

RESPONSE TO FEEDBACK RECEIVED

March 2020

Consultation Paper on the Proposed Framework for Variable Capital Companies Parts 2 and 3

MAS

Monetary Authority of Singapore

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Defined Terms

Authorised Scheme	A CIS that is constituted in Singapore and authorised by MAS under section 286(1) of the SFA
CA	Companies Act (Cap. 50) of Singapore
CIS	Collective investment scheme(s) as defined under section 2(1) of the SFA
CIS Code	Code on Collective Investment Schemes
MAS	Monetary Authority of Singapore
Registrar	Registrar of VCCs appointed under the VCC Act
SFA	Securities and Futures Act (Cap. 289) of Singapore
SFR(CIS)	Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
VCC	Variable capital company
VCC Act	Variable Capital Companies Act (Act 44 of 2018) of Singapore

1 Preface

Proposed Framework for Variable Capital Companies Part 2

1.1 On 30 April 2019, MAS issued a consultation paper to seek feedback on the (i) proposed new regulations for the VCC framework; and (ii) consequential amendments to existing regulations, such as the SFR(CIS). The consultation period closed on 30 May 2019.

1.2 MAS responded to the feedback received in the Response to Feedback Received on the Proposed Framework for Variable Capital Companies Part 2 dated 15 January 2020, available [here](#) (“**Part 2 Response Paper**”).

1.3 In the Part 2 Response Paper, MAS highlighted that it would be responding separately to the feedback received for the Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance Sheet Regulations) 2020, the Variable Capital Companies (Prescribed Accounting Standards) Regulations 2020, as well as amendments to the SFR (CIS) and the CIS Code, in relation to CIS to be authorised by MAS under section 286(1) of the SFA.

Proposed Framework for Variable Capital Companies Part 3

1.4 On 24 July 2019, MAS issued a consultation paper to seek feedback on the proposed subsidiary legislation relating to the insolvency and winding up of a VCC and its sub-funds.

1.5 MAS responded to the feedback received in the Response to Feedback Received on the Proposed Framework for Variable Capital Companies Part 3 dated 15 January 2020, available [here](#) (“**Part 3 Response Paper**”).

1.6 In the Part 3 Response Paper, MAS highlighted that it was still considering the feedback received for the Variable Capital Companies (Winding Up) Rules and would be responding to this separately.

1.7 This paper sets out MAS’ response to the feedback received for the:

- (i) Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance Sheet Regulations) 2020;
- (ii) Variable Capital Companies (Prescribed Accounting Standards) Regulations 2020;
- (iii) SFR(CIS);

- (iv) Code on Collective Investment Schemes; and
- (v) Variable Capital Companies (Winding Up) Rules.

MAS would like to thank all respondents for their contributions. The list of respondents is in Annex A and the full submissions are provided in Annex B.

1.8 MAS has considered carefully the feedback received, and will incorporate them where it has agreed with the feedback. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance Sheet Regulations) 2020

2.1 MAS proposed regulations in relation to the application of sections 100 and 104 of the VCC Act to revised financial statements. The regulations also broadly set out procedures relating to the preparation and submission of revised financial statements. MAS did not receive any objection to this proposal.

2.2 One respondent suggested requiring a written notification of intention to revise a previously issued audited financial statement to affected members of the VCC within a certain number of days from when the decision to revise the financial statement was made. The respondent also suggested stipulating when the revised financial statement must be distributed to affected members.

MAS' Response

2.3 MAS will proceed with its proposed regulations in relation to the application of sections 100 and 104 of the VCC Act to revised financial statements. For parity with the existing regulations for companies incorporated under the CA, a written notification of the intention to revise a previously issued audited financial statement will not be prescribed. Nonetheless, the timeline for providing revised financial statements to affected members will be stipulated in regulation 7(1) of the relevant VCC regulations.

3 Variable Capital Companies (Prescribed Accounting Standards) Regulations 2020

3.1 Section 100(8)(a) of the VCC Act allows VCCs to prepare their financial statements using the Singapore Financial Reporting Standards and Singapore Financial Reporting Standards (International). In addition, MAS proposed regulations under section 100(8)(b) of the VCC Act to (i) require VCCs consisting of Authorised Scheme(s) to prepare their financial statements in accordance with chapter 5.1 of the CIS Code; and (ii) allow VCCs not consisting of Authorised Schemes to prepare their financial statements using the International Financial Reporting Standards or the US Generally Accepted Accounting Principles. MAS did not receive any objection to this proposal.

MAS' Response

3.2 MAS will proceed with the proposal.

4 Amendments to the SFR(CIS)

4.1 The proposed amendments to the SFR(CIS) to effect the VCC framework in relation to Authorised Schemes include, (i) operational requirements for custodians of VCCs (“**VCC Custodians**”); (ii) provisions to be included in a VCC constitution; (iii) provisions to be included in contractual agreements between a VCC and its directors, manager, and custodian; (iv) prospectus disclosure requirements; and (v) consequential amendments.

4.2 Respondents mainly raised concerns about the operational requirements for VCC Custodians. Some also sought clarification on how these requirements would apply.

Operational requirements for VCC Custodians

(i) Application of requirements

4.3 A few respondents asked whether the VCC Custodian would be (i) required to hold a capital markets services licence to provide custodial services if it was an approved trustee; (ii) acting in any fiduciary capacity in respect of the VCC and/or shareholders of the VCC; and (iii) required to comply with the operational requirements in respect of non-Authorised Schemes in a VCC. One respondent also asked if the VCC Custodian’s duties to take into custody, properly account for, and to segregate properties of the scheme can be delegated to a third party.

MAS’ Response

4.4 A custodian who is already an approved trustee will not be required to hold a capital markets services licence for providing custodial services. The Third Schedule to the SFA has been amended to provide for this.

4.5 MAS will not impose a general obligation on VCC Custodians to safeguard the rights and interests of VCC’s shareholders¹. However, this does not preclude a VCC Custodian from entering into fiduciary relationships with a VCC and/or its shareholders, which may be independent of the VCC Custodian’s statutory obligations under the SFR(CIS). MAS would also like to clarify that the operational requirements for VCC Custodians under the new Division 2A of the SFR(CIS) will apply only in respect of VCCs or sub-funds of VCCs that are Authorised Schemes.

¹ Paragraph 7.4 of the Response to Feedback Received on the Proposed Framework for Singapore Variable Capital Companies dated September 2018.

4.6 In line with international practice, MAS will allow a VCC Custodian to delegate its custody function to a third party subject to certain requirements. MAS will set out in the CIS Code the requirements that a VCC Custodian has to meet before it may delegate such function. Amongst others, the VCC Custodian is required to (i) exercise due skill, care and diligence in the selection and appointment of the third party, (ii) conduct periodic reviews and ongoing monitoring of the third party, and (iii) ensure that the third party is licensed to act as a custodian in the country where the custody account is maintained. Notwithstanding any delegation, the VCC Custodian will still remain ultimately responsible and accountable for the property entrusted to it.

(ii) Reporting to MAS

4.7 A few respondents opposed the proposed requirement for a VCC Custodian to inform MAS of any legal or regulatory breaches by the VCC or its manager within 3 business days from the time the VCC Custodian was made aware of the breach. These respondents shared that custodians typically rely on instructions from their clients, and in many instances when an instruction is received, the relevant transaction would have already been effected. A custodian would not review whether the instruction was in compliance with any applicable regulations. Moreover, due to the limited oversight that a VCC Custodian would have over the VCC's operations, the VCC Custodian would not be in a position to know if a VCC or its manager was acting lawfully in giving an instruction.

4.8 Two respondents commented that the proposed reporting requirement appeared to be a fiduciary duty that should not be undertaken by VCC Custodians. One of the respondents added that the proposed requirement would blur the responsibilities and liabilities between a VCC Custodian and VCC directors, and impose a heavy onus on the VCC Custodian to look out for every regulatory requirement.

4.9 One respondent requested for 10 business days, instead of the proposed three business days, to report breaches to MAS due to the number of stakeholders involved.

4.10 Two respondents additionally sought clarity regarding the scope of this reporting requirement as to whether a VCC Custodian was expected to play an active reporting role and to monitor compliance with investment restrictions, as this duty was not expressly stated in the proposed SFR(CIS) and CIS Code. One respondent shared that although a VCC could contractually agree with the VCC Custodian to carry out investment restrictions monitoring, this may create differing standards across Authorised Schemes, and potentially expose VCCs and VCC Custodians (who do not adopt the more stringent approach) to liability.

MAS' Response

4.11 MAS notes that a VCC Custodian may have limited oversight of a VCC's operations. In this regard, MAS would like to clarify that it would only require a VCC Custodian to report breaches of any legal or regulatory requirements by the VCC or its manager that the VCC Custodian becomes aware of, in the course of undertaking its duties or obligations. This would be consistent with the approach taken in other major fund jurisdictions, such as Ireland, Hong Kong and the United Kingdom, which have similar reporting obligations on the fund custodian or depositary. MAS will clarify this in the new regulations 7A(1)(a) and 7B(1)(a) of the SFR(CIS).

4.12 MAS is also of the view that three business days to report any breaches is sufficient, as approved trustees are currently able to do so within this period.

4.13 Separate from the reporting of breaches, MAS expects a VCC Custodian to monitor a VCC's compliance with the investment guidelines and borrowing limits in the CIS Code. MAS will amend the CIS Code to clarify that a VCC Custodian has to take reasonable care to ensure that a scheme complies with the investment guidelines and borrowing limits set out in Part I of the CIS Code.

(iii) Take into custody scheme property

4.14 MAS proposed to require a VCC Custodian to take into custody or control all scheme property on behalf of participants. One respondent suggested that as a VCC Custodian can only take into custody property that the VCC has deposited with it, the onus should be placed on the VCC to ensure that scheme property would be deposited with the VCC Custodian. A few respondents commented that custodians cannot or do not in practice take into custody all of the scheme's property, e.g., OTC derivatives, fixed deposits, etc. These respondents suggested that for property that the VCC Custodian cannot take into custody, MAS can consider requiring the VCC Custodian to ensure ownership verification and to maintain a proper record of the property instead. Respondents also suggested that MAS can have regard to the custodian requirements in Hong Kong and under the European's Undertakings for Collective Investments in Transferable Securities (UCITS) framework.

MAS' Response

4.15 MAS agrees with the feedback that a VCC Custodian can only take into custody property that has been deposited with it by the VCC, and that not all assets can be held in custody by the VCC Custodian.

4.16 MAS will amend the SFR(CIS) such that the constitution must contain a provision requiring the VCC to entrust the property of a scheme to the VCC Custodian for safekeeping.

4.17 MAS will also amend the SFR(CIS) to require the VCC Custodian to hold in its custody only property which can be so held. However, for all property of the scheme (including property that it cannot hold in custody), the VCC Custodian will be required to (i) take appropriate measures to verify the scheme's ownership of the property and record the measures taken; and (ii) maintain proper and up-to-date records of the property and perform regular reconciliation. A VCC Custodian should also ensure that it is able to fulfil these obligations by putting in place the necessary provisions in its contractual agreement with a VCC, e.g. provisions requiring the VCC to inform the VCC Custodian of any transactions entered into on behalf of a scheme, and which relate to assets which cannot be held in custody. When verifying a scheme's ownership of the property, the VCC Custodian may assess whether the VCC or its manager holds the ownership (on behalf of the scheme) based on information or documents provided by the scheme or its manager, and where available, external evidence.

4.18 In addition, MAS will clarify in the CIS Code that the VCC Custodian may not reuse scheme property (e.g. by transferring or pledging) without the VCC's prior consent.

(iv) Ensure that all property is accounted for

4.19 One respondent sought clarity on whether a VCC Custodian, in discharging its obligation of ensuring that a scheme's property is properly accounted for, may rely on reports issued by the scheme's fund administrator or valuation agent, or whether the VCC Custodian would be expected to maintain its own independent records.

MAS' Response

4.20 In ensuring that a scheme's property is properly accounted for, MAS will require the VCC Custodian to maintain proper and up-to-date records of all assets belonging to the scheme and to perform regular reconciliations. MAS expects the VCC Custodian to have its own set of records in order to discharge its obligation.

(v) Ensure that the scheme's property is kept distinct from VCC Custodian's and its clients'

4.21 MAS proposed to require the VCC Custodian to keep a scheme's property separate from the VCC Custodian's property and the property of its clients. Two respondents requested that MAS allow VCC Custodians to hold the scheme's property in

an omnibus account, as this was commonly done in practice. One respondent further commented that strict segregation of accounts would lead to significant costs that would be passed on to investors, and would result in VCC structures being more expensive than other fund structures.

MAS' Response

4.22 Given the practical considerations, MAS will allow VCC Custodians to hold a scheme's property together with the property of its other clients in an omnibus account², if the VCC Custodian has effective safeguards to ensure that the scheme's property is properly recorded and accounted for, and regular reconciliations are performed.

Provisions to be included in a VCC constitution

4.23 Respondents were generally supportive of the proposed requirements to be included in a VCC constitution. One respondent commented that the proposed provision requiring a VCC to purchase at a participant's request, the participant's units in a scheme ("**Redemption Clause**"), appeared to contradict MAS' policy intent for the VCC structure to be used by closed-end funds (and not just open-ended funds).

MAS' Response

4.24 A VCC structure can be adopted for both open-ended or closed-end funds. For a closed-end fund that is offered to retail investors, MAS' intent is to permit authorisation if, among other things, the said fund is listed on an approved exchange.³ MAS will introduce regulations 10AA(3) and 10AB(3) for VCCs, and amend the existing regulation 8(4) governing unit trusts, such that the Redemption Clause can be excluded from the scheme's constitutive document if, amongst others, (i) the scheme is listed on an approved exchange, and (ii) its constitutive document contains provisions binding the VCC (or the manager in the case of a unit trust) to offer to purchase the participant's units if the scheme's units are suspended from trading or cease to be listed on an approved exchange.

Provisions to be included in contractual agreements

² Referred to as "custody account" in the SFR(CIS).

³ Paragraph 3.7 of MAS' Response to Feedback Received – Consultation on Proposed Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-end Funds (1 April 2013).

(vi) Directors to safeguard the rights and interests of participants of the scheme

4.25 Respondents were generally agreeable to the proposal to require the contractual arrangement between the VCC and its directors to contain provisions binding the directors to safeguard the rights and interests of participants of the scheme. One respondent commented that this obligation appeared wider than a director's duty under the Companies Act, which is to act in the interest of the company to which the directors would owe fiduciary duties. The respondent queried whether (i) there may be situations where the interests of the VCC as a whole may differ from that of its investors (particularly where a VCC comprised several sub-funds that have different investors and mandates) – although the respondent commented that practically, acting in the company's interest would typically mean that shareholders' interests are protected; and (ii) a VCC director, who is also a director of the VCC manager, would be in an inherent position of conflict and should therefore abstain from voting in any matters which may give rise to a conflict.

MAS' Response

4.26 MAS agrees with the respondent's comment that acting in the interest of participants as a whole would, in practice, also be acting in the interest of the company. MAS would therefore be retaining this requirement. MAS expects any potential conflicts of interest to be properly managed and mitigated. MAS further expects a VCC director, who is also a director of the VCC manager, to act in the interest of the VCC and its shareholders when acting in his or her capacity as a VCC director.

(vii) VCC manager and VCC Custodian to pay moneys to the VCC within 5 business days

4.27 Two respondents sought clarity as to the situations where the VCC manager or the VCC Custodian would be required to pay to the VCC moneys that would be payable by them to the VCC. One of the respondent queried whether the obligation should instead be for the VCC to pay cash that it receives for subscription of units in the scheme to the VCC Custodian (as holder of all scheme assets) within 5 business days.

MAS' Response

4.28 MAS wishes to clarify that the intent is to require payment to be made to the VCC in a timely manner, whenever such an obligation arises on the part of the VCC manager

or the VCC Custodian. The situations may range from refunds of overpaid monies to rebate of fees. MAS will therefore proceed with the proposed requirements.

Prospectus disclosure requirements

4.29 Respondents were generally supportive of the proposed amendments to the Third Schedule to the SFR(CIS) to cater for disclosures in the prospectus of VCCs or sub-funds of VCCs.

MAS' Response

4.30 MAS will proceed with the proposed disclosure requirements.

Other Consequential Amendments

4.31 Respondents were generally agreeable to the proposed consequential amendments.

MAS' Response

4.32 MAS will proceed with the other consequential amendments.

5 Amendments to the CIS Code

5.1 For parity with the treatment of authorised unit trusts, MAS proposed amendments to the CIS Code to extend the requirements currently imposed on approved trustees and managers to VCCs, VCC directors and VCC Custodians.

5.2 Respondents generally agreed with the proposed amendments. Some respondents sought clarity on certain requirements and MAS' expectations of how these requirements should be applied.

Directors' qualifications and duties

5.3 One respondent was of the view that the proposed criteria under chapter 2A.1(a) for a director to be considered independent ("**ID Criteria**") were stricter than those for corporate fund structures in Luxembourg. Another respondent further suggested allowing the VCC's board of directors to deem a person independent, notwithstanding that such person might not prima facie meet the ID Criteria. This would be similar to the treatment under existing legislation in Singapore for business trust trustee-managers and real estate investment trust managers.

5.4 A few respondents sought clarity on whether (i) the general duties of the VCC's independent director would differ from those of other VCC directors; and (ii) "business relationships involving the VCC" would include a VCC's relationships with its service providers.

5.5 Two respondents asked whether (i) VCC directors may delegate their duties (including fiduciary duties) to an MAS-regulated financial institution; and (ii) such delegation to a related party of the VCC Custodian would amount to conflict of interests under chapter 2A.2.

MAS' Response

5.6 In formulating the ID Criteria, MAS had benchmarked against those in other fund jurisdictions. The ID Criteria are thus largely aligned with those in other fund jurisdictions.

5.7 MAS would like to clarify that the general duties of VCC directors would be the same for all directors, regardless of whether the director is independent. However, similar to an independent director appointed for a company under the CA, an independent director of a VCC would additionally be expected to provide objective oversight and judgment, and check-and-balance to non-independent directors in the best interests of participants.

5.8 As MAS will not impose a general obligation on VCC Custodians to safeguard the rights and interests of VCC's shareholders, MAS is of the view that the ID Criteria is appropriate to ensure an element of independence in the decision-making of the VCC, and to mitigate any significant conflicts of interest in the governance process. MAS will proceed with the proposal.

5.9 To provide greater clarity on what constitutes "business relationships involving the VCC", MAS will amend guidance 2 under chapter 2A.1(a) to more closely align with the definition of "business relationship" in existing MAS-administered legislation relating to independent directors.

5.10 MAS would like to clarify that the VCC Act, consistent with the CA, will not allow directors to delegate their duties (including fiduciary duties) to other entities. In addition, whether an appointment of, or delegation or outsourcing to a particular service provider gives rise to a conflict of interest depends on the facts of the case. Examples of situations which may give rise to conflicts of interests include a VCC procuring the services of entities in which its directors have controlling or substantial interests, or (personal) interest that are distinct from their role as VCC director, and which may conflict with the interests of participants of the scheme.

Other Amendments

5.11 One respondent enquired on the rationale for the proposed additional consideration relating to VCC directors in assessing whether a scheme's name is misleading. Specifically, under the proposed addition to chapter 4.1(b), MAS would consider whether the scheme's name might mislead prospective participants into thinking that persons other than the VCC directors are responsible for the scheme.

5.12 One respondent sought clarity on whether "20% interest" in the guidance under chapter 2A.1(b) relating to custodian independence refers only to direct interests.

5.13 One respondent suggested extending the disclosure requirements on cross sub-fund investments in chapter 5 to unit trusts.

MAS' Response

5.14 A scheme may be named after individuals and not just entities. Where a scheme is named after an individual, MAS is of the view that it is important to assess whether the name is misleading considering the names of the VCC's directors, who would be the responsible persons for a VCC.

5.15 MAS wishes to clarify that interests in shares referred to in the CIS Code are not limited to directly acquired interests. As set out in the guidance 2 under chapter 2A.1(b), interests in shares include deemed interests in shares under sub-sections 4(4) and (5) of the SFA.

5.16 The disclosure requirements on cross sub-fund investments in chapter 5 were intended to address cross-cell contagion risk inherent in the protected cell company structure in a VCC. As this risk is not relevant for unit trusts, MAS will not extend these requirements to unit trusts.

6 Variable Capital Companies (Winding Up) Rules

6.1 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. MAS did not receive any objections to the proposed rules.

MAS' Response

6.2 MAS will proceed with the proposal. MAS will not publish the Variable Capital Companies (Winding Up) Rules now, and instead targets to publish them in Q2 2020.

6.3 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 under the Insolvency, Restructuring and Dissolution Act (IRDA), and that the IRDA subsidiary legislation for companies under the CA will be adapted for a VCC and its sub-funds. The corresponding adapted IRDA subsidiary legislation relating to the insolvency and winding up of a VCC and its sub-funds will replace the Variable Capital Companies (Winding Up) Rules.

MONETARY AUTHORITY OF SINGAPORE

13 March 2020

Annex A

**LIST OF RESPONDENTS TO THE CONSULTATION PAPER ON
THE PROPOSED FRAMEWORK FOR VARIABLE CAPITAL COMPANIES
PARTS 2 AND 3**

1. BNP Paribas Securities Services ("**BNPP**"), who requested for their submission to be kept confidential
2. Chan & Goh LLP ("**Chan & Goh**")
3. Deutsche Bank AG, Singapore Branch ("**DB**"), who requested for their submission to be kept confidential
4. DMS Governance (Singapore) Pte. Ltd. ("**DMS**"), who requested for their submission to be kept confidential
5. EY Corporate Advisors Pte. Ltd. ("**EY**")
6. Investment Management Association of Singapore ("**IMAS**")
7. RBC Investor & Treasury Services (RBC I&TS) ("**RBC**"), who requested for their submission to be kept confidential
8. Singapore Venture Capital and Private Equity Association ("**SVCA**")
9. Standard Chartered Bank (Singapore) Limited ("**SCB**"), who requested for their submission to be kept confidential
10. The Alternative Investment Management Association Limited ("**AIMA**")
11. Respondent 1, who requested for their identity to be kept confidential
12. The five respondents, who requested for full confidentiality of identity and submission

Please refer to Annex B for the submissions.

Annex B

**FULL SUBMISSIONS FROM RESPONDENTS TO THE CONSULTATION PAPER
ON THE PROPOSED FRAMEWORK FOR VARIABLE CAPITAL COMPANIES
PARTS 2 AND 3**

S/N	Respondent	Full submission from Respondent
1	BNPP	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i> Respondent requested to keep entire submission confidential.</p>
2	Chan & Goh	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i> Question 18: MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.</p> <p>Section 10AA-AC – usage of the phrase ‘units in the scheme’ under the new Division 3A. This phrase is used in other sections of the SFR(CIS), to refer to units of a scheme established as a unit trust (eg. under Division 3). In the context of a VCC, the VCC Act itself uses the word “shares”, which is defined to mean ‘a unit in a collective investment scheme that is part of a VCC’. Should the word “shares” similarly be used in the SFR(CIS) wherever the section refers to a VCC?</p> <p>Section 10AB(e)(i) – should the phrase ‘or issued by the VCC’ be added at the end of the sentence? Whilst the manager may be the party managing and offering the VCC shares for investment, it would be the VCC itself (as a corporate entity) which is the party issuing the shares to investors.</p> <p>Section 10AC – this requires the VCC to have contractual arrangements with the directors/manager/custodian (as the case may be) which contain the prescribed provisions, and mirror the equivalent provisions which the trust deed for an authorised fund established as a UT must contain.</p>

		<p>For authorisation of a fund established as a VCC by MAS, would each of the contracts mentioned in section 10AC have to be furnished to MAS, as would be the case for a new UT (whose deed must be furnished at the application stage) or would a signed confirmation by the VCC, confirming compliance with section 10AC be sufficient?</p> <p>If the contractual arrangements need to be furnished to MAS and they contain provisions that parties may wish to keep confidential (bearing in mind that section 10AC(a) imposes provisions which are likely to be contained in a director's employment contract), can parties choose to redact or omit those parts which are considered confidential?</p> <p>Section 10AC(a) – the contractual arrangements with the directors must contain provisions binding the directors to exercise all due diligence and vigilance in carrying out their functions and duties in respect of the scheme and in safeguarding the rights and interests of the participants of the scheme. The wording mirrors the obligation imposed on the trustee in the context of a UT (as found in section 8(2)(b)(i)).</p> <p>This means that the Board of directors of the VCC (as a collective group) is placed in the same position as that of a trustee of a UT since their statutory duty is to look after and protect investors' interests. This appears wider than a Board's duty under the Companies Act (for corporate entities not established under the VCC Act), which is to act in the interest of the company, to which the Board owes fiduciary duties. Practically and in general, acting in the company's interest would typically mean that shareholders' interests are protected, since shareholders own and control the company.</p> <p>Since a VCC does not have to appoint an independent trustee, is it the intention that the Board be placed in exactly the same position as if it were a trustee? Could there be situations where the interest of the VCC (being a legal entity) as a whole may differ from that of its investors, particularly where there may be several sub-funds within the VCC (with different investors and</p>
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		<p>mandates)? If so, would the Board be subject to both a duty owed to the VCC whilst being subject to a duty owed to investors under section 10AC, which may not necessarily be identical?</p> <p>In the context of a trustee, its primary role is to ensure the manager invests the UT in accordance with the deed and offering documents, to protect unitholders' interests and take custody (either itself or through a custodian) of all assets. The manager (and not the trustee) decides how the UT invests and makes decisions it believes are beneficial to the UT as a whole, especially where there are different class of unitholders in the UT.</p> <p>In this connection, it is worth noting that for an authorised VCC, one of the VCC's directors will also be a director of the manager. Would this person, in wearing 2 hats and owing separate directorship duties (to the manager as well as the VCC under section 10AC(a)) be in an inherent position of conflict? Would such director have to abstain from voting or deciding on any matter involving the manager where it may potentially conflict with his obligation to investors under section 10AC(a)?</p> <p>Section 10AC(b)(ii) and 10AC(c)(ii) - please clarify under what situations would the manager or the custodian (as the case may be) be required to pay the VCC moneys it receives within 5 business days under these sections?</p> <p>Would this be moneys an investor remits to the manager upon subscribing for the VCC's shares (which the manager should transfer to the VCC's custodian rather than the VCC)? We note that section 10AC(b)(ii) mirrors section 8(2)(a)(ii) (in relation to a UT) whereby the manager must pay to the trustee within 5 business days any moneys it receives that, under the deed, is payable to the trustee. We also note that a manager does not hold a custodial licence and cannot itself hold onto investors' monies.</p>
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		<p>In relation to the VCC's custodian, since its role is to hold moneys and assets, when would it have to pay the VCC such moneys it receives?</p> <p>Para 8A(a) of 3rd Schedule of the SFR - this requires a prospectus of a scheme which is a corporation, to state the name, position and responsibility of the directors in the scheme. With regard to the responsibility of the directors, can MAS clarify the extent to which this needs to be stated, especially since the new section 10AC(a) imposes a statutory duty on the Board as discussed above? Please also clarify if this new requirement applies to offshore funds established as corporations, which are applying to be recognised in Singapore or if this is only intended to apply to VCCs?</p> <p>In addition, please clarify if the existing requirement under Para 10A, which requires the name of the financial supervisory authority of the manager to be disclosed in the prospectus, also applies to the new VCC (i.e. to state ACRA and MAS, as the regulatory authorities of the VCC)?</p> <p>Para 2(c)(iv)(B)(AA) of 6th Schedule of the SFR - please clarify if this new disclosure should include the name and address of the Custodian (where applicable).</p> <p>8th Schedule, Part 2 (PHS template) – apart from the 'Trustee Fee' (which is not applicable for a VCC), should there also be a disclosure of the 'Custodian Fee' in relation to a VCC? If so, the template should reflect this (under the 'Fees and Charges' section).</p> <p>Other matters (not relating to VCCs specifically):-</p> <p>Section 9(f) – the reference to '(e)(I)' should read '(e)(i)' instead.</p> <p>Appendix 7 – Recognised Ucits III Schemes – should the 'III' be removed throughout such that this Appendix refers to 'Ucits Schemes' generally without reference to the version/iteration, which would change over time.</p>
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		<p>Para 2(c)(iii) of 6th Schedule of the SFR - we understand that the word “regulated” might be construed as “supervised”, “monitored”, “oversee” or “administered”. Given that a restricted Singapore scheme is strictly not “regulated” by MAS, would MAS consider clarifying in this Paragraph that for a restricted Singapore scheme, it is ‘notified and entered into the List of Restricted Schemes maintained by MAS’. This will remove any ambiguity in having to state the word “regulated” in any information memorandum for such restricted Singapore scheme.</p> <p>Question 19: MAS seeks comments on the proposed amendments to the CIS Code at Annex N.</p> <p>Para 2A.1 of Chapter 2A sets out the requirement for a minimum of one independent director for a VCC and defines what independence means. This follows the amendment to the Securities and Futures Act effected by section 167(5)(i) of the VCC Act, which imposes the independent director requirement for authorised schemes.</p> <p>However, the Paragraph does not elaborate on the role and duty of the independent director specifically. The general duties of carrying out arms-length transactions and avoiding conflicts of interest apply to all VCC Directors.</p> <p>Is an independent director expected to monitor the activity of the VCC with greater scrutiny than the other directors, or act in some way that differs from the other directors in view of his independent status? If such independent director were to disagree with how the other VCC Directors are exercising their duties and managing the VCC, would he be expected to raise this objection to the Board as well as any regulatory authority, for example the SGX (for a listed VCC), MAS or ACRA? If the independent director resigns due to a disagreement with the Board, what implication does this have on the VCC (which for authorised funds require having at least 1 independent director at all times) and would the fund be able to continue its</p>
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		<p>investments pending the appointment of a replacement independent director?</p> <p>On a separate note, is the MAS working with any independent body, eg. The Singapore Institute of Directors, to provide training for and accrediting a ready pool of directors who can be appointed as independent directors of a VCC, with skillsets which are tailored for the asset management industry?</p> <p>The SGX Listing Manual, the Code on Corporate Governance and its Practice Guidance provide direction on the roles of independent directors for listed companies. Can guidance be drawn and elaborated in the CIS Code from these documents on the desired role of independent directors in a VCC?</p> <p>Para 3.2(b) of Chapter 3 - please consider if it is necessary to elaborate on the accounts of the VCC where it is to be audited. The current language only refers to the manager sending the accounts and reports to the trustee (in the context of a UT).</p>
3	DB	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i></p> <p>Respondent requested to keep entire submission confidential.</p>
4	DMS	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i></p> <p>Respondent requested to keep entire submission confidential.</p>
5	EY	<p><i>The Proposed Framework for Variable Capital Companies Part 3</i></p> <p>Question 5: MAS seeks comments on the draft Variable Capital Companies (Winding Up) Rules at Annex F.</p> <p>Observation point: As requisite forms need to be filed with ACRA/IRAS, there should be alignment with these agencies to facilitate the implementation in practice of the lodgements and tax clearance process (corporate and GST) for the liquidating cell within the VCC. For clarity, this should include the procedures and timing of such tax filing (as an example, the routine VCC income tax filing will only take place in the subsequent year, after the</p>

		<p>commencement of the liquidation of the cell in question). Also, if the liquidation of that cell stretches into the following year, should the liquidating cell continue to be included in the routine VCC income tax filing.</p>
6	IMAS	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i></p> <p>Question 18: MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.</p> <p>We refer to the proposed new requirement to <u>disclose cross-cell contagion risk</u> in paragraph 24(e) of the Third Schedule (for Authorized Scheme) and paragraph 2(c)(iv) of the Sixth Schedule (for Restricted Scheme) to the SFR(CIS), and to take reasonable measures to <u>mitigate</u> cross-cell contagion risk with respect to an Authorized Scheme under Chapter 2A.2(c) of the Code on Collective Investment Schemes.</p> <p>We note that MAS has provided the following guidance under Chapter 2A.2(c).</p> <p><i>“...The measures which would be considered reasonable will depend on the facts and circumstances of each case. For example, the VCC Manager should consider <u>whether it would be appropriate to subject agreements governing the VCC’s overseas assets to the laws of jurisdictions which uphold segregation of assets and liabilities across sub-funds or to include terms in a contract which limit a creditor’s claim to the relevant sub-fund.</u>”</i></p> <p>According to paragraph 3.6 of the MAS’ Response to Feedback Received on the Proposed Framework for Singapore Variable Capital Companies on 10 September 2018, it is noted that:</p> <p><i>“...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. For instance, the fund manager may <u>seek legal advice on the risk of a foreign court refusing to uphold the segregation of assets and liabilities across sub-funds, directly</u></i></p>

		<p><i>or indirectly, e.g., through refusing to give effect to foreign choice of law clauses in contracts for reasons other than public policy. The fund manager may also wish to consider <u>whether it would be appropriate to subject agreements governing the VCC's overseas assets to laws and jurisdictions which uphold segregation of assets and liabilities across sub-funds, or to contract for terms which limit creditors to claim against relevant sub-funds.</u></i></p> <p>In this regard, we respectfully seek clarification from the MAS on whether it would suffice as reasonable mitigation of cross-cell contagion risk where the fund manager subject contract for terms which limit creditors to claim against relevant sub-funds. Otherwise, it would be costly if the fund manager is also required to seek the said legal advice, from time to time, as the laws in the relevant jurisdictions may change. The cost of complying with this requirement may deter the use of the VCC.</p> <p>It would be helpful if a list of jurisdictions that uphold segregation of assets and liabilities across sub-funds is made available so that a consistent approach is taken by industry players.</p> <p>Question 19: MAS seeks comments on the proposed amendments to the CIS Code at Annex N.</p> <p>Under common law, fiduciary duties (to act in the interests of the company) are owed by directors, as opposed to an external oversight entity such as a custodian. We note that MAS will not impose a general obligation on the custodian of Authorised Schemes in a VCC to safeguard the rights and interests of the VCC's shareholders.</p> <p>We note that the VCC may delegate its AML/CFT duties to a financial institution regulated and supervised by MAS for AML/CFT purposes but will remain ultimately responsible for fulfilling its AML/CFT obligations.</p> <p>We seek clarification from the MAS on whether the directors of the VCC may also delegate its duties (including their fiduciary duties) to a financial institution regulated by MAS.</p>
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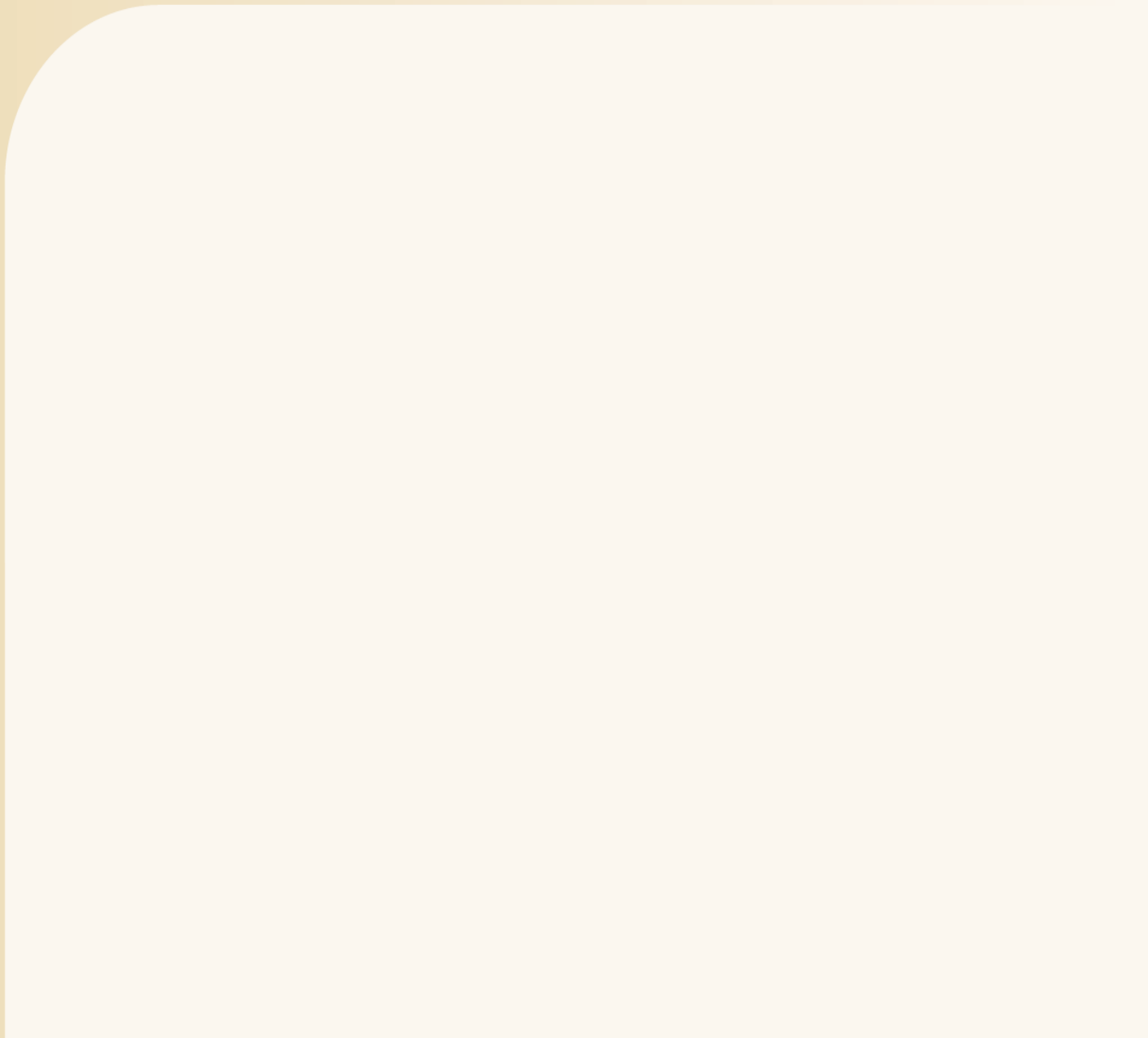
		Where delegation is allowed for the VCC's AML/CFT obligations and the directors' duties, we seek MAS clarification on how the outsourcing arrangements should comply or be in line with the MAS' Guidelines on Outsourcing, given that the VCC and the directors are not financial institutions regulated by MAS.
7	RBC	<i>The Proposed Framework for Variable Capital Companies Part 2</i> Respondent requested to keep entire submission confidential.
8	SVCA	<i>The Proposed Framework for Variable Capital Companies Part 2</i> Question 18: MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M. We note that "custodian" in the VCC Act is defined (broadly) as an entity to which the assets of the VCC are entrusted for safekeeping, which could include banks with which VCC funds open their fund bank accounts. Accordingly, we would be grateful for MAS' clarification as to whether the operational requirements set out in Division 2A for custodians are intended to apply to all custodians or only custodians of authorised VCCs or sub-funds. The wording is currently ambiguous. Our assumption, given that the VCC custodian provisions in the SFR(CIS) are set out in Division 2A which is itself under Part II of the SFR(CIS) (which deals with authorisation and recognition requirements) is that the operational requirements are only intended to apply to custodians of authorised VCCs or sub-funds. If this is the case, as a drafting point we would suggest that Regulation 7A be amended to provide additional clarity as follows: "A custodian shall, in relation to a collective investment scheme authorised under section 286 of the Act and constituted as a VCC or a sub-fund for which it acts as custodian".
9	SCB	<i>The Proposed Framework for Variable Capital Companies Part 2</i> Respondent requested to keep entire submission confidential.

10	AIMA	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i></p> <p>Question 18: MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.</p> <p><u>Operational Requirements of Custodians</u></p> <p>We would be grateful for the MAS’s clarification as to whether the operational requirements set out in Division 2A for custodians are intended to apply to all custodians or only custodians of authorised VCCs or sub-funds as the wording is currently ambiguous.</p> <p>Our assumption, on the basis that Division 2A is sited in Part II of the SFR(CIS), which deals with authorisation and recognition requirements, and on the basis of the MAS’ previous comments in paragraph 7.5 of the response to feedback dated 10 September 2018 to the effect that further details of the obligations of the custodian of Authorised Schemes in a VCC would be set out in the SFA and subsidiary legislation, is that the operational requirements are only intended to apply to custodians of authorised VCCs or sub-funds.</p> <p>If this is the case, as a drafting point we would suggest that Regulation 7A be amended to provide additional clarity as follows: “A custodian shall, in relation to a collective investment scheme authorised under section 286 of the Act and constituted as a VCC or a sub-fund for which it acts as custodian-“ (insertions in underline).</p> <p><u>Restricted Scheme Custodians</u></p> <p>We note that the MAS has indicated in paragraph 7.6 of the response to feedback dated 10 September 2018 that restricted schemes that are VCCs would be required to maintain their assets in trust or custody accounts with a prescribed entity. This was something much of the industry was opposed to. We note that this requirement does not appear to have been specified in the subsidiary legislation currently being consulted on and</p>
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		<p>would like to clarify whether the intention is that obligation will still be imposed.</p> <p>In relation to the custodial arrangement of hedge funds, we would mention that it is common for hedge funds to engage in trilateral arrangements between a fund, custodian and prime broker (with both the appointed custodians and prime brokers most likely based outside of Singapore) so as to minimise the prime broker counterparty risk. Accordingly, any such obligation to custodise assets ought not to be unduly restrictive in this regard.</p> <p>Additional Feedback:</p> <p>On a related note, we received the following additional VCC feedback (which I reproduced in full without edits) from a major Singapore law firm following on our official submission:</p> <p>The requirements for custodian for restricted schemes should be set out in the vcc Regulations or alternatively in the SF(OI)CISR Schedule 6 Restricted Schemes - apparently the draft consultation regulations did not set these out – it would be good if the MAS reflect these in the relevant regulations (even if the consultation period has closed).</p> <p>The extract below is taken from the MAS Response to the Consultation Paper, dated 10 September 2018, at paragraph 7.6:</p> <p>MAS also agrees that limiting the custodian for Restricted Schemes within a VCC to an Approved Trustee may present practical difficulties given the current industry practice regarding asset custody. We will instead require these schemes to maintain their assets in trust or custody accounts with a prescribed entity⁶. PE/VC Funds, however, need not appoint a custodian provided the VCC has (i) disclosed this fact to their investors; and (ii) obtained investors’ acknowledgement of this arrangement. Further details will be set out in amendments to the subsidiary legislation under the SFA.</p>
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		<p>The prescribed entities are:</p> <ul style="list-style-type: none"> (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; (vi) any person licensed under SFA to provide custodial services for securities; or (vii) a foreign custodian that is licensed, registered or authorised to conduct banking business or to act as a custodian in the country or territory where the account is maintained. <p>The proposed amendments to the relevant subsidiary legislation do not appear to have been released yet.</p>
<p>11</p>	<p>Respondent 1</p>	<p><i>The Proposed Framework for Variable Capital Companies Part 2</i></p> <p>Question 18: MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.</p> <p>As per Section 7.5 of the Response Paper dated September 2018 on the Proposed Framework for Singapore Variable Capital Companies, we understand that it was MAS' original intention for "Authorised Schemes in a VCC to appoint a custodian that is an Approved Trustee". We do not find the corresponding provision* in the proposed regulations and would appreciate clarification if the intent is to remove this requirement. However, we note that reference to Approved Trustee and Custodian is made in Section 167 (i) and (l) of the VCC Act.</p> <p>Question 19: MAS seeks comments on the proposed amendments to the CIS Code at Annex N.</p>

		<p>The guidance in Section 6.4 provides that the VCC is able to appoint valuation agents to perform valuation services. However, there is no mention of fund administration as part of the appointment. Can we presume that this extends to fund administrators as per existing practices under the VCC Act where fund administration service is defined as valuation, accounting, settlement of expenses and acting as a transfer agent?</p>
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