

## Chapter 4A

# The FCA's Responsibilities under the OEIC Regulations



## 4A.1 Introduction

**4A.1.1** **G** Section 262 (Open-ended investment companies) of the *Act* provides for HM Treasury to make regulations governing the establishment and regulation of *ICVCs*. Rather than merely adopting various parts of *UK* company law, HM Treasury chose a 'stand alone' approach for its *OEIC Regulations*. The main features and practical effects of those regulations are outlined below.

### Applications for authorisation (Regulations 12-17)

- 4A.1.2** **G**
- (1) The *FCA* requires an application for authorisation of an *ICVC* to be made jointly by the *ACD* and *depository*, both of which must be:
    - (a) *authorised persons* under the *Act* with the appropriate *Part 4A permissions*; and
    - (b) independent of each other (see **COLL 6.9.2 G** (Independence of depositaries and scheme operators) which provides *guidance* on independence).
  - (2) The application must contain details of the *ACD* and *depository*, and any other *person* proposed as a *director* of the *ICVC*, of the *scheme* itself, and of other *persons* to whom functions are to be delegated (e.g. the *registrar* and the *investment adviser*).
  - (3) Application forms are available free of charge from the forms page at <https://www.handbook.fca.org.uk/form> .
  - (4) A *fee* is payable and must be submitted with the application (see **FEES 3 Annex 2 R** (Application and notification fees payable in relation to collective investment schemes)).
  - (5) The following items must be provided with the application:
    - (a) a copy of the proposed *ICVC's instrument of incorporation*;
    - (b) a solicitor's certificate stating that the *instrument of incorporation* complies with Schedule 2 to the *OEIC Regulations* and with *COLL*;
    - (c) a copy of the *prospectus*, with a checklist indicating the location of the information required by *COLL* to be contained in it;
    - (d) in the case of an authorisation application relating to a *UCITS scheme*, a copy of the *key investor information document*; and
    - (e) if applicable, *documents* evidencing any guarantee arrangement.
  - (6) The name of the *ICVC* must not be undesirable or misleading and must not be the same as that of an existing company. Regulation 19

includes a list of words and expressions that are prohibited from inclusion within the name of an *ICVC* and further *guidance* can be found in ■ COLLG 6.9 (Independence, names and UCITS business restrictions). As with an *AUT*, the aim of the *ICVC* must be reasonably capable of being achieved.

(7) As with an *AUT*, the *FCA* has:

- (a) in the case of a proposed *UCITS* up to 2 months; or
- (b) in the case of any other proposed *scheme* up to 6 months;

to determine a completed application, but aims to process 75% of applications for *UCITS schemes* within six weeks. If the *FCA* is satisfied with the application, an *authorisation order* is issued. The *ICVC* becomes incorporated when the *authorisation order* is issued.

### Notification of changes to ICVCs (Regulations 21 and 22A)

4A.1.3

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- (1) The *FCA*'s approval is required before the following changes can take place:
  - (a) any alteration to the *instrument of incorporation*;
  - (b) any significant alteration to the *prospectus*;
  - (c) any reconstruction or amalgamation involving the *ICVC*;
  - (d) any proposal to wind up the *ICVC* or a *sub-fund* of an *ICVC* otherwise than by the court;
  - (e) any proposal to replace a *director*, appoint an additional *director*, or decrease the number of *directors* in post; and
  - (f) any proposal to replace the *depository*.
- (2) Any notice proposing to change the *instrument of incorporation* must be accompanied by a solicitor's certificate confirming that the change will not affect compliance of the instrument with Schedule 2 to the *OEIC Regulations* and *COLL* as they relate to the contents of the instrument.
- (3) The *FCA* has one *month* following written notification under Regulation 21 (The Authority's approval for certain changes in respect of a company) to consider whether or not to refuse the proposal. In the case of a notice under Regulation 22A (The Authority's approval for conversion of a feeder UCITS) the period available to the *FCA* is 15 working days.

### Revocation of authorisation (Regulation 23)

4A.1.4

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The *FCA* can revoke or refuse to revoke an *authorisation order* on similar grounds to those for an *AUT*. If it proposes to do so, similar procedures for *warning notices* and *decision notices* as for *AUTs* apply (see ■ COLLG 3A.1.5 G (2)).

### Power of intervention (Regulation 25)

4A.1.5

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The *FCA* has a power of intervention if it appears there is a breach of the *Act* or a *rule* of *COLL*, or if it is desirable to give a direction to protect the interests of investors in the *ICVC*. Directions can be given to cease the *issue*

or redemption of units or any class of unit in the ICVC or for the winding up of the ICVC.

### Corporate Code

- 4A.1.6 **G**
- (1) Certain provisions of the Companies Acts will apply to ICVCs, as they are incorporated bodies (especially, but not exclusively, regarding the holding of meetings).
  - (2) Regulations 34 to 70 lay down the corporate code for ICVCs. The code contains provisions dealing with the operation of ICVCs and includes a number of general company law provisions, for example personal liability for contracts and deeds and punishment for fraudulent trading. The operation of an ICVC is also governed by COLL.

### The FCA's registration function

- 4A.1.7 **G**
- In accordance with Part IV of the *OEIC Regulations*, the FCA is required to maintain a register of ICVCs, allocate to each a registered number, and carry out certain other registration functions.

### Sub-funds of umbrella ICVC

- 4A.1.8 **G**
- Regulations 11A, 11B and 33C implement a protected cell regime for *sub-funds of umbrella ICVCs*. As a result a *Unitholder* in a solvent *sub-fund* of an *umbrella ICVC* receives protection in respect of liabilities of and claims against: (i) the umbrella company; and (ii) any other *sub-fund*. COLL provides for:
- (1) disclosure requirements in respect of the limited recourse to the assets and liabilities of a particular *sub-fund* in the *instrument constituting the scheme* (see ■ COLL 3.2.6 R (Table: contents of the instrument constituting the scheme) paragraph 22A) and the *prospectus* (see ■ COLL 4.2.5 R (Table: contents of the prospectus) paragraph 2A);
  - (2) limitations on *cross sub-fund* investment (see ■ COLL 5.2 (General investment powers and limits for UCITS schemes) for *UCITS schemes* and ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) for *non-UCITS retail schemes*); and
  - (3) duties on the ACD to take appropriate action in relation to *foreign law contracts* which after prompt investigation appear to be inconsistent with the principle of limited recourse (see ■ COLL 6.6.5A R (Duties of the ACD of an ICVC: umbrella schemes)).