STATUTORY RULES OF NORTHERN IRELAND

2004 No. 335

FINANCIAL SERVICES

Open-Ended Investment Companies Regulations (Northern Ireland) 2004

Made - - - - 10th August 2004
To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000.

Coming into operation –

For the purposes of regulation 6	*15th September 2004*
For all other purposes	*1st November 2004*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002(**1**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Open-Ended Investment Companies Regulations (Northern Ireland) 2004 and shall come into operation –

(a) for the purposes of regulation 6, on 15th September 2004; and

(b) for all other purposes, on 1st November 2004.

(2) Subject to regulation 20(2)(b), these Regulations have effect in relation to any open-ended investment company which has its head office situated in Northern Ireland.

Interpretation

2.—(1) In these Regulations –

(**1**) 2002 c. 13 (N.I.); *see* section 2 for the definition of "the Department"

"the Act" means the Financial Services and Markets Act 2000(**2**);

"the 1986 Order" means the Companies (Northern Ireland) Order 1986(**3**);

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989(**4**);

"annual general meeting" has the meaning given in regulation 37(1);

"annual report" has the meaning given in regulation 66(1)(a);

"authorisation order" means an order made by the Authority under regulation 14;

"bearer shares" has the meaning given in regulation 48;

"court" means the High Court;

"depositary", in relation to an open-ended investment company, has the meaning given in regulation 5(1);

"the designated person" means the person designated in the company's instrument of incorporation for the purposes of paragraph 3 of Schedule 4;

"FSA rules" means any rules made by the Authority under regulation 6(1);

"larger denomination share" has the meaning given in regulation 45(5);

"officer", in relation to an open-ended investment company, includes a director or any secretary or manager;

"open-ended investment company" means a body incorporated by virtue of regulation 3(1) or a body treated as if it had been so incorporated by virtue of regulation 84(3)(a);

"prospectus" has the meaning given in regulation 6(2);

"relevant provision" means any requirement imposed by or under the Act;

"register of shareholders" means the register kept under paragraph 1(1) of Schedule 3;

"registrar" means the registrar of companies appointed under Article 653 of the 1986 Order;

"scheme property", in relation to an open-ended investment company, means the property subject to the collective investment scheme constituted by the company;

"share certificate" has the meaning given in regulation 46(1);

"smaller denomination" share has the meaning given in regulation 45(5);

"transfer documents" has the meaning given in paragraph 4(3) of Schedule 4;

"the Tribunal" means the Financial Services and Markets Tribunal;

"the UCITS Directive" means the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC)(**5**); and

"umbrella company" means an open-ended investment company whose instrument of incorporation provides for such pooling as is mentioned in section 235(3)(a) of the Act (collective investment schemes) in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another.

(2) In these Regulations any reference to a shareholder of an open-ended investment company is a reference to –

(**2**) 2000 c. 8
(**3**) S.I. 1986/1032 (N.I. 6)
(**4**) S.I. 1989/2405 (N.I. 19)
(**5**) O.J. No. L375, 31.12.1985, p. 3-18, as last amended by European Parliament and Council Directive 2001/107/EC (O.J. No. L41, 13.2.2002, p. 20-34) and European Parliament and Council Directive 2001/108/EC (O.J. No. L41, 13.2.2002, p. 35-42)

(a) the person who holds the share certificate, or other documentary evidence of title relating to that share mentioned in regulation 48; and

(b) the person whose name is entered on the company's register of shareholders in relation to any share other than a bearer share.

(3) In these Regulations, expressions which are also used in the Act have the same meaning as in the Act and expressions which are also used in the 1986 Order have the same meaning as in the 1986 Order.

PART II

FORMATION, SUPERVISION AND CONTROL

General

Open-ended investment company

3.—(1) If the Authority makes an authorisation order then, immediately upon the coming into effect of the order, the body to which the authorisation order relates is to be incorporated as an open-ended investment company (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) The name of an open-ended investment company is the name mentioned in the authorisation order made in respect of the company or, if it changes its name in accordance with these Regulations and FSA rules, its new name.

Registration by the Authority

4.—(1) Upon making an authorisation order under regulation 14, the Authority must forthwith register –

(a) the instrument of incorporation of the company;

(b) a statement of the address of the company's head office;

(c) a statement, with respect to each person named in the application for authorisation as director of the company, of the particulars set out in regulation 13; and

(d) a statement of the corporate name and registered or principal office of the person named in the application for authorisation as the depositary of the company.

(2) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation supplied for the purposes of regulation 14(1)(c).

Safekeeping of scheme property by depositary

5.—(1) Subject to paragraph (2), all the scheme property of an open-ended investment company must be entrusted for safekeeping to a person appointed for the purpose (a depositary).

(2) Nothing in paragraph (1) –

(a) applies to any scheme property designated for the purposes of this regulation by FSA rules;

(b) prevents a depositary from –

(i) entrusting to a third party all or some of the assets in its safekeeping; or

(ii) in a case falling within sub-paragraph (i), authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 1 makes provision with respect to depositaries of open-ended investment companies.

FSA rules

6.—(1) The Authority's powers to make rules under section 247 (trust scheme rules) and section 248 (scheme particulars rules) of the Act in relation to authorised unit trust schemes are, subject to the provisions of these Regulations, exercisable in relation to open-ended investment companies –

(a) for like purposes; and

(b) subject to the same conditions.

(2) In these Regulations any document which a person is required to submit and publish by virtue of rules made by the Authority under paragraph (1) for like purposes to those in section 248 of the Act is referred to as a prospectus.

Modification or waiver of FSA rules

7.—(1) The Authority may, on the application or with the consent of any person to whom any FSA rules apply, direct that all or any of the FSA rules –

(a) are not to apply to him as respects a particular open-ended investment company; or

(b) are to apply to him as respects such a company with such modifications as may be specified in the direction.

(2) The Authority may, on the application or with the consent of an open-ended investment company and its depositary acting jointly, direct that all or any of the FSA rules –

(a) are not to apply to the company; or

(b) are to apply to the company with such modifications as may be specified in the direction.

(3) Section 148(3) to (9) and (11) of the Act (modification or waiver of rules) has effect in relation to a direction under paragraph (1) as it has effect in relation to a direction under section 148(2) of the Act but with the following modifications –

(a) subsection (4)(a) is to be read as if the words by the authorised person were omitted;

(b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in paragraph (1); and

(c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word commercial were omitted.

(4) Section 148(3) to (9) and (11) of the Act has effect in relation to a direction under paragraph (2) as it has effect in relation to a direction under section 148(2) of the Act but with the following modifications –

(a) subsection (4)(a) is to be read as if the words by the authorised person were omitted;

(b) subsections (7)(b), (8) and (11) are to be read as if the reference to the authorised person were a reference to each of the company and its depositary;

(c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word commercial were omitted; and

(d) subsection (9) is to be read as if the reference to the authorised person were a reference to the company and its depositary acting jointly.

Notices: general

8. Subject to the provisions of these Regulations –

(a) section 387 of the Act (warning notices) applies to a warning notice given under any provision of these Regulations in the same way as it applies to a warning notice given under any provision of the Act;

(b) section 388 of the Act (decision notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act;

(c) section 389 of the Act (notices of discontinuance) applies to the discontinuance of the action proposed in a warning notice or the action to which a decision notice relates given under any provision of these Regulations in the same way as it applies to a warning notice or decision notice given under any provision of the Act;

(d) section 390 of the Act (final notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act.

Publication

9. Section 391 of the Act (publication) applies to the notices mentioned in regulation 8 in the same way as it applies to any such notice given under any provision of the Act.

The Authority's procedures

10. Section 395 of the Act (the Authority's procedures) applies to the procedure relating to the Authority's functions in relation to supervisory notices, warning notices and decision notices given under any provision of these Regulations.

The Tribunal

11. Section 133 of the Act (proceedings: general provision) applies to any reference to the Tribunal under these Regulations as it applies to any reference to the Tribunal under the Act.

Authorisation

Applications for authorisation

12.—(1) Any application for an authorisation order in respect of a proposed open-ended investment company –

(a) must be made in such manner as the Authority may direct;

(b) must state with respect to each person proposed in the application as a director of the company the particulars set out in regulation 13;

(c) must state the corporate name and registered or principal office of the person proposed in the application as depositary of the company; and

(d) must contain or be accompanied by such other information as the Authority may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it the Authority may require the applicant to furnish additional information.

(3) Different directions may be given and different requirements imposed in relation to different applications.

(4) Any information to be furnished to the Authority under this regulation must be in such form or verified in such manner as it may specify.