Investor rights in ISAs: what you may not know

by Eric Chalker

Some time ago, Roy Colbran discovered HMRC 'guidance notes for ISA managers' which, if acted upon, would give ISA investors in company shares more control over their investments than seems to have generally been the case. More recently, I became aware that lying behind the 'guidance' are Parliamentary Regulations which actually *oblige* ISA managers to do things that some are still reluctant to do.

It is actually even more interesting than that. There is a body of ISA Regulations going back to 1998. They have been amended 38 times, but I have been assured that the basic rights given to investors have never changed. They have always been as they are now. So for ISA users, Part 9 information rights under the Companies Act have always been irrelevant.

The body responsible for sponsoring The Individual Savings Account Regulations 1998 (SI 1998 No. 1870) and all its amendments, originally the Inland Revenue, is now Her Majesty's Revenue & Customs (HMRC). I have been told that there is no-one now in HMRC who has knowledge of the origin of the Regulations. Indeed, enquiries about them are diverted to the Tax Incentivised Savings Association (TISA), a non-profit body which to all intents and purposes is now the guardian of the Regulations, although HMRC is still the government agency which owns them.

So far as enquiries have been able to discover, the true origin of the ISA Regulations lies in the preceding regulations governing Personal Equity Plans (PEPs). This makes sense and also explains why the ISA Regulations are as helpful as they are to investors, even if their implementation by ISA providers has been, shall we say, somewhat lax.

The introduction of tax-incentivised PEPs was intended to encourage more savers to put their money into equities. This meant that, for the first time, investors would choose which company shares to buy, but would not be the legal owners because in order to prevent abuse of the tax privileges the shares had to be held by a nominee.

One can imagine that, behind the scenes, a debate took place about the consequences of this for the investor, with the outcome being a decision to require the nominees to give PEP investors, should they so wish, the same rights that investors in company shares had always had. After all, PEPs were not simply a means of tax-free saving but, as Wikipedia tells us, were intend-

ed by "*Margaret Thatcher's Conservative government to encourage equity ownership among the wider population."* Equity ownership requires shareholder rights – or their equivalent – if it is to be meaningful. So this is what was provided and these provisions were carried through to the 1998 Regulations when ISAs
replaced PEPs.

What do they say? The answer can be found in Regulation 4(6)(c) and (d), which are there for us to use.

"In relation to a stocks and shares component, and (other) qualifying investments....., the account manager shall, if the account investor so elects, arrange for the account investor to receive a copy of the annual report and accounts to investors by every company, unit trust, open-ended investment company or other entity in which he has account investments."

"In relation to a stocks and shares component and (other) qualifying Investments....., the account manager shall be under an obligation (.... if the account investor so elects) to arrange for the account investor to be able –

(i)to attend any meetings of investors in companies, unit trusts, open -ended investment companies and other entities in which he has investments,

(ii) to vote, and

(iii) to receive, in addition to the (annual report and accounts), any other information issued to investors in (any of the investments mentioned above).

It is clear that the government intended all ISA investors in equities to be enabled to act as shareholders if they so wish. It's the law. All that is required is a single request to the ISA provider and the ISA provider must deliver. However, the Regulations unfortunately say nothing about charges and that is something I am very conscious of in my discussions with the Department of Business Innovation & Skills (BIS) about all aspects of nominee accounts generally. As we all know, when an ISA provider imposes prohibitive charges for doing what the Regulations require it to do, the rights that the government intended us to have become in effect null and void.

There is one other thing. Regulation 4(6)(f) stipulates that, on the instructions of the account investor, all or any part of an ISA account" *shall be transferred to another account manager...."* Now, this says nothing about *withdrawing* investments from an ISA, for which ISA managers like to make charges. The law requires an ISA manager to *transfer* the account or part account. It seems to me that charging to do this, on the basis that it is equivalent to withdrawing investments, is a breach of the Regulations.

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