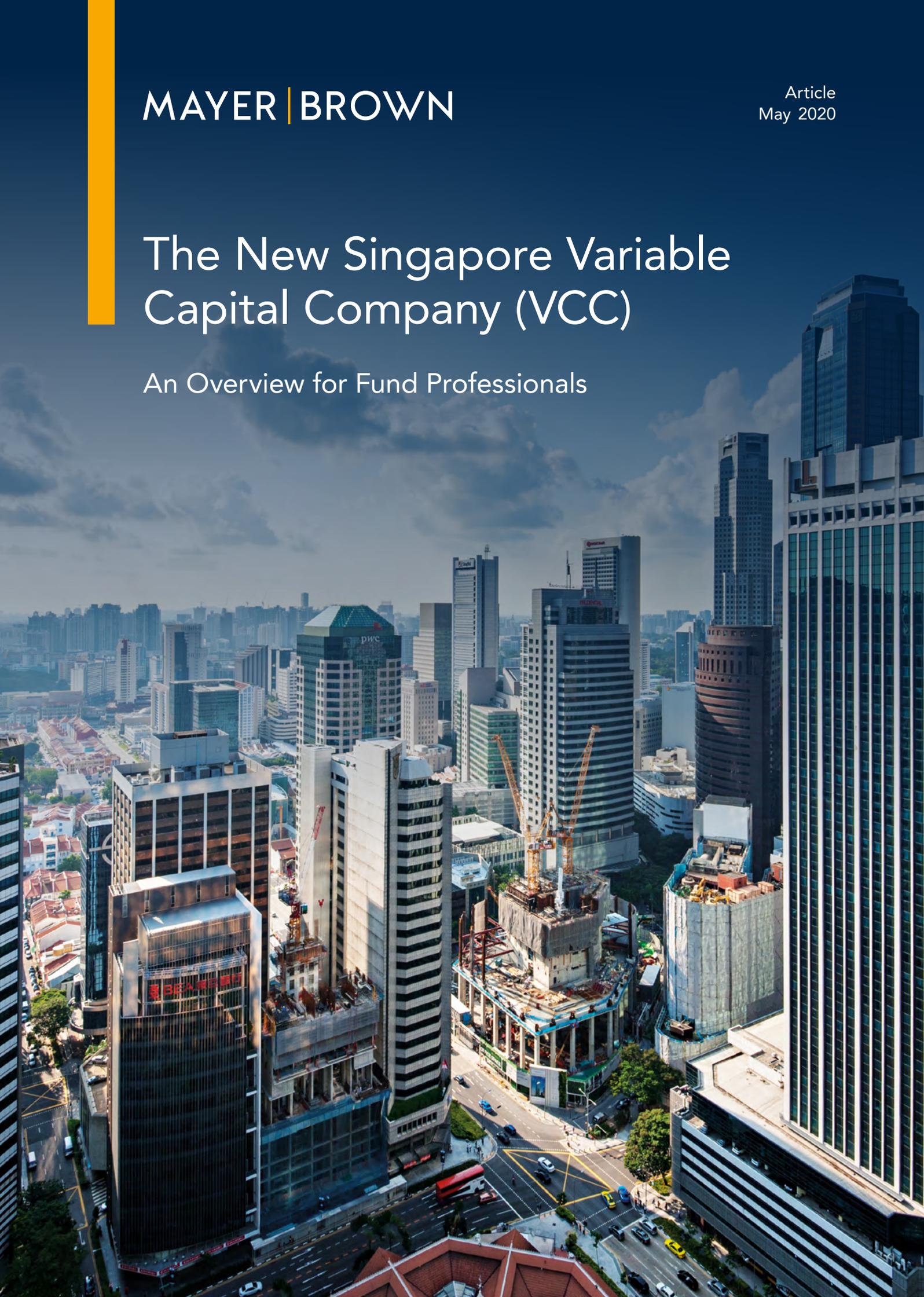


The New Singapore Variable Capital Company (VCC)

An Overview for Fund Professionals





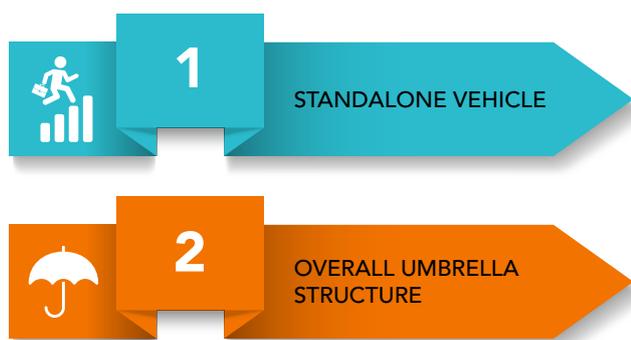
Introduction

Singapore's Variable Capital Companies Act 2018 (the **VCC Act**) and related subsidiary legislation came into force earlier this year. Introduced to encourage investment funds to be incorporated in and operated from Singapore, the Variable Capital Company (**Singapore VCC**) framework aims to enhance Singapore's position as a fund domicile centre alongside other global fund domicile centres such as Luxembourg and the Cayman Islands. In addition to this core aim, the introduction of the Singapore VCC framework is also likely to bolster the city's already strong fund manager community, as well as its position, alongside Hong Kong, as one of the key centres in Asia for regional fund related financing transactions.

In this update we provide an overview of some of the key features of a Singapore VCC, consider the tax treatment of a Singapore VCC and share some headline points for lenders and borrowers to consider in respect of the provision of financing to a Singapore VCC.

What is a Singapore VCC?

The Singapore VCC is a Singapore-incorporated company with separate legal entity status that can serve as a corporate fund vehicle for collective investment schemes. It can take the form of:



2. Consisting of multiple segregated sub-funds with different investment strategies and objectives, assets and liabilities, and investors but shared directors, fund manager and other common service providers and parked under the same VCC.

Investors will directly invest into the Singapore VCC as members and hold shares that are transferable and redeemable. In the umbrella structure, the investors will be able to hold interest in specific sub-funds without investing in other sub-funds. Further, the VCC allows for both open and close-ended funds to be housed under it.

A Singapore VCC has two key defining features. The first, as noted above, is the ability to establish segregated cells, while the second is the concept of variable capital. To consider the two key defining features of the Singapore VCC in more detail:



SEGREGATED CELL STRUCTURE

The segregated cell structure permits a Singapore VCC to register and segregate its assets and liabilities into different sub-funds held within the same legal entity. This segregation is established by way of statutory provisions, which protect against liabilities crystallising in one cell from being recoverable against the assets held in a different cell. This internal ring-fence is intended as an alternative to establishing separate asset or strategy-specific special purpose vehicles, which can become an unwieldy proposition. It is possible to compute the profit and loss or balance sheet position of a cellular company on a cell-by-cell basis. This means if a cell represents a particular investment strategy, then investors in that cell do not, at least theoretically, need to be concerned about the performance of other cells.



VARIABLE CAPITAL

The value of the paid-up capital of a Singapore VCC is at all times deemed to be equal to the net asset value of the Singapore VCC. Assets of a Singapore VCC must be measured on a fair-value basis so the net asset value of a Singapore VCC should be reflective of its fair market value. Accordingly, distributions can be made by a Singapore VCC without the requirement for it to have profits or retained earnings. Shares of a Singapore VCC are freely redeemable and/or repurchasable at a price equal to the proportion of the net asset value of the Singapore VCC, subject to certain adjustments which are necessary for the costs associated with these redemptions.

Requirements of a VCC

In addition to establishing the two key defining features of a Singapore VCC set out above, the VCC Act contains a number of other requirements for the Singapore VCC. These include:

- A requirement to appoint a fund manager. Subject to certain exemptions, the fund manager must be licensed under the Singapore Securities and Futures Act and regulated by the Monetary Authority of Singapore.
- A requirement for a Singapore VCC to have at least one Singapore resident director, with separate, more stringent rules applying to certain types of collective investment scheme.
- A requirement to maintain a register of members. The VCC Act specifically provides that the register of members does not need to be made public, save for certain exceptions, such as a requirement to provide the register on request to public authorities.
- A requirement to appoint an auditor to audit the applicable accounts of the Singapore VCC on an annual basis.
- In the case of a Singapore VCC with sub-funds, a requirement for each sub-fund to prepare separate financial statements, which must be audited and prepared in accordance with a single accounting standard across all sub-funds and the presentation of the financial states per IFRS, Singapore FRS or US GAAP standard.
- A requirement for the VCC to have its registered office in Singapore and appoint a Singapore based company secretary.
- A general requirement to comply with Anti-Money Launder/Countering of the Financing of Terrorism requirement.

It is also worth noting that the requirements under the Singapore Securities and Futures Act for investment funds will apply to VCCs.

One further notable feature of the Singapore VCC framework is that it permits, subject to certain criteria being met, inward re-domiciliation of foreign-domiciled corporate entities into Singapore through a Singapore VCC structure. While the coming into force of the VCC Act is a recent development and it remains to be seen how

popular the inward re-domiciliation will be, the ability to re-domicile shows the flexibility and ambition of the VCC Act.

Tax

A Singapore VCC may apply for certain tax incentives that are available in Singapore for investment funds. For example, the tax exemption for specified income arising from designated investments is available if the investment fund meets the conditions and is successfully granted the Enhanced Tier Fund tax incentive under Section 13X of the Singapore Income Tax Act or the Singapore Resident Fund Scheme of Section 13R of the Singapore Income Tax Act. In practice this should cover most types of income and investments. A Singapore VCC will be considered as a single entity for the purposes of these incentives.

A Singapore VCC should be entitled to obtain tax residence certificates if it is Singapore tax resident. There are detailed rules around tax residency, but a company or a body of persons is generally considered to be tax resident in Singapore if the control and management of its business is exercised in Singapore. It is to be noted that for umbrella VCCs, tax residency will be determined at the umbrella level. A Singapore VCC that is tax resident in Singapore should be able to access double taxation treaties entered into by Singapore, which may reduce overseas withholding taxes and capital gains taxes in the jurisdictions where the investments are made. This aspect sets Singapore apart from the Cayman Islands, which has, to date, been the most commonly used jurisdiction for Asian funds.

In addition, the Monetary Authority of Singapore has launched a Variable Capital Companies Grant Scheme on 15 January 2020, the scheme is for a period of up to three years, to help defray the costs involved in incorporating or registering a Singapore VCC by co-funding up to 70% of eligible expenses paid to Singapore-based service providers capped at S\$150,000 for each application, with a maximum of three VCCs per fund manager.

As investors in a Singapore VCC invest directly into it as members and hold shares that are transferable and redeemable, a transfer of the shares in a Singapore VCC will be subject to stamp duty in Singapore.

The 10% concessionary tax rate available to approved fund managers under the Singapore Financial Sector Incentive – Fund Management Scheme will be extended for permissible fund managers to include fee income received from managing, or the advising of, incentivised Singapore VCCs.

Financing Considerations

Given the VCC Act only came into force in early 2020, lenders and other market participants are expected to take some time to understand the VCC framework and the potential financing opportunities it creates. The basic process, due diligence and analysis for a financing transaction in respect of a VCC is not expected to differ substantially from the process and analysis for a financing transaction for any other corporate fund or investment vehicle. For example, lawyers acting for the lenders will need to review the constitution and related documentation for the VCC in detail for the usual matters that would be relevant to any financing transaction to a corporate fund or investment vehicle, and the loan documentation for a loan to a VCC will contain the usual suite of positive and negative covenants. However, as noted above, the VCC structure is a new corporate structure with its own defining features. There will therefore be new issues that lenders and borrowers will need to consider. For instance:



For an umbrella VCC, lenders will need to consider how those sub-funds are managed and understand the statutory position under the VCC Act relating to the liability of sub-funds. While sub-funds are not treated as separate legal entities, the VCC Act provides for several measures to prevent liabilities of one sub-fund from being claimed from another sub-fund, and also provides that sub-funds can be wound up separately. This has a number of implications, including as to the availability of credit support for a financing (for example it may not be possible to have cross guarantees or collateral between sub-funds) and the downside protection and insolvency analysis for a financing. Where relevant, we would expect lenders to consider including appropriate contractual safeguards into the credit facility documentation to provide additional comfort on the ring-fencing of liabilities of sub-funds.



As mentioned in the “What is a Singapore VCC” section above, the VCC Act permits the inward re-domiciliation of foreign-domiciled corporate entities into Singapore through a VCC structure. Any foreign-domiciled entity considering such a re-domiciliation will need to consider the terms of any existing financings at an early stage in any re-domiciliation planning to establish, for example, whether the consent of the lenders under that financing is required for such a re-domiciliation. If a foreign-domiciled entity requests consent from its lenders to re-domicile in Singapore using a Singapore VCC, those lenders will need to consider, among other things, any amendments to the existing loan documentation that may be required to ensure the documentation for the financing contains appropriate protections for a Singapore VCC structure, as well as whether the re-domiciliation adversely impacts the lender’s interests or any of the analysis originally carried out for the financing, including the tax analysis.

Conclusion

The introduction of the Singapore VCC framework is a welcome development and enhances the range of investment vehicles available for investors and fund managers, particularly for open-ended funds. The flexibility of the framework and potential tax incentives, along with the initial pilot programme of 20 investment funds that have incorporated or re-domiciled as Singapore VCCs, has led to a significant amount of interest in the framework. We envisage that the use of, and opportunities arising from, the framework will continue to increase over time as global and Asia-based investors become familiar with it.

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