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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 IV**

**MISCELLANEOUS**

**Notifications to registrar of companies**

**65.**—(1) An investment company with variable capital shall as soon as is reasonably practicable after the coming into effect of an authorisation order in respect of the company send to the registrar of companies a copy of the company's prospectus.

(2) A company shall—

(a) not later than 14 days after the coming into effect of an authorisation order in respect of the company send to the registrar of companies notice of—

(i) the place where the copies and memoranda required to be kept by regulation 30 above are kept; and

(ii) the place where the register of shareholders is kept; and

(b) not later than 14 days after the occurrence of any change in any such place send to the registrar of companies notice of that change.

(3) A company shall not later than 14 days after the making of any alteration to the company's instrument of incorporation send to the registrar of companies—

(a) any document making or evidencing the alteration; and

(b) a printed copy of the instrument of incorporation as altered.

(4) A company shall not later than 14 days after the occurrence of the change in question notify the registrar of companies of—

(a) any change in the address of the head office of the company;

(b) any change in the directors of the company;

(c) any change in the depositary of the company; and

(d) in respect of any director or depositary, any change in the information mentioned in regulation 7(1)(b) or (c) above.

(5) A company shall before the end of the period allowed by SIB regulations for the publication of the company's annual report send to the registrar of companies—

(a) a copy of that report; and

(b) a copy of the most recent revision of the company's prospectus.

(6) A company shall not later than 14 days after the completion of a revised annual report under regulation 62 above send to the registrar of companies a copy of that revised report.

(7) Where a resolution removing an auditor is passed at a general meeting of a company under paragraph 12 of Schedule 6 to these Regulations, a company shall not later than 14 days after the holding of the meeting notify the registrar of companies of the passing of the resolution.

(8) Where an auditor of a company deposits a notice of his resignation from office under paragraph 15 of Schedule 6 to these Regulations, a company shall not later than 14 days after the deposit of the notice send a copy of the notice to the registrar of companies.

(9) Where the affairs of a company are to be wound up otherwise than by the court, the company shall as soon as reasonably practicable after the commencement of the winding up notify the registrar of companies of that fact.

### **Contraventions**

66. Any of the following persons, that is to say—

- (a) a person who contravenes any provision of these Regulations; and
- (b) an investment company with variable capital, or any director or depositary of such a company, which contravenes any provision of SIB regulations;

shall be treated as having contravened rules made under Chapter V of Part I of the 1986 Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

### **Prosecutions**

67.—(1) Proceedings in respect of an offence under regulation 26 above or paragraph 3(3) or 19(1) of Schedule 6 to these Regulations shall not be instituted, in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(2) Proceedings in respect of an offence under any other provision of these Regulations shall not be instituted, in England and Wales, except by SIB or by or with the consent of the Secretary of State or the Director of Public Prosecutions.

(3) SIB shall exercise the function conferred by this regulation of instituting proceedings subject to such conditions or restrictions as the Treasury may from time to time impose.

### **Offences: bodies corporate, partnerships and unincorporated associations**

68.—(1) Where an offence under these Regulations committed by an investment company with variable capital is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director of the company, or a person purporting to act in any such capacity, he, as well as the company, is guilty of the offence and liable to be proceeded against and punished accordingly.

This paragraph applies to a shadow director of an investment company with variable capital as it applies to a director of such a company.

(2) Where an offence under these Regulations committed by any body corporate other than an investment company with variable capital is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of any body corporate other than an investment company with variable capital are managed by its members, paragraph (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as it applies in relation to the acts and defaults of a director of a body corporate.

(4) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he, as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) Where an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

### **Time limits for prosecution of offences**

**69.**—(1) Any information relating to an offence under these Regulations which is triable by a magistrates' court in England and Wales may be so tried on an information laid at any time within 12 months after the date on which evidence sufficient in the opinion of the relevant authority to justify the proceedings comes to its knowledge.

(2) Proceedings in Scotland for an offence triable only summarily which is alleged to have been committed under these Regulations may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State or SIB, within 12 months after the date on which it came to the knowledge of the Secretary of State or SIB (as the case may be).

For the purposes of this paragraph proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or to cite the accused is granted, if the warrant is executed without undue delay.

(3) Paragraph (1) above does not authorise the trial of an information laid, and paragraph (2) does not authorise the commencement of proceedings, more than three years after the commission of the offence.

(4) For the purposes of these Regulations a certificate by the relevant authority or the Lord Advocate as to the date on which such evidence as is referred to above came to its or his knowledge is conclusive evidence of that fact.

(5) Nothing in this regulation affects proceedings within the time limits prescribed by section 127(1) of the Magistrates' Courts Act 1980<sup>(1)</sup> or section 136 of the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup> (the usual time limits for criminal proceedings).

(6) In this regulation "relevant authority", in relation to an offence, means—

- (a) in a case where the person instituting proceedings in respect of the offence is a person who, by virtue of regulation 67(1) or (2) above, may not do so without the consent of the Secretary of State or the Director of Public Prosecutions, the Secretary of State or the Director of Public Prosecutions; and
- (b) in any other case where proceedings are instituted in England and Wales, the person instituting the proceedings.

### **Jurisdiction and procedure in respect of offences**

**70.**—(1) Summary proceedings for an offence under these Regulations may, without prejudice to any jurisdiction exercisable apart from this regulation, be taken against an investment company

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(1) 1980 c. 43.

(2) 1995 c. 46.

with variable capital or other body corporate, or an unincorporated association, at any place at which it has a place of business and against an individual at any place where he is for the time being.

(2) Proceedings for an offence alleged to have been committed under these Regulations by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.

(3) Section 33 of the Criminal Justice Act 1925<sup>(3)</sup> and Schedule 3 to the Magistrates' Courts Act 1980<sup>(4)</sup> (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under these Regulations as they apply in the case of a corporation.

(4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under these Regulations by an unincorporated association, section 70 of the Criminal Procedure (Scotland) Act 1995<sup>(5)</sup> (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.

(5) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.

### Service of documents

**71.**—(1) This regulation has effect in relation to any notice, direction or other document required or authorised by these Regulations or SIB regulations to be given or served on any person other than the registrar of companies.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may—

- (a) in the case of an investment company with variable capital, be given to or served on any director of the company;
- (b) in the case of any other body corporate (including any director referred to in subparagraph (a) above which is a body corporate) be given to or served on the secretary or clerk of that body;
- (c) in the case of a partnership, be given to or served on any partner; and
- (d) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of that association.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978<sup>(6)</sup> (service of documents by post) in its application to this regulation, the proper address of any person is his last known address (whether of his residence or of a place where he carries on business or is employed) and also—

- (a) in the case of an investment company with variable capital or any of its directors, the company's head office;

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(3) 1925 c. 86.

(4) 1980 c. 43.

(5) 1995 c. 46.

(6) 1978 c. 30.

- (b) in the case of any other body corporate (including any director referred to in paragraph (3) (a) above which is a body corporate) or its secretary or clerk, the address of its registered or principal office in the United Kingdom.
- (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom.

### **Evidence of grant of probate etc**

**72.** The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person shall be accepted by the company as sufficient evidence of the grant.

### **SIB's functions under the Regulations**

**73.—**(1) The functions of SIB under these Regulations, except its function of instituting proceedings, shall be treated for the purposes of the 1986 Act and the Transfer of Functions (Financial Services) Order 1992(7) as if they were functions to which section 114 of that Act applies which—

- (a) had been functions of the Secretary of State; and
- (b) had been transferred to SIB by the Financial Services Act 1986 (Delegation) Order 1987(8).

(2) The function of SIB of instituting proceedings under these Regulations shall be treated for the purposes of the 1986 Act and the Transfer of Functions (Financial Services) Order 1992 as if it were a function to which section 114 of the 1986 Act applies by virtue of the provisions of section 201(4) of that Act which had been transferred to SIB by the Financial Services Act 1986 (Delegation) Order 1987 so as to be exercisable concurrently with the Secretary of State.

### **Fees**

**74.—**(1) Every application under regulation 7 above shall be accompanied by such fee as may be prescribed by SIB by virtue of paragraph (3)(a) below; and no such application shall be regarded as duly made unless this paragraph is complied with.

(2) Each investment company with variable capital shall pay such periodical fees to SIB as may be prescribed by SIB by virtue of paragraph (3)(b) below.

(3) SIB may, with respect to investment companies with variable capital, make regulations prescribing fees for purposes of the like nature as the purposes for which power is conferred by—

- (a) section 112(5) of the 1986 Act (application fees) in respect of applications under section 77 of that Act (applications for authorisation of unit trust scheme);
- (b) section 113(8) of that Act (periodical fees)(9) in respect of managers of authorised unit trust schemes and operators of recognised schemes.

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(7) S.I.1992/1315.

(8) S.I. 1987/942.

(9) The functions under section 112 with respect to fees in respect of applications under section 77 of the 1986 Act, and the functions under section 113 with respect to periodical fees in respect of managers of authorised unit trust schemes and operators of recognised schemes (in so far as those functions are exercisable by virtue of subsection (8) of that section), were transferred to SIB by article 3 of the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I. 1988/738).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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**Minor and consequential amendments**

75. The enactments mentioned in Schedule 8 to these Regulations (being minor amendments and amendments consequential on the provisions of these Regulations) shall have effect subject to the amendments specified in that Schedule.