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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 251**

**Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997**

**Part II**

**Formation Supervision and Control**

*General*

**Investment company with variable capital**

3.—(1) If SIB makes an authorisation order then, immediately upon the coming into effect of the order, a body shall be incorporated (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) Any body incorporated by virtue of paragraph (1) shall be known as an investment company with variable capital.

(3) The name of an investment company with variable capital shall be the name mentioned in the authorisation order made in respect of the company or, if it changes its name in accordance with these Regulations and SIB regulations, by its new name.

**Registration by registrar of companies**

4.—(1) As soon as is reasonably practicable after the coming into effect of the authorisation order in respect of an investment company with variable capital, SIB shall send a copy of the order to the registrar.

(2) The registrar shall, upon receipt of the copy of the authorisation order, forthwith register—

- (a) the instrument of incorporation of the company; and
- (b) the details in relation to the company, its directors and its depositary which are contained in the other papers retained by him under regulation 13(3).

(3) A company shall not carry on any business unless its instrument of incorporation has been registered under paragraph (2).

(4) Schedule 1 (which makes provision with respect to the registration of, and the functions of the registrar of companies in relation to, investment companies with variable capital) shall have effect.

(5) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation which was supplied for the purposes of regulation 9(1)(a).

**Safekeeping of scheme property by depositary**

5.—(1) Subject to paragraph (2), all the scheme property of an investment company with variable capital shall be entrusted for safekeeping to a person appointed for the purpose (“a depositary”).

- (2) Nothing in paragraph (1)—
- (a) shall apply to any scheme property designated for the purposes of this regulation by SIB regulations;
  - (b) shall prevent a depositary from—
    - (i) entrusting to a third party all or some of the assets in its safekeeping; or
    - (ii) in a case falling within head (i), authorising the third party to entrust all or some of those assets to other specified persons.
- (3) Schedule 2 (which makes provision with respect to depositaries of investment companies with variable capital) shall have effect.

### **SIB regulations**

- 6.—(1) SIB’s powers to make regulations under section 81 (constitution and management) and section 85 (publication of scheme particulars) of the 1986 Act<sup>(1)</sup> in relation to authorised unit trust schemes shall be exercisable in relation to investment companies with variable capital—
- (a) for like purposes; and
  - (b) subject to the same conditions.
- (2) In these Regulations any document complying with regulations made by SIB under paragraph (1) for purposes of the like nature as the purposes for which power is conferred by section 85 of the 1986 Act shall be known as a prospectus.

### *Authorisation*

#### **Applications for authorisation**

- 7.—(1) Any application for an authorisation order in respect of an investment company with variable capital shall—
- (a) be made in such manner as SIB may direct;
  - (b) state with respect to each person named in the application as a director of the company the particulars set out in regulation 8;
  - (c) state the corporate name and registered or principal office of the person named in the application as depositary of the company; and
  - (d) contain or be accompanied by such other information as SIB may reasonably require for the purpose of determining the application.
- (2) At any time after receiving an application and before determining it SIB may require the applicant to furnish additional information.
- (3) The directions and requirements given or imposed under paragraphs (1) and (2) may differ as between different applications.
- (4) Any information to be furnished to SIB under this regulation shall, if SIB so requires, be in such form or verified in such manner as it may specify.
- (5) A person commits an offence if—
- (a) for the purposes of or in connection with any application under this regulation; or

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(1) Sections 81 and 85 conferred power to make regulations on the Secretary of State. Most of these powers have been transferred to the Securities and Investment Board by the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991. The regulations made by the Board which are currently in force are The Financial Services (Regulated Schemes) Regulation 1991 (Release 148). The remaining functions of the Secretary of State have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315)

(b) in purported compliance with any requirement imposed on him by or under this regulation; he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(6) A person guilty of an offence under paragraph (5) shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or to both.

### **Particulars of directors**

8.—(1) Subject to paragraph (2), an application for an authorisation order shall contain the following particulars with respect to each person named as director of an investment company with variable capital, that is to say—

- (a) in the case of an individual, his present name, any former name, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him or which have been held by him and his date of birth;
- (b) in the case of a corporation or Scottish firm, its corporate or firm name and the address of its registered or principal office.

(2) It is not necessary for the application to contain particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding the date on which the application is delivered to SIB;
- (b) which is held by a director in a body corporate which is dormant and, if he also held that directorship for any period during those 5 years, which was dormant for the whole of that period; or
- (c) which was held by a director for any period during those 5 years in a body corporate which was dormant for the whole of that period.

(3) For the purposes of paragraph (2), a body corporate is dormant during a period in which no significant transaction occurs; and it ceases to be dormant on the occurrence of such a transaction.

(4) In paragraph (1)(a)—

- (a) “name” means a person’s Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a British title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them;
- (b) the reference to a former names does not include—
  - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title; or
  - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more; or
  - (iii) in the case of a married woman, the name by which she was known previous to the marriage; and
- (c) the reference to directorships is a reference to directorships of any body corporate whether or not incorporated in Northern Ireland.

(5) In paragraph (3) the reference to significant transaction is, in relation to a company within the meaning of Article 2(1) of the 1986 Order, a reference to a significant accounting transaction within the meaning of Article 258(3) of that Order<sup>(2)</sup>.

### **Authorisation**

**9.**—(1) SIB may, on an application duly made in accordance with regulation 7 and after being furnished with all such information as it may require under that regulation, make an order (an “authorisation order”) in respect of a company under these Regulations if—

- (a) it has been furnished with a copy of the proposed company’s instrument of incorporation and a certificate signed by a solicitor to the effect that the instrument of incorporation complies with Schedule 3 and with such of the requirements of SIB regulations as relate to the contents of that instrument of incorporation;
- (b) it appears to SIB that the criteria mentioned in regulation 10 will, on the coming into effect of the authorisation order, be satisfied in respect of the company; and
- (c) it has received a notification under regulation 13(3) from the registrar.

(2) In determining whether the criterion of fitness and propriety mentioned in regulation 10(5) is satisfied in respect of any proposed director of a company, SIB may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the proposed director, for the purposes of the business of the company;
- (b) if the proposed director is a body corporate, to any director, shadow director or controller of the body, to any other body corporate in the same group or to any director, shadow director or controller of any such other body corporate;
- (c) if the proposed director is a partnership, to any of the partners; and
- (d) if the proposed director is an unincorporated association, to any member of the governing body of the association or any officer or controller of the association.

(3) SIB shall inform the applicant of its decision on the application not later than six months after the date on which the application was received.

(4) An authorisation order shall specify the date on which it is to come into effect.

(5) Schedule 3 (which makes provision with respect to the contents, alteration and binding nature of the instrument of incorporation of an investment company with variable capital) shall have effect.

(6) In paragraph (2)(b), “shadow director”, in relation to a body corporate, means any person in accordance with those directions (not being advice given in a professional capacity) the directors of that body are accustomed to act.

### **Criteria for authorisation**

**10.**—(1) The criteria referred to in regulation 9(1)(b) are as follows.

(2) The company and its instrument of incorporation shall comply with the requirements of these Regulations and SIB regulations.

(3) The head office of the company shall be situated in Northern Ireland.

(4) The company shall have at least one director.

(5) The directors of the company shall be fit and proper persons to act as directors of an investment company with variable capital.

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(2) Article 258 was inserted by Article 16 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))

(6) If the company has only one director, that director shall be a body corporate which is an authorised person and which is not prohibited from acting as director of an investment company with variable capital by or under rules under section 48 of the 1986 Act (conduct of business rules)<sup>(3)</sup>, by or under the rules of any recognised self-regulating organisation of which the body corporate is a member or by a prohibition imposed under section 65 of the 1986 Act (restriction of business).

(7) If the company has two or more directors, the combination of their experience and expertise shall be such as is appropriate for the purposes of carrying on the business of the company.

(8) The person appointed as the depositary of the company shall—

- (a) be a body corporate incorporated in the United Kingdom or another EEA State;
- (b) have a place of business in the United Kingdom;
- (c) have its affairs administered in the country in which it is incorporated;
- (d) be an authorised person;
- (e) not be prohibited from acting as depositary, or as trustee of a unit trust, by or under rules under section 48 of the 1986 Act, by or under the rules of any recognised self-regulating organisation of which it is a member or by a prohibition imposed under section 65 of the 1986 Act; and
- (f) be independent of the company and of the persons appointed as directors of the company.

(9) The name of the company shall not be undesirable or misleading.

(10) The aims of the company shall be reasonably capable of being achieved.

(11) The Company shall be an open-ended investment company which meets one or both of the following requirements—

- (a) the rights of participants referred to in paragraph (b)(i) of the definition of open-ended investment company in section 75(8) of the 1986 Act (collective investment schemes: interpretation) are that shareholders are entitled to have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company's instrument of incorporation and SIB regulations; or
- (b) the rights of participants referred to in paragraph (b)(ii) of that definition are that shareholders are able to sell their shares on an investment exchange at a price not significantly different from that mentioned in sub-paragraph (a).

### **Representations against refusal of authorisation**

**11.**—(1) Where SIB proposes to refuse an application for an authorisation order, it shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to refuse the application and giving particulars of the rights conferred by paragraph (2).

(2) A person on whom a notice is served under paragraph (1) may, within 21 days of the date of service, make written representations to SIB and, if desired, oral representations to a person appointed for that purpose by SIB.

(3) SIB shall have regard to any representations made in accordance with paragraph (2) in determining whether to refuse the application.

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(3) Section 48 was amended by section 206 of, and paragraph 2 of Schedule 23 to, the Companies Act 1989 (c. 40); there are other amendments not relevant to these Regulations

## UCITS certificate

12. Where SIB has made an authorisation order in respect of an investment company with variable capital, it may (whether at the same time as the making of that order or afterwards) upon request issue a certificate to the effect that the company complies, or (as the case may be) on the coming into effect of the order will comply, with the conditions necessary for it to enjoy the rights conferred by the UCITS Directive.

### *Registrar's approval of names*

#### **Registrar's approval of names**

13.—(1) Where, in respect of a proposed investment company with variable capital, it appears to SIB that the requirements of sub-paragraphs (a) and (b) of regulation 9(1) are or will be met, SIB shall send the papers mentioned in paragraph (2) to the registrar.

(2) The papers referred to in paragraph (1) are—

- (a) a copy of the instrument of incorporation;
- (b) a statement of the address of the proposed company's head office;
- (c) a statement with respect to each person named in the application as director of the company of the particulars set out in regulation 8; and
- (d) a statement of the corporate name and registered or principal office of the person named in the application for authorisation as the first depository.

(3) The registrar shall retain the papers delivered to him under paragraph (1) and, if it appears to him that the provisions of regulation 14(1) are not contravened in relation to the proposed company, he shall notify SIB to that effect.

(4) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation which was supplied for the purposes of regulation 9(1)(a).

#### **Prohibition on certain names**

14.—(1) An investment company with variable capital shall not have a name that—

- (a) includes any of the following words or expressions, that is to say—
  - (i) limited, unlimited or public limited company; or
  - (ii) European Economic Interest Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations (Northern Ireland) 1989(4);
- (b) includes an abbreviation of any of the words or expressions referred to in sub-paragraph (a); or
- (c) is the same as any other name appearing in the registrar's index of company names.

(2) In determining for the purposes of paragraph (1)(c) whether one name is the same as another, there shall be disregarded—

- (a) the definite article, where it is the first word of the name;
- (b) the following words and expressions where they appear at the end of the name, that is to say—
  - “company”;

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(4) S.R. 1989 No. 216. These Regulations were amended by virtue of section 2(1) of the European Economic Area Act 1993 (c. 51) so that, for any limitation in the Regulations that proceeds by reference to the Communities, there is substituted a corresponding limitation relating to the European Economic Area

“and company”;  
“company limited”;  
“limited”;  
“unlimited”;  
“public limited company”;

“European Economic Interest Grouping” or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations (Northern Ireland) 1989;

“investment company with variable capital”;

(c) abbreviations of any of those words or expressions where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks;

and “and” and “&” are to be taken as the same.

#### *Alterations*

### **SIB approval for certain changes in respect of company**

15.—(1) An investment company with variable capital shall give written notice to SIB of—

- (a) any proposed alteration to the company’s instrument of incorporation;
- (b) any proposed alteration to the company’s prospectus which, if made, would be significant;
- (c) any proposed reconstruction or amalgamation involving the company;
- (d) any proposal to wind up the affairs of the company otherwise than by the court;
- (e) any proposal to replace a director of the company, to appoint any additional director or to decrease the number of directors in post; and
- (f) any proposal to replace the depository of the company.

(2) Any notice given under paragraph (1)(a) shall be accompanied by a certificate signed by a solicitor to the effect that the change in question will not affect the compliance of the instrument of incorporation with Schedule 3 and with such of the requirements of SIB regulations as relate to the contents of that instrument.

(3) Effect shall not be given to any proposal falling within paragraph (1) unless—

- (a) SIB has given its approval to the proposal; or
- (b) three months have elapsed since the date on which the notice was given under paragraph (1) without SIB having notified the company that the proposal is not approved.

(4) A change falling within paragraph (1)(e) shall not be made if any of the criteria set out in regulation 10(4) to (7) and (8)(f) would not be satisfied if the change were made and a change falling within paragraph (1)(f) shall not be made if any of the criteria set out in regulation 10(8) would not be satisfied if the change were made.

#### *Intervention*

### **Revocation of authorisation**

16.—(1) SIB may revoke an authorisation order if it appears to it—

- (a) that any of the requirements for the making of the order are no longer satisfied;

- (b) that it is undesirable in the interests of shareholders, or potential shareholders, of the investment company with variable capital concerned that it should continue to be authorised; or
- (c) without prejudice to sub-paragraph (b), that the company, any of its directors or its depositary—
  - (i) has contravened any relevant provision;
  - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
  - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (5)(a), (c) or (e).
- (2) For the purposes of paragraph (1)(b), SIB may take into account—
  - (a) any matter relating to the company or its depositary;
  - (b) any matter relating to any director or controller of the depositary of the company;
  - (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
  - (d) any matter relating to—
    - (i) any director of the company; or
    - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.
- (3) Before revoking any authorisation order that has come into effect, SIB shall ensure that such steps as are necessary and appropriate to secure the winding up of the company (whether by the court or otherwise) have been taken.
- (4) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.
- (5) In paragraph (1)(c), “relevant provision” means any provision of—
  - (a) the 1986 Act;
  - (b) any rules or regulations made under that Act;
  - (c) these Regulations;
  - (d) SIB regulations; and
  - (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary of such a company, is a member.

### **Representations against revocation**

17.—(1) Where, in respect of an investment company with variable capital, SIB proposes to revoke an authorisation order on any of the grounds set out in regulation 16(1), SIB shall give the company, its depositary and any other person who appears to SIB to be interested written notice of its intention to do so.

(2) A notice under paragraph (1) shall state the reasons for which SIB proposes to revoke the order and give particulars of the rights conferred by paragraph (3).

(3) A person on whom notice is served under paragraph (1) may, within 21 days of service, make written representations to SIB and, if desired, oral representations to a person appointed for that purpose by SIB.

(4) SIB shall have regard to any representations made in accordance with paragraph (3) in determining whether to revoke the authorisation order.



## Directions

18.—(1) SIB may give a direction under this regulation in relation to an investment company with variable capital if it appears to it—

- (a) that any of the requirements for the making of an authorisation order in respect of the company are no longer satisfied;
- (b) that the exercise of the power conferred by this paragraph is desirable in the interests of shareholders, or potential shareholders, of the company; or
- (c) without prejudice to sub-paragraph (b), that the company, any of its directors or its depositary—
  - (i) has contravened any relevant provision;
  - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
  - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (9)(a), (c) or (e).

(2) A direction under this regulation may—

- (a) require the company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (b) in the case of a director of the company who is the person designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5, require that director to cease transfers to or from, or both to and from, his own holding of shares, or of any class of shares, in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (c) in the case of an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with SIB regulations;
- (d) require any director of the company, by such date as is specified in the direction or if no date is specified as soon as practicable, to present a petition to the court to wind up the company;
- (e) require that the affairs of the company be wound up otherwise than by the court.

(3) Subject to paragraph (4), the revocation of an authorisation order in respect of a company shall not affect the operation of any direction under this regulation which is then in force; and a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.

(4) Where a winding up order has been made by the Court, no direction under this regulation shall have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(b), SIB may take into account—

- (a) any matter relating to the company or its depositary;
- (b) any matter relating to any director or controller of the depositary of the company;
- (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
- (d) any matter relating to—
  - (i) any director of the company; or

- (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.

(6) Sections 60 (public statement as to person's misconduct), 61 (injunctions and restitution orders) and 62 (actions for damages) of the 1986 Act shall have effect in relation to a contravention of a direction under this regulation as they have effect in relation to any such contravention as is mentioned in those sections.

(7) SIB may, either of its own motion or on the application of the company or its depositary, withdraw or vary a direction given under this regulation if it appears to SIB that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

(8) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

(9) In paragraph (1)(c) "relevant provision" means any provision of—

- (a) the 1986 Act;
- (b) any rules or regulations made under that Act;
- (c) these Regulations;
- (d) SIB regulations; and
- (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary of such a company, is a member.

### **Notice of directions**

**19.**—(1) The power to give a direction under regulation 18 in relation to an investment company with variable capital shall be exercisable by written notice served by SIB on the company and its depositary, and any such notice shall take effect on such date as is specified in the notice.

(2) If SIB refuses to withdraw or vary a direction on the application of the company concerned or of the depositary of that company, it shall serve the applicant with a written notice of the refusal.

(3) A notice—

- (a) giving a direction or varying it otherwise than on the application of the company concerned or of the depositary of that company; or
- (b) refusing to withdraw or vary a direction on the application of such a person;

shall state the reasons for which the direction was given or varied or, as the case may be, why the application was refused.

(4) SIB may give public notice of a direction given by it under regulation 18 and of any withdrawal or variation of such a direction; and any such notice may, if SIB thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

### **Application to the court**

**20.**—(1) In any case in which SIB has power to give a direction under regulation 18 in relation to an investment company with variable capital, it may apply to the court for an order—

- (a) removing any director of the company; or
- (b) removing the depositary of the company;

and replacing any of them with a person or persons nominated by SIB and appearing to it to satisfy the criteria set out in paragraphs (4) to (7) or, as the case may be, paragraph (8) of regulation 10.

- (2) On the application under this regulation the court may make such order as it thinks fit.
- (3) SIB shall—
  - (a) give written notice of the making of an application under this regulation to—
    - (i) the company concerned;
    - (ii) its depositary; and
    - (iii) where the application seeks the removal of any director of the company, that director; and
  - (b) take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders of the company.

### *Investigations*

#### **Investigations: functions of the Department and SIB**

**21.** In regulations 22 to 24, “relevant authority” means the Department or SIB and, in relation to any investigation carried out by an inspector, means the person who appointed the inspector in question.

#### **Investigations: powers and duties of inspectors**

**22.—**(1) A relevant authority may appoint one or more competent inspectors to investigate and report on the affairs of, or of any director or depositary of, an investment company with variable capital if it appears to the authority that it is in the interests of shareholders of the company to do so or that the matter is of public concern.

(2) An inspector appointed under paragraph (1) to investigate the affairs of, or of any director or depositary of, a company may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or (as the case may be) of the directors, depositary, trustee or operator of,—

- (a) an investment company with variable capital the directors of which include any of the directors of the company whose affairs are being investigated by virtue of that paragraph;
- (b) an investment company with variable capital the directors of which include any of the directors of the depositary whose affairs are being investigated by virtue of that paragraph;
- (c) an investment company with variable capital the depositary of which is—
  - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
  - (ii) the depositary whose affairs are being investigated by virtue of that paragraph;
- (d) an investment company with variable capital the directors of which include—
  - (i) the director whose affairs are being investigated by virtue of that paragraph; or
  - (ii) any director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph;
- (e) a collective investment scheme the manager or operator of which is a director of the company whose affairs are being investigated by virtue of that paragraph;
- (f) a collective investment scheme the trustee of which is—
  - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
  - (ii) the depositary whose affairs are being investigated by virtue of that paragraph; or
- (g) a collective investment scheme the manager or operator of which is—

- (i) the director whose affairs are being investigated by virtue of that paragraph; or
- (ii) a director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph.

(3) Articles 427 and 429 of the 1986 Order<sup>(5)</sup> (production of documents and evidence to inspectors) shall apply in relation to an inspector appointed under this regulation as they apply to an inspector appointed under Article 424 of that Order but with the modifications specified in paragraph (4).

(4) In the provisions applied by paragraph (3)—

- (a) for any reference to a company there shall be substituted a reference to the company, director or depositary under investigation by virtue of paragraph (1);
- (b) any reference to an officer of the company shall include a reference to—
  - (i) any director of the company or depositary under investigation by virtue of paragraph (1); or
  - (ii) where the director under investigation by virtue of that paragraph is a body corporate, any director of that body;
- (c) for any reference to any other body corporate whose affairs are investigated under Article 426(1) of the 1986 Order there shall be substituted a reference to any other investment company with variable capital or collective investment scheme under investigation by virtue of paragraph (2); and
- (d) any reference to an officer of such a body corporate shall include a reference to the depositary and directors of an investment company with variable capital or the trustee and operator of a collective investment scheme.

(5) This regulation and regulations 23 and 24 confer the same powers in relation to a shadow director of an investment company with variable capital as they confer in relation to a director of such a company.

### **Investigations: disclosure**

**23.**—(1) A person shall not under regulation 22 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court except that a lawyer may be required to furnish the name and address of his client.

(2) Nothing in regulation 22 requires a person (except as mentioned in paragraph (3)) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the making of the requirement was authorised by the relevant authority.

(3) Paragraph (2) does not apply where the person owing the obligation of confidence or to whom it is owed is—

- (a) an investment company with variable capital, director or depositary under investigation by virtue of paragraph (1) of regulation 22; or
- (b) an investment company with variable capital, or any other person, under investigation by virtue of paragraph (2) of that regulation.

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(5) Articles 427 and 429 were amended by Article 4 of the Companies (No. 2) (Northern Ireland) Order 1990 [S.I. 1990/1504 \(N.I. 10\)](#)

### **Investigations: supplementary**

**24.**—(1) Where a person claims a lien on a document its production under regulation 22 shall be without prejudice to the lien.

(2) An inspector appointed under regulation 22 may, and if directed by the relevant authority shall, make interim reports to the authority and on the conclusion of his investigation shall make a final report to the authority.

(3) If it appears to the relevant authority that matters have come to light in the course of an inspector's investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, the relevant authority may direct the inspector to take no further steps in the investigation or to take only such steps as are specified in the direction.

(4) Where an investigation is the subject of a direction under paragraph (3), the inspector shall make a final report to the relevant authority only where it directs him to do so.

(5) Each final report shall be written or printed as the relevant authority may direct and the authority may, if it thinks fit—

- (a) furnish a copy, on request and on payment of the prescribed fee—
  - (i) to any director or shareholder, or to the depositary, of a company under investigation by virtue of paragraph (1) of regulation 22;
  - (ii) where a director under investigation by virtue of that paragraph is a body corporate, to any director of that body;
  - (iii) to any director of a depositary under investigation by virtue of that paragraph; or
  - (iv) to any other person whose conduct is referred to in the report; and
- (b) cause the report to be published.

(6) A person who is convicted on a prosecution instituted as a result of an investigation under regulation 22 may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(7) For the purposes of paragraph (6), there shall be treated as expenses of the investigation, in particular, such reasonable sums as the relevant authority may determine in respect of general staff costs and overheads.

(8) The powers in section 205(6) of the 1986 Act (general power to make regulations), as they apply in relation to fees to be prescribed for the purposes of section 94(9) of that Act (investigations in respect of authorised unit trusts etc.), shall be exercisable in relation to fees to be prescribed for the purposes of paragraph (5)(a)—

- (a) for like purposes; and
- (b) subject to the same conditions.

### *Winding up*

#### **Winding up by the court**

**25.**—(1) Where an investment company with variable capital is wound up as an unregistered company under Part VI of the Insolvency (Northern Ireland) Order 1989(7), the provisions of that Order shall apply for the purposes of the winding up with the following modifications.

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(6) Section 205 was substituted by section 206(1) of, and paragraph 18 of Schedule 23 to, the Companies Act 1989 (c. 40) and amended by Article 10(1) of, and paragraph 7 of Schedule 4 to, the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315)

(7) S.I. 1989/2405 (N.I. 19)

(2) A petition for the winding up of an investment company with variable capital may be presented by the depositary of the company as well as by any person authorised under Article 104 or 104A of the Insolvency (Northern Ireland) Order 1989<sup>(8)</sup>, (as those Articles apply by virtue of Part VI of that Order), to present a petition for the winding up of the company.

(3) Where a petition for the winding up of an investment company with variable capital is presented by a person other than SIB—

- (a) that person shall serve a copy of the petition on SIB; and
- (b) SIB shall be entitled to be heard on the petition.

(4) If, before the presentation of a petition for the winding up by the court of an investment company with variable capital as an unregistered company under Part VI of the Insolvency (Northern Ireland) Order 1989, the affairs of the company are being wound up otherwise than by the court—

- (a) Article 109(2) of the Insolvency (Northern Ireland) Order 1989 (commencement of winding up by the High Court) shall not apply; and
- (b) any winding up of the company by the court shall be deemed to have commenced—
  - (i) at the time at which SIB gave its approval to a proposal mentioned in paragraph (1) (d) of regulation 15; or
  - (ii) in a case falling within paragraph (3)(b) of that regulation, on the day next following the end of the three month period mentioned in that paragraph.

#### **Dissolution on winding up by the court**

**26.—**(1) This regulation applies where, in respect of an investment company with variable capital, the registrar receives—

- (a) a notice served for the purposes of Article 146(7) of the Insolvency (Northern Ireland) Order 1989 (final meeting of creditors and vacation of office by liquidator), as that Article applies by virtue of Part VI of that Order; or
- (b) a notice from the official receiver that the winding up by the court of the company is complete.

(2) The registrar shall, on receipt of the notice, forthwith register it; and, subject as follows, at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(4) An appeal to the court lies from any decision of the Department on an application for a direction under paragraph (3).

(5) It is the duty of the person—

- (a) on whose application a direction is given under paragraph (3); or
- (b) in whose favour an appeal with respect to an application for such a direction is determined;

not later than seven days after the giving of the direction, or the determination of the appeal, to deliver to the registrar for registration a copy of the direction or determination.

(6) If a person without reasonable excuse fails to deliver a copy as required by paragraph (5), he is guilty of an offence.

(7) A person guilty of an offence under paragraph (6) is liable, on summary conviction—

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<sup>(8)</sup> Article 104A was inserted by Article 8 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

- (a) to a fine not exceeding £200; and
- (b) on a second or subsequent conviction instead of the penalty set out in sub-paragraph (a), to a fine of £100 for each day on which the contravention is continued.

#### **Dissolution in other circumstances**

27.—(1) Where the affairs of an investment company with variable capital have been wound up otherwise than by the court, SIB shall ensure that, as soon as is reasonably practicable after the winding up is complete, the registrar is sent notice of that fact.

(2) The registrar shall, upon receipt of the notice, forthwith register it; and, subject as follows, at the end of the period of three months beginning with the day of the registration of the notice, the company shall be dissolved.

(3) The court may on the application of SIB or the company make an order deferring the date at which the dissolution of the company is to take effect for such period as the court thinks fit.

(4) It is the duty of the person on whose application an order of the court under paragraph (3) is made to deliver, not later than seven days after the making of the order, to the registrar a copy of the order for registration.

(5) Where any company is dissolved by virtue of paragraph (2), any sum of money (including unclaimed distributions) standing to the account of the company at the date of the dissolution shall on such date as is determined in relation to the dissolution of that company in accordance with SIB regulations, be paid into court.