
STATUTORY INSTRUMENTS

2006 No. 964

The Authorised Investment Funds (Tax) Regulations 2006

[^{F1}PART 1A

THE GENUINE DIVERSITY OF OWNERSHIP CONDITION

Textual Amendments

F1 Pt. 1A inserted (1.9.2009) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\)](#), regs. 1, 6

The genuine diversity of ownership condition

9A.—(1) For the purposes of these Regulations, the genuine diversity of ownership condition is as follows.

- (2) The genuine diversity of ownership condition is that an authorised investment fund must—
 - (a) meet conditions A to C throughout the accounting period; or
 - (b) comply with paragraph (8).
- (3) Condition A is that the fund documents—
 - (a) contain a statement that units in the fund will be widely available,
 - (b) specify the intended categories of investor, and
 - (c) specify that the manager of the fund must market and make available the units in the fund in accordance with paragraph 9A(6)(a).
- (4) Condition B is that neither—
 - (a) the specification of the intended categories of investor, nor
 - (b) any other terms or conditions governing participation in the fund, whether or not specified in the fund documents,

have a limiting or deterring effect.

- (5) In paragraph (4) a limiting or deterring effect means an effect which—
 - (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
 - (b) deters a reasonable investor within the intended categories of investor from investing in the fund.
- (6) Condition C is that—
 - (a) units in the fund must be marketed and made available—
 - (i) sufficiently widely to reach the intended categories of investors, and
 - (ii) in a manner appropriate to attract those categories of investors; and

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- (b) a person who is in an intended category of investor can, upon request to the manager of the fund, obtain information about that fund and acquire units in it.

Condition C is subject to paragraph (7).

(7) Condition C shall be treated as being met even if at the relevant time the fund has no capacity to receive additional investments, unless—

- (a) the capacity of the fund to receive investments in it is fixed by the fund documents (or otherwise), and
- (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the fund which collectively exhausts all, or substantially all, of that capacity.

(8) An authorised investment fund ^{F2}... also meets the genuine diversity of ownership condition if—

- (a) an investor in the fund is a unit trust scheme [^{F3}, an offshore fund or another authorised investment fund] (a “feeder fund”);
- (b) conditions A to C are met in relation to the authorised investment fund after taking into account—
 - (i) the fund documents relating to the feeder fund, and
 - (ii) the intended investors in the feeder fund; and
- (c) the authorised investment fund and the feeder fund have the same manager (or proposed manager).

^{F4}(8A) For the purposes of these Regulations, a long-term asset fund is treated as meeting the genuine diversity of ownership condition if—

- (a) the fund’s prospectus was published on or before 9th December 2021, or
- (b) at least 70% of the shares or units in the fund are held by one or more relevant investors or by the manager of the fund in the capacity as manager.

(8B) In paragraph (8A), “relevant investor” means any of the persons specified in categories A to E.

(8C) Category A is the trustee or manager of—

- (a) an authorised unit trust scheme which meets the genuine diversity of ownership condition, or
- (b) a unit trust scheme which—
 - (i) is authorised under the law of a territory outside the United Kingdom in a way which makes it, under that law, the equivalent of an authorised unit trust scheme, and
 - (ii) meets conditions A to C or complies with paragraph (8).

(8D) Category B is a company—

- (a) which is an open-ended investment company which meets the genuine diversity of ownership condition, or
- (b) which—
 - (i) is incorporated under the law of a territory outside the United Kingdom and is, under that law, the equivalent of an open-ended investment company, and
 - (ii) meets conditions A to C or complies with paragraph (8).

(8E) Category C is a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001) where—

- (a) that person—
- (i) is authorised under FISMA 2000 to carry on such business, or
 - (ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business, and
- (b) if that person is a company, it is not a close company.

(8F) Category D is a person who cannot be liable for corporation tax or income tax (as relevant) on the grounds of sovereign immunity.

(8G) Category E is the trustee, manager or administrator of a pension scheme (within the meaning given by section 150(1) of the Finance Act 2004) other than an investment regulated pension scheme (within the meaning given by paragraphs 1 and 2 of Schedule 29A to that Act).

(8H) For the purposes of paragraph (8E)(b) (category C), in applying the rules in Chapter 2 of Part 10 of CTA 2010 to determine whether a company is “a close company”, section 442(a) (non-UK resident companies) is to be treated as omitted.]

(9) In this Part “fund documents” means—

- (a) the instrument constituting the fund, and
- (b) the fund’s prospectus in issue for the time being ^{F5}...

Textual Amendments

- F2** Words in reg. 9A(8) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment No. 2\) Regulations 2011 \(S.I. 2011/2192\)](#), regs. 1(1), **3(a)**
- F3** Words in reg. 9A(8)(a) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 2\) Regulations 2011 \(S.I. 2011/2192\)](#), regs. 1(1), **3(b)**
- F4** [Reg. 9A\(8A\)-\(8H\)](#) inserted (9.12.2021) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2021 \(S.I. 2021/1270\)](#), regs. 1, **3(1)**
- F5** Words in reg. 9A(9)(b) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **23(2)**

Modifications etc. (not altering text)

- C1** Reg. 9A applied by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [Sch. 7AC para. 30A\(1\)](#) (as inserted (with effect in accordance with s. 28(7) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. **28(5)**)
- C2** Reg. 9A(2)(a) applied by [Finance Act 2003 \(c. 14\)](#), [Sch. 7A para. 8\(4\)](#) (as inserted (with effect in accordance with Sch. 16 para. 15) by [Finance Act 2016 \(c. 24\)](#), [Sch. 16 para. 4](#))

Clearance in relation to the genuine diversity of ownership condition

9B.—(1) An application for clearance that an authorised investment fund meets the genuine diversity of ownership condition (see regulation 9A) may be made in writing to the Commissioners by the manager (or proposed manager) of an authorised investment fund.

(2) An application for clearance must be accompanied by the fund documents in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the fund for which clearance is sought.

(3) If regulation 9A(2)(b) and (8) applies, an application for clearance by the authorised investment fund must be accompanied by—

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- (a) the documents specified in paragraph (2), and
 - (b) the fund documents of the feeder fund in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the fund for which clearance is sought.
- (4) The Commissioners may require the manager (or proposed manager) to provide further particulars if they believe that full particulars of the fund have not been provided.
- (5) The Commissioners must notify the applicant within 28 days of the receipt of the particulars (or, if paragraph (4) applies, of all further particulars required) that they—
- (a) give clearance that the fund meets the genuine diversity of ownership condition,
 - (b) give that clearance subject to conditions, or
 - (c) refuse to give that clearance.
- (6) An authorised investment fund (and investors in that fund) may not rely on a clearance given under this regulation if—
- (a) at the beginning of the first accounting period of the fund to which the clearance relates (and at the beginning of each subsequent accounting period), a relevant statement in the fund documents in issue for the time being is not in accordance with a relevant statement in the documents considered by the Commissioners before giving clearance,
 - (b) the fund acts or is operated in contravention of a relevant statement in the fund documents,
 - (c) the fund documents are materially amended, or
 - (d) the fund is operated otherwise than in accordance with condition C of the genuine diversity of ownership condition (see regulation 9A(6)).
- (7) If regulation 9A(2)(b) and (8) applies an authorised investment fund (and investors in that fund) may not rely on a clearance given under this regulation if any of sub-paragraphs (a) to (d) of paragraph (6) apply in relation to either the authorised investment fund or the feeder fund.
- (8) Paragraph (6)(c) does not apply if the manager of the fund has obtained a clearance given under this regulation which applies to the amendment.
- (9) For the purposes of paragraph (6)(c), a material amendment is one that may reasonably be construed as causing, or likely to cause, the fund to fail to meet the genuine diversity of ownership condition in relation to any accounting period.]

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