Regulatory Update – Singapore Variable Capital Company (“VCC”)

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Introduction

In March 2017, the Monetary Authority of Singapore ("MAS") released a consultation paper on the proposed framework for Singapore Variable Capital Company ("VCC").

Following the public consultation, on 10 September 2018, the VCC Bill was moved for First Reading in Parliament.

MAS has issued response to feedback received and finalised the features of the new corporate structure for investment funds.

On 1 October 2018, the VCC Bill was moved for Second Reading in Parliament.

The VCC regime is expected to be operational in Q1 2019

What is a VCC?

- A VCC is a new corporate structure, initially intended for investment funds.
- Many Singapore-based fund managers currently choose to locate their fund structures in offshore jurisdictions, such as Cayman. This is driven by practical limitations in existing Singapore fund vehicles (unit trusts, companies and limited partnerships).
- Unit trusts are typically used only for mutual funds aimed at retail investors. Limited partnership structures have not been popular, while funds constituted as companies are operationally cumbersome
- The VCC regime is intended to be an operationally efficient structure which aims to attract more funds to be set-up in Singapore

What is a VCC?

- VCCs can be used by both open-ended and closed-end investment funds, and for both traditional and alternative strategies e.g. hedge funds, private equity and venture capital funds.

- Attractive features of the VCC include the ability to redeem shares at the fund's Net Asset value and to pay dividends from capital. It can also be set-up as an umbrella structure with multiple sub-funds, which can be cost effective.

Key characteristics of a VCC

Variable Capital Structure

- Valuation and redemption of a VCC share are at Net Asset Value (“NAV”)
- VCC can issue and redeem shares without prior shareholders’ approval and pay dividends using its capital – unlike a fund constituted as a company

Umbrella Structure with Segregated Assets and Liabilities

- A VCC can be established as an umbrella structure with multiple sub-funds
- Assets and liabilities of each sub-fund are required to be segregated
- The sub-funds can share a board of directors and have common service providers – leading to operational efficiencies

Tax Treatment

- S13R and S13X Tax Exemption Schemes are extended to the VCCs
- IRAS treats VCC as a company and single entity for tax purposes - eliminating need to file multiple tax returns for sub-funds

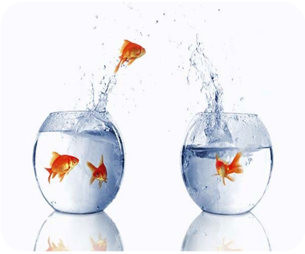
Key characteristics of a VCC

Non-public Disclosure of Shareholder Register

- Unlike companies, VCCs’ shareholder registers are not required to be made public – thus offering privacy to investors

Financial Reporting Standards

- VCCs can choose to prepare financial statements using US GAAP, IFRS or ASC Standards (VCCs under schemes for Retail investors, Authorised Schemes, must follow the Reporting Framework for Unit Trusts, “RAP 7”)
- All sub-funds in a VCC are required to adopt the same accounting standard



Inward Re-domiciliation

- Foreign corporate fund structures can re-domicile as VCCs in Singapore
- Singapore fund managers with offshore fund domiciles will now have an option to co-locate fund domiciliation and management activities in Singapore
- The existing “Small Company Requirements” that apply under the Companies Act will not apply to VCCs, allowing more offshore funds to potentially re-domicile

Main Requirements of a VCC

Fund Manager

- A VCC must appoint a Permissible Fund Manager to manage its property
- Permissible Fund Managers include Licensed/ Registered Fund Management Companies and other certain exempt fund managers under the SFA
- Single Family offices currently exempted from licensing requirements will not meet the definition of Permissible Fund Manger

Board of Directors

- At least 1 director who is also a director/ representative of the VCC's fund manager for Restricted or Exempted Schemes (e.g. schemes for Accredited Investors, Private Placements)
- At least 3 directors for a VCC which is an Authorised Scheme
- Corporate directors are not permitted

Auditor

- All VCCs are to be subject to audit by a Singapore-based auditor on an annual basis
- The audited financial statements of a VCC are to be made available to all shareholders

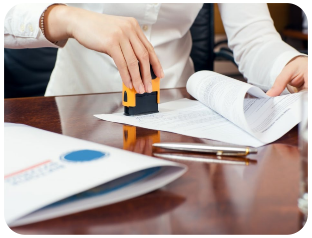
Main Requirements of a VCC

Custodian

- Authorised Schemes have to appoint a custodian that is an Approved Trustee
- Restricted Schemes can maintain custody accounts with a prescribed entity (such as a bank or a depositary agent)
- Private Equity and Venture Capital funds are not required to appoint custodian subject to certain conditions

Fund Administrator

- VCCs that wish to apply for the tax exemption schemes under S13R and S13X, are required to engage a Singapore-based fund administrator



Company Secretary & Registered Office

- All VCCs must appoint a Singapore resident company secretary and have a registered office address in Singapore

Conclusion

The introduction of the VCC is a significant positive for the Singapore funds industry. It should make Singapore more competitive in attracting funds to domicile in the jurisdiction.

It was also an important step given the new Open-Ended Fund Company ("OFC") regime recently launched in Hong Kong.

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