

MAS CONSULTS ON REQUIREMENTS FOR THE PROPOSED AML/CFT FRAMEWORK FOR VCCS

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Introduction

The variable capital company (“**VCC**”) is a new corporate structure for all types of collective investment schemes (“**CIS**”) in Singapore. Each VCC may comprise of one or more CIS, which can be open-ended or closed-ended funds. The VCC will be regulated under the Variable Capital Companies Act 2018 (“**VCC Act**”), which has not come into force as at August 2019, as well as various proposed items of subsidiary legislation that have not been passed. However, it is expected that the VCC framework will be operational in Q4 2019. The VCC will be regulated jointly by the Accounting and Corporate Regulatory Authority (“**ACRA**”) and the Monetary Authority of Singapore (“**MAS**”) – ACRA would administer the VCC Act, while the anti-money laundering and countering the financing of terrorism (“**AML/CFT**”) obligations of VCCs will come under the purview of MAS.

On the back of the public consultation of the VCC Act in 2017 and feedback received, MAS is proposing to introduce a new AML/CFT framework for VCCs as set out in its consultation paper on the proposed notice on prevention of money laundering and countering the financing of terrorism for VCCs (“**Consultation Paper**”). A copy of the Consultation Paper can be accessed [here](#). This proposed framework for VCCs will be contained in a new MAS AML/CFT notice to VCCs (“**VCC AML/CFT Notice**”), which can be accessed [here](#), and reflects the policy outcomes and imposes requirements similar to those required of existing MAS-regulated entities, with some adaptations as discussed below.

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Engagement of an eligible financial institution

In order to prevent the use of a VCC as an investment vehicle for nefarious activities, MAS will require a VCC to engage an eligible financial institution (“**Eligible Financial Institution**”) as prescribed in the VCC AML/CFT Notice to conduct the necessary checks and perform the measures to allow the VCC to comply with the majority of the VCC AML/CFT Notice requirements. The prescribed list of Eligible Financial Institutions consists of MAS regulated entities for AML/CFT purposes such as fund managers. MAS expects a VCC to have in place internal policies and procedures, and appropriate compliance, audit and training procedures, similar to those required of existing MAS-regulated entities. Also, a VCC’s directors and employees should be adequately trained on applicable AML/CFT requirements.

That said, MAS proposes that a VCC should not delegate the requirements set out in paragraph 3 (Underlying Principles), paragraph 4 (Eligible Financial Institutions), and paragraph 10 (Reliance on Third Party) of the VCC AML/CFT Notice as these requirements are those which only the VCC can comply with.

In practice, MAS notes that a VCC would largely adapt the policies and procedures of the Eligible Financial institution that it has appointed, such as its fund manager. However, MAS expects that the VCC will ultimately still remain responsible for fulfilling its AML/CFT requirements. If a VCC is unable to comply with its AML/CFT obligations due to an act or omission on part of the Eligible Financial Institution, MAS may take appropriate supervisory action or sanction against the VCC and/or its directors after considering all the relevant facts and circumstances. Further, MAS may also take separate supervisory action or sanction against the Eligible Financial Institution if it has been found to be in breach of its own AML/CFT obligations applicable to it.

Definitions of “business relations” and “customers”

The definitions of “business relations” and “customers” would determine the individuals and entities on which a VCC should perform customer due diligence (“**CDD**”). MAS expects VCCs to conduct CDD on its members and prospective members, whether at a fund or sub-fund level. In practice, MAS notes that the VCC would have engaged its appointed Eligible Financial Institution to perform these CDD procedures.

The proposed definitions are as follows:

- “business relations” means any direct or indirect contact between a VCC and a person (whether a natural person, legal person or legal arrangement) that results in the entering or maintaining of such person’s particulars in the register of members under section 17 of the VCC Act; and
- “customer” in relation to a VCC, means a person (whether a natural person, legal person or legal arrangement) with whom the VCC establishes or intends to establish business relations.

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Register of beneficial owners and nominee directors

VCCs will be required, subject to certain exceptions, to maintain a register of beneficial owners and a register of nominee directors (collectively “**Registers**”), similar to those required of companies under the Companies Act in relation to registrable controllers and nominee directors. MAS will allow the Registers to be kept confidential, however, they must be made available to ACRA, MAS and other law enforcement authorities. The Registers must: (a) be kept up to date and held at the registered office of the VCC, its appointed fund manager or the Eligible Financial Institution; and (b) contain particulars of the VCC’s beneficial owners and persons for which the directors are nominees, including their names and aliases, dates of birth/incorporation, unique identity numbers, addresses, nationalities/places of incorporation, as well as the start and end dates of beneficial ownership or the nominee directorship arrangement.

Reliance by acquiring VCCs on CDD measures already performed

In cases where a VCC acquires another VCC or fund, the VCC AML/CFT Notice as proposed by MAS allows for reliance by the acquiring VCC on CDD measures already performed by the acquired entity on its customers, where the VCC acquires, in whole or in part, the business or shares of another VCC, fund, or their equivalent. This is provided that the VCC has no doubt or concerns with respect to the veracity or adequacy of the CDD information of the acquired entity.

Key differences from the existing AML/CFT notice

Since a VCC’s sole object is to be a CIS, various concepts in MAS’ AML/CFT notices for existing MAS-regulated entities would not be relevant to VCCs and therefore not included in the proposed VCC AML/CFT Notice. MAS highlights two examples. First, MAS recognises that while a VCC would have members who hold shares/units in the VCC, these members would not have “accounts” with the VCC. Opening or maintenance of accounts would rather be at the VCC’s fund manager end, which operates the VCC’s CIS. Accordingly, the requirements in relation to “accounts” and “correspondent accounts” are not included in the VCC AML/CFT Notice. Second, since a VCC is not set up to provide services to non-members of a VCC, undertaking of transactions for non-customers are not relevant to VCCs and therefore excluded from the VCC AML/CFT Notice.

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