
STATUTORY INSTRUMENTS

2001 No. 1228

The Open-Ended Investment Companies Regulations 2001

PART III

CORPORATE CODE

Organs

Directors

34.—(1) On the coming into effect of an authorisation order in respect of an open-ended investment company, the persons proposed in the application under regulation 12 as directors of the company are deemed to be appointed as its first directors.

(2) Subject to regulations 21 and 26, any subsequent appointment as a director of a company must be made by the company in general meeting, save that the directors of the company may appoint a person to act as director to fill any vacancy until such time as the next 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 FSA rules which required a director to retire upon attaining a specified age.

(4) The business of a company must 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 FSA rules 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, FSA rules 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

35.—(1) The matters to which a director of an open-ended investment company must have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its shareholders.

(2) The duty imposed by this regulation on a director 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 a company by its directors.

Inspection of directors' service contracts

- 36.**—(1) Every open-ended investment company must 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) must be kept at the same place.
- (3) The following are appropriate places for the purposes of paragraph (1)—
- (a) the company's head office;
 - (b) the place where the company's register of shareholders is kept; and
 - (c) where the designated person 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) to be kept must 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) to be kept must be made available by the company for inspection by any shareholder at the company's annual general meeting.
- (7) Paragraph (1) applies to a variation of a director's contract of service as it applies to the contract.

General meetings

- 37.**—(1) Subject to paragraph (2), every open-ended investment company must 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 the Authority in respect of the company comes into effect, paragraph (1) does 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), not more than 15 months may elapse between the date of one annual general meeting of a company and the date of the next.

Capacity of company

- 38.**—(1) The validity of an act done by an open-ended investment company cannot be called into question on the ground of lack of capacity by reason of anything in these Regulations, FSA rules or the company's instrument of incorporation.
- (2) Nothing in paragraph (1) affects the duty of the directors to observe any limitation on their powers.

Power of directors and general meeting to bind the company

- 39.**—(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 open-ended investment company (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;

are 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), a person is not to 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 paragraph (1)(a) or (b); and
- (c) subject to paragraph (4), a person is presumed to have acted in good faith unless the contrary is proved.

(3) The reference in paragraph (1) to any limitation under the company's constitution on the powers therein set out includes any limitation deriving from these Regulations, from FSA rules or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

(4) Sub-paragraphs (b) and (c) of paragraph (2) do not apply where—

- (a) by virtue of a limitation deriving from these Regulations or from FSA rules, an act is beyond any of the powers referred to in paragraph (1)(a) or (b); 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) 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.

40. Subject to regulation 39(4)(b)(ii), a party to a transaction with an open-ended investment company is not bound to enquire—

- (a) as to whether the transaction is permitted by these Regulations, FSA rules or the company's instrument of incorporation; or
- (b) as to any limitation on the powers referred to in regulation 39(1)(a) or (b).

Exclusion or deemed notice

41. A person is not to be taken to have notice of any matter merely because of its being disclosed in any document made available by an open-ended investment company 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.

Restraint and ratification by shareholders

42.—(1) A shareholder of an open-ended investment company may bring proceedings to restrain the doing of an act which but for regulation 38(1) would be beyond the company's capacity.

(2) Paragraph (1) of regulation 39 does not affect any right of a shareholder of an open-ended investment company 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 may be brought under paragraph (1) 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) does 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 regulation 38(1), would be beyond the company's capacity; or
- (b) which is within the company's capacity but beyond the powers referred to in regulation 39(1)(a);

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

(5) A resolution ratifying such action does not affect any liability incurred by the directors or any other person, relief from any such liability requiring agreement by a separate resolution of the company in general meeting.

(6) Nothing in this regulation affects any power or right conferred by or arising under section 150 (actions for damages) or section 380, 382 or 384 of the Act (injunctions and restitution orders).

Events affecting company status

43.—(1) Where either of the conditions mentioned in paragraph (2) is satisfied, an open-ended investment company is not entitled to rely against other persons on the happening of any of the following events—

- (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) 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 regulation 78) of any document containing the information referred to in paragraph (1) above, and “officially notified” is to be construed accordingly.

Invalidity of certain transactions involving directors

44.—(1) This regulation applies where—

- (a) an open-ended investment company enters into a transaction to which the parties include a director of the company or 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 (1)(a), 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) is to 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;

(b) the company is indemnified for any loss or damage resulting from the transaction;

(c) rights which are acquired, bona fide for value and without actual notice of the directors concerned having exceeded 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) 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 39 in relation to any party to the transaction not within paragraph (1)(a); 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 spouse, child or stepchild (if under 18), employee, partner or any body corporate of which that person is a director; and if that person is a body corporate, any subsidiary undertaking or director of that body corporate (including any director or employee of such subsidiary undertaking);

(b) “transaction” includes any act; and

(c) the reference in paragraph (1)(b) to any limitation on directors’ powers under the company’s constitution includes any limitation deriving from these Regulations, from FSA rules or from a resolution of the company in general meeting or of a meeting of any class of shareholders.