Companies Act (SICAV Incorporated Cell Companies) Regulations 2010

Summary

A SICAV may be formed as an incorporated cell company and may establish sub-funds in the form of incorporated cells. It is possible to continue a scheme from abroad as an incorporated cell company in Malta, irrespective of whether the Scheme abroad is already an incorporated cell company or a normal SICAV company. Maltese regulations also permit the continuation of a foreign incorporated cell as an incorporated cell in Malta and the continuation of Maltese incorporated cell companies in another foreign jurisdiction.

The Memorandum of the incorporated cell company shall state that it is an incorporated cell company and the name of the company shall also include the expression “Incorporated Cell Company” or “ICC”.

The cells in an incorporated cell company may be established by a Board of Directors Resolution:

1. Approving the name of the incorporated cell being established;
2. Approving the Memorandum and Articles of Association of the incorporated cell
3. Authorising the subscription by the incorporated cell company of a share or shares in the incorporated cell.

The Memorandum and Articles of Association shall be entered into by the incorporated cell company (irrespective of whether it will subscribe to shares in the incorporated cell) and persons subscribing to shares in the incorporated cell.

The incorporated cell may not own shares in its incorporated cell company and this must be clearly stated in the Memorandum and Articles of Association. However such incorporated cell may own shares in other incorporated cells of its incorporated cell company. The name of the incorporated cell shall include the expression “Incorporated Cell”.

An incorporated cell is a **limited liability company with separate legal personality**. It is not a subsidiary of its incorporated cell company, although it may be constructed as such. An incorporated cell may not itself be an incorporated cell company or a segregated multi-fund company. It may be either a SICAV or an INVCO and shall at all times have the same registered office of the incorporated cell company.

The Directors are responsible to ensure that the assets and liabilities of the incorporated cell company are kept separate from the assets and liabilities of its incorporated cells. This also applies to assets and liabilities of incorporated cells within the same incorporated cell company.
An incorporated cell company cannot enter into transactions on behalf of its incorporated cell and vice-versa. The Directors shall ensure that it is clearly identified whether a particular transaction is entered into by the incorporated cell company or by one of its incorporated cells.

Where there is reference to the company, the directors, the Memorandum and Articles of Association, the members, the shares, the assets and liabilities and the share capital of a company in the Companies Act or the Investment Services Act, such reference shall also apply to incorporated cell companies and incorporated cells.

The company secretary of an incorporated cell company and of an incorporated cell may be a body corporate (unlike in normal companies where it must be an individual). Furthermore, an incorporated cell may have its incorporated cell company as its only member.

An incorporated cell company and an incorporated cell shall each submit an annual return. The financial statements of an incorporated cell shall not be consolidated with those of the incorporated cell company or of other incorporated cells except when the incorporated cell is a subsidiary of the incorporated cell company and only to such extent. The Director’s report of the incorporated cell company shall also include the names and registration numbers of all of its incorporated cells.

It is possible to convert existing SICAVs, being single funds or multi-funds, into incorporated cell companies, provided that there is the approval of the Board of Directors and the prior written approval of the MFSA. It is also possible to convert an existing multi-class Scheme into an incorporated cell under an existing incorporated cell company. The Regulations permit the relocation of an incorporated cell from one incorporated cell company to another.

for more information regarding the above, please contact us on +356 25693000 or info@dglawfirm.com.mt

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