



Consultation Paper on the Proposed Framework for Variable Capital Companies

Summaries of amendments proposed in the paper are as follows:

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

The Variable Capital Companies (Composition of Offences) Regulations 2019 set out the offences under the VCC Act (other than offences under Part 7 of the Act) which can be compounded. These include any offence under the Act or subsidiary legislation that is punishable only by a fine or a fine and a default penalty, and any offence under section 100(1) as applied by section 106(1) other than offences with fraudulent nature.

Part 7 of the Act relates to international and AML/CFT obligations, and the Variable Capital Companies (Composition of Offences – Part 7) Regulations 2019 set out that any offence under Part 7, which is punishable by a fine only may be compounded.

2. Variable Capital Companies (Feed and Late Lodgment Penalties) Regulations 2019

MAS has proposed a schedule of fees and penalties when a person fails to file or lodge a document within the required period. To note, MAS will not be consulting on the fee quantum.

3. Variable Capital Companies (Filing of Documents) Regulations 2019

MAS has proposed a procedure for the filing of documents largely in line with the existing procedure for companies under the Companies Act. Certain modifications have been made to cater to the unique features of VCCs such as sub-funds. Additionally, certain confirmations have also been included.

For example, confirmation must be provided that each person who is to be appointed as manager of the VCC has consented to act as manager.

4. Variable Capital Companies (Fit and Proper) Regulations 2019

MAS has proposed 'fit and proper' criteria to be used in determining whether a director is suitable. The criteria considers prior conduct, compliance history, integrity, reputation and public interest among other factors with special emphasis from an AML/CFT perspective.

5. Variable Capital Companies (Identical Names) Regulations 2019

MAS has proposed rules for determining whether the name of a VCC is identical to another name.

6. Variable Capital Companies (Prescribed Accounting Standards) Regulations 2019

MAS has proposed the accounting standards to be used by VCCs. Companies consisting of one or more Authorised Schemes will be required to prepare their financial statements using RAP 7, whilst companies which do not consist of any Authorised Schemes will have the option to prepare financial statements in US GAAP in addition to ASC or IFRS.

7. Variable Capital Companies Regulations 2019

The VCC Regulations 2019 set out the miscellaneous applicable regulations such as:

- forms and other documents;
- auditor's remuneration;
- prescribed period under section 130(8)(n) of the Act;
- Official Receiver's on liquidator's report in relation to unfitness of directors of insolvent VCC;
- requirement of secretary;
- prescribed circumstances on whether a VCC is carrying on business; and
- safeguards for use of electronic communications.

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

The VCC (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2019 set out the regulation in relation to revised financial statements.

9. Variable Capital Companies (Transfer of Registration) Regulations 2019

MAS has proposed requirements and documentation for a transfer of registration of foreign corporate entities similar to the framework under the CA. However, only entities that are able to pay their debts and whose assets exceed the value of its liabilities (including contingent liabilities) will be able to re-domicile.

10. Variable Capital Companies (Striking Off) Regulations 2019

The VCC (Striking Off) Regulations 2019 set out the procedure for the striking off and restoration of VCCs and their sub-funds.

11. Amendments to the SFR(CIS)

MAS has proposed amendments to the SFR(CIS) to implement the VCC framework. The amendments 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.

Furthermore, the amendments aim to align the duties of a custodian with that of an approved trustee and disclose the risk of cross-cell contagion to shareholders. The other proposed requirements are intended to synchronize the framework to the requirements imposed for trust deeds of unit trusts.

12. Amendments to the CIS Code

MAS has proposed extending certain existing responsibilities and independence requirements relating to approved trustees and managers of authorised funds, to the VCC, its directors and custodians (where applicable).

The amendments under item 11 and 12 above are in line with MAS' position detailed in the 'Response to Response to Feedback Received on the Proposed Framework for Singapore Variable Capital Companies dated 10 September 2018'.

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