
STATUTORY INSTRUMENTS

1996 No. 2827

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

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(1);

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(2) (consent of Operator of system required to

(1) 1995 c. 7.
(2) S.I.1995/3272.

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
- (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⁽³⁾ (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 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

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

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(4).

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—

(4) 1995 c. 7.

- (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 depositary 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.