

## Chapter 8

# Qualified investor schemes

## 8.2 Constitution

### Application

- 8.2.1 **R** This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

### Classes of unit

- 8.2.2 **R** A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

### Names of schemes, sub-funds, and classes of units

- 8.2.3 **R**
- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
  - (2) Paragraph (3) applies to an *authorised fund manager* of a *qualified investor scheme*, an *ICVC* which is such a *scheme*, and any other *directors* of such an *ICVC*.
  - (3) The *scheme* or *sub-fund*:
    - (a) must not use 'Long-Term Asset Fund' or 'LTAF' in its name; and
    - (b) must not otherwise suggest through its name that it is a *fund* which invests in long-term assets or describe itself as such.

### Undesirable and misleading names

- 8.2.4 **G**
- (1) ■ COLL 6.9.6G (Undesirable and misleading names) contains *guidance* as to names which may be undesirable or misleading.
  - (2) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for *long-term asset funds* (see ■ COLL 15).
  - (3) Only *AIFs* that are authorised in accordance with the *LTIF Regulation* may use the designation 'LTIF' or 'long-term investment fund'.

### Instrument constituting the fund

- 8.2.5 **R** The statements and provisions required by ■ COLL 8.2.6 R must be included in the *instrument constituting the fund* of a *qualified investor scheme*.

**Table: contents of the instrument constituting the fund**

8.2.6

**R**

This table belongs to ■ COLL 8.2.5 R

<b>1</b>	<p><b>Description of the authorised fund</b></p> <p>Information detailing:</p> <ol style="list-style-type: none"> <li>(1) the name of the <i>authorised fund</i>;</li> <li>(2) that the <i>authorised fund</i> is a <i>qualified investor scheme</i>; and</li> <li>(3) in the case of an <i>ICVC</i>, whether the head office of the <i>company</i> is situated in England and Wales or Wales or Scotland or Northern Ireland.</li> </ol> <p><b>Property Authorised Investment Funds</b></p> <p><b>1A</b> For a <i>property authorised investment fund</i>, a statement that:</p> <ol style="list-style-type: none"> <li>(1) it is a <i>property authorised investment fund</i>;</li> <li>(2) no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</li> <li>(3) in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> in accordance with 6A if the <i>authorised fund manager</i> reasonably considers such action to be: <ol style="list-style-type: none"> <li>(a) necessary in order to enable an orderly reduction of the holding to below 10%; and</li> <li>(b) in the interests of the <i>unitholders</i> as a whole.</li> </ol> </li> </ol>
<b>2</b>	<p><b>Constitution</b></p> <p>The following statements:</p> <ol style="list-style-type: none"> <li>(1) the <i>scheme property</i> of the <i>scheme</i> is entrusted to a <i>depository</i> for safekeeping (subject to any exception permitted by the <i>rules</i>);</li> <li>(2) if relevant, the duration of the <i>scheme</i> is limited and, if so, for how long;</li> <li>(3) charges and expenses of the <i>scheme</i> may be taken out of <i>scheme property</i>;</li> <li>(4) for an <i>ICVC</i>: <ol style="list-style-type: none"> <li>(a) what the maximum and minimum sizes of the <i>scheme's</i> capital are; and</li> <li>(b) the <i>unitholders</i> are not liable for the debts of the <i>company</i>;</li> </ol> </li> <li>(4A) for an <i>ICVC</i> which is an <i>umbrella</i>, a statement that the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose;</li> <li>(4B) for a <i>co-ownership scheme</i> which is an <i>umbrella</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>;</li> </ol>

- (4C) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;
- (5) for an *AUT*:
  - (a) the *trust deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
    - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
  - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
    - (i) the *scheme* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
    - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);
  - (c) a *Unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and
  - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (6) for an *ACS*:
  - (a) the *contractual scheme deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions;
    - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
    - (iv) states that *units* may not be *issued* to a *person* other than a *person*:
      - (A) who is a:
        - (i) *professional ACS investor*;
        - (ii) *large ACS investor*; or

- (iii) *person* who already holds *units* in the *scheme*; and
  - (B) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R;
- (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
- (vi) states that for a *co-ownership scheme*:
  - (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
  - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
  - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*;
- (vii) states:
  - (A) whether the transfer of *units* in the *ACS* scheme or, for a *co-ownership scheme* which is an *umbrella (sub-funds* of which pursue differing policies in relation to transfer of *units*), in each particular *sub-fund*, is either:
    - (i) prohibited; or
    - (ii) allowed;
  - (B) where transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
    - (i) who is a:
      - (1) *professional ACS investor*; or
      - (2) *large ACS investor*; or
      - (3) *person* who already holds *units* in the *scheme*; and

- (ii) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R; and
  - (viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;
- (b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the Act (Contractual scheme rules) and for the time being in force:
  - (i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
  - (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 8.5.15 R(Income); and
- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by FCA rules does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
  - (i) acquire, manage and dispose of the *scheme property*; and
  - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

**3 Investment objectives**

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

<b>4</b>	<p><b>Units in the scheme</b></p> <p>A statement of:</p> <ol style="list-style-type: none"> <li>(1) the <i>classes of units</i> which the <i>scheme</i> may issue, indicating, for a <i>scheme</i> which is an <i>umbrella</i>, which <i>class</i> or <i>classes</i> may be issued in respect of each <i>sub-fund</i>; and</li> <li>(2) the rights attaching to <i>units</i> of each <i>class</i> (including any provisions for the expression in two denominations of such rights).</li> </ol>
<b>5</b>	<p><b>Limitation on issue of and redemption of units</b></p> <p>Details as to:</p> <ol style="list-style-type: none"> <li>(1) the provisions relating to any restrictions on the right to redeem <i>units</i> in any <i>class</i>; and</li> <li>(2) the circumstances in which the issue of the <i>units</i> of any particular <i>class</i> may be limited.</li> </ol>
<b>6</b>	<p><b>Income and distribution</b></p> <p>Details of the <i>person</i> responsible for the calculation, transfer, allocation and distribution of income for any <i>class</i> of <i>unit</i> in <i>issue</i> during the accounting period.</p> <p><b>Redemption or cancellation of units on breach of law or rules</b></p>
<b>6A</b>	<p>A statement that where any holding of <i>units</i> by a <i>unitholder</i> is (or is reasonably considered by the <i>authorised fund manager</i> to be) an infringement of any law, governmental regulation or rule, those <i>units</i> must be redeemed or cancelled.</p>
<b>7</b>	<p><b>Base currency</b></p> <p>A statement of the <i>base currency</i> of the <i>scheme</i>.</p>
<b>8</b>	<p><b>Meetings</b></p> <p>Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for <i>unitholders</i>.</p>
<b>9</b>	<p><b>Powers and duties of the authorised fund manager and depositary</b></p> <p>Where relevant, details of any function to be undertaken by the <i>authorised fund manager</i> and <i>depositary</i> which the <i>rules</i> in <i>COLL</i> require to be stated in the <i>instrument constituting the fund</i>.</p>
<b>10</b>	<p><b>Termination and suspension</b></p> <p>Details of:</p> <ol style="list-style-type: none"> <li>(1) the grounds under which the <i>authorised fund manager</i> may initiate a suspension of the <i>scheme</i> and any associated procedures; and</li> <li>(2) the methodology for determining the rights of <i>unitholders</i> to participate in the <i>scheme property</i> on winding up.</li> </ol>
<b>10A</b>	<p><b>Investment in overseas property through an intermediate holding vehicle</b></p> <p>If investment in an overseas immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of overseas immovables by the <i>scheme</i>.</p>
<b>11</b>	<p><b>Other relevant matters</b></p> <p>Details of those matters which enable the <i>scheme</i>, <i>authorised fund manager</i> or <i>depositary</i> to obtain any privilege or power conferred</p>

by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

**Limited issue**

8.2.7

**R**

*Units whose issue may be limited can only be issued if permitted by the instrument constituting the fund, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.*