

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation Procedure

Proposals for Recognised Incorporated Cell Companies Regulations

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

Note for Consultation

DRAFT REGULATIONS ON RECOGNISED INCORPORATED CELL COMPANIES IN TERMS OF THE COMPANIES ACT 1994

Reference is made to the subject in caption and to the draft Companies Act (Recognised Incorporated Cell Companies) Regulations, 2011, as attached herewith. The draft Legal Notice is accompanied by a Draft set of Investment Services Rules that will apply to Recognised Incorporated Cell Companies.

The RICC Regulations build on the “cellular” concept, taking into account international developments and setting out a framework for a new type of vehicle in Malta – Recognised Incorporated Cell Companies (“RICCs”). The cellular concept provides for the establishment of a cluster of cell companies group under an incorporated cell company structure. Assets and liabilities are attributed either to the cell company itself, or to a particular separate cell of the cell company.

The launch of the ICC SICAV in February 2011 generated a lot of interest across the fund sector generally with the consequence that the MFSA started receiving enquiries based on business models that due to their particular nature it was not able to entertain under the ICC SICAV regime. Most of the demand revolved around a ‘platform’ model that would involve an ICC providing administrative services to any number of Incorporated Cells licensed as collective investment schemes.

As a result the MFSA is considering introducing a new Recognised ICC framework with a specific set of conditions that will cater for the above mentioned business models. The new framework is being proposed in the form of a legal notice and will be regulated by a separate set of Rules so that it will not be confused with the ICC SICAV regime.

A Recognised Incorporated Cell Company may only provide services of an administrative nature for which it is issued with a Recognition Certificate in terms of article 9A of the Investment Service Act. The services that may be permitted are those listed in the Schedule to the proposed regulations.

The new RICC structure proposed in the draft Regulations provides promoters with a structure that may be used as a vehicle to achieve various objectives including the setting up of a fund platform. Unlike the SICAV ICC, the Recognised Incorporated Cell Company must be established as a limited liability company and may not carry out any licensable activity.

The ICC will require a memorandum of association restricted to the provision of administrative services to its incorporated cells and must be issued with a Recognition Certificate by the MFSA

An RICC may establish an incorporated cell by virtue of a resolution of its board of directors. The RICC framework is structured to allow incorporated cells to migrate in and out of the ICC they share with other incorporated cells and either relocate to another ICC or establish themselves as a separate independent schemes. The RICC itself may also undergo transformations excluding a transformation into a SICAV.

Accordingly one could be able to establish an ICC either as:

[i] a SICAV ICC that operates as a collective investment scheme under a CIS licence in accordance with the Companies Act (SICAV Incorporated Cell Companies) Regulations already in force.

[ii] an RICC that provides purely administrative services to incorporated cells within the platform structure. In this case, the ICC will not have to obtain a CIS Licence. The ICC however will still be required to submit to the Authority an application to obtain a recognition certificate to operate as a pure platform not carrying out any activity amounting to licensable activity.

The following table lists out the main features of the two regimes:

Distinctive Features	ICC SICAV	RICC
Applicable Regulations	Companies Act (SICAV Incorporated Cell Companies) Regulations, 2010	Companies Act (Recognised Incorporated Cell Companies) Regulations 2012
Licensing requirement	The ICC is licensed as a SICAV CIS; Each IC requires a CIS licence under the ISA, independently from the ICC	The ICC requires a Recognition Certificate; Each IC requires a CIS licence under the ISA, independently from the ICC
Activity	The ICC to be formed as a SICAV and operate as a collective investment scheme	No licensable activity allowed. Only administrative services as outlined in the Regulations.
Legal form:		
ICC	SICAV	Limited liability Company
IC	SICAV or investment company with fixed share capital	SICAV or investment company with fixed share capital
Separate legal personality of ICC and Incorporated Cells	yes	yes
Mixed platform	<p>The following mixed use ICCs are allowed:</p> <ul style="list-style-type: none"> • SICAVs/ Closed ended • Listed/ non-listed <p>The following mixed use ICCs are not allowed:</p> <ul style="list-style-type: none"> • UCITS/Non-UCITS/PIFs; • Managed/Self-Managed 	<p>The following mixed use ICCs are allowed:</p> <ul style="list-style-type: none"> • SICAVs/ Closed ended • 3rd party/ Self-managed • Listed/ non-listed <p>The following mixed use ICCs are not allowed:</p> <ul style="list-style-type: none"> • UCITS/Non-UCITS/PIFs
Can ICC issue principal prospectus and IC's issue supplementaries based on it	No – each IC must issue its own prospectus, but IC may adopt principal prospectus issued by the ICC	No – each IC must issue its own prospectus, but IC may base its principal prospectus on standard model provided by the RICC
Can an IC have sub-funds	No – (ICs may function as sub-funds of ICC)	yes
IC: Members on Board of Directors	May be same as ICC. At least on ICC Director to sit on the Board of each IC.	May be same as ICC. At least on ICC Director to sit on the Board of each IC.
Service Providers/ Outsourcing	Would ordinarily be the same as the ICC unless otherwise authorised by the MFSA	Would ordinarily be the same as those identified by the RICC for its ICs and authorised by the MFSA
Allowed transformations	<ul style="list-style-type: none"> • From a non-cellular company into an ICC or into an IC • From an ICC or IC into a non-cellular company • From a segregated multi- 	<ul style="list-style-type: none"> • From a non-cellular company into an RICC or into an IC • From an RICC or IC into a non-cellular company • From a segregated multi-fund company into an IC

	fund company with no sub-funds into an ICC and vice versa <ul style="list-style-type: none"> Segregated multi-fund company with sub-funds into an ICC with ICs 	<ul style="list-style-type: none"> IC into a segregated multi-fund company
IC: registered address	Same as ICC	Same as ICC
Redomiciliation	Yes	Yes
Quoted on the stock exchange	Yes	Yes
Licencing and supervision fees		
ICC	Same as CIS	Same as Fund Administrator
IC	Same as CIS	Same as CIS

Abbreviations

- ICC: Incorporated Cell Company
- IC: Incorporated Cell
- CIS: Collective Investment Scheme licensed under the ISA
- ISA: Investment Services Act
- SICAV: investment company with variable share capital

Consultation Documents

Licence holders and other interested parties are being informed of the circulation of the the following documents

(i) A proposed new Legal Notice titled: Companies Act (Recognised Incorporated Cell Companies) Regulations 2011;

(ii) Investment Services Rules for Recognised Incorporated Cell Companies – Parts A and B; and

Interested parties are kindly asked to submit any comments which they may have in relation to the aforementioned documents in writing, to Dr Emaliese Lofaro – Regulatory Development Unit on elofaro@mfsa.com.mt by not later than 30th November 2011. We thank you for your cooperation.

Background Q & A Document

A background Q and A Document is being circulated along with the consultation documents for background information purposes only.

Communications Unit
Malta Financial Services Authority
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