

**2016 No. 1194**

**FINANCIAL SERVICES AND MARKETS**

**The Companies Act 2006 (Distributions of Insurance  
Companies) Regulations 2016**

<i>Made</i> - - - -	<i>7th December 2016</i>
<i>Laid before Parliament</i>	<i>8th December 2016</i>
<i>Coming into force</i> - -	<i>30th December 2016</i>

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016.

(2) These Regulations come into force on 30th December 2016.

(3) The amendments made by these Regulations have effect for distributions made on or after that date by reference to relevant accounts (within the meaning of section 836 of the Companies Act 2006) prepared for any period ending on or after 1st January 2016.

**Amendment to the Companies Act 2006**

2.—(1) The Companies Act 2006(c) is amended as follows.

(2) In section 830(3) (distributions to be made only out of profits available for the purpose)—

(a) after “832” insert “, 833A”; and

(b) for the words from “etc.” to the end, substitute “and Solvency 2 insurance companies”.

(3) In the italic heading before section 832 (distributions by investment companies out of accumulated revenue profits), at the end, insert “*or Solvency 2 insurance companies*”.

(4) After section 833(d) (meaning of “investment company”), insert—

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(a) S.I. 2012/1759.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572).

(c) 2006 c. 46. Amendments relevant to these Regulations are set out in subsequent footnotes.

(d) Section 833 has been amended, but the amendments are not relevant to this S.I.

## “Distributions by insurance companies authorised under the Solvency 2 Directive

**833A.**—(1) This section applies in relation to any authorised insurance company carrying on long-term business that is authorised in accordance with Article 14 of the Solvency 2 Directive.

(2) For the purposes of section 830(2), the realised profit or loss of the company for the period in respect of which its relevant accounts (within the meaning of section 836) are prepared is taken to be the amount given by the formula in subsection (4) (with a positive figure taken to be a realised profit and a negative figure taken to be a realised loss).

(3) But the company’s profits available for distribution are limited to an amount that does not exceed its accumulated profits (whether realised or not), so far as not previously utilised by distribution or capitalisation, less its accumulated losses (whether realised or not), so far as not previously written off in a reduction or reorganisation of capital duly made.

(4) The formula is  $A - L - D$ ,

where—

“A” is the total value of the company’s assets;

“L” is the total value of the company’s liabilities; and

“D” is the total value of the items within subsection (5) relating to the company;

and, in each case, the value is to be determined as at the date of the company’s balance sheet that forms part of the accounts mentioned in subsection (2).

(5) The items within this subsection are—

- (a) if the value of shares held by the company in a qualifying investment subsidiary exceeds the value of the consideration given by it for their acquisition, the amount of that excess;
- (b) any asset of the company representing a surplus in a defined benefit pension scheme;
- (c) if the value of the assets held by the company in a ring-fenced fund exceeds the value of the liabilities incurred by the company in respect of that fund, the amount of that excess;
- (d) the amount of any liability of the company in respect of deferred tax shown in the company’s balance sheet that relates to any asset within paragraph (a), (b) or (c);
- (e) if—
  - (i) the company has permission under regulation 42 of the Solvency 2 Regulations 2015<sup>(a)</sup> to apply a matching adjustment to a relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of the company’s life insurance or reinsurance obligations, and
  - (ii) the value of the portfolio of the company’s assets assigned by the company to cover the best estimate exceeds the value of the portfolio of the company’s life insurance or reinsurance obligations,the amount of that excess; and
- (f) the following capital items of the company—
  - (i) paid-in ordinary share capital together with any related share premium account;
  - (ii) paid-in preference shares which are not liabilities of the company together with any related share premium account;
  - (iii) capital redemption reserve; and

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(a) S.I. 2015/575.

(iv) any other reserve that the company is prohibited from distributing (ignoring this Part for this purpose).

(6) So far as anything falls within more than one of the above paragraphs of subsection (5), its value is to be taken into account only once.

(7) The company's assets and liabilities must be valued in accordance with—

- (a) rules made by the Prudential Regulation Authority under Part 9A of the Financial Services and Markets Act 2000(a) implementing Articles 75 to 85, and 308b to 308e, of the Solvency 2 Directive; and
- (b) Articles 7 to 61 of Commission Delegated Regulation (EU) 2015/35(b) supplementing that directive.

(8) If the company carries on both long-term business and other insurance business—

- (a) this section is to be applied on the assumption that the company carries on only the long-term business; and
- (b) the remainder of this Part is to be applied on the assumption that the company carries on only that other insurance business;

and, in applying paragraph (a) or (b), such apportionments of amounts referable to the long-term business or other insurance business are to be made as are just and reasonable.

(9) In this section—

“best estimate”, “paid-in ordinary share capital”, “paid-in preference shares”, “relevant risk-free interest rate term structure” and “ring-fenced fund” have the same meaning as in the Solvency 2 Directive and any directly applicable regulations made under it;

“defined benefit pension scheme” means a pension scheme (as defined by section 1(5) of the Pension Schemes Act 1993(c)) which is a defined benefits scheme within the meaning given by section 2 of the Pension Schemes Act 2015(d);

“long-term business” means business that consists of effecting or carrying out contracts of long-term insurance (and this definition must be read with section 22 of the Financial Services and Markets Act 2000(e), any relevant order under that section and Schedule 2 to that Act);

“qualifying investment subsidiary” means an undertaking in which the company holds a participation within the meaning given by Article 13(20) of the Solvency 2 Directive and which is not held by the company as part of its portfolio of investments;

“Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(f).”.

(5) In section 843(g) (realised profits and losses of long-term insurance business)—

- (a) in the heading, at the end, insert “of certain insurance companies”;
- (b) for subsection (1) substitute—

“(1) The provisions of this section have effect for the purposes of this Part as it applies in relation to an authorised insurance company carrying on long-term business, other than—

- (a) a person to whom section 833A applies; or
- (b) an insurance special purpose vehicle.”.

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(a) 2000 c. 8. Part 9A was inserted by section 24(1) of the Financial Services Act 2012 (c.21). There are amendments to these provisions which are not relevant to these Regulations.

(b) O.J. L12, 17.1.2015, p.1.

(c) 1993 c. 48. Section 1(5) was inserted by sections 239(1) and (4) of the Pensions Act 2004 (c. 35).

(d) 2015 c. 8.

(e) Section 22 has been amended by section 7(1) of the Financial Services Act 2012.

(f) O.J. L335, 17.12.2009, p.1.

(g) Section 843 has been amended by section 114(1) of, and Schedule 18 to, the Financial Services Act 2012 (c. 21) and by S.I. 2007/3253 and S.I. 2015/575.

*Stephen Barclay  
Andrew Griffiths*

Two of the Lords Commissioners of Her Majesty's Treasury

7th December 2016

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend Part 23 of the Companies Act 2006 (c. 46). Part 23 restricts the amount of assets which a company may distribute to its shareholders, and the provisions relating to life insurance companies need updating as a consequence of the coming into force of Directive 2009/138/EC of the European Parliament and of the Council of 25th November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L335, 17.12.2009, p.1). These regulations therefore insert a new section 833A into Part 23 for life insurance companies regulated in accordance with that directive and make various other minor amendments to Part 23.

An impact assessment has not been produced for this instrument as no impact on the voluntary sector, and no additional burden on the private sector, is foreseen.

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