

## Singapore Variable Capital Company: an overview

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The red-dot in the Southeast Asian Archipelago, the city-state of Singapore that has developed itself into a financial centre amongst many other accolades, has seen an overwhelming success with the launch of the Variable Capital Company (VCC) – investment fund structure, since January 2020.

The roll-out just before the pandemic did not deter its appeal in the marketplace and became another reason for managers to situate their businesses on this island financial capital.

### | Singapore Variable Capital Company - an overview

Why did Singapore introduce the Variable Capital Company in its suite of funds?

A financial centre with its legal fundamentals on common law, a corporate investment vehicle was much needed by the industry. Its suite of funds, Unit Trusts, Limited Partnerships, needed expansion to corporation form funds. Admittedly one could have set up a fund using the erstwhile Singapore Corporate, under the Companies Act, however, the structure was not flexible enough to accommodate investment fund-like vehicles. With a strong nexus of double taxation treaties and a large distribution landscape via the private banks and wealth managers, it was only a matter of time that Singapore needed to expand its prowess from fund management jurisdiction to a fund domicile. A corporation, dedicated to investment vehicle, was much needed and thus the Variable Capital Company (**VCC**) was introduced after a thorough study of similar structures around the globe.

What is the regulatory architecture of a VCC?

A VCC would be incorporated by the Accounting and Corporate Regulatory Authority (ACRA), and supervised by the Monetary Authority of Singapore (MAS) directly through the Securities and Futures Act (SFA) as pertaining to funds, and indirectly through the regulatory oversight

over the fund managers.

VCC is a legal entity with connectivity to the Singapore's fund laws via the fund manager. This is done via intertwining the fund manager regulations with the VCC. Therefore, only a licensed or a regulated fund manager can operate a VCC in Singapore. The fund types in Singapore are as follows:

- Authorised funds (for retail investors);
- Restricted (for accredited investors); and
- Exempt (for small offerings, private placement and institutional investors schemes)

A VCC would be either one of these as one would reiterate that it is a legal entity form. It is imperative to note that VCC is not a part of the Singapore Companies Act. It is a corporate form by itself but its use is limited to investment funds only and not for operating businesses.

## What types of investment funds can be set up via a VCC?

VCC can be set up as an open-ended fund as well as a closed-ended fund. Since it is regulatory regime agnostic, it can be set up for retail, accredited (sophisticated) investors as well as institutional. It is also asset class agnostic, since it does not depict any investment eligibility or diversification rules, and thus can be set up for mutual funds, hedge funds, private equity fund, venture capital fund, real estate (set up only by a regulated manager in Singapore), etc.

## Who can set up a VCC?

Singapore based, "Regulated" (RFMC) or a "Licensed" (LFMC/VCFM) or currently regulated "financial institution" regulated by the MAS (eg Banks, Insurance companies, Finance companies etc) can operate a VCC. Therefore, localised manager with regulated status is a pre-requisite. These are titled as "Permissible Fund Managers" for purposes for a VCC.

A VCC must have the same permissible fund manager across all the sub-funds of an umbrella VCC.

## Who cannot set up a VCC?

Investment managers that are not based in Singapore or do not have a fund management regulated status, (e.g. Single Family Offices, Real Estate managers) cannot operate a VCC.

## What can you do with a VCC?

VCC is a legislation for a "legal entity" but its use is limited and restricted to "investment funds" only. One cannot use a VCC for operating businesses or as holding companies of operating businesses. The Securities and Futures Act defines investment fund as follows:

- Arrangement where:

1. Participants do not have day-to-day control over the management of the property
2. The property is managed as a whole by or on behalf of a manager

- Contributions, profits or income payments to participants are pooled
- Participants can receive sums paid out from the profits, income, or other payments or returns from investments in the investment fund.

Therefore, a VCC must meet the above two pre-requisites:

- Meet the above definition of investment fund
- Must be managed by a Permissible Fund Manager.

It is also worth noting that VCC does not prescribe any diversification or investment eligibility requirements to qualify as a VCC. Unless a VCC is set up as a “mutual fund” (i.e. Authorised VCC) then the rules of eligibility and diversification as prescribed under the Authorised fund’s rules (Code of Collective Investment Schemes) apply, as they would apply to Authorised funds set up as Unit Trusts.

## How does one set up a VCC?

A VCC is incorporated just like a company would be incorporated with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). It typically would take one-two weeks for ACRA to issue a certificate of incorporation.

Another way to set up a VCC would be to re-domicile a corporate fund structure from overseas, to Singapore as VCC.

## What are the benefits of a VCC as a fund structure?

**Variable nature of the capital** structure is its best feature. This is possible only as the capital is equal to its “net assets”. A VCC would also need to perennially measure its assets and liabilities at *fair value*. Such mechanism helps to dispense with the statutory task of performing a solvency test prior to capital reduction/redemptions, which is a requirement for any corporation. The dispensation of ‘solvency tests’, alleviates the administrative burden as capital reduction/redemptions are lot more prevalent in funds than an operating company.

**Umbrella structure** are possible for a VCC, and one of the most compelling feature of a VCC. There are no restrictions on the number of sub-funds, or their size. One can simply create new sub-funds by passing resolution and intimating ACRA for update of the register. One does not seek permission from ACRA to set up a sub-fund, just an intimation is required. It is worth

noting that sub-fund of a VCC may invest in other sub-funds of the same VCC

***Segregation of Assets & Liabilities*** of each sub-fund is a distinguishing feature of a VCC to other similar fund structures globally. There is a legal segregation of assets and liabilities between sub-funds. The statute prescribes for such segregation. Therefore, winding up of one sub-funds has no impact on another and one can operate multiple sub-funds without fear of one sub-fund jeopardising another.

***Re-domiciliation*** of an existing fund structure allows for track record of the fund to continue when being brought to Singapore. This gives it an additional ability to launch in addition to incorporation.

***All types of funds***, can utilise a VCC. It can be an open- or closed-ended VCC. Since there are no investment eligibility qualifications, a VCC can be set up for all investment strategies and asset classes.

## Does a VCC need outsourced service providers?

A VCC being a Singapore based entity, would then invariably need a registered office in Singapore. The registered office is the location where registers and documents are kept by the VCC.

As an entity regulated by the ACRA, the financial statements of a VCC must be filed with ACRA annually (after 7 months from year-end) and the financial statements must be audited by a Singapore based registered accountant or firm.

A VCC would need a Singapore based secretary. The VCC secretary must be a natural person residing in Singapore, and must meet certain requirements of experience, professional or academic requirements, or memberships in certain professional associations.

Other than a VCC director and the above, are the statutory functions that need to be performed in Singapore.

A VCC **may** outsource the book-keeping (fund administration) to an external party. The tax incentives to which the VCC would typically apply for mandates the fund administration function to be performed in Singapore.

## Does a VCC need a Custodian?

A VCC needs to have its assets safeguarded unless it is explicitly exempted.

VCCs which are set up as *Private Equity or a Real Estate Fund or a Venture Capital* fund, may be *exempted* from a custodian obligation. The pre-requisite for such exemption is that the VCC must (a) disclose the lack of a custodian to its investors, (b) obtain investors' acknowledgement

of this custody arrangement, and (c) ensure that the scheme is audited on an annual basis, and that the auditor's report is provided to investors.

For VCC's that are set up as a mutual fund i.e. - Authorised VCCs, the custodian must be a Singapore regulated entity viz., a regulated trustee in Singapore. (CIS Trustee).

For VCCs which are not Authorised funds, a custodian can be any of these:

- a bank , merchant bank or a finance company in Singapore
- a depository agent for the custody of securities listed for quotation or quoted on SGX-ST or deposited with the Central Depository.
- an approved CIS trustees.
- a CMS licence holder for custodial services; or
- a custodian outside Singapore which is authorised to act as a custodian in its jurisdiction.

## What are the statutory and administrative obligations of a VCC?

A VCC must maintain its registers up to date with itself as well as those maintained by ACRA (Directors, Auditors, Secretary, Charges to name a few).

Register of members of the VCC must be maintained by the VCC at a location easily accessible either from or at the registered office. The register of members is not maintained by ACRA.

It must update its constitution and file it with ACRA only for those instances that are statutorily exempted and that is stated in the constitution. These are as follows:

- Forming a sub-fund
- Appoint or change a fund manager
- Any alteration of the constitution that would not prejudicially affect the interest of the members
- Comply with an order of the court or legislation
- Amend for errors or obsolete provisions.
- A resolution for amendment of these must be filed with ACRA.

Prepare annual accounts, have them audited and filed with ACRA.

File tax returns with the Inland Revenue Authority of Singapore (IRAS).

The Board of Directors (BOD) of a VCC can also elect to **dispense with the need to hold annual**

general meetings.

## What are the fiduciary requirements for a VCC?

Like any other corporation, the VCC is to be governed by a Board of Directors which will be responsible for the governance of the VCC.

The director must be ordinarily a resident in Singapore, an individual and financially sound and contractual ability. A VCC cannot have a body corporate as its director, irrespective of the residency.

It is pertinent to note that a VCC must have at least one director, that is also a director or qualified representative of the fund management company that manages the VCC.

There are no restrictions on directors also being members/shareholders of the VCC, provided it is disclosed.

For Mutual funds, (i.e. Authorised VCCs) it is required that at least three directors, of which at least one director has to be **independent** of: business relationships with the VCC; the fund manager of the VCC (and its related entities); and all substantial shareholders of the VCC

## What are specific duties of the board of directors of a VCC?

As for any director's fiduciary responsibility, as dictated by common law principles, the VCC's board is also responsible for the following statutory duties under the VCC Act (including but not limited to):

- Maintain proper books of accounts
- Ensure the requirements of the Act are complied with
- Prepare annual accounts
- An annual audit is performed
- Maintain the segregation of assets and liabilities of the various sub-funds
- Maintain certain registers and other documents
- File requisite reports and documents with the ACRA
- Prepare a board of directors report that is attached to the annual accounts of the VCC

## Directorships

Ogier Global is able to draw from a wide pool of resources, including lawyers, accountants and chartered secretaries to provide our clients with experienced and highly qualified non-executive

directors. Renowned for their knowledge of financial markets and managing complex structures, our directors can add value to your board, by providing a high standard of corporate governance as well as insightful knowledge of the laws and regulations in each of our jurisdictions.

- Provision of one or more resident directors
- Attendance at regular board meetings
- Discharge of duties through appropriate involvement in corporate activities
- Oversight of delegated functions
- Interaction with sponsors, managers and other service providers
- Compliance, including review of changes to statutory documentation
- Provision of alternate directors when required

## What are the financial statement requirements for a VCC?

For all VCC that are not mutual funds, (Authorised VCC), the financial statements of a VCC can be prepared as per the following accounting frameworks - the International Financial Reporting Standards, Singapore Financial Reporting Standards and the US GAAP. Authorised VCCs will prepare its financial statements as per Recommended Accounting Practices – 7 that are applicable to all mutual funds.

The financial statements can be prepared at each individual sub-fund level or overall umbrella basis, but when filing with the ACRA, an umbrella financial statement should only be presented along with the annual return.

The financial statements of any VCC are not publicly available.

The VCC shall lodge an Annual Return with ACRA after its general meeting within 7 months from the end of its financial year end. As mentioned earlier, AGM can be dispensed with.

As under the Singapore Companies' Act, there are no similar provisions of a 'small company' or 'dormancy' exemption from audits for a VCC.

## What are the features of the capital structure of the VCC?

The capital of a VCC may be presented by shares of any amounts and issue at times for payment of calls as agreed between its shareholders. It can accept members without having its shares fully paid up and can pay dividends in proportion to the amount paid up. A VCC cannot issue any bearer share warrants on its shares.

A VCC can be funded by either debentures (debt), bonds, or other securities in addition to

equity. Such instruments may also be listed on a stock exchange.

As with any corporation, the liability of members of a VCC will be limited to the amount, if any, unpaid on the shares held by them respectively.

A VCC is not required to disclose its register of shareholders to the public but must make the register available to supervisory and law enforcement agencies.

A VCC can redeem shares and also issue dividends using its capital. The constitution of a VCC should state that the valuation and redemption of shares must be carried out at net asset value (NAV). An exception to this requirement will be made for closed-end funds that are listed for quotation on a securities exchange or for shares offered in the - initial offer period.

## How are VCCs taxed?

A VCC is a corporation in Singapore that is subject to tax. However, it is also eligible to tax incentives that help to reduce the tax obligations provided certain conditions are met. These are 13-O 'Singapore Resident Fund Scheme' and 13-U 'Enhanced-Tier Fund Scheme'.

For 13-O scheme, the VCC must not have more than certain amount of its capital owned by non-individual Singapore resident entities.

Under the 13-U, the VCC must meet the minimum fund size of S\$50 million at the time of application, (includes committed capital for private equity) and the Singapore fund management company must have at least 3 investment professionals.

Both the schemes do have a minimum business spending of S\$200,000 (13-U requires spending in Singapore only), need a fund administrator in Singapore and must invest in designated investments as prescribed by the Singapore tax authorities from time to time.

These incentive conditions are to be maintained at the umbrella level of a VCC, so there is no incremental burden when there are multiple sub-funds of an Umbrella.

VCC is also eligible for Goods and Services Tax remission and withholding tax exemption.

As seen from the above salient features, that VCC is a versatile and a globally competitive fund structure. As with any progressive financial centre, the Singapore regulator is already working on the next improved version of the VCC which will not only increase the appeal but also the product suite of types of funds that can be set up by a VCC.

Some commonly asked and pertinent questions on VCC:

**Can a VCC be distributed to a retail investor outside of Singapore?**

The distribution of a VCC to retail investors in jurisdictions outside of Singapore will depend on the fund regulations in that jurisdiction. There are no prohibitions in the VCC Act that prevent some such distribution. Currently, Singapore is only signed up to the ASEAN CIS Fund passporting scheme, allowing its funds to be distributed to the retail in Thailand, Malaysia and the Philippines only.

## Could VCC be used in a fund complex of a Master-Feeder structure?

Yes, a VCC can be set up as a master-feeder structure and can be within one application of tax incentives as well.

## Can a stand-alone VCC be converted to an umbrella and vice-versa?

Yes, the constitution of the VCC will need to be amended along with investor approvals and subsequent updates to be filed with the ACRA.

## Can a Single-family office operate a VCC for its investment purposes?

Unfortunately, a single-family office does not have the regulatory status of "Permissible Fund Manager" and thereby cannot operate a VCC.

## Can an Umbrella VCC have different financial year-ends and different accountant standards across its range of sub-funds?

No, all sub-funds of the same umbrella VCC must have the same financial year end and follow the same accounting standards, amongst the three choices available to a VCC - (US GAAP, IFRS, SFRS).

## Does the financial statement of a VCC disclose portfolio of investments?

VCC preparing financial statements under RAP 7 (for Retail funds) and those preparing under US GAAP, would require their portfolio to be disclosed as per the disclosure requirements under those reporting standards. VCCs preparing financial statements under IFRS and SFRS do not have such a prescribed requirement. It is worthy to note that VCC Act does not mandate this requirement, it will be dictated by the reporting disclosure requirements of the accounting standards.

## Can a VCC invest in cryptocurrency? Or digital assets?

There are no investment eligibility requirements to qualify a VCC. However, all VCC would

invariably apply for tax incentives that are dictated by investment qualification for such incentives. Cryptocurrency and digital assets are not on that prescribed list. So strictly speaking, VCC can have such assets in its portfolio but the income attributed by such assets will be subject to corporate tax of 17%.

Our [At A Glance Guide to Variable Capital Companies in Singapore](#) contains some of the features that give Variable Capital Companies the edge in the international funds marketplace.

[You can find out more information about setting up a fund management business in singapore, and the different types of funds available, starting here.](#)

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