STATUTORY RULES OF NORTHERN IRELAND

1997 No. 251

FINANCIAL SERVICES

Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997

Made - - - -	*22nd May 1997*
Coming into operation	*7th July 1997*

The Department of Economic Development being a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to open-ended collective investment schemes which have as their purpose investment in transferable securities, with the aim of spreading investment risk, of funds raised from the public, in exercise of the powers conferred on it by that section 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 (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997 and shall come into operation on 7th July 1997.

(2) Except for paragraph 7(*b*) of Schedule 1 which has effect in relation to certain collective investment schemes which have head offices in Great Britain, these Regulations shall have effect in relation to any investment company with variable capital which has its head office situated in Northern Ireland.

(**1**) *See*S.I. 1996/266

(**2**) 1972 c. 68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) of the European Communities Act for the purpose of implementing rights, powers, liabilities, obligations and restrictions of the United Kingdom created or arising by or under the agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) as adjusted by the Protocol signed at Brussels on 17th March 1993 (Cm 2183)

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

"the 1986 Order" means the Companies (Northern Ireland) Order 1986(**4**);

"the 1986 Act" means the Financial Services Act 1986(**5**);

"annual general meeting" has the meaning given in regulation 31(1);

"annual report" has the meaning given in regulation 60(1)(*a*);

"authorisation order" means an order made by SIB under regulation 9;

"bearer shares" has the meaning given in regulation 42;

"court", in relation to any proceedings under these Regulations involving an investment company with variable capital which has its head office situated in Northern Ireland, means the High Court;

"the Department" means the Department of Economic Development;

"depositary", in relation to an investment company with variable capital, has the meaning given in regulation 5(1);

"director", in relation to an investment company with variable capital, includes a person occupying in relation to it the position of director (by whatever name called);

"EEA state" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992(**6**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**7**);

"investment company with variable capital" has the meaning given in regulation 3(2);

"larger denomination share" has the meaning given in regulation 39(5);

"officer", in relation to an investment company with variable capital, includes a director or any secretary or manager;

"participating issuer" and "participating security" have the same meaning as in the Uncertificated Securities Regulations 1995(**8**);

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

"register of shareholders" means the register kept under paragraph 1(1) of Schedule 4;

"the registrar" has the same meaning as in Article 2(3) of the 1986 Order;

"scheme property", in relation to an investment company with variable capital, means the property subject to the collective investment scheme constituted by the company;

"shadow director", in relation to an investment company with variable capital, means a person in accordance with those directions or instructions (not being advice given in a professional capacity) the directors of that company are accustomed to act;

"share certificate" has the meaning given in regulation 40(1);

"SIB" means the body known as the Securities and Investments Board(**9**);

(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1986/1032 (N.I. 6)
(**5**) 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315)
(**6**) Cm 2073
(**7**) Cm 2183
(**8**) S.I. 1995/3272
(**9**) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation)

"SIB regulations" means any regulations made by SIB under regulation 6(1);

"smaller denomination share" has the meaning given in regulation 39(5);

"transfer documents" has the meaning given in paragraph 5(3) of Schedule 5;

"transferable securities" has the same meaning as in the UCITS Directive;

"UCITS Directive" means the Council Directive co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC(**10**));

"umbrella company" means an investment company with variable capital whose instrument of incorporation provides for such pooling as is mentioned in subsection (3)(*a*) of section 75 of the 1986 Act (collective investment schemes: interpretation) in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another; and

"uncertificated unit of a security" has the same meaning as in the Uncertificated Securities Regulations 1995.

(3) In these Regulations any reference to a shareholder of an investment company with variable capital is a reference to—

(a) the person who holds the share certificate, or other documentary evidence of title, mentioned in regulation 42; 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.

(4) In these Regulations, any reference to a controller shall be construed in accordance with subsection (5) of section 207 of the 1986 Act (interpretation); and any reference to a manager shall be construed in accordance with subsection (6) of that section.

(5) In these Regulations, expressions which are also used—

(a) in the 1986 Order have the same meaning as in that Order; or

(b) in the 1986 Act have the same meaning as in that Act.

Part II

Formation Supervision and Control

General

Investment company with variable capital

3.—(1) If SIB makes an authorisation order then, immediately upon the coming into effect of the order, a body shall be incorporated (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) Any body incorporated by virtue of paragraph (1) shall be known as an investment company with variable capital.

(No. 2) Order 1988 (S.I. 1988/738), the Companies Act 1989 (Commencement No. 3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991 (S.I. 1991/1256)

(**10**) O.J. No. L375, 31.12.1985, pages 3-18, as amended by Council Directive 88/220/EEC (O.J. No. L100, 19.4.1988, pages 31-32)

(3) The name of an investment company with variable capital shall be 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 SIB regulations, by its new name.

Registration by registrar of companies

4.—(1) As soon as is reasonably practicable after the coming into effect of the authorisation order in respect of an investment company with variable capital, SIB shall send a copy of the order to the registrar.

(2) The registrar shall, upon receipt of the copy of the authorisation order, forthwith register—

(a) the instrument of incorporation of the company; and

(b) the details in relation to the company, its directors and its depositary which are contained in the other papers retained by him under regulation 13(3).

(3) A company shall not carry on any business unless its instrument of incorporation has been registered under paragraph (2).

(4) Schedule 1 (which makes provision with respect to the registration of, and the functions of the registrar of companies in relation to, investment companies with variable capital) shall have effect.

(5) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation which was supplied for the purposes of regulation 9(1)(*a*).

Safekeeping of scheme property by depositary

5.—(1) Subject to paragraph (2), all the scheme property of an investment company with variable capital shall be entrusted for safekeeping to a person appointed for the purpose ("a depositary").

(2) Nothing in paragraph (1)—

(a) shall apply to any scheme property designated for the purposes of this regulation by SIB regulations;

(b) shall prevent 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 head (i), authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 2 (which makes provision with respect to depositaries of investment companies with variable capital) shall have effect.

SIB regulations

6.—(1) SIB's powers to make regulations under section 81 (constitution and management) and section 85 (publication of scheme particulars) of the 1986 Act(**11**) in relation to authorised unit trust schemes shall be exercisable in relation to investment companies with variable capital—

(a) for like purposes; and

(b) subject to the same conditions.

(**11**) Sections 81 and 85 conferred power to make regulations on the Secretary of State. Most of these powers have been transferred to the Securities and Investment Board by the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991. The regulations made by the Board which are currently in force are The Financial Services (Regulated Schemes) Regulation 1991 (Release 148). The remaining functions of the Secretary of State have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315)

(2) In these Regulations any document complying with regulations made by SIB under paragraph (1) for purposes of the like nature as the purposes for which power is conferred by section 85 of the 1986 Act shall be known as a prospectus.

Authorisation

Applications for authorisation

7.—(1) Any application for an authorisation order in respect of an investment company with variable capital shall—

(a) be made in such manner as SIB may direct;

(b) state with respect to each person named in the application as a director of the company the particulars set out in regulation 8;

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

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

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

(3) The directions and requirements given or imposed under paragraphs (1) and (2) may differ as between different applications.

(4) Any information to be furnished to SIB under this regulation shall, if SIB so requires, be in such form or verified in such manner as it may specify.

(5) A person commits an offence if—

(a) for the purposes of or in connection with any application under this regulation; or

(b) in purported compliance with any requirement imposed on him by or under this regulation;

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(6) A person guilty of an offence under paragraph (5) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £5,000 or to both.

Particulars of directors

8.—(1) Subject to paragraph (2), an application for an authorisation order shall contain the following particulars with respect to each person named as director of an investment company with variable capital, that is to say—

(a) in the case of an individual, his present name, any former name, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him or which have been held by him and his date of birth;

(b) in the case of a corporation or Scottish firm, its corporate or firm name and the address of its registered or principal office.

(2) It is not necessary for the application to contain particulars of a directorship—

(a) which has not been held by a director at any time during the 5 years preceding the date on which the application is delivered to SIB;