
STATUTORY INSTRUMENTS

1996 No. 2827

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

PART III

CORPORATE CODE

Operation

Power incidental to carrying on business

47. An investment company with variable capital shall have power to do all such things as are incidental or conducive to the carrying on of its business.

Name to appear in correspondence etc

48.—(1) Every investment company with variable capital shall have its name mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business.

(2) If an officer of a company or a person on the company's behalf signs or authorises to be signed on behalf of the company any cheque or order for money or goods in which the company's name is not mentioned as required by paragraph (1) above he is personally liable to the holder of the cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

Particulars to appear in correspondence etc

49.—(1) Every investment company with variable capital shall have the following particulars mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business, that is to say—

- (a) the company's place of registration;
- (b) the number with which it is registered;
- (c) the address of its head office; and
- (d) the fact that it is an investment company with variable capital.

(2) Where, in accordance with section 705 of the 1985 Act⁽¹⁾ (companies' registered numbers) (as that section has effect by virtue of Schedule 1 to these Regulations), the registrar of companies makes any change of existing registered numbers in respect of any investment company with variable capital then, for a period of three years beginning with the date on which the notification of the change is sent to the company by the registrar, the requirement of paragraph (1)(b) above is satisfied by the use of either the old number or the new.

⁽¹⁾ Section 705 was substituted by section 149 of, and paragraph 14 of Schedule 19 to, the Companies Act 1989 (c. 40).

Contracts: England and Wales

50. Under the law of England and Wales a contract may be made—

- (a) by an investment company with variable capital by writing under its common seal; or
- (b) on behalf of such a company, by any person acting under its authority (whether express or implied);

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an investment company with variable capital.

Execution of documents: England and Wales

51.—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by an investment company with variable capital.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following provisions of this regulation apply whether it does or not.

(4) A document that is signed by at least one director and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director; and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

(7) In paragraph (6) above, “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

Execution of deeds overseas: England and Wales

52.—(1) Under the law of England and Wales an investment company with variable capital may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company’s common seal.

Authentication of documents: England and Wales

53. A document or proceeding requiring authentication by an investment company with variable capital is sufficiently authenticated for the purposes of the law of England and Wales—

- (a) by the signature of a director or other authorised officer of the company; or
- (b) in the case of a director which is a body corporate, if it is executed by that director.

Official seal for share certificates

54.—(1) An investment company with variable capital which has a common seal may have, for use for sealing shares issued by the company and for sealing documents creating or evidencing shares so issued, an official seal which is a facsimile of its common seal with the addition on its face of the word “securities”.

(2) The official seal when duly affixed to a document has the same effect as the company’s common seal.

(3) Nothing in this regulation shall affect the right of an investment company with variable capital registered in Scotland to subscribe such shares and documents in accordance with the Requirements of Writing (Scotland) Act 1995(2).

Personal liability for contracts and deeds

55.—(1) A contract which purports to be made by or on behalf of an investment company with variable capital at a time before the company’s instrument of incorporation has been registered in accordance with regulation 4(2) above shall have effect, subject to any agreement to the contrary, as a contract made with the person purporting to act for the company or as agent for it, and he shall be personally liable on the contract accordingly.

(2) Paragraph (1) above applies—

- (a) to the making of a deed under the law of England and Wales; and
- (b) to the undertaking of an obligation under the law of Scotland;

as it applies to the making of a contract.

(3) If a company enters into a transaction at a time after the authorisation order made in respect of the company has been revoked and the company fails to comply with its obligations in respect of that transaction within 21 days from being called upon to do so, the person who authorised the transaction is liable, and where the transaction was authorised by two or more persons they are jointly and severally liable, to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company’s failure to comply with those obligations.

Exemptions from liability to be void

56.—(1) This regulation applies to any provision, whether contained in the instrument of incorporation of an investment company with variable capital or in any contract with the company or otherwise—

- (a) which exempts any officer of the company or any person (whether or not an officer of the company) employed by the company as auditor from, or indemnifies him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company; or
- (b) which exempts the depositary of the company from, or indemnifies him against, any liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the company.

(2) Except as provided by the following paragraph, any such provision is void.

(3) This regulation does not prevent a company—

- (a) from purchasing and maintaining for any such officer, auditor or depositary insurance against any such liability; or

- (b) from indemnifying any such officer, auditor or depositary against any liability incurred by him—
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted; or
 - (ii) in connection with any application under regulation 57 below in which relief is granted to him by the court.

Power of court to grant relief in certain cases

57.—(1) This regulation applies to—

- (a) any proceedings for negligence, default, breach of duty or breach of trust against an officer of an investment company with variable capital or a person (whether or not an officer of the company) employed by the company as auditor; or
 - (b) any proceedings against the depositary of such a company for failure to exercise due care and diligence in the discharge of his functions in respect of the company.
- (2) If in any proceedings to which this regulation applies it appears to the court hearing the case—
- (a) that the officer, auditor or depositary is or may be liable in respect of the cause of action in question;
 - (b) that, nevertheless, he has acted honestly and reasonably; and
 - (c) that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused from the liability sought to be enforced against him;

the court may relieve him, either wholly or partly, from his liability on such terms as it may think fit.

(3) If any such officer, auditor or depositary has reason to apprehend that any claim will or might be made against him in proceedings to which this regulation applies, he may apply to the court for relief.

(4) The court, on an application under paragraph (3) above, has the same power to relieve the applicant as under this regulation it would have had if it had been a court before which the relevant proceedings against the applicant had been brought.

(5) Where a case to which paragraph (2) above applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that paragraph to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

Punishment for fraudulent trading

58.—(1) If any business of an investment company with variable capital is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment not exceeding a term of two years or to a fine or to both;
- (b) on summary conviction, to imprisonment not exceeding a term of three months or to a fine not exceeding the statutory maximum or to both.

(2) This regulation applies whether or not the company has been, or is in the course of being, wound up (whether by the court or otherwise).

Power to provide for employees on cessation or transfer of business

59.—(1) The powers of an investment company with variable capital include power to make the following provision for the benefit of persons employed or formerly employed by the company, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company.

(2) The power conferred by paragraph (1) above is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue of paragraph (1) above shall only be exercised by the company if sanctioned—

- (a) in a case not falling within sub-paragraph (b) or (c) below, by a resolution of the company in general meeting;
- (b) if so authorised by the instrument of incorporation—
 - (i) in the case of a company that has only one director, by a resolution of that director; and
 - (ii) in any other case, by such resolution of directors as is required by SIB regulations; or
- (c) if the instrument of incorporation requires the exercise of the power to be sanctioned by a resolution of the company in general meeting for which more than a simple majority of the shareholders voting is necessary, by a resolution of that majority;

and in any case after compliance with any other requirements of the instrument of incorporation applicable to the exercise of the power.