

# ICC Regulations (SICAV Incorporated Cell Companies) in Malta



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The “ICC Regulations”, Companies Act (SICAV Incorporated Cell Companies) Regulations, 2010 have been introduced through L.N. 559 of 2010.

The Regulations must be considered in the context of the Investment Services Act, 1994 and the Companies Act, 1995.

## What is an ICC?

The ICC Regulations build on the “cellular” concept, taking into account international developments and setting out a framework for a new type of vehicle in Malta - Incorporated Cell Companies (“ICCs”).

The cellular concept provides for the establishment of a cell within the 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 main features of the ICC Regulations, as well as key similarities and differences from a segregated multi-fund company, are summarised below.

## Application

The establishment of an ICC structure under these Regulations is limited to the carrying out of activity of a collective investment scheme, as defined under the Investment Services Act, 1994.

The provisions of the Companies Act apply to an incorporated cell company, a SICAV, and to an incorporated cell, a sub-fund, unless such provisions are inconsistent to the Investment Services Act, 1994 and the ICC Regulations, in which case the latter shall apply.

## Establishing an ICC and incorporated cells

Subject to the relevant provisions of the Regulations, an ICC can be established in the following ways:

- a SICAV can be formed or constituted as an ICC;
- a body corporate with variable share capital, similar to an ICC but established outside Malta, may be continued as an ICC in Malta;
- a body corporate, carrying on the activity of a collective investment scheme, similar to a non-cellular company but established outside Malta, may be continued as an ICC in Malta;
- a non-cellular company can convert into an ICC or into an incorporated cell;
- a segregated multi-fund company having no segregated sub-funds can convert into an ICC.

Conversely,

- an ICC may be continued as a body corporate similar to an ICC outside Malta;
- an ICC can be continued as a body corporate outside Malta;
- an ICC having no incorporated cells can convert into a segregated multi-fund company;

Note that the term “outside Malta”, referred to above, shall mean countries and jurisdictions as may be established from time to time by guidelines issued by the Registrar of Companies pursuant to the Continuation Regulations.

The name of an incorporated cell company shall include the expression “Incorporated Cell Company” or its abbreviation “ICC”.

Incorporated cells can be established by virtue of a resolution of the Board of Directors (“cell resolution”). An incorporated cell shall be validly constituted when a copy of the resolution is delivered to the Registrar, a Memorandum and Articles of Association is signed for the incorporated cell, and a certificate of registration is issued.

The name of an incorporated cell shall include the expression “incorporated cell”. The name may be similar to the ICC of which it forms part, but not as similar as to create confusion.

An incorporated cell shall not own shares in its ICC, but shall be permitted to own shares in any other incorporated cell of its ICC.

This newsletter sets out a summary of the ICC regulations and compares to the Regulations already in existence in Malta

<b>ICCs and Segregated Multi-Fund Companies compared</b>	
<b>Key similarities</b>	<b>In both sets of Regulations:</b>
	Application is to companies carrying on the activity of collective investment schemes.
	“Cellular” concept exists whereby cells/sub-funds have their own constitution, share structure and shareholders.
	Cell owners/unit holders, with varying interests, can participate in one vehicle.
	The cell company/SICAV and its cells/sub-funds share the same Board of Directors, Company Secretary and registered address.
	A cell company/SICAV is not intended to be the parent of its cells/sub-funds.
	A cell/sub-fund can be dissolved without affecting the use of any other cell/sub-fund or the cell company/SICAV.
	Lower cost alternative to establishing the activity of collective investment schemes through cells/sub-funds, when compared to setting up a stand-alone collective investment scheme.

**Separate legal personality of incorporated cells**

The main difference between an ICC and a segregated multi-fund company structure lies in their legal status. An ICC, and each of its incorporated cells, are each separate legal personalities. Conversely, in a segregated multi-fund company structure, the SICAV and its sub-funds together represent one legal entity (i.e. sub-funds do not have separate legal personality).

The lack of sub-funds’ separate legal personality in a segregated multi-fund company structure creates complexities, for example, when it comes to sub-funds transacting in their own name and with other sub-funds of the segregated multi-fund company.

Such complexities are eliminated by the separate legal personality of incorporated cells in an ICC structure.

An ICC does not have the power to transact on behalf of any of its incorporated cells, and vice versa.

**Separation of assets and liabilities**

The Companies Act, 1995, provides that a segregated multi-fund company may elect to have the assets and liabilities of each sub-fund treated as a patrimony separate from the assets and liabilities of each other sub-fund. Similarly, the ICC regulations provides for separation of assets and liabilities between the cell company and each cell. It is the cell company’s directors’ responsibility to ensure that this is achieved.

The difference is that in an ICC, liability is limited through the legal separate identity of each cell, whereas under a segregated multi-fund company, limitation of liability is achieved through the segregation of assets and liabilities of each sub-fund comprised in that company (subject to this being included in the Memorandum and Articles), which can give rise to complications.

In the case of a segregated multi-fund company, all liabilities incurred in respect of each cell/sub-fund are to be paid out of the assets forming part of its patrimony. Such creditors shall have no claim or right of action against the other assets of the company. It is important that the directors properly separate cellular/sub-funds’ assets. Note that primary recourse is to assets of the cell/sub-fund. If cellular/sub-funds’ assets are exhausted, secondary recourse from non-cellular/sub-funds’ assets is NOT available.

<b>ICCs and Segregated Multi-Fund Companies compared – the main differences</b>	
<b>ICC</b>	<b>Segregated Multi-Fund Companies</b>
The ICC and each cell are a separate legal entity.	The segregated multi-fund company is a single legal entity.
Liability is limited by structure (cells' separate legal personality).	Although each sub-fund has limited liability, each sub-fund has a common legal personality, which can give rise to complications.
Cells can contract because of separate legal personality. The ICC shall not have the power, to contract on behalf of a cell by virtue of it being the ICC.	The segregated multi-fund company's directors transact on behalf of the SICAV, as this does not have separate legal personality.

### **Annual Return, Accounts, Directors' report**

The ICC and each cell shall submit a separate Annual Return.

Financial statements of an ICC shall not be consolidated with the incorporated cells, unless the incorporated cell is a subsidiary of the ICC.

The Directors' report of an ICC shall also include the names and registration numbers of all its incorporated cells.

### **Winding up**

Subject to the applicable provisions of the Regulations, an incorporated cell can be:

- transformed into non-cellular companies;
- relocated to another ICC;
- expelled;
- continued as a body corporate in another jurisdiction;
- struck-off.

An ICC that has been dissolved and wound up shall not be struck off unless each of its incorporated cells have gone through one of the exit options above.

### **The attractiveness of an ICC in Malta to potential investors**

The ICC structure, like the segregated multi-fund company structure, offers a risk management vehicle to potential investors, with varying interests, to participate in one structure, with the potential cost leverage and other advantages associated to it. Malta is the only full EU member state to have both these vehicles in place, adding its attractiveness as a SICAV domicile.

The differences between the two vehicles, major amongst which is the legal status of the cells, may render one structure more attractive than the other to the potential investor.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners or Senior Consultants of the firm. For further details please do not hesitate to contact:

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