

Proposed amendments to the Companies Act (Investment Companies with Variable Share Capital) Regulations, 2006

Issue of shares at a discount by a SICAV licensed as a professional investor fund (drawdown)

The purpose of the proposed amendment is to introduce legal provisions to enable certain types of non-retail collective investment schemes set up as SICAVs to effect “drawdowns” on investors` committed funds in return for the issue of units at a price which may be below the net asset value per unit prevailing at the time.

Schemes which adopt this practice usually invest in long-term investments requiring a substantial capital outlay, such as immovable property and infrastructural projects. This practice allows the scheme to obtain commitments from investors who will however only be required to pay the amount committed by way of instalments upon drawdown requests made by the scheme, against the issue of units in the scheme. Drawdown requests will ordinarily be made once the scheme has identified an investment opportunity and the benefit of this practice is to avoid having the scheme maintain idle liquid funds or low-yield short-term investments until an investment opportunity is identified. Once an investment opportunity arises for the scheme, it may call on its investors to pay a part of their committed funds; enabling the scheme to make an investment at relatively short notice and in the knowledge that the necessary funds are always available.

The proposed amendment allows SICAVs licensed a professional investor funds the units of which are held solely by Qualifying investors or Extraordinary investors as defined in the Investment Services Rules for Professional Investor Funds, 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. This is made subject to a number of conditions:

- (a) the discount applies exclusively to any outstanding commitment arising under the agreement;
- (b) granting of the discount must be authorised by the memorandum or articles;
- (c) the nature of the discount and related conditions must be disclosed in the prospectus and any other offering document issued by the SICAV;
- (d) the value of shares issued at a discount cannot be reduced to below the net asset value at the time the member to whom the discount is being granted first subscribed for shares in terms of the agreement.

Finally the new provision will provide that if shares are issued in contravention of the regulation, the holder thereof shall be bound to pay the SICAV an amount equal to the amount of the discount given in excess of that permitted by this regulation, with interest.

The following is the proposed amendment:

“Issue of shares at a discount.

14. (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 -

- (e) such discount shall apply exclusively to any outstanding commitment arising under the above mentioned agreement;
- (f) authority therefore is given by the memorandum or articles;
- (g) the nature of the discount shall be disclosed in the manner required by sub-regulation 3; and
- (h) 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 in contravention of the provisions of this regulation, the holder thereof shall be bound to pay the SICAV an amount equal to the amount of the discount given in excess of that permitted by this regulation, 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.”

Kindly submit any comments by Friday 16th May 2008.