
STATUTORY INSTRUMENTS

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 [^{F1}or Part 6 of the 1989 Order], the provisions of that Act [^{F2}or that Order] 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 [^{F3}section 124 of the 1986 Act or Article 104 of the 1989 Order] (application for winding up) or [^{F4}section 124A of that Act or Article 104A of that Order] (petition for winding up on grounds of public interest), as those sections [^{F5}or Articles] apply by virtue of Part V of that Act [^{F6}or Part 6 of that Order], 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 [^{F7}or Part 6 of the 1989 Order], the affairs of the company are being wound up otherwise than by the court—

- (a) [^{F8}section 129(2) of that Act or Article 109(2) of that Order] (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.

Textual Amendments

- F1** Words in reg. 31(1) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011](#) (S.I. 2011/1265), art. 1(2), **Sch. 2 para. 7(a)(i)** (with Sch. 3)
- F2** Words in reg. 31(1) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011](#) (S.I. 2011/1265), art. 1(2), **Sch. 2 para. 7(a)(ii)** (with Sch. 3)

- F3** Words in reg. 31(2) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(b)(i)** (with Sch. 3)
- F4** Words in reg. 31(2) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(b)(ii)** (with Sch. 3)
- F5** Words in reg. 31(2) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(b)(iii)** (with Sch. 3)
- F6** Words in reg. 31(2) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(b)(iv)** (with Sch. 3)
- F7** Words in reg. 31(4) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(c)(i)** (with Sch. 3)
- F8** Words in reg. 31(4)(a) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 7(c)(ii)** (with Sch. 3)

Dissolution on winding up by the court

32.—(1) Section 172(8) of the 1986 Act [^{F9}or Article 146(7) of the 1989 Order] (final meeting of creditors and vacation of office by liquidator), as that section applies by virtue of Part V of that Act [^{F10}or Part 6 of that Order] (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 [^{F11}or Article 146(7) of the 1989 Order] (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.

Textual Amendments

- F9** Words in reg. 32(1) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 8(a)(i)** (with Sch. 3)
- F10** Words in reg. 32(1) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 8(a)(ii)** (with Sch. 3)
- F11** Words in reg. 32(2) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 8(b)** (with Sch. 3)

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 [^{F12}in England and Wales (or Wales) or in Northern Ireland], 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 [^{F13}FCA 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 [^{F13}FCA rules], be lodged in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985 ^{M1} (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.

[^{F14}(6) The duty to deal with a sum of money in accordance with paragraph (4) or (5) does not apply if (or to the extent that) it is transferred to an authorised reclaim fund as orphan monies attributable to a collective scheme investment by virtue of sections 8 to 10 of the Dormant Assets Act 2022 (transfer of eligible amount owing by virtue of a collective scheme investment).]

Textual Amendments

- F12** Words in reg. 33(4) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 9** (with Sch. 3)

Status: Point in time view as at 06/06/2022.

Changes to legislation: There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Cross Heading: Winding up. (See end of Document for details)

- F13** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**
- F14** [Reg. 33\(6\)](#) inserted (6.6.2022) by [Dormant Assets Act 2022 \(c. 5\)](#), s. 34(3), **Sch. 1 para. 4**; [S.I. 2022/582](#), reg. 2

Marginal Citations

- M1** [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 \(c. 22\)](#).

[^{F15}Winding up of a master UCITS

33A.—(1) Paragraphs (2) and (3) apply if a master UCITS is wound up.

(2) If the Authority considers that an open-ended investment company which is a feeder UCITS of the master UCITS may be wound up under section 221 of the 1986 Act, the Authority must present a petition to the Court for the feeder UCITS to be wound up unless one of the conditions referred to in paragraph (4) is satisfied.

(3) If paragraph (2) does not apply, the Authority must require the directors of any open ended investment company which is a feeder UCITS of the master UCITS to submit a proposal under regulation 21 to wind up the affairs of the company unless one of the conditions referred to in paragraph (4) is satisfied.

(4) The conditions set out in paragraphs (2) and (3) are—

- (a) the Authority approves under section 283A of the Act the investment by the feeder UCITS of at least 85% of its assets in units of another UCITS or master UCITS; or
- (b) the Authority approves under regulation 22A an amendment of the instrument of incorporation of the company which would enable it to convert into a [^{F16}UK]UCITS which is not a feeder UCITS.]

Textual Amendments

- F15** Regs. 33A, 33B inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **3(6)**
- F16** Word in [reg. 33A\(4\)\(b\)](#) inserted (31.12.2020) by [The Collective Investment Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/325\)](#), reg. 1(2), **52(10)** (with savings in [S.I. 2019/680](#), reg. 11); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

[^{F15}Merger or division of a master UCITS

33B.—(1) Paragraph (2) applies if a master UCITS—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(2) The Authority must require the directors of any open-ended investment company which is a feeder UCITS of the master UCITS to prepare a proposal to wind up the affairs of the feeder UCITS under regulation 21 unless—

- (a) the Authority approves under section 283A of the Act the investment by the company of at least 85% of its assets in the units of—
 - (i) the master UCITS which results from the merger;
 - (ii) one of the UCITS resulting from the division; or

- (iii) another UCITS or master UCITS; or
- (b) the Authority approves under regulation 22A an amendment of the instrument of incorporation of the company which would enable it to convert into a [^{F17}UK]UCITS which is not a feeder UCITS.]

Textual Amendments

- F15** Regs. 33A, 33B inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **3(6)**
- F17** Word in reg. 33B(2)(b) inserted (31.12.2020) by [The Collective Investment Schemes \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/325\)](#), regs. 1(2), **52(11)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

[^{F18}Winding up of sub-funds

33C.—(1) Save as provided in paragraphs (2) and (3), a sub-fund may be wound up as if it were an open-ended investment company in accordance with the provisions of regulations 31 to 33 provided that the appointment of the liquidator or any provisional liquidator and the powers and duties of the liquidator or any provisional liquidator shall be confined to the sub-fund which is being wound up and its affairs, business and property.

(2) Notwithstanding paragraph (1), sections 226 to 228 of the 1986 Act shall not apply where a sub-fund is wound up in accordance with the provisions of this regulation.

(3) The provisions of Part 5 of the 1986 Act with respect to staying, sisting or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of a sub-fund, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against the umbrella company of that sub-fund, or any of the other sub-funds of that umbrella company, in respect of a liability of that sub-fund.

(4) Notwithstanding regulation 11A(5), a sub-fund shall be treated as if it were a separate legal person for the purposes of winding up.

(5) For the purposes of paragraph (1), in regulations 31 to 33—

- (a) a reference to an open-ended investment company is taken to be a reference to a sub-fund; and
- (b) a reference to a company, save in relation to the term “unregistered company”, is taken to be a reference to a sub-fund.

(6) For the purposes of paragraph (1), in the provisions of the 1986 Act to which reference is made in regulations 31 to 33—

- (a) references to an unregistered company and to a company are taken to be references to a sub-fund;
- (b) a reference to creditors is taken to be a reference to the creditors of a sub-fund; and
- (c) a reference to members is taken to be a reference to the holders of the shares in a sub-fund.

(7) Subject to paragraph (8), regulation 11A(6) shall not apply after the appointment of a liquidator or a provisional liquidator.

(8) Where an order has been made for the winding-up of a sub-fund, no action or proceedings shall be commenced or proceeded with against the umbrella company or the sub-fund in respect of any liability of the sub-fund, except by leave of the court and subject to such terms as the court may impose.]

Status: Point in time view as at 06/06/2022.

Changes to legislation: There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Cross Heading: Winding up. (See end of Document for details)

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Textual Amendments

F18 Reg. 33C inserted (21.12.2011) by [The Open-Ended Investment Companies \(Amendment\) Regulations 2011 \(S.I. 2011/3049\)](#), regs. 1, **3(5)** (with regs. 4-10)

Status:

Point in time view as at 06/06/2022.

Changes to legislation:

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