

A nighttime photograph of the Helix Bridge in Singapore, illuminated with blue and purple lights. In the background, the Marina Bay Sands hotel is visible, along with the Esplanade - Theatres on the Bay and the Singapore skyline reflected in the water.

# Singapore Variable Capital Companies (“VCC”)

*22 November 2018*

## Overview

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1. Original Proposed Framework
2. Subsequent Changes to the Framework
3. Closing Thoughts and Next Steps

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# Original Proposed Framework

## Origins of the VCC

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- The consultation paper for the framework for the VCC (previously known as the “S-VACC”) was published on 23 March 2017 (the “**Consultation Paper**”).
- The VCC is essentially a Singapore-domiciled investment company that can operate as an open-ended or closed-end fund entity, with the option to be set-up as a standalone fund or an umbrella fund with separate sub-funds.



## Recap – Summary of Key Features of the VCC under the Consultation Paper

	Feature
<b>Legislative Structure</b>	<ul style="list-style-type: none"><li>• To be governed under new standalone legislation – the Variable Capital Companies Bill.</li><li>• Regulated by both MAS and ACRA.</li></ul>
<b>Permitted Use</b>	<ul style="list-style-type: none"><li>• Can only be used for collective investment schemes.</li><li>• Intended to be available for use by open-ended and closed-end funds, as well as retail and non-retail funds.</li></ul>
<b>Shares and Share Capital</b>	<ul style="list-style-type: none"><li>• May redeem shares and pay dividends out of capital, provided that shares are issued and redeemed at their net asset value (with certain exceptions).</li></ul>
<b>Sub-Funds</b>	<ul style="list-style-type: none"><li>• Sub-funds with segregated assets and liabilities can be created within a VCC.</li></ul>
<b>Permissible Fund Manager</b>	<ul style="list-style-type: none"><li>• Must be managed by a licensed fund management company, a registered fund management company or certain exempted entities under the Securities and Futures Act of Singapore (“<b>SFA</b>”) (e.g. banks).</li></ul>

## Recap – Summary of Key Features of the VCC under the Consultation Paper (cont'd)

	Feature
<b>Directors</b>	<ul style="list-style-type: none"><li>• At least one Singapore resident director.</li><li>• At least one director that is also a director of the VCC's fund manager.</li></ul>
<b>Meetings</b>	<ul style="list-style-type: none"><li>• Dispensation of AGMs in certain situations.</li><li>• Shareholders (10% or more) may require AGMs to be held.</li></ul>
<b>Audit and Accounting</b>	<ul style="list-style-type: none"><li>• Annual audit required.</li><li>• Accounting standards: ASC Standard or IFRS (or RAP 7 for Authorised Schemes).</li></ul>
<b>Register of Members, Beneficial Owners and Nominee Directors</b>	<ul style="list-style-type: none"><li>• Not required to be disclosed publicly, but must be made available to supervisory and law enforcement agencies where necessary.</li></ul>
<b>Custodian</b>	<ul style="list-style-type: none"><li>• Must appoint an approved custodian that is an approved trustee under the SFA.</li></ul>

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# Subsequent Changes to the VCC Framework



# Subsequent Changes to the VCC Framework

- 10 September 2018: MAS issues response to the feedback received on the Consultation Paper.
- 1 October 2018: VCC Bill passed in Parliament.
- 31 October 2018: MAS announces tax framework for the VCC.



	CHAPTER [ ]
	Singapore Variable Capital Companies Act
	ARRANGEMENT OF SECTIONS
	PART 1
	PRELIMINARY
Section	
1.	Short title and commencement
2.	Interpretation
3.	Interests in shares
	PART 2
	ADMINISTRATION OF THIS ACT
	<i>Division 1 – Preliminary</i>
4.	Administration of Act
	<i>Division 2 – Administration of this Act (except Part 8)</i>
5.	Appointment of Registrar of S-VACCs, etc.
6.	Inspection of books of S-VACC
7.	Power of Magistrate to issue warrant to seize books
8.	Copies of or extracts from books to be admitted in evidence
9.	Destruction, mutilation, etc., of S-VACC documents
10.	Saving for advocates and solicitors
11.	Investigation of certain matters
12.	Security of information
13.	Approved liquidators
14.	S-VACC auditors
15.	Disqualification of liquidators
16.	Registers
17.	Electronic transaction system
18.	Rectification by High Court
19.	Rectification by Registrar on application
20.	Rectification or updating on Registrar's initiative
21.	Enforcement of duty to make returns
22.	Relodging of lost registered documents
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# **MAS Response to Feedback and VCC Bill**

# MAS Response to Feedback and VCC Bill

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## General

- Removal of the requirement to have at least two members.

### **Registration of VCC**

**16.—**(1) Subject to this Act, any person may, whether alone or together with another person, by subscribing the person's name or their names to a constitution and complying with the requirements in subsection (2), incorporate a VCC.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Sub-funds

- The provisions to address risks of cross-cell contagion among sub-funds are unchanged, namely:
  - The assets of a sub-fund must not be used to discharge any liability of the VCC or any other sub-fund. Any liability of a sub-fund must be discharged solely out of its assets.
  - Any provision of the VCC constitution, an agreement, a contract or otherwise that is inconsistent with the above will be void.
- Further, a VCC consisting of an “Authorised Scheme” or “Restricted Scheme” must clearly disclose the risks of cross-cell contagion to shareholders of these schemes.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Sub-funds

- MAS (para 3.6 of response to feedback): “..when investing in assets located in another jurisdiction, MAS will require the **directors** and the **fund manager** of a VCC consisting of **Authorised Schemes** to take reasonable measures to manage cross-cell contagion risks. The measures which would be considered reasonable will depend on the facts and circumstances in each case...”

# MAS Response to Feedback and VCC Bill (cont'd)

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## Permissible Fund Manager

- The permissible fund manager of a VCC remains unchanged:

### **Manager**

**46.—**(1) A VCC must at all times have a manager that complies with subsection (2), to manage its property or operate the collective investment scheme or schemes that comprise the VCC.

(2) A manager of a VCC must be —

- (a) a holder of a capital markets services licence for fund management under the Securities and Futures Act;
- (b) a Registered Fund Management Company;
- (c) a person mentioned in section 99(1)(a), (b), (c) or (d) of the Securities and Futures Act; or
- (d) such person, or a person within such class of persons, as may be prescribed.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Shares and Share Capital

- MAS' position remains unchanged.
- However, MAS has clarified that the VCC will have the flexibility to adjust the price of shares by adding or subtracting fees/charges, and may redeem its shares on “such terms... as may be provided in its constitution”.
  - These fees/charges may be used to accommodate a fund's normal operational needs such as liquidity risk management, transaction costs, default remedies, etc.
  - These fees/charges are not subject to any prescribed limits.
  - These fees/charges must have been provided for in the VCC constitution.
- Further, under the VCC Bill, a VCC may redeem its shares on “such terms... as may be provided in its constitution”.
- MAS has also clarified that net asset value need not be calculated by an independent party.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Shares and Share Capital

- MAS has further clarified that the VCC Bill does not prohibit in-kind subscriptions or redemptions, or switching of shareholdings between sub-funds.
- MAS: “Like a company incorporated under the Companies Act, the VCC will be able to issue different classes of shares with different rights and dividend payment policies. The rights attaching to each share must be clearly set out in the VCC’s constitution.”



# MAS Response to Feedback and VCC Bill (cont'd)

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## Shareholder Rights

- Rights of shareholders must be set out in the VCC's constitution. Details of such rights include:
  - The right to participate in the profits, income or other payments or returns from the VCC or sub-fund.
  - The right to vote (if any) at any general meeting or at any shareholders' meeting of that share class.
  - The right to redeem or repurchase shares.
  - The right in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the VCC.
- No guidance on the level of detail required in setting out such information in the constitution.

# MAS Response to Feedback and VCC Bill (cont'd)

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## Custodian

- MAS has clarified that a VCC consisting of a Restricted Scheme will be required to maintain its assets with a “prescribed entity” (and not just an approved custodian).
- The “prescribed entities” are:
  - i. A bank licensed under the Banking Act (Cap. 19).
  - ii. A merchant bank approved as a financial institution under the MAS Act (Cap. 186).
  - iii. A finance company licensed under the Finance Companies Act (Cap. 108).
  - iv. A depository agent within the meaning of section 81SF of the SFA for the custody of securities listed for quotation or quoted on Singapore Exchange Securities Trading Limited or deposited with the Central Depository (Pte) Ltd.
  - v. An approved trustee under the SFA.
  - vi. Any person licensed under the SFA to provide custodial services for securities.
  - vii. A foreign custodian that is licensed, registered or authorised to conduct banking business or to act as custodian in the country or territory where the account is maintained.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Custodian

- The list of “prescribed entities” is wider than the list under r.27(1) of the Securities and Futures (Licensing and Conduct of Business) Regulations.
- It includes “a foreign custodian that is licensed...” under limb (vii).
- MAS has also clarified that private equity and venture capital funds need not appoint a custodian.
- Further details on custodian requirements will be set out in subsidiary legislation under the SFA.

## MAS Response to Feedback and VCC Bill (cont'd)

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### **Investor Committee**

- MAS has stated in its response that a VCC may form an investment committee.
- MAS and the VCC Bill do not provide any further details on this.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Meetings

- MAS' position remains unchanged: annual general meetings may be dispensed with, subject to certain safeguards.
- Shareholders with 10% or more of the voting rights may require any AGM by giving 14 days' notice to the VCC.
- MAS has clarified that this 10% will be calculated on the level of the VCC as a whole and not on a sub-fund level.
- Meetings of shareholders of a particular sub-fund (and who would therefore all hold a particular share class) may be convened by setting out the proceedings of such meetings in the umbrella VCC's constitution.

## MAS Response to Feedback and VCC Bill (cont'd)

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### **Audit and Accounting**

- Annual audit requirement.
- MAS clarified that the U.S. GAAP, in addition to the ASC Standard and IFRS, will be a permissible accounting standard for non-Authorised Schemes.
- Financial information for each sub-fund to be kept separate. However, MAS has clarified that a single accounting standard must be applied across all sub-funds.

## MAS Response to Feedback and VCC Bill (cont'd)

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### **Audit and Accounting**

- MAS has also clarified that shareholders of a sub-fund would have access to the financial information of another sub-fund.
- Financial statements are not required to be publicly available.



## MAS Response to Feedback and VCC Bill (cont'd)

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### **Register of Members, Controllers and Nominee Directors**

- VCCs to maintain registers of their members. This register would not be publicly available, but must be available to public authorities for regulatory, supervisory and law enforcement purposes.
- A member of a VCC may request for information in the VCC's register of members, but only to the extent that such information "relates to itself".
- MAS has also clarified that the register of members can be maintained by a third party.
- MAS will consult the industry at a later stage on the implementation details regarding maintaining a register of controllers and nominee directors.
- MAS has further clarified that the constitution of the VCC will not be publicly available (unlike a company under the Companies Act).

## MAS Response to Feedback and VCC Bill (cont'd)

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### AML/CFT

- The position remains unchanged.
- The VCC is required to outsource the performance of its AML/CFT duties to its fund manager or to a financial institution regulated by MAS for AML/CFT purposes (e.g. bank acting as fund distributor).
- However, MAS has clarified that notwithstanding any delegation, the VCC will remain ultimately responsible for fulfilling its AML/CFT obligations.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Delegation

- The MAS response states that the fund manager may delegate its functions and duties to other parties that are regulated as fund managers in other jurisdictions.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Winding Up

- The position remains unchanged.
- The winding-up regime for VCCs will be similar to that for companies under the Companies Act of Singapore, with the following additional grounds for winding up:
  1. The VCC is being used to conduct business outside its permitted use as a vehicle for collective investment schemes only;
  2. The VCC does not have a Permissible Fund Manager to manage its property;
  3. The VCC breaches its AML/CFT obligations.
- A VCC may be voluntarily wound up, but only with a special resolution by the shareholders (i.e. 75%).

# MAS Response to Feedback and VCC Bill (cont'd)

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## Inward Re-domiciliation

- The re-domiciliation regime has been tweaked such that the following minimum requirements set out under the Companies Act re-domiciliation regime will not apply:
  1. Value of total assets exceeds S\$10 million;
  2. Annual revenue exceeds S\$10 million;
  3. More than 50 employees.
- MAS has also clarified that foreign companies whose “home” jurisdictions do not recognise or apply the concept of a cellular structure may apply to re-domicile as a VCC.
- Further details on the re-domiciliation regime will be provided in subsidiary legislation.

## MAS Response to Feedback and VCC Bill (cont'd)

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### Conversion

- The VCC Bill remains silent on the conversion of existing structures to VCC.
- However, MAS has clarified that existing structures can adopt the VCC structure through existing corporate restructuring mechanisms, e.g. merging with a VCC.
- MAS has stated that it will not provide a regime for conversion at this juncture, but may consider doing so in subsequent reviews of the VCC framework.

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# **MAS Announces Tax Framework**



## MAS Announces Tax Framework

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- On 31 October 2018, MAS announced the tax framework for VCCs.
- The framework is largely in line with industry feedback and expectations.
- The tax exemptions under sections 13R and 13X of the Income Tax Act of Singapore (the “**Tax Exemption Schemes**”) will be available to VCCs.
- The VCC will be treated as a company and single entity for tax purposes. Hence, in the case of an umbrella VCC, the conditions under the Tax Exemption Schemes will apply across all sub-funds.
  - For example, the S\$50 million minimum fund size requirement under section 13X will be aggregated across all sub-funds.

## MAS Announces Tax Framework (cont'd)

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- A VCC can benefit from Singapore's tax treaty network.
- The 10% concessionary tax rate under the Financial Sector Incentive – Fund Management (FSI-FM) Scheme will be extended to approved fund managers managing VCCs approved under the Tax Exemption Schemes.
- The current withholding tax exemption available to funds approved the Tax Exemption Schemes will be available to VCCs approved under the Tax Exemption Schemes.
- The existing goods and services tax remission will be extended to VCCs.
- IRAS will provide further implementation details in due course.

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# Closing Thoughts and Next Steps

## Closing Thoughts and Next Steps

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- The VCC Bill has already been passed by the Parliament of Singapore.
- It is anticipated to come into effect mid-next year.



A NOTE FROM INDRANEE RAJAH S.C.,  
MINISTER IN THE PRIME MINISTER'S OFFICE,  
SECOND MINISTER FOR FINANCE AND EDUCATION

### The VCC: A Game-Changer for Singapore's Funds Industry



**MAS introduces new corporate structure to enhance fund ecosystem in Singapore**

## Closing Thoughts and Next Steps (cont'd)

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- Certain other details of the VCC framework will be made available in the subsidiary legislation/other primary legislation/directions, including:
  - Details on the regulation of offerings of investments in VCCs
  - Details on the requirements applicable to VCC's independent director(s)
  - Details on the role of the custodian of a VCC consisting of an Authorised Scheme
  - Details on custodian requirements of a VCC consisting of a Restricted Scheme
  - Details on the process for inward re-domiciliation
  - Details on the fit and proper requirements for a person to act as a director of a VCC
  - Details on the winding-up process for a sub-fund
  - Details on the AML/CFT obligations of a VCC
  - Details on the permissibility of cross investments between sub-funds.
- Draft (not final) subsidiary legislation to be released in January/February next year for consultation.

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# Questions?

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# Thank you

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