

Chapter 9

Meaning of open-ended investment company



9.1 Application and Purpose

Application

- 9.1.1 **G** This *guidance* applies to *persons* who need to know whether a *body corporate* is an *open-ended investment company* as defined in section 236 of the *Act* (Open-ended investment companies). This would mean that it is a *collective investment scheme*.

Purpose

- 9.1.2 **G** The purpose of this *guidance* is to outline the circumstances in which a *body corporate* will be an *open-ended investment company* and, in so doing, to:
- (1) give an overview of the definition (see ■ PERG 9.3 (The definition)) and describe its three main elements:
 - (a) an *open-ended investment company* must be a *collective investment scheme* (see ■ PERG 9.4 (Collective investment scheme (section 235 of the *Act*)));
 - (b) it must satisfy the 'property' condition in section 236(2) of the *Act* (see ■ PERG 9.5 (The property condition (section 236(2) of the *Act*))); and
 - (c) it must satisfy the '*investment*' condition in section 236(3) of the *Act* (see ■ PERG 9.6 (The *investment* condition (section 236(3) of the *Act*): general) to ■ PERG 9.9 (The investment condition: the 'satisfaction test' (section 236(3)(b) of the *Act*))); and
 - (2) outline the implications for a *body corporate* if it does, or does not, fall within the definition of an *open-ended investment company* (see ■ PERG 9.10 (Significance of being an open-ended investment company)).

Effect of guidance

- 9.1.3 **G** This *guidance* is issued under section 139A of the *Act* (Guidance). It is designed to throw light on particular aspects of regulatory requirements, not to be an exhaustive description of a *person's* obligations. If a *person* acts in line with the *guidance* in the circumstances it contemplates, the *FCA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates. Rights conferred on third parties cannot be affected by *guidance* given by the *FCA*. This *guidance* represents the *FCA's* view, and does not bind the courts. For example, it would not bind the courts in relation to an action for damages brought by a *private person* for breach of a *rule* (see section 138D of the *Act* (Action for damages)), or in relation to the enforceability of a contract where there has been a breach of

		<p>the <i>general prohibition</i> on carrying on a <i>regulated activity</i> in the <i>United Kingdom</i> without <i>authorisation</i> (see sections 26 to 29 of the <i>Act</i> (Enforceability of agreements)). A <i>person</i> may need to seek his own legal advice. Anyone reading this <i>guidance</i> should refer to the <i>Act</i> and to the various Orders that are referred to in this <i>guidance</i>. These should be used to find out the precise scope and effect of any particular provision referred to in this <i>guidance</i>.</p>
		<p>Other guidance that may be relevant</p>
9.1.4	G	<p>The only kind of <i>body corporate</i> of an open-ended kind that may currently be formed under the law of the <i>United Kingdom</i> is one that is authorised by the <i>FCA</i>. A <i>person</i> intending to form an open-ended <i>body corporate</i> that has its head office in Great Britain should refer to the Open-ended Investment Companies Regulations 2001 (SI 2001/1228). <i>Bodies corporate</i> formed under these Regulations are referred to in the <i>Handbook</i> as <i>investment companies with variable capital</i> (or ' <i>ICVCs</i> '). ■ COLL 2 (Authorised fund applications) contains <i>rules</i> and <i>guidance</i> on forming such <i>bodies corporate</i>.</p>
9.1.5	G	<p><i>Open-ended investment companies</i> constituted overseas that are seeking to market or promote their <i>units</i> to the general public in the <i>United Kingdom</i>, should refer to ■ COLL 9 (Recognised schemes) for <i>guidance</i> on the requirements that apply to <i>OFR recognised schemes</i> and <i>schemes</i> recognised under section 272 of the <i>Act</i> (Individually recognised schemes).</p>
9.1.6	G	<p>[deleted]</p>