

The Variable Capital Company

A fund revolution in Singapore



Introduction

On 15 January 2020, Singapore launched the Variable Capital Company (“VCC”) framework, providing a new corporate vehicle for funds. Funds can now be incorporated or re-domiciled in Singapore as VCCs under the Variable Capital Companies Act (“VCC Act”).

Similar to an ordinary company, a VCC has a board of directors and has shareholders. Funds can be formed using a VCC regardless of whether they are closed-end or open-ended. VCCs can also adopt a non-umbrella structure or an umbrella structure with multiple sub-funds, with statutory ring-fencing between each sub-fund and the VCC. They can also act as feeder funds and/or master funds within a fund structure.

This note discusses several key features of the VCC and key items of note in relation to the VCC grant scheme launched by the Monetary Authority of Singapore (the “MAS”).

Simmons & Simmons JWS

We have been actively involved and are experienced in the successful formation and launch of open-ended and closed-end VCCs for clients in the private and public segments of the investment funds industry since our involvement in the VCC Pilot Programme.

Prior to the VCC Pilot Programme, we were involved in the formulation and creation of the model VCC constitutions as part of our work in the VCC Working Group of the Promotion of Singapore Law Committee (Singapore Academy Law).

Our Asset Management practice in Asia is widely recognised and has received a number of recent awards and accolades.

In addition, our team enjoys the full support of Simmons & Simmons London's market-leading funds practice and through our alliance with Seward & Kissel LLP for asset management work, we are able to provide coordinated US, UK, EU, Hong Kong and Singapore legal advice on all aspects of fund formation as well as regulatory, operational and transactional advice to fund managers and sponsors. In-depth industry knowledge and expertise in specialist areas equips us to advice on the full range of issues relevant to fund managers and their sponsors.

"Excellent in ETF work".
Chambers Asia Pacific 2018

Investment Funds
Law Firm of the Year
2014 and 2019
Asia Legal Business Awards

Asset Management
Team of the Year
Financial News Awards for
Excellence in Legal Services

Best Law Firm for Asset
Management 2016 and
2017
AsianInvestor Asset Management
Awards

"The practice is highly
regarded for its advice to
fund managers across
Asia"
Legal 500 Asia Pacific 2019

Best Regulatory Practice
Hedge Fund Journal Awards 2018

The "very knowledgeable
team is particularly in
touch
with the latest market
and regulatory
developments".
Legal 500 Asia Pacific

Best Legal Adviser 2016,
2017, 2018, 2019 and 2020
Chinese Asset Management
Association of Hong Kong /
Bloomberg Offshore China Fund
Awards

Best Onshore Law Firm
HFM Asia Funds Services
Awards 2017 and 2019

Key Features

- 1** A VCC is a corporate entity.
- 2** The sole purpose of a VCC is to be one or more collective investment schemes i.e. it is tailored for use as an investment fund.
- 3** A VCC can be structured as a non-umbrella VCC or an umbrella VCC with multiple sub-funds, with statutory ring-fencing between each sub-fund and the VCC.
- 4** An umbrella VCC with sub-funds will have a single board of directors and can share common service providers (e.g. auditor, administrator).
- 5** A VCC will issue shares which may be in different classes and with different economic and voting rights (e.g. voting and non-voting shares).
- 6** A VCC will not require shareholder approval to issue or redeem shares and the requirement to hold AGMs may be waived.
- 7** A VCC may redeem shares and pay distributions and dividends out of profits or capital.
- 8** A VCC has the option of keeping its books and records in accordance with certain specified accounting standards (namely SFRS, IFRS, US GAAP) and must be audited in accordance with the chosen accounting standard.
- 9** The register of members of the VCC will not be open to inspection by the public and the constitution of the VCC is not publicly available.
- 10** A foreign corporate structured fund can be re-domiciled to Singapore as a VCC.

Please note that additional requirements apply in respect of VCCs which are to be authorized for offer to the retail public in Singapore.

Key Requirements for Incorporation

Name

The name of a VCC must have “VCC” as its suffix.

Manager

A VCC must have a manager that is one of the following (a “Qualifying Fund Manager”):

- A holder of a capital markets services licence for fund management;
- A registered fund management company; or
- An entity which is exempt from licensing or registration but which is nonetheless regulated by the MAS such as banks licensed under the Banking Act or companies licensed under the Insurance Act.

Directors

A VCC must have a minimum of one director.

At least one director of the VCC must be ordinarily resident in Singapore and at least one director of the VCC must be either a director of the manager of the VCC or a qualified representative of the manager. Directors of a VCC must also be fit and proper persons.

Constitution

A VCC must be incorporated with a constitution which complies with certain provisions prescribed in the VCC Act.

The Singapore Academy of Law has developed VCC model constitutions to encourage the incorporation of new funds as VCCs and to assist in the re-domiciliation of overseas funds as VCCs in Singapore.

The model constitutions are accessible here: <https://www.singaporelawwatch.sg/About-Singapore-Law/VCC-Model-Constitutions>.

Auditor and Secretary

A VCC must appoint an auditor within 3 months of incorporation and must appoint a company secretary within 6 months of incorporation.

Key Considerations for Re-domiciliation

In addition to the key requirements as set out on the preceding page, a foreign fund looking to re-domicile to Singapore as a VCC would need to consider the following key considerations:

Solvency

The foreign fund must meet all the following relevant criteria as at the application date for re-domiciliation:

- there is no ground on which the foreign fund may be found to be unable to pay its debts;
- in the case of a foreign fund that is a foreign umbrella fund, there is no ground on which the foreign fund may be found to be unable to pay the debts of any of its collective investment schemes;
- the value of the foreign fund's assets is not less than the value of its liabilities (including contingent liabilities);
- in the case of a foreign fund that is a foreign umbrella fund, the value of each of its collective investment schemes' assets is not less than the value of that collective investment scheme's liabilities (including contingent liabilities); and
- the foreign fund:
 - is able to pay its debts (and if it is a foreign umbrella fund, the debts of each of its collective investment schemes) as they fall due during the period of 12 months immediately after the application date; or
 - if it is intended to commence winding up of the foreign fund (or if it is a foreign umbrella fund, any of its collective investment schemes) within 12 months immediately after the application date, it is able to pay its debts in full within the period of 12 months after the date of commencement of the winding up.

Structure

The foreign fund must be a body corporate comprising one or more sub-funds incorporated in a jurisdiction that permits re-domiciliation.

For example, a foreign fund with an umbrella structure may re-domicile to Singapore as an umbrella VCC, and a foreign non-umbrella fund may re-domicile to Singapore as a standalone VCC. However, at present, a sub-fund of a foreign fund with an umbrella structure is not permitted to re-domicile to Singapore (whether as a sub-fund of a VCC or as a non-umbrella VCC). It is also not permitted at present for a number of foreign funds to re-domicile together as sub-funds of a single umbrella VCC.

Good Faith

Applications for re-domiciliation must be made in good faith and must not be intended to defraud existing creditors of the foreign fund.

Umbrella VCCs and Ringfencing

Formation

An umbrella VCC can form sub-funds by way of board resolutions.

Once formed, sub-funds must be registered with the Accounting and Corporate Regulatory Authority of Singapore.

Operation

Sub-funds have no separate legal personality and accordingly will rely on the umbrella VCC to enter into contracts and discharge obligations for the purpose of and in respect of each sub-fund.

Sub-funds of an umbrella VCC can invest in other sub-funds of the same umbrella VCC.

Sub-funds of an umbrella VCC can have different investment objectives and investors.

Assets of a sub-fund must not be used to discharge the liabilities of another sub-fund or of the umbrella VCC.

An umbrella VCC must keep the assets and liabilities of its sub-funds segregated from each other and from the umbrella VCC.

While the statutory segregation of assets and liabilities provided for in the VCC Act will be recognised in the courts of Singapore, there remains a risk courts of other jurisdictions may not recognize the statutory ring fencing of sub-funds of an umbrella VCC.

Termination

A sub-fund may be wound up or struck off separately from the other sub-funds and from the umbrella VCC as if it were a separate legal entity.

At present, there are no statutory judicial management, scheme of arrangement, amalgamation, reconstruction or merger provisions that apply to VCCs or sub-funds of an umbrella VCC.

VCC Grant Scheme

The MAS is currently operating a grant scheme to partially defray the costs of setting up a VCC.

Under the grant scheme, the MAS will co-fund up to 70% of “qualifying expenses” (see below), capped at S\$150,000 per VCC for successful applicants. Each applicant is allowed to claim up to S\$150,000 per application, subject to a maximum of three VCCs per applicant.

An applicant for the VCC grant scheme would need to be a Qualifying Fund Manager (which includes a holder of a capital markets services licence for fund management or a registered fund management company (see above)) that has incorporated a VCC or has successfully re-domiciled a foreign fund to Singapore as a VCC, and has obtained a notice of incorporation or transfer of registration from the Accounting and Corporate Regulatory Authority of Singapore.

At present, “qualifying expenses” include the following, if paid to Singapore based service providers for work done in Singapore:

- Legal services:
 - fees charged by law firms for legal work in relation to the incorporation or registration of a VCC, including but not limited to, drafting of legal documents such as the VCC constitution, offering memorandum (or equivalent), subscription agreements, investment management agreements; and
 - fees charged for work in relation to the authorisation or notification of a VCC’s prospectus with the MAS.
- Tax services:
 - fees charged by tax advisers, fund administrators, corporate secretaries, law firms or other Singapore-based service providers for tax advice connected with the incorporation or registration of a VCC, including but not limited to tax opinions issued in connection with the incorporation or registration of a VCC as well as relating to any tax incentive applications.
- Administration and regulatory compliance services:
 - fees charged by fund administrators, corporate service providers or company secretaries for work done including for incorporation or registration services in relation to the set up of a VCC, appointment of directors and all filings necessary for the incorporation or registration of the VCC; and
 - fees charged for work done by regulatory consultants in relation to the authorisation or registration of the VCC with the MAS or setting up a compliance framework or any services listed above.

Further details on the VCC grant scheme are available here: <https://www.mas.gov.sg/schemes-and-initiatives/variable-capital-companies-grant-scheme>

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