

CONSULTATION PAPER

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Consultation Paper on the Proposed Framework for Variable Capital Companies Part 2

MAS

Monetary Authority of Singapore

Contents

1	Preface	3
2	Defined Terms	4
3	Introduction	5
4	Variable Capital Companies (Composition of Offences) Regulations 2019 and Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019	7
5	Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019	7
6	Variable Capital Companies (Filing of Documents) Regulations 2019	7
7	Variable Capital Companies (Fit and Proper) Regulations 2019	8
8	Variable Capital Companies (Identical Names) Regulations 2019	10
9	Variable Capital Companies (Prescribed Accounting Standards) Regulations 2019	10
10	Variable Capital Companies Regulations 2019	10
11	Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019	11
12	Variable Capital Companies (Transfer of Registration) Regulations 2019 ...	11
13	Variable Capital Companies (Striking Off) Regulations 2019	12
14	Amendments to the SFR(CIS)	13
15	Amendments to the CIS Code	13
Annex A	List of Questions	15

1 Preface

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

1.2 The Monetary Authority of Singapore (“MAS”) is now consulting on (i) the proposed new regulations for the VCC framework; and (ii) other amendments to existing rules and regulations, such as the SFR(CIS), CIS Code and AML/CFT notice for VCCs, to provide the operational framework to facilitate the implementation of this new regime. The proposed regulations are adapted from existing regulations under the Companies Act (Cap. 50) (“CA”). Among other things, these proposed regulations set out details in relation to the operation of the VCC framework, including the incorporation of a VCC, the registration of sub-funds and the re-domiciliation to Singapore of foreign corporate entities as VCCs.

1.3 MAS invites interested parties to provide their comments and feedback on these proposed regulations.

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

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

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

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

2 Defined Terms

AML/CFT	Anti-money laundering and countering the financing of terrorism
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
Response Paper	Response to Feedback Received on the Proposed Framework for Singapore Variable Capital Companies dated 10 September 2018
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 2018

3 Introduction

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

3.2 In addition to the new VCC regulations, amendments will also be introduced to the SFR(CIS) and the CIS Code to support the VCC Act. Further, VCCs will be supervised for AML/CFT requirements through the MAS Notice to VCCs on Prevention of Money Laundering and Countering the Financing of Terrorism, which will be issued pursuant to section 84 of the VCC Act.

3.3 MAS intends to operationalise the changes to the SFR(CIS), CIS Code, as well as the VCC AML/CFT Notice¹, together with the operationalisation of the VCC Act and the VCC regulations. MAS will issue the consultation papers on the regulations relating to the insolvency of a VCC and its sub-funds in due course.

3.4 The draft VCC regulations are set out in Annexes B to L and the draft amendments to the SFR(CIS) and CIS Code are set out in Annex M and Annex N respectively. Key areas are introduced in the following sections.

3.5 As the provisions in the VCC Act relating to the insolvency of a VCC and its sub-funds are adapted from the CA, a VCC Amendment Bill will be tabled later in 2019 to replace these provisions with the provisions under the Insolvency, Restructuring and Dissolution Act 2018², as well as to provide any necessary modifications specific to VCCs. This will align the VCC insolvency regime with that of other corporate structures in Singapore.

¹ A separate consultation has been issued on this. Please see "Consultation Paper on the Proposed Notice on Prevention of Money Laundering and Countering the Financing of Terrorism for Variable Capital Companies" published on 30 April 2019.

² This new Act has not come into effect at the time of this public consultation.

3.6 In the event that the VCC framework comes into effect before the Insolvency, Restructuring and Dissolution Act, MAS will adapt the existing CA regulations relating to insolvency and winding up. MAS will separately consult on the regulations relating to the insolvency and winding up of a VCC and its sub-funds.

4 Variable Capital Companies (Composition of Offences) Regulations 2019 and Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019

4.1 The Variable Capital Companies (Composition of Offences) Regulations 2019 sets out the offences under the VCC Act (other than offences under Part 7 of the Act) which can be compounded by the Registrar.

4.2 Part 7 of the VCC Act relates to international and AML/CFT obligations of a VCC, and is administered by MAS. The Variable Capital Companies (Composition of Offences - Part 7) Regulations 2019 hence sets out offences under Part 7 of the VCC Act, which may be compounded by MAS.

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 at Annex C.

5 Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019

5.1 MAS proposes to prescribe the fees payable to the Registrar for the transactions set out in the First Schedule to the VCC (Fees and Late Lodgment Penalties) Regulations 2019. When a person fails to file or lodge a document within the period set out in the VCC Act, the person will be liable to pay the penalty set out in the Second Schedule, in addition to the prescribed fees set out in the First Schedule.

5.2 In line with past practice, MAS will not be consulting on the fee quantum.

Question 2. MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.

6 Variable Capital Companies (Filing of Documents) Regulations 2019

6.1 MAS proposes that the procedure for the filing of documents by a VCC largely mirrors the procedure for companies under the CA.

6.2 However, modifications to certain procedures are necessary, to cater to the unique features of VCCs. 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:

- (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.

Question 3. MAS seeks comments on the procedure for the registration of a sub-fund.

6.3 MAS also proposes that when an advocate and solicitor or a registered filing agent is engaged to incorporate a VCC, the advocate and solicitor or registered filing agent must provide certain confirmations, including that each director who is to be appointed as director of the VCC complies with the factors prescribed under section 53(3) of the VCC Act. Among others, confirmation must also be provided that each person who is to be appointed as manager of the VCC has consented to act as manager and is a person mentioned in section 46(2) of the VCC Act.

Question 4. MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.

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.

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

7 Variable Capital Companies (Fit and Proper) Regulations 2019

7.1 The VCC (Fit and Proper) Regulations 2019 set out the fit and proper criteria which apply to directors or proposed directors of a VCC under section 53 (3) of the VCC Act.

7.2 The proposed set of criteria to be used in determining whether a director or proposed director of a VCC is "fit and proper" are as follows:

- (a) whether the applicant's previous conduct and compliance history as a director of a VCC, financial institution, or overseas institution has been satisfactory;

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- (b) whether the applicant has had an application to be a director of a VCC or financial institution rejected by the Registrar or Authority, as the case may be;
 - (c) whether the applicant has been removed by or directed to be removed by the Registrar or Authority, as the case may be, as a director of a VCC or financial institution;
 - (d) whether the applicant has acted in a manner that adversely reflects on the commercial integrity or reputation of the applicant, including whether the applicant has committed professional misconduct, breach of fiduciary duty or serious negligence or breach of any requirements in relation to money laundering and terrorism financing, or caused, contributed to or facilitated the commission of professional misconduct, breach of fiduciary duty, serious negligence or breach of any requirements in relation to money laundering and terrorism financing, by some other person; and
 - (e) whether it would be contrary to the national or general public interest for the applicant to be a director of a VCC.

7.3 The criteria are intended to take into account the applicant's past conduct and application history as a director of a VCC or financial institution. In this regard, the Registrar would pay particular attention to any credible adverse information from an AML/CFT perspective, including the applicant's ability to meet any AML/CFT requirements that he had responsibility for. The criteria also take into account any serious professional lapses by an applicant, including issues that may impinge on his integrity, or if there are compelling public-interest reasons to not approve the applicant. A single "black mark" in an applicant's past conduct may not always be grounds for rejection on its own; as the Registrar will take into account the severity and recentness of any past misconduct or breaches when assessing an applicant's fitness and propriety.

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".

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

8 Variable Capital Companies (Identical Names) Regulations 2019

8.1 The VCC (Identical Names) Regulations 2019 set out the rules for determining whether the name of a VCC is identical to another name under section 21 of the VCC Act.

Question 9. MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.

9 Variable Capital Companies (Prescribed Accounting Standards) Regulations 2019

9.1 The VCC (Prescribed Accounting Standards) Regulations 2019 set out the accounting standards to be used by the VCCs to prepare their financial statements under section 100(8)(b) of the VCC Act.

9.2 VCCs consisting of one or more Authorised Schemes will be required to prepare their financial statements using RAP 7. VCCs which do not consist of any Authorised Schemes will have the option to prepare their financial statements in US GAAP, in addition to an ASC Standard or the IFRS (see paragraphs 5.10 – 5.11 of Response Paper).

Question 10. MAS seeks comments on the draft Variable Capital Companies (Prescribed Accounting Standards) Regulations 2019 at Annex H.

10 Variable Capital Companies Regulations 2019

10.1 The VCC Regulations 2019 set out the miscellaneous regulations that are applicable to VCCs. These include the forms and statements for:

- (a) declaration of consent to act as manager of a VCC and statement of compliance with section 46(2) of the VCC Act;
- (b) declaration of consent to act as director of a VCC and statement of non-disqualification to act as director, in accordance with section 73 of the VCC Act; and
- (c) statement by both the VCC, and the person to be named as a director or proposed director of VCC, as to the person's compliance with fit and proper factors prescribed in section 53(3) of the VCC Act.

10.2 The VCC Regulations 2019 provide that the Court may order the winding up of a VCC under section 130(8)(n) of the VCC Act if a VCC contravenes section 46 of the VCC Act for a period of 3 months or more.

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.

Question 12. MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.

11 Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019

11.1 The VCC (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019 set out regulations in relation to the application of section 100 of the VCC Act to revised financial statements.

Question 13. MAS seeks comments on the draft Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019 at Annex J.

12 Variable Capital Companies (Transfer of Registration) Regulations 2019

12.1 The VCC (Transfer of Registration) Regulations 2019 applies with modifications, the existing regulatory regime for the transfer of registration of foreign corporate entities under the CA, to foreign corporate entities (as defined in the VCC Act) that intend to be registered as VCCs under the VCC Act. MAS proposes that only foreign corporate entities with assets which exceed their liabilities (including contingent liabilities) and that are able to pay their debts within 12 months from the date of application by the foreign corporate entity can re-domicile to Singapore.

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

Documents to be provided at registration

12.2 MAS proposes that foreign corporate entities that wish to re-domicile to Singapore as VCCs must provide the documents set out in the regulations to the Registrar at the time of registration. This list takes into account the documents that are required to be provided under similar inward re-domiciliation regimes.³

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.

Minimum requirements for registration

12.3 The proposed minimum requirements for registration of foreign corporate entities as VCCs are set out in the regulations. If the Registrar is not satisfied that the minimum requirements prescribed for registration have been met and that all other requirements for registration have been complied with, the Registrar must refuse to register such foreign corporate structure.

Question 16. MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.

13 Variable Capital Companies (Striking Off) Regulations 2019

13.1 The VCC (Striking Off) Regulations 2019 set out the procedure for the striking off and restoration of VCCs and their sub-funds under section 130 of the VCC Act read with sections 344A – 344D of the CA.

Question 17. MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.

³ For example, the migration regime under the Irish Collective Asset-management Vehicles of the Republic of Ireland.

14 Amendments to the SFR(CIS)

14.1 MAS seeks comments on the draft amendments to the SFR(CIS) to implement the VCC framework. The amendments, which are to be read with the consequential amendments to the SFA as set out in section 167(5) of the VCC Act, pertain to:

- (a) operational requirements for custodians of VCCs;
- (b) provisions to be included in a VCC constitution;
- (c) provisions to be included in contractual agreements between a VCC and its directors, manager and custodian;
- (d) prospectus disclosure requirements; and
- (e) other consequential amendments.

14.2 The proposed amendments follow the policy position taken by MAS in the Response Paper, to (i) align the duties of a custodian with that of an approved trustee, other than the obligation to safeguard the rights and interests of the VCC's shareholder⁴, and (ii) disclose the risk of cross-cell contagion to shareholders of VCCs.⁵ The other proposed requirements to the VCC constitution and contractual agreements are intended to mirror the current requirements which MAS imposes for trust deeds of unit trusts.

Question 18. MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.

15 Amendments to the CIS Code

15.1 MAS proposes amendments to the CIS Code to extend certain existing responsibilities and independence requirements relating to approved trustees and managers of authorised funds, to the VCC, its directors and custodians (where applicable). Other proposed amendments include requiring authorised VCCs to prepare their financial standards using RAP 7, as currently required for authorised unit trusts under the CIS Code⁶, and to implement MAS' policy to allow authorised VCCs and authorised sub-funds

⁴ See paragraph 7 of Response Paper.

⁵ See paragraphs 3.1 and 3.5 of Response Paper.

⁶ See paragraph 5.10 of Response Paper

of a VCC to invest in assets located in a jurisdiction that does not have a cellular structure after reasonably mitigating cross-cell contagion risk⁷.

Question 19. MAS seeks comments on the proposed amendments to the CIS Code at Annex N.

⁷ See paragraphs 3.1 and 3.5 of Response Paper

ANNEX A

LIST OF QUESTIONS

- 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 at Annex C.7
- Question 2.** MAS seeks comments on the draft Variable Capital Companies (Fees and Late Lodgment Penalties) Regulations 2019 at Annex D.7
- Question 3.** MAS seeks comments on the procedure for the registration of a sub-fund. 8
- Question 4.** MAS seeks comments on the additional confirmations that must be lodged electronically for VCCs.8
- 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.8
- Question 6.** MAS seeks comments on the draft Variable Capital Companies (Filing of Documents) Regulations 2019 at Annex E.8
- 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”9
- Question 8.** MAS seeks comments on the draft Variable Capital Companies (Fit and Proper) Regulations 2019 at Annex F.9
- Question 9.** MAS seeks comments on the draft Variable Capital Companies (Identical Names) Regulations 2019 at Annex G.10
- Question 10.** MAS seeks comments on the draft Variable Capital Companies (Prescribed Accounting Standards) Regulations 2019 at Annex H.10
- 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.11
- Question 12.** MAS seeks comments on the draft Variable Capital Companies Regulations 2019 at Annex I.11
- Question 13.** MAS seeks comments on the draft Variable Capital Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019 at Annex J.11

Question 14. MAS seeks comments on the draft Variable Capital Companies (Transfer of Registration) Regulations 2019 at Annex K.	11
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.	12
Question 16. MAS seeks comments on the minimum requirements for registration of foreign corporate entities as VCCs under the VCC Act.....	12
Question 17. MAS seeks comments on the draft Variable Capital Companies (Striking Off) Regulations 2019 at Annex L.	12
Question 18. MAS seeks comments on the proposed amendments to the SFR(CIS) at Annex M.....	13
Question 19. MAS seeks comments on the proposed amendments to the CIS Code at Annex N.....	14

