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STATUTORY INSTRUMENTS

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**2001 No. 1228**

The Open-Ended Investment Companies Regulations 2001

PART III

CORPORATE CODE

*Operation*

**Power incidental to carrying on business**

**53.** An open-ended investment company has power to do all such things as are incidental or conducive to the carrying on of its business.

**Name to appear in correspondence etc.**

**54.—(1)** Every open-ended investment company must 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) 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.**

**55.—(1)** Every open-ended investment company must 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—

- (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 regulation 72, the Authority makes any change of existing registered numbers in respect of any open-ended investment company 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 Authority, the requirement of paragraph (1)(b) is, notwithstanding regulation 72(4), satisfied by the use of either the old number or the new.

**Contracts: England and Wales**

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

- (a) by an open-ended investment company by writing under its common seal; or

- (b) on behalf of such a company, by any person acting under its authority (whether expressed 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 such a company.

### **Execution of documents: England and Wales**

**57.**—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by an open-ended investment company.

(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 is to be presumed, unless a contrary intention is proved, to be delivered upon its being executed.

(6) In favour of a purchaser, a document is 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 is deemed to have been delivered upon its being executed.

(7) In paragraph (6), “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**

**58.**—(1) Under the law of England and Wales an open-ended investment company 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**

**59.** A document or proceeding requiring authentication by an open-ended investment company 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**

**60.**—(1) An open-ended investment company 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 affects the right of an open-ended investment company whose head office is in Scotland to subscribe such shares and documents in accordance with the Requirements of Writing (Scotland) Act 1995(1).

### **Personal liability for contracts and deeds**

**61.**—(1) A contract, which purports to be made by or on behalf of an open-ended investment company at a time before the coming into effect of an authorisation order in relation to that company, has 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 is accordingly personally liable under the contract.

(2) Paragraph (1) 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 any 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 of 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**

**62.**—(1) This regulation applies to any provision, whether contained in the instrument of incorporation of an open-ended investment company 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 63 in which relief is granted to him by the court.

**Power of court to grant relief in certain cases**

63.—(1) This regulation applies to—

- (a) any proceedings for negligence, default, breach of duty or breach of trust against an officer of an open-ended investment company or a person (whether or not an officer of the company) employed by the company as auditor; or
- (b) any proceedings against the depository 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 depository 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 depository 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), 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) 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**

64.—(1) If any business of an open-ended investment company 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**

65.—(1) The powers of an open-ended investment company 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) 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) may only be exercised by the company—

(a) in a case not falling within sub-paragraph (b) or (c), if sanctioned 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 FSA rules; 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.