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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

The Investment Trust (Approved  
Company) (Tax) Regulations 2011

PART 2

Investment Trusts

CHAPTER 1

Application procedure

**Interpretation**

**4.** In this Part—

“the eligibility conditions” mean conditions A to C in section 1158 of CTA 2010,

“the income distribution requirement” has the meaning given in regulation 21(9).

**Application for approval as an investment trust**

**5.—**(1) A company may apply to the Commissioners<sup>(1)</sup> for approval as an investment trust in accordance with this Chapter.

(2) A company which makes such an application is referred to in this Chapter as “the applicant”.

**Contents of application**

**6.—**(1) An application under regulation 5 must include the particulars specified in this regulation.

(2) The application must—

- (a) specify the date of the first day of an accounting period in respect of which the applicant seeks approval as an investment trust (“the specified date”),
- (b) contain a statement that the applicant meets, or is expected to meet, in respect of the accounting period referred to in sub-paragraph (a)—
  - (i) the eligibility conditions, and
  - (ii) the requirements of Chapter 3 of this Part,
- (c) contain an undertaking given in relation to the accounting period referred to in sub-paragraph (a) and each subsequent accounting period in respect of which it is or expects to be an investment trust, that the applicant will meet—
  - (i) the eligibility conditions, and
  - (ii) the requirements of Chapter 3 of this Part,

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<sup>(1)</sup> Section 1159 of the Corporation Tax Act 2010 defines “the Commissioners” as the Commissioners for Her Majesty’s Revenue and Customs.

- (d) include a copy of the applicant's current published investment policy, and
- (e) provide evidence to show that the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market<sup>(2)</sup>.

This regulation is subject to regulations 7, 8, 9 and 13.

#### **Contents of application: accounting period not commenced at time of application**

7.—(1) This regulation applies if at the time the application is made the applicant has not commenced an accounting period.

- (2) If this regulation applies the applicant must—
  - (a) specify a provisional date for the purposes of regulation 6(2)(a), and
  - (b) where a provisional date is specified, as soon as reasonably practicable, confirm in writing to the Commissioners the date of the first day of the accounting period in respect of which the applicant seeks approval as an investment trust.

#### **Contents of application: shares not admitted to trading at time of application**

8.—(1) This regulation applies if at the time the application is made the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are not admitted to trading on a regulated market.

- (2) If this regulation applies, the application—
  - (a) for the purposes of regulation 6(2)(d), may include a copy of the applicant's prospectus instead of the current published investment policy, and
  - (b) must explain how the applicant will be in a position to comply with condition B in section 1158(3) of CTA 2010 by the specified date.
- (3) The applicant must provide evidence to the Commissioners that the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market—
  - (a) before the end of a period of 60 days beginning with the date on which the shares were so admitted, or
  - (b) by such other date as the Commissioners may agree.

#### **Form, timing and withdrawal of application**

- 9.—(1) An application must be made in writing to the Commissioners.
- (2) The application must be made to the Commissioners before the end of the period of 90 days beginning with the last day of the first accounting period for which approval is sought.
- (3) The applicant may withdraw the application at any time during the period beginning with the day on which the application is made and ending 28 days after the day on which the Commissioners give notice under regulation 10 accepting the application.

#### **Response by Commissioners to application**

- 10.—(1) Within 28 days beginning with the date on which the application is made, the Commissioners must give notice in writing to the applicant—
  - (a) accepting the application,

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(2) Section 1158 defines "regulated market".

- (b) rejecting the application, or
  - (c) asking for further information in order to consider the application.
- (2) The Commissioners must not accept an application if any particular or information mentioned in regulation 6, 7 or 8 is not supplied.
- (3) Paragraph (4) applies if—
- (a) the Commissioners have given a notice under paragraph (1)(c), and
  - (b) the applicant provides the further information within the period of 28 days beginning with the day on which the Commissioners ask for the further information, or within such longer period as may be agreed by the Commissioners.
- (4) Within 28 days beginning with the day on which they receive the further information, the Commissioners must give notice to the applicant—
- (a) accepting the application, or
  - (b) rejecting the application.
- (5) If the Commissioners reject the application, the notice given to the applicant under paragraph (1)(b) or (4)(b) must contain a statement of the reason for which the application was rejected.

#### **Appeal against rejection of the application**

- 11.**—(1) If the Commissioners reject an application, the applicant may appeal.
- (2) The notice of appeal must be given to the Commissioners within a period of 42 days beginning with the day on which the notice rejecting the application is given.
- (3) On an appeal, the tribunal may uphold or quash the rejection of the application.
- (4) If the tribunal quashes the rejection of the application, these Regulations apply as if the Commissioners had accepted the application in the form in which it was considered by the tribunal.

#### **Effect of acceptance of application**

**12.** If the Commissioners accept (or are treated as accepting) an application, the applicant is approved as an investment trust—

- (a) for the accounting period commencing on the specified date (or commencing on such later date as may be confirmed in accordance with regulation 7(2)(b)), and
- (b) for each subsequent accounting period,

but this is subject to regulations 13 and 25 to 31.

#### **Acceptance of application conditional on receipt of specified information**

**13.**—(1) An acceptance by the Commissioners of an application is conditional on the provision of any information or particulars required by regulations 7(2)(b) and 8(3).

(2) If the applicant does not provide any such information or particulars, the application shall be treated as if it had not been made and the company treated as if it had not been an investment trust for any of the period to which the application mentioned in paragraph (1) related.

## CHAPTER 2

### Cases where eligibility conditions treated as being met

#### **Delay in admission of company's ordinary share capital to trading on a regulated market**

**14.**—(1) Paragraph (3) applies if at the date on which the application under regulation 5 is made the applicant—

- (a) has commenced procedures to obtain admission of the shares making up its ordinary share capital (or, if there are such shares of more than one class, those of each class) to trading on a regulated market but has not obtained admission, or
- (b) has given a commitment in its prospectus to commence such procedures but has not started those procedures.

(2) Paragraph (3) also applies if a company which has been approved as an investment trust issues shares of a class (“the new shares”) which is different from any of those which make up its ordinary share capital.

(3) Condition B in section 1158(3) of CTA 2010 is to be treated as met for the period of 60 days beginning with—

- (a) in the case of paragraph (1), the date of the application, or
- (b) in the case of paragraph (2), the date on which the new shares were issued.

#### **Winding up of company approved as investment trust**

**15.**—(1) Paragraph (2) applies if—

- (a) a company is being wound up,
- (b) the company was approved as an investment trust in respect of the accounting period which ended immediately before the winding up started (see section 12 of CTA 2009),
- (c) the company satisfied the eligibility conditions in respect of the accounting period referred to in sub-paragraph (b), and
- (d) subject to paragraph (4), the company makes no new investments during the realisation period.

(2) Conditions A and B in section 1158 of CTA 2010 are to be treated as met in respect of the realisation period.

This paragraph is subject to regulation 16.

(3) In paragraphs (1) and (2) the “realisation period” is the period beginning with the date on which the winding up started and ending with the date on which the winding up is completed.

(4) For the purposes of paragraph (1)(d)—

- (a) the placing on deposit of the proceeds of the disposal of assets of the company, or
- (b) the purchase of gilts with the proceeds of the disposal of assets of the company,

shall not be treated as the making of a new investment by the company.

(5) In this regulation and regulation 16, references to “a company being wound up” and “winding up” are to be construed in accordance with section 12 of CTA 2009.

#### **Winding up of company approved as investment trust – further conditions**

**16.**—(1) Paragraph (2) of regulation 15 shall only apply if paragraphs (2) to (4) of this regulation are met.

- (2) The Commissioners must be notified in writing that the company is being wound up.
- (3) The notice under paragraph (2) must be given within one year beginning with the date on which the winding up started.
- (4) The Commissioners must be satisfied that the realisation period referred to in regulation 15 has not been unreasonably prolonged.

## CHAPTER 3

### Investment trust: requirements to be met whilst approved

#### **Investment trust to comply with requirements of this Chapter**

**17.** A company must comply with the provisions of this Chapter in relation to each accounting period in respect of which it is approved as an investment trust.

#### **Investment trust must not be a close company**

- 18.—**(1) An investment trust must not be a close company at any time in an accounting period.
- (2) See section 439 of CTA 2010 for the definition of “close company”.

#### **The income distribution requirement**

**19.—**(1) An investment trust must not retain in respect of an accounting period an amount which is greater than 15% of its income for the accounting period.

(2) The investment trust must distribute as a dividend the amount required to comply with paragraph (1) before the filing date for the investment trust’s company tax return for the accounting period.

(3) Where the investment trust company’s tax return has been amended as a result of a notice served under paragraph 15(4) or 34 of Schedule 18 to the Finance Act 1998<sup>(3)</sup>, any further distribution that is required by virtue of the amendment must be made before the end of the period of 180 days beginning with the date of the amendment.

(4) In this regulation and regulation 23, “filing date” has the meaning given in paragraph 14 of Schedule 18 to the Finance Act 1998.

(5) This regulation is subject to regulations 21 and 22.

#### **Calculation of income**

**20.—**(1) Paragraphs (2) and (3) apply for the purposes of regulation 19(1) in determining the income of the investment trust for an accounting period.

(2) The amounts to be brought into account under Part 5 of CTA 2009 in respect of the investment trust’s loan relationships are to be determined without reference to any debtor relationships of the investment trust.

(3) Income treated as arising under regulation 18(1) (the charge to tax: further provisions) of the Offshore Funds Regulations is to be ignored.

#### **The income distribution requirement: reduction in amount of income permitted to be retained**

**21.—**(1) This regulation applies where conditions A to C are met.

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(3) 1998 c. 36. Paragraph 15 was amended by paragraph 68(a) of Schedule 4 to the Commissioners of Revenue and Customs Act 2005 (c. 11). Paragraph 34 was amended by section 119(3) and (6) to (8) of the Finance Act 2008 (c. 9).

(2) Condition A is that the investment trust is a participant in an offshore reporting fund within the meaning of regulation 50 (meaning of “reporting fund”) of the Offshore Funds Regulations.

(3) Condition B is that there is an amount which falls to be reported to the investment trust in accordance with regulation 92(1)(b) (contents of a report to participants: non-transparent funds) of the Offshore Funds Regulations(4).

(4) Condition C is that the amount referred to in condition B is accounted for by the investment trust through the capital column of the income statement in accordance with the AIC Statement of Recommended Practice, or would have been so accounted for if that Statement had been applied correctly.

(5) Where this regulation applies the amount which the investment trust may retain in accordance with regulation 19(1) is reduced by an amount equal to 85% of the amount referred to in condition B.

(6) If the application of paragraph (5) has the effect that the sum which an investment trust is permitted to retain (“the retainable amount”) is calculated to be less than zero, the investment trust must distribute as a dividend a further sum which is equal to the difference between the retainable amount and zero.

(7) The further distribution mentioned in paragraph (6) must be made in relation to the accounting period in which the fund distribution date for the offshore reporting fund in question falls.

(8) In this regulation—

- (a) “fund distribution date” has the meaning given in regulation 94 (reported income: general provisions) of the Offshore Funds Regulations(5), and
- (b) “AIC Statement of Recommended Practice” means the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2009(6).

(9) The distribution required under this regulation together with the distribution required under regulation 19 comprise “the income distribution requirement”.

(10) This regulation is subject to regulation 22.

### **The income distribution requirement: exceptions**

**22.**—(1) Regulations 19 and 21 do not apply in relation to an accounting period if the amount that the investment trust would be required to distribute in accordance with those regulations, taken together, would be less than £30,000.

(2) Regulations 19 and 21 do not apply in relation to an accounting period if—

- (a) by virtue of a restriction imposed by law, the investment trust is required to retain in respect of the accounting period an amount of income that exceeds 15% of its income, and
- (b) either—
  - (i) the amount of income that the investment trust retains in respect of the accounting period does not exceed the amount of income that it is required to retain in respect of the period by virtue of a restriction imposed by law, or
  - (ii) if there is such an excess, the amount of the excess plus the amount of any income that the investment trust distributes in respect of the period is less than £30,000.

(3) If the accounting period mentioned in sub-paragraphs (1) and (2) is shorter than 12 months, the amount of £30,000 mentioned in paragraphs (1) and (2)(b)(ii) is proportionately reduced.

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(4) Regulation 92(1) was amended by [S.I. 2011/1211](#).

(5) Regulation 94 was amended by [S.I. 2009/3139](#) and [2011/1211](#).

(6) The AIC Statement of Practice can be found at: <http://www.theaic.co.uk/Documents/Technical/AICSORPJan09.pdf>.

### **Requirement to notify Commissioners of revised investment policy**

**23.**—(1) An investment trust must notify the Commissioners if it revises its published investment policy.

(2) The investment trust must provide the Commissioners with a copy of any revised investment policy before the filing date for its company tax return for the accounting period in which the investment policy was revised.

### **Requirement to notify Commissioners of breach**

**24.**—(1) An investment trust must give notice in accordance with paragraph (2) if it has breached—

- (a) any of the eligibility conditions (see regulation 4), or
- (b) any other requirement of these Regulations (apart from this regulation).

(2) The notice must—

- (a) be given in writing to the Commissioners as soon as reasonably practicable after the investment trust becomes aware of any breach referred to in paragraph (1), and
- (b) specify the steps, if any, that have been taken, or are to be taken, to correct the breach.

## **CHAPTER 4**

### **Breach of the Regulations and withdrawal of approval**

#### **Types of breach**

**25.**—(1) This Chapter applies if an investment trust is in breach of a requirement imposed by these Regulations.

(2) A breach is—

- (a) a minor breach, or
- (b) a serious breach.

(3) For the purposes of these Regulations, a breach is a “serious breach” if it is—

- (a) a breach specified as a serious breach in this Chapter, or
- (b) a breach which is not a minor breach.

(4) For the purposes of these Regulations, a breach is a “minor breach” if it is a breach (other than a breach specified as a serious breach in this Chapter)—

- (a) for which there is a reasonable excuse, and
- (b) which is inadvertent and corrected as soon as reasonably practicable.

(5) For the purposes of this Chapter a minor breach is not regarded as a breach if the investment trust—

- (a) notifies the Commissioners of the breach in accordance with regulation 24, and
- (b) corrects the breach as soon as reasonably practicable without any intervention by the Commissioners.

(6) For the purposes of this regulation there is an “intervention by the Commissioners” in relation to an investment trust if the Commissioners ask it to provide them with information relating to a requirement imposed by Chapter 3.

This paragraph is subject to paragraph (7).

(7) There is no intervention by the Commissioners in relation to an investment trust if—

- (a) the investment trust notifies the Commissioners of the breach in accordance with regulation 24,
- (b) the investment trust complies with regulation 25(5), and
- (c) the Commissioners request the investment trust to provide them with information so that they may determine whether the breach has been corrected.

### **Serious breach**

**26.** For the purposes of this Chapter a breach of regulation 18 (investment trust must not be a close company) is a serious breach.

### **Multiple breaches**

**27.—**(1) Subject to the following provisions of this Chapter, if an investment trust is in breach of a requirement imposed by these Regulations, and the breach is a minor breach, it continues to be treated as approved as an investment trust.

(2) If paragraph (1) applies—

- (a) on three separate occasions in a period of ten years beginning with the first day of the accounting period in which the first breach occurs, and
- (b) in relation to the same requirement,

the third breach is a serious breach.

(3) If paragraph (1) applies—

- (a) on four separate occasions in a period of ten years beginning with the first day of the accounting period in which the first breach occurs, and
- (b) in relation to more than one of the requirements,

the fourth breach is a serious breach.

(4) If a single event results in more than one minor breach within a single accounting period there is only one minor breach in that period in relation to that event for the purposes of this Chapter.

### **Breach of the income distribution requirement**

**28.—**(1) Subject to paragraph (4), there is a breach of the income distribution requirement if—

(a) there is a difference between—

- (i) the amount that the investment trust is required to distribute in relation to an accounting period in accordance with regulations 19 and 21, and
- (ii) the amount which the investment trust distributed in relation to that accounting period, and

(b) the amount referred to in paragraph (ii) is less than the amount referred to in paragraph (i).

(2) If the difference between the two amounts specified in paragraph (1) is greater than 1% but less than or equal to 5% of the income of the investment trust for the accounting period then, subject to paragraph (5), the breach is a minor breach.

(3) If the difference between the two amounts specified in paragraph (1) is greater than 5% of the income of the investment trust for the accounting period, the breach is a serious breach.

(4) If the difference between the two amounts specified in paragraph (1) is less than or equal to 1% of the income of the investment trust for the accounting period then, subject to paragraph (5), the investment trust is to be treated as not having breached the income distribution requirement.



(5) Paragraph (4) only applies if the failure to comply with the income distribution requirement was inadvertent.

(6) For the purpose of this regulation, the income of the investment trust includes income that falls to be reported to it in accordance with regulation 92(1)(b) (contents of report to participants: non-transparent funds) of the Offshore Funds Regulations.

### **Consequences of serious breaches**

**29.**—(1) This regulation applies if conditions A and B are met.

(2) Condition A is that—

- (a) the investment trust is in breach of a requirement imposed by these Regulations, and
- (b) the breach is a serious breach.

(3) Condition B is that the Commissioners give notice in writing to the investment trust—

- (a) stating that the investment trust is in breach of a requirement imposed by these Regulations and that the breach is a serious breach, and
- (b) specifying the serious breach.

(4) The investment trust is to be treated as a company which has not been approved as an investment trust for the accounting period in which the serious breach occurred (or, if there is more than one serious breach, the first of them) and, subject to paragraph (5), for all subsequent accounting periods.

(5) A company to which this regulation applies may make an application under regulation 5 in respect of any accounting period subsequent to the accounting period in which the serious breach occurred.

### **Breach of the eligibility conditions**

**30.**—(1) This regulation applies if an investment trust is in breach of any of the eligibility conditions.

(2) The investment trust is to be treated as a company which has not been approved as an investment trust for the accounting period in which the breach of the eligibility condition occurred (or, if there is more than one breach, the first of them) and, subject to paragraph (3), for all subsequent accounting periods.

(3) A company to which this regulation applies may make an application under regulation 5 in respect of any accounting period subsequent to the accounting period in which the breach of an eligibility condition occurred.

## **CHAPTER 5**

### **Approved company treating itself as not being an investment trust**

#### **Company tax return submitted on basis that company is not an investment trust**

**31.**—(1) This regulation applies if—

- (a) a company (apart from this regulation) is approved as an investment trust in respect of an accounting period,
- (b) the company makes a company tax return for that period, and
- (c) the self-assessment of the amount of tax which is payable by it included in the return is made on the basis that the company is not an investment trust with respect to that period.

(2) If this regulation applies the company is treated as not having been approved as an investment trust for the accounting period referred to in paragraph (1) with effect from the first day of that period and, subject to paragraph (3), for all subsequent accounting periods.

(3) A company to which this regulation applies may make an application under regulation 5 in respect of any accounting period subsequent to the accounting period to which the company tax return relates.