

CONSULTATION PAPER

P007 - 2019

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Consultation Paper on the Proposed Notice on Prevention of Money Laundering and Countering the Financing of Terrorism for Variable Capital Companies

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Monetary Authority of Singapore (MAS) is introducing a Notice to variable capital companies (VCCs) on anti-money laundering and countering the financing of terrorism (AML/CFT). The proposed VCC AML/CFT Notice is attached as Annex B of this consultation paper. These requirements draw reference from international best practices and the Standards set by the Financial Action Task Force (FATF), the global standard-setter for measures to combat money laundering (ML), terrorism financing (TF), and proliferation of financing.

1.2 MAS invites comments from prospective VCCs and their managers¹, eligible financial institutions², and any other interested parties on the proposed VCC AML/CFT Notice.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like:

- (i) their whole submission or part of it (but not their identity), or**
- (ii) their identity along with their whole submission,**

to be kept confidential, please expressly state so in the submission to MAS. MAS will only publish non-anonymous submissions. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

¹ 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.

² Please refer to Table 1 for the proposed list of eligible financial institution.

1.3 Please submit written comments by 30 May 2019 via email to vcc@mas.gov.sg. We would appreciate that you use this suggested [format](#) for your submission to ease our collation efforts.

We would appreciate that you use this template for your submission to ease our collation efforts.

Defined Terms

ACRA	Accounting and Corporate Regulatory Authority
AML/CFT	Anti-money laundering and countering the financing of terrorism
CIS	Collective Investment Scheme
MAS	Monetary Authority of Singapore
SFA	Securities and Futures Act (Cap. 289)
VCC	Variable Capital Company

2 Introduction

2.1 The VCC Act was passed by Parliament on 1 October 2018, introducing a new corporate structure in Singapore that is designed for collective investment schemes (CISes). The Registrar of Companies, the Accounting and Corporate Regulatory Authority (ACRA), will be the Registrar for VCCs. ACRA will administer the VCC Act and subsidiary legislation while AML/CFT obligations of VCCs under the proposed VCC AML/CFT Notice will come under the purview of MAS.

Proposed AML/CFT framework for VCCs

2.2 From the public consultation of the draft VCC Act in March 2017, MAS noted that there is broad support for the policy to: (i) impose AML/CFT requirements on VCCs, but to require VCCs to engage a financial institution described in paragraph 2.4³ to perform the AML/CFT checks; and (ii) include requirements to maintain a register of controllers and nominee directors under the VCC AML/CFT Notice.

2.3 Consequently, MAS is proposing to introduce a new AML/CFT Notice to VCCs, set out in Annex B. The Notice reflects these policy outcomes and imposes requirements similar to that on existing MAS-regulated entities, with some adaptations elaborated below.

Engagement of an eligible financial institution

2.4 A VCC is an investment vehicle. To prevent the abuse of a VCC for unlawful purposes, MAS will require a VCC to engage a financial institution, set out in Table 1 below, which is regulated by MAS for AML/CFT purposes (an “eligible financial institution”), to conduct the necessary checks and perform the measures in order for the VCC to comply with the relevant parts⁴ of the VCC AML/CFT Notice. However, MAS has assessed that

³ Such institution is regulated and supervised by MAS for AML/CFT purposes. This financial institution engaged by a VCC may in turn outsource the performance of its duties to another entity, subject to MAS’ usual outsourcing requirements. The VCC will remain ultimately responsible for fulfilling its AML/CFT obligations.

⁴ The “relevant parts” of the VCC AML/CFT Notice refer to all paragraphs of the VCC AML/CFT Notice, except for paragraph 3, paragraph 4 and paragraph 10 as highlighted.

paragraph 3 on “Underlying Principles”, paragraph 4 on “Eligible Financial Institutions”, and paragraph 10 “Reliance on Third Party”, are requirements which only the VCC can take action to comply with. For avoidance of doubt, the VCC will remain ultimately responsible for fulfilling all its AML/CFT obligations.

2.5 As part of its AML/CFT requirements, a VCC is required to put in place internal policies and procedures, and appropriate compliance, audit and training procedures, similar to other financial institutions regulated by MAS for AML/CFT purposes. In practice, we anticipate that a VCC would largely adapt the policies and procedures of the eligible financial institution that it has appointed, where it has assessed these to be adequate, and tap on the internal audit and compliance resources of the eligible financial institution. A VCC should also ensure that its directors and employees, if any, are adequately trained on its AML/CFT obligations. MAS will provide additional clarification in this area in the guidelines to the VCC AML/CFT Notice.

2.6 In the event that a VCC is unable to meet its AML/CFT obligations set out in the VCC AML/CFT Notice as a result of an act or omission on the part of the eligible financial institution, MAS will consider the relevant facts and circumstances and take the appropriate supervisory action or sanction against the VCC and/or its directors for breaching its AML/CFT obligations. In addition, MAS may take separate supervisory action against or sanction the eligible financial institution where it has been found to be in breach of the requirements under its own AML/CFT obligations set out under the relevant MAS AML/CFT Notice that applies to the eligible financial institution.

Table 1: List of financial institution which a VCC may engage to perform its AML/CFT duties (“Eligible financial institution”)

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| <ul style="list-style-type: none">(a) Banks in Singapore licensed under section 7 of the Banking Act (Cap.19).(b) Merchant banks approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186).(c) Finance companies licensed under section 6 of the Finance Companies Act (Cap. 108).(d) Financial advisers licensed under section 6 of the Financial Advisers Act (Cap. 110) except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.(e) Holders of a capital markets services licence under section 82 of the Securities and Futures Act (Cap. 289).(f) Fund management companies registered under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg. 10). |
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- (g) Persons exempted under section 23(1)(f) of the Financial Advisers Act read with regulation 27(1)(d) of the Financial Advisers Regulations (Rg. 2) except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.
- (h) Persons exempted under section 99(1)(h) of the Securities and Futures Act read with paragraph 7(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.
- (i) Approved trustees approved under section 289 of the Securities and Futures Act.
- (j) Trust companies licensed under section 5 of the Trust Companies Act (Cap. 336).
- (k) Direct life insurers licensed under section 8 of the Insurance Act (Cap. 142).
- (l) Insurance brokers registered under the Insurance Act which, by virtue of such registration, are exempted under section 23(1)(c) of the Financial Advisers Act except those which only provide advice by issuing or promulgating research analyses or research reports, whether in electronic, print or other form, concerning any investment product.

Question 1. With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC.

3 Key issues for consultation

Definitions of “Business Relations” and “Customer”

3.1 The definitions of “business relations” and “customer” would determine the individuals and entities on which a VCC should perform customer due diligence (CDD). CDD include checks at on-boarding, periodic reviews of the customer profile, as well as transaction monitoring. MAS expects CDD to be conducted on all the VCC’s members (including prospective members), whether at a fund or sub-fund level. A VCC must also conduct due diligence on the beneficial owners of its customers, connected parties to its customers, as well as natural persons appointed to act on behalf of its customers. In practice, the VCC would have to engage an eligible FI to perform these checks.

3.2 MAS has proposed the following definitions for “business relations” and “customer” respectively:

- “Business relations” means any direct or indirect contact between a VCC and a person (whether a natural person, legal person or legal arrangement) that results in the entering or maintaining of such person’s

particulars in the register of members under section 17 of the VCC Act;
and

- “customer” in relation to a VCC, means a person (whether a natural person, legal person or legal arrangement) with whom the VCC establishes or intends to establish business relations

Question 2. MAS seeks comments on the proposed definitions of “business relations” and “customer”, in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC.

Register of beneficial owners and nominee directors

3.3 VCCs will be subject to transparency requirements to prevent their misuse for illicit purposes. A VCC will be required to maintain a register of beneficial owners of the VCC itself, and a register of nominee directors (the “registers”), similar to obligations which are currently imposed upon companies under the Companies Act. These requirements have been included in the proposed VCC AML/CFT Notice. MAS will not require these registers to be made public, but the registers must be made available to ACRA, MAS and other law enforcement authorities for regulatory, supervisory and law enforcement purposes as may be required under applicable laws.

3.4 A VCC will be required to obtain the information which has to be maintained in the registers, except for certain categories of VCCs where such information would already be available to the authorities⁵.

⁵ A VCC need not maintain a register of beneficial owners and nominee director if it is a VCC:

- (a) which shares are listed on the Singapore exchange
- (b) that is wholly-owned by the Singapore Government
- (c) that is wholly-owned by a statutory body established by or under a public Act for a public purpose,
- (d) that is a wholly-owned subsidiary of a VCC in (a), (b), or (c);
- (e) that is a wholly-owned subsidiary of a company
 - (i) which shares are listed on the Singapore Exchange,
 - (ii) that is wholly-owned by the Singapore Government or

3.5 The registers must:

- (a) be kept up to date and held at the registered office of the VCC itself, its appointed fund manager, or the eligible financial institution; and
- (b) contain particulars of the VCC's beneficial owners and persons for which the directors are nominees, including their names and aliases, dates of birth/incorporation, unique identity numbers, addresses, nationalities/places of incorporation, as well as the start and end dates of beneficial ownership or the nominee directorship arrangement.

3.6 A VCC need not include in the register of beneficial owners, a beneficial owner (including their prescribed particulars) that has beneficial control of the VCC through a member that is:

- (a) an entity listed on the Singapore Exchange;
- (b) an entity listed on a stock exchange outside of Singapore that is subject to:
 - (i) regulatory disclosure requirements; and
 - (ii) requirements relating to adequate transparency in respect of its beneficial owners (imposed through stock exchange rules, law or other enforceable means);
- (c) a financial institution set out in Appendix 1 of the VCC AML/CFT Notice;
- (d) a financial institution incorporated or established outside Singapore that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF; or
- (e) an investment vehicle where the managers are financial institutions

(iii) that is wholly-owned by a statutory body established by or under a public Act for a public purpose;
or

(f) which shares are listed on stock exchange outside of Singapore and where the VCC is subject to regulatory disclosure requirements and requirements relating to adequate transparency in respect of its beneficial owners (imposed through stock exchange rules, laws or other enforceable means)

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- (i) set out in Appendix 1 of the VCC AML/CFT Notice; or
 - (ii) incorporated or established outside Singapore that are subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF.

Question 3. MAS seeks comments on the proposed scope of requirements on the registers of beneficial owners of a VCC and its nominee directors set out in paragraphs 3.4 to 3.6, including on the prescribed places where a VCC should maintain these registers, as set out in paragraph 3.5(a).

Reliance by acquiring VCCs on measures already performed

3.7 As a VCC's sole object is to be one or more collective investment schemes in the form of a body corporate, MAS envisages that where a VCC is an acquirer, a VCC would only acquire another VCC or a fund, in line with this objective.

3.8 Hence the proposed VCC AML/CFT Notice would provide for reliance by an acquiring VCC on CDD measures already performed by the acquired entity on its customers, where the VCC acquires, in whole or in part, the business or shares of another VCC, a fund, or their equivalent, provided that the VCC has no doubt or concerns about the veracity of the adequacy of the information so acquired.

Question 4. MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice.

Key differences from existing AML/CFT Notice

3.9 A VCC's sole object is to be a fund investment vehicle for collective investment. As such, a number of key concepts in MAS' existing AML/CFT Notices are not included in the proposed VCC AML/CFT Notice, where they may not be relevant to VCCs. These are elaborated below.

Accounts and correspondent accounts

3.10 While a VCC would have members who hold shares/units in the VCC, these members would not have "accounts" with the VCC. Opening or maintenance of accounts, if any, would likely be with the VCC's fund manager, which operates the VCC's CIS.

3.11 Accordingly, the requirements relating to “accounts” and “correspondent accounts” are not included in the proposed VCC AML/CFT Notice. Nonetheless, it is important for a VCC to conduct due diligence on persons with whom they establish business relations with. As such, where relevant, we have used the concept of “establishment of business relations”.

Undertaking transactions on behalf of persons who are not customers of the VCC

3.12 MAS envisages that a VCC may undertake transactions for its members, such as processing of purchase and redemption requests for investment in certain assets, liquidation of assets and transfer of proceeds to members, or effecting transfers of assets amongst members. However, as a VCC is not set up to provide services to non-members, undertaking of transactions for non-customers is not relevant in the context of VCCs, and hence excluded from the proposed VCC AML/CFT Notice.

Question 5. MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice.

3.13 In addition to the areas highlighted above, MAS also welcomes comments on the rest of the proposed VCC AML/CFT Notice.

Question 6. MAS seeks comments, other than those listed above, on the proposed VCC AML/CFT Notice set out in Annex B.

Annex A

LIST OF QUESTIONS

- Question 1.** With respect to paragraph 2.4 of the consultation paper, MAS seeks comments that the requirement for a VCC to appoint an eligible financial institution shall not extend to paragraph 3 (Underlying Principles), paragraph 4 (Eligible FIs) and paragraph 10 (Reliance on Third Parties) of the Notice, as these are obligations that are applicable to only the VCC. 7
- Question 2.** MAS seeks comments on the proposed definitions of “business relations” and “customer”, in relation to a VCC, and whether it appropriately captures the scope of customer activities conducted by a VCC..... 8
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- Question 4.** MAS seeks comments on the whether there are other circumstances under which a VCC may acquire an entity or structure other than another VCC or a fund whereby the VCC may wish to rely on existing CDD measures already performed, which are not currently covered by the scope of the VCC AML/CFT Notice. 10
- Question 5.** MAS seeks comments on whether any of the above concepts could be relevant to VCCs, and hence should instead be included in the proposed VCC AML/CFT Notice. 11
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**Draft Notice to Variable Capital Companies on the Prevention of Money Laundering and
Countering the Financing of Terrorism**

[DISCLAIMER: THIS VERSION IS THE DRAFT OF THE DRAFT VCC AML/CFT NOTICE IS IN DRAFT FORM
AND SUBJECT TO CHANGE.]

[\[Link to draft VCC AML/CFT Notice\]](#)

