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.

[F1(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 or, if the company does not hold annual general meetings, the directors of the company may appoint a person to act as director**]**

(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.

Textual Amendments

F1 Reg. 34(2) substituted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(3)**

[F2Removal of certain directors by ordinary resolution

34A.—(1) The directors of an open-ended investment company must, on a members' requisition, forthwith proceed duly to convene an extraordinary general meeting of the company and this applies notwithstanding anything in the company's instrument of incorporation.

(2) A members' requisition is a requisition—

(a) by members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting at general meetings of the company; and

(b) which states as the object of the meeting the removal of one or more directors appointed in accordance with regulation 34(2) and which must be signed by the requisitionists and deposited at the registered office of the company.

(3) A company may by ordinary resolution at an extraordinary general meeting convened in accordance with paragraph (1) remove any director or directors appointed in accordance with regulation 34(2).

(4) This regulation is not to be treated as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or as derogating from any power to remove a director which exists apart from this regulation.**]**

Textual Amendments

F2 Reg. 34A inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(4)**

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.

[F3(6) Every copy and memorandum required to be kept by paragraph (1) must be made available, for inspection, by the company at the company's annual general meeting or, if the company does not hold annual general meetings, sent to any shareholder at his request within ten days of the company's receipt of such request.**]**

(7) Paragraph (1) applies to a variation of a director's contract of service as it applies to the contract.

Textual Amendments

F3 Reg. 36(6) substituted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(5)**

General meetings

37.—(1) Subject to paragraph (2) **[**F4and regulation 37A**]**, every open-ended investment company **[**F4incorporated before 6 April 2005**]** 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) **[**F5and regulation 37A**]**, not more than 15 months may elapse between the date of one annual general meeting of a company and the date of the next.

Textual Amendments

F4 Words in reg. 37(1) inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(6)(a)**

F5 Words in reg. 37(3) inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(6)(b)**

[F6Election to dispense with annual general meetings

37A.—(1) The directors of an open-ended investment company may elect to dispense with the holding of an annual general meeting by giving sixty days' written notice to all the company's shareholders.

(2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.**]**

Textual Amendments

F6 Reg. 37A inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(7)**

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, **[**[F7]civil partner,**]** 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.

Textual Amendments

F7 Words in reg. 44(8)(a) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), art. 1, **Sch. 16 para. 5**

Shares

Shares

45.—(1) An open-ended investment company may issue more than one class of shares.

(2) A shareholder may not have any interest in the scheme property of the company.

(3) The rights which attach to each share of any given class are—

(a) the right, in accordance with the instrument of incorporation, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property;

(b) the right, in accordance with the instrument of incorporation, to vote at any general meeting of the company or at any relevant class meeting; and

(c) such other rights as may be provided for, in relation to shares of that class, in the instrument of incorporation of the company.

(4) In respect of any class of shares, the rights referred to in paragraph (3) may, if the company's instrument of incorporation so provides, be expressed in two denominations; and in the case of any such class, one (the "smaller") denomination is to be such proportion of the other (the "larger") denomination as is fixed by the instrument of incorporation.

(5) In respect of any class of shares within paragraph (4), any share to which are attached rights expressed in the smaller denomination is to be known as a smaller denomination share; and any share to which are attached rights expressed in the larger denomination is to be known as a larger denomination share.

(6) In respect of any class of shares, the rights which attach to each share of that class are—

(a) except in respect of a class of shares within paragraph (4), equal to the rights that attach to each other share of that class; and

(b) in respect of a class of shares within that paragraph, equal to the rights that attach to each other share of that class of the same denomination.

(7) In respect of any class of shares within paragraph (4), the rights that attach to any smaller denomination share of that class are to be a proportion of the rights that attach to any larger denomination share of that class and that proportion is to be the same as the proportion referred to in paragraph (4).

Share certificates

46.—(1) Subject to regulations 47 and 48, an open-ended investment company must prepare documentary evidence of title to its shares ("share certificates") as follows—

(a) in respect of any new shares issued by it;

(b) where a shareholder has transferred part only of his holding back to the company, in respect of the remainder of that holding;

(c) where a shareholder has transferred part only of his holding to the designated person, in respect of the remainder of that holding;

(d) where a company has registered a transfer of shares made to a person other than the company or a person designated as mentioned in sub-paragraph (c)—

(i) in respect of the shares transferred to the transferee; and

(ii) in respect of any shares retained by the transferor which were evidenced by any certificate sent to the company for the purposes of registering the transfer;

(e) in respect of any holding of bearer shares for which a certificate evidencing title has already been issued but where the certificate has been surrendered to the company for the purpose of being replaced by two or more certificates which between them evidence title to the shares comprising that holding; and

(f) in respect of any shares for which a certificate has already been issued but where it appears to the company that the certificate needs to be replaced as a result of having been lost, stolen or destroyed or having become damaged or worn out.

(2) A company must exercise due diligence and take all reasonable steps to ensure that certificates prepared in accordance with paragraph (1)(a) to (e) are ready for delivery as soon as reasonably practicable.

(3) Certificates need be prepared in the circumstances referred to in paragraph (1)(e) and (f) only if the company has received—

(a) a request for a new certificate;

(b) the old certificate (if there is one);

(c) such indemnity as the company may require; and

(d) such reasonable sum as the company may require in respect of the expenses incurred by it in complying with the request.

(4) Each share certificate must state—

(a) the number of shares the title to which is evidenced by the certificate;

(b) where the company has more than one class of shares, the class of shares title to which is evidenced by the certificate; and

(c) except in the case of bearer shares, the name of the holder.

(5) Where, in respect of any class of shares, the rights that attach to shares of that class are expressed in two denominations, the reference in paragraph (4)(a) (as it applies to shares of that class) to the number of shares is a reference to the total of—

$$N + \frac{n}{p}$$

(6)In paragraph (5)—

(a)N is the relevant number of the larger denomination shares of the class in question;

(b)n is the relevant number of the smaller denomination shares of that class; and

(c) p is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(7) Nothing in these Regulations is to be taken as preventing the total arrived at under paragraph (5) being expressed on the certificate as a single entry representing the result derived from the formula set out in that paragraph.

(8) In England and Wales, a share certificate specifying any shares held by any person which is—

(a) under the common seal of the company; or

(b) authenticated in accordance with regulation 59;

is prima facie evidence of that person's title to the shares.

(9) In Scotland, a share certificate specifying any shares held by any person which is—

(a) under the common seal of the company; or

(b) subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995 [M1];

is, unless the contrary is shown, sufficient evidence of that person's title to the shares.

Marginal Citations

M1 1995 c. 7.

Exceptions from regulation 46

47.—[F8](1) . . . . . .

(2) Nothing in regulation 46 requires a company to prepare share certificates in the following cases.

(3) Case 1 is any case where the company's instrument of incorporation states that share certificates will not be issued and contains provision as to other procedures for evidencing a person's entitlement to shares.

(4) Case 2 is any case where a shareholder has indicated to the company in writing that he does not wish to receive a certificate.

(5) Case 3 is any case where shares are issued or transferred to the designated person.

(6) Case 4 is any case where shares are issued or transferred to a nominee of a recognised investment exchange who is designated for the purposes of this paragraph in the rules of the investment exchange in question.

Textual Amendments

F8 Reg. 47(1) revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

Bearer shares

48. An open-ended investment company may, if its instrument of incorporation so provides, issue shares ("bearer shares") evidenced by a share certificate, or by any other documentary evidence of title for which provision is made in its instrument of incorporation, which indicates—

(a) that the holder of the document is entitled to the shares specified in it; and

(b) that no entry will be made on the register of shareholders identifying the holder of those shares.

Register of shareholders

49. Schedule 3 to these Regulations makes provision with respect to the register of shareholders of an open-ended investment company.

Power to close register

50.—(1) Subject to paragraph (2), an open-ended investment company may, on giving notice by advertisement in a national newspaper circulating in all the countries in which shares in the company are sold, close the register of shareholders for any time or times not exceeding, in the whole, 30 days in each year.

[F9(2) Paragraph (1) has effect subject to any requirements contained in FSA rules.**]**

Textual Amendments

F9 Reg. 50(2) substituted (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), reg. 1, **Sch. 7 para. 24(b)**

Power of court to rectify register

51.—(1) An application to the court may be made under this regulation if—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of shareholders of an open-ended investment company;

(b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares in the company; or

(c) default is made or unnecessary delay takes place in amending the register so as to reflect the fact of any person having ceased to be a shareholder.

(2) An application under this regulation may be made by the person aggrieved, by any shareholder of the company or by the company itself.

(3) The court may refuse the application or may order rectification of the register of shareholders and payment by the company of any damages sustained by any party aggrieved.

(4) On such an application the court may decide any question necessary or expedient to be decided for rectification of the register of shareholders including, in particular, any question relating to the right of a person who is a party to the application to have his name entered in or omitted from the register (whether the question arises as between shareholders and alleged shareholders or as between shareholders or alleged shareholders on the one hand and the company on the other hand).

Share transfers

52. Schedule 4 to these Regulations makes provision for the transfer of registered and bearer shares in an open-ended investment company.

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 [M2].

Marginal Citations

M2 1995 c. 7.

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 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), 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.

Reports

Reports: preparation

66.—(1) The directors of an open-ended investment company must—

(a) prepare a report ("annual report") for each annual accounting period of the company; and

(b) subject to paragraph (2), prepare a report ("half-yearly report") for each half-yearly accounting period of the company.

(2) Where a company's first annual accounting period is a period of less than 12 months, a half-yearly report need not be prepared for any part of that period.

(3) The directors of a company must lay copies of the annual report before the company in general meeting.

(4) Nothing in this regulation or in regulation 67 prejudices the generality of regulation 6(1).

(5) In this regulation any reference to annual and half-yearly accounting periods of a company is a reference to those periods as determined in relation to that company in accordance with FSA rules.

Reports: accounts

67.—(1) The annual report of an open-ended investment company must, in respect of the annual accounting period to which it relates, contain accounts of the company.

(2) The company's auditors must make a report to the company's shareholders in respect of the accounts of the company contained in its annual report.

(3) A copy of the auditor's report must form part of the company's annual report.

Reports: voluntary revision

68.—(1) If it appears to the directors of an open-ended investment company that any annual report of the company did not comply with the requirements of these Regulations or FSA rules, they may prepare a revised annual report.

(2) Where copies of the previous report have been laid before the company in general meeting or delivered to the Authority, the revisions must be confined to—

(a) the correction of anything in the previous report which did not comply with the requirements of these Regulations or FSA rules; and

(b) the making of any necessary consequential alterations.

Auditors

69. Schedule 5 to these Regulations makes provision with respect to the auditors of open-ended investment companies.

Mergers and divisions

Mergers and divisions

70. Schedule 6 to these Regulations makes provision with respect to mergers and divisions involving open-ended investment companies.

Status:
Point in time view as at 05/12/2005.

Changes to legislation:
There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, PART III.