

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 ■ **COLL 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)

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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)

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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)

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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

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- (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

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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

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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)).