

2005 No. 2280

COMPANIES

**The Companies Act 1985 (Investment Companies and
Accounting and Audit Amendments) Regulations 2005**

<i>Made</i>	<i>3rd August 2005</i>
<i>Laid before Parliament</i>	<i>15th August 2005</i>
<i>Coming into force</i>	
<i>for the purpose of regulations 13 to 17 in Part 4 and Part 5</i>	<i>5th September 2005</i>
<i>for the purpose of Parts 2 and 3 and regulation 12 in Part 4</i>	<i>1st October 2005</i>

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 upon him by section 2(2) of that Act and by section 257 of the Companies Act 1985^(c), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Companies Act 1985 (Investment Companies and Accounting and Audit Amendments) Regulations 2005.

(2) Regulations 13 to 17 in Part 4 and Part 5 of these Regulations come into force on 5th September, and apply to accounts copies of which are delivered to the registrar of companies on or after that date.

(3) Parts 2 and 3, and regulation 12 in Part 4 come into force on 1st October 2005.

(4) Part 3 and regulation 12 in Part 4 of these Regulations have effect as respects companies' financial years which begin on or after 1st January 2005 and which end on or after 1st October 2005.

(5) In these Regulations, the "1985 Act" means the Companies Act 1985.

(a) S.I. 1999/654.

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

(c) 1985 c.6; section 257 was substituted by section 20 of the Companies Act 1989 (c.40), and amended by section 13 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27).

PART 2

Distributions by investment companies

Other permitted distributions by investment companies

2.—(1) Section 265 of the 1985 Act (other distributions by investment companies)(a) is amended as follows.

(2) In subsection (1)(a), after “liabilities” insert “to creditors”.

(3) In subsection (2)—

(a) after “liabilities” in both places where it occurs insert “to creditors”, and

(b) after “and any provision” insert “for liabilities to creditors”.

PART 3

Adjustment of non-comparable amounts

Adjustment of prior year items in balance sheet and profit and loss account

3. In paragraph 4(2) of Schedule 4 to the 1985 Act (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account)—

(a) for “shall be adjusted” substitute “may be adjusted”, and

(b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

Prior year disclosures in notes to accounts

4. Omit paragraph 58(2) and (3) of Schedule 4 to the 1985 Act (disclosure of corresponding amounts in notes to accounts)(b).

Adjustment of prior year items in small company balance sheet and profit and loss account

5. In paragraph 4(2) of Schedule 8 to the 1985 Act (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of small company)(c)—

(a) for “shall be adjusted” substitute “may be adjusted”, and

(b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

Prior year disclosures in notes to small company accounts prepared for members

6. Omit paragraph 51(2) and (3) of Schedule 8 to the 1985 Act (disclosure of corresponding amounts in notes to small company accounts prepared for members).

Prior year disclosures in notes to small company abbreviated accounts

7. Omit paragraph 9(2) and (3) of Schedule 8A to the 1985 Act (disclosure of corresponding amounts in notes to small company abbreviated accounts delivered to registrar of companies)(d).

(a) Section 265 was amended by section 212(2) of, and paragraph 19 of Schedule 16 to, the Financial Services Act 1986 (c.60), by regulation 2 of S.I. 1999/2770, by article 17 of S.I. 2001/3649, and by regulations 3 and 15 of, and paragraph 23 of Schedule 1 and paragraph 9 of Schedule 7 to, S.I. 2004/2947.

(b) Paragraph 58 was amended by section 4(2) of, and paragraph 10 of Schedule 1 to, the Companies Act 1989.

(c) Schedule 8 was substituted by regulation 2(2) of, and Schedule 1 to, S.I. 1997/220.

(d) Schedule 8A was inserted by regulation 2(3) of, and Schedule 2 to, S.I. 1997/220.

Adjustment of prior year items in balance sheet and profit and loss account of banking companies

8. In paragraph 4(2) of Schedule 9 to the 1985 Act (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of banking companies)(a)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

Prior year disclosures in notes to accounts of banking companies

9. Omit paragraph 47(2) and (3) of Schedule 9 to the 1985 Act (disclosure of corresponding amounts in notes to banking company accounts).

Adjustment of prior year items in balance sheet and profit and loss account of insurance companies

10. In paragraph 3(2) of Schedule 9A to the 1985 Act (requirement to adjust non-comparable corresponding amounts in balance sheet and profit and loss account of insurance companies)(b)—

- (a) for “shall be adjusted” substitute “may be adjusted”, and
- (b) for “particulars of the adjustment and the reasons for it” substitute “particulars of the non-comparability and of any adjustment”.

Prior year disclosures in notes to accounts of insurance companies

11. Omit paragraph 54(2) and (3) of Schedule 9A to the 1985 Act (disclosure of corresponding amounts in notes to insurance company accounts)(c).

PART 4

Small and Medium-sized companies

Special provisions for small companies

12. In section 246(3)(b) of the 1985 Act (special provisions for small companies)(d), before subparagraph (i) insert—

- “(ai)section 231A (disclosure required in notes to annual accounts: particulars of staff);”.

Disapplication of special provisions for small and medium-sized companies

13. In section 247A(1B)(b), for “one or more regulated activities” substitute “a regulated activity”.

(a) Parts 1 to 3 of Schedule 9 were inserted before a re-numbered Schedule 9A by regulation 5(1) of, and Schedule 1 to, S.I. 1991/2705. Part 4 of Schedule 9 was substituted by section 18(3) and (4) of, and Part 4 of Schedule 7 to, the Companies Act 1989.

(b) Parts 1 and 2 of Schedule 9 to the Companies Act 1985 were formed into a new Schedule 9A by regulation 5(1) of S.I. 1991/2705. A new Schedule 9A was substituted by regulation 4 of, and Schedule 1 to, S.I. 1993/3246.

(c) Paragraph 54 was substituted by regulation 14(7) of, and paragraphs 1 and 6 of Schedule 5 to, S.I. 1996/189.

(d) Section 246 was substituted by regulation 2(1) of S.I. 1997/220, and amended by regulation 6(1) of S.I. 1997/570, by regulation 8(1) of S.I. 2000/1430, by regulations 3 and 13(2) of, and paragraph 12 of Schedule 1 to, S.I. 2004/2947 and by regulation 4 of S.I. 2005/1011.

Application of SI 2005/1011, regulation 6

14. Regulation 6 of the Companies Act 1985 (Operating and Financial Review and Directors. Report etc) Regulations 2005 (which amends section 247A of the 1985 Act so as to enable a small company to take advantage of certain exemptions despite being a member of an ineligible group) has effect in relation to a financial year—

- (a) beginning before 1st April 2005 but on or after 1st January 2005, and
- (b) ending on or after 1st October 2005,

as it has effect in relation to a financial year beginning on or after 1st April 2005.

Dormant companies

15. In section 249AA(3)(a) of the 1985 Act (dormant companies)(a), for “one or more regulated activities” substitute “a regulated activity”.

Cases where exemption from audit not available

16. In section 249B(1)(d) of the 1985 Act (cases where exemption from audit not available)(b), after “Act 2000” insert “(other than an appointed representative whose scope of appointment is limited to activities that are not regulated activities for the purposes of this Part: see section 262)”.

Definition of “regulated activity”

17.—(1) In section 262 (minor definitions), at the appropriate place insert—

““regulated activity” has the meaning given by section 744, except that it does not include activities of the kind specified in any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001—

- (a) article 25A (arranging regulated mortgage contracts),
- (b) article 39A (assisting administration and performance of a contract of insurance),
- (c) article 53A (advising on regulated mortgage contracts), or
- (d) article 21 (dealing as agent), article 25 (arranging deals in investments) or article 53 (advising on investments) where the activity concerns relevant investments that are not contractually based investments (within the meaning of article 3 of that Order);”.

(2) In section 262A (index of defined expressions), at the appropriate place insert—

““regulated activity” sections 262 and 744.”

PART 5

Consequential amendments

18. In Schedule 1 to the Limited Liability Partnerships Regulations 2001(c), in the entries relating to sections 247A and 249AA of the 1985 Act, for “one or more regulated activities” in each place where it occurs substitute “a regulated activity”.

Gerry Sutcliffe

Parliamentary Under Secretary of State
Department of Trade and Industry

3rd August 2005

(a) Section 249AA was inserted by regulation 3 of S.I. 2000/1430, and amended by article 13 of S.I. 2001/3649.
(b) Section 249B was inserted by regulation 2 of S.I. 1994/1935, and amended by regulation 10 of S.I. 1996/189, by regulation 3 of S.I. 1997/936 and by regulation 4 of S.I. 2000/1430.
(c) S.I. 2001/1090 as amended by S.I. 2004/355.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the accounting and audit provisions of the Companies Act 1985 (“the 1985 Act”), and also amend the distribution rules for investment companies.

Part 2 of the Regulations (regulation 2) amends section 265 in Part 8 of 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 (Official Journal No. L26/1 of 31st January 1977), 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 amend section 265 to provide that an investment company may make a distribution out of revenue profits if the amount of its assets is at least equal to one and a half times the aggregate of its liabilities to creditors as shown in accounts of the company (previously the references were to “liabilities”). The amendments reflect changes in accounting practice whereby certain shares are to be classified as liabilities in a company’s accounts.

Part 3 of the Regulations (regulations 3 to 11) replaces the requirement in paragraph 4(2) of Schedule 4 to the 1985 Act (and the equivalent requirements in Schedules 8, 8A, 9 and 9A to the 1985 Act) for corresponding amounts in company accounts to be adjusted if not comparable with a discretion to make such adjustments. The requirement derived from the exercise of a Member State option in article 4.4 of Council Directive 78/660/EEC on the annual accounts of certain types of companies (Official Journal No. L222/11 of 14th August 1978). Part 3 of the Regulations also removes the requirements in Schedule 4 and the other accounting Schedules for disclosures of prior year amounts to be given in the notes to the accounts. As a result of changes in accounting practice, the issue of adjustment of non-comparable amounts and of disclosure of corresponding amounts in the notes to the accounts is to be left to accounting standards.

Part 4 of the Regulations (regulations 12 to 17) make amendments to provisions in Part 7 of the 1985 Act concerning small and medium-sized companies consequential on recent legislation. Regulation 12 amends section 246 so that small companies are not required to make the disclosure in section 231A concerning employees. Section 231A was inserted by regulation 3 of, and paragraph 9 of Schedule 1 to, the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947).

Regulations 13 to 17 ensure that small and medium-sized companies which carry out certain activities for which permission is required under Part 4 of the Financial Services and Markets Act 2000 do not cease to be able to take advantage of special accounting and audit exemptions by reason only of carrying on those activities. The activities are defined in regulation 17. Amendments consequential to the amendments made by regulations 13 to 17 are made to the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090) by regulation 18.

Regulation 14 provides for small companies to be able to take earlier advantage of amendments made by regulation 6 of the Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005 (S.I. 2005/1011) to the cases in which the special provisions for small companies do not apply. They will be able to do so for financial years which begin between 1st January and 31st March 2005 (inclusive) and end on or after 1st October 2005.

A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business is available from the Department of Trade and Industry, Corporate Law and Governance Directorate, 1 Victoria Street, London SW1H 0ET (it is also available electronically at www.dti.gov.uk/cld). Copies have also been placed in the libraries of both Houses of Parliament.

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