

## Chapter 6

# Operating duties and responsibilities

## 6.4 Title and registers

### Application

- 6.4.1 **R**
- (1) This section applies to an *authorised fund manager* and a *depository* of an *AUT* or *ACS*.
  - (2) ■ COLL 6.4.9 (Plan registers) also applies to the *ACD*, any other *director* and the *depository* of an *ICVC*.

### Purpose

- 6.4.2 **G**
- The aim of this section is to protect *consumers*, by setting out the requirements for a *register of unitholders* for an *AUT* or *ACS* and for a *plan register* for an *authorised fund*, so a proper record of ownership of *units* is maintained, whether held directly or indirectly through a *group plan*.

### Explanation of this section

- 6.4.3 **G**
- (1) (a) This section deals with matters relating to the *register of unitholders of units* in an *AUT* or *ACS* including its establishment and contents.
    - (b) The *authorised fund manager* or *depository* may be responsible for the *register*.
    - (c) In any event, the *person* responsible for the *register* must be stated in the *trust deed* or *contractual scheme deed* and this section details what his duties are.
    - (d) The provisions relating to *documents evidencing title* to *units* are dependent on the provisions in the *trust deed* or *contractual scheme deed* and their operation should be set out in the *prospectus*.
  - (2) For an *ICVC*, requirements as to the *register* of holders and transfer of *units* are contained in Schedule 3 of the *OEIC Regulations* (Register of shareholders).
  - (3) ■ COLL 6.4.9 makes provision to ensure that if the cost of the *plan register* is borne by the *scheme*, *plan investors* have the same rights in respect of notice and disclosure as *unitholders* on the main *register*.

**Register: general requirements and contents**

6.4.4

**R**

- (1) Either:
  - (a) the *manager* or the *trustee* (as nominated in the *trust deed*); or
  - (b) the *authorised contractual scheme manager* or the *depository* of the *ACS* (as nominated in the *contractual scheme deed*);

must establish and maintain a *register of unitholders* as a *document* in accordance with this section.
- (2) The *manager* or *trustee* or the *authorised fund manager* or *depository* in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (3) The *register* must contain:
  - (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered);
  - (b) the number of *units* of each *class* held by each *unitholder*;
  - (c) the date on which the *unitholder* was registered for *units* standing in his name; and
  - (d) the number of *units* of each *class* currently in *issue*.
- (4) No notice of any trust, express, implied or constructive which may be entered in the *register* is binding on the *manager* or *trustee* or the *authorised fund manager* or *depository*, but this does not affect their obligations under ■ COLL 6.4.9 R (1) (Plan registers).
- (5) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
- (6) The *person* responsible for the *register* in (1) must:
  - (a) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
  - (b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;
  - (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or *authorised fund manager*), during office hours;
  - (d) supply free of charge to any *unitholder* or his authorised representative a copy of the entries on the *register* relating to that *unitholder* on request;
  - (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or *authorised fund manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
  - (f) carry out any conversion of *units* allowed for by ■ COLL 6.4.8 R (Conversion of units) after consultation with the *manager* or *trustee* or the *authorised fund manager* or *depository*, as appropriate.

**The authorised fund manager as unitholder**

6.4.5

**R**

- (1) Subject to (3), if no *person* is entered in the *register* as the *unitholder* of a *unit*, the *authorised fund manager* must be treated as the *unitholder* of each such *unit* which is in *issue*.
- (2) Where *units* are transferred to the *authorised fund manager*, they need not be cancelled and the *authorised fund manager* need not be entered on the *register* as the new *unitholder*.
- (3) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

**Transfer of units by act of parties: AUTs and ACSs**

6.4.6

**R**

- (1) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *trust deed* or *prospectus*.
  - (1A) Provided:
    - (a) the requirements in ■ COLL 6.4.6A R (Transfer of units in an ACS) are satisfied; and
    - (b) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by FCA rules;

every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (2) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (3) In the case of an *AUT* or *ACS*, every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
  - (a) any necessary documents that may be required by legislation; and
  - (b) any other evidence reasonably required by the *person* responsible for the *register*.
- (4) In the case of an *AUT* or *ACS*, the details of instruments of transfer must be kept for a period of six years from the date of its registration.

- (5) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

**Transfer of units in an ACS**

6.4.6A

**R**

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 3.2.6 R(27G) (*ACS*s: *UCITS* and *NURS* transfer of units) and ■ COLL 4.2.5 R(5B) (*ACS*s: *UCITS* and *NURS* transfer of units), *units* in an *ACS* may only be transferred to a *person* that is a:
- (a) *professional ACS investor*; or
  - (b) *large ACS investor*; or
  - (c) *person* who already holds *units* in the *scheme*.

6.4.6B

**G**

The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 6.6.3B R (Redemption of *ACS* units by an authorised contractual scheme manager) in such cases by redeeming such *units*.

**Certificates**

6.4.7

**R**

- (1) Following the *sale* of *units* or as a result of ■ COLL 6.4.6 R (Transfer of units by act of parties: *AUT*s and *ACS*s) a document recording title to those *units* may be issued in such a form as the *trust deed* or *contractual scheme deed* permits.
- (2) The person responsible for the *register* must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming *units* require the *unitholder* to surrender that document.
- (3) [deleted]
- (4) *Bearer certificates* may not be issued for *AUT*s or *ACS*s.

**Conversion of units**

6.4.8

**R**

Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

**Plan registers**

6.4.9

**R**

- (1) The *ACD* and any other *directors* of an *ICVC* or the *person* responsible for the *register* of an *AUT* or an *ACS* may arrange for a *plan register* to be established and maintained.
- (2) Where payments are made out of *scheme property* to establish and maintain a *plan register*, *plan investors* must be treated as *unitholders* for the purposes of ■ COLL 4.3 to ■ COLL 4.5 and ■ COLL 6.4.4 R (Register: general requirements and contents).