

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(AMENDMENT NO 3) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 248 (Scheme particulars rules);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 14 December 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 3) Instrument 2007.

By order of the Board
6 December 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, all the text is new and is not underlined.

Insert the following new definition in the appropriate alphabetical position.

intermediate holding vehicle a company, trust or partnership but not a *collective investment scheme*, whose purpose is to enable the holding of immovables on behalf of a *non-UCITS retail scheme* or a *qualified investor scheme*.

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL 3.2.4R* (Matters which must be included in the instrument constituting the scheme)

...	
	<u>Investment in property through an intermediate holding vehicle</u>
<u>28</u>	<u>If investment in an 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 immovables by the <i>scheme</i>.</u>

Table: contents of the prospectus

- 4.2.5 R This table belongs to *COLL 4.2.2R* (Publishing the prospectus)

...	
	<u>Investment in property through an intermediate holding vehicle</u>
<u>26A</u>	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of immovables by the <i>scheme</i>.</u>
...	

Investment powers: general

- 5.6.4 R ...
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
- ...
- (f) immovables permitted under *COLL 5.6.18R* (Investment in property) ~~and to~~ *COLL 5.6.19R* (Investment limits for

immovables); and

...

Investment in property

5.6.18 R ...

(2) An immovable must:

...

(c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the scheme and provides as good a title as any of the interests in (b)(i) or (ii).

...

Investment in property through an intermediate holding vehicle

5.6.18A R (1) An immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an immovable shall be treated for the purposes of this chapter as if it were a direct investment in the immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

5.6.18B G (1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle's reasonable

running costs (including tax).

- (2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme's investment objectives and policy.
- (3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.
- (4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.
- (5) The authorised fund manager should provide sufficient information to enable the depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.

Payments out of scheme property

6.7.4 R ...

- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of units on behalf of unitholders rather than on behalf of the authorised fund.

Payments out of scheme property: guidance

6.7.5 G ...

- (4) Payments to third parties as referred to in COLL 6.7.4R(4) include payment to providers of fund supermarket services and other similar platform services.

Prohibition on promotional payments: guidance

6.7.13 G Examples of payments which are not permitted by COLL 6.7.12R include:

- ...
- (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under COLL 6.7.12R(2)); ~~and~~
- (3) ~~payments to third parties, for maintaining details of beneficial unitholders.~~ [deleted]

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to COLL 8.2.5R

...	
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<u>10A</u>	<u>Investment in property through an intermediate holding vehicle</u>
	<u>If investment in an 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 immovables by the <i>scheme</i>.</u>
...	

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL 8.3.2R*.

...	
<u>18A</u>	<u>Investment in property through an intermediate holding vehicle</u>
	<u>If investment in an immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of immovables by the <i>scheme</i>.</u>
...	

Investment in property through an intermediate holding vehicle

8.4.11A R (1) An immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an immovable shall be treated for the purposes of this section as if it were a direct investment in the immovable.

(2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

8.4.11B G (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund*

manager should ensure the following:

- (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle*'s reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme*'s investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.