

## Chapter 6

# Overseas Investment Exchanges

### 6.1 Introduction and legal background

#### 6.1.1

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The Act prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

- (1) obtain a *Part 4A permission* from the *FCA*; or
- (2) [deleted]
- (3) [deleted]
- (4) obtain *exempt person* status by being declared by the *FCA* to be an *ROIE*.

#### 6.1.2

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Having the status of an *ROIE* facilitates the participation of *overseas investment exchanges* in *UK markets*. In comparison with *authorisation*, it reduces the involvement which *UK* authorities need to have in the day-to-day affairs of an *overseas recognised body* because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.

## 6.2 Applications

- 6.2.1** G (1) *Overseas investment exchanges* which are considering whether to seek *authorisation* or recognition should first consider whether they will be carrying on *regulated activities* in the *United Kingdom*. *Overseas investment exchanges* which do not carry on *regulated activities* in the *United Kingdom* need take no action.
- (2) Prospective applicants should discuss *authorisation* and recognition with the *FCA* before deciding whether to seek *authorisation* or recognition.
- 6.2.2** G A prospective applicant may wish to contact the Infrastructure and Trading Firms Department at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.
- 6.2.3** G Applicants for *authorised person* status should refer to the *FCA* website "Authorisation": [www.fca.org.uk/firms/authorisation](http://www.fca.org.uk/firms/authorisation). Applications for recognition as an *overseas recognised body* should be addressed to:
- The Financial Conduct Authority (Infrastructure and Trading Firms Department)  
12 Endeavour Square  
London, E20 1JN
- 6.2.4** G There is no standard application form for application for recognition as an *ROIE*. An application should be made in accordance with any direction the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* and should include:
- (1) the information, evidence and explanatory material necessary to demonstrate to the *FCA* that the *recognition requirements* (set out in REC 6.3) will be met;
  - (2) the application fee (see REC 7);
  - (3) the address of the applicant's head office in its *home territory*;
  - (4) the address of a place in the *United Kingdom* for the service on the applicant of notices or other *documents* required or authorised to be served on it under the *Act* (see section 292(1));

- (5) the applicant's *regulatory provisions*;
- (6) one copy of each of the following *documents*:
  - (a) its most recent *annual report and accounts*; and
  - (b) the applicant's memorandum and articles of association or any similar or analogous *documents*; and
- (7) information identifying the following (if not contained in the *documents* listed in (5) or (6) or the material referred to in (1)):
  - (a) any type of *regulated activity* which the applicant envisages carrying on in the *United Kingdom*;
  - (b) any type of *specified investment dealt in* on, or arranged to be cleared through the applicant;
  - (c) the date by which the applicant wishes the *recognition order* to take effect; and
  - (d) any body or authority which supervises the applicant under the law of the *home territory*, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

6.2.5

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The FCA may require further information from the applicant and may need to have discussions with the appropriate authorities in the applicant's *home territory*. To allow sufficient time for applications to be processed and for the necessary contacts to be made with the appropriate *home territory* authorities, applications should be made not later than six months before the applicant wishes the *recognition order* to take effect. No guarantee can be given that a decision will be reached within this time, although the FCA will endeavour to meet the applicant's reasonable timing requirements.

6.2.6

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All material should be supplied in English, or accompanied, if appropriate, by an accurate English translation. An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

## 6.3 Recognition requirements

**6.3.1** G Before making a *recognition order*, the *FCA* will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (Overseas investment exchanges) have been met. These requirements are the only *recognition requirements* applicable to *ROIEs*.

**6.3.2** UK Sections 292(3) and 292(4) state:

### Section 292(3)

The requirements are that-

- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with -
  - (i) *recognition requirements*, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph; and
  - (ii) requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation;
- (b) there are adequate procedures for dealing with a *person* who is unable, or likely to become unable, to meet his obligations in respect of one or more *market contracts* connected with the [ROIE]
- (c) the applicant is able and willing to co-operate with the[FCA] by the sharing of information and in other ways; and
- (d) adequate arrangements exist for co-operation between the[FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

### Section 292(4)

In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the[FCA] is to have regard to-

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
- (b) the rules and practices of the applicant.

**6.3.3** G The reference to *recognition requirements* in section 292(3)(a) of the *Act* is a reference to the requirements applicable to *UK RIEs* in the *Recognition Requirements Regulations*. These requirements are set out, together with guidance, in ■ REC 2.



6.5 FCA decision on recognition

- 6.5.1 G If the *FCA* considers that the requirements of the *Act* are satisfied, it may make a *recognition order*, which will state the date on which it takes effect.
- 6.5.2 G Where the *FCA* considers that it is unlikely to make a *recognition order*, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the *FCA* decides to refuse to make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the *Act* (Recognition orders)) which is described in more detail in ■ REC 4.8.
- 6.5.3 G [deleted]

## 6.6 Supervision

### 6.6.1

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An *ROIE* is required to notify the *FCA* of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) requires each *ROIE* to provide the *FCA* with a report (at least once a year) which contains:

- (1) a statement as to whether any events have occurred which are likely to affect the *FCA*'s assessment of whether it is satisfied that the *ROIE* continues to satisfy the *recognition requirements* set out in the section 292(3) of the *Act* (Overseas investment exchanges and overseas clearing houses) (see ■ REC 6.3);
- (2) the information specified in the *FCA*'s *notification rules* for *ROIEs* (see ■ REC 6.7).

### 6.6.2

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The following events are examples of events likely to affect an assessment of whether an *ROIE* is continuing to satisfy the *recognition requirements*

- (1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:
  - (a) governing exchanges or, if relevant to an *ROIE*'s satisfaction of the recognition requirements, *clearing houses*;
  - (b) designed to prevent insider dealing, market manipulation or other forms of market abuse or misconduct;
  - (c) designed to protect the interests of *clients* of *members* of the *ROIE*, or of a class of bodies which includes the *ROIE*;
  - (d) which affect:
    - (i) the ability of the *ROIE* to seek information (whether compulsorily or voluntarily) from its *members*, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;
    - (ii) the ability of the *ROIE* to pass such information, on request, to *UK* authorities;
- (2) significant changes to its internal organisation or structure;
- (3) significant changes to the practices of the *ROIE* applying to any *regulated activities* carried on by it in the *United Kingdom*;
- (4) any other event or series of events in relation to the body which:

- (a) affects or may significantly affect cooperation between the *ROIE*, or its supervisor in its *home territory*, and the *FCA*; or
- (b) has or may have a substantial effect on the structure of the markets in which the body operates; or
- (c) brings about or may bring about a substantial change in the nature and composition of its membership in the *United Kingdom*; or
- (d) brings about or may bring about a substantial change in the *regulated activities* undertaken by it in the *United Kingdom*.

6.6.3	<div>G</div>	The period covered by a report submitted under section 295(1) of the <i>Act</i> starts on the day after the period covered by its last report or, if there is no such report, after the making of the <i>recognition order</i> recognising the <i>ROIE</i> as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.
6.6.4	<div>G</div>	If an <i>ROIE</i> changes the period covered by its report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.
6.6.5	<div>G</div>	The period covered by a report submitted under section 295(1) of the <i>Act</i> would most conveniently be one year.
6.6.6	<div>G</div>	Copies of the report should be sent to the <i>FCA</i> within two months after the end of the period to which it relates.





## 6.7 Notification rules for overseas recognised bodies

### Application

- 6.7.1 **R** The *notification rules* in this chapter, which are made under sections 293 (Notification requirements) and 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses), apply to all *ROIEs*.

### Purpose

- 6.7.2 **G** The *notification rules* in this chapter are made by the *FCA* in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the *Act*.

### Reports under section 295

- 6.7.3 **R** Where an *ROIE* includes in its report made under section 295(1) of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) a statement in compliance with section 295(2)(a) of the *Act* that an event has occurred in the period covered by that report which is likely to affect the *FCA's* assessment of whether it is satisfied as to the requirements set out in section 292(3) (Overseas investment exchanges and overseas clearing houses), it must include particulars of that event.
- 6.7.4 **R** An *ROIE* must include in its report submitted in compliance with section 295(1) of the *Act*:
- (1) particulars of any changes to:
    - (a) its memorandum and articles of association or any similar or analogous *documents*;
    - (b) its *regulatory provisions*;
    - (c) its chairman or president, or *chief executive* (or equivalent);
  - (2) particulars of any disciplinary action (or any similar or analogous action) taken against it by any supervisory authority in its *home territory*, whether or not that action has been made public in that territory;
  - (3) a copy of its *annual report and accounts*; and
  - (4) a statement as to whether any events have occurred which are likely to have any material effect on competition;

where those events occurred, or the period covered by that *annual report and accounts* ended, in the period covered by that report.

First report

6.7.5

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An *ROIE* must include in the first report submitted under section 295(1) of the *Act* after the *recognition order* in relation to that *ROIE* is made:

- (1) particulars of any events of the kind described in section 295(2) of the *Act* which occurred;
- (2) particulars of any change specified in ■REC 6.7.4 R (1) or disciplinary action specified in ■REC 6.7.4 R (2) which occurred; and
- (3) any *annual report and accounts* which covered a period ending;

after the application for recognition was submitted to the *FCA* but which were not included in the application or in any supplementary information submitted to the *FCA* before the *recognition order* was made.

6.7.6

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Guidance on the period covered by an *ROIE*'s report submitted in compliance with section 295(1) of the *Act* is given in ■REC 6.6.3 G.

Changes of address

6.7.7

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Where an *ROIE* proposes to change:

- (1) its address in the *United Kingdom* for the service of notices or other *documents* required or authorised to be served on it under the *Act*; or
- (2) the address of its head office;

it must give notice to the *FCA* and inform it of the new address at least 14 days before the change is effected.

Revocation or modification of home territory licence, permission or authorisation

6.7.8

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Where an *ROIE* has notice that any licence, permission or authorisation which it requires to conduct any *regulated activity* in its *home territory* has been or is about to be:

- (1) revoked; or
- (2) modified in any way which would materially restrict the *ROIE* in performing any *regulated activity* in its *home territory* or in the *United Kingdom*;

it must immediately notify the *FCA* of that fact and must give the *FCA* the information specified for the purposes of this *rule* in ■REC 6.7.9 R, as soon as that information is known to it.

- 6.7.9
- R
- The following information is specified for the purposes of ■ REC 6.7.8 R:
- (1) particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the ROIEs regulated activities to which it relates;

(2) an explanation of how the revocation or modification restricts or will restrict the ROIE in carrying on any regulated activity in its home territory or in the United Kingdom;

(3) the date on which the revocation or modification took, or will take, effect and, if it is a temporary measure, any date on which, or any conditions that must be met before which, it will cease to have effect; and

(4) any reasons given for the revocation or modification.

Language of notice

- 6.7.10
- R
- Any notice to be given or information to be supplied under these notification rules must be supplied in English, and any document to be provided must be accompanied, if not in English, by an accurate English translation.

- 6.7.11
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- An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

Form and method of notification

- 6.7.12
- R
- The rules relating to the form and method of notification in ■ REC 3.2 also apply to ROIEs.

Waivers

- 6.7.13
- G
- ROIEs may apply to the FCA for a waiver of any of the notification rules. The procedure is the same as that for applications from UK recognised bodies. Guidance on the procedure is given in ■ REC 3.3.

## 6.8 Powers to supervise

### 6.8.1

**G** The *FCA* has similar powers to supervise *ROIEs* to those it has to supervise *UK RIEs*. It may (in addition to any other powers it might exercise):

- (1) give directions to an *ROIE* under section 296 of the *Act* (Authority's power to give directions) if it has failed, or is likely to fail, to satisfy the *recognition requirements* or if it has failed to comply with any other obligation imposed by or under the *Act*; or
- (2) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) if an *ROIE* is failing, or has failed, to comply with the *recognition requirements* or any other obligation in or under the *Act*; or
- (3) require an *ROIE* or a person connected with the *ROIE*, under section 165 of the *Act*, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; or
- (4) require any of the following persons, under section 166 of the *Act*, to provide the *FCA* with a report on any matter, or appoint a skilled person to provide the *FCA* with information or produce documents with respect to any matter:
  - (a) the *ROIE*; or
  - (b) any other member of the *ROIE's* group; or
  - (c) a partnership of which the *ROIE* is a member; or
  - (d) a person who has at any time been a person falling within (a), (b) or (c).

### 6.8.2

**G** The *FCA* will follow the approach in ■ REC 4.6, ■ REC 4.7, ■ REC 4.8, ■ REC 4.2F and ■ REC 4.2G if it is considering exercising these powers in relation to an *ROIE*.