
STATUTORY INSTRUMENTS

1996 No. 2827

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

PART III

CORPORATE CODE

Organs

Directors

28.—(1) On the coming into effect of an authorisation order in respect of an investment company with variable capital, the persons named in the application under regulation 7 above as directors of the company shall be deemed to be appointed as its first directors.

(2) Subject to regulations 15 and 20 above, any subsequent appointment as a director of a company shall be made by the company in general meeting; except that the directors of the company may appoint a person to act as director to fill any vacancy until such time as the next following annual general meeting of the company takes place.

(3) Any act of a director is valid notwithstanding—

- (a) any defect that may thereafter be discovered in his appointment or qualifications; or
- (b) that it is afterwards discovered that his appointment had terminated by virtue of any provision contained in SIB regulations which requires a director to retire upon attaining a specified age.

(4) The business of a company shall be managed—

- (a) where a company has only one director, by that director; or
- (b) where a company has more than one director, by the directors but subject to any provision contained in SIB regulations as to the allocation between the directors of responsibilities for the management of the company (including any provision there may be as to the allocation of such responsibility to one or more directors to the exclusion of others).

(5) Subject to the provisions of these Regulations, SIB regulations and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.

Directors to have regard to interests of employees

29.—(1) Without prejudice to the generality of the powers and duties that any director of an investment company with variable capital has apart from this regulation, the matters to which such a director is to have regard in the performance of his functions include the interests of the company's employees in general, as well as its shareholders.

(2) Accordingly, the duty imposed by this regulation on any director of a company is owed by him to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to an investment company with variable capital by its directors.

(3) This regulation applies to a shadow director of an investment company with variable capital as it applies to a director of such a company.

Inspection of directors' service contracts

- 30.**—(1) Every investment company with variable capital shall keep at an appropriate place—
- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract; and
 - (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms.
- (2) All copies and memoranda kept by a company in accordance with paragraph (1) above shall be kept in the same place.
- (3) The following are appropriate places for the purposes of paragraph (1) above—
- (a) the company's head office;
 - (b) the place where the company's register of shareholders is kept; and
 - (c) where any person designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations is a director of the company and is a body corporate, the registered or principal office of that person.
- (4) Every copy and memorandum required by paragraph (1) above to be kept shall be open to the inspection of any shareholder of the company.
- (5) If such an inspection is refused, the court may by order compel an immediate inspection of the copy or memorandum concerned.
- (6) Every copy and memorandum required by paragraph (1) above to be kept shall be made available by the company for inspection by any shareholder at the company's annual general meeting.
- (7) Paragraph (1) above applies to a variation of a director's contract of service as it applies to the contract.

General meetings

- 31.**—(1) Subject to paragraph (2) below, every investment company with variable capital shall in each year hold a general meeting ("annual general meeting") in addition to any other meetings, whether general or otherwise, it may hold in that year.
- (2) If a company holds its first annual general meeting within 18 months of the date on which the authorisation order made by SIB in respect of the company comes into effect, paragraph (1) above shall not require the company to hold any other meeting as its annual general meeting in the year of its incorporation or in the following year.
- (3) Subject to paragraph (2) above, not more than 15 months shall elapse between the date of one annual general meeting of a company and the date of the next.

Capacity of company

- 32.**—(1) The validity of an act done by an investment company with variable capital shall not be called into question on the ground of lack of capacity by reason of anything in these Regulations, SIB regulations or the company's instrument of incorporation.
- (2) Nothing in paragraph (1) above shall affect the duty of the directors to observe any limitations on their powers.

Power of directors and general meeting to bind the company

33.—(1) In favour of a person dealing in good faith, the following powers, that is to say—

- (a) the power of the directors of an investment company with variable capital (whether or not acting as a board) to bind the company, or authorise others to do so; and
- (b) the power of such a company in general meeting to bind the company, or authorise others to do so;

shall be deemed to be free of any limitation under the company’s constitution.

(2) For the purposes of this regulation—

- (a) a person “deals with” a company if he is party to any transaction or other act to which the company is a party;
- (b) subject to paragraph (4) below, a person shall not be regarded as acting in bad faith by reason only of his knowing that, under the company’s constitution, an act is beyond any of the powers referred to in sub-paragraph (a) or (b) of paragraph (1) above; and
- (c) subject to paragraph (4) below, a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The reference in paragraph (1) above to any limitation under the company’s constitution on the powers set out in sub-paragraph (a) or (b) of that paragraph shall include any limitation deriving from these Regulations, from SIB regulations or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

(4) Paragraph (2)(b) and (c) above do not apply where—

- (a) by virtue of a limitation deriving from these Regulations or from SIB regulations, an act is beyond any of the powers referred to in paragraph (1)(a) or (b) above; and
- (b) the person in question—
 - (i) has actual knowledge of that fact; or
 - (ii) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(5) Paragraph (1) above does not affect any liability incurred by the directors or any other person by reason of the directors exceeding their powers.

No duty to enquire as to capacity etc

34. Subject to regulation 33(4)(b)(ii) above, a party to a transaction with an investment company with variable capital is not bound to enquire—

- (a) as to whether the transaction is permitted by these Regulations, SIB regulations or the company’s instrument of incorporation; or
- (b) as to any limitation on the powers referred to in paragraph (1)(a) or (b) of regulation 33 above.

Exclusion of deemed notice

35.—(1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document made available by an investment company with variable capital for inspection; but this does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such enquiries as ought reasonably to be made.

(2) In paragraph (1) above, “document” includes any material which contains information.

Restraint and ratification by shareholders

36.—(1) A shareholder of an investment company with variable capital may bring proceedings to restrain the doing of an act which but for regulation 32(1) above would be beyond the company's capacity.

(2) Paragraph (1) of regulation 33 above does not affect any right of a shareholder of an investment company with variable capital to bring proceedings to restrain the doing of an act which is beyond any of the powers referred to in that paragraph.

(3) No proceedings shall lie under paragraph (1) above in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company; and paragraph (2) above shall not have the effect of enabling proceedings to be brought in respect of any such act.

(4) Any action by the directors of a company—

(a) which, but for paragraph (1) of regulation 32 above, would be beyond the company's capacity; or

(b) which is within the company's capacity but beyond the powers referred to in paragraph (1) (a) of regulation 33 above;

may only be ratified by resolution of the company in general meeting.

(5) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by resolution of the company in general meeting.

(6) Nothing in this regulation affects any power or right conferred by or arising under section 61 (injunctions and restitution orders) or 62 (actions for damages) of the 1986 Act.

Events affecting company status

37.—(1) Where either of the conditions mentioned in paragraph (2) below are satisfied, an investment company with variable capital is not entitled to rely against other persons on the happening of any of the following events, that is to say—

(a) any alteration of the company's instrument of incorporation;

(b) any change among the directors of the company;

(c) as regards service of any document on the company, any change in the situation of the head office of the company; or

(d) the making of a winding up order in respect of the company or, in circumstances in which the affairs of a company are to be wound up otherwise than by the court, the commencement of the winding up.

(2) The conditions referred to in paragraph (1) above are that—

(a) the event in question had not been officially notified at the material time and is not shown by the company to have been known at that time by the other person concerned; and

(b) if the material time fell on or before the 15th day after the date of official notification (or where the 15th day was a non-business day, on or before the next day that was a business day), it is shown that the other person concerned was unavoidably prevented from knowing of the event at that time.

(3) In this regulation "official notification" means the notification in the Gazette by virtue of paragraph 6 of Schedule 1 to these Regulations of any document containing the information referred to in paragraph (1) above and "officially notified" shall be construed accordingly.

Invalidity of certain transactions involving directors

38.—(1) This regulation applies where—

- (a) an investment company with variable capital enters into a transaction to which the parties include any of the following, that is to say—
 - (i) a director of the company; or
 - (ii) any person who is an associate of such a director; and
- (b) in connection with the transaction, the directors of the company (whether or not acting as a board) exceed any limitation on their powers under the company’s constitution.

(2) The transaction is voidable at the instance of the company.

(3) Whether or not the transaction is avoided, any such party to the transaction as is mentioned in paragraph (i) or (ii) of paragraph (1)(a) above, and any director of the company who authorised the transaction, is liable—

- (a) to account to the company for any gain which he has made directly or indirectly by the transaction; and
- (b) to indemnify the company for any loss or damage resulting from the transaction.

(4) Nothing in paragraphs (1) to (3) above shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the company may arise.

(5) The transaction ceases to be voidable if—

- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible; or
- (b) the company is indemnified for any loss or damage resulting from the transaction; or
- (c) rights which are acquired, bona fide for value and without actual notice of the directors concerned exceeding their powers, by a person who is not a party to the transaction would be affected by the avoidance; or
- (d) the transaction is ratified by resolution of the company in general meeting.

(6) A person other than a director of the company is not liable under paragraph (3) above if he shows that at the time the transaction was entered into he did not know that the directors concerned were exceeding their powers.

(7) This regulation does not affect the operation of regulation 33 above in relation to any party to the transaction not within paragraph (i) or (ii) of paragraph (1)(a) above; but where a transaction is voidable by virtue of this regulation and valid by virtue of that regulation in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) For the purposes of this regulation—

- (a) “associate”, in relation to any person who is a director of the company, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of such a subsidiary;
- (b) “transaction” includes any act; and
- (c) the reference in paragraph (1)(b) above to any limitation on directors’ powers under the company’s constitution shall include any limitation deriving from these Regulations, from SIB regulations or from a resolution of the company in general meeting or of a meeting of any class of shareholders.