

Proposed Framework for Singapore Variable Capital Companies (S-VACC)

On 23 March 2017, the Monetary Authority of Singapore ("**MAS**") published the Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies (the "**Consultation Paper**"). Recognising the restrictions involved in the use of a company structure for collective investment schemes ("**CIS**"), as well as the potential economies of scale that can be reaped by umbrella funds, the Consultation Paper proposes to offer an alternative structure known as the Singapore Variable Capital Company ("**S-VACC**") to sponsors of investment schemes. The S-VACC is a new corporate structure tailored to the needs of CIS, in addition to the common unit trust structure commonly employed by mutual fund managers in Singapore today. The proposed S-VACC aims to offer flexibility in relation to changes in paid-up capital, efficiency in administering sub-funds and greater privacy for investors. However, the S-VACC will share some characteristics of a company structure, such as mandating a board of directors and imposing statutory duties on the directors.

A more efficient way to administer CIS

To "provide investment managers greater operational flexibility", the S-VACC may be used for both closed and open-ended funds. However, the S-VACC may only be used to create a CIS. The MAS proposes to allow sub-funds with segregated assets and liabilities to be created within an S-VACC itself, subject to registration and disclosure requirements. This allows sub-funds within the same S-VACC to have different investment objectives and investors, while ensuring that investors in a particular sub-fund are protected from claims from creditors of a different sub-fund. Furthermore, each sub-fund may be wound up separately without affecting the continuing status of the S-VACC. In any case, creditors of a particular sub-fund can only fulfil their claims out of the assets of that particular sub-fund, and not from the other assets of the S-VACC, including the assets of the other sub-funds.

In addition, to support fund managers in anchoring their substantive operations in Singapore while according further protection to retail investors, the MAS proposes to allow S-VACCs authorised by the MAS under Section 286(1) of the Securities and Futures Act (Chapter 289) ("**SFA**") ("**Authorised Scheme**") to invest in assets in jurisdictions that do not have a cellular company structure. However, such investments can only be made if the risk of cross-contagion between the assets and liabilities of different sub-funds has been reasonably mitigated. Thereafter, any residual risks of cross-contagion must be clearly disclosed to the S-VACC's shareholders. The S-VACC framework will also share certain features with other corporate entities as provided for in the Companies Act (Cap. 50) ("**CA**"), for instance in relation to inward re-domiciliation (to allow foreign corporate entities to transfer their registration to Singapore), winding-up proceedings, and directors' duties and disqualification. However, the MAS proposes to not adopt the legislative provisions for scheme of arrangements, reconstructions and amalgamations under the CA for S-VACCs.

The MAS also recognises that in a CIS, investors generally do not have control over their capital, which is usually managed as a whole by the fund manager. Therefore, the MAS proposes to not require a S-VACC to hold an AGM where, among other things, directors have elected to dispense with the AGM by giving at least 60 days' written notice to the shareholders. However, shareholders with at least 10% of the total voting rights may require an AGM by giving 14 days' notice to the S-VACC.

In order to ensure that investors are adequately protected, the MAS proposes for the S-VACC to adopt the following features:

- Accounts of the S-VACC must be audited annually, and financial information of each sub-fund must be kept separately, but must be prepared in accordance with a single accounting standard across all sub-funds of the S-VACC.
- The audited financial statements must be disclosed to shareholders, but need not be made publicly available.
- The board must comprise of directors who are fit and proper, including at least one person who is a director of the fund manager and at least one person who is resident in Singapore.
- Directors will be subject to disqualification and duties broadly similar to those under the CA.
- S-VACCs consisting of Authorised Schemes must have at least three directors, of which at least one is independent of (i) business relationships with the S-VACC, (ii) the fund manager, and (iii) all of the S-VACC's substantial shareholders.
- A S-VACC's registered office must be in Singapore.
- A S-VACC must appoint a Singapore-based company secretary.
- A S-VACC 's assets must be managed by either (i) a Licensed Fund Management Company, (ii) a Registered Fund Management Company, or (iii) an Exempted Entity under Sections 99(1)(a), (b), (c) or (d) of the SFA.
- Imposition of anti-money laundering and counter the financing of terrorism (AML/CFT) duties, which are to be performed by the fund manager.
- A S-VACC that is an Authorised Scheme or registered with the MAS as a restricted scheme must appoint a trustee approved under section 289 of the SFA to take custody of its assets. For Authorised Schemes, the approved custodian must be independent of the S-VACC's fund manager and is required to monitor the fund manager's compliance with the CIS Code.

Fewer Restrictions on Return of Capital and Privacy for Investors

The MAS recognises that, contrary to the needs of CIS, restrictions on capital reduction imposed by the CA including restrictions on paying dividends out of capital can be "operationally cumbersome". Hence, the MAS proposes that a S-VACC be allowed to freely redeem shares and pay dividends using its capital. However, to protect the interests of creditors, MAS also proposes that the shares may only be valued and redeemed at their net asset values. Listed closed-end funds will be exempt from this requirement, as such CIS may need or wish to conduct share buy-backs on the securities exchange, and the price of such share purchases will follow the applicable listing requirements rather than the net asset values of the shares. The MAS also proposes to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds.

Further, to balance the privacy needs of investors against the need for transparency regarding S-VACCs, the MAS proposes that a S-VACC need not disclose its register of shareholders to the public, but must make the register available to ACRA, MAS and other public authorities for regulatory, supervisory and law enforcement purposes. The MAS also proposes to require S-VACCs to adopt the requirements of maintaining information on beneficial owners and for nominee directors to disclose their nominee status and nominators to their companies, similar to the recent amendments to the CA.

The proposed framework for a S-VACC is subject to refinement before it is implemented and takes effect. The MAS is currently studying the tax regime for S-VACCs including the feasibility of extending the current fund vehicle tax schemes to S-VACCs.

If you would like more information on this or any other area of law, you may wish to contact the partner at WongPartnership LLP that you normally deal with or any of the following partners:



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