

63AB. Criteria for registration of a unit trust scheme

- (1) In this section —
 - “**land**” has the same definition as in section 76.
- (1a) For the purposes of this section, a person and another person are related if they are related as provided in section 63(5).
- (2) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as a pooled investment trust if it meets all of the following criteria —
 - (a) the scheme is established and managed by a funds manager solely or principally for the investment and management of subscriptions by unit holders of the kind described in paragraph (c) and is not established or managed for a particular person;
 - (b) at least 2 persons who are not related are unit holders in the scheme;
 - (c) each unit holder in the scheme —
 - (i) holds the unit in the unit holder’s capacity as a trustee of a complying superannuation fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (ii) holds the unit in the unit holder’s capacity as a trustee of a complying approved deposit fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
 - (iii) holds the unit in the unit holder’s capacity as a trustee or manager of a fund that is part of a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;
 - (iv) is a life company that holds the unit solely for the purpose of an investment of its statutory funds maintained by it under the *Life Insurance Act 1995* of the Commonwealth;
 - (v) holds the unit in the unit holder’s capacity as a trustee of a unit trust that is not a unit trust scheme;
 - (vi) holds the unit in the unit holder’s capacity as a trustee of a master trust, being a trust by means of which the public may invest in managed funds;
 - (vii) holds the unit in the unit holder’s capacity as a trustee of a unit trust scheme registered under section 63AA(2) as a pooled investment trust;
 - (viii) holds the unit in the unit holder’s capacity as a trustee of a unit trust scheme each unit holder in which is of a kind described in another subparagraph of this paragraph;
 - (ix) holds the unit in the unit holder’s capacity as a trustee or manager of a fund or trust that the Commissioner is satisfied corresponds to a fund or trust referred to in subparagraph (i), (ii), (iii), (v) or (vi) under the law of an external Territory or a country other than Australia;
 - (x) is a body corporate that the Commissioner is satisfied —

- (I) corresponds to a company referred to in subparagraph (iv) under the law of an external Territory or a country other than Australia; and
 - (II) holds the unit for a purpose that corresponds to the purpose referred to in that subparagraph;
 - (xi) holds not more than 5% of the total issued units under the scheme; or
 - (xii) is a person who, the Commissioner is satisfied, is, or is in a class of persons that is, prescribed for the purposes of this paragraph;
- (d) if paragraph (c)(xi) applies to 2 or more unit holders in the scheme to which no other subparagraph of paragraph (c) applies, those unit holders do not together hold more than 10% of the total issued units under the scheme;
- (e) at least 2 unit holders in the scheme who are not related each have a subscription under the scheme of not less than \$3 000 000;
- (f) the unit trustee, in the unit trustee's capacity as trustee of the scheme, holds interests in land (whether or not situated in Western Australia) that together have an unencumbered value of not less than \$50 000 000;
- (g) either —
- (i) the interests in land referred to in paragraph (f) include interests in at least 3 parcels of land, and at least 2 of those interests each have an unencumbered value of not less than \$10 000 000; or
 - (ii) at least 6 unit holders who are not related each have a subscription under the scheme of not less than \$3 000 000;
- (h) the scheme provides for offers of initial subscriptions only to persons to whom an offer of securities does not need disclosure under section 708(8) or (11) of the Corporations Act.
- (2a) In subsection (2)(a) —
- “funds manager”** means —
- (a) a body corporate that, as its principal business, provides funds management and investment services to persons of the kind described in subsection (2)(c) if —
 - (i) that business is not conducted to provide those services only to particular persons; and
 - (ii) the body corporate manages funds invested with it of not less than \$500 000 000;
- or
- (b) a body corporate that is a member of a group of related corporations that, as the group's principal business, provides funds management and investment services to persons of the kind described in subsection (2)(c) if —
 - (i) that business is not conducted to provide those services only to particular persons; and

- (ii) the body corporate or the group manages funds invested with it of not less than \$500 000 000.
- (2b) For the purposes of subsection (2)(c), a unit held by a unit holder in the unit holder's capacity as a custodian trustee is taken to be held by each of the persons on whose behalf the custodian trustee holds the unit.
- (3) For the purposes of section 63AA(2), a unit trust scheme is eligible for registration as an equity trust if it meets all of the following criteria —
 - (a) the unit trustee, as trustee of the scheme, does not hold, and is not empowered or able to hold, any thing other than —
 - (i) shares, or an option to acquire shares, in a company or corporation that is not a company to which section 76AI or 76ATB or a corporation to which section 76AP or 76ATI applies;
 - (ii) units in a unit trust that are marketable securities;
 - (iii) property that the Commissioner is satisfied is necessary for the administration of the scheme but which is not and cannot be used for the purpose of investment;
 - (iv) cash or money in an account at call;
 - (v) negotiable instruments, and money on deposit with any person;
 - (vi) any thing prescribed for the purposes of this paragraph;
 - (b) not less than 5 persons are holders of units under the scheme;
 - (c) no person beneficially entitled to units under the scheme, other than the Government of the Commonwealth, a State or a Territory or a corporation of which such a Government is a majority shareholder, is entitled to more than 40% of the total issued units under the scheme.
- (4) For the purpose of determining whether the criteria referred to in subsection (3)(c) have been satisfied, one person shall be treated as being beneficially entitled to all units held by the person and all units held by another person if those persons are related as provided in section 63(5).

[(5)-(8) repealed]

[Section 63AB inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 34; No. 28 of 2003 s. 188; No. 66 of 2003 s. 19; No. 11 of 2004 s. 11; No. 12 of 2004 s. 25.]