

# The Collective Investment Scheme Information Guide

## **The Collective Investment Scheme Information Guide**

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# Chapter 1A

## Overview

## 1A.1 Introduction

### About this guide

#### 1A.1.1



- (1) This Collective Investment Scheme Information Guide (*COLLG*) contains some key facts on the regulation of *regulated collective investment schemes* in the *United Kingdom*. It will be of interest primarily to those who wish to gain a general understanding of the regulatory regime governing these *schemes*.
- (2) This guide is intended to complement the *rules* and *guidance* in the Collective Investment Schemes sourcebook (*COLL*). It also explains how an authorised *firm* should go about applying for authorisation of a *scheme* under the *Act* or under the *OEIC Regulations*.
- (3) This guide does not contain information on *unregulated collective investment schemes*. Such *schemes* cannot be *marketed* to the general public, are not subject to *COLL* and are otherwise restricted in their promotion.
- (4) The material in this guide is intended only as a summary of a number of significant legal provisions affecting *regulated collective investment schemes*. It does not constitute *guidance* under sections 139A and 139B of the *Act* and does not have the status of the guidance in the *Handbook*. This also means that ■ GEN 2.2 (Interpreting the *FCA Handbook*) does not apply. If you have any doubt about any legal provision you should seek appropriate legal advice.
- (5) This guide italicises words that are defined in the *Glossary* that forms part of the *FCA Handbook*. For the full definition of the term, the reader should consult the *Glossary* and adopt the meaning specified for *COLL*.
- (6) The guide is current as of November 2012. The guide does not remove the need for *firms* to keep up to date with regulatory developments and to consider the potential impact on business of proposed changes - for example, the regulatory framework of changes required by further European Union (*EU*) initiatives.

### Structure of collective investment regulation in the United Kingdom

#### 1A.1.2



- (1) There are three broad levels of regulation of *collective investment schemes* in the *United Kingdom*. These can be summarised as *EU* regulation, *UK* legislation and regulation by the *FCA*.

- (2) *EU collective investment scheme* product regulation was introduced in 1985 by the Undertakings for Collective Investment in Transferable Securities Directive (*UCITS Directive*) and has been updated on several occasions by amendments to that Directive, with a revised version in 2009. If a *scheme* is established and authorised in the *United Kingdom* and complies with the provisions of the *UCITS Directive*, it is a *UCITS scheme* and is capable of being promoted throughout the *EEA*. However, not all *regulated collective investment schemes* are *UCITS schemes* (see ■ COLLG 1A.1.3 G). ■ COLLG 2A (European legislation) provides more detail on the scope and contents of the *UCITS Directive*.
- (3) The main *UK* legislation is the *Act* (under which *AUTs* operate) and the *Open-Ended Investment Company Regulations (OEIC Regulations)* (under which *ICVCs* (also known as *OEICs*) operate). ■ COLLG 3A (The *FCA's* responsibilities under the *Act*) provides details on the *FCA's* responsibilities under the *Act*; how a *firm* may go about applying for authorisation of a *unit trust scheme* or recognition of an overseas *scheme*; and what notifications are required to the *FCA* in terms of changes to those schemes. ■ COLLG 4A (The *FCA's* responsibilities under the *OEIC Regulations*) provides details on the *FCA's* responsibilities under the *OEIC Regulations*; how a *firm* may go about applying for authorisation of an *ICVC*; and what notifications are required to the *FCA* in respect of changes to the *ICVC*.
- (4) The main *FCA* requirements are set out in the *FCA Handbook*, in particular in *COLL*. *COLL* is a specialist sourcebook of the *FCA Handbook* and is structured in a way that gives *rules* and *guidance* on specific aspects of *AUT* and *ICVC* regulation and on *recognised schemes*. ■ COLLG 5A (The *COLL* sourcebook) provides details of the structure of *COLL*.

### What are regulated collective investment schemes?

#### 1A.1.3

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- (1) *Regulated collective investment schemes* are *collective investment schemes* which are regulated by the *FCA* as *authorised funds* or recognised by the *FCA* as *recognised schemes*:
  - (a) *authorised funds* must take the form of an *AUT* (an *authorised unit trust scheme*) or an *ICVC* (an *investment company with variable capital*) (as described in more detail below), must be established in the *United Kingdom* and must be:
    - (i) a *UCITS scheme*; or
    - (ii) a *qualified investor scheme*; or
    - (iii) a *non-UCITS retail scheme*; and
  - (b) *recognised schemes* must be established outside the *United Kingdom* and recognised by the *FCA* under:
    - (i) section 264 of the *Act* (Schemes constituted in other *EEA* States) - these are *UCITS*; or
    - (ii) section 270 of the *Act* (Schemes authorised in designated countries or territories); or
    - (iii) section 272 of the *Act* (Individually recognised overseas schemes).

- (2) The promotion of *regulated collective investment schemes* is restricted by the *Act*. Under section 238 of the *Act* (Restrictions on promotion), *regulated collective investment schemes* may be promoted by *authorised persons*. *UCITS schemes*, *non-UCITS retail schemes* and *recognised schemes* may be promoted to retail investors. *Qualified investor schemes* may only be promoted to certain prescribed category of investor (see COLLG 5.1.3G(8)).

### What is an AUT?

- 1A.1.4 G An *AUT* (or *authorised unit trust scheme*) is a *unit trust scheme* which is authorised by the *FCA* by making an *authorisation order*. Under section 237 of the *Act* (Other definitions), a *unit trust scheme* is a *collective investment scheme* under which the property is held on trust for the *participants* by the *trustee*. An *AUT* is constituted by a *trust deed*, entered into by the *manager* and *trustee*. Under section 243(4) of the *Act* (Authorisation orders) the *manager* and *trustee* must be independent of each other.

### What is an ICVC?

- 1A.1.5 G
- (1) An *ICVC* (or *investment company with variable capital*) is an *open-ended investment company* (or *OEIC*) as defined by section 236 of the *Act* (Open-ended investment companies) which is incorporated under the *OEIC Regulations*. Section 262 of the *Act* (Open-ended investment companies) empowers HM Treasury to make provisions relating to *open-ended investment companies*, which it has done by way of the *OEIC Regulations*, including provisions relating to the establishment of *ICVCs*. The *FCA* may authorise an *ICVC* by making an *authorisation order* under regulation 14 of the *OEIC Regulations*. Paragraph 1(3) of Schedule 5 to the *Act* states that an authorised *open-ended investment company* is an *authorised person*. So, an *ICVC* is an *authorised person*.
- (2) An *ICVC* is constituted by an *instrument of incorporation*. Regulation 15(4) of the *OEIC Regulations* requires an *ICVC* to have at least one *director*. Where there is only one *director*, that *director* must be a *body corporate* with the *permission* of acting as the *depository* or sole *director* of an *open-ended investment company*. *COLL* refers to this person as an *authorised corporate director (ACD)*. A *depository* must take responsibility for the safekeeping of the *scheme property*. The *depository* must be independent of the *ICVC* and each of its *directors*.
- (3) The *directors* and the *depository* are required to comply with the *OEIC Regulations* and the *rules* in *COLL* and, in accordance with paragraph 6(1) of Schedule 2 to the *OEIC Regulations*, are also bound by the provisions of the *instrument of incorporation*.

### Authorisation to carry on regulated activities

- 1A.1.6 G (1) No *person* may carry on a *regulated activity* by way of business in the *United Kingdom*, or purport to do so, unless he is an *authorised person* (or an *exempt person*). This prohibition is referred to in the *Act* as the *general prohibition*. *Guidance for persons* considering carrying on *regulated activities* in the *United Kingdom* can be found in *PERG*. The *FCA* website page

"Apply for authorisation": <https://www.fca.org.uk/firms/authorisation/apply-authorisation> gives *guidance* on how to apply to the FCA for a *Part 4A permission*. This *authorisation* is different to the authorisation of an *AUT* or an *ICVC*, as referred to in ■ COLLG 1A.1.4 G and ■ COLLG 1A.1.5 G respectively.

- (2) The following constitute *regulated activities*:
  - (a) *establishing, operating or winding up a collective investment scheme*;
  - (b) *acting as trustee of an authorised unit trust scheme*; and
  - (c) *acting as the depositary or sole director of an open-ended investment company*.
- (3) The FCA maintains a public register of *persons* who have a *permission* to carry on a *regulated activity*. The register also contains details of all *regulated collective investment schemes* and it can be consulted on the FCA's website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register) .





# Chapter 2A

## European Legislation

## 2A.1 Introduction

### Background and scope

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- (1) This section summarises the scope and content of the *UCITS Directive* as amended ("the Directive") as it applies in the *United Kingdom*. The Directive establishes a degree of harmonisation of *EEA States'* laws governing:
- (a) the activities of *management companies*;
  - (b) the *UCITS* they manage; and
  - (c) how *units* of the *UCITS* they manage are sold to the public.
- (2) The main topics governed by the Directive and summarised in this section concern:
- (a) the general scope of the Directive;
  - (b) the obligations of the *management company* and the *depository*;
  - (c) investment and borrowing powers and limits;
  - (d) information for investors,
  - (e) how the *management company* passport works; and
  - (f) *marketing* requirements.
- (3) The Directive also covers other topics which are not summarised in this section. These include:
- (a) the ability to establish master-feeder *UCITS*, with the *master UCITS* and *feeder UCITS* either in the same or different *EEA States*; and
  - (b) a procedure for the merger of *UCITS* where the *UCITS* involved are established in different *EEA States*, or market their *units* in an *EEA State* other than the one in which they are established.

### General scope of the UCITS Directive

2A.1.2

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- (1) The Directive applies to any open-ended collective investment undertaking that is established and authorised as a *UCITS* in an *EEA State*, regardless of whether it is promoted in any other *EEA State*. However, the Directive applies only to collective investment undertakings that are promoted to the general public within the *EEA*, so collective investment undertakings that are restricted in their promotion fall outside the Directive's scope.

- (2) Furthermore, the Directive does not cover *collective investment schemes* that are authorised in an *EEA State* with different investment and borrowing powers to those covered by the Directive. So, *schemes* that invest in (for example) real property or *commodities* are not within the Directive's scope.

### Obligations on the management company and depositary

2A.1.3

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- (1) The Directive assigns certain functions and requirements to a *management company* and a *depositary*. As a result, a *UK firm* which wishes to operate *UCITS schemes* or act as a *depositary* must first seek *authorisation* from the *FCA*. A *UK firm* operating a *UCITS scheme* (a *UK management company*) is referred to as the *authorised fund manager (AFM)*.
- (2) In addition, the Directive imposes certain conduct of business and financial resources requirements on the *UCITS management company*.
- (3) The Directive states that the *depositary* must be subject to 'public control' and provide 'sufficient financial and professional guarantees'. The *depositary* is responsible for the safe keeping of a *UCITS'* assets, and for ensuring that the *issue, sale, redemption* and *cancellation of units* and the calculation of the value of *units* are effected in accordance with the law and constituting document of the *UCITS*.
- (4) Two main principles govern the relationship between the *UCITS management company* and the *depositary* of a *UCITS*. First, no single company may act in both capacities. Second, they must act independently of each other and, apart from management of a *UCITS*, a *UCITS management company* cannot engage in any activities other than:
- (a) management of other collective investment undertakings;
  - (b) *managing investments*; and
  - (c) *advising on investments* and *safeguarding and administering investments*, but in either case only where it also has *permission to manage investments*.

### Investment and borrowing powers and limits

2A.1.4

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- (1) The Directive states the types of assets a *UCITS* can invest in. These include:
- (a) *transferable securities*;
  - (b) *approved money-market instruments*;
  - (c) *deposits*;
  - (d) *derivatives* and *forwards*; and
  - (e) *units* in other *collective investment schemes*.
- (2) The *UCITS eligible assets Directive*, which came into effect in July 2008, clarifies the definition of terms used in the Directive by setting out criteria for determining which types of *transferable securities*, *approved money-market instruments* and *derivatives* are eligible to be held by a *UCITS*.

- (3) Within this range of investment assets there are some detailed spread and concentration rules in the Directive. The main requirements can be summarised as follows:
- (a) no more than 5% may be invested in *transferable securities* or *approved money-market instruments* with one *issuer* - this can be raised to 10% but only in respect of a maximum of 40% of the *UCITS* value;
  - (b) no more than 20% may be invested in *deposits* with one body;
  - (c) 100% may be invested in other collective investment undertakings provided:
    - (i) no more than 30% is invested in total in units in collective investment undertakings which are not *UCITS* and then only in collective investment undertakings that offer equivalent protection to investors;
    - (ii) the collective investment undertaking being invested into is not permitted to invest more than 10% in other collective investment undertakings; and
    - (iii) no more than 10% is invested in any one *UCITS* (which may be raised to 20% at the discretion of the Member State and has been raised to 20% for *UK UCITS*), except where a *feeder UCITS* is investing in a *master UCITS* (see ■ COLL 5.8 (Investment powers and borrowing limits for feeder UCITS));
  - (d) no more than 20% may be invested in *transferable securities* and *approved money-market instruments* issued by one group;
  - (e) no more than 20% may be invested in any combination of *transferable securities*, *approved money-market instruments*, *deposits*, or *OTC derivatives* from a single body; and
  - (f) no more than 5% may be invested in *OTC derivative* exposure to one counterparty, or 10% where the counterparty is an *approved bank*.
- (4) Where a *UCITS* has the investment objective of replicating the composition of a qualifying index, it may have an exposure of up to 20% in any *issuer* or exceptionally up to 35% (but only for one *issuer*). A qualifying index is one which has a sufficiently diversified composition, is a representative benchmark for that market, and is published in an appropriate manner.
- (5) The *management company* must employ a specific risk management process to monitor the risk of all investment positions. Where *derivatives* are to be used within a *UCITS*, the *management company* must notify details of this risk management process and any significant change to it to its *competent authority*. The exposure to all *derivative* transactions must not exceed the current net asset value of the *UCITS*. The underlying assets representing any *derivative* position must be taken into account in applying the spread of limits above. This does not apply in the case of any *derivative* which is on a qualifying index.
- (6) A *UCITS* may borrow up to 10% in value of its assets, provided the borrowing is on a temporary basis.

### Information to investors

2A.1.5

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- (1) The Directive sets out which *documents* must be made available or offered to investors. The three main documentary requirements are:
  - (a) the *prospectus*;
  - (b) the *key investor information document*; and
  - (c) the annual and half-yearly reports and accounts.
- (2) The full *prospectus* requirements are included in Annex A of the Directive and provide detailed information on the main parties involved in operating the *UCITS*, the investment objectives and policy of the *UCITS*, and general day-to-day operating matters such as dealing times and income allocation.
- (3) In addition to the *prospectus*, the *management company* must publish a *key investor information document* for each *UCITS*. This is intended to be a standardised *document* used for selling *UCITS* throughout the *EEA*. It must be provided to any prospective investor free of charge so that they can take investment decisions on an informed basis. The required contents for the *key investor information document* are set out in the *KII Regulation*, which is directly applicable in each Member State.
- (4) Reports and accounts must be prepared on a half-yearly and annual basis and the latest report must be supplied to investors free of charge. They must also be available at the place specified in the *prospectus*. The required contents for the report and accounts are set out in Schedule B of the Directive.

### The management company passport

2A.1.6

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- (1) Chapter III of the Directive provides the framework for a *UCITS management company* to provide services in another *EEA State* by way of a *branch* or *cross border services*.
- (2) *UK firms* which are *UCITS management companies* can operate *UCITS* established in other *EEA states* (see ■ SUP 13 (Exercise of passport rights by UK firms) and ■ COLL 12 (Management company and product passports under the UCITS Directive) for more information).
- (3) A non-UK *management company* may operate a *UK UCITS* by way of *branch* or *cross border services* in accordance with the provision of Schedule 3 to the *Act* and if so it is defined in the *FCA Handbook* as an *EEA UCITS management company*.

### Marketing requirements

2A.1.7

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- (1) Chapter XI of the Directive provides the framework for a *UCITS* to be marketed in another *EEA State*. A *UCITS* is required to comply with the *marketing* and advertising rules in the relevant *Host State* (Article 91) and is also required to maintain facilities in the *Host State* (Article 92).
- (2) Certain *documents* must be provided to the *Host State regulator* in the relevant *EEA State* at the same time as notification of the proposal to market there. Before a *UCITS* can begin *marketing* in a

*Host State*, it must submit a notification letter to the *Home State regulator*, together with the *instrument constituting the scheme*, the *prospectus*, *key investor information document* and the most recent annual and half-yearly reports. The *Home State regulator* has ten working days in which to process the notification and transmit it to the *Host State regulator*. The *UCITS* may begin accessing the market immediately following transmission of the notification (Article 93).

- (3) The relevant information and *documents* distributed in the *Host State* are required to be the same as those that the *UCITS* provides in its *Home State*. In addition, the *key investor information document* must be published in an official language of the *Host State* or another language if approved by the relevant *Host State regulator* (Article 94). The other *documents* may either be translated in the same way, or published in a language customary in the sphere of international finance (English is accepted to be such a language).
- (4) A *UK UCITS* may access the market in another *EEA State* using the procedure set out in Schedule 3 to the *Act*.
- (5) A *UCITS* from another *EEA State* may access the market in the *United Kingdom* in accordance with the procedure set out in section 264 of the *Act*.

## Chapter 3A

# The FCA's responsibilities under the Act



## 3A.1 Introduction

**3A.1.1** **G** Part 17 of the *Act* deals specifically with *collective investment schemes*. The main features and practical effects of Part 17, and how the *FCA* exercises its responsibilities, are described below. References to sections are to the numbered sections of Part 17.

### Promotion of schemes in the United Kingdom (section 238)

**3A.1.2** **G**

- (1) Before a *scheme* can be promoted to the public in the *United Kingdom*, it must be authorised or recognised by the *FCA* as a *regulated collective investment scheme* (see ■ COLLG 1A.1.3 G).
- (2) A *regulated collective investment scheme* may be promoted to the public by an *authorised person*.

### Application for authorisation as an authorised unit trust (sections 242 and 243)

**3A.1.3** **G**

- (1) The *FCA* requires an application for authorisation of a *unit trust scheme* to be made jointly by the *manager* and *trustee*, 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 *manager* and *trustee*, 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 *trust deed*;
  - (b) a solicitor's certificate stating that the *trust deed* complies with the *rules* made under section 247 (Trust scheme rules);



- (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 application relating to the authorisation of 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 *scheme* must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect. ■ [COLL 6.9](#) (Independence, names and UCITS business restrictions) provides *guidance* on what the *FCA* considers undesirable or misleading names.

### Determining and refusing applications (sections 244 and 245)

3A.1.4

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- (1) Under section 244 (Determination of applications), the *FCA* has:
- (a) up to 2 *months* in the case of a proposed *UCITS*; or
  - (b) up to 6 *months* in the case of any other proposed *scheme*;
- in which to consider a completed application following its receipt and must inform the *manager* and *trustee* of its decision within that timescale. In practice, the *FCA* aims to process 75% of completed applications relating to a *UCITS scheme* within 6 weeks. If the *FCA* is satisfied with the application, an *authorisation order* is issued for the *scheme*.
- (2) If the *FCA* proposes to refuse an application, it must give a *warning notice* which will contain the reasons for the refusal. If, having given the *warning notice*, it decides to refuse the application, a *decision notice* will be sent and the applicant may refer the matter to the *Tribunal*.

### Revocation of authorisation (section 254)

3A.1.5

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- (1) The *FCA* can revoke an *authorisation order* if:
- (a) the requirements of authorisation are no longer satisfied; or
  - (b) the *manager* or *trustee* has contravened any provision of the *Act* or any *rules* or regulations made under it, or has given false or misleading information to the *FCA*; or
  - (c) no *regulated activity* is being carried on in relation to the *scheme* and the period of that inactivity began at least twelve *months* earlier; or
  - (d) it is undesirable for investors or potential investors that the *authorised unit trust scheme* should continue.
- (2) The *FCA* may refuse to revoke an *authorisation order* if it considers that:
- (a) any matter should be investigated prior to revocation; or
  - (b) revocation would not be in the interests of investors; or
  - (c) revocation would be incompatible with the *UCITS Directive*.

- (3) If the *FCA* proposes to revoke an *authorisation order*, a separate *warning notice* will be sent to the *manager* and *trustee*. The same procedures as stated for refusal of authorisation, in relation to the *warning notice* and *decision notice*, will apply.

**Notification of changes to unit trusts (sections 251 and 252A)**

3A.1.6

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- (1) The *manager* must give written notice to the *FCA* when:
  - (a) an alteration to the *authorised unit trust scheme* is proposed; or
  - (b) it is proposed that the *trustee* should retire and be replaced.
- (2) Any proposal that involves a change in the *trust deed* must be accompanied by a solicitor's certificate stating that the change will not affect the compliance of the *trust deed* with the *rules*.
- (3) The *trustee* must give written notice to the *FCA* of a proposal to replace the *manager*.
- (4) The *FCA* has one *month* following receipt of notice under section 251 (Alteration of schemes and changes or manager or trustee) to consider whether or not to refuse the proposal. In the case of a notice under section 252A (Proposal to convert a non-feeder UCITS) the period available to the *FCA* is 15 working days.

**Powers of intervention (sections 257 and 281)**

3A.1.7

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The *FCA* has powers of intervention if there is a breach of the *Act* or *COLL*, or if it is in the interests of *Unitholders* or potential *Unitholders* in a *scheme*. In respect of an *AUT*, directions can be made for the *manager* to suspend the *issue* and *redemption* of *units* or to wind up the *scheme*.

**Scheme particulars (section 248)**

3A.1.8

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The *Act* empowers the *FCA* to require a *manager* to publish *scheme particulars*. ■ *COLL 4* (Investor relations) which refers to the *scheme particulars* as a *prospectus*, sets out details of the required contents, the timing of publication, and how and when the *prospectus* must be offered to prospective investors.

**Recognition of overseas schemes**

3A.1.9

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Recognition by the *FCA* enables overseas *schemes* to be *marketed* to the public in the *United Kingdom*.

**Recognition of schemes constituted in other EEA states (section 264)**

3A.1.10

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- (1) Section 264 covers *schemes* constituted in another *EEA State* that are certified by their *Home State regulator* as meeting the requirements of the *UCITS Directive* (*EEA UCITS schemes*). The *scheme* becomes recognised as soon as its *Home State regulator* has transmitted to the *FCA* the notification of the *scheme operator's* intention to access the market in the *United Kingdom*, together with the *documents*

prescribed in Article 93 of the Directive that the *scheme operator* has filed with its *Home State regulator*.

- (2) If there is a change in the information supplied to the *FCA* in accordance with ■ COLL 9.2 (Section 264 recognised schemes) following initial recognition, the *FCA* should be notified by the operator before the change is implemented.

**Recognition of schemes authorised in designated territories (section 270)**

3A.1.11

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- (1) Section 270 covers *schemes* that are managed in and authorised under the law of a country or territory outside the *United Kingdom* that has been designated for this purpose by an order made by HM Treasury ("the Designation Order"). These include Jersey, Guernsey and the Isle of Man. It should be noted that HM Treasury:
  - (a) retains responsibility for the designation of countries or territories and must be satisfied that their laws and practices relating to the authorisation and regulation of their *collective investment schemes* provide a level of protection at least equivalent to that provided under the *Act*;
  - (b) must be content that adequate arrangements exist for co-operation between regulators in each country or territory and the *FCA*; and
  - (c) may request the *FCA* provide a report on the regimes of regulation in existing or prospective designated territories.
- (2) Notification forms are available, free of charge, at the *FCA* website and ■ COLL 9.3 (Section 270 and 272 recognised schemes) provides further information on the *documents* to be supplied to the *FCA*. The *scheme* becomes recognised on the *FCA*'s written approval, or automatically after two *months* from notification.

**Recognition of individual overseas schemes (section 272)**

3A.1.12

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- (1) Section 272 covers overseas *schemes* that are not recognised by virtue of section 264 or section 270. The *FCA* may make an order declaring the *scheme* to be recognised if it is satisfied that the *scheme* will afford adequate protection (i.e. a similar level of protection to that provided under the *Act*) for investors, and the arrangements for the *scheme's* constitution and management, and the powers and duties of the *operator* and of any *trustee* or *depository*, are also "adequate". In deciding what is adequate, the *FCA* will consider the *rules* applicable to *AUTs* or *ICVCs*.
- (2) A section 272 application requires detailed and rigorous analysis of all aspects of the *scheme* and the level of investor protection provided by the regime under which the *scheme* operates, so the *FCA* has 6 *months* in which to determine a completed application. Details of the information and *documents* required for a section 272 application can be found in ■ COLL 9.3 (Section 270 and 272 recognised schemes).

**Subsequent notification in respect of schemes recognised under section 272 of the Act**

- 3A.1.13 **G**
- (1) The *FCA* wishes to be informed of changes in the information supplied by the *operator* of a section 272 *scheme* under ■ COLL 9.3.1 D (Information and documents to be supplied for a section 270 notification or section 272 application).
  - (2) Any revised *documents* sent under (1) should be certified as true copies of the originals and accompanied, where relevant, by written evidence of the approval of the *overseas regulator* to the change.

**Refusal of approval: schemes recognised under sections 270 and 272 of the Act**

- 3A.1.14 **G**
- The *FCA*'s power to refuse recognition and the procedures for this are set out in section 271 (Procedure) for *schemes* recognised under section 270, and section 276 (Procedure when refusing an application) for *schemes* recognised under section 272.

**Revocation of recognition of overseas schemes**

- 3A.1.15 **G**
- (1) If the *operator* of a *scheme* recognised under section 264 gives written notice to the *FCA* under section 264(6) that it desires the *scheme* to no longer be recognised, then the *scheme* ceases to be recognised.
  - (2) Under section 279 (Revocation of recognition), the *FCA* may direct that a *scheme* shall cease to be recognised under section 270, or revoke its recognition under section 272, on similar grounds to those provided for in the revocation of *authorised funds* under section 254 (Revocation of authorisation order otherwise than by consent).
  - (3) If the *FCA* proposes to give a direction under section 279 or to revoke a *scheme's* recognition, it will give a *warning notice*. Should the *FCA* decide to give a direction or revoke recognition, it will issue a *decision notice*. Thereafter, the matter may be referred to the *Tribunal*.

**Scheme facilities in the United Kingdom (section 283)**

- 3A.1.16 **G**
- This section enables the *FCA* to make *rules* requiring *recognised schemes* to maintain *scheme* facilities in the *United Kingdom* and to provide certain information to be supplied on request. Details are contained in ■ COLL 9.4 (Facilities in the United Kingdom).

## 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)).



# Chapter 5A

## The COLL sourcebook



## 5A.1 Introduction

5A.1.1

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- (1) *COLL* is a specialist sourcebook that sits in Block 6 (Specialist Sourcebooks) of the *FCA Handbook*. It provides the detailed framework within which *authorised funds* operate and includes requirements relating to *recognised schemes*.
- (2) The material in *COLL* (excluding chapter 9) forms a major part of the product regulation regime for *ICVCs* and *AUTs*, supplementing the material in the *OEIC Regulations* (for *ICVCs*) and chapter III of Part 17 of the *Act* (for *AUTs*) and giving effect to the relevant parts of the *UCITS Directive*. This is shown in the diagram at ■ COLLG 5A.1.5 G.
- (3) The sourcebook is designed as a two-tier approach, depending on whether the *authorised fund* is capable of being promoted to the general public (a *retail scheme*) or is sold to sophisticated investors (a *qualified investor scheme*).

### Definition of terms in COLL

5A.1.2

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Some parts of *COLL* relate only to *ICVCs* and some parts only to *AUTs*. However, most of *COLL* covers both *ICVCs* and *AUTs*, so some of the defined terms included relate equally to both *ICVCs* and *AUTs* (together defined as "*authorised funds*"). Other key terms are:

- (1) "*authorised fund manager*", which refers to both the *ACD* of an *ICVC* and the *manager* of an *AUT*;
- (2) "*depository*", which when used for an *authorised fund* refers to both the *depository* of an *ICVC* and the *trustee* of an *AUT*; and
- (3) "*unit*", which according to the context can refer to a "*share*" in an *ICVC*, a "*unit*" in an *AUT*, and the rights or interests of *participants* in other types of *collective investment scheme*.

### Outline of the content of COLL

5A.1.3

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The contents of *COLL* are outlined below.

- (1) ■ COLL 1 (Introduction) sets out which firms *COLL* applies to and gives an overview of the types of *authorised fund*.
- (2) ■ COLL 2 (*Authorised fund applications*) sets out the initial application requirements for *authorised funds* and the *rules* concerning notifications which need to be made to the *FCA* in its role as registrar of *ICVCs*.

- (3) ■ COLL 3 (Constitution) includes requirements regarding the contents of the *instrument constituting the scheme for authorised funds* that are retail schemes and other matters relating to their constitutional features, such as *classes of units*.
- (4) ■ COLL 4 (Investor relations) includes consumer-facing material relating to *authorised funds* that are retail schemes. So, material on the *prospectus*, *key investor information document*, *simplified prospectus* (for *non-UCITS retail schemes* or *feeder NURS*, where the *authorised fund manager* opts to produce this), and reports and accounts is included in that chapter, together with *rules* relating to when *Unitholders* must be notified of events and when meetings of *Unitholders*, are required. The chapter also includes the information to be given to *Unitholders* of a *feeder UCITS* in certain circumstances. (A *key investor information document* is not required for a *non-UCITS retail scheme* or *feeder NURS*. However, an *authorised fund manager* of such a *scheme* can choose to produce an equivalent document to the *key investor information document*, which is referred to as a *NURS-KII document*, by applying for a modification by consent (see [www.fca.org.uk/firms/waivers-modifications/consent](http://www.fca.org.uk/firms/waivers-modifications/consent)). If an *authorised fund manager* of such a *scheme* does not choose to produce a *NURS-KII document* it must produce a *key features document*, in accordance with the provisions of ■ COBS 13.3 (Contents of a key features document), or opt to produce a *simplified prospectus*).
- (5) ■ COLL 5 (Investment and borrowing powers) requires *authorised funds* that are retail schemes, their *authorised fund managers* and *depositories*, to comply with *rules* on the investment composition of the *scheme*. It is divided up as follows:
- (a) ■■ COLL 5.2 to ■ COLL 5.3 implement the *UCITS Directive* requirements which require quality, spread and counterparty limits to be imposed on the assets of funds within the scope of the Directive (as set out in ■ COLLG 2A.1.4 G);
  - (b) ■ COLL 5.4 provides rules on *stock lending*;
  - (c) ■ COLL 5.5 provides *rules* on holding cash and *near cash*, borrowing and lending;
  - (d) ■ COLL 5.6 provides investment rules for *non-UCITS retail schemes*;
  - (e) ■ COLL 5.7 provides a regime for a *non-UCITS retail scheme* that is to be operated as a *fund of alternative investment funds (FAIF)*. The *authorised fund manager* of such a fund must carry out certain additional due diligence procedures in relation to the funds in which the *FAIF* is to invest;
  - (f) ■■ COLL 5.8 sets out investment powers and limits for a *UCITS scheme* that is to be operated as a *feeder UCITS*. It also sets out what other provisions in ■ COLL 5 are applicable to a *feeder UCITS*; and
  - (g) ■ COLL 5.9 specifies the permitted investments for a *UCITS scheme* or a *non-UCITS retail scheme* operating as a *money market fund* or a *short-term money market fund*. These restrictions reflect *CESR's guidelines on a common definition of European money market funds*.

- (6) ■ COLL 6 (Operating duties and responsibilities) contains *rules* on the day-to-day operation of *authorised funds* that are *retail schemes*. In particular:
- (a) ■ COLL 6.2 sets out rules relating to *dealing* in *units*, including the *issue* and *cancellation of units*;
  - (b) ■ COLL 6.3 sets out how *authorised funds* must be valued and *prices of units* calculated and published;
  - (c) ■ COLL 6.4 provides requirements relating to the *register of Unitholders* in an *AUT* (see the *OEIC Regulations for ICVCs*) and any *plan register*;
  - (d) ■ COLL 6.5 sets out *rules* relating to the appointment and replacement of the *authorised fund manager* and *depository*;
  - (e) ■ COLL 6.6 imposes certain powers and duties on the *authorised fund manager* and the *depository* and ■ COLL 6.6A imposes certain powers and duties on the *authorised fund managers* of *UCITS schemes* and on a *UK UCITS management company* of an *EEA UCITS scheme*;
  - (f) ■ COLL 6.7 lays down conditions concerning charges and expenses that may be taken when investors buy or sell *units*, and what payments may be made out of the *scheme property*;
  - (g) ■ COLL 6.8 provides *rules* and *guidance* on the calculation and distribution of income;
  - (h) ■ COLL 6.9 gives *guidance* relating to independence of the *depository* and *management company*, *scheme names* and the restrictions on the business of the *UCITS*;
  - (i) ■ COLL 6.10 sets out the oversight responsibilities of *senior personnel* in relation to a *UCITS scheme*;
  - (j) ■ COLL 6.11 and ■ COLL 6.12 set out more detail about the risk controls and risk management policy that must be employed in relation to a *UCITS scheme*; and
  - (k) ■ COLL 6.13 sets out record-keeping requirements in relation to a *UCITS scheme*.
- (7) ■ COLL 7 (Suspension of dealings and termination of authorised funds) includes the requirements for suspension of *dealing* in the *units* of *authorised funds* and how they may be wound up (including termination of *sub-funds*). ■ COLL 7.7 provides *rules* in relation to mergers subject to the *UCITS Directive*.
- (8) ■ COLL 8 (Qualified Investor Schemes) provides a framework of *rules* for a *scheme* which restricts subscription to certain prescribed categories of investor (principally *professional clients* and sophisticated investors). For such a *scheme*, the *FCA* considers that not all the detailed product *rule* protections that apply to *retail schemes* are necessary. This type of *scheme*, called a *qualified investor scheme*, satisfies the essential features of an authorised product and so distinguishes itself from an *unregulated collective investment scheme*, but otherwise is allowed more flexibility in its operation compared to the framework for *retail schemes*. ■ COLL 2 (Authorised fund applications) contains details of the application procedure for *qualified investor schemes*.

- (9) ■ COLL 9 (Recognised Schemes) applies to *collective investment schemes* established outside the *United Kingdom*. It brings together the material relating to the admission to *marketing* of such *schemes* in the *United Kingdom*, supplementing material in chapter V of Part 17 of the *Act* (Recognised overseas schemes).
- (10) ■ COLL 10 (Fees) is no longer used as the provisions are set out in *FEES*.
- (11) ■ COLL 11 (Master-feeder arrangements under the UCITS Directive) sets out various Directive requirements applicable to *feeder UCITS* and *master UCITS*, including the arrangements for co-ordination and information-sharing between *the UCITS management companies*, *depositories* and auditors of each *scheme*.
- (12) ■ COLL 12 (Management company and product passports under the UCITS Directive) provides more information about the rules that are applicable to the use of the *UCITS management company* passport and the *UCITS* product passport. It sets out which rules in *COLL* are applicable to an *EEA UCITS management company* that wishes to operate a *UCITS* scheme in the *UK* through the exercise of passporting rights.
- (13) ■ COLL 13 (Operation of a *feeder NURS*) sets out requirements relating to the operation of a *feeder NURS* and certain types of *qualifying master scheme*. Such operational obligations concern, for example, information which is to be obtained and/or provided pre-investment, and the treatment of a *charge* made to a *feeder NURS* for acquisition or disposal of *units* in a *qualifying master scheme*.

### Related Sourcebooks

#### 5A.1.4

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- (1) There are a number of other parts of the *Handbook* that are particularly relevant to those having a responsibility in relation to *authorised funds*. These include:
  - (a) *PRIN* (The Principles for Businesses);
  - (b) *SYSC* (Senior Management Arrangements, Systems and Controls);
  - (c) *APER* (The Statements of Principle and Code of Practice for Approved Persons);
  - (d) *FEES* (the Fees manual), which includes details of the application and periodic fees payable for *authorised funds* and *recognised schemes*;
  - (e) *COBS* (the Conduct of Business sourcebook);
  - (f) *CASS* (the Client Assets sourcebook);
  - (g) *SUP* (the Supervision manual);
  - (h) *DEPP* (the Decision Procedure and Penalties manual);
  - (i) *DISP* (Dispute resolution: complaints); and
  - (j) *COMP* (Compensation).
- (2) *UPRU* (the Prudential sourcebook for UCITS firms) sets out the financial resources requirements for an *authorised fund manager* of a *UCITS* scheme where that manager is undertaking only *scheme management activity*. *BIPRU* (the Prudential sourcebook for Banks,

Building Societies and Investment Firms) applies certain requirements to the *authorised fund manager* of a *UCITS scheme* where that manager is a *UCITS investment firm*. Both sourcebooks include certain requirements of the *UCITS Directive*.

(3) *IPRU(INV)* (the Interim Prudential sourcebook for Investment Businesses) sets out the financial resources requirements for an *authorised fund manager* of a *qualified investor scheme* or a *non-UCITS retail scheme*, unless the *authorised fund manager* is a *BIPRU investment firm*, in which case *BIPRU* (the Prudential sourcebook for Banks, Building Societies and Investment Firms) sets out the financial resources requirements.

(4) In addition to the listed sourcebooks, Regulatory Guides may also be of relevance. For example ■ [EG link 14](#) (Collective Investment Schemes) sets out the *FCA's* policies and procedures concerning the use of its enforcement powers in relation to *regulated collective investment schemes*.

**Regulated schemes: explanatory diagram**

5A.1.5

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This diagram provides a general description of the products covered by *COLL* and the relevant legislation and sections of *COLL*.

