

Chapter 1A

Overview

1A.1 Introduction

About this guide

1A.1.1

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- (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

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- (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?

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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?

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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?

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- (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

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- (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 .

