L.N. 361 of 2008

COMPANIES ACT
(CAP. 386)

Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations, 2008

IN exercise of the powers conferred by article 84(10) of the Companies Act, the Minister of Finance, the Economy and Investment acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title and commencement.

1. (1) The title of these regulations is the Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations, 2008 and shall be read and construed as one with the Companies Act (Investment Companies with Variable Share Capital), 2006 hereinafter referred to as "the principal regulations".

L.N. 241 of 2006, as amended.

(2) These regulations shall come into force upon publication.

Renumbering of regulation 13.

2. Regulation 13 of the principal regulations shall be renumbered as regulation 16 thereof.

Addition of new regulations 13, 14 and 15.

3. Immediately after regulation 12, there shall be added the following new regulations 13,14 and 15:

"Non-applicability of article 120 of the Act.

13. The provisions of article 120 of the Act shall not apply to a SICAV and all notices of transfers or transmissions of securities issued by a SICAV shall be given to the SICAV.

Non-applicability of article 122 of the Act.

14. (1) The provisions of article 122 of the Act shall not apply to a SICAV and the pledge of securities in a SICAV shall be subject to the provisions of this regulation.

(2) Securities may, unless otherwise provided in the memorandum or articles of the SICAV or under the conditions of issue of those securities, be pledged by their holder in favour of any person as security for an obligation. The pledge of securities shall be constituted by means of an

instrument in writing entered into between the pledgor and the pledgee:

Provided that in the case of a private SICAV, securities may not be pledged unless the memorandum or articles of the SICAV specifically so provide.

(3) Notice of the pledge shall be delivered by the pledgor or the pledgee to the SICAV within fourteen days of the granting of the pledge. The pledge of securities shall be recorded in the register of the holders of the respective securities.

(4) The pledge of securities shall be effective in relation to a third party only from the date of the recording of the pledge in the register of the holders of the respective securities referred to in subregulation (3):

Provided that the SICAV shall, upon a request in writing made by a third party who may show an interest therein, disclose whether a pledge of securities has been recorded in the register of the holders of the respective securities, including the name of the pledgor and the pledgee, the amount of securities pledged and the date of the recording of the pledge.

(5) Saving the provisions of subregulation (4), during the existence of a pledge of securities, any transfer or other assignment of the pledged securities made by the pledgor, whether by onerous or gratuitous title, shall be null and void:

Provided that any such transfer or other assignment made with the consent of the pledgee shall be valid and the securities to be transferred or assigned shall continue to be subject to the pledge.

(6) Notwithstanding the provisions of the Civil Code or of the memorandum or articles of the SICAV, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor and the SICAV, the pledgee shall be entitled to -

(i) dispose of the securities which are pledged in his favour; or

(ii) appropriate and acquire the securities himself; or

(iii) request the SICAV to purchase the pledged securitiesin settlement of the debt due to him or of part thereof; and for this purpose, the value of the securities which are pledged shall be their current net asset value:

Provided that in the case of a public SICAV the memorandum or articles of which require any shareholder wishing to transfer shares in the SICAV to offer them on a pre-emptive basis to other shareholders of the SICAV, the pledgee shall be obliged, prior to the exercise of the rights granted by this subregulation, to offer any such shares at their current net asset value to those shareholders, which offer shall be kept open for at least ten working days.

(7) In the case of a private SICAV, any restriction on the transfer of shares by members resulting from the memorandum or articles shall be deemed not to apply to the rights granted to the pledgee in terms of subregulation (6):

Provided that the pledgee shall be obliged, prior to the exercise of the rights granted by subregulation (6), to offer any such shares at their current net asset value to other shareholders of the SICAV in accordance with any pre-emption rights relating to the transfer of shares as laid down in the memorandum or articles of the SICAV, and, failing such pre-emption rights, to all other shareholders of the SICAV in proportion to their holdings, which offer shall be kept open for at least ten working days.

(8) In the exercise of his rights under this regulation, the pledgee shall only dispose of, appropriate and acquire or request the purchase of such number of securities as are needed to raise sufficient proceeds to repay the debt due. All remaining securities shall be released to the pledgor.

(9) It shall be lawful for the parties to an agreement of pledge of securities to agree on the person or persons who shall exercise all the rights belonging to the holder of securities including voting rights and the right to receive income, dividends, interest or any other payments due on such securities:

Provided that, should the agreement between the parties not make provision for such matters, all rights belonging to a holder of securities shall, for the duration of the pledge, be

exercised by the pledgor until such time as he defaults under the agreement of pledge or until the pledgee enforces his security; and in any such case, upon giving notice by a judicial act to the pledgor and the SICAV, all the rights belonging to the pledgor shall immediately become exercisable by the pledgee;

Provided further that, unless the pledgor and the pledgee have otherwise agreed in the pledge agreement and notice thereof has been given to the SICAV, income, dividends, interests or any other payments due on securities which are pledged shall, during such time as the pledge is registered in the register of the holders of the respective securities, be paid by the SICAV to the pledgee who shall appropriate any such amounts received to the interest due on the debt secured by the pledge, and, if there is an excess, to the capital.

(10) Notice of termination of the pledge shall be delivered by the pledgee to the SICAV within fourteen days of the termination of the pledge. The termination of the pledge shall be recorded in the register of the holders of the respective securities.

(11) (a) In the case of a pledge of securities in a public SICAV which securities are listed and traded on a Maltese regulated market and in respect of which arrangements have been made for the maintenance by such regulated market of the relevant register of the holders thereof, the provisions of subregulations (3) to (7) and (10) shall not apply to such listed and traded securities. The following provisions shall apply instead:

(i) the pledgor or the pledgee shall deliver within fourteen days of the granting of the pledge of a listed and traded security a notice of the pledge to the Maltese regulated market, which shall also be served with a notice of termination of the pledge by the pledgee within fourteen days of the termination of the pledge;

(ii) the SICAV whose listed and traded securities have been pledged shall also be notified of the pledge and of its termination within the said periods and the SICAV shall record that fact in the register of the holders of the respective securities;

(iii) such pledge of securities shall be effective in relation to a third party only from the date of delivery of the notice of the pledge to the Maltese regulated market and any transfer or other assignment made therefrom by the pledgor, whether by onerous or gratuitous title, of the pledged securities shall be null and void; and

(iv) the pledgee shall, in the event of a default under the agreement of pledge and upon giving notice by judicial act to the pledgor, the Maltese regulated market and the SICAV, have the securities sold through a person duly licensed under the Investment Services Act. Cap. 370.

(b) In the case of a pledge of securities in a public SICAV which are listed and traded on a regulated market other than a Maltese regulated market, or on an equivalent market in a non-Member State or non-EEA State, the provisions of subarticles (3) to (7) and (10) shall not apply and in the event of a default under the agreement of pledge, the pledgee shall, upon notice in writing to the pledgor and the SICAV have the shares sold through a person duly authorised for this purpose.

(c) References in this regulation to the maintenance by a regulated market including a Maltese regulated market or an equivalent market as referred to in paragraphs (a) and (b) of this regulation of the register of the holders of the respective securities shall be deemed to include a reference to the maintenance of the said register by a duly authorised central securities depositary and the delivery of the notices referred to in this regulation shall be construed accordingly.

Issue of shares at a discount.

15. (1) It shall be lawful for a SICAV licensed by the competent authority as a professional investor fund the units of which are held solely by Qualifying investors or Extraordinary investors as defined by Investment Services Rules issued by the competent authority, to make a discount to an existing member who has committed by written agreement with the SICAV to subscribe for any shares in the SICAV, which discount shall be in consideration for such commitment, provided that -

(a) such discount shall apply exclusively to any outstanding commitment arising under the above mentioned agreement;

(b) authority therefor is given by the memorandum or articles;

(c) the nature of the discount shall be disclosed in the manner required by sub-regulation 3; and

(d) in no event shall the value of such shares issued at a discount, be reduced to below the net asset value at the time the member, to whom the discount is being granted, first subscribed for the shares in terms of the aforementioned agreement.

(2) If shares are issued at a discount which is in excess of that permitted by this regulation, the holder thereof shall be bound to pay the SICAV an amount equal to such excess, with annual interest at the rate of two percentage points over the minimum bid rate set by the European Central Bank for the main re-financing operations of the Eurosystem.

(3) The conditions specified in sub-regulation 1 shall be clearly disclosed in the prospectus and any other offering document issued by the SICAV.

(4) To the extent that these regulations are inconsistent with the provisions of sub-article 9 of article 84 of the Act, these regulations shall prevail.".

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