

## Chapter 12

# Management company and product passports under the UCITS Directive

## 12.1 Introduction

### Application

- 12.1.1 **R**
- (1) ■ COLL 12.1 (Introduction) - ■ COLL 12.3 (EEA UCITS management companies) apply to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
  - (b) (i) an *EEA UCITS management company* that acts as:
    - (A) (A) the *authorised fund manager* of an *AUT* or *ACS*; or
    - (B) (B) the *ACD* of an *ICVC*;
  - (ii) any other director of an *ICVC*; and
  - (iii) an *ICVC*; that is a *UCITS scheme*.
  - (c) ■ COLL 12.4 (UCITS product passport) applies in accordance with ■ COLL 12.4.1 R (Application).

### Purpose

- 12.1.2 **G**
- (1) This chapter contains *rules* and *guidance* relating to the operation of the *management company* passport under the *UCITS Directive* and explains how the passporting regime applies to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
  - (b) an *EEA UCITS management company* that acts as the *authorised fund manager* of an *AUT*, *ACS* or *ICVC* that is a *UCITS scheme*; whether from a *branch* it establishes in an *EEA State* other than its *Home State* or under the freedom to provide *cross border services*.
- (2) ■ COLL 12.4 (UCITS product passport) contains *rules* and *guidance* relating to the operation of the product passport under the *UCITS Directive* under which a *UCITS scheme* established in the *United Kingdom* may passport into and be marketed in another *EEA State* (the *Host State*).
- 12.1.3 **G**
- Where an *authorised fund manager* wishes to market the *units* of a *UCITS scheme* it operates in a *Host State*, without establishing a *branch* or pursuing any other activities in that State, a *management company* passport is not required for those *marketing* activities. A *UCITS marketing notification*

should be made for the relevant *UCITS scheme* (see ■ COLL 12.4 (UCITS product passport) in order to access the market of the *Host State*. The *marketing* must be carried on in conformity with the laws and regulations of that *Host State* implementing Chapter XI of the *UCITS Directive*.

[**Note:** article 16(1) second paragraph of the *UCITS Directive*]

## 12.2 UK UCITS management companies

### Application

- 12.2.1 **R** This section applies to a *UK UCITS management company* that operates an *EEA UCITS scheme* by establishing a *branch* in another *EEA State* or under the freedom to provide *cross-border services*.

### References in COLL to authorised fund manager

- 12.2.2 **R** Where this section refers to *rules* in any other part of this sourcebook, references in those *rules* and any relevant *guidance* to an *authorised fund manager*, *AFM* or *operator* of a *UCITS scheme* are to be interpreted as if they are referring to a *UK UCITS management company* of the *EEA UCITS scheme*.

### Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

- 12.2.3 **R** A *UK UCITS management company* that operates an *EEA UCITS scheme* must in relation to that activity comply with the *rules* which relate to:

- (1) the organisation of the *management company*, including delegation arrangements;
- (2) risk-management procedures;
- (3) prudential rules and supervision;
- (4) operating conditions; and
- (5) reporting requirements.

[Note: article 19(1) of the *UCITS Directive*]

### Arrangements and organisational decisions

- 12.2.4 **R** A *UK UCITS management company* that operates an *EEA UCITS scheme* must decide and be responsible for adopting and implementing all the arrangements and organisational decisions that are necessary to ensure compliance with rules drawn up by the *EEA State* in which that *scheme* is established, in implementation of its obligations under articles 19(3) and 19(4) of the *UCITS Directive*.

[Note: article 19(6) of the *UCITS Directive*]

12.2.5 **G** The *FCA's* equivalent *rules* under articles 19(3) and 19(4) of the Directive are set out in ■ COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules) and ■ COLL 6.6.3 R (Functions of the authorised fund manager).

**Rules of conduct: UK UCITS management companies operating in another Member State**

---

12.2.6 **G**

- (1) Each *EEA State*, including the *United Kingdom*, is required to implement article 14 of the *UCITS Directive* by drawing up rules of conduct which *management companies* authorised in that State must observe at all times, except as explained in (3).
- (2) *UK UCITS management companies* operating an *EEA UCITS scheme* under the freedom to provide *cross border services* (otherwise than by establishing a *branch* in that State) are advised that, as provided for elsewhere in the *Handbook*, they are required to comply with the following *rules* and *guidance* in relation to such business, as follows:
  - (a) ■ COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders);
  - (b) ■ COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
  - (c) ■ COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
  - (d) *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and
  - (e) *COBS*, to the extent indicated at paragraph 9.1 of Part 3 of ■ COBS 1 Annex 1 (Application).
- (3) Rules of conduct drawn up by a *Host State* under article 14 of the *UCITS Directive* are for *branch* operations reserved to that State under article 17(4) of that Directive. A *UK UCITS management company* operating an *EEA UCITS scheme* from a *branch* in an *EEA State* other than the *United Kingdom*, should be aware that it will be expected to comply with the relevant requirements of its *Host State regulator* that correspond to the *rules* referred to at (2)(a) to (c) and (e). Further *guidance* on the *COBS* position may be found at paragraph 9 of Part 3 of ■ COBS 1 Annex 1 (Application). As explained at paragraph 2.16AR of Part 2 of ■ SYSC 1 Annex 1 (Detailed application of SYSC), *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of ■ SYSC 1 Annex 1, applies to a *UK UCITS management company* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*, reflecting that responsibility for such matters is shared between the *management company's Home* and *Host State regulators*.

[Note: articles 14, 17(4) and 18(3) of the *UCITS Directive*]

12.2.7

**G**

**Notification to the UCITS Home State regulator**

- (1) A UK UCITS management company which applies to operate an EEA UCITS scheme in another EEA State is advised that it must comply with the requirements of the *Host State regulator* regarding provision to them of the following documents:
  - (a) the written contract it has entered into with the *depository* of the EEA UCITS scheme, as referred to in article 22(2) of the UCITS Directive; and
  - (b) information on delegation arrangements (if any), regarding functions of investment management and administration which are to be delegated to a third party.
- (2) If the UCITS management company already manages other UCITS of the same type in the EEA State referred to in (1), reference to the documents already provided should be sufficient.
- (3) Any subsequent material modifications of the documents referred to in (1) must be notified by the UK UCITS management company to the *Host State regulator*.

[Note: article 20(1) and 20(4) of the UCITS Directive]

**Requirement to make information available to the public or the competent authority of the scheme's Home Member State**

12.2.8

**G**

A UK UCITS management company that operates an EEA UCITS scheme is advised that in accordance with the requirements of the *Host State regulator* it must establish appropriate procedures and arrangements to make information available at the request of the public or that regulator.



**12.3 EEA UCITS management companies**

**Application**

**12.3.1** **R** This section applies to an *EEA UCITS management company* that provides *collective portfolio management services* in the *United Kingdom* by acting as the *authorised fund manager* of an *AUT*, *ACS* or *ICVC* which is a *UCITS scheme*, either by establishing a *branch* or under the freedom to provide *cross border services*.

**Purpose**

- 12.3.2** **G**
- (1) An *EEA UCITS management company* may be the *authorised fund manager* of an *AUT* or *ACS*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* (see ■ SUP 13A (Qualifying for authorisation under the Act)).
  - (2) An *EEA UCITS management company* that acts as the *authorised fund manager* of an *AUT* or *ACS*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* may conduct its business from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services* (without establishing a *branch* in the *United Kingdom*).
  - (3) The Glossary definition of an "*authorised fund manager*" includes an *EEA UCITS management company*.
  - (4) This section provides for the application of the *FCA Handbook* to such a *firm*.

[Note: article 16(1) of the *UCITS Directive*]

**Further reading on the UCITS management company passport regime**

**12.3.3** **G** A summary of how the passport for *UCITS management companies* established by the *UCITS Directive* is intended to operate, including the processes for applying for the necessary approvals and describing the regulatory split of responsibilities between the *competent authorities* of the relevant *Home State* and *Host State*, is to be found in *COLLG*.

**Provision of documentation to the FCA: EEA UCITS management companies**

**12.3.4** **R** (1) An *EEA UCITS management company* which applies to manage a *UCITS scheme* under paragraph 15A(1) of Schedule 3 to the *Act* must provide the *FCA* with the following *documents*:

- (a) the written contract that has been entered into with the *depository of the scheme*, as referred to in article 22(2) of the *UCITS Directive*;
  - (b) information on any delegation arrangements it has made regarding the functions of investment management and administration, as referred to in Annex II of the *UCITS Directive*; and
  - (c) the form required under SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom).
- (2) If the *EEA UCITS management company* already manages other *UCITS schemes* of the same type in the *United Kingdom* and under the same arrangements, reference to the *documents* already provided to the *FCA* is sufficient compliance with (1)(a) and (b).
- (3) If any subsequent material modification is made to any of the *documents* referred to in (1)(a) and (b), the *EEA UCITS management company* must promptly notify the *FCA* of those changes.

[Note: article 20(1) first and second paragraphs and article 20(4) of the *UCITS Directive*]

**COLL fund rules under the management company passport: the fund application rules**

12.3.5



An *EEA UCITS management company* that manages a *UCITS scheme* must comply with the *rules* of the *FCA Handbook* which relate to the constitution and functioning of the *UCITS scheme* (the *fund application rules*), as follows:

- (1) the setting up and authorisation of the *UCITS scheme* (■ COLL 1 (Introduction), ■ COLL 2 (Authorised fund applications), ■ COLL 3 (Constitution), ■ COLL 6.5 (Appointment and replacement of the authorised fund manager and the depository), ■ COLL 6.6 (Powers and duties of the scheme, the authorised fund manager and the depository) (unless disapplied), ■ COLL 6.7 (Payments), ■ COLL 6.9.1 R (Application) to ■ COLL 6.9.8 G (Undesirable or misleading names: umbrellas - guidance) and ■ COLL 6.9.11 R (Notification to the *FCA* in its role as registrar of ICVCs));
- (2) the *issue* and *redemption of units* (■ COLL 6.1 (Introduction and application), ■ COLL 6.2 (Dealing) (with the exception of ■ COLL 6.2.19 R (Limited redemption) and ■ COLL 6.2.20 G (Limited redemption: guidance)) and ■ COLL 7.2 (Suspension and restart of dealings));
- (3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales (■ COLL 5.1 (Introduction) to ■ COLL 5.5 (Cash, borrowing, lending and other provisions), ■ COLL 5.8 (Investment powers and borrowing limits for feeder UCITS), ■ COLL 6.12 (Risk management policy and risk measurement) and ■ COLL 11 (Master-feeder arrangements under the UCITS Directive));
- (4) the value of the *scheme property* and the accounting of the *UCITS scheme* (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing) (unless disapplied));



- (5) the calculation of the *issue or redemption price*, and errors in the net asset value and related investor compensation (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing));
- (6) the distribution or reinvestment of the *income property* (■ COLL 6.8 (Income: accounting, allocation and distribution));
- (7) the disclosure and reporting requirements of the *UCITS scheme*, including the *prospectus, key investor information document* and periodic reports (■ COLL 4.1 (Introduction), ■ COLL 4.2 (Pre-sale notifications), ■ COLL 4.5 (Reports and accounts) and ■ COLL 4.7 (Key investor information and marketing communications));
- (8) the arrangements made for *marketing* (■ COBS 4 (Communicating with clients, including financial promotions), ■ COBS 14 (Providing product information to clients) and ■ COLL 4.7 (Key investor information and marketing communications));
- (9) the relationship with *unitholders* (■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications) and ■ COLL 4.4 (Meetings of Unitholders and service of notices));
- (10) the merging, restructuring, winding up and liquidation of the *UCITS scheme* (■ COLL 7.1 (Introduction) and ■ COLL 7.3 (Winding up a solvent ICVC and terminating a sub-fund of an ICVC) to ■ COLL 7.7 (UCITS mergers) (including ■ COLL 7.6.2 R (3) to ■ COLL 7.6.2 R (6));
- (11) where applicable, the content of the *register* (■ COLL 6.4 (Title and registers));
- (12) the exercise of *Unitholders'* voting rights and other *Unitholders'* rights in relation to (1) to (11) (including ■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications), ■ COLL 4.4 (Meetings of Unitholders), Dispute resolution: Complaints sourcebook) (*DISP* - see ■ DISP 1 Annex 2 G for a summary of the relevant requirements that apply) and the Compensation sourcebook (*COMP*)); and
- (13) the application and periodic fees of the *UCITS scheme (FEES)*.

[Note: articles 16(3) and 19(3) of the *UCITS Directive*]

### **Requirement to make information available to the public or the FCA**

12.3.6

**R**

- (1) An *EEA UCITS management company* that manages a *UCITS scheme* must establish appropriate procedures and arrangements to make information available at the request of the public or the *FCA*.
- (2) The *EEA UCITS management company* must ensure that the procedures and arrangements it establishes in accordance with (1), enable the *FCA* to obtain any information it requests directly from the *management company*.

[Note: article 15 second paragraph and article 21(2) third paragraph, of the *UCITS Directive*]

12.3.7

G

**EEA UCITS management companies: compliance with FCA rules**

An *EEA UCITS management company* that operates a *UCITS scheme* is advised that in particular it needs to comply with:

- (1) ■ COLL 6.6.3 R (Functions of the authorised fund manager) requiring it to fulfil the obligations placed on it by the *instrument constituting the fund* and the *prospectus* of that *scheme*;
- (2) Dispute resolution: Complaints sourcebook (*DISP* - see ■ DISP 1 Annex 2 G for a summary of the relevant requirements that apply, which include the *complaints handling rules* (under which the *management company* is required to be subject to the *Compulsory Jurisdiction of the UK's Financial Ombudsman Service*) as set out in DISP 2 and 3, but note that the application of many of the requirements in *DISP* differs depending on whether the *collective portfolio management services* are being provided from a *branch* in the *UK* or under the freedom to provide *cross border services*);
- (3) and to the extent applicable, the Compensation sourcebook (*COMP*) requiring it to participate in the *UK's Financial Services Compensation Scheme* which provides compensation cover where valid claims relating to a *UCITS scheme* arise from the default of a *management company*.

[Note: article 16(3), 19(4) and 19(6) of the *UCITS Directive*]

12.3.8

G

**EEA UCITS management companies: conduct of business rules**

- (1) In addition to the requirements of this section, an *EEA UCITS management company* that provides *collective portfolio management services* from a *branch* in the *United Kingdom* must comply with the following *rules* that implement the requirements of article 14(1) of the *UCITS Directive*:
  - (a) ■ COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders);
  - (b) ■ COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
  - (c) ■ COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
  - (d) SYSC, to the extent indicated in column A+ (Application to a management company) of Part 3 of ■ SYSC 1 Annex 1 (Detailed application of SYSC); and
  - (e) COBS, to the extent indicated at paragraph 9.1 of Part 3 of ■ COBS 1 Annex 1 (Application).
- (2) The effect of article 18(3) of the *UCITS Directive* is that an *EEA UCITS management company* managing a *UCITS scheme* under the freedom to provide *cross border services* without establishing a *branch* in the *United Kingdom*, has to comply with the relevant conduct of business rules drawn up by its *Home State regulator* that implement the requirements of article 14(1) of the Directive. So the *rules* set out at (1) do not apply to such a *management company*. However, such

*management companies* must comply in all respects with the *fund application rules* referred to in ■ COLL 12.3.5 R.

[Note: articles 14, 16(3), 17(4), 18(3) and article 19(3) of the *UCITS Directive*]

## 12.4 UCITS product passport

### Application

- 12.4.1 **R** (1) This section applies to:
- (a) an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*;
  - (b) any other *director* of an *ICVC*; and
  - (c) an *ICVC*;
- which is a *UCITS scheme* whose *units* may be marketed in another *EEA State* (the *Host State*).
- (2) The *marketing of units* of a *UCITS scheme* in the *Host State* may not commence until the *FCA* has, in accordance with paragraph 20B(5) (Notice of intention to market) of Schedule 3 to the *Act*, notified the *authorised fund manager*, in response to the application of that *firm*, that it has transmitted a *UCITS marketing notification* to the appropriate *Host State regulator*.

- 12.4.2 **G** The effect of article 58(4) (b) of the *UCITS Directive* is that a *UCITS scheme* that is a *master UCITS* which only has one or more *feeder UCITS* in another *EEA State* and therefore does not raise capital directly from the public in that *EEA State* will not thereby be exercising its right to market its *units* in that *Host State* in accordance with Chapter XI of the *UCITS Directive*.
- [Note: article 58(4)(b) of the *UCITS Directive*]

### Availability of facilities

- 12.4.3 **G** The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* should be aware that it may be required by the laws, regulations and administrative provisions of the *Host State regulator* to maintain facilities in that State, including for making payments to *unitholders*, repurchasing or redeeming *units* and making available the information which is required to be provided in relation to the *scheme*.
- [Note: article 92 of the *UCITS Directive*]

### Keeping fund documentation up to date and notification of changes

- 12.4.4 **R** (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in the *Host State* must ensure that:

- (a) its *instrument constituting the fund*, its *prospectus* and, where appropriate, its latest annual report and any subsequent half-yearly report; and
  - (b) its *key investor information document*;
- together with their translations (wherever necessary), are kept up to date.
- (2) The *authorised fund manager* must notify any amendments to the *documents* referred to in (1) to each relevant *Host State regulator* and must indicate to them where those *documents* can be obtained electronically.
  - (3) In the event of a change in the information regarding the arrangements made for *marketing*, communicated in the notification letter submitted to the *FCA* under paragraph 20B of Schedule 3 to the *Act*, or a change regarding the *classes of units* to be marketed, the *authorised fund manager* must give written notice of the change to each relevant *Host State regulator* before implementing the change.
  - (4) For the purposes of (2) and (3), the *authorised fund manager* may give written notice of the change by sending an e-mail to the e-mail address maintained by each relevant *Host State regulator*.
  - (5) The e-mail referred to in (4) notifying the update or amendment may:
    - (a) describe the update or the amendment that has been made; or
    - (b) provide the new version of the *document* as an attachment, in which case it must be provided in a commonly used electronic format.

[**Note:** articles 93(2), 93(7) second and third sentences and 93(8) of the *UCITS Directive* and article 32(2) and article 32(3) of the *UCITS implementing Directive No 2*]

### Provision of information and documents

12.4.5

**R**

- (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that investors within the territory of that *Host State* are provided with all the information and *documents* which it is required by the *Handbook* to provide to investors in the *United Kingdom*.
- (2) The information and *documents* referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the *Host State* and in compliance with the following provisions:
  - (a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by its *Host State regulator*;
  - (b) information or *documents* other than the *key investor information document* (including the *prospectus*, the *instrument constituting the fund* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language

approved by its *Host State regulator*, or provided in a language customary in the sphere of international finance; and

- (c) accurate translations of information or *documents* under (a) or (b) must be produced under the responsibility of the *authorised fund manager*.

- (3) The requirements in this *rule* also apply to any changes to the information or *documents* referred to in (1) and (2).

[**Note:** articles 94(1) and 94(2) of the *UCITS Directive*]

- 12.4.6 **G** The frequency of the publication of the *issue, sale, cancellation, repurchase or redemption prices of units* of the *UCITS scheme* when they are marketed in another *EEA State* is governed by ■ COLL 6.3.11 R (Publication of prices).

[**Note:** article 94(3) of the *UCITS Directive*]

### Reference to the scheme's legal form

- 12.4.7 **R** For the purpose of pursuing its *marketing* activities in another *Host State*, an *authorised fund manager* of a *UCITS scheme* may use the same reference to the *scheme's* legal form (such as *open-ended investment company* or *investment company with variable capital* or *authorised unit trust* or, for an *authorised contractual scheme*, either a *co-ownership scheme* or a *limited partnership scheme*) in its designation in the *Host State* as is used in the *United Kingdom*.

[**Note:** article 96 of the *UCITS Directive*]

### UCITS Host State's access to documents and updates of documents

- 12.4.8 **R**
  - (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that an electronic copy of each *document* referred to in ■ COLL 12.4.4 R (1) is made available on:
    - (a) the website of the *UCITS scheme* or the *authorised fund manager*; or
    - (b) another website designated by the *authorised fund manager* in the notification letter submitted to the *FCA* under paragraph 20B of Schedule 3 to the *Act* or any updates to it.
  - (2) Any *document* that is made available on a website referred to in (1) must be provided in an electronic format in common use.
  - (3) The *authorised fund manager* of the *UCITS scheme* must ensure that each relevant *Host State regulator* has access to the website referred to in (1).

[**Note:** article 31 of the *UCITS implementing Directive No 2*]