
STATUTORY INSTRUMENTS

1996 No. 2827

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

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) above 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 an authorisation order in respect of an investment company with variable capital, SIB shall send a copy of the order to—

- (a) the registrar of companies for England and Wales, if the instrument of incorporation of the company states that the company's head office is to be situated in England and Wales, or that it is to be situated in Wales; or
- (b) the registrar of companies for Scotland, if the instrument of incorporation of the company states that the head office of the company is to be situated in Scotland.

(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 depository which are contained in the other papers retained by him under regulation 13(3) below.

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

(4) Schedule 1 to these Regulations (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) below.

Safekeeping of scheme property by depositary

5.—(1) Subject to paragraph (2) below, 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) above—

- (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 paragraph (i) above, authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 2 to these Regulations (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⁽¹⁾ 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) above 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—

- (a) shall be made in such manner as SIB may direct;
- (b) shall state with respect to each person named in the application as a director of the company the particulars set out in regulation 8 below;
- (c) shall state the corporate name and registered or principal office of the person named in the application as depositary of the company; and
- (d) shall 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.

(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 Investments Board by the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I.1988/738) and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991 (S.I. 1991/1256). The regulations made by the Board which are in force (July 1996) are The Financial Services (Regulated Schemes) Regulations 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).

(3) The directions and requirements given or imposed under paragraphs (1) and (2) above 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
- (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) above 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 the statutory maximum or to both.

Particulars of directors

8.—(1) Subject to paragraph (2) below, 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) above, 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) above—

- (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 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 name 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 Great Britain.

(5) In paragraph (3) above the reference to significant transaction is, in relation to a company within the meaning of section 735(1) of the 1985 Act, a reference to a significant accounting transaction within the meaning of section 250(3) of that Act⁽²⁾.

Authorisation

9.—(1) SIB may, on an application duly made in accordance with regulation 7 above 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 to these Regulations 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 below 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) below from the registrar of companies.

(2) In determining whether the criterion of fitness and properness mentioned in regulation 10(5) below 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 to these Regulations (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) above, “shadow director”, in relation to a body corporate, means any person in accordance with whose directions or instructions (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) above are as follows.

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

(2) Section 250 was substituted by section 14 of the Companies Act 1989 (c. 40).

- (3) The head office of the company must be situated in England and Wales, Wales or Scotland.
- (4) The company must have at least one director.
- (5) The directors of the company must be fit and proper persons to act as directors of an investment company with variable capital.
- (6) If the company has only one director, that director must 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)⁽³⁾, 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 must 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—
 - (a) must be a body corporate incorporated in the United Kingdom or another EEA State;
 - (b) must have a place of business in the United Kingdom;
 - (c) must have its affairs administered in the country in which it is incorporated;
 - (d) must be an authorised person;
 - (e) must 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) must be independent of the company and of the persons appointed as directors of the company.
- (9) The name of the company must not be undesirable or misleading.
- (10) The aims of the company must be reasonably capable of being achieved.
- (11) The company must 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) above.
- (12) In paragraph (8)(a) above, “EEA state” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁴⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁵⁾.

⁽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.

⁽⁴⁾ Cm 2073.

⁽⁵⁾ Cm 2183.

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) below.

(2) A person on whom a notice is served under paragraph (1) above 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) above in determining whether to refuse the application.

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) above are or will be met, SIB shall send the papers mentioned in paragraph (2) below—

- (a) to the registrar of companies for England and Wales, if the instrument of incorporation of the company states that the company's head office is to be situated in England and Wales, or that it is to be situated in Wales; or
- (b) to the registrar of companies for Scotland if the instrument of incorporation of the company states that the head office of the company is to be situated in Scotland.

(2) The papers referred to in paragraph (1) above 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 above; 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) above and if it appears to him that the provisions of regulation 14(1) below 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) above.

Prohibition on certain names

14.—(1) No investment company with variable capital shall 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 their Welsh equivalents (“cyfyngedig”, “anghyfyngedig” and “cwmni cyfyngedig cyhoeddus” respectively); or
 - (ii) European Economic Interest Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989⁽⁶⁾;
- (b) includes an abbreviation of any of the words or expressions referred to in sub-paragraph (a) above; 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) above 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” or its Welsh equivalent (“cwmni”);
 - “and company” or its Welsh equivalent (“a'r cwmni”);
 - “company limited” or its Welsh equivalent (“cwmni cyfyngedig”);
 - “limited” or its Welsh equivalent (“cyfyngedig”);
 - “unlimited” or its Welsh equivalent (“anghyfyngedig”);
 - “public limited company” or its Welsh equivalent (“cwmni cyfyngedig cyhoeddus”);
 - “European Economic Interest Grouping” or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989;
 - “investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyalaf newidiol”);
 - (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 depositary of the company.

(6) S.I. 1989/638. The regulations were amended by virtue of section 2(1) of the European Economic Area Act 1994 (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.

(2) Any notice given under paragraph (1)(a) above 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 to these Regulations 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) above 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) above without SIB having notified the company that the proposal is not approved.

(4) No change falling within paragraph (1)(e) above shall 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 no change falling within paragraph (1)(f) above shall be made if any of the criteria set out in regulation 10(8) above 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) above, 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) below.

(2) For the purposes of paragraph (1)(b) above, 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 above 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) above, “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) above, 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) above shall state the reasons for which SIB proposes to revoke the order and give particulars of the rights conferred by paragraph (3) below.

(3) A person on whom notice is served under paragraph (1) above 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.

(4) SIB shall have regard to any representations made in accordance with paragraph (3) above 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) above, 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) below.
- (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 to these Regulations, 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) below, 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) above, 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 above 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) above, "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 or such a company, is a member.

Notice of directions

19.—(1) The power to give a direction under regulation 18 above 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 above 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.

Applications to the court

20.—(1) In any case in which SIB has power to give a direction under regulation 18 above 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 above.

(2) On an 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 section 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 Secretary of State and SIB

21. In regulations 22 to 24 below, “relevant authority” means the Secretary of State 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) above 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) Sections 434 and 436 of the 1985 Act⁽⁷⁾ (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 section 431 of that Act but with the modifications specified in paragraph (4) below.

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

- (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) above;
- (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) above; 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 section 433(1) of the 1985 Act 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) above; and

(7) Sections 434 and 436 were amended by section 56 of the Companies Act 1989 (c. 40).

(d) any reference to an officer of such a body corporate shall include a reference to the depository 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 below 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 above 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 or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

(2) Nothing in regulation 22 above requires a person (except as mentioned in paragraph (3) below) 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) above 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 depository under investigation by virtue of paragraph (1) of regulation 22 above; or
- (b) an investment company with variable capital, or any other person, under investigation by virtue of paragraph (2) of that regulation.

Investigations: supplementary

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

(2) An inspector appointed under regulation 22 above 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) above, 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 depository, of a company under investigation by virtue of paragraph (1) of regulation 22 above;
 - (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 above 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) above, 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(8) 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) above—

- (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 V of the Insolvency Act 1986(9), 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.

(8) 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 the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(9) 1986 c. 45.

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—

- (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⁽¹⁰⁾ (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.

⁽¹⁰⁾ 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).