

CONSULTATION PAPER

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Consultation Paper on the Proposed Framework for Variable Capital Companies Part 3

MAS

Monetary Authority of Singapore

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1 Preface

1.1 The Variable Capital Companies Act (“VCC Act”) was passed in Parliament on 1 October 2018. The VCC Act provides the legislative framework for the incorporation, operation, and regulation of a new corporate structure that is tailored for collective investment schemes, known as the variable capital company (“VCC”).

1.2 The Monetary Authority of Singapore (“MAS”) is now consulting on the proposed subsidiary legislation relating to the insolvency and winding up of a VCC and its sub-funds. The proposed subsidiary legislation is adapted from the existing subsidiary legislation under the Companies Act (Cap. 50) (“CA”).

1.3 MAS invites interested parties to provide their comments and feedback on this proposed subsidiary legislation.

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.

1.4 Please submit comments by 24 August 2019 via email to ycc@mas.gov.sg. We would appreciate that you use this [suggested format](#) for your submission to ease our collation efforts.

2 Defined Terms

Bankruptcy Act	Bankruptcy Act (Cap. 20) of Singapore
CA	Companies Act (Cap. 50) of Singapore
IRDA	Insolvency, Restructuring and Dissolution Act 2018
MAS	Monetary Authority of Singapore
VCC	Variable capital company
VCC Act	Variable Capital Companies Act 2018
VCC Bankruptcy Regulations	Variable Capital Companies (Application of Bankruptcy Act Provisions) Regulations 2019
VCC Regulations	Variable Capital Companies Regulations 2019

3 Introduction

3.1 The VCC complements the existing structures available for use by fund managers in Singapore, namely unit trusts, companies incorporated under the CA and limited partnerships governed under the Limited Partnerships Act. The introduction of the VCC will provide an additional structuring option for Singapore-based fund managers to domicile their investment funds locally and enhance Singapore's position as a full-service international fund management centre.

3.2 MAS earlier consulted on the subsidiary legislation relating to the operational framework for a VCC and its sub-funds in the Consultation Papers on the Proposed Framework for Variable Capital Companies Part 2 and the Proposed Notice on Prevention of Money Laundering and Countering the Financing of Terrorism for Variable Capital Companies on 30 April 2019.

3.3 In this consultation paper, MAS is seeking feedback on the proposed subsidiary legislation relating to the insolvency and winding up of a VCC and its sub-funds. This proposed subsidiary legislation is adapted from the existing subsidiary legislation for the insolvency and winding up of a company under the CA, with modifications for a VCC and its sub-funds. The proposed subsidiary legislation is set out in Annex B to F and key areas are introduced in the following sections.

3.4 Once the VCC Act is in force, the insolvency and winding up provisions in the VCC Act and the proposed subsidiary legislation in Annex B to F that is being consulted on in this consultation paper will apply to the insolvency and winding up of a VCC and its sub-funds.

3.5 It is intended that the insolvency and winding up regime for a VCC and its sub-funds will be aligned with that of the insolvency and winding up regime for other corporate structures in Singapore under the IRDA¹.

3.6 The VCC Act will be amended to adapt the relevant provisions under the IRDA that relate to the insolvency and winding up of a company under the CA, with modifications for a VCC and its sub-funds. The IRDA subsidiary legislation for companies under the CA will also be adapted for a VCC and its sub-funds ("Adapted IRDA Subsidiary Legislation").

3.7 The Adapted IRDA subsidiary legislation will then replace the proposed subsidiary legislation in Annex B to F that is being consulted on in this consultation paper. The

¹ This Act has not come into force at the time of issuance of this public consultation.

amendments to the VCC Act and the Adapted IRDA Subsidiary Legislation set out in paragraph 3.6 will come into operation in due course after the IRDA comes into force.

3.8 MAS does not intend to undertake a public consultation for the Adapted IRDA Subsidiary Legislation. MAS will take into account any feedback received during this public consultation to the extent that such feedback is applicable to the Adapted IRDA Subsidiary Legislation.

4 Variable Capital Companies (Application of Bankruptcy Act Provisions) Regulations 2019

4.1 The Variable Capital Companies (Application of Bankruptcy Act Provisions) Regulations 2019 (“VCC Bankruptcy Regulations”) sets out the modifications to the Bankruptcy Act (Cap. 20) (“Bankruptcy Act”), which apply in the context of the winding up of a VCC or a sub-fund of an umbrella VCC. For this purpose, a sub-fund of an umbrella VCC is to be treated as though it is a separate entity or person.

4.2 The VCC Bankruptcy Regulations set out when a person is connected with a VCC or a sub-fund, that is being wound up (a “connected person”). The scenarios specified were modified from regulation 5 of the Companies (Application of Bankruptcy Act Provisions) Regulations.

4.3 Where a VCC is being wound up, a connected person includes a person who is an associate of the VCC being wound up, its manager or director. In such a scenario, if a person is an umbrella VCC acting for its sub-fund, it is only a connected person if it is an associate of the VCC being wound up, the VCC’s manager or director, “*on account of the sub-fund*”.

4.4 Similarly, where a sub-fund is being wound up, the connected person would include an associate of the particular sub-fund, the umbrella VCC’s manager or its director. However, as a sub-fund is not a legal person, a person would be regarded as a connected person of a sub-fund if the umbrella VCC is an associate of the person “*on account of the sub-fund*”, or the person is the associate of the umbrella VCC’s manager or its director. The VCC Bankruptcy Regulations specifies what is meant by an umbrella VCC being an associate “*on account of a sub-fund*”.

4.5 Paragraphs 4.3 and 4.4 are explained by the following illustration:

- (a) While a company acts for itself, an umbrella VCC acts for one or more of its sub-funds. Assets and liabilities of each sub-fund of an umbrella VCC are also segregated. Since a transaction entered into by an umbrella VCC for the purpose of its sub-fund only benefits that specific sub-fund (e.g. an undervalue transaction entered into with a VCC being wound up), the connected person or associate of the VCC being wound up should be determined with reference to the specific sub-fund, rather than the umbrella VCC.
- (b) However, as a sub-fund is not a legal person, the definition of “*associate*” in the Companies (Application of Bankruptcy Act Provisions) Regulations

does not provide for this, and modifications are needed to look through the umbrella VCC to the sub-fund.

Question 1. MAS seeks comments on the draft VCC Bankruptcy Regulations at Annex B.

5 Variable Capital Companies (Filing of Documents) Regulations 2019

5.1 In the Consultation Paper of the Proposed Framework for Variable Capital Companies Part 2, MAS consulted on the Variable Capital Companies (Filing of Documents) Regulations 2019. MAS is now consulting on the insolvency and winding up related portions of this regulation.

5.2 These provisions are separately set out in Annex C for the purposes of public consultation and will be consolidated with the Variable Capital Companies (Filing of Documents) Regulations 2019.

Question 2. MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex C.

6 Variable Capital Companies (Maximum Amount Payable in Priority in Winding Up) Order 2019

6.1 The Variable Capital Companies (Maximum Amount Payable in Priority in Winding Up) Order 2019 sets out the prescribed amount payable to an employee in relation to services rendered by the employee of a VCC to the VCC or the sub-fund of an umbrella VCC, in the event of the VCC is wound up. This proposed piece of subsidiary legislation is adapted from the provisions set out in the Companies (Maximum Amount Payable in Priority in Winding Up) Order 2015.

6.2 The maximum amount that is payable is equivalent to the lower of (a) a proportion of five months' salary in respect of services rendered by the employee of the umbrella VCC to the VCC, umbrella VCC or the relevant sub-fund of the umbrella VCC, as the case may be, or (b) a sum computed with the formula in the Schedule of the order.

Question 3. MAS seeks comments on the draft Variable Capital Companies (Maximum Amount Payable in Priority in Winding Up) Order 2019 at Annex D.

7 Variable Capital Companies Regulations 2019

7.1 MAS had previously consulted on the Variable Capital Companies Regulations 2019 (“VCC Regulations”) in the Consultation Paper on the Proposed Framework for Variable Capital Companies Part 2. MAS is now consulting on the insolvency and winding up related portion of this regulation. The provisions relating to the insolvency and winding up of a VCC and its sub-funds are adapted from the provisions set out in the Companies Regulations, which relate to the insolvency and winding up of a company under the CA.

7.2 These provisions, including the relevant forms, are separately set out in Annex E for the purposes of this public consultation and will be consolidated with the VCC Regulations.

Question 4. MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex E.

8 Variable Capital Companies (Winding Up) Rules

8.1 The Variable Capital Companies (Winding Up) Rules apply to the procedural matters in the winding up of a VCC or a sub-fund of an umbrella VCC. The rules relating to the insolvency and winding up of a VCC and its sub-funds are adapted from the provisions set out in the Companies (Winding Up) Rules, which relate to the insolvency and winding up of a company under the CA.

Question 5. MAS seeks comments on the draft Variable Capital Companies (Winding Up) Rules at Annex F.

Annex A

LIST OF QUESTIONS

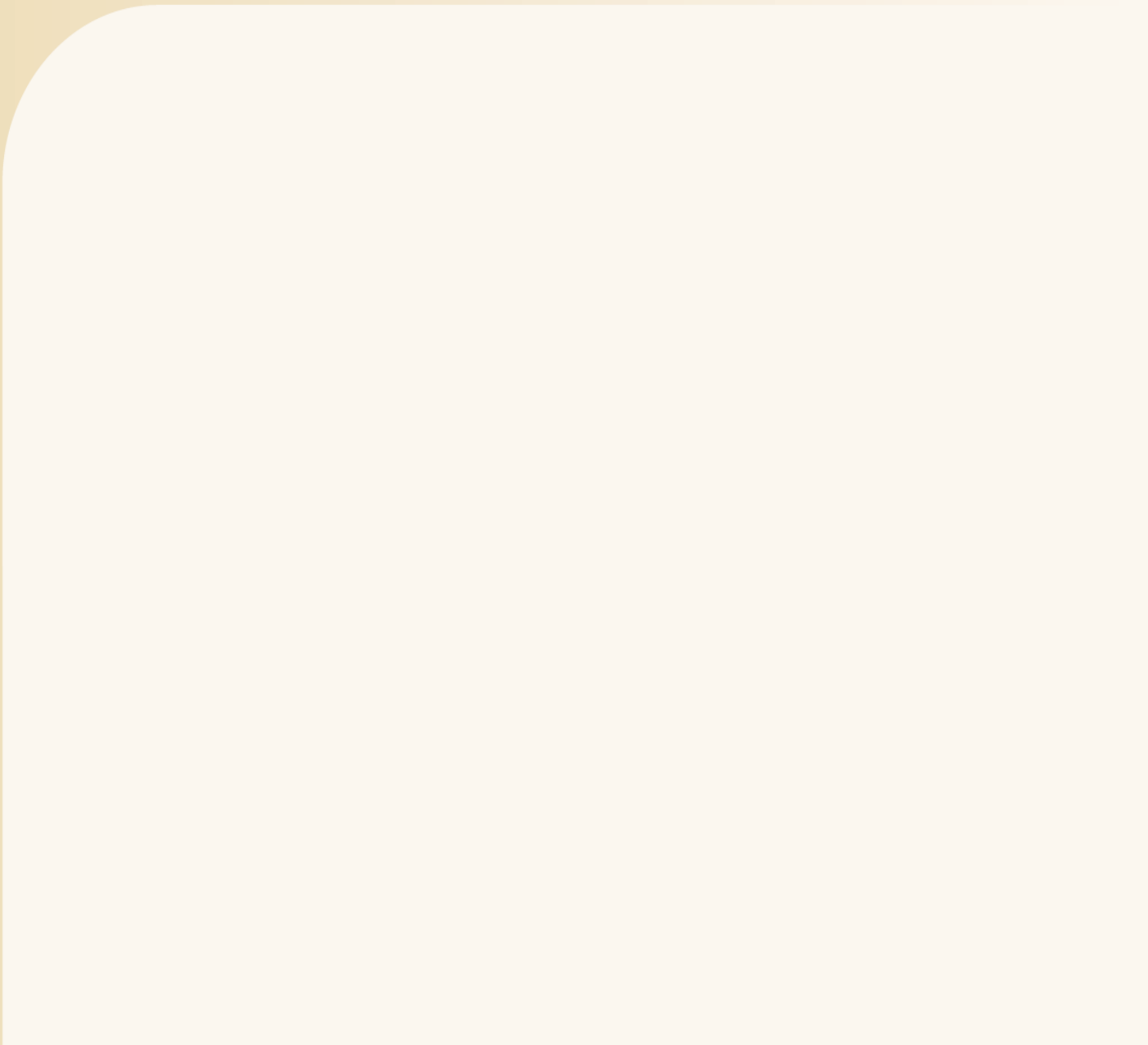
Question 1. MAS seeks comments on the draft VCC Bankruptcy Regulations at Annex B...
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Question 2. MAS seeks comments on the draft Variable Capital Companies (Filing of
Documents) Regulations 2019 at Annex C.8

Question 3. MAS seeks comments on the draft Variable Capital Companies (Maximum
Amount Payable in Priority in Winding Up) Order 2019 at Annex D.8

Question 4. MAS seeks comments on the draft Variable Capital Companies Regulations
2019 at Annex E.9

Question 5. MAS seeks comments on the draft Variable Capital Companies (Winding Up)
Rules at Annex F.9



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