

Singapore Variable Capital Company

Presented by

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A DEDICATED FUND VEHICLE

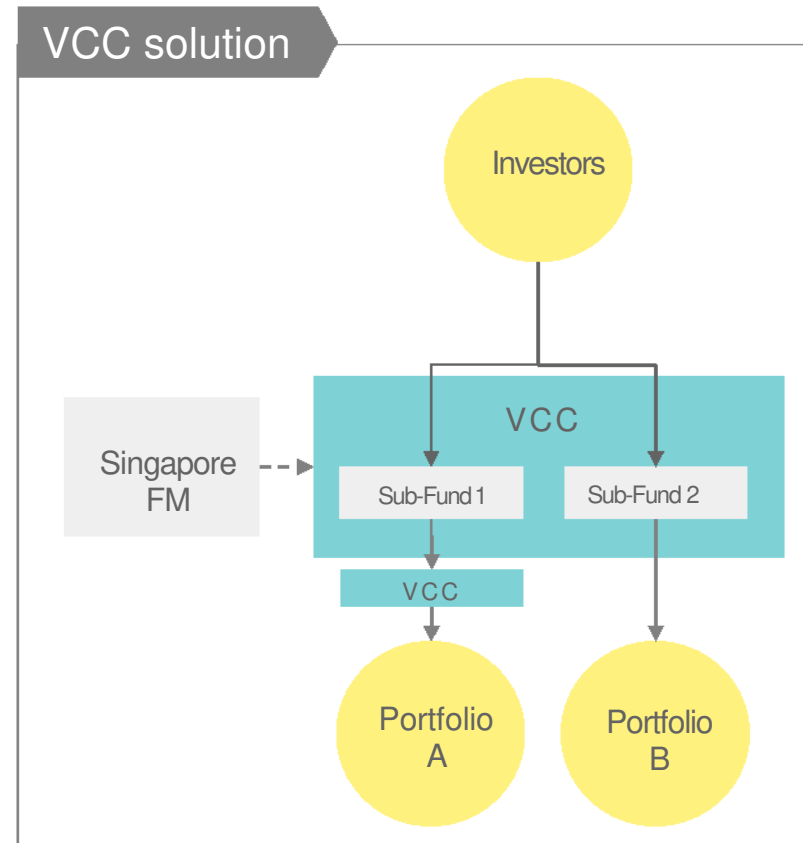
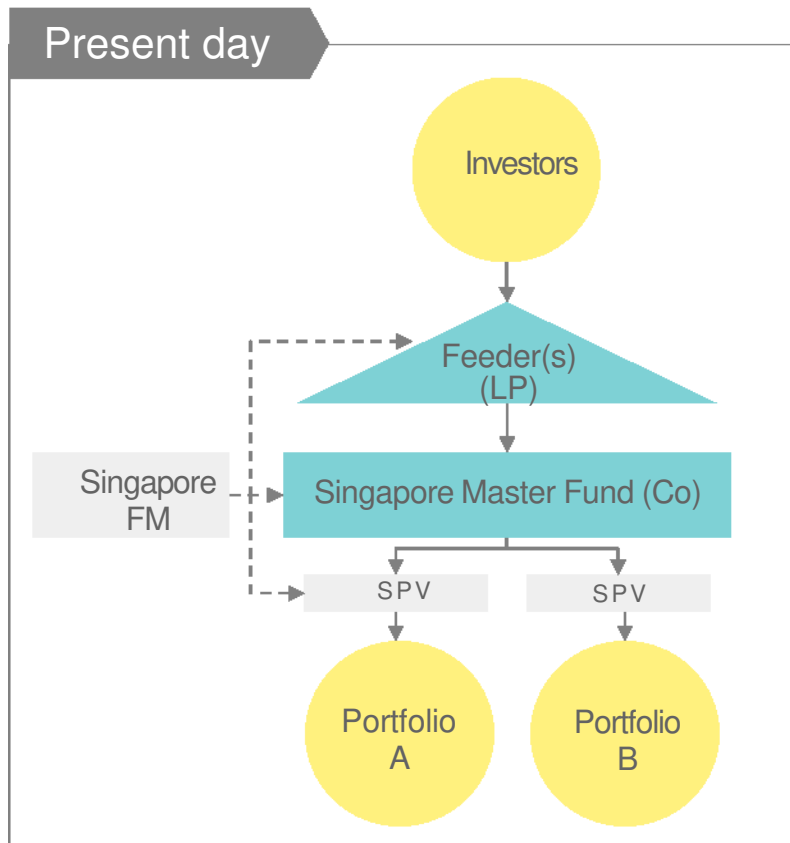
- **Singapore a hub for funds in Asia**
 - Encourage fund managers to domicile more funds in Singapore
- **Complement existing fund structures available in Singapore**
 - Company limited by shares, limited partnership, unit trust and business trust
- **Limitations of the Singapore limited company as fund structure**
 - Restrictions on the return of capital to shareholders
 - Register of shareholders is open to public
 - Dividends only payable out of profit

USE CASE FOR VCC

- **VCC a Singapore domiciled investment company**
- **Only for collective investment scheme(s)**
- **Can be set up as standalone fund or an umbrella fund with separate sub-funds**
- **For both retail funds and non-retail funds**
- **For both open-ended (hedge funds) and closed-end funds (alternative funds PE/VC/RE)**
 - Potential cost efficiencies
 - Investor confidentiality without a limited partnership feeder
 - Access to tax treaty benefits

USE CASE FOR VCC

Closed end alternative funds (PE/VC/RE)



LEGISLATION

- **Variable Capital Companies Act 2018**
 - Bill passed 1 October 2018
 - MAS announced tax framework 31 October 2018
 - MAS consultation papers on VCC regulations published in 2019
 - VCC Act came into force 14 January 2020, together with regulations
- **To be read with the Companies Act**
- **Jointly regulated by ACRA and MAS**
 - Constitution filed on ACRA but not made public

SUB-FUNDS

- **Umbrella VCCs can register multiple sub-funds**
- **Each sub-fund is itself a CIS/investment fund, but no separate legal personality from umbrella VCC**
- **Assets and liabilities are segregated from other sub-funds of same VCC**
- **A sub-fund may invest in other sub-funds of the same VCC**
- **Concept of a VCC sub-fund is similar to...**
 - “Segregated Portfolio” in the Segregated Portfolio Company (SPC) structure from the Cayman Islands
 - “Sub-Fund” in the Irish Collective Asset-management Vehicle (ICAV) structure from Ireland

SEGREGATION OF ASSETS AND LIABILITIES OF SUB-FUNDS

- **Segregation of assets and liabilities between sub-funds through cellular structure**
 - A liability of a sub-fund must be discharged solely out of its own assets, not from assets of other sub-funds or umbrella VCC
 - Similar concepts of segregation in the SPC and ICAV regimes
- **Creditors of a sub-fund cannot seek recourse from assets of other sub-funds of the same VCC**
- **To mitigate cross-cell contagion risks**
 - Investors of a sub-fund [with a lower risk strategy] would not want its assets to be used to satisfy liabilities of a sub-fund [with a higher risk strategy]

SEGREGATION OF ASSETS AND LIABILITIES OF SUB-FUNDS

- **Segregation is implied in every umbrella VCC's constitution**
- **No contracting out of this, as provisions inconsistent with such segregation are void**
- **Mandatory disclosure of segregation of assets and liabilities to contracting parties**
 - Umbrella VCC will enter into contracts for and on behalf of its sub-funds
 - Name and registration number of sub-fund must be stated in transaction documents
 - VCC must disclose the segregation of assets and liabilities in documents referring to sub-funds and dealings on behalf of sub-funds

SEGREGATION OF ASSETS AND LIABILITIES OF SUB-FUNDS

- **Authorised and restricted VCCs must clearly disclose cross-cell contagion risks to investors**
- **Directors and fund managers of authorised VCCs must take reasonable measures to manage cross-cell contagion risks, before investing in assets located in jurisdictions that do not recognise cellular structures**
 - E.g. ensure agreements are governed by laws of jurisdictions that recognise cellular structures and uphold segregation of assets and liabilities

ASSETS AND LIABILITIES NOT ATTRIBUTABLE TO A SUB-FUND

- **Umbrella VCC may hold assets and incur liabilities on behalf of sub-funds**
 - E.g. cost of engaging service providers, administrative functions (holding general meetings, preparing prospectuses), office rent
- **Such assets and liabilities may not be attributable to any particular sub-fund**
- **VCC may allocate such assets and liabilities between sub-funds in a manner it considers fair to shareholders. VCC’s constitution must state its policy for such allocation**
- **SG’s approach is slightly different from the Cayman SPC structure**
 - Cayman SPC involves concept of “general assets” of SPC
 - Liabilities that are not attributable to a particular Segregated Portfolio can be satisfied from the general assets

SHARES AND SHARE CAPITAL

- **VCC may freely redeem shares and pay dividends out of capital**
- **Shares issued and redeemed at net asset value**
 - (adding or subtracting fees and charges to accommodate a fund's normal operational needs such as liquidity risk management, transactions costs, default remedies, etc)
- **Rights to participate in profits, to redeem or repurchase shares, to vote must be set out in VCC constitution**
- **The SAL template VCC constitutions contemplate that details of rights of a sub-class may be set out in a directors' resolution and/or the information memorandum for the sub-fund and incorporated by reference in the constitution**

PERMISSIBLE FUND MANAGER

- **VCC must appoint a Permissible Fund Manager to manage its property – licensed or registered fund management company or certain entities exempted under the SFA, eg banks**
 - Seems to rule out exempt real estate fund managers and exempted family offices
- **Delegation of fund management and operational duties is permitted**
- **Fund manager may delegate its functions to a fund manager regulated in another jurisdiction**

DIRECTORS

- **At least one director who is resident in Singapore**
- **At least one director who is either a director or a qualified representative of the VCC's fund manager**
- **Authorised schemes must have at least three directors including one independent director**
- **Directors must be fit and proper persons**

MEETINGS

- **General requirement for AGMs**
- **AGMs may be dispensed with**
- **10% Shareholders may call for AGM to be held**
- **Class meetings of shareholders of a particular sub-fund**



REGISTER OF MEMBERS

- **VCC to maintain registers of shareholders, controllers and nominee directors**
- **Not required to be made public but must be made available to supervisory and law enforcement agencies where necessary**

ACCOUNTING

- **Annual audit**
- **Separate financial information for each sub-fund**
- **Shareholders of a sub-fund have access to financial statement for VCC**
- **Single accounting standard across all sub-funds**
 - SFRS, IFRS or US GAAP (or RAP 7 for authorised schemes)
- **Financial statements not required to be publicly available**
- **Financial statements can be provided to prospective investors**

ANTI-MONEY LAUNDERING

- **VCCs are subject to AML/CFT requirements (MAS Notice VCC-N01)**
- **Required to outsource performance of AML duties to its fund manager or a regulated financial institution but VCC will remain ultimately responsible for compliance**
- **MAS' Guidelines on Outsourcing**

CUSTODIAN

- **VCCs which are authorised schemes must appoint a custodian that is a trustee approved under s 289 of the SFA**
- **VCCs which are restricted schemes must maintain their assets with a “prescribed entity”** – bank, etc, depository agent, approved trustee, custodian (licensed in Singapore or where account is maintained)
- **VCCs which are PE or VC funds need not appoint a custodian, subject to conditions**

RE-DOMICILIATION

- **Inward re-domiciliation regime**
 - Minimum requirements under CA re-domiciliation regime do not apply
 - Foreign companies without a cellular structure may re-domicile as a VCC
 - Full requirements set out in VCC (Transfer of Registration) Regulations 2020
- **Conversion**
 - No regime for conversion to a VCC at this point but may be considered by MAS in future

WINDING-UP OF VCC

- **Regime for companies under Insolvency, Restructuring and Dissolution Act 2018 to be adapted with additional grounds:**
 - VCC is being used to conduct business outside CIS
 - VCC does not have a permissible fund manager
 - VCC breaches its AML/CFT obligations
- **Each sub-fund may be wound up as if it were a separate legal person**

DEBENTURES AND RECEIVERSHIP

- **VCCs can issue debentures relating to specific sub-funds**
- **Receiver may be appointed over the VCC's property as a whole or over the property of a specific sub-fund**

ARRANGEMENTS, RECONSTRUCTIONS AND AMALGAMATIONS

- **Mechanisms for arrangements, reconstructions and amalgamations under the CA do not apply**
- **Constitution of VCC must set out shareholder's rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation**

TAXATION

- **GST, stamp duty treatment, deductions and allowances will be applied at the sub-fund level**
- **An umbrella VCC only needs to file a single Corporate Income Tax return, regardless of the number of its sub-funds**
- **Tax incentives under sections 13R (Singapore Resident Fund Scheme) and 13X (Enhanced Tier Fund Scheme) of the ITA will be extended to VCCs**

13R AND 13X TAX INCENTIVES

- **Existing requirements apply to VCCs (e.g. fund administrator must be Singapore-based)**
- **For umbrella VCCs, tax incentives will be granted at the umbrella level**
 - If a VCC has 3 sub-funds, the business spend requirement will be set at S\$200,000 for the VCC as a whole (and not S\$600,000). If the VCC were to apply for the 13X incentive, the minimum fund size requirement will be S\$50 million (and not S\$150 million)
- **VCCs cannot change investment objective once tax incentive granted, subject to exceptions and approval from the authorities**
- **Investment objective condition must be satisfied at the umbrella level**
 - If a sub-fund invests outside of the approved investment objective of the VCC, this breach will adversely impact the entire VCC. This also applies to newly registered sub-funds of the VCC

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Photo credit: Tessaract.io

Bill is an English lawyer who is also registered to practise Singapore law in the areas of corporate law, banking and finance and securities laws. He brings depth of experience, including a first class degree in law from Oxford, 10 years in the City of London and 25 years in Asia, based in Singapore. Before joining CNPLaw, he was a partner in an international law firm.

He has worked for clients from all over the world on M&A, capital markets, investment fund, private equity, project finance, leveraged buy-out and restructuring transactions. His focus is on assisting clients access Asian markets and investment flows through Singapore. He also advises on financial services regulatory and employment issues.



Corporate and M&A
Banking and Finance,
Labor & Employment



Investment Funds



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