Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. XXXX

COMPANIES

The Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012

Made - - - -	***
Coming into force - -	*6th April 2012*

The Secretary of State is a Minister designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

In exercise of the powers conferred by that section, the Secretary of State makes the following Regulations.

In accordance with paragraph 2(2)(**c**) of Schedule 2 to the European Communities Act 1972, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Companies Act 2006 (Amendment of Part 23) (Investment Companies) Regulations 2012 and come into force on 6th April 2012.

Amendments to Part 23 of the Companies Act 2006

2.—(1) Part 23 of the Companies Act 2006(**d**) is amended as follows.

(2) In section 832(5) (conditions investment company must meet in order to make a distribution under section 832)—

(a) for paragraph (a) substitute the following—

"(a) the company's shares must be shares admitted to trading on a regulated market;";

(b) omit paragraph (b)(i) (together with the "or" following it); and

(c) in paragraph (b)(ii) omit "or any capital profits (realised or unrealised)".

(**a**) S.I. 2007/193.
(**b**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).
(**c**) Paragraph 2(2) was amended by section 27(2)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).
(**d**) 2006 c. 46.

(3) In section 832(6) (definitions applying for the purpose of conditions which investment company must meet in order to make a distribution under section 832) omit paragraph (a) (together with the "and" following it).

(4) In section 833(1)(b) (meaning of "investment company"), for "requirements" substitute "requirement".

(5) In section 833(2) (requirements to be complied with after giving notice to registrar of intention to carry on business as an investment company)—

(a) for "Those requirements are" substitute "The requirement is";

(b) in paragraph (a), for "mainly in securities" substitute "in shares, land or other assets"; and

(c) omit paragraphs (b), (c) and (d).

(6) Omit section 833(3).

(7) Omit sections 834 and 835.

Transitional provision

3.—(1) The repeal of section 833(2)(d) of the Companies Act 2006 (requirement not to retain more than 15% of income in each accounting reference period) applies only in relation to accounting reference periods of an existing investment company beginning on or after 6th April 2012.

(2) In this regulation, "existing investment company" means a company that gave notice under section 833(1) of that Act (notice to registrar of intention to carry on business as an investment company) before 6th April 2012.

Consequential repeals

4. The following are repealed—

(a) paragraph 11(4) of Schedule 22 to the Finance Act 2009(**a**);

(b) paragraph 489 of Schedule 1 to the Corporation Tax Act 2010(**b**).

Name
Minister for Employment Relations, Consumer and Postal Affairs,
Department for Business, Innovation and Skills

Date

(**a**) 2009 c. 10.
(**b**) 2010 c. 4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions in Part 23 of the Companies Act 2006 (c. 46) ("the Act") which deal with distributions by investment companies out of revenue profits. Those provisions take partial advantage of an option in Article 15(4) of Council Directive 77/91/EEC (OJ L26, 31.1.1977, p.1) ("the Directive"). Among other things, the Directive prohibits a public company from making a distribution to its shareholders if the company's net assets are (or following the distribution would become) lower than the aggregate amount of its called-up share capital and undistributable reserves. But Article 15(4) allows Member States not to apply this rule to certain investment companies, so long as particular conditions are met. Sections 832 to 835 of the Act take partial advantage of this option to derogate. They impose conditions and requirements which must be met by investment companies wishing to take advantage of the modified distributions regime.

These Regulations amend sections 832 to 835 of the Act to take further advantage of the option to derogate under the Directive and to make changes to the conditions and requirements in those sections.

Regulation 2(2)(a) replaces section 832(5)(a), and regulation 2(3) repeals section 832(6)(a). An investment company's shares must currently be listed on a recognised UK investment exchange. This condition is changed so that they must be admitted to trading on a "regulated market", as defined in section 1173.

Section 832(5)(b) provides (among other things) that an investment company may only make a distribution out of revenue profits under section 832 if, during the "relevant period" defined in section 832(6)(b), the company has not distributed any capital profits (other than by way of a redemption or purchase of its own shares complying with Part 18 of the Act) and has not applied any capital profits in paying up debentures or amounts unpaid on its issued shares. Regulation 2(2)(b) and (c) removes these conditions with effect from 6th April 2012, when these Regulations come into force. The conditions continue to apply in relation to periods of time before that date.

Section 833 defines an "investment company" for the purposes of Part 23. A company satisfies the definition if it has given notice to the registrar of companies of its intention to carry on business as an investment company and, since the date of that notice, has complied with certain requirements. Regulation 2(4) to (7) makes changes to those requirements. Section 833(2)(a) is amended so that the company's business must consist of investing its funds in shares, land or other assets, rather than (as now) mainly in securities. As now, the aim of the investment activity must be to spread investment risk and give members of the company the benefit of the results of the management of its funds. Sections 833(2)(b) and 834, which require an investment company to have satisfied requirements relating to holdings in other companies, are repealed. Section 833(2)(c) and (3) is also repealed, with the result that there is no requirement for an investment company's articles of association to prohibit it from distributing capital profits. The amendment to section 833(2)(a) and the repeal of section 833(2)(b) and 834 have effect from 6th April 2012 and do not affect the application of the conditions in these sections as they currently stand in relation to periods of time before that date. Finally, regulation 2(5) repeals section 833(2)(d), which requires an investment company not to have retained, in respect of any accounting reference period since giving notice to the registrar of companies, more than 15% of its income for that period (unless other applicable provisions of Part 23 required it to do so). Regulation 3 provides that this repeal only affects accounting reference periods beginning on or after 6th April 2012.

Regulation 2(7) also repeals section 835 of the Act. That section contains a power to extend the provisions of sections 832 to 834 of the Act to other companies whose principal business consists of investing their funds in securities, land or other assets with the aim of spreading investment risk and giving their members the benefit of the results of the management of the assets. Section 834 is repealed by these Regulations and, as a result of the amendment made to section 833(2)(a), there is no further scope to extend sections 832 and 833 in the manner provided for by section 835.

Regulation 4 makes consequential repeals.

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or from www.bis.gov.uk, and is annexed to the Explanatory Memorandum which is available alongside these Regulations on www.legislation.gov.uk.

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