

Chapter 6

Operating duties and responsibilities

6.7 Payments

Application

6.7.1 **R** This section applies in accordance with **■** COLL 6.7.2 R (Table of application).

Table of application

6.7.2 **R** Table of Application. This table belongs to **■** COLL 6.7.1 R.

Rule	ICVC	ACD	Depositary of an ICVC, AUT or ACS	Authorised fund manager of an AUT or ACS
6.7.1R to 6.7.5G	x	x	x	x
6.7.6G	x	x		x
6.7.7R		x		x
6.7.8G		x		x
6.7.9R		x		x
6.7.10R		x	x	x
6.7.11G		x	x	x
6.7.12R	x	x		x
6.7.13G	x	x		x
6.7.14R	x			
6.7.15R	x	x	x	x
6.7.16G		x	x	x
6.7.17R	x	x		x

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

- 6.7.3 **G**
- (1) This section assists in securing the *statutory objective* of protecting consumers through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.
 - (2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for *unitholders* of any increases in charges and payments to the *authorised fund manager*.

- (3) The *prospectus* should make adequate provision for payments from an *authorised fund*. This section:
 - (a) prohibits, or stipulates the conditions on which, the payments out of the *scheme property* can be made;
 - (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
 - (c) governs the allocation of payments between capital and income.

Payments out of scheme property

6.7.4

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- (1) The only payments which may be recovered from the *scheme property* of an *authorised fund* are those in respect of:
 - (a) remunerating the parties operating the *authorised fund*;
 - (b) the administration of the *authorised fund*; or
 - (c) the investment or safekeeping of the *scheme property*.
- (2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.
- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of *units* on behalf of *unitholders* rather than on behalf of the *authorised fund*.

Payments out of scheme property: guidance

6.7.5

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- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with ■ COLL 4.2.5R (13) and ■ COLL 4.2.5R (14) (Table: contents of the *prospectus*).
- (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ■ COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.
- (4) Payments to third parties as referred to in ■ COLL 6.7.4 R (4) include payments to *platform service providers* and other similar platform services.

Performance fees

6.7.6

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- (1) For the *authorised fund manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the

value or *price* of property of any description or index or other factor designated for the purpose (a "performance fee").

- (2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with ■ COLL 6.7.4 R. In determining whether the performance fee is consistent the *authorised fund manager* should have regard to factors such as:
 - (a) [deleted]
 - (b) where it is made on the basis of performance of the *authorised fund* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *authorised fund* and must be consistently applied;
 - (c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;
 - (d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
 - (e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and
 - (f) except where allowed by ■ COLL 6.7.4 R (1), there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.
- (3) In accordance with ■ COLL 4.2.5R (13) (Table: contents of prospectus) the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

6.7.6A **R** Any performance fee specified in the *prospectus* must be calculated on the basis of the *scheme's* performance after deduction of all other payments out of *scheme property*.

Charges on buying and selling units

6.7.7 **R**

- (1) No *person* other than the *authorised fund manager* may impose charges on *unitholders* or potential *unitholders* when they buy or sell units.
- (2) An *authorised fund manager* must not make any charge or levy in connection with:
 - (a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be:
 - (i) a fixed amount; or
 - (ii) calculated as a percentage of the *price* of a *unit*; or
 - (iii) calculated as a percentage of the amount being subscribed; or

(b) the *redemption* or *cancellation* of units, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.

(3) This rule is subject to ■ COLL 6.3.8 R (Dilution) and ■ COLL 11.3.11 R (Obligations of the master UCITS).

Charges on buying and selling units: guidance

6.7.8

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(1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with ■ COLL 4.2.5 R (Table: contents of prospectus) and ■ COLL 4.3 (Approvals and notifications).

(2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.

(3) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be redeemed or cancelled for the purpose of the imposition of the *redemption charge*.

(4) (a) For a *UCITS scheme*, article 10(2)(a) of the *KII Regulation* requires the *key investor information document* to disclose the maximum percentage that might be deducted as an entry charge from the investor's capital commitment.

(b) Where a *preliminary charge* is charged as a fixed amount or is calculated as a percentage of the *price* of a *unit*, the *AFM* should ensure that the actual amount charged, if it were expressed as a percentage of the amount being subscribed, does not exceed the maximum percentage stated as the entry charge in the *key investor information document*.

(5) When a *preliminary charge* is calculated as a percentage of the *price* of a *unit*, the percentage amount should be added to:

(a) the *price* of a *unit* (for a *single-priced authorised fund*); or

(b) the *issue price* (for a *dual-priced authorised fund*).

(6) In relation to a *regulated money market fund*, any charges for the *sale* or *redemption* of *units*, and any change to such charges, should reflect the restrictions of the *Money Market Funds Regulation*.

Charges for the exchange of units in an umbrella

6.7.9

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For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

Allocation of payments to income or capital

- 6.7.10 **R**
- (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
 - (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
 - (b) agree the treatment of any payment with the *depository*.
 - (2) Where, for any *class* of *units* for any *annual accounting period*, the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

Allocation of payments to income or capital: guidance

- 6.7.11 **G**
- (1) Any payment as a result of effecting transactions for the *authorised fund* should be made from the *capital property* of the *scheme*.
 - (2) Other than the payments in (1), all other payments should be made from income property in the first instance but may be transferred to the *capital account* in accordance with **COLL 6.7.10 R (1)** (Allocation of payments to income or capital).
 - (3) For payments transferred to the *capital property* of the *scheme* in accordance with (2), the *prospectus* should disclose the matters in **COLL 4.2.5R (14)**.
 - (4) If the *authorised fund manager* wishes to make a change in relation to the allocation of payments, the procedures in **COLL 4.3** (Approvals and notifications) will be relevant.

Prohibition on promotional payments

- 6.7.12 **R**
- (1) No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale* of *units* in an *authorised fund*.
 - (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *key investor information document*, *NURS-KII document* or *key information document*, provided the *prospectus* states, in accordance with **COLL 4.2.5 R (13)** and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

Prohibition on promotional payments: guidance

- 6.7.13 **G**
- Examples of payments which are not permitted by **COLL 6.7.12 R** include:
- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);

(2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under ■ COLL 6.7.12 R (2)).

(3) [deleted]

Movable or immovable property

6.7.14 **R** An *ICVC* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

Payment of liabilities on transfer of assets

6.7.15 **R**

(1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue of units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.

(2) The *ICVC* or the *depository* of the *ICVC*, *ACS* or *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

(a) there is nothing in the *instrument constituting the fund* of the *authorised fund* expressly forbidding the payment; and

(b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

6.7.16 **G** Except as provided in ■ COLL 6.3.5DR, an *affected person* is not liable to account to another affected person or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Allocation of scheme property

6.7.17 **R** For a *scheme* which is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only, must be allocated by the *authorised fund manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella* generally.