

**RESPONSE TO
FEEDBACK RECEIVED**

January 2020

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

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1 Preface

1.1 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 Variable Capital Company (“VCC”) and its sub-funds. The provisions in the Variable Capital Companies Act (Act 44 of 2018) of Singapore (“VCC Act”) and the proposed subsidiary legislation relating to the insolvency and winding up of VCCs and their sub-funds are adapted from the Companies Act (Cap. 50) of Singapore (“CA”) and existing subsidiary legislation under the CA.

1.2 The consultation period closed on 24 August 2019. 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.

1.3 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 in sections 2 to 5 below.

1.4 MAS would like to reiterate our intention to eventually align the insolvency and winding up regime for a VCC and its sub-funds with that of the insolvency and winding up regime for other corporate structures in Singapore under the Insolvency, Restructuring and Dissolution Act (No. 40 of 2018) (“IRDA”), which consolidates all personal and corporate insolvency and debt restructuring laws under one statute. When the IRDA comes into force, the provisions in the CA that relate to insolvency and winding up will be repealed.

1.5 On 3 September 2019, Parliament passed the Variable Capital Companies (Miscellaneous Amendments) Bill (“VCC (Miscellaneous Amendments) Bill”) to incorporate relevant insolvency and winding up provisions under the IRDA, make amendments to introduce the tax framework for VCCs and other technical amendments.

1.6 After the IRDA comes into force, the IRDA subsidiary legislation for companies will be adapted for VCCs and their sub-funds (“Adapted IRDA subsidiary legislation”) in due course. MAS does not intend to undertake a public consultation for the Adapted IRDA subsidiary legislation.

1.7 In addition, to incorporate changes arising from the introduction of the VCC Act, amendments have been made to the Rules of Court (Order 1, Order 88A and Appendix B) to include references and extend certain rules to VCCs.

1.8 MAS notes that amendments to Order 1 Rule 9 of the Rules of Court had been proposed. This proposal would necessitate amendments to section 34(1)(ea) of the Legal Profession Act (Cap. 161) of Singapore, in order that an officer of a VCC may, with leave from the Court, act on behalf of a VCC for the purposes of any relevant matter or proceeding to which the VCC is a party. This proposal is still under review.

1.9 As these amendments will not be made at this stage, a VCC will be expected to engage an advocate or solicitor to act on its behalf in any relevant matter or proceeding to which it is a party. MAS notes that, in any event, a VCC is likely to engage an advocate and solicitor to represent it in most instances.

1.10 MAS is still considering the feedback received for the Variable Capital Companies (Winding Up) Rules. MAS' response to this feedback will be published separately.

2 Variable Capital Companies (Application of Bankruptcy Act Provisions) Regulations 2020

2.1 Respondents were agreeable to the proposed Regulations to mirror the modifications to the Bankruptcy Act (Cap. 20) of Singapore, set out in the Companies (Application of Bankruptcy Act Provisions) Regulations 2020, for winding up proceedings of VCCs and their sub-funds.

MAS' Response

2.2 MAS will proceed with this proposal.

3 Variable Capital Companies (Lodgment of Documents) Regulations 2020

3.1 MAS proposed Regulations to address the insolvency and winding up related sections of these Regulations. The proposed Regulations relate to the lodgment of the statement of affairs and accounts of a VCC or sub-fund by a receiver or manager and the statement of affairs of a VCC or sub-fund that is being wound up. The proposed Regulations also address the circumstances when a lodgment of prescribed documents by the liquidator of a VCC or sub-fund with the Registrar is treated as a lodgment of the documents with both the Registrar and Official Receiver.

3.2 These Regulations were titled "Variable Capital Companies (Filing of Documents) Regulations 2019" and have since been renamed "Variable Capital Companies (Lodgment of Documents) Regulations 2020" following the wording in section 165(2)(b) of the VCC Act.

3.3 One respondent suggested that the Regulations should include a requirement for a certified true copy of statement of affairs to be filed with the Court.

MAS' Response

3.4 MAS will proceed with the proposal to adapt insolvency and winding up provisions in existing subsidiary legislation under the CA for VCCs and their sub-funds. MAS will not include a requirement for a certified true copy of statement of affairs to be filed with the Court. After the IRDA comes into force, the IRDA subsidiary legislation will be adapted for VCCs and their sub-funds.

4 Variable Capital Companies (Maximum Amount Payable in Priority in Winding Up) Order 2020

4.1 MAS proposed Regulations to set out the prescribed amount payable to an employee in relation to services rendered by the employee of a VCC to the VCC or the sub-fund of an umbrella VCC, in the event of winding up. MAS has included a formula in the proposed Regulations to determine the prescribed amounts.

4.2 One respondent highlighted that this Regulation may not be applicable to a fund vehicle that is structured as a VCC, as it is the industry norm that employees of the fund are employed by the fund manager, and not the fund vehicle. As such, it is unlikely that the VCC will have employees. Another respondent sought clarity on whether MAS intends to extend the meaning of "employee" and "subcontractor" in section 328(2B) of the CA as applied by sections 33 and 130 of the VCC Act to service providers of a VCC or sub-fund.

MAS' Response

4.3 MAS will proceed with the proposed Regulations. While we recognise that a VCC would have a regulated fund manager that has employees, it remains possible for a VCC to employ persons. As such, it may still be necessary to have this Regulation in place to prescribe the amount payable to any employee of a VCC or sub-fund in the event of winding up. The formula in the proposed Regulations to determine the prescribed amounts due to employees of the VCC is adapted from the formula used in the Companies (Maximum Amount Payable in Priority in Winding Up) Order 2015.

4.4 MAS would also like to clarify that it will not be extending the scope of this Regulation to include service providers of a VCC or sub-fund. In the event that a VCC or sub-fund is insolvent and there are monies owed to such service providers, these service providers will be treated as creditors and not employees for the repayment of monies owed.

5 Variable Capital Companies Regulations 2020

5.1 MAS proposed Regulations¹ to address the insolvency and winding up related sections of these Regulations.

5.2 One respondent suggested that if a member's voluntary liquidation is applicable to the winding up of a VCC and/or a sub-fund, a declaration of solvency should be prescribed as a form under the proposed Regulations, on the basis that a declaration of solvency was required under section 293(2)(b) of the CA.

MAS' Response

5.3 MAS would like to clarify that section 293(2) of the CA only requires that a statement of affairs be provided in a prescribed form; section 293(2) does not require a declaration of solvency to be provided in a prescribed form. Accordingly, it is only necessary to prescribe a form for the statement of affairs in the Regulations, but not for the declaration of solvency. MAS will work with ACRA and all relevant agencies to make available relevant forms.

5.4 MAS will proceed with the proposal.

MONETARY AUTHORITY OF SINGAPORE

15 January 2020

¹ Regulations 10 and 11 of the Variable Capital Companies Regulations 2020.

Annex A

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

1. EY Corporate Advisors Pte. Ltd.
2. The one respondent, who requested for full confidentiality of identity and submission

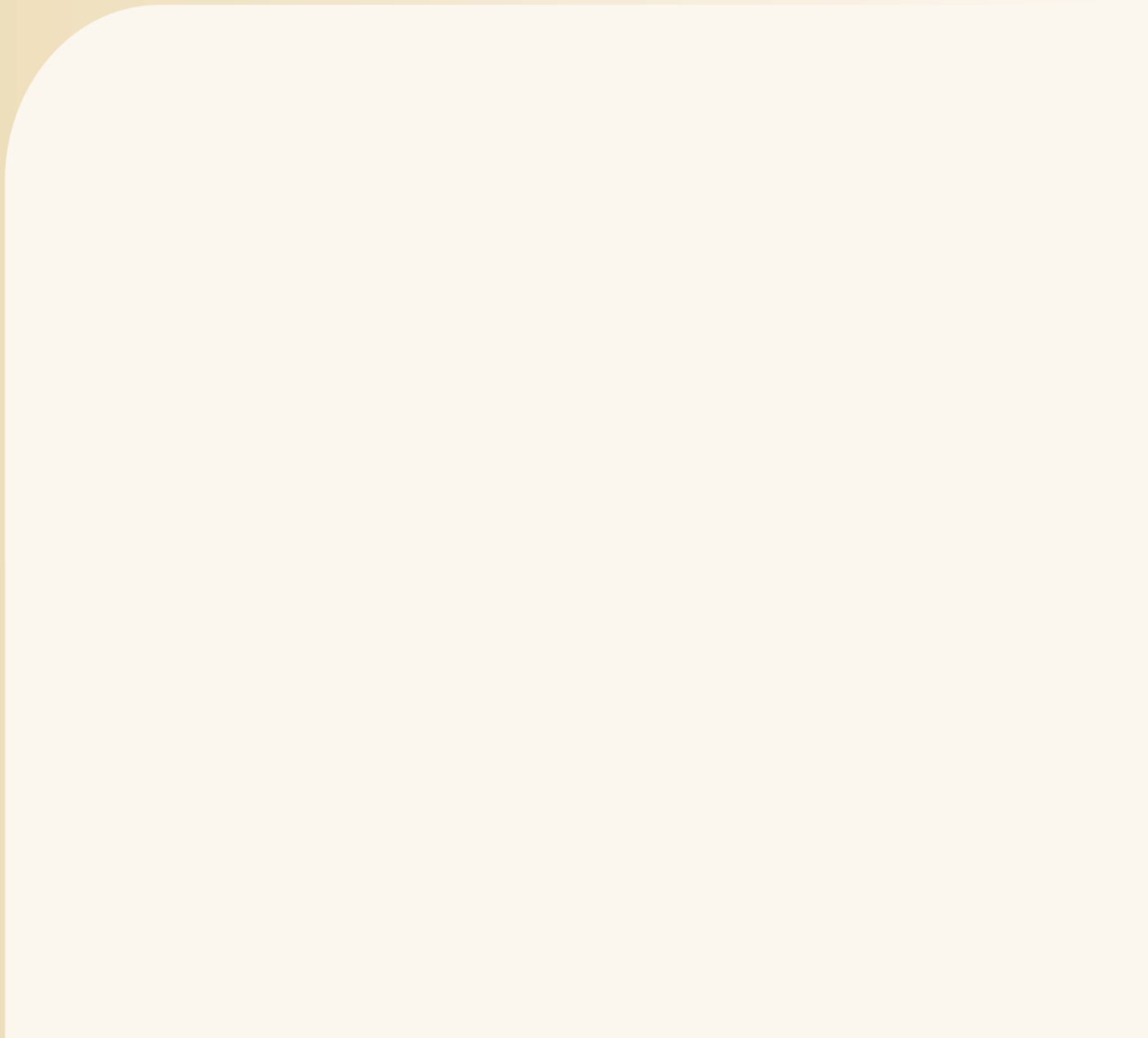
Please refer to Annex B for the submissions.

Annex B

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

S/N	Respondent	Full submission from Respondent
1	EY Corporate Advisors Pte. Ltd.	<p>General Comments:</p> <p>NA</p> <p>Question 1: MAS seeks comments on the draft VCC Bankruptcy Regulations at Annex B.</p> <p>NA</p> <p>Question 2: MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex C.</p> <p>As the Statement of Affairs under the court winding up process is required to be filed with the High Court, we propose that section 8 includes the same arrangement (i.e. certified true copy of the Statement of Affairs to be filed by the directors in writing) be applicable for filing with the High Court.</p> <p>Question 3: MAS seeks comments on the draft Variable Capital Companies (Maximum Amount Payable in Priority in Winding Up) Order 2019 at Annex D.</p> <p>It is the industry norm that the employees are housed in the fund manager and not in the fund / VCC. As such, the draft provision relating to payment to employees and the proposed formula may not be applicable. Further, it is noted that all assets and liabilities of each</p>

		<p>cell in the VCC are ringfenced within their respective cells.</p> <p>Question 4: MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex E.</p> <p>If a members' voluntary liquidation is applicable to the winding up of VCC and/or sub-fund, the Declaration of Solvency (as mentioned in Section 293(2)(b)) will need to be incorporated.</p>
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Monetary Authority of Singapore