

Chapter 9

Meaning of open-ended investment company

9.2 Introduction

- 9.2.1** **G** The nature of many *bodies corporate* means that they will, in most if not all circumstances, come within the definition of *collective investment scheme* in section 235(1) to (3) of the Act (Collective investment schemes). The property concerned will generally be managed as a whole under the control of the directors of the *body corporate* or some other *person* for the purpose of running its business. The idea underlying the investment is that the investors will participate in or receive profits or income arising from the operation of the *body corporate's* business.
- 9.2.2** **G** However, there are a number of exclusions that apply to prevent certain arrangements from being a *collective investment scheme*. These are in the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (Arrangements not amounting to a collective investment scheme). The exclusion in paragraph 21 of the Schedule to that Order is of particular significance for *bodies corporate*. It excludes from being a *collective investment scheme* certain specified *bodies corporate* (such as *building societies* and *friendly societies*) as well as any other *body corporate* except a *limited liability partnership* or an *open-ended investment company*. This means that if a *body corporate* is an *open-ended investment company* it will not be excluded from the definition in section 235(1) to (3) of the Act. So it will be a *collective investment scheme*. Of course, it may be that other exclusions in the Schedule to the Order are available but this will depend on the circumstances of a particular *body corporate* (see **■ PERG 9.4.5 G** (Collective investment scheme (section 235 of the Act))).
- 9.2.3** **G** Certain consequences flow according to whether or not a *body corporate* is an *open-ended investment company*. Different requirements apply to the marketing of the shares or securities issued by a *body corporate* which is an *open-ended investment company*, compared with one that is not (see **■ PERG 9.10.1 G** to **■ PERG 9.10.6 G** (Marketing of shares or securities issued by a *body corporate*)). In addition, the *regulated activities* that require *permission* may differ (see **■ PERG 9.10.7 G** to **■ PERG 9.10.10 G** (Implications for regulated activities)).
- 9.2.4** **G** *Guidance* on the application of the definition in particular circumstances is in **■ PERG 9.11** (Frequently asked questions)).