
STATUTORY INSTRUMENTS

1996 No. 2827

The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996

PART II

FORMATION, SUPERVISION AND CONTROL

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 V of the Insolvency Act 1986⁽¹⁾, the provisions of that Act shall apply for the purposes of the winding up with the following modifications.

(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 section 124 or 124A of the Insolvency Act 1986, (as those sections apply by virtue of Part V of that Act) 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 V of the Insolvency Act 1986, the affairs of the company are being wound up otherwise than by the court—

- (a) section 129(2) of the Insolvency Act 1986 (commencement of winding up by the 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 above; 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 of companies receives—

(1) 1986 c. 45.

- (a) a notice served for the purposes of section 172(8) of the Insolvency Act 1986 (final meeting of creditors and vacation of office by liquidator), as that section applies by virtue of Part V of that Act; 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 Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State 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 Secretary of State thinks fit.

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

(5) Paragraph (3) above does not apply to a case where the winding up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.

(6) It is the duty of the person—

- (a) on whose application a direction is given under paragraph (3) above;
- (b) in whose favour an appeal with respect to an application for such a direction is determined; or
- (c) on whose application an order is made under paragraph (5) above;

not later than seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar of companies for registration a copy of the direction or determination or, in respect of an order, a certified copy of the interlocutor.

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

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

- (a) to a fine not exceeding level 1 on the standard scale; and
- (b) on a second or subsequent conviction, instead of the penalty set out in sub-paragraph (a) above, 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 of companies 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) above is made to deliver, not later than seven days after the making of the order, to the registrar of companies a copy of the order for registration.

(5) Where any company, the head office of which is situated in England and Wales, or Wales, is dissolved by virtue of paragraph (2) above, 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.

(6) Where any company, the head office of which is situated in Scotland, is dissolved by virtue of paragraph (2) above, any sum of money (including unclaimed dividends and unapplied or undistributable balances) standing to the account of the company at the date of the dissolution shall—

- (a) on such date as is determined in relation to the dissolution of that company in accordance with SIB regulations, be lodged in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985⁽²⁾ (interpretation) in the name of the Accountant of the Court; and
- (b) thereafter be treated as if it were a sum of money lodged in such an account by virtue of section 193 of the Insolvency Act 1986 (unclaimed distributions), as that section applies by virtue of Part V of that Act.

(2) 1985 c. 66; the definition of “appropriate bank or institution” was substituted by section 108(1) of, and paragraph 20 of Schedule 6 to, the Banking Act 1987 (c. 22).