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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**

*Authorisation*

**Applications for authorisation**

7.—(1) Any application for an authorisation order in respect of an investment company with variable capital—

- (a) shall be made in such manner as SIB may direct;
- (b) shall state with respect to each person named in the application as a director of the company the particulars set out in regulation 8 below;
- (c) shall state the corporate name and registered or principal office of the person named in the application as depositary of the company; and
- (d) shall contain or be accompanied by such other information as SIB may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it SIB may require the applicant to furnish additional information.

(3) The directions and requirements given or imposed under paragraphs (1) and (2) above may differ as between different applications.

(4) Any information to be furnished to SIB under this regulation shall, if SIB so requires, be in such form or verified in such manner as it may specify.

(5) A person commits an offence if—

- (a) for the purposes of or in connection with any application under this regulation; or
- (b) in purported compliance with any requirement imposed on him by or under this regulation;

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(6) A person guilty of an offence under paragraph (5) above shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

### Particulars of directors

8.—(1) Subject to paragraph (2) below, an application for an authorisation order shall contain the following particulars with respect to each person named as director of an investment company with variable capital, that is to say—

- (a) in the case of an individual, his present name, any former name, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him or which have been held by him and his date of birth;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and the address of its registered or principal office.

(2) It is not necessary for the application to contain particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding the date on which the application is delivered to SIB;
- (b) which is held by a director in a body corporate which is dormant and, if he also held that directorship for any period during those 5 years, which was dormant for the whole of that period; or
- (c) which was held by a director for any period during those 5 years in a body corporate which was dormant for the whole of that period.

(3) For the purposes of paragraph (2) above, a body corporate is dormant during a period in which no significant transaction occurs; and it ceases to be dormant on the occurrence of such a transaction.

(4) In paragraph (1)(a) above—

- (a) name means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them;
- (b) the reference to a former name does not include—
  - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title; or
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more; or
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage; and
- (c) the reference to directorships is a reference to directorships of any body corporate whether or not incorporated in Great Britain.

(5) In paragraph (3) above the reference to significant transaction is, in relation to a company within the meaning of section 735(1) of the 1985 Act, a reference to a significant accounting transaction within the meaning of section 250(3) of that Act<sup>(1)</sup>.

### Authorisation

9.—(1) SIB may, on an application duly made in accordance with regulation 7 above and after being furnished with all such information as it may require under that regulation, make an order (an “authorisation order”) in respect of a company under these Regulations if—

- (a) it has been furnished with a copy of the proposed company's instrument of incorporation and a certificate signed by a solicitor to the effect that the instrument of incorporation

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(1) Section 250 was substituted by section 14 of the Companies Act 1989 (c. 40).

complies with Schedule 3 to these Regulations and with such of the requirements of SIB regulations as relate to the contents of that instrument of incorporation;

- (b) it appears to SIB that the criteria mentioned in regulation 10 below will, on the coming into effect of the authorisation order, be satisfied in respect of the company; and
- (c) it has received a notification under regulation 13(3) below from the registrar of companies.

(2) In determining whether the criterion of fitness and properness mentioned in regulation 10(5) below is satisfied in respect of any proposed director of a company, SIB may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the proposed director, for the purposes of the business of the company;
- (b) if the proposed director is a body corporate, to any director, shadow director or controller of the body, to any other body corporate in the same group or to any director, shadow director or controller of any such other body corporate;
- (c) if the proposed director is a partnership, to any of the partners; and
- (d) if the proposed director is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.

(3) SIB shall inform the applicant of its decision on the application not later than six months after the date on which the application was received.

(4) An authorisation order shall specify the date on which it is to come into effect.

(5) Schedule 3 to these Regulations (which makes provision with respect to the contents, alteration and binding nature of the instrument of incorporation of an investment company with variable capital) shall have effect.

(6) In paragraph (2)(b) above, “shadow director”, in relation to a body corporate, means any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act.

### **Criteria for authorisation**

**10.**—(1) The criteria referred to in regulation 9(1)(b) above are as follows.

(2) The company and its instrument of incorporation must comply with the requirements of these Regulations and SIB regulations.

(3) The head office of the company must be situated in England and Wales, Wales or Scotland.

(4) The company must have at least one director.

(5) The directors of the company must be fit and proper persons to act as directors of an investment company with variable capital.

(6) If the company has only one director, that director must be a body corporate which is an authorised person and which is not prohibited from acting as director of an investment company with variable capital by or under rules under section 48 of the 1986 Act (conduct of business rules)(2), by or under the rules of any recognised self-regulating organisation of which the body corporate is a member or by a prohibition imposed under section 65 of the 1986 Act (restriction of business).

(7) If the company has two or more directors, the combination of their experience and expertise must be such as is appropriate for the purposes of carrying on the business of the company.

(8) The person appointed as the depositary of the company—

- (a) must be a body corporate incorporated in the United Kingdom or another EEA State;

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(2) Section 48 was amended by section 206 of, and paragraph 2 of Schedule 23 to, the Companies Act 1989 (c. 40); there are other amendments not relevant to these Regulations.

- (b) must have a place of business in the United Kingdom;
  - (c) must have its affairs administered in the country in which it is incorporated;
  - (d) must be an authorised person;
  - (e) must not be prohibited from acting as depositary, or as trustee of a unit trust, by or under rules under section 48 of the 1986 Act, by or under the rules of any recognised self-regulating organisation of which it is a member or by a prohibition imposed under section 65 of the 1986 Act; and
  - (f) must be independent of the company and of the persons appointed as directors of the company.
- (9) The name of the company must not be undesirable or misleading.
- (10) The aims of the company must be reasonably capable of being achieved.
- (11) The company must be an open-ended investment company which meets one or both of the following requirements—
- (a) the rights of participants referred to in paragraph (b)(i) of the definition of open-ended investment company in section 75(8) of the 1986 Act (collective investment schemes: interpretation) are that shareholders are entitled to have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company’s instrument of incorporation and SIB regulations; or
  - (b) the rights of participants referred to in paragraph (b)(ii) of that definition are that shareholders are able to sell their shares on an investment exchange at a price not significantly different from that mentioned in sub-paragraph (a) above.
- (12) In paragraph (8)(a) above, “EEA state” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(3)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(4)</sup>.

### **Representations against refusal of authorisation**

**11.**—(1) Where SIB proposes to refuse an application for an authorisation order, it shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to refuse the application and giving particulars of the rights conferred by paragraph (2) below.

(2) A person on whom a notice is served under paragraph (1) above may, within 21 days of the date of service, make written representations to SIB and, if desired, oral representations to a person appointed for that purpose by SIB.

(3) SIB shall have regard to any representations made in accordance with paragraph (2) above in determining whether to refuse the application.

### **UCITS certificate**

**12.** Where SIB has made an authorisation order in respect of an investment company with variable capital, it may (whether at the same time as the making of that order or afterwards) upon request issue a certificate to the effect that the company complies, or (as the case may be) on the coming into effect of the order will comply, with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive.

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<sup>(3)</sup> Cm 2073.

<sup>(4)</sup> Cm 2183.

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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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