



INCORPORATED CELL COMPANIES ACT 2010

INCORPORATED CELLS REGULATIONS 2011

Approved by Tynwald

22nd June 2011

Coming into operation In accordance with regulation 2 (being 23rd June 2011)

The Treasury, after consulting the Department of Economic Development, the Insurance and Pensions Authority and persons and bodies appearing to be representative of interests likely to be affected, makes these Regulations under section 32 of the Incorporated Cell Companies Act 2010¹.

1 Title

These Regulations are the Incorporated Cells Regulations 2011.

2 Commencement

If approved by Tynwald², these Regulations come into operation on the day after they are granted that approval.

3 Interpretation

In these Regulations —

"the 1931 Act" and "the 1931 legislation" each have the same meaning as in the 2010 Act;

"the 2006 Act" and "the 2006 legislation" each have the same meaning as in the 2010 Act;

"the 2010 Act" means the Incorporated Cell Companies Act 2010;

"continued IC" means an overseas cell which is continued in the Island in accordance with Part 1 of Schedule 1;

¹ 2010 c.13

² As required by section 33 of the Incorporated Cell Companies Act 2010

"IC" means an incorporated cell;

"the ICC", in relation to an IC, means the incorporated cell company of which the IC is an incorporated cell;

"overseas cell" means a body incorporated in a country or territory outside the Island whose relationship to another body incorporated in that country or territory ("the overseas ICC") is similar to the relationship between an IC and its ICC;

"the registration authority" means, in relation to an IC incorporated, or an overseas cell to be incorporated, under —

- (a) the 1931 Act, the Department of Economic Development;
- (b) the 2006 Act, the Registrar of Companies.

4 Restrictions on business

- (1) An IC may not carry on any business other than insurance business (within the meaning of the Insurance Act 2008³).
- (2) An IC which contravenes paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

5 Particulars to be included in business letters etc.

In its application to an IC incorporated under the 1931 Act, section 94A(1) of that Act shall have effect with the addition of the following paragraphs —

"(d) the fact that it is an incorporated cell; and

(e) the name and registered number of the incorporated cell company of which it is a cell;"

6 Transfer of domicile

- (1) Part 1 of Schedule 1 shall have effect with respect to the transfer to the Island of the domicile of an overseas cell.
- (2) Part 2 of Schedule 1 shall have effect with respect to the transfer to another country or territory of the domicile of an IC.

7 Winding up of ICs

Part V of the 1931 Act and, in the case of an IC incorporated under the 2006 Act, Chapter 4 of Part XIII of the 2006 Act apply to the winding up of an IC as they apply to the winding up of any other company limited by shares, subject to the modifications specified in Schedule 2.

³ 2008 c.16

8 Application of the 2006 Act to ICs

Without prejudice to section 9(6) of and Schedule 2 to the 2010 Act, the 2006 Act is further modified in its application to an IC incorporated under that Act in accordance with Schedule 3.

SCHEDULE 1
TRANSFER OF DOMICILE
PART 1
CONTINUANCE OF OVERSEAS CELLS

Application for consent to be continued in the Island

1. (1) An overseas cell may apply to the registration authority for consent to be continued in the Island as an IC to which the provisions of the 1931 legislation or the 2006 legislation and any other relevant laws of the Island shall apply.
- (2) An application under this paragraph shall be in such form as the registration authority may require.
- (3) An application under this paragraph shall —
 - (a) state whether the overseas cell is to be incorporated under the 1931 Act or the 2006 Act; and
 - (b) specify the incorporated cell company of which the overseas cell is to become an IC.
- (4) An application under this paragraph shall be accompanied by —
 - (a) a memorandum of continuance stating that the overseas cell is to be an IC, in such form and containing such other particulars as may be required by the registration authority;
 - (b) proof to the satisfaction of the registration authority that the overseas cell has obtained all necessary authorisations required under the laws of the country or territory in which it was incorporated to enable it to make the application;
 - (c) financial statements of the overseas cell prepared for a period ending within 12 months of the date of the application and audited to the satisfaction of the registration authority;
 - (d) details of all charges created by the overseas cell to which section 79 of the 1931 Act or section 138 of the 2006 Act, as the case may be, would apply if the overseas cell had been incorporated in the Island indicating the order in which they will be registered under paragraph 3(2)(c);
 - (e) the written consent to the making of the application of —
 - (i) the overseas ICC; and
 - (ii) the company referred to in sub-paragraph (3);
 - (f) the written consent to —
 - (i) the making of the application; and
 - (ii) the order of registration specified in accordance with sub-paragraph (d),
of the holders of all charges created by the overseas cell to which section 79 of the 1931 Act or section 138 of the 2006 Act, as the case may be, would apply if the overseas cell had been incorporated in the Island; and
 - (g) a certificate signed by an advocate to the effect he has made such enquiries as are reasonable in the circumstances and as a result of those enquiries believes —
 - (i) that the application complies with the requirements of this Part; and

- (ii) that matters precedent and incidental thereto have been complied with; and
 - (h) such other information and documents as the registration authority may require.
- (3) Not more than 3 months prior to an application under this paragraph, the overseas cell shall cause to be published in –
 - (a) 2 newspapers published and circulating in the Island; and
 - (b) one newspaper circulating throughout the country or territory in which the overseas cell is incorporated,an advertisement announcing its intention to continue the overseas cell in the Island in accordance with this Part and specifying its name and principal place of business.
- (4) The registration authority may waive the requirements of sub-paragraph (3) if it considers that the circumstances are such that it is reasonable to do so.

Consent

- 2. (1) In relation to every application under paragraph 1, the registration authority shall, after considering the application and after making such other enquiries as it thinks appropriate, either grant its consent or refuse the application.
- (2) A consent or refusal under sub-paragraph (1) shall be in writing.
- (3) A consent under sub-paragraph (1) shall, subject to there being no material change in the information contained in the documents submitted with the application, be valid for a period of 3 months from the date on which the consent is granted.

Registration

- 3. (1) During the period mentioned in paragraph 2(3) and subject to the provisions of that sub-paragraph, an overseas cell may deliver to the registration authority –
 - (a) the consent under paragraph 2(1); and
 - (b) the memorandum of continuance; and
 - (c) articles of association (if any) which conform to the requirements of the 1931 legislation or the 2006 legislation, as the case may be, and to other applicable laws of the Island;
 - (d) particulars, in the form prescribed for the purposes of section 79 of the 1931 Act or section 138 of the 2006 Act, as the case may be, of any existing charge of a description specified in section 79(2) of the 1931 Act or section 136 of the 2006 Act, as the case may be;
 - (e) a statutory declaration (dated not more than 7 days before such delivery) by a director of the overseas cell that there has been no material change in the information contained in the documents submitted with the application.
- (2) On delivery of the consent, memorandum, articles of association (if any), particulars (if any) and statutory declaration under sub-paragraph (1), the registration authority shall –
 - (a) register the memorandum of continuance;
 - (b) issue a certificate of registration of the memorandum of continuance in such form as the registration authority may determine; and
 - (c) enter in the register of charges under section 82 of the 1931 Act or the record of charges under section 138(3) of the 2006 Act, as the case may be, in such order as the overseas cell may instruct, the particulars of charges delivered under sub-paragraph (1), and issue a certificate under section 82(2) of the 1931 Act or section 138(4) of the 2006 Act, as the case may be, in respect of each such charge.

- (3) The memorandum of continuance shall be deemed to be the memorandum of association of a continued IC in lieu of its memorandum of association or other constituting document.
- (4) Without prejudice to paragraph 4(1), where no articles of association have been delivered to the registration authority under sub-paragraph (2), the articles of a continued IC shall be —
 - (a) in the appropriate form prescribed under section 7 of the Companies Act 1986, or
 - (b) in the form of the relevant model articles prescribed under section 6 of the 2006 Act, as the case may be, as in force at the date of the certificate of registration under sub-paragraph (2)(b) until it adopts articles of association which conform to the requirements of the 1931 legislation or the 2006 legislation, as the case may be, and any other applicable laws of the Island.
- (5) A continued IC shall, within 14 days of the date of the certificate of registration under sub-paragraph (2)(b), forward a copy of it to the competent authority in the country or territory from which it has been continued.

Effect of continuance

4. (1) On the date of the certificate of registration under paragraph 3(2)(b) the overseas cell shall become —
 - (a) a company to which the 1931 legislation or the 2006 legislation, as the case may be, and all other laws of the Island apply as if it had been incorporated under the 1931 Act or the 2006 Act, as the case may be, as an IC; and
 - (b) an incorporated cell of the company referred to in paragraph 1(3)(b);
- (2) The provisions of the 1931 legislation or the 2006 legislation, as the case may be, relating to the memorandum of association of companies shall, with the necessary modifications, apply to a memorandum of continuance.
- (3) The provisions of the 1931 legislation or the 2006 legislation, as the case may be, relating to a certificate of incorporation shall, with the necessary modifications, apply to a certificate of registration under paragraph 3(2)(b).
- (4) Without prejudice to the generality of subsection (1), where particulars of an existing charge have been delivered to the registration authority under paragraph 3(1)(d), that charge shall not be treated as void against a liquidator or any creditor of the overseas cell under section 79(1) of the 1931 Act or section 138(6) of the 2006 Act, as the case may be.

Consequences of continuance of overseas cell

5. (1) On the continuance of an overseas cell as an IC —
 - (a) the property of the overseas cell continues to be the property of the continued IC;
 - (b) the continued IC continues to be liable for the obligations of the overseas cell;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the overseas cell is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the overseas cell is unaffected; and
 - (e) any conviction against, or any ruling, order or judgment in favour of or against the overseas cell may be enforced by or against the continued IC.
- (2) The registration of the continuance of an overseas cell under this Part shall not be deemed —
 - (a) to create a new legal entity, or

- (b) to prejudice or affect the continuity of the body corporate which was formerly an overseas cell and becomes a continued IC.
- (3) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued IC shall be prejudiced in pursuing in or under the laws of the Island a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the overseas cell.
- (4) Notwithstanding section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968⁴, Part I of that Act applies in respect of judgments of any court outside the Island if —
 - (a) the judgment debtor is an overseas cell which has become a continued IC; and
 - (b) the judgment is given (whether before or after the commencement of this section) in proceedings in respect of a cause of action arising before the date of the certificate of registration issued in respect of the continued IC under paragraph 3(2)(b); and
 - (c) at the time when the cause of action arose, the continued IC was incorporated in, or had its principal place of business in the country of the relevant court; and
 - (d) the judgment is final and conclusive as between the parties to it; and
 - (e) there is payable under the judgment a sum of money.
- (5) For the purposes of sub-paragraph (4)(d), a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (6) Sub-paragraph (4) applies in respect of judgments for taxes or other charges of a like nature or in respect of a fine or other penalty as it applies in respect of any other judgment under which there is payable a sum of money.
- (7) Except as provided by sub-paragraph (8), section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 shall not apply in respect of any judgment to which sub-paragraph (4) applies.
- (8) Where, apart from this paragraph, Part I of the 1968 Act applies to a judgment of any court, this paragraph shall be treated as additional to and not in derogation of such application of that Part.

⁴ 1968 c.12

PART 2

DISCONTINUANCE OF ICs

Application for consent for discontinuance

6. (1) An IC may apply to the registration authority for consent to be continued in a country or territory outside the Island as if it had been incorporated under the laws of that other country or territory and to be discontinued under the 1931 legislation or the 2006 legislation, as the case may be.
- (2) An application under this paragraph shall be in such form as the registration authority may require.
- (3) An application under this paragraph shall specify the body incorporated in the country or territory referred to in sub-paragraph (1) of which the IC is to become an incorporated cell.
- (4) An application under this paragraph shall be accompanied by –
 - (a) a certified copy of a resolution of the members passed by a majority vote of 75% of each class of members and authorising the continuance of the IC in a named country or territory outside the Island;
 - (b) statutory declarations by all the directors of the IC that –
 - (i) the IC is solvent and can meet all of its liabilities and obligations; and
 - (ii) that the discontinuance will not adversely affect the interests or rights of, creditors and shareholders; and
 - (c) a copy of a notice published at least 14 days prior to the application in –
 - (i) 2 newspapers published and circulating in the Island; and
 - (ii) one newspaper circulating throughout the country or territory in which the IC is to be continued,

to the effect that the IC intends to cease to be registered in the Island, to continue in the named country or territory outside the Island and that interested persons may make comments to the registration authority during the 10 days following the publication of the notice;
 - (d) an irrevocable and legally binding undertaking executed by the IC and its directors under which –
 - (i) the IC and each of its directors agree to accept service of legal process in the Island in any proceeding arising out of actions or omissions occurring prior to the discontinuance and provision is made for the appointment of a person within the Island as agent for the IC for the service of process for a period of not less than 3 years from the date of discontinuance and for a signed acceptance of the appointment;
 - (ii) the IC and each of its directors agree that all legal process will be accepted by them at a specified address in the named country or territory; and
 - (iii) the IC and such directors submit to the non-exclusive jurisdiction of the courts of that country or territory;
 - (e) a copy of a notice delivered to all shareholders of the IC at least 14 days prior to the application, to the effect that the registration authority will take into consideration any comments in writing which it receives from shareholders prior to the application;
 - (f) the written consent to the making of the application of –

- (i) the ICC, and
 - (ii) the body referred to in sub-paragraph (3);
- (g) the written consent to the making of the application of the holders of all charges registered under section 79 of the 1931 Act or section 138 of the 2006 Act, as the case may be; and
- (h) a certificate signed by an advocate to the effect he has made such enquiries as are reasonable in the circumstances and as a result of those enquiries believes —
- (i) that the application complies with the requirements of this Part; and
 - (ii) that matters precedent and incidental thereto have been complied with.
- (5) The directors of an IC may, if authorised by the members in general meeting, abandon an application for consent under this paragraph; and the provisions of sub-paragraph (4)(a) as to majority shall apply to such authorisation.

Grant of consent

7. (1) In relation to every application under paragraph 6(1) the registration authority shall, after considering such documents, information and copies, and after making such other enquiries as it thinks appropriate, either grant its written consent or refuse the application.
- (2) The registration authority shall not grant its consent under sub-paragraph (1) if the IC has not satisfied it that appropriate arrangements have been made for the payment of all taxes, duties, rates and contributions which are payable or may become payable to the Government or any Department, Statutory Board or agent of the Government in respect of anything done by the IC before the date of the certificate of discontinuance under section 8(3).
- (3) The consent of the registration authority shall be in such form as the registration authority may determine.
- (4) The consent of the registration authority shall expire 3 months after the date of the grant unless within that period the IC is continued under the laws of the named country or territory outside the Island.

Documents to be filed

8. (1) The IC shall deliver to the registration authority —
- (a) the consent of the registration authority;
 - (b) a copy of the instrument of continuance issued to it by the competent authority in the country or territory under the laws of which the IC is to be continued; and
 - (c) a declaration of discontinuance containing or attaching the following information —
 - (i) a copy of the irrevocable undertaking required by paragraph 6(4)(d);
 - (ii) the name of the country or territory under the laws of which the IC has been continued; and
 - (iii) the address of the registered office or the principal business address of the IC in that country or territory,
 not later than 1 month after the date of issue of the instrument of continuance referred to in sub-paragraph (b).
- (2) An IC which contravenes sub-paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

- (3) The registration authority shall file the instrument of continuance and issue a certificate of discontinuance which shall be in such form as the registration authority may determine.
- (4) A certificate of discontinuance given by the registration authority in respect of an IC shall be conclusive evidence that all the requirements of this Part in respect of discontinuance and of matters precedent and incidental thereto have been complied with, and that the IC is duly discontinued under this Part.

Effect of discontinuance

9. (1) On the date of the certificate of discontinuance the IC shall cease to be —
 - (a) registered as a company under the 1931 Act or the 2006 Act, as the case may be; and
 - (b) an incorporated cell of the ICC.
- (2) The 1931 legislation or the 2006 legislation, as the case may be, shall cease to apply to the IC on the date on which it is continued under the laws of the other country or territory as stated in the instrument of continuance and in the declaration of discontinuance.

Restrictions on continuance of IC

10. An IC shall not be eligible for continuance as an overseas cell unless at the time of the application under paragraph 6, the laws of the country or territory in question provide, in effect, that when an IC is continued as an overseas cell in that country or territory —
 - (a) the property of the IC continues to be the property of the overseas cell;
 - (b) the overseas cell continues to be liable for the obligations of the IC;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the IC is unaffected; and
 - (d) any conviction against, or any ruling, order or judgment in favour of or against the IC be enforced by or against the overseas cell.

Consequence of discontinuance of IC

11. The discontinuance of an IC under this Part and its continuance in a country or territory outside the Island shall not be deemed to operate —
 - (a) to create a new legal entity; or
 - (b) to prejudice or affect the continuity of the overseas cell which was formerly an IC.

Regulation 7

SCHEDULE 2

MODIFICATIONS OF WINDING UP PROVISIONS

Winding up by the court

1. An application to the court for the winding up of an IC may be made by the ICC as well as by a person mentioned in section 164(1) of the 1931 Act.

Meetings of company or contributories

2. The ICC shall be entitled to be given notice of and, by its duly authorised representative, to attend (but not to vote at) —
 - (a) a meeting of contributories under section 179(2) or 185(2) of the 1931 Act;
 - (b) a general meeting at which a resolution for voluntary winding up, or appointing a liquidator, may be passed;
 - (c) a general meeting under section 223(1), 224(1), 232(1) or 233(1) of the 1931 Act.

Liquidator's accounts

3. The liquidator shall send to the ICC a copy of every account laid before a meeting referred to in paragraph 2(c).

Enforcement

4. An application to the court for an order under section 263 of the 1931 Act may be made by the ICC.

Disposal of books and papers

5. In its application to an IC, section 266 of the 1931 Act shall have effect as if subsection (1) required the books and papers of the IC and of the liquidators to be delivered to the ICC, to be kept by it for a period of not less than 5 years.

SCHEDULE 3
APPLICATION OF THE 2006 ACT TO ICs

1 Accounting records

Any reference within the 2006 Act to section 80 of that Act shall be construed in accordance with paragraph 2 of Schedule 2 to the 2010 Act.

2 Financial statements

(1) Whenever financial statements are to be prepared in respect of one or more ICs of an ICC (whether or not under compulsion of law or other obligation), the ICC shall be responsible for the preparation of those financial statements and shall prepare separate financial statements for each IC.

(2) The requirement in sub-paragraph (1) is satisfied if an IC, with the agreement of the ICC, elects —

(a) in its articles; or

(b) by a resolution of the IC's members,

that the preparation of its financial statements may be combined with the preparation of the financial statements of its ICC or another IC of its ICC which also so elects, and that preparation is so combined.

(3) Where no election is made under sub-paragraph (2), the financial statements of an ICC need not include matters already included by it in the financial statements of an IC prepared by it in accordance with sub-paragraph (1).

(4) Subject to contrary provision in the articles of an IC or its ICC —

(a) a member of the ICC who is not a member of the IC is only entitled to be provided with the financial statements of the ICC that relate to the ICC;

(b) a member of an IC is only entitled to be provided with so much of the financial statements as relate to that IC.

(5) An ICC which fails to comply with this paragraph commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

3 Right to require financial statements to be prepared

(1) Section 80A of the 2006 Act does not apply to an IC.

(2) However, if no financial statements, whether separate or, if permitted by paragraph 2(2), combined, have been prepared in respect of an IC for a continuous period of 18 months or more, any member or director of the IC may at any time demand that financial statements be prepared for the period since the end of the financial period to which the preceding financial statements relate or, if none, since the incorporation of the IC and made up to such date as is specified in the demand, not being later than the date of demand.

(3) A demand under sub-paragraph (2) shall be made in writing and deposited at the registered office of the IC or the ICC.

(4) The financial statements must be prepared by the ICC within 6 months of the date of deposit of the demand.

- (5) The requirements of sub-paragraph (4) may be met by the preparation of either separate accounts of the IC or, if permitted by paragraph 2(2), combined accounts.
- (6) An ICC which fails to comply with sub-paragraph (4) commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

4 ICC responsibility for audit of its ICs

Where the financial statements of an IC are to be audited (whether or not under compulsion of law or other obligation), the IC shall be responsible for the appointment and remuneration of the auditor unless, with the agreement of the ICC, that IC has elected —

- (a) in its articles; or
- (b) by a resolution of the IC's members,

that the ICC shall be responsible for the appointment and remuneration of the auditor.

5 Combining audit of ICs with their ICC

- (1) Where the financial statements of an IC are to be audited the IC may, with the agreement of the directors of its ICC, elect —
 - (a) in its articles; or
 - (b) by a resolution of the IC's members,that its audit may be combined with the audit of its ICC, or another IC of its ICC which also so elects.
- (2) Subject to contrary provision in the articles of an IC or its ICC —
 - (a) a member of the ICC who is not a member of the IC is only entitled to be provided with so much of the auditors' report on the financial statements of the ICC as relates to the ICC;
 - (b) a member of an IC is only entitled to be provided with so much of the auditors' report of the ICC as relates to the financial statements of that IC.

Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make further provision for incorporated cells (ICs) created under the Incorporated Cell Companies Act 2010. An IC is prohibited from carrying on any business other than insurance business (regulation 4). An IC incorporated under the Companies Act 1931 is required to mention its status and the identity of the company of which it is a cell on business letters etc. (regulation 5). Provision is made for the transfer of the domicile of ICs to and from the Isle of Man (regulation 6 and Schedule 1) and for the winding up of ICs (regulation 7 and Schedule 2). The application of the Companies Act 2006 is further modified with respect to ICs (regulation 8 and Schedule 3).