

THE SINGAPORE VARIABLE CAPITAL COMPANY: A GAME-CHANGER IN THE ASIAN FUND INDUSTRY (PART I)

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The Singapore variable capital company (VCC) is a new and innovative type of corporate entity which has just been introduced in Singapore. The VCC offers fund managers a much more flexible alternative to existing fund structures in Singapore which could, previously, only be set up as unit trusts, private limited companies or limited partnerships, each of which had noticeable disadvantages. The VCC is regulated under the Variable Capital Companies Act (VCC Act) which took effect on 14 January 2020. On 15 January 2020, the Monetary Authority of Singapore (MAS) and the Accounting and Corporate Regulatory Authority launched the VCC framework.

The idea of a new flexible fund vehicle that could attract international fund managers was first introduced at the annual Investment Managers Association of the Singapore conference in 2016. In March 2017, the MAS circulated the first consultation paper on the proposed framework for VCCs. The fund industry has watched the development of the VCC framework with great interest as it was designed specifically for Singapore's nascent fund management industry and appeared to offer possibilities for funds that previously were only available with offshore fund structures or limited to certain entities but not others. Over three consultation papers, the regulators' responses reflected a keen consideration of fund managers' needs. This has been confirmed by the provisions of the VCC Act.

KEY FEATURES OF A VCC

As structured, a VCC:

- Can be used for both traditional and alternative fund strategies which can be either open-ended or closed-ended, retail or restricted;
- Can be a stand-alone fund or an umbrella fund with multiple sub-funds, allowing for segregation of portfolios, assets and liabilities (bringing it on par with the long-established and popular Cayman segregated portfolio companies which was previously the only real alternative at segregating portfolios within a fund for fund managers);
- Has a flexible share capital and fund structure – a VCC's shares are created when investments are made and therefore, its capital will always equal its net assets, thereby providing flexibility in the distribution and reduction of capital as dividends may be paid out of capital and shares are easily redeemable by shareholders without separate shareholder approval. There is no need to comply with solvency tests or

corporate resolutions for issue and redemption of shares and no annual general meetings of shareholders are required. These are all features that existing Singapore authorized corporate vehicles under the Companies Act either lack or require numerous approvals before exercising;

- Is, while required to maintain an updated register of shareholders, not required to file this as a publicly available register and is required to disclose this only to regulators or law enforcement authorities and only if requested by them. Particularly for family offices where a high level of confidentiality is preferred, this is a major benefit;
- Must have sufficient mandatory Singapore substance (among other things, a Singapore registered office, Singapore resident company secretary and auditor, and at least one resident director although if it is a MAS-authorized fund, it must have at least three directors);
- Must have the following minimum Singapore regulatory compliance:
 - At least one director must be a director or registered representative of the fund manager;
 - All directors must be fit and proper persons; and
 - It must comply with Singapore Anti-Money Laundering/Combating the Financing of Terrorism requirements, although these can be provided by a fund manager or a regulated financial institution in Singapore
 - Must have a permissible person as its fund manager, namely, a Singapore licensed or regulated fund manager or a Singapore licensed bank, merchant bank, finance company or insurer and cannot be self-managed; and
- Is eligible for a U.S. “check the box” election which will increase its attractiveness to U.S. tax residents.
- The VCC framework even allows for existing fund structures in other jurisdictions to be redomiciled into Singapore as VCCs from their current place of registration/incorporation — this potentially enables the transfer of track records, past performance data and other such legacy and goodwill with minimal, if any loss.

TAX TREATMENT

Singapore is already a hospitable tax environment for investment funds to be based in since any investment fund in Singapore will benefit from its extensive tax treaty network (86 countries, currently), which, in some cases, completely eliminates double taxation. For the VCC, however, Singapore has provided some unique incentives and rebates, in addition to the beneficial tax treaty environment:

- If offered to restricted investors such as accredited investors, a VCC may opt to utilize prescribed internationally accepted accounting standards like the U.S. Generally Accepted Accounting Principles, Accounting Standards Council Standard, or International Financial Reporting Standards;
- It will be treated as a company and a single entity for purposes of tax even if it is structured as an umbrella fund irrespective of the number of sub-funds it may have;

- It will enjoy the same tax incentives applicable to funds under sections 13X and 13R of the Income Tax Act and be eligible as either Enhanced Tier Funds (*ETF*) or Single Resident Funds (*SRF*) for tax exemption from income and gains on designated investments and withholding tax provided it complies with the requirements for an *ETF* or *SRF*, as the case may be;
- It may qualify for the Singapore Startup Tax Exemption for the first three years from its incorporation date which will enable it to be exempted from any tax on the first S\$100,000 of the normal chargeable income, and up to 50% of tax on the next S\$200,000 normal chargeable income;
- The Variable Capital Companies Grant Scheme will help defray costs involved in incorporating or registering a VCC by co-funding up to 70% of eligible expenses paid to Singapore-based service providers up to a maximum of S\$150,000 for each application, with a maximum of three VCCs per fund manager;
- It can recover Singapore goods and services tax on expenses incurred in Singapore; and Its fund manager will only be subject to a 10% concessionary tax rate (instead of the standard corporate tax rate of 17%).

CONCLUSION

At a time when offshore economic substance requirements and the uncertainty surrounding the execution, enforcement, and compliance with such requirements are causing unease in Asian funds and fund managers, the rollout of such an innovative structure in Asia brings Singapore to the forefront of the fund management industry in Asia. Although the VCC framework was only launched on 15 January 2020, 20 investment funds are already incorporated or have redomiciled as VCCs. The benefits of a VCC are easily discernible from its key features alone but more exciting are the numerous ways it can be used in conjunction with existing Singapore incentive, immigration, and business programs such as the Global Investor Program.

We will move on to examine how the VCC compares with other typical offshore fund structures and the potential uses of the VCC in upcoming alerts. Stay tuned in.