Collective Investment Schemes

Chapter 6

Operating duties and responsibilities
6.6B UCITS depositaries

Application

This section applies to the depositary of a UCITS scheme managed by an authorised fund manager.

General obligations

A depositary in carrying out its functions must act:

1. honestly, fairly, professionally and independently; and
2. solely in the interests of the UCITS scheme and its unitholders.

[Note: article 25(2) first paragraph of the UCITS Directive]

Conflicts of interest: depositaries

A depositary must not carry out activities with regard to the UCITS scheme, or the authorised fund manager, acting on behalf of the scheme, that may create conflicts of interest between the scheme, the unitholders in the scheme or the authorised fund manager and itself, unless:

1. the depositary has properly identified any such potential conflicts of interest;
2. the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and
3. the potential conflicts of interest are properly managed, monitored and disclosed to the unitholders of the scheme.

[Note: article 25(2) second paragraph of the UCITS Directive]

Eligible depositaries for UCITS schemes

A depositary of a UCITS scheme must be a firm established in the United Kingdom that has the Part 4A permission of acting as trustee or depositary of a UK UCITS.

6.6A.8R sets out the categories of firms that may be appointed by an authorised fund manager as the depositary of a UCITS scheme.
For a depositary to be established in the United Kingdom, it must have its registered office in the United Kingdom.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

A depositary appointed in accordance with COLL 6.6A.8R(3) needs to satisfy the capital requirements in either:

1. IPRU(INV) 5; or
2. IFPRU and the UK CRR.

A full-scope IFPRU investment firm which is appointed as a depositary of a UCITS scheme must maintain own funds of at least £4million.

1. If the depositary is a full-scope IFPRU investment firm, it is subject to the capital requirements of IFPRU and the UK CRR.

2. However, these requirements are not in addition to COLL 6.6B.8R and therefore that firm may use the own funds required under IFPRU and the UK CRR to meet the £4million requirement.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): organisational requirements

A depositary appointed under COLL 6.6A.8R(3) must:

1. ensure that it has the infrastructure necessary to keep in custody UCITS custodial assets that can be registered in a financial instruments account opened in the depositary’s books;

2. establish adequate policies and procedures sufficient to ensure the compliance of the depositary, including its managers and employees, with its obligations under the regulatory system;

3. have:
   a. sound administrative and accounting procedures and internal control mechanisms;
   b. effective procedures for risk assessment; and
   c. effective control and safeguard arrangements for information processing systems;

4. maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;

5. arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable
the competent authority to monitor the firm’s compliance with the requirements under the regulatory system;

(6) take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures to perform its depositary activities;

(7) ensure that all members of its management body and senior management at all times:
   (a) are of sufficiently good repute; and
   (b) possess sufficient knowledge, skills and experience;

(8) ensure that its management body possesses adequate collective knowledge, skills and experience to be able to understand the depositary’s activities, including the main risks; and

(9) require each member of its management body and senior management to act with honesty and integrity.

[Note: article 23(2)(c) (second sentence) of the UCITS Directive]

6.6B.12 A firm’s attention is also drawn to the organisational requirements in SYSC. The rules and guidance in SYSC apply to a depositary appointed under COLL 6.6A.8R(3), in accordance with the application provisions summarised in SYSC 1.1A (Application) and provided in detail in SYSC 1 Annex 1.

Written contract

6.6B.13 (1) A depositary must ensure that its appointment as depositary of a UCITS scheme is evidenced by a written contract.

(2) The contract must regulate the flow of information deemed necessary to allow the depositary to perform its functions for the scheme.

[Note: article 22(2) of the UCITS Directive]

6.6B.14 The written contract referred to in COLL 6.6B.13R may cover more than one UCITS scheme.

6.6B.15 Article 2 of the UCITS level 2 regulation sets out the minimum information that must be included in the written contract between the authorised fund manager and the depositary.

Depositary functions: oversight

6.6B.16 The depositary must, for each UCITS scheme for which it is appointed:

(1) ensure that the sale, issue, repurchase, redemption and cancellation of units of the scheme are carried out in accordance with:
   (a) the applicable national law;
   (b) the instrument constituting the fund;
(c) the prospectus; and
(d) [COLL 6.2 (Dealing)];

(2) ensure that the price of the units of the UCITS is calculated in accordance with:
   (a) the applicable national law;
   (b) the instrument constituting the fund;
   (c) the prospectus; and
   (d) [COLL 6.3 (Valuation and pricing)];

(3) carry out the instructions of the authorised fund manager, unless they conflict with:
   (a) the applicable national law; or
   (b) the instrument constituting the fund; or
   (c) the prospectus; or
   (d) [COLL 5 (Investment and borrowing powers)];

(4) ensure that, in transactions involving the assets of the UCITS scheme, any consideration is remitted to the scheme within the usual time limits; and

(5) ensure that the income of the UCITS scheme is applied in accordance with:
   (a) the applicable national law;
   (b) the instrument constituting the fund;
   (c) the prospectus; and
   (d) [COLL 6.8 (Income: accounting, allocation and distribution)].

[Note: article 22(3) of the UCITS Directive]

Depositary functions: cash monitoring

The depositary must ensure that the cash flows of each UCITS scheme are properly monitored and that:

(1) all payments made by, or on behalf of, investors upon the subscription of units of the scheme have been received;

(2) all cash of the scheme has been booked in cash accounts which are:
   (a) opened in the name of:
      (i) the scheme; or
      (ii) the authorised fund manager, acting on behalf of the scheme; or
      (iii) the depositary acting on behalf of the scheme; and
   (b) at:
      (i) a central bank; or
      (ii) a CRD credit institution; or
(iii) a bank authorised in a country other than an EEA State; and
(c) maintained in accordance with the principles in article 2
(safeguarding of client financial instruments and funds) of the
MiFID Delegated Directive; and

(3) where cash accounts are opened in the name of the depositary acting
on behalf of the scheme in accordance with (2)(a)(iii), the depositary
must ensure that no cash of the entity referred to in (2)(b), and none
of the depositary's own cash, is booked on such accounts.

[Note: article 22(4) of the UCITS Directive]

Depositary functions: safekeeping of financial instruments

6.6B.18 R

(1) The depositary of a UCITS scheme must hold in custody all UCITS
custodial assets of the scheme.

(2) The depositary must ensure that all UCITS custodial assets that can be
registered in a financial instruments account:
(a) are registered in the depositary's books within segregated
accounts opened in the name of:
   (i) the UCITS scheme; or
   (ii) the authorised fund manager, acting on behalf of the
scheme; and
(b) can be clearly identified as belonging to the UCITS scheme at all
times in accordance with:
   (i) the applicable law; and
   (ii) the applicable provisions in CASS 6.

[Note: article 22(5)(a) of the UCITS Directive]

Depositary functions: safekeeping of other assets

6.6B.19 R

The depositary must, for UCITS scheme property other than UCITS custodial
assets:

(1) verify that the UCITS scheme or the authorised fund manager, acting
on behalf of the scheme, is the owner of the assets based:
(a) on information or documents provided by the authorised fund
manager; and
(b) where available, on external evidence; and

(2) maintain, and keep up to date, a record of those assets for which it is
satisfied that the UCITS scheme or the authorised fund manager,
acting on behalf of the scheme, is the owner.

[Note: article 22(5)(b) of the UCITS Directive]
### Inventory of assets

**6.6B.20**

The depositary must provide a comprehensive inventory of all the assets comprising the scheme property of the UCITS scheme to the authorised fund manager on a regular basis.

[Note: article 22(6) of the UCITS Directive]

### Re-use of assets

**6.6B.21**

1. The depositary must not re-use UCITS custodial assets except:
   - (a) where permitted under COLL 5.4 (stock lending); and
   - (b) when carrying out the instructions of the authorised fund manager on behalf of the scheme.

2. Re-use of the UCITS custodial assets comprises any transaction in relevant scheme property including, but not limited to, transferring, pledging, selling and lending.

[Note: article 22(7) first paragraph of the UCITS Directive]

### Limitation on delegation

**6.6B.22**

A depositary must not delegate its oversight function in COLL 6.6B.16R or its cash monitoring function in COLL 6.6B.17R to a third party.

[Note: article 22a(1) of the UCITS Directive]

**6.6B.23**

The use of services provided by securities settlement systems, as specified in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by securities settlement systems in other countries, does not constitute a delegation by the depositary of its functions for the purposes of COLL 6.6B.22R.

[Note: article 22a(4) of the UCITS Directive]

**6.6B.24**

1. (a) If a depositary performs part of its functions through a branch in an EEA State, this is not a delegation by the depositary of its functions to a third party.

2. [deleted]

3. (a) A depositary that performs part of its functions through a branch in an EEA State should ensure that those arrangements do not impede the depositary’s ability to meet the threshold conditions.

   (b) (i) In particular, the arrangements should not impede the FCA’s ability to supervise the depositary effectively.

   (ii) For example, the FCA’s ability to supervise the depositary might be impeded if the depositary performed tasks other than administrative and supporting tasks from its branch or registered office in another EEA State.
Delegation: safekeeping

A depositary may delegate the functions in COLL 6.6B.18R and COLL 6.6B.19R to one or more third parties if:

(1) the tasks are not delegated with the intention of avoiding the requirements of the UCITS Directive, as implemented in this chapter;

(2) the depositary can demonstrate that there is an objective reason for the delegation;

(3) the depositary:
   (a) has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
   (b) continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
      (i) of any third party to whom it has delegated parts of its tasks; and
      (ii) of the arrangements of that third party in respect of the matters delegated to it; and

(4) the depositary ensures that the third party delegate meets the following conditions at all times:
   (a) the third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS scheme that have been entrusted to it;
   (b) (subject to COLL 6.6B.26R) for custody tasks in relation to UCITS custodial assets, the third party is subject to:
      (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
      (ii) an external periodic audit to ensure that the financial instruments remain in its custody;
   (c) the third party segregates the assets of the depositary’s clients from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
   (d) the third party takes all necessary steps to ensure that in the event of insolvency of the third party, UCITS custodial assets held in custody by the third party are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
   (e) the third party complies with the general obligations and prohibitions relating to the depositary in:
      (i) COLL 6.6B.2R (General obligations);
      (ii) COLL 6.6B.3R (Conflicts of interests: depositaries);
      (iii) COLL 6.6B.13R (Written contract);
      (iv) COLL 6.6B.18R (Depositary functions: safekeeping of financial instruments);
(v) [COLL 6.6B.19R] (Depositary functions: safekeeping of other assets); and
(vi) [COLL 6.6B.21R] (Reuse of assets).

[Note: article 22a(2) and (3) of the UCITS Directive]

Delegation: third countries

6.6B.26
A depositary may delegate custody tasks in relation to UCITS custodial assets to an entity in another country even though that entity does not satisfy the conditions in [COLL 6.6B.25R(4)(b)(i)] if:

1. the law of that country requires those UCITS custodial assets to be held in custody by a local entity;
2. no local entity satisfies the conditions in [COLL 6.6B.25R(4)(b)(i)];
3. the depositary delegates its functions to such a local entity only:
   a. to the extent required by the law of that country; and
   b. for as long as there is no local entity that satisfies the delegation conditions in [COLL 6.6B.25R(4)(b)(i)];
4. the investors of the relevant UCITS scheme are informed before their investment:
   a. that such delegation is required due to legal constraints in the other country;
   b. of the reasons as to why the delegation is necessary; and
   c. of the risks involved in such a delegation; and
5. the authorised fund manager, acting on behalf of the UCITS scheme, has consented to the delegation arrangements before they become effective.

[Note: article 22a(3) of the UCITS Directive]

Delegation: sub-delegation

6.6B.27
A depositary must ensure that a third party to whom the depositary has delegated functions under [COLL 6.6B.25R] does not, in turn, sub-delegate those functions unless the delegate complies with the same requirements that apply to the depositary, with any necessary changes, in relation to the delegation by the depositary of its functions in [COLL 6.6B.25R] and [COLL 6.6B.26R].

[Note: article 22a(3) third paragraph of the UCITS Directive]

Delegation: omnibus account

6.6B.28
A depositary may delegate the safekeeping of assets to a third party that maintains an omnibus account for multiple UCITS schemes, provided it is a segregated common account that is segregated from the third party’s own assets.

[Note: recital 22 of the UCITS Directive]
Provision of information

The requirements of SUP 2 (Information gathering by the FCA or PRA on its own initiative) apply to the depositary, under which it must enable the FCA to obtain, on request, all information that the depositary has obtained while discharging its duties and that the FCA considers necessary.

[Note: article 26a first paragraph of the UCITS Directive]

Reporting of breaches

A depositary must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions which implemented the UCITS Directive before IP completion day.

[Note: article 99d(5) of the UCITS Directive]

Subordinate measures

Articles 3 to 17 of the UCITS level 2 regulation provide detailed rules supplementing this section.