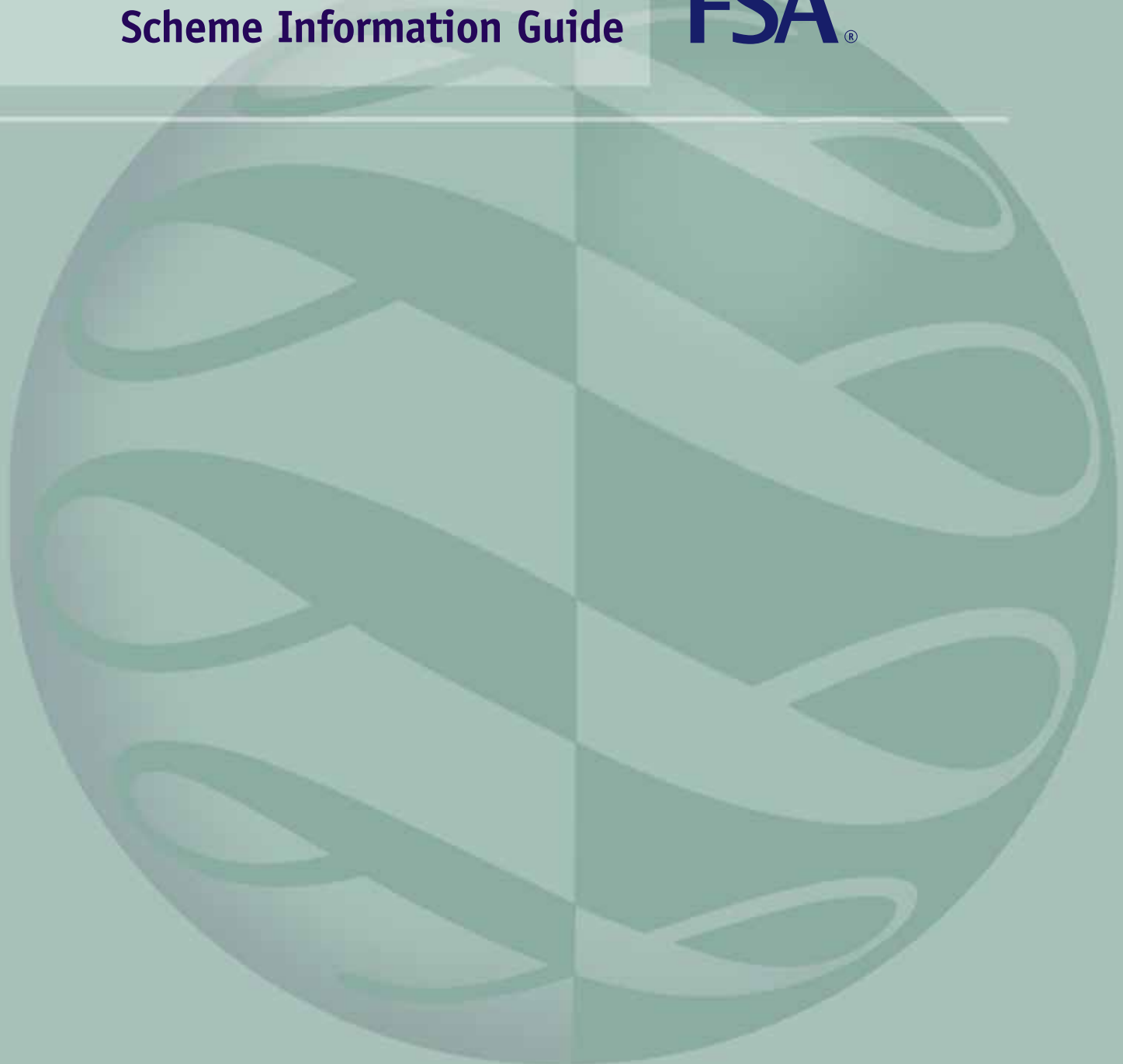


**The Collective Investment
Scheme Information Guide**



1.1	Introduction	
1.1.1	G	About this guide
		<p>(1) This Collective Investment Scheme Information Guide (COLLG) contains some key facts on the regulation of <i>collective investment schemes</i> in the <i>United Kingdom</i>. It will be of interest primarily to those who wish to gain a general understanding of the regulatory regime governing these <i>schemes</i>.</p> <p>(2) This guide is intended to complement the <i>rules</i> and <i>guidance</i> in the New Collective Investment Schemes sourcebook (<i>COLL</i>) and explains how an authorised <i>firm</i> should go about applying for authorisation of a <i>scheme</i> under the <i>Act</i> and the <i>OEIC Regulations</i>.</p> <p>(3) This guide does not contain information on unregulated <i>schemes</i>. Such <i>schemes</i> cannot be <i>marketed</i> to the general public and are otherwise restricted in their promotion.</p> <p>(4) The material in this guide is intended only as a summary of a number of significant legal provisions affecting authorised <i>collective investment schemes</i>. It does not constitute <i>guidance</i> under sections 157 and 158 of the <i>Act</i> and does not have the status of the guidance in the <i>Handbook</i>. This also means that <i>GEN 2.2</i> (Interpreting the Handbook) does not apply. If you have any doubt about any legal provision you should seek appropriate legal advice from your legal adviser.</p> <p>(5) This guide italicises words that are defined in the <i>Glossary</i> that forms part of the <i>Handbook</i>. For the full definition of the term, the reader should consult the <i>Glossary</i>.</p> <p>(6) The Overview is current as of January 2006. The Overview 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 initiatives.</p>
1.1.2	G	Structure of collective investment regulation in the UK
		<p>(1) There are three broad levels of regulation of <i>collective investment schemes</i> in the <i>United Kingdom</i>. These can be summarised as European, HM Government and the <i>FSA</i>. They should be viewed as a hierarchy of rules that, at each level, deals with more specific aspects of <i>collective investment scheme</i> regulation.</p> <p>(2) European <i>collective investment scheme</i> product regulation was introduced in 1985 by the <i>UCITS Directive</i> and this has been updated by amendments to the Directive which came into force in February 2004. If a <i>scheme</i> constituted in the <i>United Kingdom</i> complies with the Directive's provisions a <i>UCITS scheme</i> and can be promoted throughout the <i>EEA</i>. However not all <i>regulated collective investment schemes</i> are <i>UCITS</i></p>

		<p><i>schemes. COLLG 2 provides more detail on the scope and contents of the UCITS Directive.</i></p> <p>(3) The main Government legislation is the <i>Act</i> (under which <i>AUTs</i> operate) and the <i>OEIC Regulations</i> (under which <i>ICVCs</i> operate). <i>COLLG 3</i> provides details on: the <i>FSA's</i> responsibilities under the <i>Act</i>; how a <i>firm</i> may go about applying for authorisation of a unit trust or recognition of an overseas <i>scheme</i>; and what notifications to the <i>FSA</i> are required in terms of changes to those schemes. <i>COLLG 4</i> provides details on: the <i>FSA's</i> responsibilities under the <i>OEIC Regulations</i>; how a <i>firm</i> may go about applying for authorisation of an <i>ICVC</i>; and what notifications to the <i>FSA</i> are required in respect of changes to the <i>ICVC</i>.</p> <p>(4) The <i>Handbook</i> includes a specialist sourcebook <i>COLL</i>, which is structured in a way that gives <i>rules</i> and <i>guidance</i> on specific aspects of <i>AUT</i> and <i>ICVC</i> regulation. <i>COLLG 5</i> provides details of the structure of <i>COLL</i>.</p>
1.1.3	G	What are regulated collective investment schemes?
		<p>Under section 238 of the <i>Act</i> (Restrictions on promotion), only certain kinds of <i>collective investment scheme</i> may be promoted to the public by an <i>authorised person</i>. These are:</p> <p>(1) <i>authorised funds</i> constituted in the <i>United Kingdom</i>, as described in more detail below; and</p> <p>(2) <i>collective investment schemes</i> constituted outside the <i>United Kingdom</i> and recognised by the <i>FSA</i> under:</p> <p>(a) section 264 of the <i>Act</i> (Schemes constituted in other <i>EEA States</i>) - these are <i>schemes</i> that qualify under the <i>UCITS Directive</i>;</p> <p>(b) section 270 of the <i>Act</i> (Schemes authorised in designated countries or territories); and</p> <p>(c) section 272 of the <i>Act</i> (Individually recognised overseas schemes).</p>
1.1.4	G	What are ICVCs?
		<p>(1) An <i>ICVC</i> is the <i>UK-based</i> form of an <i>open-ended investment company</i> as defined by section 236 of the <i>Act</i> (Open-ended investment companies). Section 262 of the <i>Act</i> (Open-ended investment companies) empowers HM Treasury to make provisions relating to <i>open-ended investment companies</i> (the <i>OEIC Regulations</i>) which enable the establishment of <i>ICVCs</i>. Paragraph 1 (3) of Schedule 5 to the <i>Act</i> states that an authorised <i>open-ended investment company</i> is an <i>authorised person</i>. So, an <i>ICVC</i> is an <i>authorised person</i>.</p> <p>(2) An <i>ICVC</i> is constituted by an <i>instrument of incorporation</i>. Regulation 15(4) of the <i>OEIC Regulations</i> requires an <i>ICVC</i> to have at least one <i>director</i>. A <i>depository</i> must take responsibility for the safekeeping of the <i>scheme property</i>. The <i>depository</i> must be independent of the <i>ICVC</i> and each of its <i>directors</i>. Under regulation 14 of the <i>OEIC Regulations</i>, the <i>FSA</i> may</p>

		authorise an <i>ICVC</i> by making an <i>authorisation order</i> .
1.1.5	G	What are AUTs?
		(1) Under section 237 of the <i>Act</i> , (Other definitions), a <i>unit trust scheme</i> is a <i>collective investment scheme</i> under which the property is held on trust for the <i>participants</i> by the <i>trustee</i> . An <i>AUT</i> is constituted by a <i>trust deed</i> , entered into by the <i>manager</i> and <i>trustee</i> . Under section 243(4) of the <i>Act</i> , (Authorisation orders) they must be independent of each other and <i>COLL</i> 6.9 provides <i>guidance</i> on what the <i>FSA</i> considers independence to mean. The <i>FSA</i> may authorise an <i>AUT</i> by making an <i>authorisation order</i> .
1.1.6	G	Duties and responsibilities relating to <i>ICVCs</i>
		(1) The <i>OEIC Regulations</i> include requirements that: (a) the business of an <i>ICVC</i> be managed in accordance with the <i>FSA rules</i> ; and (b) where there is only one <i>director</i> , that <i>director</i> must be a <i>body corporate</i> with a <i>permission</i> to act as a <i>director</i> of an <i>ICVC</i> . (2) <i>COLL</i> refers to the director in (1)(b) as an authorised corporate director (" <i>ACD</i> ").
1.1.7	G	Powers and duties of the scheme, the authorised fund manager, and the depositary
		(1) <i>COLL</i> includes <i>rules</i> : (a) relating to the <i>authorised fund manager's</i> duties in respect of the management of the <i>scheme</i> ; (b) requiring the <i>depositary</i> to check that the <i>authorised fund manager</i> carries out certain of its functions in accordance with the applicable <i>rules</i> in <i>COLL</i> ; (c) relating to the <i>depositary's</i> duties in respect of the safe <i>custody</i> of the <i>scheme property</i> ; (d) requiring <i>firms</i> to avoid conflicts of interest that could prejudice investors; and (e) to provide safeguards when certain of the functions of the <i>directors</i> or <i>depositary</i> of an <i>ICVC</i> , or the <i>manager</i> or <i>trustee</i> of an <i>AUT</i> , are carried out by a third party. (2) For an <i>ICVC</i> , the <i>depositary</i> and the <i>directors</i> are required to comply with the <i>OEIC Regulations</i> and the <i>rules</i> in <i>COLL</i> and, in accordance with paragraph 6(1) of Schedule 2 to the <i>OEIC Regulations</i> , are also bound by the provisions of the <i>instrument constituting the scheme</i> . (3) The <i>directors</i> (including the <i>ACD</i>) and the <i>depositary</i> of an <i>ICVC</i> may each, to the extent permitted by <i>COLL</i> , retain the services of others

		to assist them to perform their respective functions. Where there is a vacancy in the position of an <i>ACD</i> , the <i>directors</i> should appoint one or more <i>authorised persons</i> to assist them in performing the functions that the <i>ACD</i> would otherwise be required to perform. Where there are no <i>directors</i> , the <i>depository's</i> powers are extended, temporarily, to enable it to manage the <i>scheme property</i> .
2.1		Introduction
2.1.1	G	Background and scope
		<p>1) This section summarises the scope and content of the <i>UCITS Directive</i>, as amended ("the Directive"). The Directive establishes a degree of harmonisation of <i>EEA states'</i> laws governing:</p> <ul style="list-style-type: none"> (a) the activities of management companies; (b) the <i>schemes</i> they manage; and (c) how their <i>schemes'</i> units are sold to the public. <p>(2) The main topics governed by the Directive and summarised in this section concern:</p> <ul style="list-style-type: none"> (a) the general scope of the Directive; (b) obligations of the management company and <i>depository</i>; (c) investment and borrowing power limits; (d) information for investors, (e) how the management passport works; and (f) <i>marketing</i> requirements.
2.1.2	G	General scope of the UCITS Directive
		<p>(1) The Directive is relevant only to open-ended collective vehicles that promote to the general public, so schemes that are restricted in their promotion fall outside the Directive's scope. The Directive applies to any <i>collective investment scheme</i> falling within its scope, regardless of whether it is promoted in other <i>EEA States</i>.</p> <p>(2) The Directive does not cover <i>collective investment schemes</i> that are authorised in an <i>EEA State</i> with different investment and borrowing powers to those covered by the Directive. So, <i>schemes</i> that invest in (for example) real property or commodities are not within the Directive's scope.</p>
2.1.3	G	Obligations on the management company and depository
		(1) The Directive requires each <i>UCITS scheme</i> to have a management company and a <i>depository</i> and assigns certain functions to each. As a result,

		<p>the FSA has identified the <i>authorised fund manager</i> as the <i>UCITS management company</i>. So, a <i>UK firm</i> which wishes to operate a <i>UCITS scheme</i> must first seek authorisation as a <i>UCITS management company</i>.</p> <p>(2) In addition, the Directive imposes certain conduct of business and financial resources <i>rules</i> on the management company. The conduct of business <i>rules</i> are very similar to the <i>rules</i> placed on <i>ISD firms</i> and can be found in <i>COB</i>. The financial resources rules can be found in <i>IPRU(INV) 5& 7</i>, and are different to those for <i>ISD firms</i>.</p> <p>(3) The Directive states the <i>depository</i> must be subject to 'public control' and provide 'sufficient financial and professional guarantees'. The <i>depository</i> is responsible for the safe keeping of a <i>scheme's</i> assets, and for ensuring that <i>sales, redemptions, cancellation</i> and <i>issue of units</i> and calculation of the value of <i>units</i> are effected in accordance with the law and <i>rules of the scheme</i>.</p> <p>(4) Two principal <i>rules</i> govern the relationship between the <i>UCITS management company</i> and the <i>depository</i> of a <i>scheme</i>. Firstly, no single company may act in both capacities. Secondly, they must act independently of each other and, apart from management of a <i>UCITS scheme</i>, a <i>UCITS management company</i> cannot engage in any activities other than:</p> <ul style="list-style-type: none"> (a) management of other <i>collective investment schemes</i>; (b) <i>managing investments</i>; and (c) <i>advising on investments</i>, and carrying out safeguarding and administration of <i>collective investment scheme units</i>, where it has <i>permission to manage investments</i>.
2.1.4	G	Investment and borrowing power limits
		<p>(1) The Directive states the types of assets a <i>scheme</i> can invest in. These are:</p> <ul style="list-style-type: none"> (a) <i>transferable securities</i>; (b) money market investments; (c) <i>deposits</i>; (d) <i>derivatives</i> and forwards; and (e) <i>units</i> in other <i>collective investment schemes</i>. <p>(2) Within this range of investment assets there are some detailed spread and concentration rules. The main requirements can be summarised as:</p> <ul style="list-style-type: none"> (a) no more than 5% in <i>transferable securities</i> or money market instruments with one <i>issuer</i>. This can be raised to 10% but only in respect of a maximum of 40% of the <i>scheme</i> value; (b) no more than 20% in <i>deposits</i> with one body; (c) 100% may be invested in other <i>schemes</i> provided: <ul style="list-style-type: none"> (i) they meet the requirements of the Directive, otherwise there is a limit of 30% in <i>schemes</i> offering equivalent protection to investors; and (ii) no more than 20% may be invested in any one <i>scheme</i>, provided the

		<p><i>scheme</i> being invested into limits investment in other <i>schemes</i> (by way of a provision in its <i>instrument constituting the scheme</i>) to no more than 10% of its value;</p> <p>(d) no more than 20% in <i>transferable securities</i> and money market instruments within one group;</p> <p>(e) no more than 20% with a single body from any combination of <i>transferable securities</i> or money market instruments, <i>deposits</i>, or <i>OTC derivatives</i>; and</p> <p>(f) no more than 5% <i>OTC derivative</i> exposure to one counterparty, or 10% where the counterparty is an <i>approved bank</i>, taking into account collateral held and netting of positions with the same counterparty..</p> <p>(3) Where a <i>scheme</i> has the investment objective of replicating the composition of a qualifying index, it may have an exposure of up to 20% in any <i>issuer</i> or exceptionally up to 35% (but only for one <i>issuer</i>). 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.</p> <p>(4) Where derivatives are to be used within a <i>scheme</i>, the <i>authorised fund manager</i> must employ a specific risk management system to monitor the risk of all <i>derivative</i> positions. The <i>authorised fund manager</i> must notify details of this risk management system and of any significant change to it to the <i>FSA</i>. The exposure to all <i>derivative</i> transactions must not exceed the current net asset value of the <i>scheme</i>. The underlying assets representing any <i>derivative</i> position must be taken into account in applying the spread of limits above. This does not apply in the case of any <i>derivative</i> which is on a qualifying index.</p>
2.1.5	G	Information to investors
		<p>(1) The Directive sets out which <i>documents</i> must be made available or offered to investors. The three main documentary requirements are:</p> <p>(a) the full <i>prospectus</i>,</p> <p>(b) the <i>simplified prospectus</i>, and</p> <p>(c) the annual and half-yearly reports and accounts.</p> <p>(2) The full <i>prospectus</i> requirements are covered in Annex A of the Directive and provide detailed information on the main parties involved in operating the <i>scheme</i>, the investment objectives and policy of the <i>scheme</i> and general day-to-day operating matters such as dealing times and income allocation.</p> <p>(3) In addition to the full <i>prospectus</i>, the management company must publish a simplified prospectus. This, subject to some exceptions, must be provided to the customer before he completes the application for the scheme. COB 6 (Product disclosure and the customer's right to cancel or withdraw) sets out the requirements for the simplified prospectus.(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 on request. They must also be available at the places specified in the full and <i>simplified</i></p>

		<i>prospectuses</i> . The required contents for the report and accounts are set out in Schedule B of the Directive.
2.1.6	G	The management passport
		<p>(1) Section III of the Directive provides the framework for a management company to provide services in another <i>EEA State</i> by way of a <i>branch</i> or <i>cross border services</i>.</p> <p>(2) <i>UK firms</i> which are <i>UCITS management companies</i> can operate in other <i>EEA States</i> similar to <i>ISD firms</i>. <i>SUP 13</i> will be of particular relevance and explains the process such <i>firms</i> need to follow to provide services in other <i>EEA States</i>.</p> <p>(3) Non-UK management companies are defined in the <i>Handbook</i> as <i>EEA UCITS management companies</i>. The <i>manager</i> will be a <i>UCITS qualifier</i>, and so will be an <i>authorised person</i> under Schedule 5 to the <i>Act</i>, if it carries out only <i>scheme management activity</i> and activity in connection with the operation of the <i>scheme</i>. If the <i>manager</i> of such a <i>scheme</i> wishes to undertake the <i>passport activities</i> of <i>managing investment</i> (other than of <i>collective investment schemes</i>), <i>advising on investments</i>, or safekeeping and administration of <i>investments</i>, as provided by article 5(3) of the Directive, as well as <i>scheme management activity</i>, it will need to do so in accordance with an authorisation conferred by Schedule 3 to the <i>Act</i> and should refer to the procedures in <i>AUTH 5</i> and <i>SUP 14</i> accordingly.</p>
2.1.7	G	Marketing requirements (for UK firms)
		<p>(1) Section VIII of the <i>UCITS Directive</i> provides the framework for a <i>UCITS scheme</i> to undertake <i>marketing</i> in another <i>EEA State</i>. A <i>UCITS scheme</i> is required to comply with the <i>marketing</i> and advertising rules in the relevant <i>Host State</i> (Article 44). And is also required to maintain facilities in the <i>Host State</i> (Article 45).</p> <p>(2) Certain <i>documents</i> must be provided to the <i>overseas regulator</i> in the relevant <i>EEA State</i>. The <i>documents</i> have to be provided at the same time as notification of the proposal to market there. The <i>UCITS scheme</i> may begin <i>marketing</i> two <i>months</i> following notification (Article 46) unless the <i>Host State</i> objects within that period.</p> <p>(3) The relevant information and <i>documents</i> distributed in the <i>Host State</i> must be published in an official language of the <i>Host State</i> or another language if approved by the relevant <i>overseas regulator</i> (Article 47).</p> <p>(4) If the <i>UCITS scheme</i> is being marketed in another <i>EEA State</i>, the publication of prices in the <i>Host State</i> is required (Article 34). <i>COLL 6.3.11</i> (Publication of prices) will be applicable in this case.</p>
3.1		Introduction

3.1.1	G	Part XVII of the <i>Act</i> deals specifically with <i>collective investment schemes</i> (CISs). The main features and practical effects of Part XVII, and how the <i>FSA</i> exercises its responsibilities, are described below. References to sections are to the numbered sections of Part XVII.
3.1.2	G	Marketing of schemes in the UK (section 238)
		<p>(1) Before a <i>scheme</i> can be promoted to the public in the <i>UK</i>, it must be authorised or recognised by the <i>FSA</i> (see <i>COLLG 1.1.3 G</i> (What are regulated collective investment schemes?)).</p> <p>(2) Only <i>persons</i> authorised under the <i>Act</i> can market authorised or recognised <i>schemes</i> to the public.</p>
3.1.3	G	Application for authorisation (section 242 and 243)
		<p>(1) Applications for authorisation of a UK unit trust need to be made by the <i>manager</i> and <i>trustee</i>, who need to:</p> <p>(a) be <i>authorised persons</i> under the <i>Act</i> with a <i>Part IV permission</i> to act as <i>manager</i> and <i>trustee</i> respectively;</p> <p>(b) be independent of each other (see <i>COLL 6.9</i>) which provides <i>guidance</i> on independence;</p> <p>(c) submit a joint application giving details of themselves and the <i>scheme</i>;</p> <p>(d) provide:</p> <p>(i) a copy of the <i>trust deed</i>;</p> <p>(ii) a copy of the <i>prospectus</i> and simplified <i>prospectus</i>;</p> <p>(iii) a solicitor's certificate stating that the <i>trust deed</i> complies with the <i>rules</i> made under section 247 of the <i>Act</i> (Trust scheme rules); and</p> <p>(iv) a business plan.</p> <p>(2) The name of the <i>scheme</i> must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect. <i>COLL 6.9</i> provides <i>guidance</i> on what the <i>FSA</i> considers undesirable or misleading names.</p> <p>(3) Application forms are available free of charge from the <i>FSA's</i> website. An application <i>fee</i> is payable.</p> <p>(4) Under section 244 of the <i>Act</i> (Determination of applications), the <i>FSA</i> has up to 6 <i>months</i> in which to consider a completed application following its receipt, and must inform the <i>manager</i> and <i>trustee</i> of its decision within that timescale. In practice, the <i>FSA</i> aim to process a completed application relating to a <i>UCITS scheme</i> within 6 weeks. If the <i>FSA</i> is satisfied with the application, an <i>authorisation order</i> is issued for the <i>scheme</i>.</p> <p>(5) If the <i>FSA</i> proposes to refuse an application, it must give a warning notice which will contain the reasons for the refusal. If, having given the <i>warning notice</i>, it decides to refuse the application, a decision notice will be</p>

		sent and the applicant may refer the matter to the <i>Tribunal</i> .
3.1.4	G	Revocation of authorisation (section 254)
		<p>(1) The <i>FSA</i> can revoke an <i>authorisation order</i> declaring a unit trust to be authorised if:</p> <ul style="list-style-type: none"> (a) the requirements of authorisation are no longer satisfied; or (b) the <i>manager</i> or <i>trustee</i> has contravened any provision of the <i>Act</i> or any <i>rules</i> or regulations made under it, or has given false or misleading information to the <i>FSA</i>; or (c) no regulated activity is being carried on in relation to the <i>scheme</i> and the period of that inactivity began at least twelve <i>months</i> earlier; or (d) it is undesirable for investors or potential investors that the unit trust should continue; <p>(2) The <i>FSA</i> may refuse to revoke an <i>authorisation order</i> if it considers that:</p> <ul style="list-style-type: none"> (a) any matter should be investigated prior to revocation; (b) revocation would not be in the interests of investors; or (c) revocation would be incompatible with the <i>UCITS Directive</i>. <p>(3) If the <i>FSA</i> proposes to revoke an <i>authorisation order</i>, a separate <i>warning notice</i> will be sent to the <i>manager</i> and <i>trustee</i>. The same procedures as stated for refusal of authorisation, in relation to the <i>warning notice</i> and <i>decision notice</i>, will apply.</p>
3.1.5	G	Notification of changes to unit trusts (section 251)
		<p>1) The <i>manager</i> must give written notice to the <i>FSA</i> when:</p> <ul style="list-style-type: none"> (a) an alteration to the <i>unit trust</i> is proposed; or (b) it is proposed that the <i>trustee</i> retires. <p>(2) Any proposal that involves a change in the <i>trust deed</i> must be accompanied by a solicitor's certificate stating that the change will not affect the compliance of the deed with the <i>rules</i>.</p> <p>(3) The <i>trustee</i> must give written notice to the <i>FSA</i> of a proposal to replace the <i>manager</i>.</p> <p>(4) The <i>FSA</i> has one <i>month</i> following receipt of notice to consider whether or not to refuse the proposal.</p>
3.1.6	G	Powers of intervention (section 257 and section 281)
		The <i>FSA</i> has powers of intervention if there is a breach of the <i>Act</i> or <i>COLL</i> , or if it is in the interest of <i>unitholders</i> or potential <i>unitholders</i> in a <i>scheme</i> . In respect of an <i>AUT</i> , directions can be made for the <i>manager</i> to suspend the <i>issue</i> and <i>redemption</i> of <i>units</i> or to wind up the <i>scheme</i> .

3.1.7	G	Scheme particulars (section 248)
		The <i>Act</i> empowers the <i>FSA</i> to require a <i>manager</i> to publish <i>scheme particulars</i> . Details relating to the timing of publication, how and when they must be offered to prospective investors, and their content is contained in <i>COLL 4</i> (Investor relations) which refers to the <i>scheme particulars</i> as a <i>prospectus</i> .
3.1.8	G	Recognition of overseas schemes (section 264, 270 and 272)
		<p>(1) Recognition by the <i>FSA</i> enables overseas <i>schemes</i> to be <i>marketed</i> to the public in the <i>United Kingdom</i>.</p> <p>(2) Section 264 covers <i>schemes</i> constituted in another <i>EEA State</i> that are certified by their <i>Home State</i> as meeting the requirements of the <i>UCITS Directive</i>. The <i>scheme</i> becomes recognised unless the <i>FSA</i>, within two <i>months</i> of receiving written notice of the intention to <i>market</i> into the <i>United Kingdom</i>, notifies the applicant and its <i>Home State regulator</i> that the manner in which the invitation is to be made (to the public) does not comply with <i>UK law</i>. Such <i>schemes</i> cannot be <i>marketed</i> to the public in the <i>United Kingdom</i> before the two <i>month</i> period is over. <i>COLL 9.2.1G</i> (Information and documents to be supplied with a section 264 notification) provides specific details.</p> <p>(3) If there is a change in the information supplied to the <i>FSA</i> in accordance with <i>COLL 9.2.1 G</i> following initial recognition, the <i>FSA</i> wishes to be notified of such changes and revised <i>documents</i> (certified as true copies) should be sent.</p> <p>(4) Section 270 covers <i>schemes</i> that are managed in and authorised under the law of a country or territory outside the <i>United Kingdom</i> that has been designated for this purpose by an order made by the Treasury ("the Designation Order"). These are currently Jersey, Guernsey, the Isle of Man and Bermuda. Notification forms are available, free of charge, at the <i>FSA</i> website; <i>COLL 9.3</i> (Section 270 and 272 recognised schemes) provides further information on the documents to be supplied to the <i>FSA</i>. The <i>scheme</i> becomes recognised on the <i>FSA's</i> written approval, or automatically after two <i>months</i> from notification. It should be noted that the Treasury:</p> <p>(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 <i>collective investment schemes</i> provide a level of protection at least equivalent to that provided under the <i>Act</i>;</p> <p>(b) must be content that adequate arrangements exist for co-operation between regulators in each country or territory and the <i>FSA</i>; and</p> <p>(c) may request the <i>FSA</i> to provide a report on the regimes of regulation in existing or prospective designated territories.</p> <p>(5) Section 272 covers overseas <i>schemes</i> that are not recognised by virtue of section 264 or section 270. The <i>FSA</i> may make an order declaring the <i>scheme</i> to be recognised if it is satisfied that the <i>scheme</i> will afford adequate</p>

		<p>protection (i.e. a similar level of protection to that provided under the <i>Act</i>) for investors, and the arrangements for the <i>scheme's</i> constitution and management, and the powers and duties of the <i>operator</i> and of any <i>trustee</i> or <i>depository</i>, are also "adequate". In deciding what is adequate, the <i>FSA</i> will consider the <i>rules</i> applicable to <i>AUTs</i> or <i>ICVCs</i>. Section 272 applications require detailed and rigorous analysis of all aspects of the <i>scheme</i> and the level of investor protection provided by the regime under which the <i>scheme</i> operates, so the <i>FSA</i> has 6 months in which to determine a complete application. Details of the information and documents required for a section 272 application can be found in <i>COLL 9.3</i> (Section 270 and 272 recognised schemes).</p>
3.1.9	G	Subsequent notification in respect of schemes recognised under sections 270 and 272 of the Act
		<p>(1) The <i>FSA</i> wishes to be informed of changes in the information supplied by the <i>operator</i> of a section 270 or section 272 <i>scheme</i> under <i>COLL 9.3.1 D</i></p> <p>(2) Any revised <i>documents</i> sent under (1) should be certified as true copies of the originals and accompanied, where relevant, by written evidence of the approval of the <i>overseas regulator</i> to the change.</p>
3.1.10	G	Refusal of approval: schemes recognised under section 270 and 272 of the Act
		The <i>FSA's</i> power to refuse recognition and the procedures for this are set out in section 271 of the <i>Act</i> for <i>schemes</i> recognised under section 270 and section 276 of the <i>Act</i> for <i>schemes</i> recognised under section 272.
3.1.11	G	Revocation of recognition of overseas schemes (section 279)
		<p>(1) If the <i>operator</i> of a <i>scheme</i> recognised under section 264 gives written notice to the <i>FSA</i> under section 264(6) that it desires the <i>scheme</i> to no longer be recognised, then the <i>scheme</i> ceases to be recognised.</p> <p>(2) Under section 279, the <i>FSA</i> 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 <i>authorised funds</i> under section 254.</p> <p>(3) If the <i>FSA</i> proposes to give a direction under section 279 or to revoke a <i>scheme's</i> recognition, it will give a <i>warning notice</i>. Should the <i>FSA</i> decide to give a direction or revoke recognition, it will issue a <i>decision notice</i>. Thereafter, the matter may be referred to the <i>Tribunal</i>.</p>
3.1.12	G	Scheme facilities in the UK (section 283)

		This section enables the <i>FSA</i> to make <i>rules</i> requiring recognised <i>schemes</i> to maintain <i>scheme</i> facilities in the <i>United Kingdom</i> and to provide certain information to be supplied on request. Details are contained in <i>COLL 9.4</i> (Facilities in the United Kingdom).
4.1		Introduction
4.1.1	G	Section 262 of the <i>Act</i> provides for the Treasury to make regulations governing the establishment and regulation of <i>ICVCs</i> . Rather than merely adopting various parts of <i>UK</i> company law, the Treasury chose a 'stand alone' approach for its <i>OEIC Regulations</i> . The main features and practical effects of those regulations are outlined below.
4.1.2	G	Applications for authorisation (Regulations 12 - 17)
		<p>(1) The <i>FSA</i> requires an application for authorisation to be made by the <i>ACD</i> and <i>Depositary</i>, who must:</p> <ul style="list-style-type: none"> (a) be <i>authorised persons</i> under the <i>Act</i> with the appropriate <i>Part IV permission</i>; (b) be independent of each other; <p>(c) submit a joint application giving details of themselves, and of any other <i>person</i> proposed as a <i>director</i> of the <i>ICVC</i>;</p> <p>(d) provide:</p> <ul style="list-style-type: none"> (i) a copy of the proposed <i>ICVC's instrument of incorporation</i>; (ii) a copy of the <i>prospectus</i> and <i>simplified prospectus</i>; (iii) a solicitor's certificate to the effect that the <i>instrument of incorporation</i> complies with Schedule 2 to the <i>OEIC Regulations</i> and with <i>COLL</i>; and (iv) a business plan. <p>(2) The name of the <i>ICVC</i> 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 <i>ICVC</i> and further <i>guidance</i> can be found in <i>COLL 6.9</i>. As with <i>AUTs</i>, the aim of the <i>ICVC</i> must be reasonably capable of being achieved.</p> <p>(3) As with <i>AUTs</i>, the <i>FSA</i> has up to 6 <i>months</i> to determine a completed application, but aims to process an application within 6 weeks for <i>UCITS schemes</i>. If the <i>FSA</i> is satisfied with the application, an <i>authorisation order</i> is issued. The <i>ICVC</i> becomes incorporated when the <i>authorisation order</i> is issued.</p>
4.1.3	G	Notification of changes to <i>ICVCs</i> (Regulation 21)
		(1) The <i>FSA's</i> approval is required before the following changes can take place:

		<p>(a) any alteration to the <i>instrument of incorporation</i>;</p> <p>(b) any significant alteration to the <i>prospectus</i>;</p> <p>(c) any reconstruction or amalgamation involving the <i>ICVC</i>;</p> <p>(d) any proposal to wind up the <i>ICVC</i> otherwise than by the court;</p> <p>(e) any proposal to replace a <i>director</i>, appoint an additional <i>director</i>, or decrease the number of <i>directors</i> in post; and</p> <p>(f) any proposal to replace the <i>depository</i>.</p> <p>(2) Any notice proposing to change the <i>instrument of incorporation</i> must be accompanied by a solicitor's certificate confirming that the change will not affect compliance of the instrument with schedule 2 to the <i>OEIC Regulations</i> and <i>COLL</i> as they relate to the contents of the instrument.</p> <p>(3) The <i>FSA</i> has 1 <i>month</i> following written notification to consider whether or not to refuse the proposal.</p>
4.1.4	G	Revocation of authorisation (Regulation 23)
		The <i>FSA</i> can revoke or refuse to revoke an <i>authorisation order</i> on similar grounds to those for an <i>AUT</i> . If it proposes to do so, similar procedures for <i>warning notices</i> and <i>decision notices</i> as for <i>AUTs</i> apply (see <i>COLLG</i> 3.1.4G).
4.1.5	G	Power of intervention (Regulation 25)
		The <i>FSA</i> has a power of intervention if it appears there is a breach of the <i>Act</i> or <i>COLL</i> , or if it is desirable to give a direction to protect the interests of investors in the <i>ICVC</i> . Directions can be given to cease the <i>issue</i> or <i>redemption of units</i> or any class of <i>unit</i> in the <i>ICVC</i> or for the winding up of the <i>ICVC</i> .
4.1.6	G	Corporate Code
		<p>(1) Certain provisions of the Companies Acts will apply to <i>ICVCs</i>, as they are incorporated bodies (especially, but not exclusively, regarding the holding of meetings).</p> <p>(2) Regulations 34 to 70 lay down the corporate code for <i>ICVCs</i>. The code contains provisions dealing with the operation of <i>ICVCs</i> 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 <i>ICVC</i> is also governed by <i>COLL</i>.</p>
4.1.7	G	The FSA's Registration Function

		In accordance with Part IV of the <i>OEIC Regulations</i> , the <i>FSA</i> is required to maintain a register of <i>ICVCs</i> , to allocate to each a registered number, and to carry out certain other registration functions.
5.1		Introduction
5.1.1	G	<p>(1) <i>COLL</i> is a specialist sourcebook that sits in Block 6 (specialist sourcebooks) of the <i>FSA Handbook</i>. It provides the detailed framework within which <i>authorised funds</i> operate and includes requirements relating to what certain overseas <i>schemes</i> must provide by way of facilities in order to <i>recognised schemes</i>.</p> <p>(2) Until 12 February 2007, <i>COLL</i> is optional for any person seeking authorisation of a <i>scheme</i>, as they may apply for authorisation of the <i>scheme</i> under the Collective Investment Schemes sourcebook (<i>CIS</i>). <i>CIS</i> will cease to apply from 13 February 2007 and <i>firms</i> already operating <i>schemes</i> under <i>CIS</i> will need to comply with <i>COLL</i> by that date.</p>
5.1.2	G	Function of the sourcebook: the two-tier regime
		<p>(1) The material in chapters 2 to 8 of <i>COLL</i> forms a major part of the product regulation regime for <i>ICVCs</i> and <i>AUTs</i>, supplementing the material in the <i>OEIC Regulations</i> (for <i>ICVCs</i>) and chapter III of Part XVII of the <i>Act</i> (for <i>AUTs</i>) and giving effect to the <i>UCITS Directive</i>. This is shown in the diagram at <i>COLLG 5.1.8 G</i>.</p> <p>(2) The sourcebook is designed as a two-tier approach depending on whether the <i>authorised fund</i> is promoted to the general public (retail <i>schemes</i>) or to institutions and expert <i>private customers (qualified investor schemes)</i>.</p>
5.1.3	G	Definition of terms in <i>COLL</i>
		<p>Some parts of <i>COLL</i> relate only to <i>ICVCs</i> and some parts only to <i>AUTs</i>. However, most of the sourcebook covers both <i>ICVCs</i> and <i>AUTs</i>. So, some of the defined terms included relate equally to both <i>ICVCs</i> and <i>AUTs</i> (together defined as "<i>authorised funds</i>"). Other key examples of these terms are:</p> <p>(1) "<i>authorised fund manager</i>", which refers to both the <i>ACD</i> of an <i>ICVC</i> and the <i>manager</i> of an <i>AUT</i> (the term "<i>ACD</i>" is used only for an <i>ICVC</i> and the term "<i>manager</i>" is used only for an <i>AUT</i>);</p> <p>(2) "<i>depository</i>", which, when used for an <i>authorised fund</i>, refers to both the <i>depository</i> of an <i>ICVC</i> and the <i>trustee</i> of an <i>AUT</i>;</p> <p>(3) "<i>unit</i>", which according to the context, can refer to a "<i>share</i>" in an <i>ICVC</i>, a "<i>unit</i>" in an <i>AUT</i>, or the rights or interests of <i>participants</i> in other types of <i>collective investment scheme</i>.</p>

5.1.4	G	Retail Schemes
		<p>(1) Retail <i>schemes</i> must be either <i>UCITS schemes</i> or <i>non-UCITS retail schemes</i>. A <i>non-UCITS retail scheme</i> is an <i>authorised fund</i> capable of being promoted to retail investors, and which does not fall within the scope of the UCITS Directive. The content of <i>COLL</i> in relation to retail schemes is outlined below.</p> <p>(2) <i>COLL 2</i> (Authorised fund applications) sets out the initial application requirements for <i>authorised funds</i> and the <i>rules</i> concerning notifications which need to be made to the <i>FSA</i> in its role as registrar of <i>ICVCs</i>.</p> <p>(3) <i>COLL 3</i> (Constitution) includes requirements regarding the contents of the <i>instrument constituting the scheme</i> for <i>authorised funds</i> that are retail <i>schemes</i> and other matters relating to their constitutional features, such as <i>classes of units</i>.</p> <p>(4) <i>COLL 4</i> (Investor relations) includes consumer-facing material relating to <i>authorised funds</i> that are retail <i>schemes</i>. So, material on the <i>prospectus</i> and reports and accounts is included in that chapter, together with <i>rules</i> relating to when <i>unitholders</i> must be notified of events and when meetings of <i>unitholders</i> are required.</p> <p>(5) <i>COLL 5</i> (Investment and borrowing powers) requires <i>authorised funds</i> that are retail <i>schemes</i>, their <i>authorised fund managers</i> and <i>depositories</i>, to comply with <i>rules</i> on the investment composition of the <i>scheme</i>. It is split into four sections:</p> <p>(a) <i>COLL 5.1</i> to <i>COLL 5.3</i> implement the <i>UCITS Directive</i> requirements for quality, spread and counterparty limits to be imposed on funds investing in asset classes covered by the Directive;</p> <p>(b) <i>COLL 5.4</i> provides <i>rules</i> on <i>stock lending</i>;</p> <p>(c) <i>COLL 5.5</i> provides rules on holding <i>cash</i> and <i>near cash</i>, borrowing and lending; and</p> <p>(d) <i>COLL 5.6</i> provides risk-spreading <i>rules</i> for <i>non-UCITS retail schemes</i>.</p> <p>(6) <i>COLL 6</i> (Operating duties and responsibilities) contains <i>rules</i> on the day-to-day operation of <i>authorised funds</i> that are retail <i>schemes</i>. In particular:</p> <p>(a) <i>COLL 6.2</i> sets out rules relating to <i>dealing</i> in <i>units</i> of <i>authorised funds</i>;</p> <p>(b) <i>COLL 6.3</i> sets out how <i>authorised funds</i> must be valued and <i>prices</i> of <i>units</i> calculated and published;</p> <p>(c) <i>COLL 6.4</i> provides requirements relating to the <i>register</i> of <i>unitholders</i> in an <i>AUT</i> (see the <i>OEIC Regulations</i> for <i>ICVCs</i>) and <i>plan register</i>;</p> <p>(d) <i>COLL 6.5</i> sets out <i>rules</i> relating to the appointment and replacement of the <i>authorised fund manager</i> and <i>depository</i>;</p> <p>(e) <i>COLL 6.6</i> imposes certain powers and duties on the <i>authorised fund manager</i> and the <i>depository</i>;</p> <p>(f) <i>COLL 6.7</i> lays down conditions concerning charges and expenses when investors buy or sell <i>units</i> and when payments may be made out of the</p>

		<p><i>scheme property</i>;</p> <p>(g) <i>COLL 6.8</i> provides <i>rules</i> and <i>guidance</i> on the calculation and distribution of income; and</p> <p>(h) <i>COLL 6.9</i> gives guidance relating to ongoing obligations imposed by the <i>Act</i>.</p> <p>(7) <i>COLL 7</i> (Suspension of dealings and termination of authorised funds) includes the requirements for suspension of dealing in the <i>units</i> of <i>authorised funds</i> and how they may be wound up (including termination of <i>sub-funds</i>).</p>
5.1.5	G	Qualified investor schemes
		<p>(1) If a <i>scheme</i> is to be restricted in its promotion or subscription to sophisticated investors, the <i>FSA</i> considers that not all the detailed product <i>rule</i> protections that apply to retail <i>schemes</i> are necessary. So, <i>COLL</i> provides a framework of <i>rules</i> for such <i>schemes</i> which satisfies the essential features of an authorised product and so distinguishes them from <i>unregulated collective investment schemes</i>, but otherwise allows more flexibility in the <i>scheme's</i> operation compared to the framework provided for retail <i>schemes</i>.</p> <p>(2) <i>COLL 2</i> is relevant for achieving authorisation. <i>COLL 8</i> provides the framework mentioned in (1) and, compared to retail <i>schemes</i>, places more emphasis on the contents of the <i>prospectus</i> to describe the operating procedures.</p>
5.1.6	G	Recognised schemes
		For <i>collective investment schemes</i> constituted outside the <i>United Kingdom</i> and referred to in <i>COLLG 1.1.3 G</i> (2) the sourcebook brings together the material relating to the admission to <i>marketing</i> of such <i>schemes</i> in the <i>United Kingdom</i> , supplementing material in Chapter V of Part XVII of the <i>Act</i> (Recognised overseas schemes). This material can be found at <i>COLL 9</i> .
5.1.7	G	Related Sourcebooks
		<p>(1) <i>Establishing, operating or winding up a collective investment scheme</i> constitutes a <i>regulated activity</i>. No <i>person</i> may carry on a <i>regulated activity</i> by way of business in the <i>United Kingdom</i>, or purport to do so, unless he is an <i>authorised person</i> (or an <i>exempt person</i>). This prohibition is referred to in the <i>Act</i> as the <i>general prohibition</i>. <i>Guidance</i> for <i>persons</i> considering carrying on <i>regulated activities</i> in the <i>United Kingdom</i> can be found in <i>AUTH</i>. <i>AUTH 3</i> (Applications for Part IV permission) gives <i>guidance</i> on how to apply to the <i>FSA</i> for a <i>Part IV permission</i>. This <i>authorisation</i> is different to the authorisation of an <i>AUT</i> under Part XVII of the <i>Act</i>, or of an <i>ICVC</i> (for which see Schedule 5 of the <i>Act</i> and Regulation 14 of the <i>OEIC Regulations</i> (Authorisation), <i>guidance</i> on which is provided in this guide and <i>COLL</i>.</p>

		<p>(2) There are a number of other parts of the <i>FSA's Handbook</i> that are particularly relevant to those having a responsibility in relation to <i>authorised funds</i>. These include:</p> <ul style="list-style-type: none"> (a) <i>PRIN</i> (The Principles for Businesses); (b) <i>SYSC</i> (Senior Management Arrangements, Systems and Controls); (c) <i>APER</i> (The Statements of Principle and Code of Practice for Approved Persons); (d) <i>COB</i> (The Conduct of Business sourcebook); (e) <i>SUP</i> (The Supervision manual); (f) <i>DEC</i> (The Decision making manual); and (g) <i>CASS</i> (The Client Assets sourcebook). <p>(3) <i>ENF 16</i> sets out the <i>FSA's</i> policies and procedures concerning the use of its enforcement powers in relation to <i>regulated collective investment schemes</i>.</p> <p>(4) <i>ML</i> is also relevant, in particular when considering <i>COLL 6.2.16</i> (Sale and redemption) and <i>COLL 6.4</i> (Title and registers). Due regard should be given to compliance with the Joint Money Laundering Steering Group Guidance Notes for the Financial Sector in determining compliance with the <i>Money Laundering Regulations</i>.</p> <p>(5) <i>IPRU (INV) 5 and 7</i> sets out the financial resources requirements for an <i>authorised fund manager</i> of <i>UCITS schemes</i>, including certain requirements of the <i>UCITS Directive</i>.</p> <p>(6) <i>FEES</i> includes details of the application and periodic fees payable for <i>authorised funds</i>.</p>
5.1.8	G	Regulated schemes: explanatory diagram

