
STATUTORY INSTRUMENTS

1996 No. 2827

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

PART II

FORMATION, SUPERVISION AND CONTROL

Authorisation

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)⁽¹⁾, 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.

(1) 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.

- (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⁽²⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽³⁾.

(2) Cm 2073.
(3) Cm 2183.