

Annex 2 - Controlled investments

Category 1: Collective Investment Schemes

1. (1) A collective investment scheme constitutes a controlled investment for the purposes of this Law; and, subject to the provisions of this paragraph, a collective investment scheme is any arrangement relating to property of any description (including money):

(a) the purpose or effect of which is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income, and

(b) in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions), and

(c) under which:

(i) the contributions of the investors and the profits or income out of which payments are to be made to them are pooled, or

(ii) the property in question is managed as a whole by or on behalf of the person responsible for its management.

(2) Where any arrangement provides for parts of the assets in question to be owned by different investors or for such pooling as is mentioned in sub-paragraph (1) (c) (i) of this paragraph in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless it has the characteristic mentioned in sub-paragraph (1) (c) (ii) of this

paragraph or the investors are entitled to exchange rights in one part for rights in another.

(3) The following are not collective investment schemes –

(a) an arrangement operated by a person otherwise than by way of business,

(b) an arrangement where each of the investors carries on a business other than investment business and enters into the arrangement for commercial purposes related to that business,

(c) an arrangement where each of the investors is a body corporate in the same group as the manager,

(d) an arrangement where –

(i) each of the investors is a bona fide employee or former employee (or the wife, husband, widow, widower, child under the age of 18 or step-child under the age of 18 of such an employee or former employee) of a body corporate in the same group as the body corporate responsible for the management of the arrangement, and

(ii) the property to which the arrangement relates consists of securities in or of a member of that group,

(e) an arrangement where the receipt of the investors' contributions constitutes the acceptance of money for the purpose of investment on deposit within the meaning of Part I of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969,

(f) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trade name or design or other intellectual property or the goodwill attached to it,

(g) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons,

(h) a contract of insurance,

(i) an occupational pension scheme,

(j) an arrangement under which –

(i) the units of investors consist of instruments which confer rights (other than options to purchase) in respect of only one issue, or

(ii) each investor owns a part of the property and may withdraw it at any time, if the arrangement does not involve such pooling as is mentioned in sub-paragraph (1) (c) (i) and falls within sub-paragraph (1) (c) (ii) only because each investor's property is not separately bought and sold except when a person becomes, or ceases to be, an investor,

(l) a friendly society registered under an enactment relating to friendly societies and recognised by the Commission as being such a society.

(4) In this paragraph:

"occupational pension scheme" means an arrangement comprised in one or more instruments or agreements which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

Category 2 : General securities and derivatives

2. (1) General securities and derivatives constitute controlled investments for the purposes of this Law; and for those purposes general securities and derivatives comprise

(a) shares and stock in the share capital of a company other than an investment company,

(b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging the indebtedness of a company or public sector body; but this item does not extend:

(i) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services,

(ii) to a cheque or other bill of exchange, a banker's draft or a letter of credit,

(iii) to a bank note, a bank statement, or (by reason of any financial obligation contained in it) to any lease or disposition of real property, to any bond or other security over real property, or to an insurance policy,

(c) without prejudice to the generality of item (a), shares in an investment company,]

(d) warrants or other instruments entitling the holder to subscribe for investments falling within items (a), (b), or (c),

(e) certificates or other instruments which confer proprietary, disposal, underwriting, conversion or acquisition rights in respect of investments falling within any of items (a) to (d),

(f) options to acquire or dispose of:

(i) an investment falling within any other item of this subparagraph, or within this item, or

(ii) currency, or

(iii) gold, palladium, platinum or silver,

(g) rights under a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers of banks and bureaux de change,

(h) rights under a contract for differences, or under any other contract of which the purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description, or in an index or other factor designated for that purpose in the contract, except where the parties intend that the profit be obtained, or the loss be avoided, by taking delivery of the property to which the contract relates,

(i) rights to, and interests in, any of the foregoing investments.

(2) In this paragraph,

"company" means anybody (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body,

"public sector body" means any international, national or local government, governmental or other public body or organisation.