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STATUTORY INSTRUMENTS

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**2001 No. 1228**

**The Open-Ended Investment Companies Regulations 2001**

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*Winding up*

**Winding up by the court**

**31.**—(1) Where an open-ended investment company is wound up as an unregistered company under Part V of the 1986 Act, the provisions of that Act apply for the purposes of the winding up with the following modifications.

(2) A petition for the winding up of an open-ended investment company may be presented by the depositary of the company as well as by any person authorised under section 124 (application for winding up) or section 124A<sup>M1</sup> of the 1986 Act (petition for winding up on grounds of public interest), 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 open ended investment company is presented by a person other than the Authority—

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

(4) If, before the presentation of a petition for the winding up by the court of an open-ended investment company as an unregistered company under Part V of the 1986 Act, the affairs of the company are being wound up otherwise than by the court—

- (a) section 129(2) of the 1986 Act (commencement of winding up by the court) is not to apply; and
- (b) any winding up of the company by the court is to be deemed to have commenced—
  - (i) at the time at which the Authority gave its approval to a proposal mentioned in paragraph (1)(d) of regulation 21; or
  - (ii) in a case falling within paragraph (3)(b) of that regulation, on the day following the end of the one-month period mentioned in that paragraph.

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**Marginal Citations**

**M1** Section 124A was inserted by the [Companies Act 1989 \(c. 40\)](#), [section 60\(3\)](#).

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

**32.**—(1) Section 172(8) of the 1986 Act (final meeting of creditors and vacation of office by liquidator), as that section applies by virtue of Part V of that Act (winding up of unregistered companies) has effect, in relation to open-ended investment companies, as if the reference to the registrar of companies was a reference to the Authority.

- (2) Where, in respect of an open-ended investment company, the Authority receives—
- (a) a notice given for the purposes of section 172(8) of the 1986 Act (as aforesaid); or
  - (b) a notice from the official receiver that the winding up, by the court, of the company is complete;

the Authority must, on receipt of the notice, forthwith register it and, subject to the provisions of this regulation, at the end of the period of three months beginning with the day of the registration of the notice, the company is to 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).

(5) Paragraph (3) 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 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);
  - (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);

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 Authority 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), he is guilty of an offence.

- (8) A person guilty of an offence under paragraph (7) 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), to a fine of £100 for each day on which the contravention is continued.

### **Dissolution in other circumstances**

**33.**—(1) Where the affairs of an open-ended investment company have been wound up otherwise than by the court, the Authority must, as soon as is reasonably practicable after the winding up is complete, register that fact and, subject to the provisions of this regulation, at the end of the period of three months beginning with the day of the registration, the company is to be dissolved.

(2) The court may, on the application of the Authority 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.

(3) It is the duty of the company, on whose application an order of the court under paragraph (2) is made, to deliver to the Authority, not later than seven days after the making of the order, a copy of the order for registration.

(4) Where any company, the head office of which is situated in England and Wales, or Wales, is dissolved by virtue of paragraph (1), any sum of money (including unclaimed distributions) standing to the account of the company at the date of the dissolution must on such date as is determined in accordance with FSA rules, be paid into court.

(5) Where any company, the head office of which is situated in Scotland, is dissolved by virtue of paragraph (1), 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 must—

- (a) on such date as is determined in accordance with FSA rules, be lodged in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985<sup>M2</sup> (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 1986 Act (unclaimed dividends (Scotland)), as that section applies by virtue of Part V of that Act.

#### **Marginal Citations**

- M2** 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 \(c. 22\)](#).

**Status:**

Point in time view as at 01/12/2001.

**Changes to legislation:**

There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Cross Heading: Winding up.