regulation of Authorised Schemes

[The Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 2005](#) ("the Authorised Schemes Regulations"), make comprehensive provision for the constitution and operation of authorised schemes which must be constituted either as:

1. unit trust schemes whose trust deed is made under and governed by the law of the Isle of Man; or
2. open-ended investment companies to which Part I of the Isle of Man Companies Act 1986 applies.

Therefore, a scheme constituted under the law of another country or territory, or which is not constituted in the Isle of Man as either a unit trust or open-ended investment company, is not eligible for authorisation under section 3 of the FSA. The Authorised Schemes Regulations make provision for all aspects of the operation of an authorised scheme. These include such matters as the powers and duties of managers and trustees, and in the case of an open-ended investment company scheme its directors, distributions of income, valuation of scheme property, cancellation and creation as well as sale and repurchase of units, expenses, investment and borrowing powers and restrictions, contents of reports to holders, meetings and termination of schemes.

Schedules 1 and 2 to the Authorised Schemes Regulations make provision for those matters which must, as well as those matters which may, be provided for in

the constitutional documents of a scheme constituted as either a unit trust scheme or an open-ended investment scheme respectively.

It is important to note that, subject to the provisions of section 6(4) of the FSA, and save as expressly provided for in the Authorised Schemes Regulations, the duties imposed by the Authorised Schemes Regulations on the manager and trustee and, in the case of an open-ended investment company scheme the company and its directors, are in addition to and not in derogation from the duties which are otherwise imposed upon them by law. Indeed, it is an explicit requirement of regulation 133 of the Authorised Schemes Regulations that the general law is complied with.

Authorised Schemes must also comply with the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#).