

# ALLEN & OVERY



## The Variable Capital Company: A new corporate structure for funds in Singapore

---

September 2019

# Contents

Executive summary	3
1. Overview of the VCC structure	4
2. Incorporating and establishing a VCC	5
<i>(i) Ring-fencing of sub-funds</i>	7
<i>(ii) VCCs consisting of Authorised Scheme(s)</i>	8
<i>(iii) Tax matters</i>	9
<i>(iv) Foreign CIS converting to Singapore VCCs</i>	9
3. Next steps	10
Key contacts	11
Appendix 1: Comparison of the new VCC structure against the existing fund structures	12

# Executive summary

The Variable Capital Company (VCC) is a new corporate entity structure under which several collective investment schemes (whether open-end or closed-end) may be gathered under the umbrella of a single corporate entity and yet remain ring-fenced from each other.

It is similar to the open-ended investment company structure in the UK and protected cell company or segregated portfolio company structures in jurisdictions like Guernsey or the Cayman Islands.

The new corporate entity structure will give funds an alternative to the existing structures available in Singapore, namely, unit trusts, limited partnerships, limited liability partnerships and companies.

The VCC will be regulated under its own legislation, the Variable Capital Companies Act 2018, which was passed on 1 October 2018 but is not yet in force. The new structure will likely only be available some time in the last quarter of 2019.

In this publication, we explain the key features of the VCC, the legal framework relating to the incorporation and establishment of a VCC, and set out a comparison of the VCC structure against existing fund structures in Singapore.

*“The introduction of this corporate structure, known as the variable capital company or “VCC”, will be a game-changer for Singapore’s fund management industry... The VCC regime will strengthen [Singapore’s] position as the Asian hub for fund domiciliation and management.”*

Parliamentary speech by Ms Indranee Rajanah, Second Minister for Finance, on the second reading of the Variable Capital Companies Bill on 1 October 2018

# 1. Overview of the VCC structure

- The VCC is a corporate entity in which shareholders may hold shares.
- However, unlike a company which is used to carry on a business, the only purpose for which a VCC may be used is as one or more collective investment schemes (CIS) in the form of a body corporate.
- Each share in a VCC will be analogous to a unit of a CIS, and the members in a VCC will therefore correspond to unitholders of a CIS.
- Shares in a VCC will entitle members to receive profits from the VCC's property in accordance with the rights set out in the VCC's constitution.
- A VCC is not restricted to paying dividends only out of profits as is currently the case with companies.
- If permitted, members may also redeem or sell their shares back to the VCC in order to exit their investment.
- There will be no capital maintenance requirements and hence whitewash approvals will not be required.
- The redemptions would typically need to be carried out as a proportionate amount of the VCC's net asset value.

**A key advantage of the VCC is the use of the umbrella structure.**

This allows the sub-funds to share a board of directors and have common service providers, such as the same fund manager, custodian, auditor and administrative agent. Certain administrative functions, for instance the holding of general meetings and preparation of prospectuses, can also be consolidated.

Where a VCC is set up as an umbrella fund with several sub-funds, members may hold shares that are referenced to a particular sub-fund held by the VCC.



## 2. Incorporating and establishing a VCC

A VCC may be incorporated with only one member. This is to allow VCCs to be used in fund structures with only a single member but many underlying investors (eg, a master-feeder-fund structure or a fund with a single nominee account).

The VCC must have a manager to manage its property or to operate the collective investment scheme or schemes that comprise the VCC.

The manager must be one of the following:

- A holder of a capital markets services licence for fund management;
- A Registered Fund Management Company; or
- Certain financial institutions exempted from holding a capital markets services licence under the Securities and Futures Act (**SFA**).

Except for VCCs consisting of Authorised Scheme(s) (as to which please see section 2(ii)), the VCC may have only one director. The director must be ordinarily resident in Singapore and be either a director of the manager of the VCC or a qualified representative of the manager. If a VCC has more than one director then each of these requirements may be met by separate persons. A director of a VCC must also be fit and proper with reference to, among others, their previous conduct and compliance history as a director of another VCC, financial institution or overseas institution.

The constitution of a VCC will be deemed to contain certain provisions from which it cannot derogate. These include the following:

- The value of the paid-up capital of the VCC is deemed to be at all times equal to its net asset value.
- The shares of the VCC must be issued, redeemed and repurchased at an amount representing its proportionate share of the VCC's net asset value (subject to any adjustments for fees and charges provided for in the constitution), except for certain closed-end funds listed on a securities exchange.

In addition, the rights of the shareholders (for example, to participate in or receive profits) must be set out in the constitution. To ensure confidentiality, the constitution will not be publicly available although a copy must be filed with the Accounting and Corporate Regulatory Authority (ACRA).

Directors may alter the constitution for the purpose of forming a sub-fund without members' approval if this right is provided for in the constitution. Accordingly, the usual requirement to obtain members' approval to amend a company's constitution will not apply to such an alteration.

The register of members of a VCC is not open to public inspection, unlike that of a company. The register must, however, be open to inspection by the following persons or upon an order of court:

- The manager of the VCC;
- The custodian of the VCC's sub-funds, but only in respect of the members of its sub-fund; and
- The government.

A member of a VCC may not inspect the register of members except insofar as to request for information on itself.

As with any other company, a VCC must prepare financial statements. Except for VCCs consisting of Authorised Scheme(s) (as to which please see section 2(ii)), financial statements may be prepared in accordance with US GAAP, in addition to a Singapore Accounting Standards Council standard or the IFRS. Financial statements must be provided to members annually and members of a sub-fund will therefore have access to the financial information of another sub-fund in the same VCC.



## *(i) Ring-fencing of sub-funds*

As mentioned in section 1, a VCC can be established as an umbrella structure with several sub-funds.

### *Key things to note:*



Each sub-fund must be registered with the ACRA.



The VCC must keep segregated the assets and liabilities of each sub-fund and the assets of one sub-fund may not be used to discharge the liabilities of another sub-fund.



A fund manager may not wind-up a sub-fund at its own discretion but a VCC may do so using the procedures applicable under the Companies Act (or the Insolvency, Restructuring and Dissolution Act 2018, when it comes into force) for the winding up of companies as applied to the sub-fund. A sub-fund will therefore be wound up singly and separately from the other sub-funds as if it were a separate legal entity. This will ensure that the ring-fencing of each sub-fund's assets and liabilities applies.



There is a risk that the laws of other jurisdictions may not recognise the ring fencing of sub-funds. VCCs should take this into account and structure their investments accordingly. For VCCs consisting of Authorised Scheme(s) (as to which please see more below), the Monetary Authority of Singapore (**MAS**) will regulate how such VCCs are to deal this issue separately in subsidiary legislation under the SFA and the Code on Collective Investment Schemes.






The provisions on judicial management and schemes of arrangement do not apply to the VCC or its sub-funds.

## *(ii) VCCs consisting of Authorised Scheme(s)*

Authorised Schemes are schemes that have been authorised by the MAS and whose units may be offered to retail investors. As such, they come under more stringent regulation.

VCCs consisting of Authorised Scheme(s) are subject to the following enhanced requirements:

-  must have at least three directors instead of one, and at least one of the three must be an independent director.
-  must prepare its financial statements in accordance with Recommended Accounting Practice 7 “Reporting Framework for Unit Trusts”.
-  must appoint a custodian that is an approved trustee.

### *Management of cross-cell contagion risks when investing in assets located in another jurisdiction*

As regards the ring fencing of sub-funds, the MAS has noted that it will require the directors and the fund manager of a VCC consisting of Authorised Scheme(s) to take reasonable measures to manage cross-cell contagion risks when investing in assets located in another jurisdiction.

The measures which would be considered reasonable will depend on the facts and circumstances in each case. For instance, the fund manager may seek legal advice on the risk of a foreign court refusing to uphold the segregation of assets and liabilities across sub-funds, directly or indirectly, eg, through refusing to give effect to foreign choice of law clauses in contracts for reasons other than public policy.

The fund manager may also wish to consider whether it would be appropriate to subject agreements governing the VCC’s overseas assets to laws of jurisdictions which uphold segregation of assets and liabilities across sub-funds, or to contract for terms which limit creditors to claim against relevant sub-fund(s).



## *(iii) Tax matters*

A VCC will be treated as a company and a single entity for tax purposes. This means that only one set of income tax returns is required to be filed with the Inland Revenue Authority of Singapore (**IRAS**).



### **Tax exemptions**

The tax exemptions for specified income from designated investments of a company incorporated and resident in Singapore arising from funds managed by a fund manager in Singapore (section 13R of the Income Tax Act) and for specified income from designated investments arising from funds managed by a fund manager in Singapore (section 13X of the Income Tax Act) will be extended to VCCs. The 10% concessionary tax rate under the Financial Sector Incentive – Fund Management scheme will be extended to approved fund managers managing incentivised VCCs.



### **Double taxation treaties**

VCCs are also expected to have access to Singapore's network of over 80 double taxation treaties. VCCs can apply for a certificate of residence from IRAS. IRAS will detail the name of the VCC and all sub-funds receiving income from the source jurisdiction in such certificate. Whether the VCC is ultimately able to benefit from the tax treaties would depend on the specific tax treaty, and tax advice will need to be sought.



### **Stamp duty**

Transactions carried out between sub-funds of a single VCC will be liable to stamp duty (if applicable) as if the sub-funds were separate legal entities. A transfer from one sub-fund to another of shares in a private limited company or of immovable property will therefore be subject to stamp duty. Transfers between the umbrella VCC and its sub-funds will be treated the same way.



### **Goods and Services Tax (GST)**

Similarly, the supply of goods and services from one sub-fund to another sub-fund will be treated as a supply of goods and services between two separate entities and GST will apply accordingly. Sub-funds will therefore assess their GST registration liability on a separate basis, based on the value of taxable supplies they made. The existing GST remission for funds will be extended to incentivised VCCs.

## *(iv) Foreign CIS converting to Singapore VCCs*

The legislation provides for corporate entities domiciled in other jurisdictions which comprise one or more CIS to redomicile in Singapore as a VCC by applying to the ACRA to transfer their registration. For Singapore-domiciled funds, provisions for their conversion to a VCC have not been included. Such Singapore-domiciled funds will need to rely on standard acquisition agreements to transfer their assets to a VCC if they wish to convert to the new structure.

## 3. Next steps

As previously noted, the Variable Capital Companies Act 2018 is not yet in force.

A Variable Capital Companies (Miscellaneous Amendments) Bill was tabled before the Singapore Parliament on 5 August 2019. It seeks to effect, among other things, changes to the Income Tax Act, Goods and Services Tax Act and Stamp Duties Act to implement the tax framework described above for VCCs. Other changes intended to update the Variable Capital Companies Act 2018 for consistency with the Insolvency, Restructuring and Dissolution Act 2018, which is omnibus legislation consolidating the corporate and personal insolvency legal framework. These amendments to be effected by the amendment bill do not have an impact on the legal framework for VCCs as described above.

The Variable Capital Companies Act 2018 as amended is expected to come into force before the end of 2019. Accordingly, it is not too early to consider whether to use the new structure, and to that end it may be useful to see how it compares with the other structures available to funds in Singapore. In Appendix 1, we set out a table comparing key features of the VCC against the existing limited partnership, limited liability partnership and private limited company structures to provide a broad overview of their differences.



# Key contacts

Please don't hesitate to reach out to any of us should you have questions.



**Yin Mei Lock**

Partner, Singapore  
Tel +65 6671 6188  
yinmei.lock@allenoverly.com



**Prakash Segaran**

Partner, Singapore  
Tel +65 6671 6060  
prakash.segaran@allenoverly.com



**Gautam Narasimhan**

Partner, Singapore  
Tel +65 6671 6048  
gautam.narasimhan@allenoverly.com



**Aloysius Tan**

Partner, Singapore  
Tel +65 6671 6016  
aloyusius.tan@allenoverly.com



**Wei Ling Wong**

Counsel, Singapore  
Tel +65 6671 6019  
weiling.wong@allenoverly.com



**Kai Hsien Yang**

Counsel, Singapore  
Tel +65 6671 6021  
kaihsien.yang@allenoverly.com



**Shuhui Kwok**

Counsel, Singapore  
Tel +65 6671 6065  
shuhui.kwok@allenoverly.com



**Gerald Tham**

Associate, Singapore  
Tel +65 6671 6003  
gerald.tham@allenoverly.com



**Wee Teck Lim**

Professional Support Lawyer, Singapore  
Tel +65 6671 6142  
weeteck.lim@allenoverly.com

# Appendix 1: Comparison of the new VCC structure against the existing fund structures

	Limited Partnership (LP)	Limited Liability Partnership (LLP)	Private Company Limited by Shares (Company)	Variable Capital Company (VCC)
<b>Held by</b>	<ul style="list-style-type: none"> <li>– Partners, comprising general partners and limited partners</li> <li>– Minimum: One general partner and one limited partner</li> <li>– No maximum</li> </ul>	<ul style="list-style-type: none"> <li>– Partners</li> <li>– Minimum: Two</li> <li>– No maximum</li> </ul>	<ul style="list-style-type: none"> <li>– Shareholders</li> <li>– Minimum: One</li> <li>– Maximum: 50</li> </ul>	<ul style="list-style-type: none"> <li>– Shareholders</li> <li>– Minimum: One</li> <li>– No maximum</li> </ul>
<b>Type of interests that a partner/shareholder would hold</b>	<p>The partners collectively own the property of the LP – they will be entitled to:</p> <ul style="list-style-type: none"> <li>– A distribution of the profits of the LP in accordance with the terms of the partnership agreement; and</li> <li>– A distribution of the partnership property in accordance with the terms of the partnership agreement upon dissolution of the partnership</li> </ul>	<ul style="list-style-type: none"> <li>– A partner in an LLP has contractual rights to share in the profits of the LLP pursuant to the terms of the LLP agreement</li> <li>– By default, he also has a right to receive an amount equal to his capital contribution to the LLP upon leaving the LLP</li> </ul>	<ul style="list-style-type: none"> <li>– Shares in the Company</li> <li>– In general, a share in a Company gives the right to vote at shareholder meetings, to receive dividends (if declared) from the profits of the Company, and to receive a distribution from the proceeds of the liquidation of the assets of the Company on a winding up.</li> </ul>	<ul style="list-style-type: none"> <li>– Shares in the VCC</li> <li>– A share in the VCC gives the shareholder such rights as may be specified in the constitution of the VCC. This would include the right to participate in or receive payments from the property of the VCC (or a sub-fund of an umbrella VCC)</li> </ul>
<b>Minimum capital requirements</b>	– None	– None	<ul style="list-style-type: none"> <li>– Minimum: One share</li> <li>– Shares have no par value and the value of the share is the agreed price of issue</li> <li>– In practice, the lowest minimum amount paid up is usually SGD1.00</li> </ul>	<ul style="list-style-type: none"> <li>– Minimum: One share</li> <li>– Shares have no par value – the actual value of the paid-up capital of the VCC is at all times equal to the net asset value of the VCC</li> </ul>

	Limited Partnership (LP)	Limited Liability Partnership (LLP)	Private Company Limited by Shares (Company)	Variable Capital Company (VCC)
<b>Legal status</b>	<ul style="list-style-type: none"> <li>– No separate legal personality</li> <li>– Cannot hold property in its own name</li> </ul>	<ul style="list-style-type: none"> <li>– An LLP is a separate legal entity</li> <li>– It can hold property in its own name its rights and obligations are separate from those of its partners</li> </ul>	<ul style="list-style-type: none"> <li>– A Company is a separate legal entity</li> <li>– It can hold property in its own name</li> <li>– Its rights and obligations are separate from those of its shareholders and directors</li> </ul>	<ul style="list-style-type: none"> <li>– A VCC is a separate legal entity</li> <li>– It can hold property in its own name</li> <li>– Its rights and obligations are separate from those of its shareholders and directors</li> <li>– A sub-fund of an umbrella VCC is not a legal person separate from the VCC; nevertheless, the VCC may sue or be sued in respect of a sub-fund as if each sub-fund were a legal person and the property of a sub-fund is treated in law as if the sub-fund were a separate legal person</li> </ul>
<b>Continuity in law</b>	<ul style="list-style-type: none"> <li>– The LP continues to exist unless dissolved by the agreement of the general partners or in accordance with the terms of the partnership agreement</li> <li>– The LP is also dissolved, among other things, upon the death or bankruptcy of any general partner</li> </ul>	Perpetual succession until wound up in accordance with the LLP Act	Perpetual succession until wound up in accordance with the Companies Act	<ul style="list-style-type: none"> <li>– A VCC enjoys perpetual succession until wound up in accordance with the VCC Act</li> <li>– Where a VCC is an umbrella VCC, each sub-fund continues to exist unless it or the umbrella VCC is wound up</li> <li>– A sub-fund in a VCC may be wound up without affecting the continuing existence of the VCC or the other sub-funds in the VCC</li> </ul>
<b>Liability of partners/ shareholders</b>	<ul style="list-style-type: none"> <li>– General partner: Liable for all the debts and obligations of the LP incurred while a general partner</li> <li>– Limited partner: Liable for the debts and obligations of the LP incurred while a limited partner but only up to the amount of his agreed contribution</li> </ul>	<ul style="list-style-type: none"> <li>– An obligation of the LLP is solely the obligation of the LLP</li> <li>– A partner is not liable for the obligation unless it involves a tort of his own wrongful act or omission. In that case, the partner is liable to the same extent as the LLP</li> <li>– The other partners of the LLP are not liable for the wrongful act or omission of the partner in default</li> <li>– The liabilities of the LLP are to be met out of the property of the LLP</li> </ul>	<ul style="list-style-type: none"> <li>– An obligation of the Company is solely the obligation of the company</li> <li>– The liability of a shareholder to contribute is limited to the amount, if any, unpaid on his shares</li> <li>– The liabilities of the company are to be met out of the property of the Company</li> </ul>	<ul style="list-style-type: none"> <li>– The liability of a shareholder to contribute to the liabilities of the VCC or a sub-fund of the VCC is limited to the amount, if any, unpaid on his shares</li> <li>– An obligation of the VCC is solely the obligation of the VCC, and an obligation of a sub-fund is solely the obligation of the sub-fund</li> <li>– The liabilities of the VCC are to be met out of the property of the VCC</li> <li>– The liabilities of a sub-fund are to be met out of the property of the sub-fund and not the property of the VCC or another sub-fund</li> </ul>

	Limited Partnership (LP)	Limited Liability Partnership (LLP)	Private Company Limited by Shares (Company)	Variable Capital Company (VCC)
<b>Management</b>	<ul style="list-style-type: none"> <li>– By the general partners. Any general partner may, generally speaking, bind the LP</li> <li>– A limited partner does not have the power to bind the LP and should not take part in the management of the LP</li> <li>– A limited partner that takes part in the management of the LP will be liable for the debts and obligations of the LP as though he were a general partner</li> </ul>	<p>In accordance with the LLP agreement. For instance, partners are free to agree on, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>– Voting thresholds and/or requirements for deciding on certain matters or issues relating to the LLP</li> <li>– Persons who may be introduced as partners of the LLP, and whether this requires any consent from the partners</li> </ul>	<ul style="list-style-type: none"> <li>– Board of directors</li> <li>– Minimum of one director who may or may not also be the shareholder</li> </ul>	<ul style="list-style-type: none"> <li>– The management of the VCC is by its board of directors</li> <li>– A VCC must have at least one director. If the VCC comprises at least one authorised scheme (i.e., the scheme has been authorised by the MAS and units in the scheme may be offered to the public), the VCC must have at least three directors, including one independent director</li> <li>– A VCC must also have a manager to manage its property or operate the CIS or schemes that comprise the VCC</li> <li>– The manager must, in general, hold a capital markets services licence for fund management</li> </ul>
<b>Taxes</b>	<ul style="list-style-type: none"> <li>– An LP is tax transparent: the partners pay income tax on the profits made by the LP according to their share at the applicable tax rates</li> <li>– For companies, this is currently 17%; individual tax rates are progressive and range from 2% to 22%.</li> </ul>	<ul style="list-style-type: none"> <li>– An LLP is tax transparent: the partners pay income tax on the profits made by the LLP according to their share at the applicable tax rates</li> <li>– For companies, this is currently 17%; individual tax rates are progressive and range from 2% to 22%.</li> </ul>	<ul style="list-style-type: none"> <li>– Companies pay income tax at the corporate tax rate, which is currently 17%</li> <li>– Singapore has a single tier tax regime, and dividends paid out to shareholders are not taxable</li> </ul>	<ul style="list-style-type: none"> <li>– A VCC will be treated as a company and a single entity for income tax purposes. This means that only one set of income tax returns is required to be filed with the Inland Revenue Authority of Singapore</li> <li>– Companies pay income tax at the corporate tax rate, which is currently 17%</li> <li>– Singapore has a single tier tax regime, and dividends paid out to shareholders are not taxable</li> </ul>

	Limited Partnership (LP)	Limited Liability Partnership (LLP)	Private Company Limited by Shares (Company)	Variable Capital Company (VCC)
<b>Closing the Business</b>	An LP may be dissolved by the agreement of the general partners or in accordance with the terms of the partnership agreement	<ul style="list-style-type: none"> <li>– An LLP may be wound up voluntarily by the partners or by order of the High Court</li> <li>– The Court may wind up an LLP under the following circumstances, among others: <ul style="list-style-type: none"> <li>– It carries on business with less than two partners for more than two years; or</li> <li>– It is unable to pay its debts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– A company may be wound up voluntarily by its shareholders</li> <li>– A Company may also be wound up by an order of the High Court</li> <li>– The Court may wind up a company under the following circumstances, among others: <ul style="list-style-type: none"> <li>– It is unable to pay its debts; or</li> <li>– It does not commence business within a year from its incorporation or has suspended its business for an entire year</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– A VCC may be wound up voluntarily by its shareholders</li> <li>– A VCC may also be wound up by an order of the High Court. The Court may wind up a VCC under the following circumstances, among others: <ul style="list-style-type: none"> <li>– It is unable to pay its debts; or</li> <li>– It does not commence business within a year from its incorporation or has suspended its business for an entire year</li> </ul> </li> <li>– A sub-fund in an umbrella VCC may be wound up voluntarily by the shareholders of the VCC that hold shares issued in respect of that sub-fund or by an order of the High Court</li> <li>– A sub-fund may also be wound up by an order of the High Court</li> <li>– The Court may wind up a sub-fund of a VCC under the following circumstances, among others: <ul style="list-style-type: none"> <li>– The umbrella VCC is unable to pay the debts of the sub-fund; or</li> <li>– The umbrella VCC does not commence business of the sub-fund within a year from its formation or has suspended its business for an entire year</li> </ul> </li> </ul>

---

## GLOBAL PRESENCE

---

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in more than 40 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Hong Kong	Munich	Shanghai
Amsterdam	Budapest	Istanbul	New York	Singapore
Antwerp	Casablanca	Jakarta (associated office)	Paris	Sydney
Bangkok	Dubai	Johannesburg	Perth	Tokyo
Barcelona	Düsseldorf	London	Prague	Warsaw
Beijing	Frankfurt	Luxembourg	Riyadh (cooperation office)	Washington, D.C.
Belfast	Hamburg	Madrid	Rome	Yangon
Bratislava	Hanoi	Milan	São Paulo	
Brussels	Ho Chi Minh City	Moscow	Seoul	

**Allen & Overy** means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy LLP is authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term **partner** is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2019. This document is for general guidance only and does not constitute definitive advice.