

# LEGAL UPDATE

21 January 2020

## LAUNCH OF THE VARIABLE CAPITAL COMPANIES FRAMEWORK

### INTRODUCTION

On 14 January 2020, the Variable Capital Companies Act 2018 (amended by certain provisions of the Variable Capital Companies (Miscellaneous Amendments) Act 2019 (“**VCC Amendment Act**”)) was brought into force together with its supporting subsidiary legislation as well as the amendment regulations under the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005. On 15 January 2020, the Monetary Authority of Singapore (“**MAS**”) and the Accounting and Corporate Regulatory Authority launched the variable capital companies regulatory framework (“**Framework**”).

The Framework introduces a new corporate structure in Singapore known as a variable capital company (or “VCC” in shorthand). The VCC can be structured as a standalone entity, or an umbrella entity containing sub-funds within it. The VCC with its segregated sub-fund structure is informed by an extensive and in-depth analysis of the laws and practices in other well-known funds jurisdictions such as Luxembourg, the Republic of Ireland and the United Kingdom.

A VCC is not limited in use to hedge funds and can be used for both traditional and alternative strategies including private equity, real estate, infrastructure and venture capital funds. A VCC, and each of its sub-funds (where applicable), can be structured as an open-ended or closed-end fund. The establishment of an umbrella VCC with multiple sub-funds provides cost savings to fund managers, since sub-funds can share the same board of directors and common service providers and consolidate some administrative functions, thereby creating economies of scale. The Framework also allows fund managers to take

advantage of Singapore’s extensive double tax treaty network.

The Framework is intended to encourage fund managers in Singapore to establish the domicile of their investment funds in Singapore and help strengthen Singapore’s position as a full-service international fund management centre. Prescribed fund managers in Singapore who manage foreign investment funds with comparable structures are able to re-domicile such foreign investment funds by transferring their registration to Singapore as VCCs. Furthermore, foreign fund managers who are not prescribed fund managers within the Framework may consider working with existing fund management services platform firms to establish their own VCCs.

### KEY FEATURES OF VCCS

A VCC has the following key features which Singapore funds incorporated as a private limited company under the Companies Act (Cap 50) are unable to offer:

- (a) A VCC may vary its share capital without seeking investors’ approval and can therefore give investors the right to freely redeem and withdraw their capital from the VCC.
- (b) Although the constitution and returns of a VCC must be submitted to the Registrar of VCCs, none of such documents will be accessible by the public.
- (c) The register of members of a VCC is not accessible to the public. Only the fund manager of the VCC, a custodian of the VCC, certain prescribed public authorities, or a person permitted by court order, may inspect the register of members of that VCC. A member of a VCC is entitled to inspect and obtain information relating to itself in the register of members.
- (d) A VCC can be established as an umbrella VCC with two or more sub-funds. As earlier mentioned, this allows for economies of scale and enhances operational efficiencies. Sub-funds within the same umbrella VCC can adopt or pursue different investment strategies or asset classes, as long as they are aligned with the constitution or offering document of the VCC. Further, the assets and liabilities of sub-funds within an umbrella VCC are segregated and each sub-fund may be wound up as if it were a separate legal person.

Other features of a VCC include the following:

- (a) An auditor has to be appointed to audit the VCC's accounts on an annual basis.
- (b) A VCC must appoint at least one director who is ordinarily resident in Singapore and at least one director (who may be the same person as the local resident director) who is a director or qualified representative of the fund manager of the VCC.
- (c) A qualified custodian must be appointed in respect of an authorised scheme that is constituted as a VCC. Similarly, a qualified custodian must be appointed in respect of a Singapore restricted scheme that is constituted as a VCC unless (i) the VCC is a closed-end fund established for the purposes of private equity or venture capital investments, (ii) the fact that its assets are not maintained in a trust account or custody account with a custodian is disclosed to investors, and (iii) the investors have acknowledged such fact.
- (d) The constitution of a VCC may generally be altered by ordinary resolution of the members. In addition, the constitution of a VCC can be drafted in such a way as to expressly authorise the directors of the VCC to alter the constitution without members' approval in certain prescribed instances. Chiefly among those instances is where such alteration does not prejudice the interests of any member, and does not release to any material extent the fund manager or any director from any responsibility to the members.
- (e) A VCC is not required to hold an annual general meeting for a financial year if (i) the directors of the VCC elect to dispense with the annual general meeting by giving to the VCC's members a written notice of such dispensation at least 60 days before the last date on which the annual general meeting must be held, or (ii) copies of the audited financial statements and the auditor's report relating to the financial year in question have been sent to all persons entitled to receive notice of general meetings of the VCC within 5 months after the end of the financial year to which the financial statements relate.
- (f) A VCC must have "VCC" as part of and at the end of its name.

#### TAX TREATMENT FOR VCCS

Regardless of whether a VCC is set up as a standalone VCC or as an umbrella VCC with sub-funds, a VCC will be treated as a single entity for

income tax purposes. An umbrella VCC, and its sub-funds, is only required to submit a single corporate income tax return with the Inland Revenue Authority of Singapore.

The tax incentive schemes pursuant to sections 13O and 13U of the Income Tax Act (Cap. 134) of Singapore will be extended to VCCs as well.

#### VCC GRANT SCHEME

The MAS has launched a Variable Capital Companies Grant Scheme to help eligible fund managers defray costs when incorporating or registering a VCC.

Under the Scheme, the MAS will co-fund up to 70% of eligible expenses paid to Singapore-based service providers. The grant is capped at S\$150,000 for each application, for up to three VCCs per fund manager.

The Scheme will be funded by the Financial Sector Development Fund and will take effect from 15 January 2020 for a period of up to three years.

The MAS has invited interested applicants to write to [fsdf@mas.gov.sg](mailto:fsdf@mas.gov.sg) for more information.

Singapore fund managers who wish to incorporate VCCs can consider applying for such grant.

#### AMENDMENTS TO THE VCC FRAMEWORK

In conjunction with the launch of the Framework, amendments to the Securities and Futures Act (Cap 289) of Singapore and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 ("**CIS Regulations**") relating to the offers of shares in a VCC (particularly VCCs which are restricted Singapore schemes) have also come into effect.

Notwithstanding the above, there are further proposed amendments under the VCC Amendment Act and the CIS Regulations (particularly relating to authorised schemes) which have yet to be legislatively enshrined.

Readers should therefore be mindful that the VCC structure and Framework, while largely ready for commercial uptake, is subject to further changes and fine-tuning.

#### CLOSING

The Framework has been much anticipated since the initial consultation paper which was issued on

23 March 2017 and response to the launch has been very positive. With the increasing transparency, regulatory and economic substance requirements on funds established in other funds jurisdictions, it is likely that the VCC will be the preferred funds vehicle for Singapore fund managers in the future. As much as the Framework is likely to provide fund managers and service providers with exciting opportunities and innovative tools to market their funds and services respectively, it is in their best interest to obtain proper legal advice in that regard due to the novelty of, and impending legislative adjustments to, the Framework.

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