

# Authorised investment funds technical release

February 2012

## Protected cell regime for umbrella OEICs in the UK

Following the approval of the Open-Ended Investment Companies (Amendment) Regulations 2011 (SI No 3049) by Parliament and the publication of the related COLL amendments by the FSA, the protected cell regime for OEICs in the UK is now finally in place.

Following these changes, the OEIC Regulations provide that the assets of a sub-fund belong exclusively to that sub-fund, and are not available to discharge the liabilities of any other sub-fund or any claim against the umbrella company. As the regime affects all categories of UK umbrella OEIC (whether UCITS, NURS or QIS), all existing umbrella companies will need to convert to protected cell status.

In response to industry concerns about the short length of the proposed period over which conversion should take place, the transition period has been set in most cases at two years. The precise implementation timetable however depends on the size of the ACD:

- ACDs with ten employees or more have two years to convert and must complete this by 20 December 2013. The OEIC must notify the FSA of its intention to alter its instrument of incorporation to reflect protected cell status. This must be accompanied by a confirmation that the OEIC has no contracts which are inconsistent with the new regulatory provisions on segregated liability. The prospectus and investor documentation (simplified prospectus or key investor information - as appropriate) will also need to be altered. ACDs may apply to the FSA for the deadline to be extended by a year, although the granting of this is at the FSA's discretion.
- ACDs with fewer than ten employees (the so called 'micro-businesses') have three years to convert - ie by 20 December 2014. HM Treasury have indicated that they do

not believe there are any more than a handful of 'micro' ACDs in the UK as the Regulations require ACDs' size assessments to include staff employed "for the purposes of the ACD" even though their employment contracts may be with other group companies.

- New OEICs authorised after 21 December 2011 by ACDs other than those in the micro-business category must comply with the protected cell regime immediately. New OEICs established by 'micro' ACDs have a transitional period in which to comply - this period ends on 20 December 2014.



The conversion exercise itself will involve a substantial amount of work to review existing scheme documentation, agreements and contracts in order to identify what may need to be amended and/or renegotiated. The financial reporting aspects to be considered once an umbrella OEIC enters the protected cell regime include:

- 1 The long standing COLL requirement for a statement in the annual report regarding contagion between sub-funds has been removed. (This was the statement to the effect that, as a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds).
- 2 Under the revised regulations it becomes permissible for the first time for a sub-fund to invest in other sub-funds of the same umbrella company (subject to appropriate disclosure in the prospectus and adherence with restrictions on double charging). For an OEIC which cross invests, consideration will need to be given to how this should be reflected in the aggregated accounts. There is an argument for cross holdings (and related revenue and distributions) being eliminated from the aggregated accounts but this is something which will need to be determined by the SORP having regard to COLL's requirement for aggregation at entity level. It is nonetheless disappointing that there was not greater consideration given to the on-going value of aggregated accounts as part of the consultation - accounts which serve a legal purpose but which arguably contain even less in the way of useful information for investors in the new protected cell world.

- 3 When winding up a sub-fund of an OEIC within the protected cell regime, the solvency statement relates unequivocally to the affairs of that sub-fund. As there has historically been some confusion under existing FSA rules as to whether the solvency statement relates to the OEIC or the sub-fund, it appears that the position in COLL will be clearer going forward.

There are also some notable issues with the regime in relation to the possibility of claims which might be brought by local creditors in foreign courts or under foreign law contracts. COLL recognises that there may be uncertainty over how foreign courts might react to the UK regulations and in light of this there is a requirement to disclose this risk in the prospectus. There is also a new obligation on ACDs to promptly investigate and, where appropriate, to take steps to remedy any inconsistency between a foreign law contract and the new principle of limited recourse which is required to be enshrined in the OEIC's instrument of incorporation. As COLL requires ACDs to follow up any situations where there are 'reasonable grounds' for believing that an inconsistency exists, consideration will need to be given as to how best to comply with this obligation, as it implies a degree of on-going monitoring.

The protected cell regime has been a number of years in the making but it is a positive attempt on the part of HM Treasury and the FSA to help UK OEICs to compete on a more level playing field with similar vehicles in other fund jurisdictions.

#### Contact us

If you would like to discuss any of the matters raised in this release further, please contact one of our authorised funds specialists listed below.



**Marcus Swales**

T 020 7865 2320

E [marcus.swales@uk.gt.com](mailto:marcus.swales@uk.gt.com)



**Alastair Robertson**

T 020 7865 2275

E [alastair.robertson@uk.gt.com](mailto:alastair.robertson@uk.gt.com)



**Julian Bartlett**

T 020 7865 2327

E [julian.bartlett@uk.gt.com](mailto:julian.bartlett@uk.gt.com)



© 2012 Grant Thornton UK LLP. All rights reserved. 'Grant Thornton' means Grant Thornton UK LLP, a limited liability partnership. Grant Thornton UK LLP is a member firm within Grant Thornton International Ltd ('Grant Thornton International'). Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered by the member firms independently. This publication has been prepared only as a guide. No responsibility can be accepted by us for loss occasioned to any person acting or refraining from acting as a result of any material in this publication.

[www.grant-thornton.co.uk](http://www.grant-thornton.co.uk)