

Persons authorised to bind company

40. (1) For the purposes of any question whether a transaction fails to bind a company because of an alleged lack of authority on the part of the person who exercised (or purported to exercise) the company's powers, the following, namely—

- (a) the board of directors of the company; and
- (b) any registered person,

shall each be deemed to have authority to exercise any power of the company and to authorise others to do so.

(2) Subsection (1) applies regardless of any limitations in the company's constitution on the board's authority or a registered person's authority, but subject to subsections (5) and (8).

(3) Subsection (1) is not to be read as preventing the exercise of a company's powers otherwise than by the board, a registered person or a person authorised by the board or by a registered person, where authority for that exercise exists.

(4) Subsection (1) does not affect—

(a) a director's duties (including a director's duty to observe any limitations in the company's constitution on the board's authority), or his or her liability in respect of any breach of those duties; or

(b) any duty arising on the part of any other person concerned in the transaction (including the registered person) or his or her liability in respect of any breach of that duty.

(5) Where a company is purportedly a party to a transaction—

(a) in connection with which the board of directors exceeded limitations in the company's constitution on their authority; and

(b) to which a person referred to in subsection (6) is also a party,
subsection (1) does not apply in favour of the person so referred to.

(6) Each of the following is a person mentioned in subsection (5)(b):

- (a) a director or shadow director of the company or of its holding company;
- (b) a person connected with such a director;

(c) a registered person;

(d) a person connected with a registered person,

and in this subsection references to a person's being connected with—

(i) a director or shadow director are to be read in accordance with section 220; or

(ii) a registered person are to be read in accordance with section 220 as that section is applied by subsection (7).

(7) For the purpose of subsection (6)(ii), section 220 applies as if—

(a) for each reference in subsections (1), (2), (3) and (8) to a director of a company there were substituted a reference to the registered person;

(b) for the first reference and the third reference in subsection (5) to a director of a company there were substituted a reference to the registered person;

(c) the references in subsection (5) to another director or directors included references to one or more other registered persons; and

(d) the reference in subsection (6)(b) to a director included a reference to a registered person.

(8) In subsection (1) “power of the company” does not include—

(a) with reference to any registered person, the power of management referred to in section 39 (5)(a), and

(b) with reference to the board of directors or any registered person, the power referred to in section 39 (5)(b).

(9) Without prejudice to subsection (1), in determining any question whether a person had ostensible authority to exercise any of a company's powers in a given case, no reference may be made to the company's constitution.

(10) In this section a reference—

(a) to limitations in a company's constitution includes a reference to limitations deriving from—

(i) a resolution of the company or of any class of its members; or

(ii) any agreement between the members of the company or of any class of its members;

(b) to a transaction includes a reference to any act or omission.

(11) This section is in addition to, and not in substitution for, the Rule in *Royal British Bank v. Turquand*.