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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 I**  
**GENERAL**

**Citation, commencement and extent**

**1.—**(1) These Regulations may be cited as the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.

(2) These Regulations shall come into force on 6th January 1997.

(3) Except for paragraph 7(b) of Schedule 1 to these Regulations which has effect in relation to certain collective investment schemes which have head offices in Northern Ireland, these Regulations shall have effect in relation to any investment company with variable capital which has its head office situated in Great Britain.

**Interpretation**

**2.—**(1) In these Regulations, except where the context otherwise requires—

“the 1985 Act” means the Companies Act 1985<sup>(1)</sup>;

“the 1986 Act” means the Financial Services Act 1986<sup>(2)</sup>;

“annual general meeting” has the meaning given in regulation 31(1) below;

“annual report” has the meaning given in regulation 60(1)(a) below;

“authorisation order” means an order made by SIB under regulation 9 below;

“bearer shares” has the meaning given in regulation 42 below;

“court”, in relation to any proceedings under these Regulations involving an investment company with variable capital the head office of which is situated in England and Wales, means the High Court and in relation to such a company the head office of which is situated in Scotland, means the Court of Session;

“depository”, in relation to an investment company with variable capital, has the meaning given in regulation 5(1) below;

“director”, in relation to an investment company with variable capital, includes a person occupying in relation to it the position of director (by whatever name called);

“investment company with variable capital” has the meaning given in regulation 3(2) below;

“larger denomination share” has the meaning given in regulation 39(5) below;

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<sup>(1)</sup> 1985 c. 6.

<sup>(2)</sup> 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I.1992/1315).

“officer”, in relation to an investment company with variable capital, includes a director or any secretary or manager;

“participating issuer” and “participating security” have the same meaning as in the Uncertificated Securities Regulations 1995(3);

“prospectus” has the meaning given in regulation 6(2) below;

“register of shareholders” means the register kept under paragraph 1(1) of Schedule 4 to these Regulations;

“scheme property”, in relation to an investment company with variable capital, means the property subject to the collective investment scheme constituted by the company;

“shadow director”, in relation to an investment company with variable capital, means a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that company are accustomed to act;

“share certificate” has the meaning given in regulation 40(1) below;

“SIB” means the body known as the Securities and Investments Board(4);

“SIB regulations” means any regulations made by SIB under regulation 6(1) below;

“smaller denomination share” has the meaning given in regulation 39(5) below;

“transfer documents” has the meaning given in paragraph 5(3) of Schedule 5 to these Regulations;

“transferable securities” has the same meaning as in the UCITS Directive;

“UCITS Directive” means the Council Directive co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC(5));

“umbrella company” means an investment company with variable capital whose instrument of incorporation provides for such pooling as is mentioned in subsection (3)(a) of section 75 of the 1986 Act (collective investment schemes: interpretation) in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another; and

“uncertificated unit of a security” has the same meaning as in the Uncertificated Securities Regulations 1995.

(2) In these Regulations any reference to a shareholder of an investment company with variable capital is a reference to—

- (a) the person who holds the share certificate, or other documentary evidence of title, mentioned in regulation 42 below; and
- (b) the person whose name is entered on the company’s register of shareholders in relation to any share or shares other than a bearer share.

(3) In these Regulations, any reference to a controller shall be construed in accordance with subsection (5) of section 207 of the 1986 Act (interpretation); and any reference to a manager shall be construed in accordance with subsection (6) of that section.

(4) In these Regulations, unless the contrary intention appears, expressions which are also used in the 1985 Act or the 1986 Act have the same meanings as in that Act.

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(3) S.I. 1995/3272.

(4) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I. 1988/738), the Companies Act 1989 (Commencement No. 3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991 (S.I. 1991/1256).

(5) OJ No. L 375, 31.12.1985, p. 3—18, as amended by Council Directive 88/220/EEC (OJ No. L 100, 19.04.1988, p. 31—32).

## 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 depositary 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>(6)</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.

### *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—

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(6) 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](#)).

- (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(7).

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

## 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 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)(8),

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(8) 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.

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;
- (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>(9)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(10)</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.

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<sup>(9)</sup> Cm 2073.

<sup>(10)</sup> Cm 2183.

## 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.

### *Registrar's approval of names*

#### Registrar's approval of names

13.—(1) Where, in respect of a proposed investment company with variable capital, it appears to SIB that the requirements of sub-paragraphs (a) and (b) of regulation 9(1) above are or will be met, SIB shall send the papers mentioned in paragraph (2) below—

- (a) to 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) to 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 papers referred to in paragraph (1) above are—
- (a) a copy of the instrument of incorporation;
  - (b) a statement of the address of the proposed company's head office;
  - (c) a statement with respect to each person named in the application as director of the company of the particulars set out in regulation 8 above; and
  - (d) a statement of the corporate name and registered or principal office of the person named in the application for authorisation as the first depository.

(3) The registrar shall retain the papers delivered to him under paragraph (1) above and if it appears to him that the provisions of regulation 14(1) below are not contravened in relation to the proposed company, he shall notify SIB to that effect.

(4) 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) above.

#### Prohibition on certain names

14.—(1) No investment company with variable capital shall have a name that—

- (a) includes any of the following words or expressions, that is to say—
  - (i) limited, unlimited or public limited company, or their Welsh equivalents (“cyfyngedig”, “anghyfyngedig” and “cwmni cyfyngedig cyhoeddus” respectively); or
  - (ii) European Economic Interest Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989(11);
- (b) includes an abbreviation of any of the words or expressions referred to in sub-paragraph (a) above; or
- (c) is the same as any other name appearing in the registrar's index of company names.

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(11) S.I. 1989/638. The regulations were amended by virtue of section 2(1) of the European Economic Area Act 1994 (c. 51) so that, for any limitation in the Regulations that proceeds by reference to the Communities, there is substituted a corresponding limitation relating to the European Economic Area.



(2) In determining for the purposes of paragraph (1)(c) above whether one name is the same as another, there shall be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of the name, that is to say—

- “company” or its Welsh equivalent (“cwmni”);
- “and company” or its Welsh equivalent (“a'r cwmni”);
- “company limited” or its Welsh equivalent (“cwmni cyfyngedig”);
- “limited” or its Welsh equivalent (“cyfyngedig”);
- “unlimited” or its Welsh equivalent (“anghyfyngedig”);
- “public limited company” or its Welsh equivalent (“cwmni cyfyngedig cyhoeddus”);
- “European Economic Interest Grouping” or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989;
- “investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyfalfaf newidiol”);

- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
  - (d) type and case of letters, accents, spaces between letters and punctuation marks;
- and “and” and “&” are to be taken as the same.

#### *Alterations*

### **SIB approval for certain changes in respect of company**

15.—(1) An investment company with variable capital shall give written notice to SIB of—

- (a) any proposed alteration to the company’s instrument of incorporation;
- (b) any proposed alteration to the company’s prospectus which, if made, would be significant;
- (c) any proposed reconstruction or amalgamation involving the company;
- (d) any proposal to wind up the affairs of the company otherwise than by the court;
- (e) any proposal to replace a director of the company, to appoint any additional director or to decrease the number of directors in post; and
- (f) any proposal to replace the depositary of the company.

(2) Any notice given under paragraph (1)(a) above shall be accompanied by a certificate signed by a solicitor to the effect that the change in question will not affect the compliance of the instrument of incorporation with Schedule 3 to these Regulations and with such of the requirements of SIB regulations as relate to the contents of that instrument.

(3) Effect shall not be given to any proposal falling within paragraph (1) above unless—

- (a) SIB has given its approval to the proposal; or
- (b) three months have elapsed since the date on which the notice was given under paragraph (1) above without SIB having notified the company that the proposal is not approved.

(4) No change falling within paragraph (1)(e) above shall be made if any of the criteria set out in regulation 10(4) to (7) and (8)(f) would not be satisfied if the change were made and no change

falling within paragraph (1)(f) above shall be made if any of the criteria set out in regulation 10(8) above would not be satisfied if the change were made.

### *Intervention*

#### **Revocation of authorisation**

- 16.**—(1) SIB may revoke an authorisation order if it appears to it—
- (a) that any of the requirements for the making of the order are no longer satisfied;
  - (b) that it is undesirable in the interests of shareholders, or potential shareholders, of the investment company with variable capital concerned that it should continue to be authorised; or
  - (c) without prejudice to sub-paragraph (b) above, that the company, any of its directors or its depositary—
    - (i) has contravened any relevant provision;
    - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
    - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (5)(a), (c) or (e) below.
- (2) For the purposes of paragraph (1)(b) above, SIB may take into account—
- (a) any matter relating to the company or its depositary;
  - (b) any matter relating to any director or controller of the depositary of the company;
  - (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
  - (d) any matter relating to—
    - (i) any director of the company; or
    - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 above if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.
- (3) Before revoking any authorisation order that has come into effect, SIB shall ensure that such steps as are necessary and appropriate to secure the winding up of the company (whether by the court or otherwise) have been taken.
- (4) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.
- (5) In paragraph (1)(c) above, “relevant provision” means any provision of—
- (a) the 1986 Act;
  - (b) any rules or regulations made under that Act;
  - (c) these Regulations;
  - (d) SIB regulations; and
  - (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary of such a company, is a member.

#### **Representations against revocation**

**17.**—(1) Where, in respect of an investment company with variable capital, SIB proposes to revoke an authorisation order on any of the grounds set out in regulation 16(1) above, SIB shall give

the company, its depositary and any other person who appears to SIB to be interested written notice of its intention to do so.

(2) A notice under paragraph (1) above shall state the reasons for which SIB proposes to revoke the order and give particulars of the rights conferred by paragraph (3) below.

(3) A person on whom 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.

(4) SIB shall have regard to any representations made in accordance with paragraph (3) above in determining whether to revoke the authorisation order.

### **Directions**

**18.**—(1) SIB may give a direction under this regulation in relation to an investment company with variable capital if it appears to it—

- (a) that any of the requirements for the making of an authorisation order in respect of the company are no longer satisfied;
- (b) that the exercise of the power conferred by this paragraph is desirable in the interests of shareholders, or potential shareholders, of the company; or
- (c) without prejudice to sub-paragraph (b) above, that the company, any of its directors or its depositary—
  - (i) has contravened any relevant provision;
  - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
  - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (9)(a), (c) or (e) below.

(2) A direction under this regulation may—

- (a) require the company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (b) in the case of a director of the company who is the person designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations, require that director to cease transfers to or from, or both to and from, his own holding of shares, or of any class of shares, in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (c) in the case of an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with SIB regulations;
- (d) require any director of the company, by such date as is specified in the direction or if no date is specified as soon as practicable, to present a petition to the court to wind up the company;
- (e) require that the affairs of the company be wound up otherwise than by the court.

(3) Subject to paragraph (4) below, the revocation of an authorisation order in respect of a company shall not affect the operation of any direction under this regulation which is then in force; and a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.

(4) Where a winding up order has been made by the court, no direction under this regulation shall have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(b) above, SIB may take into account—

- (a) any matter relating to the company or its depositary;
- (b) any matter relating to any director or controller of the depositary of the company;
- (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
- (d) any matter relating to—
  - (i) any director of the company; or
  - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 above if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.

(6) Sections 60 (public statement as to person's misconduct), 61 (injunctions and restitution orders) and 62 (actions for damages) of the 1986 Act shall have effect in relation to a contravention of a direction under this regulation as they have effect in relation to any such contravention as is mentioned in those sections.

(7) SIB may, either of its own motion or on the application of the company or its depositary, withdraw or vary a direction given under this regulation if it appears to SIB that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

(8) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

(9) In paragraph (1)(c) above, "relevant provision" means any provision of—

- (a) the 1986 Act;
- (b) any rules or regulations made under that Act;
- (c) these Regulations;
- (d) SIB regulations; and
- (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary or such a company, is a member.

### **Notice of directions**

**19.**—(1) The power to give a direction under regulation 18 above in relation to an investment company with variable capital shall be exercisable by written notice served by SIB on the company and its depositary, and any such notice shall take effect on such date as is specified in the notice.

(2) If SIB refuses to withdraw or vary a direction on the application of the company concerned or of the depositary of that company, it shall serve the applicant with a written notice of the refusal.

(3) A notice—

- (a) giving a direction or varying it otherwise than on the application of the company concerned or of the depositary of that company; or
- (b) refusing to withdraw or vary a direction on the application of such a person;

shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.

(4) SIB may give public notice of a direction given by it under regulation 18 above and of any withdrawal or variation of such a direction; and any such notice may, if SIB thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

### **Applications to the court**

**20.**—(1) In any case in which SIB has power to give a direction under regulation 18 above in relation to an investment company with variable capital, it may apply to the court for an order—

- (a) removing any director of the company; or
- (b) removing the depositary of the company;

and replacing any of them with a person or persons nominated by SIB and appearing to it to satisfy the criteria set out in paragraphs (4) to (7) or, as the case may be, paragraph (8) of regulation 10 above.

(2) On an application under this regulation the court may make such order as it thinks fit.

(3) SIB shall—

- (a) give written notice of the making of an application under this section to—
  - (i) the company concerned;
  - (ii) its depositary; and
  - (iii) where the application seeks the removal of any director of the company, that director; and
- (b) take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders of the company.

### *Investigations*

#### **Investigations: functions of Secretary of State and SIB**

**21.** In regulations 22 to 24 below, “relevant authority” means the Secretary of State or SIB and, in relation to any investigation carried out by an inspector, means the person who appointed the inspector in question.

#### **Investigations: powers and duties of inspectors**

**22.**—(1) A relevant authority may appoint one or more competent inspectors to investigate and report on the affairs of, or of any director or depositary of, an investment company with variable capital if it appears to the authority that it is in the interests of shareholders of the company to do so or that the matter is of public concern.

(2) An inspector appointed under paragraph (1) above to investigate the affairs of, or of any director or depositary of, a company may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or (as the case may be) of the directors, depositary, trustee or operator of,—

- (a) an investment company with variable capital the directors of which include any of the directors of the company whose affairs are being investigated by virtue of that paragraph;
- (b) an investment company with variable capital the directors of which include any of the directors of the depositary whose affairs are being investigated by virtue of that paragraph;
- (c) an investment company with variable capital the depositary of which is—
  - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
  - (ii) the depositary whose affairs are being investigated by virtue of that paragraph;
- (d) an investment company with variable capital the directors of which include—
  - (i) the director whose affairs are being investigated by virtue of that paragraph; or

- (ii) any director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph;
  - (e) a collective investment scheme the manager or operator of which is a director of the company whose affairs are being investigated by virtue of that paragraph;
  - (f) a collective investment scheme the trustee of which is—
    - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
    - (ii) the depositary whose affairs are being investigated by virtue of that paragraph; or
  - (g) a collective investment scheme the manager or operator of which is—
    - (i) the director whose affairs are being investigated by virtue of that paragraph; or
    - (ii) a director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph.
- (3) Sections 434 and 436 of the 1985 Act<sup>(12)</sup> (production of documents and evidence to inspectors) shall apply in relation to an inspector appointed under this regulation as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in paragraph (4) below.
- (4) In the provisions applied by paragraph (3) above—
- (a) for any reference to a company there shall be substituted a reference to the company, director or depositary under investigation by virtue of paragraph (1) above;
  - (b) any reference to an officer of the company shall include a reference to—
    - (i) any director of the company or depositary under investigation by virtue of paragraph (1) above; or
    - (ii) where the director under investigation by virtue of that paragraph is a body corporate, any director of that body;
  - (c) for any reference to any other body corporate whose affairs are investigated under section 433(1) of the 1985 Act there shall be substituted a reference to any other investment company with variable capital or collective investment scheme under investigation by virtue of paragraph (2) above; and
  - (d) any reference to an officer of such a body corporate shall include a reference to the depositary and directors of an investment company with variable capital or the trustee and operator of a collective investment scheme.
- (5) This regulation and regulations 23 and 24 below confer the same powers in relation to a shadow director of an investment company with variable capital as they confer in relation to a director of such a company.

### **Investigations: disclosure**

**23.**—(1) A person shall not under regulation 22 above be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

(2) Nothing in regulation 22 above requires a person (except as mentioned in paragraph (3) below) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

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<sup>(12)</sup> Sections 434 and 436 were amended by section 56 of the Companies Act 1989 (c. 40).

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (b) the making of the requirement was authorised by the relevant authority.
- (3) Paragraph (2) above does not apply where the person owing the obligation of confidence or to whom it is owed is—
- (a) an investment company with variable capital, director or depositary under investigation by virtue of paragraph (1) of regulation 22 above; or
  - (b) an investment company with variable capital, or any other person, under investigation by virtue of paragraph (2) of that regulation.

### **Investigations: supplementary**

24.—(1) Where a person claims a lien on a document its production under regulation 22 above shall be without prejudice to the lien.

(2) An inspector appointed under regulation 22 above may, and if directed by the relevant authority shall, make interim reports to the authority and on the conclusion of his investigation shall make a final report to the authority.

(3) If it appears to the relevant authority that matters have come to light in the course of an inspector's investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, the relevant authority may direct the inspector to take no further steps in the investigation or to take only such steps as are specified in the direction.

(4) Where an investigation is the subject of a direction under paragraph (3) above, the inspector shall make a final report to the relevant authority only where it directs him to do so.

(5) Each final report shall be written or printed as the relevant authority may direct and the authority may, if it thinks fit—

- (a) furnish a copy, on request and on payment of the prescribed fee—
  - (i) to any director or shareholder, or to the depositary, of a company under investigation by virtue of paragraph (1) of regulation 22 above;
  - (ii) where a director under investigation by virtue of that paragraph is a body corporate, to any director of that body;
  - (iii) to any director of a depositary under investigation by virtue of that paragraph; or
  - (iv) to any other person whose conduct is referred to in the report; and
- (b) cause the report to be published.

(6) A person who is convicted on a prosecution instituted as a result of an investigation under regulation 22 above may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(7) For the purposes of paragraph (6) above, there shall be treated as expenses of the investigation, in particular, such reasonable sums as the relevant authority may determine in respect of general staff costs and overheads.

(8) The powers in section 205(13) of the 1986 Act (general power to make regulations), as they apply in relation to fees to be prescribed for the purposes of section 94(9) of that Act (investigations in respect of authorised unit trusts etc), shall be exercisable in relation to fees to be prescribed for the purposes of paragraph (5)(a) above—

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(13) Section 205 was substituted by section 206(1) of, and paragraph 18 of Schedule 23 to, the Companies Act 1989 (c. 40) and amended by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

- (a) for like purposes; and
- (b) subject to the same conditions.

### *Winding up*

#### **Winding up by the court**

**25.**—(1) Where an investment company with variable capital is wound up as an unregistered company under Part V of the Insolvency Act 1986(14), the provisions of that Act shall apply for the purposes of the winding up with the following modifications.

(2) A petition for the winding up of an investment company with variable capital may be presented by the depositary of the company as well as by any person authorised under section 124 or 124A of the Insolvency Act 1986, (as those sections apply by virtue of Part V of that Act) to present a petition for the winding up of the company.

(3) Where a petition for the winding up of an investment company with variable capital is presented by a person other than SIB—

- (a) that person shall serve a copy of the petition on SIB; and
- (b) SIB shall be entitled to be heard on the petition.

(4) If, before the presentation of a petition for the winding up by the court of an investment company with variable capital as an unregistered company under Part V of the Insolvency Act 1986, the affairs of the company are being wound up otherwise than by the court—

- (a) section 129(2) of the Insolvency Act 1986 (commencement of winding up by the court) shall not apply; and
- (b) any winding up of the company by the court shall be deemed to have commenced—
  - (i) at the time at which SIB gave its approval to a proposal mentioned in paragraph (1) (d) of regulation 15 above; or
  - (ii) in a case falling within paragraph (3)(b) of that regulation, on the day next following the end of the three month period mentioned in that paragraph.

#### **Dissolution on winding up by the court**

**26.**—(1) This regulation applies where, in respect of an investment company with variable capital, the registrar of companies receives—

- (a) a notice served for the purposes of section 172(8) of the Insolvency Act 1986 (final meeting of creditors and vacation of office by liquidator), as that section applies by virtue of Part V of that Act; or
- (b) a notice from the official receiver that the winding up by the court of the company is complete.

(2) The registrar shall, on receipt of the notice, forthwith register it; and, subject as follows, at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

(4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under paragraph (3) above.



(5) Paragraph (3) above does not apply to a case where the winding up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.

(6) It is the duty of the person—

- (a) on whose application a direction is given under paragraph (3) above;
  - (b) in whose favour an appeal with respect to an application for such a direction is determined;
- or

(c) on whose application an order is made under paragraph (5) above;

not later than seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar of companies for registration a copy of the direction or determination or, in respect of an order, a certified copy of the interlocutor.

(7) If a person without reasonable excuse fails to deliver a copy as required by paragraph (6) above, he is guilty of an offence.

(8) A person guilty of an offence under paragraph (7) above is liable, on summary conviction—

- (a) to a fine not exceeding level 1 on the standard scale; and
- (b) on a second or subsequent conviction, instead of the penalty set out in sub-paragraph (a) above, to a fine of £100 for each day on which the contravention is continued.

### **Dissolution in other circumstances**

27.—(1) Where the affairs of an investment company with variable capital have been wound up otherwise than by the court, SIB shall ensure that, as soon as is reasonably practicable after the winding up is complete, the registrar of companies is sent notice of that fact.

(2) The registrar shall, upon receipt of the notice, forthwith register it; and, subject as follows, at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The court may on the application of SIB or the company make an order deferring the date at which the dissolution of the company is to take effect for such period as the court thinks fit.

(4) It is the duty of the person on whose application an order of the court under paragraph (3) above is made to deliver, not later than seven days after the making of the order, to the registrar of companies a copy of the order for registration.

(5) Where any company, the head office of which is situated in England and Wales, or Wales, is dissolved by virtue of paragraph (2) above, any sum of money (including unclaimed distributions) standing to the account of the company at the date of the dissolution shall, on such date as is determined in relation to the dissolution of that company in accordance with SIB regulations, be paid into court.

(6) Where any company, the head office of which is situated in Scotland, is dissolved by virtue of paragraph (2) above, any sum of money (including unclaimed dividends and unapplied or undistributable balances) standing to the account of the company at the date of the dissolution shall—

- (a) on such date as is determined in relation to the dissolution of that company in accordance with SIB regulations, be lodged in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985<sup>(15)</sup> (interpretation) in the name of the Accountant of the Court; and

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<sup>(15)</sup> 1985 c. 66; the definition of “appropriate bank or institution” was substituted by section 108(1) of, and paragraph 20 of Schedule 6 to, the Banking Act 1987 (c. 22).

- (b) thereafter be treated as if it were a sum of money lodged in such an account by virtue of section 193 of the Insolvency Act 1986 (unclaimed distributions), as that section applies by virtue of Part V of that Act.

## PART III

### CORPORATE CODE

#### *Organs*

#### **Directors**

**28.**—(1) On the coming into effect of an authorisation order in respect of an investment company with variable capital, the persons named in the application under regulation 7 above as directors of the company shall be deemed to be appointed as its first directors.

(2) Subject to regulations 15 and 20 above, any subsequent appointment as a director of a company shall be made by the company in general meeting; except that the directors of the company may appoint a person to act as director to fill any vacancy until such time as the next following annual general meeting of the company takes place.

(3) Any act of a director is valid notwithstanding—

- (a) any defect that may thereafter be discovered in his appointment or qualifications; or
- (b) that it is afterwards discovered that his appointment had terminated by virtue of any provision contained in SIB regulations which requires a director to retire upon attaining a specified age.

(4) The business of a company shall be managed—

- (a) where a company has only one director, by that director; or
- (b) where a company has more than one director, by the directors but subject to any provision contained in SIB regulations as to the allocation between the directors of responsibilities for the management of the company (including any provision there may be as to the allocation of such responsibility to one or more directors to the exclusion of others).

(5) Subject to the provisions of these Regulations, SIB regulations and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.

#### **Directors to have regard to interests of employees**

**29.**—(1) Without prejudice to the generality of the powers and duties that any director of an investment company with variable capital has apart from this regulation, the matters to which such a director is to have regard in the performance of his functions include the interests of the company's employees in general, as well as its shareholders.

(2) Accordingly, the duty imposed by this regulation on any director of a company is owed by him to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to an investment company with variable capital by its directors.

(3) This regulation applies to a shadow director of an investment company with variable capital as it applies to a director of such a company.

#### **Inspection of directors' service contracts**

**30.**—(1) Every investment company with variable capital shall keep at an appropriate place—

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract; and
  - (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms.
- (2) All copies and memoranda kept by a company in accordance with paragraph (1) above shall be kept in the same place.
- (3) The following are appropriate places for the purposes of paragraph (1) above—
- (a) the company’s head office;
  - (b) the place where the company’s register of shareholders is kept; and
  - (c) where any person designated in the company’s instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations is a director of the company and is a body corporate, the registered or principal office of that person.
- (4) Every copy and memorandum required by paragraph (1) above to be kept shall be open to the inspection of any shareholder of the company.
- (5) If such an inspection is refused, the court may by order compel an immediate inspection of the copy or memorandum concerned.
- (6) Every copy and memorandum required by paragraph (1) above to be kept shall be made available by the company for inspection by any shareholder at the company’s annual general meeting.
- (7) Paragraph (1) above applies to a variation of a director’s contract of service as it applies to the contract.

### **General meetings**

**31.**—(1) Subject to paragraph (2) below, every investment company with variable capital shall in each year hold a general meeting (“annual general meeting”) in addition to any other meetings, whether general or otherwise, it may hold in that year.

(2) If a company holds its first annual general meeting within 18 months of the date on which the authorisation order made by SIB in respect of the company comes into effect, paragraph (1) above shall not require the company to hold any other meeting as its annual general meeting in the year of its incorporation or in the following year.

(3) Subject to paragraph (2) above, not more than 15 months shall elapse between the date of one annual general meeting of a company and the date of the next.

### **Capacity of company**

**32.**—(1) The validity of an act done by an investment company with variable capital shall not be called into question on the ground of lack of capacity by reason of anything in these Regulations, SIB regulations or the company’s instrument of incorporation.

(2) Nothing in paragraph (1) above shall affect the duty of the directors to observe any limitations on their powers.

### **Power of directors and general meeting to bind the company**

**33.**—(1) In favour of a person dealing in good faith, the following powers, that is to say—

- (a) the power of the directors of an investment company with variable capital (whether or not acting as a board) to bind the company, or authorise others to do so; and
- (b) the power of such a company in general meeting to bind the company, or authorise others to do so;

shall be deemed to be free of any limitation under the company's constitution.

(2) For the purposes of this regulation—

- (a) a person “deals with” a company if he is party to any transaction or other act to which the company is a party;
- (b) subject to paragraph (4) below, a person shall not be regarded as acting in bad faith by reason only of his knowing that, under the company's constitution, an act is beyond any of the powers referred to in sub-paragraph (a) or (b) of paragraph (1) above; and
- (c) subject to paragraph (4) below, a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference in paragraph (1) above to any limitation under the company's constitution on the powers set out in sub-paragraph (a) or (b) of that paragraph shall include any limitation deriving from these Regulations, from SIB regulations or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

(4) Paragraph (2)(b) and (c) above do not apply where—

- (a) by virtue of a limitation deriving from these Regulations or from SIB regulations, an act is beyond any of the powers referred to in paragraph (1)(a) or (b) above; and
- (b) the person in question—
  - (i) has actual knowledge of that fact; or
  - (ii) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(5) Paragraph (1) above does not affect any liability incurred by the directors or any other person by reason of the directors exceeding their powers.

#### **No duty to enquire as to capacity etc**

**34.** Subject to regulation 33(4)(b)(ii) above, a party to a transaction with an investment company with variable capital is not bound to enquire—

- (a) as to whether the transaction is permitted by these Regulations, SIB regulations or the company's instrument of incorporation; or
- (b) as to any limitation on the powers referred to in paragraph (1)(a) or (b) of regulation 33 above.

#### **Exclusion of deemed notice**

**35.—**(1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document made available by an investment company with variable capital for inspection; but this does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such enquiries as ought reasonably to be made.

(2) In paragraph (1) above, “document” includes any material which contains information.

#### **Restraint and ratification by shareholders**

**36.—**(1) A shareholder of an investment company with variable capital may bring proceedings to restrain the doing of an act which but for regulation 32(1) above would be beyond the company's capacity.

(2) Paragraph (1) of regulation 33 above does not affect any right of a shareholder of an investment company with variable capital to bring proceedings to restrain the doing of an act which is beyond any of the powers referred to in that paragraph.

(3) No proceedings shall lie under paragraph (1) above in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company; and paragraph (2) above shall not have the effect of enabling proceedings to be brought in respect of any such act.

(4) Any action by the directors of a company—

- (a) which, but for paragraph (1) of regulation 32 above, would be beyond the company's capacity; or
- (b) which is within the company's capacity but beyond the powers referred to in paragraph (1) (a) of regulation 33 above;

may only be ratified by resolution of the company in general meeting.

(5) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by resolution of the company in general meeting.

(6) Nothing in this regulation affects any power or right conferred by or arising under section 61 (injunctions and restitution orders) or 62 (actions for damages) of the 1986 Act.

#### **Events affecting company status**

**37.**—(1) Where either of the conditions mentioned in paragraph (2) below are satisfied, an investment company with variable capital is not entitled to rely against other persons on the happening of any of the following events, that is to say—

- (a) any alteration of the company's instrument of incorporation;
- (b) any change among the directors of the company;
- (c) as regards service of any document on the company, any change in the situation of the head office of the company; or
- (d) the making of a winding up order in respect of the company or, in circumstances in which the affairs of a company are to be wound up otherwise than by the court, the commencement of the winding up.

(2) The conditions referred to in paragraph (1) above are that—

- (a) the event in question had not been officially notified at the material time and is not shown by the company to have been known at that time by the other person concerned; and
- (b) if the material time fell on or before the 15th day after the date of official notification (or where the 15th day was a non-business day, on or before the next day that was a business day), it is shown that the other person concerned was unavoidably prevented from knowing of the event at that time.

(3) In this regulation "official notification" means the notification in the Gazette by virtue of paragraph 6 of Schedule 1 to these Regulations of any document containing the information referred to in paragraph (1) above and "officially notified" shall be construed accordingly.

#### **Invalidity of certain transactions involving directors**

**38.**—(1) This regulation applies where—

- (a) an investment company with variable capital enters into a transaction to which the parties include any of the following, that is to say—
  - (i) a director of the company; or
  - (ii) any person who is an associate of such a director; and
- (b) in connection with the transaction, the directors of the company (whether or not acting as a board) exceed any limitation on their powers under the company's constitution.

- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not the transaction is avoided, any such party to the transaction as is mentioned in paragraph (i) or (ii) of paragraph (1)(a) above, and any director of the company who authorised the transaction, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the transaction; and
  - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in paragraphs (1) to (3) above shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible; or
  - (b) the company is indemnified for any loss or damage resulting from the transaction; or
  - (c) rights which are acquired, bona fide for value and without actual notice of the directors concerned exceeding their powers, by a person who is not a party to the transaction would be affected by the avoidance; or
  - (d) the transaction is ratified by resolution of the company in general meeting.
- (6) A person other than a director of the company is not liable under paragraph (3) above if he shows that at the time the transaction was entered into he did not know that the directors concerned were exceeding their powers.
- (7) This regulation does not affect the operation of regulation 33 above in relation to any party to the transaction not within paragraph (i) or (ii) of paragraph (1)(a) above; but where a transaction is voidable by virtue of this regulation and valid by virtue of that regulation in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.
- (8) For the purposes of this regulation—
- (a) “associate”, in relation to any person who is a director of the company, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of such a subsidiary;
  - (b) “transaction” includes any act; and
  - (c) the reference in paragraph (1)(b) above to any limitation on directors’ powers under the company’s constitution shall include any limitation deriving from these Regulations, from SIB regulations or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

### *Shares*

#### **Shares**

- 39.**—(1) Without prejudice to the generality of regulation 6(1) above, an investment company with variable capital may issue more than one class of shares.
- (2) A shareholder shall have no interest in the scheme property of the company.
  - (3) The rights that attach to each share of any given class are—

- (a) the right in accordance with the instrument of incorporation to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property;
  - (b) the right in accordance with the instrument of incorporation to vote at any general meeting of the company or at any relevant class meeting; and
  - (c) such other rights as may be provided for, in relation to shares of that class, in the instrument of incorporation of the company.
- (4) In respect of any class of shares, the rights referred to in paragraph (3) above may, if the company's instrument of incorporation so provides, be expressed in two denominations; and in the case of any such class, one (the "smaller") denomination shall be such proportion of the other (the "larger") denomination as is fixed by the instrument of incorporation.
- (5) In respect of any class of shares within paragraph (4) above, any share to which are attached rights expressed in the smaller denomination shall, in these Regulations, be known as a smaller denomination share and any share to which are attached rights expressed in the larger denomination shall, in these Regulations, be known as a larger denomination share.
- (6) In respect of any class of shares, the rights that attach to each share of that class shall be—
- (a) except in respect of a class of shares within paragraph (4) above, equal to the rights that attach to each other share of that class; and
  - (b) in respect of a class of shares within that paragraph, equal to the rights that attach to each other share of that class of the same denomination.
- (7) In respect of any class of shares within paragraph (4) above, the rights that attach to any smaller denomination share of that class shall be a proportion of the rights that attach to any larger denomination share of that class and that proportion shall be the same as the proportion referred to in paragraph (4) above.

### **Share certificates**

- 40.**—(1) Subject to regulation 41 below, an investment company with variable capital shall prepare documentary evidence of title to its shares ("share certificates") as follows—
- (a) in respect of any new shares issued by it;
  - (b) where a shareholder has transferred part only of his holding back to the company, in respect of the remainder of that holding;
  - (c) where a shareholder has transferred part only of his holding to any person who is designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations, in respect of the remainder of that holding;
  - (d) where a company has registered a transfer of shares made to a person other than either the company or a person designated as mentioned in sub-paragraph (c) above—
    - (i) in respect of the shares transferred to the transferee; and
    - (ii) in respect of any shares retained by the transferor which were evidenced by any certificate sent to the company for the purposes of registering the transfer;
  - (e) in respect of any holding of bearer shares for which a certificate evidencing title has already been issued but where the certificate has been surrendered to the company for the purpose of being replaced by two or more certificates which between them evidence title to the shares comprising that holding;
  - (f) in respect of any shares for which a certificate has already been issued but where it appears to the company that the certificate needs to be replaced as a result of having been lost, stolen or destroyed or having become damaged or worn out.

(2) A company shall exercise due diligence and take all reasonable steps to ensure that certificates prepared in accordance with paragraphs (1) (a) to (e) above are ready for delivery as soon as reasonably practicable.

(3) Certificates need be prepared in the circumstances referred to in paragraphs (1)(e) and (f) above only if the company has received—

- (a) a request for new certificate;
- (b) the old certificate (if there is one);
- (c) such indemnity as the company may require; and
- (d) such reasonable sum as the company may require in respect of the expenses incurred by it in complying with the request.

(4) Each share certificate shall state—

- (a) the number of shares the title to which is evidenced by the certificate;
- (b) where the company has more than one class of shares, the class of shares title to which is evidenced by the certificate; and
- (c) except in the case of bearer shares, the name of the holder.

(5) Where, in respect of any class of shares, the rights that attach to shares of that class are expressed in two denominations, the reference in paragraph (4)(a) above (as it applies to shares of that class) to the number of shares is a reference to the total of—

$$N + \frac{n}{p}$$

(6) In paragraph (5) above—

- (a)  $N$  is the relevant number of the larger denomination shares of the class in question;
- (b)  $n$  is the relevant number of the smaller denomination shares of that class; and
- (c)  $p$  is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(7) Nothing in these Regulations shall be taken as preventing the total arrived at under paragraph (5) above being expressed on the certificate as a single entry representing the result derived from the formula set out in that paragraph.

(8) In England and Wales, a share certificate specifying any shares held by any person which is—

- (a) under the common seal of the company; or
- (b) authenticated in accordance with regulation 53 below;

is prima facie evidence of that person's title to the shares.

(9) In Scotland, a share certificate specifying any shares held by any person which is—

- (a) under the common seal of the company; or
- (b) subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995(16);

is, unless the contrary is shown, sufficient evidence of that person's title to the shares.

#### **Exceptions from regulation 40**

**41.**—(1) An investment company with variable capital which is a participating issuer shall not prepare share certificates in respect of any share in the company which is an uncertificated unit of a security.



(2) Nothing in regulation 40 above requires a company to prepare share certificates in Cases 1 to 4 set out below.

(3) Case 1 is any case where the company's instrument of incorporation states that share certificates will not be issued and contains provision as to other procedures for evidencing a person's entitlement to shares.

(4) Case 2 is any case where a shareholder has indicated to the company in writing that he does not wish to receive a certificate.

(5) Case 3 is any case where shares are issued or transferred to the person who is designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations.

(6) Case 4 is any case where shares are issued or transferred to a nominee of a recognised investment exchange who is designated for the purposes of this paragraph in the rules of the investment exchange in question.

### **Bearer shares**

**42.** An investment company with variable capital may, if its instrument of incorporation so provides, issue shares ("bearer shares") evidenced by a share certificate, or by any other documentary evidence of title for which provision is made in the instrument of incorporation, which indicates—

- (a) that the holder of the document is entitled to the shares specified in it; and
- (b) that no entry will be made on the register of shareholders identifying the holder of those shares.

### **Register of shareholders**

**43.** Schedule 4 to these Regulations (which makes provision with respect to the register of shareholders of an investment company with variable capital) shall have effect.

### **Power to close register**

**44.—(1)** Subject as mentioned in paragraph (2) below, an investment company with variable capital may, on giving notice by advertisement in a national newspaper circulating in all the countries in which shares in the company are sold, close the register of shareholders for any time or times not exceeding in the whole 30 days in each year.

(2) Sub-paragraph (1) above has effect—

- (a) in the case of a company which is a participating issuer, subject to regulation 22 of the Uncertificated Securities Regulations 1995<sup>(17)</sup> (consent of Operator of system required to close register) and to any requirements contained in SIB regulations, in so far as such requirements are not inconsistent with that regulation; and
- (b) in the case of any other company, subject to any requirements contained in SIB regulations.

### **Power of court to rectify register**

**45.—(1)** An application to the court may be made under this regulation if—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of shareholders of an investment company with variable capital;
- (b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares in the company; or

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(17) S.I. 1995/3272.

(c) default is made or unnecessary delay takes place in amending the register so as to reflect the fact of any person having ceased to be a shareholder.

(2) An application under this regulation may be made by the person aggrieved, by any shareholder of the company or by the company itself.

(3) The court may either refuse the application or may order rectification of the register of shareholders and payment by the company of any damages sustained by any party aggrieved.

(4) On such an application the court may decide any question necessary or expedient to be decided for rectification of the register of shareholders including, in particular, any question relating to the right of a person who is a party to the application to have his name entered in or omitted from the register (whether the question arises as between shareholders and alleged shareholders or as between shareholders or alleged shareholders on the one hand and the company on the other hand).

### **Share transfers**

**46.** Schedule 5 to these Regulations (which makes provision for the transfer of registered and bearer shares in an investment company with variable capital) shall have effect.

### *Operation*

#### **Power incidental to carrying on business**

**47.** An investment company with variable capital shall have power to do all such things as are incidental or conducive to the carrying on of its business.

#### **Name to appear in correspondence etc**

**48.—**(1) Every investment company with variable capital shall have its name mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business.

(2) If an officer of a company or a person on the company's behalf signs or authorises to be signed on behalf of the company any cheque or order for money or goods in which the company's name is not mentioned as required by paragraph (1) above he is personally liable to the holder of the cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

#### **Particulars to appear in correspondence etc**

**49.—**(1) Every investment company with variable capital shall have the following particulars mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business, that is to say—

- (a) the company's place of registration;
- (b) the number with which it is registered;
- (c) the address of its head office; and
- (d) the fact that it is an investment company with variable capital.

(2) Where, in accordance with section 705 of the 1985 Act<sup>(18)</sup> (companies' registered numbers) (as that section has effect by virtue of Schedule 1 to these Regulations), the registrar of companies makes any change of existing registered numbers in respect of any investment company with variable capital then, for a period of three years beginning with the date on which the notification of the

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<sup>(18)</sup> Section 705 was substituted by section 149 of, and paragraph 14 of Schedule 19 to, the Companies Act 1989 (c. 40).

change is sent to the company by the registrar, the requirement of paragraph (1)(b) above is satisfied by the use of either the old number or the new.

### **Contracts: England and Wales**

**50.** Under the law of England and Wales a contract may be made—

- (a) by an investment company with variable capital by writing under its common seal; or
- (b) on behalf of such a company, by any person acting under its authority (whether express or implied);

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an investment company with variable capital.

### **Execution of documents: England and Wales**

**51.**—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by an investment company with variable capital.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following provisions of this regulation apply whether it does or not.

(4) A document that is signed by at least one director and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director; and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

(7) In paragraph (6) above, “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

### **Execution of deeds overseas: England and Wales**

**52.**—(1) Under the law of England and Wales an investment company with variable capital may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company’s common seal.

### **Authentication of documents: England and Wales**

**53.** A document or proceeding requiring authentication by an investment company with variable capital is sufficiently authenticated for the purposes of the law of England and Wales—

- (a) by the signature of a director or other authorised officer of the company; or

- (b) in the case of a director which is a body corporate, if it is executed by that director.

### **Official seal for share certificates**

**54.**—(1) An investment company with variable capital which has a common seal may have, for use for sealing shares issued by the company and for sealing documents creating or evidencing shares so issued, an official seal which is a facsimile of its common seal with the addition on its face of the word “securities”.

(2) The official seal when duly affixed to a document has the same effect as the company’s common seal.

(3) Nothing in this regulation shall affect the right of an investment company with variable capital registered in Scotland to subscribe such shares and documents in accordance with the Requirements of Writing (Scotland) Act 1995(19).

### **Personal liability for contracts and deeds**

**55.**—(1) A contract which purports to be made by or on behalf of an investment company with variable capital at a time before the company’s instrument of incorporation has been registered in accordance with regulation 4(2) above shall have effect, subject to any agreement to the contrary, as a contract made with the person purporting to act for the company or as agent for it, and he shall be personally liable on the contract accordingly.

(2) Paragraph (1) above applies—

- (a) to the making of a deed under the law of England and Wales; and
- (b) to the undertaking of an obligation under the law of Scotland;

as it applies to the making of a contract.

(3) If a company enters into a transaction at a time after the authorisation order made in respect of the company has been revoked and the company fails to comply with its obligations in respect of that transaction within 21 days from being called upon to do so, the person who authorised the transaction is liable, and where the transaction was authorised by two or more persons they are jointly and severally liable, to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company’s failure to comply with those obligations.

### **Exemptions from liability to be void**

**56.**—(1) This regulation applies to any provision, whether contained in the instrument of incorporation of an investment company with variable capital or in any contract with the company or otherwise—

- (a) which exempts any officer of the company or any person (whether or not an officer of the company) employed by the company as auditor from, or indemnifies him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company; or
- (b) which exempts the depository of the company from, or indemnifies him against, any liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the company.

(2) Except as provided by the following paragraph, any such provision is void.

(3) This regulation does not prevent a company—

- (a) from purchasing and maintaining for any such officer, auditor or depositary insurance against any such liability; or
- (b) from indemnifying any such officer, auditor or depositary against any liability incurred by him—
  - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted; or
  - (ii) in connection with any application under regulation 57 below in which relief is granted to him by the court.

### **Power of court to grant relief in certain cases**

57.—(1) This regulation applies to—

- (a) any proceedings for negligence, default, breach of duty or breach of trust against an officer of an investment company with variable capital or a person (whether or not an officer of the company) employed by the company as auditor; or
  - (b) any proceedings against the depositary of such a company for failure to exercise due care and diligence in the discharge of his functions in respect of the company.
- (2) If in any proceedings to which this regulation applies it appears to the court hearing the case—
- (a) that the officer, auditor or depositary is or may be liable in respect of the cause of action in question;
  - (b) that, nevertheless, he has acted honestly and reasonably; and
  - (c) that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused from the liability sought to be enforced against him;

the court may relieve him, either wholly or partly, from his liability on such terms as it may think fit.

(3) If any such officer, auditor or depositary has reason to apprehend that any claim will or might be made against him in proceedings to which this regulation applies, he may apply to the court for relief.

(4) The court, on an application under paragraph (3) above, has the same power to relieve the applicant as under this regulation it would have had if it had been a court before which the relevant proceedings against the applicant had been brought.

(5) Where a case to which paragraph (2) above applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that paragraph to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

### **Punishment for fraudulent trading**

58.—(1) If any business of an investment company with variable capital is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence and liable—

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

(2) This regulation applies whether or not the company has been, or is in the course of being, wound up (whether by the court or otherwise).

### **Power to provide for employees on cessation or transfer of business**

**59.**—(1) The powers of an investment company with variable capital include power to make the following provision for the benefit of persons employed or formerly employed by the company, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company.

(2) The power conferred by paragraph (1) above is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue of paragraph (1) above shall only be exercised by the company if sanctioned—

- (a) in a case not falling within sub-paragraph (b) or (c) below, by a resolution of the company in general meeting;
- (b) if so authorised by the instrument of incorporation—
  - (i) in the case of a company that has only one director, by a resolution of that director; and
  - (ii) in any other case, by such resolution of directors as is required by SIB regulations; or
- (c) if the instrument of incorporation requires the exercise of the power to be sanctioned by a resolution of the company in general meeting for which more than a simple majority of the shareholders voting is necessary, by a resolution of that majority;

and in any case after compliance with any other requirements of the instrument of incorporation applicable to the exercise of the power.

## *Reports*

### **Reports: preparation**

**60.**—(1) The directors of an investment company with variable capital shall—

- (a) prepare a report (“annual report”) for each annual accounting period of the company; and
- (b) subject to paragraph (2) below, prepare a report (“half-yearly report”) for each half-yearly accounting period.

(2) Where a company’s first annual accounting period is a period of less than 12 months, a half-yearly report need not be prepared for any part of that period.

(3) The directors of a company shall lay copies of the annual report before the company in general meeting.

(4) Nothing in this regulation or in regulation 61 below shall prejudice the generality of regulation 6(1) above.

(5) In this regulation any reference to annual and half-yearly accounting periods of a company is a reference to those periods as determined in relation to that company in accordance with SIB regulations.

### **Reports: accounts**

**61.**—(1) The annual report of an investment company with variable capital shall, in respect of the annual accounting period to which it relates, contain accounts of the company.

(2) The company's auditors shall make a report to the company's shareholders in respect of the accounts of the company contained in its annual report.

(3) A copy of the auditors' report shall form part of the company's annual report.

#### **Reports: voluntary revision**

**62.**—(1) If it appears to the directors of an investment company with variable capital that any annual report of the company did not comply with the requirements of these Regulations or SIB regulations, they may prepare a revised annual report.

(2) Where copies of the previous report have been laid before the company in general meeting or delivered to the registrar of companies, the revisions shall be confined to—

(a) the correction of anything in the previous report which did not comply with the requirements of these Regulations or SIB regulations; and

(b) the making of any necessary consequential alterations.

#### **Auditors**

**63.** Schedule 6 to these Regulations (which makes provision with respect to the auditors of investment companies with variable capital) shall have effect.

#### *Mergers and divisions*

#### **Mergers and divisions**

**64.** Schedule 7 to these Regulations (which makes provision with respect to mergers and divisions involving investment companies with variable capital) shall have effect.

## **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>(20)</sup> or section 136 of the Criminal Procedure (Scotland) Act 1995<sup>(21)</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 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>(22)</sup> and Schedule 3 to the Magistrates' Courts Act 1980<sup>(23)</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>(24)</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;

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<sup>(20)</sup> 1980 c. 43.

<sup>(21)</sup> 1995 c. 46.

<sup>(22)</sup> 1925 c. 86.

<sup>(23)</sup> 1980 c. 43.

<sup>(24)</sup> 1995 c. 46.

- (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>(25)</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;
- (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<sup>(26)</sup> 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<sup>(27)</sup>.

(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.

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<sup>(25)</sup> 1978 c. 30.

<sup>(26)</sup> S.I. 1992/1315.

<sup>(27)</sup> S.I. 1987/942.

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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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- (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)(28) in respect of managers of authorised unit trust schemes and operators of recognised schemes.

**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.

11th November 1996

*Patrick McLoughlin*  
*Richard Ottaway*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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(28) 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).