

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

1. Argus Global Pte. Ltd. ("**Argus**")
2. Benoy Philip ("**Benoy**")
3. BNP Paribas Securities Services ("**BNPP**"), who requested for their submission to be kept confidential
4. CFA Society Singapore ("**CFA**")
5. Chan & Goh LLP ("**Chan & Goh**")
6. Deutsche Bank AG, Singapore Branch ("**DB**"), who requested for their submission to be kept confidential
7. DMS Governance (Singapore) Pte. Ltd. ("**DMS**"), who requested for their submission to be kept confidential
8. Investment Management Association of Singapore ("**IMAS**")
9. PwC LLP ("**PWC**")
10. RBC Investor & Treasury Services (RBC I&TS) ("**RBC**"), who requested for their submission to be kept confidential
11. Shook Lin & Bok LLP ("**SLB**")
12. Solas Fiduciary Services Pte. Ltd. ("**Solas**")
13. Singapore Venture Capital and Private Equity Association ("**SVCA**")
14. Standard Chartered Bank (Singapore) Limited ("**SCB**"), who requested for their submission to be kept confidential
15. The Alternative Investment Management Association Limited ("**AIMA**")
16. Respondent 1, who requested for their identity to be kept confidential
17. The nine respondents, who requested for full confidentiality of identity and submission

Please refer to Annex B for the submissions.

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

S/N	Respondent	Full submission from Respondent
1	Argus	<p>General comments:</p> <p>The points we have raised are by virtue of our partners experience in dealing with similar fund structures elsewhere.</p> <p>In reference to section 48 of the VCC Act – (1) – at least one director who is ordinarily resident in Singapore, does this mean the person just has to be based here, i.e. is tax resident in Singapore? Or does he have to be a PR/citizen of Singapore to be appointed? A bit of clarity here would be appreciated.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>Nil</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>Nil</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>Nil</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>That the requirements to obtain confirmation as stipulated in the relevant Annex, should be supplemented by declarations given by</p>

		<p>the Directors themselves to adhere with the Fit & Proper requirements.</p> <p>We would suggest having a template that the Directors may use to provide this self-declaration on – which the RFAs/Advocate & Solicitors assisting with the set up of the VCC could use to file with the Registrar.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>We recommend including the name of the Fund Management Company that is registered to manage the VCC and its sub-funds, as per S.46 of the VCC Act - as part of the information provided in the annual return, seeing that this is a requirement imposed on the VCC structure.</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>Under Regulation 18 of Annex E - The Registrar need not give the written notice referred to in section 11 of the Act read with section 12D(2) of the Companies Act before the Registrar rectifies or updates the register under section 11 of the Act read with section 12D(1) of the Companies Act if —</p> <p>(b) the Registrar is satisfied that the effort involved in giving the written notice referred to in section 12D(2) of the Companies Act would be excessive by reasonable standards, having regard to the likelihood that the VCC or person whose particulars are to be rectified or updated would object to the rectification or updating</p> <p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>“Fit and proper” considerations for director of a VCC – under point (3) (a) – whether the applicant’s previous conduct and compliance history as a director of a VCC, financial institution or overseas institution has been satisfactory;</p>
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		<p>What constitutes “satisfactory” and how is this determined?</p> <p>We would suggest drawing from the example of the Fit & Proper declaration similar to that used by the MAS in RNF. It would be good to make this declaration a standard format that can be used by the Directors of the VCC and submitted to the RFAs in order for them to determine whether the Director is indeed Fit & Proper. This removes the obligation on the RFA to take on the responsibility of the Registrar in trying to determine whether an individual meets the fit & proper requirements if raised as a Director of a VCC.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>Similar to points raised above in Question 7.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>Nil</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>Nil</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>Under Regulation 8, for the purposes of section 69 of the Act read with section 171(1AA)(b) of the Companies Act, the requirements in section 171(1AA)(b) of the Companies Act relating to experience, professional and academic requirements and membership of professional associations that a secretary of a VCC must satisfy are any of the following:</p> <p>(a) the person has, for at least 3 years in the period of 5 years immediately preceding his appointment as secretary, held the office of secretary of any company or VCC;</p>
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		<p>(b) the person is a qualified person under the Legal Profession Act (Cap. 161);</p> <p>(c) the person is a public accountant;</p> <p>(d) the person is a member of the Institute of Singapore Chartered Accountants;</p> <p>(e) the person is a member of the Chartered Secretaries Institute of Singapore</p> <p>(f) the person is a member of the Association of International Accountants (Singapore Branch);</p> <p>(g) the person is a member of the Institute of Company Accountants, Singapore.</p> <p>We would suggest that providing an equivalent overseas qualification for (b), (d), (e), (f) and (g) would allow for individuals that reside in Singapore with such qualifications to be taking on the role of Company Secretary of a VCC.</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p> <p>Nil</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>Nil</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>Nil</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p> <p>Nil</p>
2	Benoy	General comments:

		<p>1) VCC's Annual Report should include:</p> <p>VCC is a separate legal structure. However, the VCC Manager (ie; licenced fund manager or RFMC) is designated to play a significant role in the day to day management of investor monies in the fund/sub-fund.</p> <p>(i) The Annual Report of the VCC should contain a separate section titled “Investment Manager’s Report”. Such a report should provide a commentary on investment strategy followed by each sub fund, its performance during the period and such other information relevant for the investors. The Manager’s report should be factual and carry a cautionary statement in the lines of – “past performance of the fund is not an indication of future prospects of investment portfolios held by the fund”.</p> <p>(ii) In the portfolio management context, the Manager invariably has first-hand knowledge of investment risks undertaken by the fund/sub fund, changes if any made to investment strategy, underlying market conditions, conflict of interest arising and related party transactions (where applicable). The investment manager accordingly is well positioned to provide a comprehensive commentary in the Annual Report.</p> <p>2) The Directors’ Report should also include a sub-section on:</p> <p>(i) summary of investor complaints received during the period and how such complaints were resolved by the VCC/sub-fund. If there are no complaints during the year to report, a nil statement to that effect.</p> <p>(ii) disclosure relating to how the VCC/sub-fund handled at arms-length, matters involving conflict of interests (potential and actual)?</p> <p>(iii) disclosure of related party transactions involving the Manager (its board and key employees), VCC Board and entities with which major outsourcing arrangement is entered into by the VCC. The Directors’ Report should have a table form commentary on how conflict of interests and related party transactions were addressed by the VCC for the period covered by the report.</p>
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		<p>(iv) Disclosure of amounts paid/payable to all parties related to the VCC and the respective services rendered by each of them. The disclosure should also include “not so visible cash outgoes”, such as trade fee/transaction fee which are usually buried in the investment account and not charged to the income & expense statement of the VCC/sub-fund.</p> <p>(v) The existence of side-letters and benefits accruing to the VCC or its sub-funds on account of such arrangements. For example: Increased AUM stability on account of a large subscription by an Investor, which also carries a “lock-in” clause for a defined duration. A significant participation in the fund’s AUM by a prominent institutional investor, boosting its prospects to garner more AUM as well as resulting in lowering of its total expense ratio.</p> <p>(vi) In an open-ended fund scenario, details of redemptions carried out by investors who have held such shares or units for less than 3 months. If there are none to report, a nil statement to that effect.</p> <p>3) Governance related:</p> <p>The Constitution of VCC should require the VCC Board to adopt (in its first board meeting if possible) its policies to address conflict of interests (potential and real) and for dealing with related party transactions impacting the VCC and any of its sub-funds.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>No specific points to add.</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgement Penalties) Regulations 2019 at Annex D.</p> <p>No specific points to add.</p>
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		<p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>“One such procedure is for the registration of a sub-fund, where the person seeking to register a sub-fund under an umbrella VCC must provide the Registrar with certain information, including:</p> <ul style="list-style-type: none"> (a) the unique entity number of the umbrella VCC; (b) the name of the sub-fund that is being registered; and (c) a declaration to the Registrar that all of the requirements of the VCC Act relating to the registration of the sub-fund have been complied with.” <p>Please consider including the following too:</p> <ul style="list-style-type: none"> (d) specify whether the proposed sub-fund seeking registration is close-ended or open-end. (e) specify the finalised investment strategy of the proposed sub fund? (f) does shares or units of the proposed sub-fund, provide voting rights to potential investors? If otherwise, provide details as to how the voting right at the proposed sub-fund level is exercisable and by whom? (g) whether any part of the proposed AUM of the sub-fund be managed from outside of Singapore, by way of delegated powers given to such sub manager/sub adviser in another country? If yes, details of such parties. <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>Suggested additional confirmation</p> <ul style="list-style-type: none"> (1) An undertaking that VCC Board shall adopt standards of governance commensurate with the nature and size of business operations of the VCC and its sub-funds, formed from time to time. This shall include putting in place adequate systems and procedures to manage the day to day operations, risk management, governance, compliance and addressing investor complaints. (2) That VCC Board undertakes to ensure all assets and liabilities attributable to each sub-fund be separately accounted for and
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		<p>kept segregated at all times, to avoid any risk of cross-cell contagion, in Singapore and elsewhere.</p> <p>(3) VCC Board undertakes to put in place suitable mechanism to address conflict of interests (potential and real) and related party transactions (if any) will be conducted at arms-length, with specific emphasis on matters involving fund management activities and major outsourcing done by the VCC or any of its sub-funds.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>Consider including...</p> <p>(vii) Specify the name of the Manager of the VCC/sub-funds.</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>Affidavit and statutory declaration</p> <p>“ Regulation 11.—(1) Except as otherwise provided in the Act, these Regulations or in any form, an affidavit or a statutory declaration sworn or declared for the purposes of the Act or these Regulations on behalf of a corporation shall be sworn or declared by a director or the secretary of the corporation.”</p> <p>(1) Would recommend the authorised signatory aspect be modified as on behalf of a corporation (ie: VCC) shall be sworn or declared by (i) one director of a corporation and one director representing the investment manager of the VCC (Manager) <u>or</u> (ii) jointly by two directors of a corporation, <u>or</u> (ii) one director of the corporation <u>and</u> company secretary.” Preferably in this order.</p> <p>Most intricate aspects of portfolio management and its ongoing status (at any given point in time) will be first known to the Manager (ie due to having first-hand knowledge), thereafter the VCC Board at large and subsequently various professional parties. It is important for the Manager to also have some skin in the game.</p>
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		<p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>No specific points to add.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>No specific points to add.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>No specific points to add.</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>No specific points to add.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p><u>Director’s consent related- proposed Form 3</u></p> <p><u>“(ix) I have not —</u> <u>(A) within a period of 5 years preceding the date of this statement, been a director of a VCC (VCC A) at the time that the name of VCC A had been struck off the register under section 344 of the Companies Act as applied by section 130 of the Act; and</u> <u>(B) within a period of 5 years immediately before the date on which the name of VCC A was struck off the register —</u> <u>(i) been a director of not less than 2 other VCCs the names of which have been struck off that register; and</u> <u>(ii) been a director of each of those VCCs at the time its name was so struck off”.</u></p>
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		<p>Comment: Please consider removing this parameter from Form 3 and the proposed regulation, even for VCCs being used as a pooling vehicle for retail fund management. I believe, there are several other filters available in the enabling legislation to prevent a “bad element” from becoming a director of a VCC. Please have a re-look at this.</p> <p>Rationale</p> <p>(1) Despite genuine/ good enough reasons beyond its control, a standalone VCC or a sub-fund can still get caught within the proposed parameters for getting struck-off by the Registrar. While the legislative intention may have own merit, a potential VCC director (including independent director) may become overly cautious on this. This parameter can also push director’s fee further upwards. An unintended consequence may be a tendency developing amongst VCC directors to “jump the ship” to ensure not to become the last surviving director on a VCC Board which has the potential of getting struck off by the Registrar.</p> <p>(2) From the point of view of a standalone VCC or a sub-fund, its successful commencement of operation is significantly influenced by many external factors such as:</p> <ul style="list-style-type: none"> (i) at the launch stage, securing inception AUM/seed funding of a desired level, (ii) obtaining regulatory approvals in multiple jurisdictions, in case of a regional fund investing into multiple countries wherein such specific approval being a pre-requisite to commence business or to invest into such markets. <p>(3) Subsequent to a successful fund launch, an open-ended fund runs the risk of unexpected levels of redemption pressure on a day-to-day basis (say, driven by global market conditions or liquidity needs of its investors or any other reason beyond the control of the VCC or its Manager). An unprecedented redemption pressure can potentially trigger the possibility of an open-ended fund meeting the parameters prescribed for getting struck off by the Registrar. A company under Companies Act will not have a similar predicament.</p> <p>(4) There are industry examples of investment fund launches in the past gotten deferred even beyond one (1) year due to currency crisis in global markets. There are examples of regional fund launches being delayed on account of requirements to seek</p>
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		<p>regulatory approvals in multiple countries, being a pre-requisite to launch such funds or to commence investing into such markets. Again, in an open-ended fund situation, what if a standalone VCC or one sub-fund of an umbrella VCC is compelled to discontinue its business on account of its AUM subsequently dropping to a level, which is perceived by its key service providers as “non- remunerative” for them to service?</p> <p>(5) To augur well for Singapore being a pre-eminent financial centre, this parameter should be seen in a wider context of VCCs investing from Singapore into multiple countries/ overseas markets, including international markets (including Singapore), emerging markets and frontier markets.</p> <p>(6) To reiterate from a fund management perspective, the <u>business context and specific circumstances</u> of a VCC under Variable Capital Companies Act is <u>significantly different</u> from a company incorporated under the Companies Act. Especially for VCC structure used as an open-ended fund vehicle.</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p> <p>No specific points to add.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>No specific points to add.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>No specific points to add.</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p> <p>No specific points to add.</p>
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3	BNPP	Respondent requested to keep entire submission confidential.
4	CFA	<p>General comments:</p> <p>Nil</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>No comment</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>No comment</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>No comment</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>No comment</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>No comment</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>No comment</p>

		<p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>MAS may wish to consider including a minimum of 10 years of full-time employment in commercial law, audit/accounting for financial services, banking & financial services, and /or capital markets experience in a managerial capacity as a qualifying criterion for “fit and proper” characteristics for the directors/ responsible officers of a registered & approved VCC We also propose the inclusion of additional questions as per MAS Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01)</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>Refer to response for question 7</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>No comment</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>No comment</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>No comment</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p>
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		<p>A Cayman SPC, which has several SP units under the umbrella SPC should ideally be transferred to a similar structure in an umbrella VCC and sub-funds. Similarly, a foreign register trust should ideally be transferred to a sub-fund of an umbrella VCC. Guidelines and possibilities of these transfers should be clearly spelled out.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>We view the prescribed documents under section 134(2)(b)(iv) as being reasonable.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>No comment</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p> <p>No comment</p>
5	Chan & Goh	<p>General comments:</p> <p>Template for VCC Constitution – is there a reason why there is no sample template Constitution for the VCC? We note that the VCC Act and Regulations prescribe various matters which the Constitution should contain. As is the case for the Companies (Model Constitutions) Regulations 2015 issued pursuant to the Companies Act, it would be good for a sample VCC Constitution to be set out in the VCC Regulations, which market participants can use (and modify as necessary).</p> <p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>We note that the proposed set of criteria under Regulation 3 of the VCC (Fit and Proper) Regulations 2019 (“Regulations”) has some</p>

		<p>overlap with, but is substantively different from and appears less strict than, the criteria under MAS' Guidelines on Fit and Proper Criteria ("Guidelines"), which apply to all relevant persons carrying out any activity regulated by the MAS.</p> <p>For example, section 3 contemplates an applicant director's previous compliance history, general conduct and conduct in relation to anti-money laundering and terrorism financing while the Guidelines have more stringent requirements which include the honesty, integrity, reputation, competence and capability, and financial soundness of the relevant person. We wish to seek clarification on the applicability of the Guidelines (which is administered by MAS) in light of the proposed set of criteria for a director/proposed director of a VCC under the Regulations (which is administered by the Registrar of the VCC).</p> <p>Under section 3(d) of the draft Regulations, one consideration is "whether the applicant has acted in a manner that adversely reflects on the commercial integrity or reputation of the applicant" (as a director). Similarly, one of the fit and proper criteria under the Guidelines is "honesty, integrity and reputation".</p> <p>The Guidelines are however more comprehensive in description, setting out various factors to determine "honesty, integrity and reputation", while section 3(d) lists fewer factors. In contrast, the focus in section 3 of the Regulations is primarily on the applicant's previous history or past conduct as a director in other entities.</p> <p>If a director satisfies the criteria in the Regulations but falls short of certain fit and proper criteria listed in the Guidelines, would the Registrar have grounds to consider such shortcomings in determining whether an applicant for directorship of a VCC is fit and proper?</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>To give the Registrar more discretion in its assessment and for clarity to potential VCC directors, it would be good to additionally apply the standards set out in the Guidelines to section 3 of the Regulations. This is particularly relevant for first-time directors of a</p>
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		<p>VCC who may not have held other directorships (and where the section 3 limbs may not be directly relevant). The Registrar can take into account all relevant factors in determining suitability, as would be the case where MAS assesses a director of an entity carrying out a regulated activity.</p> <p>A suggested new limb (f): “whether the applicant satisfies such conditions or requirements as may be prescribed by the Monetary Authority of Singapore under its Guidelines on Fit and Proper Criteria”.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>Form 5 (Statement of Compliance with Fit and Proper Factors to Act as Director) requires (i) the applicant director to confirm compliance, and (ii) either another director, the secretary or the manager of the VCC to declare, for and on behalf of the VCC, that the proposed applicant director has complied with section 53(3) of the VCC Act.</p> <p>Practically, how would any of these listed persons in (ii) above be able to verify and give such confirmation since they would typically rely on the representations made by the applicant director? Would this impose an unnecessary obligation and liability on the VCC itself, particularly when the applicant director would already be liable for misrepresentation and be liable under the VCC Act for any inaccurate disclosure on his part in signing Form 5?</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>We note that foreign corporate entities seeking to transfer their registration are required to provide certified copies of certain documents, whereby such certification has to be made within 4 months preceding the day on which such copy is lodged with the Registrar. We agree that the proposed timeframe of 4 months is reasonable and sufficient for foreign corporate entities to obtain certified copies of the relevant documents.</p>
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		<p>However, in the event that (for whatever reason) the relevant regulatory body or authority does not certify any document (or does not do so in time), would the Registrar accept any form of alternative confirmation from a third party. For example, can the solicitor (or any person equivalent to a registered filing agent in the foreign country) who assisted in the establishment of the foreign corporate entity provide confirmation in relation to any of the documents to be filed with the Registrar?</p> <p>We note that the regulations under the VCC (Transfer of Registration) Regulations is applicable only to a ‘foreign corporate entity’, which is defined under the VCC Act as a body corporate incorporated outside Singapore that comprises one or more collective investment schemes. Accordingly, we wish to seek clarification whether MAS intends to extend such redomiciliation regime to cover other types of fund structures established overseas and more generically, to all non-corporate funds (whether in Singapore or overseas)? This would widen the net of potential offshore funds which may wish to redomicile to Singapore.</p> <p>In Singapore, since there are many funds established as unit trusts (UT), this conversion option (albeit not a redomiciliation per se), would give their managers the option of converting their UTs into a VCC (and to take advantage of the VCC’s tax and other advantages).</p> <p>Whilst UTs do not have a separate legal personality (unlike corporate funds), since such UTs have been duly established and approved in the overseas jurisdiction (with evidence of regulatory approval having been obtained there), it would be a case of the Registrar recognising that such an overseas fund is now being ‘housed’ / converted in a VCC, whilst keeping all of its past investment track record and continuing its existing investment mandate. This would be akin to a company being established under the Companies Act to take over an existing sole proprietorship or business registered under the Business Registration Act. The policy objective in encouraging managers of offshore funds (in whatever structure or form) to redomicile or convert into a VCC, should similarly apply.</p>
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		<p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>We note that the minimum requirements under Regulation 7 of the VCC (Transfer of Registration) Regulations 2019 include, amongst others, ensuring that the foreign corporate entity is not under judicial management or that no receiver is in possession of or has control over any its property and that such foreign corporate entity is not in liquidation or in the process of being wound up.</p> <p>Would the Registrar require cause book/litigation/winding-up and JM searches under the relevant jurisdiction of the foreign corporate entity to be furnished as part of the list of documents under Regulation 4 of the Regulation during the registration process?</p>
6	DB	Respondent requested to keep entire submission confidential.
7	DMS	Respondent requested to keep entire submission confidential.
8	IMAS	<p>General comments:</p> <p><u>Subscriber</u></p> <p>Section 19(4) of the VCC Act sets out provision requirements for inclusion in the VCC’s constitution. One of the requirements is to state the full name, address and occupation of the subscriber to the constitution. From the details required on each subscriber, it appears that only individuals may be subscribers to the VCC constitution.</p> <p>We seek clarification from the MAS on whether corporate entities may also be initial subscribers to the VCC’s constitution.</p> <p><u>Financial Statements</u></p> <p>We note that where an AGM is held, the financial statements of a VCC must be laid before the AGM. Thus, shareholders of a sub-fund would have access to the financial information of another sub-fund in the same VCC.</p> <p>We respectfully request that the MAS reconsider subjecting closed-end funds such as private equity (“PE”) funds to this requirement</p>

		<p>where investors of one PE fund have access to the financial information of another PE fund in the same VCC.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>Nil</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>Nil</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>Nil</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>Nil</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>Nil</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>Nil</p> <p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p>
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		<p>Regulation 3 in the draft Variable Capital Companies (Fit and Proper) Regulations 2019 sets out the prescribed “fit and proper” criteria for directors.</p> <p>We propose that for purpose of determining whether a director is “fit and proper”, the past conduct and history of the applicant be limited to the past 10 years. This is in alignment with MAS Circular No: CMI 01/2011 in respect of the fit and proper self-declarations made by appointed representatives of Capital Markets Services Licence holders.</p> <p>We would also like to clarify whether there is an expectation to align or adopt the criteria with the factors set out in the Guidelines on Fit and Proper Criteria (FSG-G01) issued by the MAS. We understand that there is a prescribed fit and proper declaration form under the proposed Variable Capital Companies Regulations 2019 where the declaration statements are different from those in FSG-G01.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>Nil</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>Nil</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>Nil</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>We propose to include a form for the appointment of an eligible financial institution for AML/CFT requirements.</p>
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9	PWC	<p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>No comments.</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>There should be further clarifications on the application fees a foreign corporate entity will need to pay to be re-domiciled as a VCC. In particular, this is pertinent to umbrella structures as the registration for these is not separately identified as in the case of newly incorporated entities.</p>

		<p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>It would be prudent to also submit to ACRA the updated constitution which would include the details of the newly “formed” sub-fund. Currently, Annex E only requires the UEN of the VCC, the name of the sub-fund that is registered and a declaration to the registrar by the registered qualified individual/director/secretary. However the updated constitution is missing. There also needs to be a clarification on whether the date of registration should be the same as the date of formation of the sub-fund.</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>No comments.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>No comments.</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>No comments.</p> <p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>The "<i>Guidelines on Fit and Proper</i>" (Guideline No: FSG-G01) should be used for VCCs as well. The first paragraph is broad enough to cover the VCC Act which states "<i>These Guidelines set out the fit and proper criteria applicable to all relevant persons in relation to the carrying out of any activity regulated by the Monetary Authority of Singapore [—MAS]] under any written law [—relevant legislation]].</i>"</p>
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		<p>Furthermore, the fit and proper criteria was meant to be a guideline and not a regulation. In the majority of the jurisdictions, the fit and proper criteria are guidelines and not regulations.</p> <p>Regulation states “3(a) whether the applicant’s previous conduct and compliance history as a director of a VCC, financial institution or overseas institution has been satisfactory.” There appears to be no objective measurement of the word “satisfactory”.</p> <p>A point that requires notice would be the fact that s3(a) to (d) only refer to the applicant being a director of a VCC or a financial institution. It appears to exclude directors of non-VCC companies which in Singapore could be corporations that serve as investment funds with the application of incentives under ITA s13R and s13X. Furthermore, as a VCC is in its infancy, this may limit the potential population of director candidates.</p> <p>Lastly, it is noted that the provisions have been adapted from ACRA (Filing Agents and Qualified Individuals) Regulations 2015 and it makes no reference to “competency” aspects of being a director of an investment fund.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>As above.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>No comments.</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>No comments.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p>
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Regulation 5 – Auditors Remuneration makes reference to s109 and 206(1A) of the CA, which makes distinction between “private” and “public” companies. The provision of the section applies differently to “private” and “public” companies. Since the VCC Act does not define “private” and “public” VCC, this regulation may not be needed.

Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.

Prescribed documents under section 134(2)(b)(iv) of Act

(i) a declaration by each proposed secretary —

(i) that he or she consents, upon registration of the foreign corporate entity as a VCC, to act as a secretary; and

(ii) that he or she is not debarred under section 59 of the Act read with section 155B of the Companies Act from acting as a secretary under the Act;

As the prescribed documents state that there should be a declaration by the proposed secretary that he/she consents to act as the secretary upon registration, then it should follow that s134(2)(b) VCC Act include that the name of the secretary be submitted along with "(iii) the name of the manager and directors of the proposed VCC". While it may be argued that the name of the secretary is already provided for in the constitution, the same could be said for the names of the directors and the managers.

This is also noted in s16(2) VCC Act. s16(2) VCC Act does not state the name of the secretary to be submitted to the Registrar. However in s16(3)(b) VCC Act, it requires that "either the person named in the constitution as a director or the secretary of the proposed VCC must make a declaration..."

Notice of transfer of registration

For the purposes of section 135(3) of the Act, the form of the notice of transfer of registration to be issued by the Registrar upon registration of a foreign corporate entity is set out in the Schedule.

		<p>In the case of an umbrella VCC, would a transfer of registration be given to sub-funds since a registration of a sub-fund in Singapore itself requires that a notice of registration be given to as per s27(3) VCC Act.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>No comments.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>No comments.</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p> <p>No comments.</p>
10	RBC	Respondent requested to keep entire submission confidential.
11	SLB	<p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>The process for the registration of a VCC and/or a sub-fund should be as easy as possible, as smooth as possible and as swift as possible. This will give Singapore and the VCC the competitive advantage vis-a-vis other jurisdictions and similar protected cell structures. Time to market is often crucial and any delay, perceived or actual uncertainty or unnecessary red tape may dampen the demand for the use of VCCs.</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>Please take note of our comments to Q3.</p>

Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.

Please take note of our comments to Q3.

Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.

We note that there is a distinction between the proposed criteria used for determining whether a director or proposed director of a VCC ("VCC director") would be considered fit and proper and the criteria currently used for determining whether a director or representative of a holder of a CMS licence is considered fit and proper. The proposed criteria for a VCC director seems to give the ACRA wider discretion in determining if the VCC director is fit and proper. In the case of a VCC director which is already a director or representative of a holder of a CMS licence (who has already been assessed by the MAS as fit and proper), there is a possibility that ACRA in applying its discretion could determine that the VCC director is not fit nor proper under the VCC Regulations. This would present an awkward situation for the VCC director and the holder of the CMS licence.

We suggest that the MAS consider having a deeming provision in the VCC Regulations, which allows a director or representative of a holder of a CMS licence to be deemed fit and proper under the VCC Regulations when an application is made for such a person to be a VCC director.

Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.

Please take note of our comments to Q7.

Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.

The process for the transfer of registration for foreign corporate entities as VCCs should be as easy as possible, as smooth as possible and as swift as possible. This will give Singapore and the VCC the competitive advantage vis-a-vis other jurisdictions and similar

		<p>protected cell structures. Time to market is often crucial and any delay, perceived or actual uncertainty or unnecessary red tape may dampen the demand for the transfer of registration for foreign corporate entities as VCCs. To encourage the transfer of registrations, the process should be as straightforward as possible and the unit handling the approval for transfer must streamline the process and have a standardised set of checklists. The approval must be given within a short time and with little or no uncertainty, so long as the requisite forms, information and documents are furnished and the criteria for transfer are met.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>Please take note of our comments to Q14.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>Please take note of our comments to Q14.</p>
12	Solas	<p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>There is no mention of competency standards, as long as ACRA standards can be met then they would qualify for VCC.</p> <p>I feel that directors of VCC would need to have relevant funds experience both here in Singapore and/or overseas. We want to move away from the “friends and family” environment and add proper independent directors with relevant industry experience.</p> <p>There is already fit and proper, competencies under the SFA so we should look to utilise those standards. Also, we should look at residency status of the directors, if they are on EP, will they need approval from MOM, and will that take 3 months as in existing cases at MOM.</p>

		<p>Question 8. MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>In addition to 7 above, the Annex is a little on determining the suitability of the director, should question more on:</p> <ul style="list-style-type: none"> a) Honesty, integrity and reputation; b) Competence and capability; and c) Financial soundness. <p>We should look more on the overseas directors looking to sit on VCC boards, perhaps provide exemption to those that are regulated overseas.</p>
13	SVCA	<p>General comments:</p> <p>This response to the consultation paper on the proposed framework for variable capital companies (“VCC”) has been prepared by the Advocacy Committee of the Singapore Private Equity and Venture Capital Association (“SVCA”) with feedback from members of SVCA. The members of our advocacy committee include fund managers, law firms, tax advisers and compliance advisers. Additional details about the advocacy committee are available at: https://www.svca.org.sg/sub-committees.</p> <p>The responses we provide assume the perspective of the private equity fund and venture capital fund industry.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>We have no comment on this.</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>We have no comment on this.</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p>

		<p>We suggest that the notice of registration set out in Part II of the Schedule of the Variable Capital Companies (Filing of Documents) Regulations 2019 should also specify the date of formation of the sub-fund, in addition to the date of registration of the sub-fund. Our suggestion seeks to avoid confusion as to the date on which the sub-fund in question comes into existence.</p> <p>Our understanding is that regardless of whether registration is obtained in a timely manner (pursuant to Section 27(1) of the Variable Capital Companies Act (“VCC Act”), a sub-fund may be validly constituted, though late registration would expose the VCC and its officers to the prescribed penalties (pursuant to Section 27(4) of the VCC Act).</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>We have no comment on this.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>While we have no comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations, we seek MAS’ clarification whether a VCC’s annual return will be made available to the public. We have raised this given that the annual return is required to contain the investment strategy of the VCC and its sub-funds.</p> <p>We note from paragraph 6.6 of the Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies issued on 23 March 2017 that the MAS does not intend to require that financial statements be publicly available as such statements would contain proprietary information relating to investment strategy.</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>We have no comment on this.</p>
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		<p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>We have no comment on this.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>We have no comment on this.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>We have no comment on this.</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>We have no comment on this.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>With reference to Form 5 set out in the Second Schedule to the draft Variable Capital Companies Regulations 2019 (i.e. the form for Statement of Compliance with Fit and Proper Functions to act as Director), we note that the VCC is required to confirm that the director meets the requirements of the VCC Act “[t]o the best of the knowledge of the abovenamed VCC” (limb (I) of the declaration).</p> <p>By comparison, in Form 11 (i.e. the form for Appointment of Chief Executive Officer or Director; or Change of Director’s Nature of Appointment from non-executive to executive, under Section 96(1) of the Securities and Futures Act and Regulation 12 of the Securities and Futures (Licensing and Conduct of Business) Regulations, the licensed entity is required to make the statement “On the basis of</p>
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		<p>due and diligent enquiry made on the background of the appointee/director named in this form and other information available, we are satisfied that he/she is a fit and proper person, based on the criteria stated in the Guidelines to perform the functions and duties of a director/executive director/chief executive officer”.</p> <p>We seek MAS’ clarification on the different language between Form 5 for the Variable Capital Companies Regulations 2019 and Form 11, and whether it is intended that there are different standard of due diligence being set.</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p> <p><u>Regulation 4</u></p> <p>Regulation 4 of the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 sets out the prescribed documents under section 134(2)(b)(iv) of the VCC Act.</p> <p>Regulation 4(1)(k) provides that where “an advocate and solicitor or a registered filing agent is engaged to submit an applicable under section 134(1) of the Act, a confirmation by the advocate and solicitor or registered filing agent (as the case may be) that: (i) each proposed director: (A) has consented to act as a director upon registration of the foreign corporate entity as a VCC; (B) is not disqualified from acting as a director under the Act; and (C) complies with the prescribed factors in section 53(3) of the Act; (ii) each proposed secretary has consented to act as a secretary upon registration of the foreign corporate entity as a VCC; (iii) each proposed manager: (A) has consented to act as a manager upon registration of the foreign corporate entity as a VCC; and (B) is a person mentioned in section 46(2) of the Act; and (iv) the foreign corporate entity is satisfied that each proposed director complies with the prescribed factors in section 53(3) of the Act.”</p> <p>It is submitted that it is unnecessarily onerous for such requirement to be imposed on the lawyers/filing agents and further clarity is required from the MAS as to how lawyers/filing agents can provide</p>
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		<p>such confirmation of consent by the director/secretary/manager/foreign corporate entity.</p> <p>Such matters (e.g. whether the proposed director complies with the fit and proper requirements; and whether the foreign corporate entity is satisfied that each proposed director complies with the fit and proper requirements) are not matters which can be verified by a search or other type of due diligence typically carried out by lawyers/filing agents when engaged to make filings on ACRA.</p> <p><u>Regulation 8</u></p> <p>We note that Regulation 8 of the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 waives the requirement for the constitution of the transferring entity to comply with Section 19(4)(d) of the VCC Act.</p> <p>We would suggest that compliance with Section 19(4)(c) of the VCC Act should also be waived as being unnecessary.</p> <p>In this regard, we note that the equivalent provision is waived in Regulation 8 of the Companies (Transfer of Registration) Regulations 2017.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>We have no comment on this.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>We have no comment on this.</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p> <p>We have no comment on this.</p>
14	SCB	Respondent requested to keep entire submission confidential.

15	AIMA	<p>General comments:</p> <p>While outside the scope of this consultation, we like to clarify whether draft regulations (referenced in Section 5(4) of the VCC Act) to prescribe further modifications to the incorporated provisions (as defined in Section 5(3) of the VCC Act) will be circulated for comments.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>No specific comments.</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>No specific comments.</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>We note Section 27(3) only requires that a sub-fund be registered after the sub-fund has been formed, and we further note that pursuant to Regulation 16 of the draft Variable Capital Companies (Filing of Documents) Regulations (“VCC FOD Regulations”), the Registrar will issue a notice of registration of a sub-fund containing only the date on which the sub-fund is registered and not the date on which the sub-fund is formed.</p> <p>Our understanding of Section 27 and the VCC FOD Regulations is that regardless of whether registration is obtained in a timely manner (pursuant to Section 27(1)) the sub-fund would be validly constituted, though late registration would expose the VCC and its officers to penalties (pursuant to Section 27(4)).</p>

		<p>In light of this, for certainty, and to avoid confusion as to whether registration impacts the valid formation of a sub-fund, we would suggest that the notice of registration set out in Part II of the Schedule of the VCC FOD Regulations should also specify the date of formation of the sub-fund.</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>No specific comments.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>We note from paragraph 6.6 of the consultation paper issued on March 2017 that the MAS does not intend to require that financial statements be publicly available as they would contain proprietary information relating to investment strategy. Similarly, given that the annual return is required to contain the investment strategy of the VCC and its sub-fund, will the annual return also not be made available to the public?</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>No specific comments.</p> <p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>No specific comments.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>No specific comments.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p>
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		<p>No specific comments.</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>No specific comments.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>No specific comments.</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p> <p>We note that Regulation 8 of the draft Variable Capital Companies (Transfer of Registration) Regulations waives the requirement for the constitution of the transferring entity to comply with Section 19(4)(d) of the VCC Act.</p> <p>We would suggest that compliance with Section 19(4)(c) of the VCC Act should also be waived as being unnecessary – furthermore, we note that the equivalent provision is waived in Regulation 8 of the Companies (Transfer of Registration) Regulations 2017.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>No specific comments.</p> <p>Question 16: MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.</p> <p>No specific comments.</p> <p>Question 17: MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.</p>
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		No specific comments.
11	Respondent 1	<p>General comments:</p> <p>No comment.</p> <p>Question 1: MAS seeks comments on the draft Variable Capital Companies (Composition of Offences) Regulations 2019 at Annex B and the draft Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 in Annex C.</p> <p>No comment.</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.</p> <p>No comment.</p> <p>Question 3: MAS seeks comments on the procedure for the registration of a sub-fund.</p> <p>No comment.</p> <p>Question 4: MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.</p> <p>No comment.</p> <p>Question 5: MAS seeks comments on the particulars to be provided in a VCC’s annual return and the documents referred to in the regulations.</p> <p>No comment.</p> <p>Question 6: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.</p> <p>No comment.</p>

		<p>Question 7: MAS seeks comments on the proposed set of criteria to be used in determining whether a director or proposed director of a VCC would be considered “fit and proper”.</p> <p>No comment.</p> <p>Question 8: MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.</p> <p>No comment.</p> <p>Question 9: MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.</p> <p>No comment.</p> <p>Question 11: MAS seeks comments on the prescribed minimum period of contravention of section 46 of the VCC Act of 3 months by a VCC, upon which the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act.</p> <p>No comment.</p> <p>Question 12: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.</p> <p>No comment.</p> <p>Question 14: MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.</p> <p>No comment.</p> <p>Question 15: MAS seeks comments on the list of documents to be provided at registration and whether any issues are envisaged for foreign corporate entities to provide these documents.</p> <p>No comment.</p>
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