

L.N. 241 of 2006

COMPANIES ACT
(CAP. 386)

**Companies Act (Investment Companies with Variable
Share Capital) Regulations, 2006**

IN exercise of the powers conferred by sub-article (10) of article 84 of the Companies Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. The title of these regulations is the Companies Act (Investment Companies with Variable Share Capital) Regulations, 2006. Citation.

2. In these regulations, unless the context otherwise requires: Interpretation.

“the Act” means the Companies Act;

“base currency” means the currency in which a class of shares is denominated;

“the Competent Authority” means the Competent Authority under the Investment Services Act; Cap. 370.

“currency” means, in addition to the Maltese lira, any convertible currency in terms of article 186 of the Act;

“fractional share” means a fraction of a whole share in any class of shares issued by a SICAV;

“multi class company” means a SICAV falling within the terms of regulation 5;

“multi fund company” means a SICAV falling within the terms of regulation 7 and such a SICAV may also be referred to as an umbrella company;

“SICAV” means an investment company with variable share capital licensed, recognised, exempted or otherwise regulated in terms of the Investment Services Act.

Fractional shares.

3. (1) A SICAV may, if so authorised by its memorandum of association, issue fractional shares up to such number of decimal places, not being less than three, as shall be specified in the memorandum of association, and under such terms and conditions as may be stipulated therein.

(2) Fractional shares shall be automatically consolidated into a whole share of the same class when the fractional shares held by one shareholder become equal to a whole share.

(3) A fractional share shall carry no voting rights in general meetings of the company.

Company Secretary.

4. Notwithstanding anything contained in the definition of company secretary in article 2, and in sub-article (3) of article 138 of the Act, a SICAV shall, with the written approval of the Competent Authority, appoint to the office of company secretary, any person who may be either an individual or otherwise.

Multi class company.

5. (1) A SICAV may be constituted as a multi class company, if in terms of its memorandum of association, its share capital is, or is capable of being, divided into different classes of shares not constituting any distinct sub-fund.

(2) A multi class company may, with the written approval of the Competent Authority, issue a new class or classes of shares. Such class or classes of shares shall not constitute a distinct sub-fund or sub-funds of the company.

(3) Each class of shares in a multi class company may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) A multi class company may not elect for the segregation of any of its assets and liabilities.

Accounts of multi class companies.

6. (1) A multi class company having its share capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(2) The provisions of sub-regulation (1) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under the Act or by the Competent Authority.

(3) For the purposes of sub-regulations (1) and (2), the conversion from the base currency of a class of shares into the currency in which the annual accounts of the multi class company are to be drawn up shall be in accordance with generally accepted accounting principles.

7. (1) A SICAV may be constituted as a multi fund company, where in terms of its memorandum of association, its share capital is, or is capable of being divided into different classes of shares where one class or a group of classes of shares constitute a distinct sub-fund of the company:

Multi fund companies.

Provided that the initial share capital may or may not be organized in one or more sub-funds in terms of this regulation.

(2) A multi fund company may, with the written approval of the Competent Authority, create and issue a new class or classes of shares which may constitute a new sub-fund or be comprised in an existing sub-fund or sub-funds of the company.

(3) A class or classes of shares constituting a sub-fund in a multi fund company may be denominated in a different currency provided that a class of shares may be denominated only in one currency.

(4) For the purposes of this regulation, a “sub-fund” means the distinct class or classes of shares constituting that sub-fund in a multi fund company to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other sub-funds in the same company.

8. (1) A multi fund company having its share capital denominated in different currencies shall draw up its annual accounts in any one of such currencies.

Accounts of multi fund companies.

(2) The directors of a multi fund company shall maintain proper accounting records of the assets and liabilities of each sub-fund in the base currency of any class of shares constituting that sub-fund.

(3) The provisions of sub-regulation (1) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required under the Act or by the Competent Authority.

(4) For the purposes of sub-regulations (1) and (3), the conversion from the base currency of a class of shares into the currency in which the annual accounts of the multi fund company are to be drawn up shall be in accordance with generally accepted accounting principles.

9. (1) A multi fund company may in its memorandum of association elect to have the assets and liabilities of each sub-fund comprised in that company treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-fund of such company. Where a multi fund company makes the election aforementioned the assets and liabilities of each sub-fund of that multi fund company shall, for all intents and purposes of law be deemed to constitute a patrimony separate from the assets and liabilities of each other sub-fund of such a company.

(2) (a) Save for such proportion of the liabilities of a multi fund company which by virtue of the memorandum of association of the company or by virtue of the terms of issue of the shares constituting a sub-fund are, or are to be attributable to, one or more sub-funds in the proportion established therein, the liabilities incurred in respect of each sub-fund shall be paid out of the assets forming part of its patrimony and the creditors in respect thereof shall have no claim or right of action against the other assets of the company, and the following rules shall apply:

(i) proceedings in relation to the company shall respect the legal status of each sub-fund as a patrimony separate from the assets and liabilities of each other sub-fund of the company in terms of this regulation;

(ii) proceedings under the Act shall apply *mutatis mutandis* to the sub-fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-fund is not a company; and any proceedings in relation to one sub-fund shall not have any effect on the assets of any other sub-fund of the company or of the company itself; and

(iii) where, for the avoidance of doubt, a sub-fund which comprises a separate patrimony in terms of this regulation is being wound up, the liquidator of such sub-fund shall carry out his functions in accordance with the provisions of the Act; and accordingly all the powers of the directors and company secretary in respect solely of that sub-fund shall cease.

(b) "Proceedings" in this regulation refers to any proceedings in terms of Title II of Part V and Part VI of the Act.

(3) When a SICAV is established as a multi fund company and elects to have the assets and liabilities of its sub-funds treated as distinct patrimonies, the memorandum shall provide that the actual value of the paid up share capital of any sub-fund shall be at all times equal to

the value of the assets of any kind of the particular sub-fund after the deduction of such sub-fund's liabilities and this in lieu of what is stated in sub-paragraph (i) of paragraph (c) of sub-article (2) of article 84 of the Act.

(4) The directors of a multi fund company shall hold or cause to be held such separate records, accounts, statements and other documents as may be necessary to evidence the liabilities and assets of each sub-fund as distinct and separate from the assets and liabilities of other sub-funds in the same company.

(5) These regulations shall have effect with respect to sub-funds of multi fund companies established before the coming into effect of these regulations, from the date of issue of the first shares in the class or classes constituting a sub-fund.

10. (1) The provisions of article 73 of the Act shall apply to SICAVs, other than SICAVs licensed by the Competent Authority as Professional Investor Funds, subject to the following variations, conditions and modifications:

Applicability of article 73 to SICAVS.

(a) sub-articles (1), (4) and (7) shall continue to apply thereto;

(b) sub-article (2) shall apply thereto and be read as if for the words therein "transferred to the company within five years from the date the company is authorized to commence business.", there were substituted the words "transferred to the company before the company is authorized to commence business.";

(c) sub-article (3) shall apply thereto and be read as if for the words therein "transferred within five years from the date of the decision to issue shares.", there were substituted the words "transferred to the company not later than the date of the issue of the shares." ;

(d) sub-article (5) shall apply thereto and be read as if for the words therein "correspond at least to the number and nominal value, and, where applicable, to the premium on the shares to be issued for them.", there were substituted the words "at least correspond to the net asset value of the shares to be issued for them."; and

(e) sub-article (6) shall apply and be read as if for the words therein "and in default, the Registrar shall accordingly refuse to register the company or the return of the allotments of the shares

so issued, and, in the latter case, the issue shall be considered null and void.”, there were substituted the words “and in default, the Registrar shall accordingly refuse to register the company and, in the case of a new issue, the issue shall be considered null and void.”.

(2) The provisions of article 73 of the Act shall apply to SICAVs licensed by the Competent Authority as Professional Investor Funds with the following variations, conditions and modifications:

(a) sub-articles (1), (2), (3) and (7) shall continue to apply thereto;

(b) sub-article (4) shall apply thereto and be read as if for the words “by one or more experts who are independent of the company and approved by the Registrar.”, these were substituted the words: “in accordance with Guidelines issued for that purpose by the Competent Authority from time to time.”; and

(c) sub-articles (5) and (6) shall not apply thereto provided that the “report” mentioned therein and in sub-article (4) that the “report” shall be drawn up in such manner and shall contain such particulars as may be required by Guidelines issued for that purpose by the Competent Authority.

Non-applicability of articles 186 and 187(1).

11. The provisions of articles 186 and sub-article (1) of article 187 of the Act shall not apply to SICAVs constituted as multi fund or multi class companies.

Guidelines.

12. For the better carrying out of the provisions of these regulations, the Competent Authority may issue guidelines in terms of paragraph (b) of sub-article (2) of article 6 of the Investment Services Act.

Transitional arrangements.

13. The Competent Authority may issue guidelines in terms of paragraph (b) of sub-article (2) of article 6 of the Investment Services Act, to establish transitional arrangements in relation to SICAVs already set up prior to the coming into force of these regulations and in this regard to impose any relevant conditions and regulate any related documents, as it may deem appropriate.

Repeals L.N. 102 of 1996.

14. The Companies Act (Investment Companies with Variable Share Capital) Regulations, 1996, are hereby repealed.