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STATUTORY INSTRUMENTS

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**1996 No. 2827**

**The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996**

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*General*

**Investment company with variable capital**

**3.—**(1) If SIB makes an authorisation order then, immediately upon the coming into effect of the order, a body shall be incorporated (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) Any body incorporated by virtue of paragraph (1) above shall be known as an investment company with variable capital.

(3) The name of an investment company with variable capital shall be the name mentioned in the authorisation order made in respect of the company or, if it changes its name in accordance with these Regulations and SIB regulations, by its new name.

**Registration by registrar of companies**

**4.—**(1) As soon as is reasonably practicable after the coming into effect of an authorisation order in respect of an investment company with variable capital, SIB shall send a copy of the order to—

- (a) the registrar of companies for England and Wales, if the instrument of incorporation of the company states that the company's head office is to be situated in England and Wales, or that it is to be situated in Wales; or
- (b) the registrar of companies for Scotland, if the instrument of incorporation of the company states that the head office of the company is to be situated in Scotland.

(2) The registrar shall, upon receipt of the copy of the authorisation order, forthwith register—

- (a) the instrument of incorporation of the company; and
- (b) the details in relation to the company, its directors and its depository which are contained in the other papers retained by him under regulation 13(3) below.

(3) A company shall not carry on any business unless its instrument of incorporation has been registered under paragraph (2) above.

(4) Schedule 1 to these Regulations (which makes provision with respect to the registration of, and the functions of the registrar of companies in relation to, investment companies with variable capital) shall have effect.

(5) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation which was supplied for the purposes of regulation 9(1)(a) below.

### **Safekeeping of scheme property by depositary**

5.—(1) Subject to paragraph (2) below, all the scheme property of an investment company with variable capital shall be entrusted for safekeeping to a person appointed for the purpose (“a depositary”).

(2) Nothing in paragraph (1) above—

(a) shall apply to any scheme property designated for the purposes of this regulation by SIB regulations;

(b) shall prevent a depositary from—

(i) entrusting to a third party all or some of the assets in its safekeeping; or

(ii) in a case falling within paragraph (i) above, authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 2 to these Regulations (which makes provision with respect to depositaries of investment companies with variable capital) shall have effect.

### **SIB regulations**

6.—(1) SIB’s powers to make regulations under section 81 (constitution and management) and section 85 (publication of scheme particulars) of the 1986 Act<sup>(1)</sup> in relation to authorised unit trust schemes shall be exercisable in relation to investment companies with variable capital—

(a) for like purposes; and

(b) subject to the same conditions.

(2) In these Regulations any document complying with regulations made by SIB under paragraph (1) above for purposes of the like nature as the purposes for which power is conferred by section 85 of the 1986 Act shall be known as a prospectus.

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(1) Sections 81 and 85 conferred power to make regulations on the Secretary of State. Most of these powers have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I. [1988/738](#)) and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991 (S.I. [1991/1256](#)). The regulations made by the Board which are in force (July 1996) are The Financial Services (Regulated Schemes) Regulations 1991 (Release 148). The remaining functions of the Secretary of State have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. [1992/1315](#)).