

Appendix 8

N.B. This Appendix contains proposed new Regulations made under the Companies Law of 2018 administered by DIFCA. Accordingly, the proposals in this Appendix are being consulted upon jointly by the DFSA and DIFCA.



Incorporated Cell Company (ICC) Regulations

CONTENTS

The contents of this module are divided into the following chapters, sections and appendices:

1. INTRODUCTION 3

1.1 Application and interpretation 3

1.2 Status of an Incorporated Cell Company and an Incorporated Cell 5

1.3 Creation of an Incorporated Cell Company and an Incorporated Cell 5

1.4 Name and Articles of Association of an Incorporated Cell Company 7

1.5 Permissible use of Incorporated Cell Companies and of Incorporated Cells 7

1.6 Articles of Association of an Incorporated Cell 9

1.7 DFSA consent..... 9

1.8 Revocation of DFSA consent 10

1.9 Directions by the DFSA 12

1.10 Applications to the Court..... 13

1.11 Accounts of an Incorporated Cell Company and Incorporated Cells 14

1.12 Incorporation of an Incorporated Cell as an independent Company 14

1.13 Transfer of an Incorporated Cell 15

1.14 Winding up of an Incorporated Cell Company 17

APPENDIX 1 – FEES 18

APPENDIX 2 - DECISION-MAKING PROCEDURES 19

The Board of Directors of the DIFCA, in the exercise of the powers conferred on them under Articles 136 and 155 of the Companies Law 2018, hereby makes these Regulations.

1. INTRODUCTION

1.1 Application and interpretation

1.1.1 These Regulations apply to:

- (a) a person applying to incorporate an Incorporated Cell Company or an Incorporated Cell of such a Company;
- (b) an Incorporated Cell Company (ICC);
- (c) an Incorporated Cell of an ICC;
- (d) a Fund Manager that incorporates or uses an Incorporated Cell Company to conduct Fund business;
- (e) an Insurer that incorporates or uses an Incorporated Cell Company to conduct Insurance Business; and
- (f) an Officer of an Incorporated Cell Company, of an Incorporated Cell and of a Fund Manager, or of an Insurer, as applicable.

1.1.2 Capitalised terms are defined terms in:

- (a) the Companies Law of 2018 (“the Law”) or Regulations made under the Law;
- (b) the Regulatory Law 2004 (“the Regulatory Law”) and Rules made under that law;
- (c) the Collective Investment Law 2010 (“the Collective Investment Law”) and Rules made under that law; and
- (d) the Insolvency Law 2009 (“the Insolvency Law”) and Regulations made under that law.

1.1.3 Where capitalisation of the initial letter is not used, an expression has its natural meaning, unless otherwise provided in Regulation 1.1.4 or the context requires otherwise.

1.1.4 In these Regulations, the following terms have the following meanings:

- (a) ‘Administrative Receiver’ has the meaning given in the Insolvency Law;

Incorporated Cell Company (ICC) Regulations

- (b) 'closed-ended Company' in relation to an Incorporated Cell has the meaning given in Regulation 1.3.7(b);
- (c) 'Fund Manager' has the meaning given in Article 20 of the Collective Investment Law;
- (d) 'Fund business' in relation to an Incorporated Cell Company has the meaning given in Regulation 1.1.7;
- (e) 'Incorporated Cell' means a cell of an Incorporated Cell Company;
- (f) 'Insolvency Regulations' mean the Regulations made under the Insolvency Law;
- (g) 'Insurer' has the meaning given in the Glossary (GLO) module of the DFSA Rulebook;
- (h) 'Liquidator' has the meaning given in the Insolvency Law;
- (i) 'open-ended Company' in relation to an Incorporated Cell has the meaning given in Regulation 1.3.7(a);
- (j) 'using a Fund Platform' has the meaning given in Rule 2.2.7A of the General (GEN) module of the DFSA Rulebook;
- (k) 'the Registrar' means the Registrar of Companies;
- (l) 'Shareholder' is a holder of a Share of an Incorporated Cell Company or an Incorporated Cell of an ICC, unless the context requires otherwise;
- (m) 'the Collective Investment Law' means the Collective Investment Law 2010 as amended from time to time;
- (n) 'the Insolvency Law' means the Insolvency Law 2009 as amended from time to time;
- (o) 'the Law' means the Companies Law 2018 as amended from time to time;
- (p) 'the Operating Law' means the Operating Law 2018 as amended from time to time;
- (q) 'the Regulatory Law' means the Regulatory Law 2004 as amended from time to time;
- (r) 'Incorporated Cell Company' or 'ICC' is a Company incorporated as, or converted into, an Incorporated Cell Company in accordance with these Regulations; and
- (s) 'Receiver' has the meaning given in the Insolvency Law.

Incorporated Cell Company (ICC) Regulations

1.1.5 The requirements that apply to a Company under the Law and Regulations made under that Law apply to an Incorporated Cell Company and to an Incorporated Cell, except to the extent otherwise provided in these Regulations or in legislation administered by the DFSA, including the Collective Investment Law and the Rules made under that law.

1.1.6 Where there is any inconsistency between the provisions of:

(a) legislation administered by the DFSA applicable to an Incorporated Cell Company (ICC) or an Incorporated Cell of an ICC; and

(b) the Law and Regulations made under the Law,

the provisions in (a) shall prevail over the provisions in (b) and be taken to exclude, waive or modify the Law or Regulations to the extent of any such inconsistency.

1.1.7 In these Regulations, an Incorporated Cell Company conducts Fund business if it is established or used by a Fund Manager using a Fund Platform.

1.2 Status of an Incorporated Cell Company and an Incorporated Cell

1.2.1 An Incorporated Cell Company is a type of Company incorporated:

(a) under Article 136(1) of the Law; and

(b) in accordance with the provisions of these Regulations and of the Law.

1.2.2 For the avoidance of doubt, an Incorporated Cell of an Incorporated Cell Company:

(a) is a Company incorporated under Article 136(1) of the Law; and

(b) is created in accordance with the requirements in these Regulations and in the Law.

1.2.3 An Incorporated Cell Company does not have a subsidiary or parent relationship to an Incorporated Cell of that ICC and an ICC shall not own Shares in its Incorporated Cells, except where permitted to do so under these Regulations or legislation administered by the DFSA.

1.3 Creation of an Incorporated Cell Company and an Incorporated Cell

1.3.1 A person may incorporate a Company as an Incorporated Cell Company:

(a) in accordance with the requirements in these Regulations and in the Law; and

(b) if the person proposes to conduct:

Incorporated Cell Company (ICC) Regulations

- (i) Fund business, subject to any further requirements under the Regulatory Law, the Collective Investment Law and the Rules made under those laws; or
- (ii) Insurance Business, subject to any further requirements under the Regulatory Law and the Rules made under that law.

1.3.2 A person may convert an existing Company into an Incorporated Cell Company:

- (a) in accordance with the requirements in these Regulations and in the Law; and
- (b) if it proposes to conduct:
 - (i) Fund business, subject to any further requirements under the Regulatory Law, the Collective Investment Law and the Rules made under those laws; or
 - (ii) Insurance Business, subject to any further requirements under the Regulatory Law and the Rules made under that law.

1.3.3 An application for incorporation of a Company as an Incorporated Cell Company shall be made by:

- (a) filing an application with the Registrar in accordance with Article 10 of the Law and applicable Regulations or otherwise in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require; and
- (b) submitting to the Registrar a copy of the DFSA consent given under Regulation 1.5.1(1)(c).

1.3.4 An application for the conversion of an existing Company into an Incorporated Cell Company shall be made by:

- (a) filing an application with the Registrar in such form and manner, and accompanied by such documents and information, verified in such manner, as the Registrar may require;
- (b) submitting to the Registrar the Company's Articles of Association with such amendments as may be necessary to facilitate the conversion of the Company into an Incorporated Cell Company;
- (c) submitting a copy of the Company's Special Resolution approving any such change to its Articles of Association and the conversion of status of the Company into an Incorporated Cell Company; and
- (d) submitting a copy of the DFSA's consent given under Regulation 1.5.1(1)(c).

1.3.5 An application made under Regulation 1.3.3 or 1.3.4 shall be accompanied by the appropriate fee prescribed in Appendix 1.

Incorporated Cell Company (ICC) Regulations

1.3.6 The Special Resolution referred to in Regulation 1.3.4(c) shall assign a name to the proposed Incorporated Cell Company that is in accordance with Regulation 1.4.1.

1.3.7 An Incorporated Cell which proposes to be a Fund may be constituted as:

- (a) an Open-ended Fund, as defined in Article 18A(2) of the Collective Investment Law; or
- (b) a Closed-ended Fund, as defined in Article 18A(3) of the Collective Investment Law.

1.3.8 If the Registrar is satisfied that the requirements under the Law and these Regulations relating to the registration of an Incorporated Cell Company have been met, the Registrar shall register it as an Incorporated Cell Company.

1.4 Name and Articles of Association of an Incorporated Cell Company

1.4.1 The name of an Incorporated Cell Company shall, without prejudice to the application of Articles 33 and 34 of the Law, end with the words 'Incorporated Cell Company' or with the abbreviation 'ICC'.

1.4.2 An Incorporated Cell Company shall assign a distinctive name to each Incorporated Cell that:

- (a) distinguishes the cell from any other Incorporated Cell of the ICC;
- (b) ends with the words 'Incorporated Cell' or 'IC';
- (c) if it is a closed-ended company, the words 'Closed-ended' immediately before the words 'Incorporated Cell' or 'IC'; and
- (d) if it is an open-ended company, the words 'Open-ended' immediately before the words 'Incorporated Cell' or 'IC'.

1.5 Permissible use of Incorporated Cell Companies and of Incorporated Cells

1.5.1 (1) An Incorporated Cell Company shall only be incorporated, or an existing Company shall only be converted into an Incorporated Cell Company:

- (a) for the purpose of conducting Insurance Business or Fund business;
- (b) if the requirements under paragraphs (2) and (3) are met; and
- (c) if the DFSA has given its prior written consent.

(2) An Incorporated Cell Company formed for conducting Insurance Business:

Incorporated Cell Company (ICC) Regulations

- (a) shall be incorporated as a closed-ended Company; and
 - (b) may be constituted as a Public Company or a Private Company in accordance with its Articles of Association.
- (3) An Incorporated Cell Company formed for the purpose of conducting Fund business:
- (a) shall be formed as a closed-ended Company; and
 - (b) may be constituted either as a Public Company or Private Company in accordance with its Articles of Association and subject to the requirements in the Collective Investment Law and the Rules made under that law.
- 1.5.2** An Incorporated Cell Company formed for the purpose of conducting Fund business shall not:
- (a) be constituted as a Fund or act as a Fund Manager; or
 - (b) provide infrastructure to a Fund other than an Incorporated Cell of that ICC.
- 1.5.3** (1) An Incorporated Cell shall only be incorporated, or an existing Company shall only be converted into an Incorporated Cell of an Incorporated Cell Company:
- (a) for the purpose of conducting Insurance Business or Fund business;
 - (b) if the requirements under paragraphs (2) and (3), as relevant, are met; and
 - (c) if the DFSA has given its prior written consent.
- (2) An Incorporated Cell that is to be a Fund may be:
- (a) an Open-ended Fund or a Closed-ended Fund, as provided in that company's Articles of Association; and
 - (b) constituted either as a Public Company or a Private Company in accordance with its Articles of Association and the requirements in the Law, and in the Collective Investment Law and the Rules made under that law.
- (3) An Incorporated Cell that is formed for the purpose of conducting Insurance Business shall be closed-ended and may be constituted either as a Public Company or a Private Company in accordance with its Articles of Association and the requirements in the Law.

1.6 Articles of Association of an Incorporated Cell

- 1.6.1** Each Incorporated Cell shall have its own Articles of Association.
- 1.6.2** The Articles of Association of an Incorporated Cell shall provide for it to be wound up on:
- (a) the occurrence of a specified event; or
 - (b) the expiration of a specified period.
- 1.6.3** There shall be taken to be included in the Articles of Association of an Incorporated Cell provisions that an Incorporated Cell may not own Shares:
- (a) in the Incorporated Cell Company in which it is a cell; or
 - (b) in another Incorporated Cell of that Incorporated Cell Company.
- 1.6.4** The Articles of Association of an Incorporated Cell may be amended:
- (a) in the manner specified in the Articles of Association; or
 - (b) if there is no such manner specified in the Articles of Association, by a Special Resolution of the Incorporated Cell and its Incorporated Cell Company.
- 1.6.5** If an Incorporated Cell is to be an Open-ended Fund, its Articles of Association shall contain a provision to the effect that its Shareholders are entitled to have their Shares redeemed or repurchased by the Fund Manager, at a value calculated based on the net asset value of the Fund Property in accordance with section 8.6 of the CIR module of the DFSA Rulebook.
- 1.6.6** Subject to the provisions in Regulations 1.6.2 to 1.6.5, the provisions in the Law relating to Articles of Association of a Company and the provisions in the DIFC Insolvency Law and Regulations made under that Law shall apply to the Articles of Association of an Incorporated Cell.

1.7 DFSA consent

- 1.7.1** An application for consent under Regulation 1.5.1(1)(c) or 1.5.3(1)(c) shall be made in such manner as the DFSA may direct.
- 1.7.2**
- (1) The DFSA may grant its consent under Regulation 1.5.1(1)(c) or 1.5.3(1)(c), only where it is satisfied that the requirements under these Regulations and under other applicable legislation administered by it are met by the applicant.
 - (2) The DFSA may grant its consent subject to such specified conditions and restrictions as it considers appropriate.

Incorporated Cell Company (ICC) Regulations

1.7.3 Without limiting any requirement to which an Incorporated Cell Company may be subject under other legislation applicable in the DIFC, an Incorporated Cell Company, and if it is conducting Fund business, the Fund Manager using the Fund Platform, must provide written notice to the DFSA of:

- (a) any proposed alteration to the Articles of Association of either the Incorporated Cell Company or any of its Incorporated Cells;
- (b) any proposed reconstruction of the Incorporated Cell Company or merger of it with any other Company;
- (c) any proposed reconstruction of any of its Incorporated Cells, or merger of such a cell with any other Company;
- (d) any proposal to appoint a Receiver to the Incorporated Cell Company or any of its Incorporated Cells, or to wind up the affairs of the Incorporated Cell Company or any of its Incorporated Cells;
- (e) any proposal to remove a Director of, or to appoint any new Director to the Incorporated Cell Company or any of its Incorporated Cells; and
- (f) any event or circumstance which may materially adversely affect the fitness and propriety of a Director referred to in (e).

1.7.4 Effect must not be given to any proposal in Regulation 1.7.3 unless the DFSA has given its written approval to the proposal.

1.7.5 The procedures in Appendix 2 apply to a decision of the DFSA to refuse to grant:

- (a) consent under Regulation 1.5.1(1)(c) or 1.5.3(1)(c); or
- (b) approval under Regulation 1.7.4.

1.7.6 If the DFSA decides to refuse to grant consent under Regulation 1.5.1(1)(c) or 1.5.3(1)(c) or to refuse to grant approval under Regulation 1.7.4, the Person seeking consent may refer the matter to the Financial Markets Tribunal for review.

1.8 Revocation of DFSA consent

1.8.1 The DFSA may revoke its consent to operate an Incorporated Cell Company or any Incorporated Cell (both of whom are referred to as a company) if it appears to it that:

- (a) any requirement for the grant of the consent is no longer satisfied;
- (b) the company or any Director of the company, or the Fund Manager or any of its Directors, as the case may be:
 - (i) has contravened any requirement under the Law or these Regulations;

Incorporated Cell Company (ICC) Regulations

- (ii) has contravened any requirement under the Regulatory Law, the Collective Investment Law or Rules made under those laws;
 - (iii) has failed to comply with a condition or restriction specified in relation to the grant of consent; or
 - (iv) has knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular;
- (c) no activity has been carried on by the company for the previous 12 months; or
- (d) it is in the interests of the DIFC to revoke the consent to protect the interests of shareholders or creditors, or potential shareholders or creditors, of the company.

1.8.2 For the purposes of Regulation 1.8.1(d), the DFSA may take into account any relevant matter, including a matter relating to:

- (a) the Incorporated Cell Company, any of its Incorporated Cells or the Fund Manager;
- (b) any person employed by or associated with a person referred to in (a);
- (c) any Director of the persons referred to in (a) or (b);
- (d) any person exercising influence over a person referred to in (a) to (c);
- (e) any body corporate in the same group as the Incorporated Cell Company;
- (f) any Director of a body corporate referred to in (e);
- (g) any person exercising influence over a person referred to in (e); or
- (h) the interests of a Shareholder or Creditor of the Incorporated Cell Company or of any of its Incorporated Cells.

1.8.3 Before it revokes its consent, the DFSA will consider whether any necessary and appropriate steps have been taken to secure one or more of the following:

- (a) appointment of a Receiver or Administrative Receiver to the Incorporated Cell Company or any of its Incorporated Cells; or
- (b) the winding up of the Incorporated Cell Company or any of its Incorporated Cells,

in accordance with the Insolvency Law and Regulations made under that Law, as applicable.

1.8.4 The procedures in Appendix 2 apply to a decision of the DFSA to revoke its consent under Regulation 1.8.1.

1.8.5 If the DFSA decides to revoke its consent under Regulation 1.8.1, the Incorporated Cell Company, the Incorporated Cell or the Fund Manager may refer the matter to the Financial Markets Tribunal for review.

1.9 Directions by the DFSA

1.9.1 The DFSA may give a direction to any Concerned Person under this section 1.9.

1.9.2 A Concerned Person for the purposes of this section is:

- (a) in the case of an Incorporated Cell Company conducting Insurance Business, the Incorporated Cell Company, its Incorporated Cells and any Director of such a company, as relevant; and
- (b) in the case of an Incorporated Cell Company conducting Fund business, the Incorporated Cell Company, its Incorporated Cells, any Director of such a company, the Fund Manager and its Directors, as relevant.

1.9.3 The DFSA may give a direction to a Concerned Person if it appears to the DFSA that:

- (a) any requirement for the grant of the DFSA's consent is no longer satisfied;
- (b) the Concerned Person:
 - (i) has contravened any requirement applicable to that person under the Law or these Regulations;
 - (ii) has contravened any requirements under the Regulatory Law, the Collective Investment Law or Rules made under those laws;
 - (iii) has failed to comply with a condition or restriction specified in relation to the grant of consent; or
 - (iv) has knowingly or recklessly given the DFSA or the Registrar information which is false or misleading in a material particular; or
- (c) it is desirable and in the interests of the DIFC to revoke the consent.

1.9.4 Without limiting the generality of Regulation 1.9.1, a direction under this section 1.9 may require the Concerned Person:

- (a) to cease issuing or redeeming, or both issuing and redeeming, Shares or any class of such Shares if the Incorporated Cell is an Open-ended Fund; or
- (b) to present a petition to the Court for:
 - (i) an order for the appointment of a Receiver or Administrative Receiver to the Incorporated Cell Company or any of its Incorporated Cells; or

Incorporated Cell Company (ICC) Regulations

- (ii) an order for the winding up of the Incorporated Cell Company or any of its Incorporated Cells.

1.9.5 If the DFSA revokes its consent under section 1.8, the revocation does not affect the operation of any direction given under this section 1.9 which is already in force. The DFSA may give further directions under this section 1.9 as appropriate.

1.9.6 If an order appointing a Receiver or Administrative Receiver, or a winding up order, has been made by the Court in respect of an Incorporated Cell Company or any of its Incorporated Cells, then, no direction under this section is to take effect in relation to such a company.

1.9.7 The DFSA may, on its own initiative, or on the application of a Concerned Person, revoke or vary a direction given under this section if it appears to the DFSA:

- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or to continue in force; or
- (b) in the case of variation, that the direction should take effect or continue in force in a different form.

1.9.8 A direction takes effect:

- (a) immediately, if the notice states that that is the case; or
- (b) on such date as may be specified in the notice.

1.9.9 The procedures in Appendix 2 apply to a decision of the DFSA to give a direction.

1.9.10 If the DFSA decides to give a direction, the person to whom the direction is given may refer the matter to the Financial Markets Tribunal for review.

1.10 Applications to the Court

1.10.1 The Court may, on application of the DFSA under this section 1.10, make one or more of the following orders:

- (a) an order removing any Director of the Incorporated Cell Company, any of its Incorporated Cells or the Fund Manager or Insurer using the Incorporated Cell Company, as relevant, and replacing any such person with a person or persons nominated by the DFSA or as the Court may consider appropriate;
- (b) an order removing the Fund Manager or Insurer using the Incorporated Cell Company and replacing that manager with an appropriately licensed Fund Manager or Insurer nominated by the DFSA;
- (c) an order appointing a Receiver or Administrative Receiver to, or an order for the winding up of, the Incorporated Cell Company or any of its Incorporated Cells under the Law, the Insolvency Law or the Insolvency Regulations; or

(d) any other order as the Court sees fit.

1.10.2 The DFSA will give written notice of the making of an application under this section 1.10 to a Concerned Person as defined in Regulation 1.9.2, and bring it to the attention of any other person as the DFSA considers appropriate.

1.11 Accounts of an Incorporated Cell Company and Incorporated Cells

1.11.1 In the case of an Incorporated Cell Company conducting Insurance Business, the Incorporated Cell Company shall prepare accounts in relation to the Incorporated Cell Company and its Incorporated Cells in accordance with the requirements in section 8.2 of the GEN module of the DFSA Rulebook.

1.11.2 In the case of an Incorporated Cell Company that conducts Funds business, the Fund Manager shall prepare accounts in relation to the Incorporated Cell Company and its Incorporated Cells in accordance with the requirements in chapter 9 of the CIR module of the DFSA Rulebook.

1.11.3 A Shareholder of an Incorporated Cell shall only be entitled to be provided with accounts that relate to the Incorporated Cell in which it is a Shareholder, unless otherwise provided in the Articles of Association of the Incorporated Cell Company and the relevant Incorporated Cells.

1.12 Incorporation of an Incorporated Cell as an independent Company

1.12.1 An Incorporated Cell may apply to the Registrar to be incorporated as a Company independent of the Incorporated Cell Company of which it is a cell in accordance with the Law and Regulations made under the Law.

1.12.2 If the Articles of Association of an Incorporated Cell are silent or do not provide otherwise, the Incorporated Cell shall approve such incorporation by a Special Resolution.

1.12.3 The application should be made in accordance with the requirements that apply to the incorporation of a Company under the Law and Regulations under the Law and:

- (a) if the Company is to conduct Insurance Business, subject to the requirements in the Regulatory Law and Rules made under that law;
- (b) if the Company is to conduct Fund business, subject to the requirements in the Investment Company (IC) Regulations, the Regulatory Law, the Collective Investment Law and Rules made under those laws; and
- (c) subject to the DFSA granting its written consent to its incorporation as an independent Company.

Incorporated Cell Company (ICC) Regulations

- 1.12.4** The procedures in Appendix 2 apply to a decision of the DFSA to refuse to grant its consent under Regulation 1.12.3.
- 1.12.5** If the DFSA decides to refuse to grant its consent under Regulation 1.12.3 (c), the Person seeking consent may refer the matter to the Financial Markets Tribunal for review.
- 1.12.6** If an Incorporated Cell applies under this section to be registered as an independent Company, a Shareholder of the Incorporated Cell who objects to the proposed registration may apply to the Court on the grounds that the registration, or any term of the registration, is unfairly prejudicial to his or her interests. An application must be made within 30 days of the application under Regulation 1.12.1.
- 1.12.7** If an Incorporated Cell is registered as an independent Company under this Regulation:
- (a) all the rights and liabilities of the Incorporated Cell immediately before registration shall continue as rights and liabilities of the independent Company;
 - (b) any action or proceeding which was commenced against the Incorporated Cell before registration as an independent Company shall continue against the independent Company; and
 - (c) any action or proceeding that was commenced by the Incorporated Cell before registration as an independent Company shall continue as an action or proceeding commenced by the independent Company.

1.13 Transfer of an Incorporated Cell

- 1.13.1** An Incorporated Cell may become an Incorporated Cell of another Incorporated Cell Company if:
- (a) a written agreement has been entered into between the transferor Incorporated Cell Company and the transferee Incorporated Cell Company, setting out the terms of the transfer;
 - (b) the written agreement referred to in (a) is provisionally approved:
 - (i) by the Directors of the transferor Incorporated Cell Company;
 - (ii) by a Special Resolution adopted by the transferee Incorporated Cell Company; and
 - (iii) upon either:

Incorporated Cell Company (ICC) Regulations

- (A) the transfer agreement being consented to by all the Shareholders and creditors (if any) of the Incorporated Cell which is to be transferred; or
- (B) the transfer agreement being sanctioned by the Court;
- (c) the DFSA has given its prior written consent upon being satisfied of the matters referred to in Regulation 1.7.2; and
- (d) the additional procedures specified in Regulation 1.13.2 and 1.13.3 are duly completed.

1.13.2 Each Director of the transferor Incorporated Cell Company who approved the transfer agreement shall, as soon as possible after the transfer agreement has been provisionally approved in accordance with Regulation 1.13.1:

- (a) sign a declaration stating that:
 - (i) the Director believes on reasonable grounds that the Incorporated Cell that is to be transferred is able to discharge its liabilities as they fall due; and
 - (ii) the transfer has been provisionally approved in accordance with Regulation 1.13.1; and
- (b) ensure that a copy of that declaration is delivered to the transferee Incorporated Cell Company.

1.13.3 The transferee Incorporated Cell Company shall, within 21 days of receiving a copy of the declaration referred to in Regulation 1.13.2, deliver to the Registrar:

- (a) a copy of the transfer agreement referred to in Regulation 1.13.1(a);
- (b) copies of the documents referred to in Regulation 1.13.1(b) as applicable;
- (c) a copy of the draft Articles of Association of the Incorporated Cell that are to be in force once the transfer is completed;
- (d) a copy of the declaration by the Directors of the transferor Incorporated Cell Company referred to in Regulation 1.13.2; and
- (e) a copy of the DFSA's consent to the transfer.

1.13.4 The Registrar shall approve the transfer of the Incorporated Cell if he is satisfied that:

- (a) the requirements in this section 1.13 are complied with; and
- (b) there are no provisions in the Articles of Association of the Incorporated Cell, or transferee Incorporated Cell Company, that are inconsistent with the transfer.

Incorporated Cell Company (ICC) Regulations

1.13.5 If the Registrar approves the transfer of the Incorporated Cell, the Registrar shall give effect to the transfer by:

- (a) issuing a certificate of incorporation to the Incorporated Cell;
- (b) recording it as an Incorporated Cell of the transferee Incorporated Cell Company; and
- (c) recording that the Incorporated Cell has ceased to be an Incorporated Cell of the transferor Incorporated Cell Company.

1.13.6 All the rights and liabilities of the Incorporated Cell before the transfer of the Incorporated Cell shall continue to be rights and liabilities of that Incorporated Cell, and any actions or proceedings by or against the Incorporated Cell shall continue to be actions or proceedings by or against that Incorporated Cell.

1.13.7 The transfer of an Incorporated Cell in accordance with Regulations 1.13.1 to 1.13.5 shall not be considered as a breach of contract by the Incorporated Cell.

1.14 Winding up of an Incorporated Cell Company

1.14.1 An Incorporated Cell Company shall not be wound up until after all of its Incorporated Cells are either transferred out of the Incorporated Cell Company, converted into another type of Company or wound up in accordance with the requirements in the DIFC Insolvency Law and the Regulations under that law.

Incorporated Cell Company (ICC) Regulations

APPENDIX 1 – FEES

Upon receipt by the Registrar of:	
An application for the incorporation of an Incorporated Cell Company or for the conversion to an Incorporated Cell Company	\$1,000
FMT fees:	
Making a referral to the FMT (which can be waived by the president of the FMT if the person commencing the reference is an individual and if, in the circumstances, the president considers it is equitable to do so)	\$5,000

APPENDIX 2 - DECISION-MAKING PROCEDURES

1. Interpretation

For the purposes of this Appendix:

- (a) a “Decision Maker” means a person making a decision to which these procedures apply; and
- (b) a “Relevant Person” means a person in relation to whom a power referred to in paragraph 2 of this Appendix is exercised or proposed to be exercised.

2. Application of the Appendix

This Appendix applies to the Decision Maker, subject to paragraph 3 of this Appendix, where a provision requires the Decision Maker to make a decision under these Regulations.

3. Decisions to which the procedures do not apply

- (a) The procedures in this Appendix (other than sub-paragraph (b) below) do not apply to a decision by the Decision Maker:
 - (i) to withdraw a direction or requirement;
 - (ii) in relation to a person, if the person has requested, or consented in writing to, the making of the decision.
- (b) In the cases referred to in sub-paragraph (a) above, the Decision Maker shall notify the person in writing of the decision and the date on which it is to take effect.
- (c) If the Decision Maker makes a decision in relation to a person after a decision of the Financial Markets Tribunal or Court relating to the conduct of the person, the requirement to give the person an opportunity to make representations under paragraph 4 or 6 of this Appendix (as applicable), does not apply in relation to findings of fact of the Court.

4. Opportunity to make representations before a decision

- (a) If the Decision Maker proposes to make a decision to which this Appendix applies other than a decision under paragraph 3(a) of this Appendix, the Decision Maker shall first give the Relevant Person:
 - (i) a written notice (a “Preliminary Notice”) containing the information in sub-paragraph (b) below; and
 - (ii) an opportunity to make representations to the Decision Maker in person and in writing concerning the decision the Decision Maker proposes to make.

Incorporated Cell Company (ICC) Regulations

- (b) The Preliminary Notice shall:
 - (i) specify the proposed decision;
 - (ii) specify the reasons for that proposed decision, including any proposed findings of fact;
 - (iii) include a copy of any relevant materials which were considered in making the proposed decision;
 - (iv) inform the person that the person may make representations to the Decision Maker concerning the proposed decision; and
 - (v) specify how and by when any representations may be made.
- (c) For the purposes of sub paragraph (b)(iii) above, the Decision Maker:
 - (i) may refer to materials (instead of providing a copy) if they are to the knowledge of the Decision Maker already held by the Relevant Person or are publicly available; and
 - (ii) is not required to provide material that is the subject of legal professional privilege.
- (d) If the Decision Maker does not receive any representations within the period specified in the Preliminary Notice, the Decision Maker may proceed to make the proposed decision and give the person a Decision Notice in accordance with paragraph 5.
- (e) If the Decision Maker receives representations within the period specified in the Preliminary Notice, the Decision Maker shall consider the representations in making the decision.
- (f) If, after considering the representations, the Decision Maker decides:
 - (i) to make the proposed decision (either as proposed or with variations), then the Decision Maker shall give the person a Decision Notice under paragraph 5; or
 - (ii) not to make the proposed decision, then the Decision Maker shall as soon as reasonably practicable notify the person in writing that the Decision Maker has decided not to make the decision.
- (g) If the Decision Maker concludes that any delay likely to arise as a result of complying with the procedures in this paragraph would be prejudicial to the interests of a Relevant Person, its Shareholders or members or otherwise prejudicial to the interests of the DIFC, the requirements in subparagraphs (a) to (f) above do not apply and the Decision Maker shall provide the Relevant Person with an opportunity to make representations in

Incorporated Cell Company (ICC) Regulations

accordance with the procedures in paragraph 6, after the Decision Maker has made the decision.

5. Decision Notice

- (a) If the Decision Maker decides to make a decision to which this Appendix applies, the Decision Maker shall, as soon as practicable, give the Relevant Person a written notice (a "Decision Notice") specifying:
 - (i) the decision;
 - (ii) the reasons for the decision, including any findings of fact and the application of any applicable law to the facts as found;
 - (iii) the date on which the decision is to take effect; and
 - (iv) if applicable, the date by which any relevant action shall be taken by the person.
- (b) The Decision Notice shall include a copy of the relevant materials which were considered in making the decision.
- (c) For the purposes of subparagraph (b), the Decision Maker:
 - (i) may refer to materials (instead of providing a copy) if they are already held to the knowledge of the Decision Maker by the Relevant Person or are publicly available; and
 - (ii) is not required to provide material that is the subject of legal professional privilege.

6. Opportunity to make representations after a decision

- (a) If this paragraph applies under paragraph 4(g), the Decision Maker shall:
 - (i) provide the Relevant Person with an opportunity to make representations to the Decision Maker in person and in writing within a period of fourteen (14) days, or such further period as may be determined by the Decision Maker, from the date on which the Decision Notice is given to the person under paragraph 5 above; and
 - (ii) inform the Relevant Person in the Decision Notice that the person may make representations concerning the decision and specify how and by when any representations may be made.
- (b) If the Decision Maker does not receive any representations within the period specified in the Decision Notice, the Decision Maker shall inform the person in writing that the decision is to stand.

Incorporated Cell Company (ICC) Regulations

- (c) If the Decision Maker receives representations within the period specified in the Decision Notice, the Decision Maker shall consider the representations in deciding whether to confirm, withdraw or vary the decision.
- (d) If after considering representations received the Decision Maker decides:
 - (i) to confirm the decision, the Decision Maker shall as soon as reasonably practicable notify the person in writing that the decision is to stand;
 - (ii) to withdraw the decision, the Decision Maker shall as soon as reasonably practicable notify the person in writing that the decision has been withdrawn; or
 - (iii) to vary the decision, the Decision Maker shall as soon as reasonably practicable give the person an amended Decision Notice under paragraph 5.
- (e) For the avoidance of doubt, the opportunity to make representations under this paragraph does not arise:
 - (i) if the person was given a Preliminary Notice and the opportunity to make representations under paragraph 4 before the decision was made; or
 - (ii) in respect of an amended Decision Notice given under subparagraph (d)(iii) above.