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STATUTORY INSTRUMENTS

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**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.

[<sup>F1</sup>(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 [<sup>F2</sup>FCA 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 [<sup>F2</sup>FCA 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, [<sup>F2</sup>FCA rules] and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.

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**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)**

**F2** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**

### [<sup>F3</sup>Removal 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 [<sup>F4</sup>at least the required percentage] 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.

[  
<sup>F5</sup>(2A) The required percentage is 10% unless more than twelve months has elapsed since the end of the last general meeting—

- (a) called in pursuance of a members' requisition under this regulation, or
- (b) in relation to which the members of the company had (by virtue of an enactment, the company's instrument of incorporation or otherwise) rights with respect to the circulation of a resolution no less extensive than they would have had if the meeting had been called at their request,

in which case the required percentage is 5%.]

(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

- F3** Reg. 34A inserted (6.4.2005) by [The Open-Ended Investment Companies \(Amendment\) Regulations 2005 \(S.I. 2005/923\)](#), regs. 1, **2(4)**
- F4** Words in reg. 34A(2)(a) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 10(a)** (with Sch. 3)
- F5** Reg. 34A(2A) inserted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 10(b)** (with Sch. 3)

### 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;
  - [<sup>F6</sup>(b) a place that is situated in the part of the United Kingdom in which the company is registered, which has been notified to the Authority as being the company's alternative inspection location.]
- (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.
- [<sup>F7</sup>(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

- F6** Reg. 36(3)(b) substituted for reg. 36(3)(b)(c) (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 11** (with Sch. 3)
- F7** 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) [<sup>F8</sup>and regulation 37A], every open-ended investment company [<sup>F8</sup>incorporated 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) [<sup>F9</sup>and 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

- F8** 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)**
- F9** 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)**

#### [<sup>F10</sup>Election 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

- F10** 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, [<sup>F2</sup>FCA 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.

#### Textual Amendments

- F2** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**

#### 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 [F2FCA 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 [F2FCA 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.

**Textual Amendments**

**F2** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**

**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, [F2FCA 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).

**Textual Amendments**

**F2** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**

**Exclusion or deemed notice**

**<sup>F11</sup>41.** . . . . .

**Textual Amendments**

**F11** Reg. 41 omitted (12.5.2011) by virtue of [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 12** (with Sch. 3)

**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 [F12section 138D] (actions for damages) or section 380, 382 or 384 of the Act (injunctions and restitution orders).

#### Textual Amendments

- F12** Words in [reg. 42\(6\)](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 41\(8\)](#)

#### 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, [<sup>F13</sup>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 [<sup>F2</sup>FCA rules] or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

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**Changes to legislation:** There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Cross Heading: Organs. (See end of Document for details)

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**Textual Amendments**

- F2** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**
- F13** 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**



**Changes to legislation:**

There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Cross Heading: Organs.