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S T A T U T O R Y   I N S T R U M E N T S

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**1999 No. 2770**

**COMPANIES**

**The Companies (Investment Companies) (Distribution of Profits) Regulations 1999**

*Made* - - - - - *7th October 1999*

*Laid before Parliament* *8th October 1999*

*Coming into force* - - *8th November 1999*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the acquisition by companies of their own shares, and to distributions to their shareholders, in exercise of the powers conferred on him by section 2(2) of that Act and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Companies (Investment Companies) (Distribution of Profits) Regulations 1999 and shall come into force on 8th November 1999.

(2) In these Regulations, “the 1985 Act” means the Companies Act 1985(c).

**Amendment of section 265**

2. In section 265 of the 1985 Act (other distributions by investment companies)(d), in subsection (4)(b)(i) after the words “capital profits” there shall be inserted the words “otherwise than by way of the redemption or purchase of any of the company’s own shares in accordance with section 160 or 162 in Chapter VII of Part V”.

**Amendment of section 266**

3. In section 266 of the 1985 Act (meaning of “investment company”)(e)—

(a) in subsection (2)(c), after “that” insert “subject to subsection (2A),” and

(b) after that subsection insert—

“(2A) An investment company need not be prohibited by its memorandum or articles from redeeming or purchasing its own shares in accordance with section 160 or 162 in Chapter VII of Part V out of its capital profits.”.

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(a) S.I. 1999/654.

(b) 1972 c. 68; as amended by the European Economic Area Act 1993 (c. 51).

(c) 1985 c. 6.

(d) Section 265 was amended by section 212(2) of, and paragraph 19 of Schedule 16 to, the Financial Services Act 1986 (c. 60).

(e) Section 266 was amended by section 117(3) of the Finance Act 1988 (c. 39).

**Transitional provision**

4. Section 265(4) of the 1985 Act shall apply in relation to any part of a relevant period (as defined in section 265(5)) which falls before the date of coming into force of these Regulations as if the amendment to that section effected by regulation 2 above had not been made.

7th October 1999

*Kim Howells,*  
Parliamentary Under-Secretary of State for  
Competition and Consumer Affairs,  
Department of Trade and Industry.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend sections 265 and 266 in Part VIII of the Companies Act 1985 (“the 1985 Act”) concerning the distribution of profits of an investment company. The amendments are in further implementation of Article 15.4 of the Second Council Directive 77/91/EEC (O.J. No. L26, 31.1.77, p.1), on the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital.

The Regulations alter the requirements that a public limited company must satisfy in order to qualify as an investment company under section 266 of the 1985 Act, and in order to take advantage of the special rules on distributions by investment companies contained in section 265 of the 1985 Act. Under section 266(2)(c) as amended a company must, to qualify as an investment company, continue to be prohibited by its memorandum or articles of association from distributing capital profits, but that prohibition need no longer extend to distributions of capital profits by redemption or purchase of a company’s own shares under section 160 or 162 of the 1985 Act. Similarly, an investment company will under section 265(4)(b)(i) as amended continue to be prohibited from making a distribution in a relevant accounting period if it has already made a distribution of capital profits in that period, but that requirement has been relaxed to provide that distributions by redemption or purchase of a company’s own shares pursuant to section 160 and 162 will not prevent a section 265 distribution (subject to the transitional provision in regulation 4).

A Regulatory Impact Assessment of these Regulations is available from the Department of Trade and Industry, Company Law and Investigations Directorate, Room 507, 1 Victoria Street, London SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament.

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Profits) Regulations 1999**

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