L.N. 356 of 2002

COMPANIES ACT, (Cap.386)

Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations, 2002

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

Citation and commencement.

1. (1) The title of these regulations is the Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations, 2002 and shall be read and construed as one with the Companies Act (Investment Companies with Variable Share Capital) Regulations, 1996, hereinafter referred to as the "principal regulations".

L.N. 102 of 1996.

(2) These regulations shall come into effect on the 2nd December, 2002.

Amends Regulation 2 of the principal regulations.

2. In regulation 2 of the principal regulations, immediately after the definition of "fractional share", there shall be inserted the following new definition :

" "licensed manager" means a person, company or other entity which is licensed by the competent authority in terms of article 3 of the Investment Services Act, to conduct the management of collective investment schemes;".

Addition of regulation 7 and regulation 8 in the principal regulations.

3. Immediately after regulation 6 of the principal regulations, there shall be added the following new regulations:

Umbrella or multi-class companies.

"7. (1) An umbrella or multi-class company may in its memorandum and articles 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 an umbrella or multi-class company makes the election afore-mentioned the assets and liabilities of each sub-fund of that umbrella or multi-class 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) Save for such proportion of the liabilities of an umbrella or multi-class company which by virtue of the memorandum or articles 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 in the event that such assets are insufficient to discharge the liabilities so incurred, the creditors in respect thereof shall have no claim or right of action against the other assets of the company, and the provisions of any law or regulation in force regulating the insolvency of companies shall not apply.

(3) The directors of an umbrella or multi-class 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.

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

SICAV Companies.

8. (1) A SICAV may appoint as one of its directors or as its sole director a licensed manager.

(2) A SICAV may appoint a licensed manager as its sole director and, where this is done, any reference in any enactment, memorandum or articles of association or other document to directors (or board of directors) shall be construed as a reference to the sole director.

(3) Notwithstanding the provisions of article 137 of the Act a SICAV that has appointed a licensed manager as its sole director, may be established as a public company.

(4) In any case where on the operative date a SICAV does not have a director who, is a licensed manager and on that date, a licensed manager is contractually undertaking the management functions of the SICAV, then, at the expiry of the period of six (6) months from the date on which these regulations come into effect, that licensed manager shall, subject to the acceptance of the licensed manager so to act, be deemed

to have been duly appointed a director of the SICAV in accordance with paragraph (1) of this regulation.

(5) In the event that the appointment of the licensed manager as contemplated in paragraph (4) of this regulation shall require any amendments to the constitutional documents of the SICAV then the licensed manager and the directors of the SICAV shall take such action as may be necessary to put before the next annual general meeting of the members of the SICAV such amendments to the constitutional documents as may be necessary for the purpose of appointing the licensed manager as a director. The amendments put before the general meeting shall only take effect if passed by a resolution taken by such qualified majority, if any, as is contemplated by the constitutional documents of the SICAV for the amendments to take place."

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – 3, Pjazza Kastilja – *Published by the Department of Information – 3, Castille Place*
Mitbugħ fl-Istamperija tal-Gvern – *Printed at the Government Printing Press*

Prezz 6c – *Price 6c*