

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on the Companies Act (Recognised Incorporated Cell Companies) Regulations And Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells

INTRODUCTION

The Authority would like to draw your attention to the following:

L.N. 119 of 2012 cited as The Companies Act (Recognised Incorporated Cell Companies) Regulations was issued in the Government Gazette on 17th April 2012. The Regulations are supplemented by a set of MFSA Investment Services Rules. The new Investment Services Rules for Recognised Incorporated Cell Companies and Incorporated Cells have been incorporated within already existing frameworks as follows:

- *Investment Services Rules for Recognised Persons:*

New Part AIII – Application Process for Recognised Incorporated Cell Companies (RICCs)

New Schedule III – Application form for RICCs

New Part BIII – On-going Recognition Requirements for RICCs including inter alia organisational requirements, conduct of business rules, compliance and outsourcing rules.

- *Investment Services Rules for Professional Investor Funds:*

New Section 6 to Appendix 1 of Part B relating to the Supplementary Standard Licence Conditions for PIFS providing supplementary conditions for Professional Investor Funds established as Incorporated Cells under a Recognised Incorporated Cell Company.

- *Investment Services Rules for Retail Collective Investment Schemes:*

New Section 17 to Part B I of these Rules which is applicable to Malta Based Non-UCITs Schemes and New Section 22 to Part BII of these Rules which is applicable to Maltese UCITS Schemes providing supplementary conditions for Non-UCITs and UCITS schemes established as Incorporated Cells under a Recognised Incorporated Cell Company

BACKGROUND

The Regulations continue to build on the “cellular” concept developed under Maltese legislation in recent years while taking into account international developments in the structuring of investment funds in Malta. The launch of the ICC SICAV in February 2011 had generated significant 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 said regime. Most of the demand revolved around a ‘platform’ type of model that would involve an incorporated cell company providing standardised administrative services to any number of Incorporated Cells licensed as collective investment schemes. These services, however, do not amount to the type of fund administration services that would normally require the engagement of a Recognised Fund Administrator, but deal mainly with routine contractual matters and start-up support. This type of model is now addressed in the new, RICC-specific Regulations. The activities carried out by a Recognised Incorporated Cell Company (“RICC”) differ from those of an ICC SICAV since the latter would also be licensed to carry out investment activity.

OVERVIEW OF THE RICC FRAMEWORK

The new RICC framework introduces a specific set of conditions which are separate from those applying to the ICC SICAV regime. A RICC 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 Regulations. Unlike the SICAV ICC structure, the new RICC structure provides promoters with a flexible ICC structure that may be used as a vehicle to achieve various objectives including the setting up of a fund platform. A RICC must be established as a limited liability company and may not carry out any licensable activity. The RICC requires a memorandum of association restricted to the provision of administrative services to its incorporated cells.

A RICC may establish an incorporated cell by virtue of a resolution of its board of directors. An incorporated cell of a RICC is constituted as an investment company in its own right and requires a licence to operate as an investment fund from the MFSA. The relationship between the incorporated cell and the RICC is regulated by the Regulations and the relevant MFSA Rules. The RICC framework is also structured to allow incorporated cells to migrate in and out of the RICC they share with other incorporated cells and either relocate to another ICC or establish themselves as separate independent schemes. The RICC itself may also undergo transformations excluding a transformation into a SICAV.

Accordingly, with the new RICC framework in place, one can establish an ICC either as:

[i] a SICAV operating under a CIS licence in accordance with the Companies Act (SICAV Incorporated Cell Companies) Regulations.

[ii] a platform serving purely for the provision of administrative services to incorporated cells in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations . In this case, the ICC will not operate under a CIS Licence but under a Recognition Certificate. The ICC therefore is 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.

A copy of the [RICC Regulations](#) and the supplementing [RICC Rules](#) is available from today on the Authority's website.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact the Regulatory Development Unit, MFSA via email: rdu@mfsa.com.mt or Dr. Emaliese Lofaro Analyst Regulatory Development Unit, by telephone on 2548 5501.

Communications Unit
Malta Financial Services Authority
23rd April, 2012