

Chapter 2

Applications for registration

2.3 Determination of registration

- 2.3.1** **G** To enable the *FCA* to be satisfied that the *issuer* and the proposed owner will comply with requirements imposed on the *issuer* or *owner*, as the case may be, by or under the *RCB Regulations*, the applicant should use the application form to provide relevant details of the proposed *covered bond* or *programme* and demonstrate how each of the requirements will be complied with.
- 2.3.2** **G**
- (1) The *FCA*'s application form covers both *issuer* registration and *covered bond* registration as the *FCA* will not normally consider applications for *issuer* registration in isolation from the application for registration of the *covered bond*.
 - (2) An *issuer* which has been admitted to the register of *issuers* should use the same form to apply for registration of subsequent *covered bonds* or *programmes*.
 - (3) The *issuer* does not need to apply for registration of individual issuances from a *programme* which has already been registered, but does need to notify the *FCA* of the issuance under **RCB 3.4.1 D**.
- 2.3.3** **G** In relation to registration of an *issuer* of *regulated covered bonds*, the *FCA* will need to be satisfied that the *issuer's* compliance with the requirements of the *regulatory system* has been adequate and does not give rise to any material cause for concern over the *issuer's* ability to issue *regulated covered bonds* in compliance with the *RCB Regulations*.
- 2.3.4** **G** To demonstrate that the *issuer* and the proposed owner will comply with Regulation 17, and Regulations 23 and 24 of the *RCB Regulations* (capability of the *asset pool* to cover claims), the *issuer* should set out what it considers to be the risks of the regulation not being complied with and show how those risks have been adequately mitigated by reference to the tests and provisions set out in the *covered bond* or *programme* documentation.
- 2.3.5** **G** **Asset pool of sufficient quality**.....
Regulations 17(2)(d) (requirements on *issuer* relating to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) require the *issuer* of a *regulated covered bond* and the *owner* of the *relevant asset pool* to make arrangements so that the *asset pool* is of sufficient quality to give investors confidence that in the event of the failure of the *issuer* there will be a low

risk of default in the timely payment by the *owner* of claims attaching to a *regulated covered bond*.

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The *FCA* will:

- (1) expect the *issuer* to demonstrate that it has in place appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation;
- (2) expect the *issuer* to demonstrate that the cash-flows generated by the *assets* would be sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the *issuer*;
- (3) take account of any *over collateralisation* used to mitigate these risks to achieve the desired outcome so that, for example, potential credit losses and mismatches are offset; and
- (4) not only consider the probability of default in timely payment of claims, but also the loss in the event of a default. This will include consideration of recovery assumptions, timing and costs.

2.3.7

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The risk factors which the *FCA* will take into account in assessing the *issuer's* and *owner's* compliance with Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) will include credit risk of the *assets*, concentration risk, market risk and counterparty risk.

Credit risk

2.3.8

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- (1) The credit risk of an *asset* is the risk of loss if another party fails to perform its obligations or fails to perform them in a timely fashion.
- (2) Where, for example, the *asset pool* includes residential mortgages the relevant factors which the *FCA* may consider include:
 - (a) whether the *asset pool* contains (or could contain) loans made to individuals who have been made bankrupt or have had court judgments made against them;
 - (b) the extent to which the *asset pool* contains (or could contain) loans made to individuals whose earnings have been self-certified rather than independently verified;
 - (c) whether the *asset pool* contains (or could contain) loans which have a higher credit risk in terms of individuals' willingness or ability to pay (for example, because they have high loan-to-value ratios, low debt service ratios or high income multipliers);
 - (d) the quantity and duration of mortgages which are in arrears;
 - (e) the length of time the loan has been in place; and
 - (f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate, off-set or endowment).

- (3) Where, for example, the *asset pool* includes commercial mortgages, the relevant factors the *FCA* may consider in addition to any of the relevant residential mortgage factors described above, include:
 - (a) the type of property to which the mortgage relates (for example whether it is office, retail, industrial);
 - (b) the terms of the loans (including size, interest rate, maturity, options, representations and warranties); and
 - (c) occupation levels, rental income and terms of rental agreements of the property secured.

Concentration risk

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Concentration risk is the risk of loss from exposures being limited in number or variety. The relevant factors the *FCA* may consider include:

- (1) the level of granularity of the *asset pool* (i.e. what is the number and size distribution of *assets* in the pool);
- (2) whether the borrowers or collateral is unduly concentrated in a particular industry, sector, or geographical region.

Market risk

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Market risk is the risk that arises from fluctuations in the values of, or income from, *assets* or in interest or exchange rates. The relevant factors the *FCA* may consider include whether the hedging agreements (defined in Regulation 1(2) of the *RCB Regulations* as agreements entered into or *assets* held as protection against possible financial loss) adequately protect against any adverse mismatched cash-flows due to changes in market variables.

Counterparty risk

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Counterparty risk is the risk that the counterparty to a transaction could default before the final settlement of the transactions cash flows. The relevant factors the *FCA* may consider include whether the:

- (1) counterparty has an appropriate credit rating;
- (2) counterparty can unilaterally terminate the hedging agreement, and if so under what circumstances;
- (3) contractual arrangements contain appropriate termination procedures (for example, what provisions apply in the event of default or in respect of the calculation of termination payments); and
- (4) contractual arrangements provide adequately for what is to happen in the event of *issuer* default.

Assessment of risk factors

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- (1) The *FCA* will assess each risk factor separately and then assess any inter-dependencies and correlations to form a judgment on the quality of the *asset pool* as a whole. For example, an *asset pool* which is of high credit quality and so low risk due to a combination of

factors such as owner occupation, low income multiples, full valuation methodologies, and a strong payments track record, may permit another factor such as high loan-to-value ratios, that would otherwise be considered as inconsistent with high quality, to be included.

- (2) The more that an *asset pool* consists of loans involving risks such as high loan-to-value ratios, self-certification, borrowers with poor credit profiles, and low borrower affordability, the less likely it is, without other mitigating factors, to be of sufficiently high quality to meet the requirements in Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*.

Covered bonds collateralised by real estate

- 2.3.13 G In assessing whether the *asset pool* is of sufficient quality, the *FCA* will have regard to the requirements in relation to the collateralisation of real estate referred to in article 208 of the *UK CRR* and the valuation rules in article 229(1) of the *UK CRR*.

Rectifying non-compliance

- 2.3.14 G The *FCA* expects the *issuer* to demonstrate that there are provisions in the *covered bond or programme* that adequately deal with:
 - (1) the identification and rectification of any breach of Regulations 17(2) (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*;
 - (2) the appointment of replacements for parties, for example servicers, cash managers or paying agents; and
 - (3) the orderly winding-up of the *asset pool* in the event that breaches of Regulations 17(2) and 24 are not rectified in a timely way.

Representation of bond investors' views and interests

- 2.3.15 G The *FCA* expects the *issuer* to demonstrate, as part of showing that Regulations 17 (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations* will be complied with, that there are provisions in the *covered bond or programme* which enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way by a suitably qualified, adequately resourced, third party who acts independently, such as a bond trustee.

Third party advice and reports

- 2.3.16 D The *issuer* must obtain written advice and reports regarding the compliance of the *issuer* and the relevant *covered bond or programme* with the requirements in the *RCB Regulations* and *RCB* from suitable independent third party advisers, such as lawyers and accountants, before making an application.

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Legal advice

- (1) The *FCA* expects legal advice to deal adequately with at least the following matters in relation to the actual or proposed arrangements:
- (a) whether the transfer of the *assets* to the owner would be upheld in the event of liquidation or administration, or similar collective insolvency proceedings, of the *issuer* or the transferor (if different from the *issuer*);
 - (b) the risk of the transfer of an *asset* to the owner being re-characterised as the creation of a security interest;
 - (c) the risk of an *asset* transferred to the owner being clawed back under insolvency law provisions (such as rules against preferences, or transactions at an undervalue);
 - (d) whether the contractual arrangements limit eligible property to the items listed in Regulation 2(1) of the *RCB Regulations* (meaning of eligible property);
 - (e) whether the contractual arrangements limit the situation of eligible property to locations permitted under Regulation 2(2) of the *RCB Regulations* (situation of eligible property);
 - (f) whether the contractual arrangements limit the asset pool to items listed in Regulation 3 of the *RCB Regulations* (composition of asset pool);
 - (g) if security is granted over the *asset pool* by the *owner*, the enforceability of that security and any relevant legal limitations;
 - (h) whether the *owner* meets the requirements set out in Regulation 4 of the *RCB Regulations* (meaning of owner);
 - (i) whether the *owner* is a company or limited liability partnership which has its registered office in the *United Kingdom* and whether the contractual arrangements support an analysis that the owner's "centre of main interests" (defined in Regulation 1(2) of the *RCB Regulations* as having the same meaning as in Article 3(1) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings) is also situated in the *United Kingdom*;
 - (j) whether the contractual arrangements are consistent with the obligation of the *issuer* to lend sums derived from the issue of a *regulated covered bond* to the *owner* of the *relevant asset pool* under Regulation 16 of the *RCB Regulations* (sums derived from the issue of *regulated covered bonds*);
 - (k) whether the contractual arrangements provide that if the *owner* is wound up, the *asset pool* will be used to reimburse the claims of investors in *regulated covered bonds* under the priority set out in Regulation 27 of the *RCB Regulations* (priority in a winding-up of an *owner*);
 - (l) whether the contractual arrangements provide for the appointment of a person who will enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way as explained in ■ RCB 2.3.15 G;
 - (m) whether the contractual arrangements provide for the identification and rectification of breaches of Regulation 17 of the *RCB Regulations* (general requirements on *issuer* relating to the *asset pool*) and Regulations 23 and 24 of the *RCB Regulations* (requirements relating to the *asset pool*) and the orderly

winding-up of the *asset pool* in the event that the breaches cannot be rectified; and

(n) the enforceability of the contractual arrangements.

(2) Where *assets* are situated outside England and Wales, the *FCA* expects the *issuer* to obtain advice on whether the law of those jurisdictions impacts on the enforceability of security and the availability of those *assets*. Relevant issues to consider may include true sale, perfection of security, priority and recognition of insolvency proceedings, and foreclosure rights.

Accountancy reports

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(1) The *FCA* expects the report from the accountants to address at least the following matters:

(a) that the level of *over collateralisation* meets the limits set out in the *covered bond* arrangements which are designed to ensure compliance with the requirement that the *asset pool* is capable of covering claims attaching to the bond in Regulation 17 (requirements on *issuer* in relation to the *asset pool*) of the *RCB Regulations*; and

(b) that appropriate due diligence procedures (which should include an analysis of a representative statistical sample at a 99% confidence level of the *assets* in the *asset pool*) have been carried out to check whether:

(i) the attributes of the *asset pool* correspond accurately to supporting information obtained from other sources (for example, in the case of mortgage pools, that information such as the mortgage amount, value, term, type and location correspond to land registry records, valuation reports and loan agreements);

(ii) the attributes of the *asset pool* are appropriately reflected on the records which are maintained in order to comply with the requirements of Regulations 17(2)(a) and 24(1)(a)(i) of the *RCB Regulations* (requirement to keep a record of each *asset* in the *asset pool*) and on the *issuer's* systems; and

(iii) the *issuer's* analysis of the *assets* provided to the *FCA* is accurate.

Providing advice and reports to the FCA

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The *FCA's* use of its power under Regulation 12 of the *RCB Regulations* (requirement of further information to determine application) may include requiring the *issuer* to provide copies of the advice or reports referred to in ■ RCB 2.3.16 D to the *FCA*.

Liquid assets

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Assets which would be eligible for inclusion in a liquidity buffer under ■ BIPRU 12.7 as it applied on 31 December 2021 can be liquid assets for the

purposes of limb (a) of the definition of liquid assets in Regulation 1(2) of the *RCB Regulations*. The *FCA* will also expect that liquid assets which consist of deposits should be held in the same currency or currencies as the *regulated covered bonds* issued by the *issuer*.