

VARIABLE CAPITAL COMPANY

Posted on May 1, 2017

Category: [CNPupdates](#)

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Date Published: 1 May 2017

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Introduction

The Singapore Variable Capital Company ("**SVACC**") will be an alternative form of corporate vehicle for use as a collective investment scheme ("**CIS**"). This will be a useful addition to the existing forms available to use for CIS, being a company under the Companies Act (Cap. 50) ("**CA**"), unit trust and a limited partnership. The proposed new legal framework will provide investment managers with great operational flexibility in the constitution of funds in Singapore and promote the development of Singapore as a center for fund administration. While formulating the S-VACC, the Monetary Authority of Singapore ("**MAS**") has taken into consideration the laws and practices of leading fund jurisdictions like Luxembourg, the Republic of Ireland and the United Kingdom.

Features

1. The Singapore Variable Capital Companies Act ("**S-VACC Act**") will regulate the incorporation and governance of S-VACC under the administration of the Accounting and Corporate Regulatory Authority ("**ACRA**").
2. The S-VACC can be used as a CIS vehicle either as a stand-alone entity or as an umbrella entity with multiple sub-funds with segregated assets and liabilities.
3. A S-VACC is permitted to freely redeem shares and pay dividends using its net assets/capital, thereby

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providing flexibility in the distribution and return of capital.

4. The holding of an Annual General Meeting (“**AGM**”) can be dispensed with at the discretion of the Board of Directors, subject to certain safeguards under the S-VACC Act.
5. The register of the shareholders of an S-VACC is not required to be disclosed to the public, but it would need to be disclosed to the MAS, ACRA and other public authorities for regulatory, supervisory and law enforcement purposes. Information on beneficial owners must also be maintained, and nominee directors must disclose their nominee status and nominators to the S-VACC.
6. One of the directors of the S-VACC must also be a director of S-VACC’s fund manager. Directors must also be “fit and proper persons” for MAS purposes and will be subject to regular checks.
7. An S-VACC’s assets must be managed by a fund manager duly registered, licensed or exempted by MAS.
8. The S-VACC will be required to outsource compliance with Anti-Money Laundering/ Countering the Financing of Terrorism (“**AML/ CFT**”) procedures to its fund manager under the supervision of MAS.
9. An approved custodian must be appointed to supervise custody of the assets of an S-VACC which is an authorised or restricted CIS. (Broadly, an authorised CIS means a CIS authorised by MAS to be marketed to retail investors. A restricted CIS refers to a CIS offered only to accredited investors or where the minimum consideration is S\$200,000 per transaction and which is exempt from authorisation. The third category of CIS would be those exempt as marketed only to institutional investors or by way of the private placement exemption, i.e. by way of not more than 50 offers in Singapore in any 12 months).
10. Both open-ended and close-ended funds can adopt the S-VACC structure and the redemption rights of investors are to be clearly set out in the constitution of the S-VACC.
11. Foreign corporate entities that are equivalent to an S-VACC may be re-domiciled as S-VACCs in Singapore e.g. Irish Collective Asset Management Vehicles / UK OEICs.
12. It is expected that the S-VACC will benefit from Singapore's network of more than 80 tax treaties. MAS is considering extending the current Singapore fund vehicle tax incentives to S-VACCs (i.e. the Onshore Fund Tax Exemption Scheme and the Enhanced Tier Fund Tax Exemption Scheme).

Segregation of Assets and Liabilities of Sub-Funds

S-VACCs will be able to utilise a cellular structure. In this structure, the S-VACC will be a single legal entity, with its sub-funds operating as separate cells (each without legal personality). A sub-fund will be constituted by registration with ACRA, which will, in turn, provide the sub-fund with a unique sub-fund identification number. To prevent cross-cell contagion, the S-VACC framework will provide for the segregation of assets and liabilities of sub-funds, where –

1. the assets of a sub-fund cannot be used to discharge the liabilities of or claims against the S-VACC or any other sub-fund of the SVACC; and

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2. any liability incurred on behalf of or attributable to any sub-fund of a S- VACC must be discharged solely out of the assets of that sub-fund.

To mitigate against cross-cell contagion, MAS is proposing to void any provisions which are inconsistent with the segregation of assets and liabilities of sub-funds (e.g. provisions in the constitution or in agreements entered into by the SVACC) and to require the S-VACC to ensure proper segregation of assets and liabilities of sub-funds.

In circumstances where the S-VACC is dealing with a third party the S-VACC has to disclose the cellular structure to the third party.

To accord protection to retail investors, MAS is proposing that the fund manager of an S-VACC authorised as a CIS be allowed to invest in assets located in a jurisdiction that does not have a cellular company structure, only if any risk of cross contagion between the S-VACC's sub-funds has been reasonably mitigated.

Share and Share Capital

An S-VACC will be allowed to freely redeem shares and pay dividends using its capital. The constitution of an S-VACC should state that the valuation and redemption of shares will be carried out at net asset value ("**NAV**") to safeguard the interests of the creditors (as the liabilities will always be accounted for in the NAV).

An exception is available for closed-end funds which are listed on a securities exchange where the shares of the fund may be traded.

Fund Managers

A S-VACC must be managed by a fund manager regulated or licensed by the MAS, unless exempted under section 99(1) (a),(b),(c) or (d) of the Securities and Futures Act (Cap. 289) ("**SFA**"), i.e., a bank licensed under the Banking Act (Cap. 19), a merchant bank approved under the MAS Act (Cap. 186), a finance company licensed under the Finance Companies Act (Cap. 108) or a company or co-operative society licensed under the Insurance Act (Cap. 142). Note that this excludes fund managers exempt from licensing and registration under the real estate and venture capital exemptions and self-managed S-VACCs (e.g. that availing of the related corporation exemptions such as family offices).

Meetings, Accounts and Shareholder Register

1. Annual General Meetings The directors of an S-VACC may elect to dispense with holding an AGM by giving at least 60 days' written notice to the shareholders of the S-VACC. However, shareholder(s) with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the S-VACC before the date by which an AGM would have been required to be held under the S-VACC Act.
2. Audit and Accounts S-VACCs are required to appoint a Singapore accounting entity to audit their

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books of accounts which shall be separate for each subfund and they must be prepared in accordance with a single set of accounting standards from the Accounting Standards Council, Singapore across all the sub-funds. Authorised schemes will need to use the RAP7 accounting standard (currently required for unit trusts under the CIS Code). There is no requirement to have an audit committee in an S-VACC. The audited statements shall be made available to the shareholders but there is no intention to make them publicly available.

Corporate Governance

An S-VACC must have at least one director who is ordinarily resident in Singapore. At least one director of the S-VACC must also be a director of the SVACC's fund manager, and its directors will be subject to disqualification and duties broadly similar to those under the CA.

An S-VACC is required to have its registered office in Singapore and to appoint a Singapore-based company secretary. The naming requirements for an S-VACC are similar to those under the CA.

Approved Custodian

MAS is proposing that S-VACCs that are authorised or restricted schemes shall have an approved custodian (i.e. an approved CIS trustee under the SFA must supervise the custody of the property of SVACC, and be accountable to MAS for safeguarding the rights and interests of shareholders of the S-VACCs as well as the assets of authorised and restricted S-VACCs). This proposal may meet with some push-back from the funds industry, as it may argue it seeks to impose a higher standard on S-VACCs than currently applies to other funds that can be marketed on an equivalent basis in Singapore. Other operational obligations relating to accounts and registers that are currently imposed on approved trustees for unit trusts will not be imposed on the approved custodian where they are already imposed on the S-VACC or its directors under S-VACC legislation.

Winding Up

The winding-up of an S-VACC is provided for under the S-VACC Act and it may be wound up by (i) its members voluntarily by passing a special resolution for winding up, or (ii) by a court order provided the conditions under the S-VACC Act are satisfied. In addition, a sub-fund may be wound up and the shares of the sub-fund redeemed upon its winding up.

There are certain additional grounds proposed for winding up of an S-VACC. They are as follows:

1. the S-VACC is being used to conduct business outside its permitted use as a vehicle for CIS only;
2. the S-VACC does not have a fund manager duly registered, licensed or exempted by MAS to manage its property for such period as may be prescribed under the S-VACC Act; or
3. the S-VACC breaches its AML/CFT obligations.

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