STATUTORY INSTRUMENTS

2016 No. 1194

FINANCIAL SERVICES AND MARKETS

The Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016

Made - - - -	*7th December 2016*
Laid before Parliament	*8th December 2016*
Coming into force - -	*30th December 2016*

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Companies Act 2006 (Distributions of Insurance Companies) Regulations 2016.

(2) These Regulations come into force on 30th December 2016.

(3) The amendments made by these Regulations have effect for distributions made on or after that date by reference to relevant accounts (within the meaning of section 836 of the Companies Act 2006) prepared for any period ending on or after 1st January 2016.

Amendment to the Companies Act 2006

2.—(1) The Companies Act 2006(**3**) is amended as follows.

(2) In section 830(3) (distributions to be made only out of profits available for the purpose)—

(a) after "832" insert ", 833A"; and

(b) for the words from "etc:" to the end, substitute "and Solvency 2 insurance companies".

(**1**) S.I. 2012/1759.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572).

(**3**) 2006 c. 46. Amendments relevant to these Regulations are set out in subsequent footnotes.

(3) In the italic heading before section 832 (distributions by investment companies out of accumulated revenue profits), at the end, insert "*or Solvency 2 insurance companies*".

(4) After section 833(**4**) (meaning of "investment company"), insert—

"**Distributions by insurance companies authorised under the Solvency 2 Directive**

833A.—(1) This section applies in relation to any authorised insurance company carrying on long-term business that is authorised in accordance with Article 14 of the Solvency 2 Directive.

(2) For the purposes of section 830(2), the realised profit or loss of the company for the period in respect of which its relevant accounts (within the meaning of section 836) are prepared is taken to be the amount given by the formula in subsection (4) (with a positive figure taken to be a realised profit and a negative figure taken to be a realised loss).

(3) But the company's profits available for distribution are limited to an amount that does not exceed its accumulated profits (whether realised or not), so far as not previously utilised by distribution or capitalisation, less its accumulated losses (whether realised or not), so far as not previously written off in a reduction or reorganisation of capital duly made.

(4) The formula is

$$A - L - D$$

,

where—

"A" is the total value of the company's assets;

"L" is the total value of the company's liabilities; and

"D" is the total value of the items within subsection (5) relating to the company;

and, in each case, the value is to be determined as at the date of the company's balance sheet that forms part of the accounts mentioned in subsection (2).

(5) The items within this subsection are—

(a) if the value of shares held by the company in a qualifying investment subsidiary exceeds the value of the consideration given by it for their acquisition, the amount of that excess;

(b) any asset of the company representing a surplus in a defined benefit pension scheme;

(c) if the value of the assets held by the company in a ring-fenced fund exceeds the value of the liabilities incurred by the company in respect of that fund, the amount of that excess;

(d) the amount of any liability of the company in respect of deferred tax shown in the company's balance sheet that relates to any asset within paragraph (a), (b) or (c);

(e) if—

(i) the company has permission under regulation 42 of the Solvency 2 Regulations 2015(**5**) to apply a matching adjustment to a relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of the company's life insurance or reinsurance obligations, and

(**4**) Section 833 has been amended, but the amendments are not relevant to this S.I.
(**5**) S.I. 2015/575.