

## Variable Capital Company – Key Features and Highlights

### Introduction

The Variable Capital Company (“VCC”) will soon become 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) (“**Companies Act**”), a unit trust and a limited partnership. The VCC is similar to variants in other leading fund jurisdictions like the open-ended investment company (“**OEIC**”) in the UK and the Irish Collective Asset-Management Vehicle (“**ICAV**”) in Ireland. With this new legal framework in place, it is envisaged that investment managers will have greater operational flexibility in the constitution of funds in Singapore, elevating Singapore as a leading fund centre in the Asia region.

Attractive features of the VCC include the ability to redeem shares at the fund’s net asset value (“**NAV**”) and to pay dividends from capital – unlike a fund constituted as a company. It can also be set-up as an umbrella structure with multiple sub-funds, which can be cost effective. Sections 13R and 13X tax exemption schemes are extended to VCCs. The Inland Revenue Authority of Singapore treats a VCC as a company and single entity for tax purposes – eliminating the need to file multiple tax returns for sub-funds. Unlike companies, VCCs’ shareholder registers are not required to be made public – thus offering privacy to investors. Singapore fund managers with offshore fund domiciles will now have an option to co-locate fund domiciliation and management activities in Singapore. The existing “Small Company Requirements” that apply under the Companies Act will not apply to VCCs, potentially allowing more offshore funds to re-domicile.

This article provides a brief summary of the key features and highlights you need to know about the VCC.

### Key Features

1. The VCC will be regulated by its own standalone legislation – the Variable Capital Companies Act (“**VCC Act**”) and the Accounting and Corporate Regulatory Authority (“**ACRA**”) will administer the VCC Act.
2. The VCC 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 VCC is permitted to freely redeem shares and pay dividends using its net assets/capital,

thereby 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 VCC Act.
5. The register of members of a VCC is not required to be open for inspection by the public. That said, the register must be allowed for inspection by following persons or upon an order of court:
  - the manager of the VCC;
  - the custodian of the VCC (being a non-umbrella VCC);
  - a public authority (such as the Government, ACRA and the Monetary Authority of Singapore (“**MAS**”)).

A member is entitled to inspect the register only with respect to information of itself.

6. One of the directors of the VCC must be ordinarily resident in Singapore and also be a director or a qualified representative of VCC’s fund manager. Directors of a VCC must also be “fit and proper persons”.
7. A VCC’s assets must be managed by a fund manager duly registered, licensed or exempted by MAS.
8. A VCC will be required to comply with Anti-Money Laundering/Countering the Financing of Terrorism (“**AML/CFT**”) procedures, which would be supervised by MAS for compliance.
9. An approved custodian must be appointed to supervise custody of the assets of a VCC 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 VCC structure and the redemption rights of investors are to be clearly set out in the constitution of the VCC.
11. Foreign corporate entities that are equivalent to a VCC may be re-domiciled as VCCs in Singapore e.g. ICAVs / OEICs.

### Segregation of Assets and Liabilities of Sub-Funds

VCCs will be able to utilise a cellular structure. In this structure, the VCC 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 VCC Act provides for the segregation of assets and liabilities of sub-funds, where:

- the assets of a sub-fund cannot be used to discharge the liabilities of or claims against the VCC or any other sub-fund of the VCC; and
- any liability incurred on behalf of or attributable to any sub-fund of a VCC must be discharged solely out of the assets of that sub-fund.

To mitigate against cross-cell contagion, the VCC Act voids 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 VCC) and requires the VCC to ensure proper segregation of assets and liabilities of sub-funds.

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

To accord protection to retail investors, MAS will require that the fund manager of an VCC 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 VCC's sub-funds has been reasonably mitigated.

### Share and Share Capital

A VCC will be allowed to freely redeem shares and pay dividends using its capital. This is one of the main advantages of a VCC. The constitution of a VCC would be deemed to imply the following:

- the value of the paid-up share capital shall be at all times equal to the NAV of the VCC; and
- subject to adjustments for fees and charges as provided in the constitution of the VCC, the shares of the VCC shall be issued, redeemed or repurchased at the price equal to the proportion of the NAV of the VCC represented by each share.

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 VCC 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 exemption and self-managed VCCs (e.g. those availing of the related corporation exemptions such as family offices).

### Meetings, Accounts and Shareholder Register

#### 1. Annual General Meetings

The directors of a VCC may elect to dispense with holding an AGM by giving at least 60 days' written notice to the shareholders of the VCC. However, shareholder(s) with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the VCC before the date by which an AGM would have been required to be held under the VCC Act.

#### 2. Audit and Accounts

VCCs are required to audit their books of accounts which shall be separate for each sub-fund and they must be prepared in accordance with a single set of accounting standards from the Singapore Accounting Standards Council ("**ASC**") or International Financial Reporting Standards ("**IFRS**") across all the sub-funds. Authorised Schemes will need to use the RAP7 accounting standard (currently required for units trusts under the CIS Code). MAS will allow VCCs which do not consist of Authorised Schemes (i.e. VCCs that consist only of Restricted and/or Exempted Schemes, being CIS offered to non-retail investors) the option to prepare their financial statements in US GAAP, in addition to the ASC standard or the IFRS. The audited statements shall be made available to the shareholders but there is no intention to make them publicly available.

### Corporate Governance

A VCC must have at least one director who is ordinarily resident in Singapore. At least one director of the VCC must also be a director or qualified representative of the VCC's fund manager, and its directors will be subject to disqualification and duties broadly similar to those under the Companies Act.

A VCC is required to have its registered office in Singapore and to appoint a Singapore-based company secretary. The naming requirements for a VCC are similar to those under the Companies Act.

### Approved Custodian

VCCs that are Authorised Schemes shall have an approved custodian (i.e. an approved CIS trustee under the SFA must supervise the custody of the property of the VCC). MAS will provide further details for the role of the custodian of Authorised Schemes in a VCC in amendments to the SFA, its subsidiary legislation and/or the CIS Code.

### Winding Up

The winding up of a VCC is provided for under the VCC 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 VCC 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 for winding up of a VCC. They are as follows:

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

### Tax

Under the tax framework, a VCC will be treated as a company and a single entity for tax purposes and therefore it is clarified that the Singapore-resident VCC would be entitled to enjoy and rely on the various tax treaties Singapore has concluded with other countries. The VCC would therefore be able to enjoy the same tax benefits as a company incorporated in Singapore with the added corporate and regulatory advantages accorded to the VCC. In addition, the main tax exemptions for Singapore-based funds (i.e. the Singapore Resident Fund Scheme and the Enhanced Tier Fund Scheme) will be extended to VCCs which are able to meet the qualifying conditions for such schemes.

Also, the Financial Sector Incentive – Fund Management Scheme will be extended to approved managers managing an incentivised VCC. The GST remission for funds will also be extended to incentivised VCCs.

*This update is provided to you for general information and should not be relied upon as legal advice.*



### Authors & Contributors



**Amit DHUME**

Partner

Email: [adhume@cnplaw.com](mailto:adhume@cnplaw.com)



**Bill JAMIESON**

Partner

Email: [billjamieson@cnplaw.com](mailto:billjamieson@cnplaw.com)



**Abel HO**

Associate

Email: [aho@cnplaw.com](mailto:aho@cnplaw.com)



**Joy TAN**

Practice Trainee

Email: [jtian@cnplaw.com](mailto:jtian@cnplaw.com)

If you wish to have further information on this update or wish to discuss how it may potentially have an impact on your business, please feel free to contact the following:



**Amit DHUME**

Partner

Co-Head, Funds Practice Group

DID: +65 6349 8729

Fax: +65 6323 8282

Email: [adhume@cnplaw.com](mailto:adhume@cnplaw.com)



**Bill JAMIESON**

Partner

Co-Head, Funds Practice Group

DID: +65 6349 8680

Fax: +65 6323 8282

Email: [billjamieson@cnplaw.com](mailto:billjamieson@cnplaw.com)