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Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies

MAS

Monetary Authority of Singapore

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1 Preface

1.1 To further develop Singapore as a centre for both fund management activities and investment fund domiciliation, the Monetary Authority of Singapore (“MAS”) proposes to set up a legislative framework for a new corporate structure that is tailored for collective investment schemes (“CIS”). The framework seeks to provide CIS with an additional option to the common unit trust structure today. In view of the possible economies of scale that can be reaped by umbrella funds, MAS also intends to allow the segregation of assets and liabilities of sub-funds established under a single legal entity.

1.2 MAS invites comments from interested parties on the proposed framework and its accompanying draft legislation.

Please note that all submissions received will be published and attributed to the respective respondents unless they expressly request MAS not to do so. As such, if respondents would like (i) their whole submission or part of it, or (ii) their identity, or both, to be kept confidential, please expressly state so in the submission to MAS. In addition, MAS reserves the right not to publish any submission received where MAS considers it not in the public interest to do so, such as where the submission appears to be libellous or offensive.

1.3 Please submit written comments by 24 April 2017 via email to svacc@mas.gov.sg. We would appreciate that you use this [template](#) for your submission to ease our collation efforts.

Defined Terms

ACRA	Accounting and Corporate Regulatory Authority
AGM	Annual general meeting
AML/CFT	Anti-money laundering and countering the financing of terrorism
Approved Trustee	A trustee approved under section 289 of the SFA
ASC Standard	An accounting standard set by the Accounting Standards Council
Authorised Scheme	A CIS that is constituted in Singapore and authorised by MAS under section 286(1) of the SFA
CA	Companies Act (Cap. 50) of Singapore
CIS	Collective investment scheme(s) as defined under section 2(1) of the SFA
CIS Code	Code on Collective Investment Schemes
Exempted Entity	A financial institution exempted under sections 99(1)(a), (b), (c) or (d) of the SFA from the requirement to hold a capital markets services licence to carry on business in fund management i.e., a bank licensed under the Banking Act (Cap. 19), a merchant bank approved under the MAS Act (Cap. 186), a finance company licensed under the Finance Companies Act (Cap. 108) or a company or co-operative society licensed under the Insurance Act (Cap. 142)
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
LFMC	A licensed fund management company, i.e., a holder of a capital markets services licence for fund management under section 86 of the SFA
MAS	Monetary Authority of Singapore
NAV	Net asset value, i.e., total assets less total liabilities
Permissible Fund Manager	A LFMC, RFMC or an Exempted Entity

RAP 7	Statement of Recommended Accounting Practice 7
Restricted Scheme	A CIS that is offered only to accredited investors and certain other persons, or offered on terms that the units may only be acquired for consideration of at least S\$200,000 (or equivalent in foreign currency) per transaction; and is exempted from authorisation or recognition and prospectus requirements, subject to the conditions under section 305(3) of the SFA
RFMC	A registered fund management company i.e., a corporation which is exempted from holding a capital markets services licence under paragraph 5(1)(i) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations
SFA	Securities and Futures Act (Cap. 289) of Singapore
SFR	Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005
SFRS	Singapore Financial Reporting Standards
S-VACC	Singapore Variable Capital Company

2 Introduction

Current investment fund structures

2.1 Internationally, the most commonly used CIS structures are unit trusts (constituted by way of trust deeds) and investment companies. In Singapore, CIS constituted as investment companies are relatively uncommon because of the restrictions under the CA on the return of capital to shareholders. These requirements impede the normal operations of CIS which need the flexibility to vary their capital and redeem shares whenever investors exercise their redemption rights. The CA also does not cater for the creation of sub-funds with segregated assets and liabilities. Therefore, fund managers will not be able to reap economies of scale by consolidating certain administrative functions within an umbrella fund. To address these issues, most international fund jurisdictions have established specialised corporate structures for CIS.

Proposed new framework

2.2 MAS proposes to establish a new corporate structure in Singapore that is designed for CIS. The proposed framework takes into consideration the laws and practices in other leading fund jurisdictions including Luxembourg, the Republic of Ireland and the United Kingdom. In developing the framework, MAS also considered international standards, as well as the interests of investors, fund managers and other fund service providers.

2.3 The new structure will be known as the Singapore Variable Capital Company or S-VACC. The legislative framework for S-VACCs seeks to provide an alternative to incorporating a company under the CA for the constitution of CIS in Singapore.

2.4 A summary of the features of the proposed framework for S-VACCs is as follows:

- (a) Incorporation of S-VACCs will be governed by a new S-VACC Act to be administered by ACRA.
- (b) The S-VACC structure can only be used as a vehicle for CIS.
- (c) Sub-funds with segregated assets and liabilities can be created by registration with ACRA.
- (d) Redemption of shares and capital reduction will be allowed, provided shares are issued and redeemed at their NAV¹.
- (e) AGMs may be dispensed with at the discretion of directors, subject to certain safeguards.
- (f) A S-VACC will not be required to disclose its register of shareholders to the public, but must make the register available to supervisory and law enforcement agencies where necessary.
- (g) Directors will be required to be fit and proper persons. At least one director must be a director of the S-VACC's fund manager.
- (h) A S-VACC's assets must be managed by a Permissible Fund Manager.
- (i) Requirements in relation to AML/CFT will be imposed on a S-VACC. The S-VACC will be required to outsource the performance of AML/CFT duties to its fund manager.
- (j) A S-VACC consisting of an Authorised or Restricted Scheme must appoint an approved custodian that will take custody of the scheme's assets and act in the best interests of its shareholders.

¹ Except for shares of closed-end funds listed on a securities exchange which will be issued and redeemed in accordance with applicable listing requirements.

2.5 The S-VACC structure will complement the existing CIS structures available in Singapore, namely unit trusts, companies incorporated under the CA, and limited partnerships governed under the Limited Partnerships Act. The new framework will provide investment managers greater operational flexibility in Singapore, and allow CIS to consolidate the fund domicile with the respective fund management activities.

2.6 The S-VACC structure will also act as a platform for fund managers to anchor their substantive operations in Singapore, where control and management will be executed from Singapore. MAS recognises that tax treatment is one of the considerations for deciding on the domiciliation and management of funds. In this regard, MAS is studying the tax regime for S-VACCs, including exploring the feasibility of extending the current fund vehicle tax schemes to S-VACCs, and welcomes feedback on the S-VACC tax regime.

3 Structure Governing S-VACCs

Legislative structure

3.1 MAS proposes to introduce a new S-VACC Act to govern S-VACCs in a manner similar to the way the CA currently governs companies. The proposed draft S-VACC Act is set out in Annex B².

3.2 The Registrar of Companies, ACRA, will also be the Registrar for S-VACCs. ACRA will administer the S-VACC Act and subsidiary legislation while AML/CFT obligations of S-VACCs under S-VACC legislation will come under the purview of MAS.

Question 1. MAS seeks comments on the proposed legislative structure for S-VACCs.

Question 2. MAS seeks views on the proposed draft S-VACC Act at Annex B.

Permitted use of the S-VACC structure and name

3.3 MAS proposes that the S-VACC structure be used as a vehicle for CIS only, and not for operating any other business. While there is potential for S-VACCs to be used for other specialised purposes in the future, the current objective of the S-VACC framework

² All foreign companies, including foreign companies with similar business models as S-VACCs, will continue to be governed under the CA. The regulatory framework for CIS under the SFA, which applies regardless of the legal structure of a fund, will apply to S-VACCs. In this regard, proposed requirements in relation to an Authorised or Restricted Scheme will be imposed through consequential amendments to the SFA, SFR and CIS Code.

is to create an alternative corporate structure to facilitate the incorporation of funds in Singapore.

3.4 MAS further proposes that only S-VACCs incorporated under the S-VACC Act can use the term, “S-VACC”, in their names and hold themselves out as S-VACCs.

Question 3. MAS seeks comments on the proposal that the S-VACC structure be used as a vehicle for CIS only, and on the proposed restriction on the use of the term, “S-VACC”.

Open-ended and closed-end funds

3.5 Generally, CIS can be categorised as either open-ended or closed-end depending on whether investors have discretion to exit their investments in the CIS. An open-ended fund is one where investors have the right to redeem their investments if they so wish; investors of a closed-end fund are not able to do so. In addition, closed-end funds have fixed number of shares and do not allow subscriptions from new investors once the offering period is over. Open-ended funds, however, are open to subscriptions by new investors at any time.

3.6 Other than the above differences, the nature of the two types of CIS is largely the same, which is a vehicle for collective investments in accordance with an investment policy. MAS therefore proposes to allow both open-ended and closed-end funds to adopt the S-VACC structure. To ensure that investors of a S-VACC are clear on their rights of redemption, MAS proposes to require the rights of and limits to redemption to be clearly set out in the constitution of the S-VACC.

Question 4. MAS seeks comments on the proposal to allow S-VACCs to be structured as open-ended or closed-end funds, and to require the rights of and limits to redemption to be set out in the constitution of a S-VACC.

4 Segregation of Assets and Liabilities of Sub-Funds

Cellular structure for sub-funds

4.1 To reap economies of scale, it is common for fund managers to group CIS under umbrella funds, each containing multiple sub-funds that share a board of directors and the same service providers. Administrative functions such as the holding of general meetings and preparation of prospectuses may also be conducted for the entire umbrella fund instead of individually for each sub-fund.

4.2 In order to facilitate the economies of scale associated with umbrella funds, MAS proposes to allow S-VACCs to use a cellular structure. In this structure, a S-VACC is a single legal entity, with its sub-funds operating as separate cells (each without legal personality). Incorporation will be done only once for the S-VACC. A sub-fund will be constituted by registration with ACRA which will in turn provide the sub-fund with a unique sub-fund identification number.

4.3 Sub-funds within the same S-VACC can have different investment objectives and investors, and hence different risks and exposures. To prevent cross-cell contagion, the S-VACC framework will provide for the segregation of assets and liabilities of sub-funds, where –

- (a) the assets of a sub-fund cannot be used to discharge the liabilities of or claims against the S-VACC or any other sub-fund of the S-VACC; and
- (b) any liability incurred on behalf of or attributable to any sub-fund of a S-VACC must be discharged solely out of the assets of that sub-fund.

This means that creditors of a particular sub-fund can only fulfil their claims out of the assets of that sub-fund, and not from the other assets of the S-VACC (including assets of other sub-funds).

4.4 To address the key risk of cross-cell contagion within a S-VACC, MAS proposes to void any provisions (e.g. in the constitution or in agreements entered into by S-VACCs) which are inconsistent with the segregation of assets and liabilities of sub-funds; and to require a S-VACC to ensure proper segregation of assets and liabilities of sub-funds. Such duty is also implied in each S-VACC's constitution, so as to provide shareholders with an avenue to recover damages where there is a breach.

4.5 To ensure that third parties dealing with S-VACCs are aware of segregated assets and liabilities of sub-funds, a S-VACC will be required to disclose, in documents in which its sub-fund is referred to, and in dealings with third parties prior to entering into oral agreements on behalf of its sub-fund, the name, unique sub-fund identification number, and that the sub-fund has segregated assets and liabilities.

4.6 To accord further protection to retail investors, MAS proposes to allow the fund manager of a S-VACC consisting of an Authorised Scheme to invest in assets located in a jurisdiction that does not have a cellular company structure, only if any risk of cross-contagion between the S-VACC's sub-funds has been reasonably mitigated. Where reasonable grounds come to exist for the fund manager to believe otherwise, the fund manager must promptly investigate the validity of these grounds, and if the grounds appear to be valid, take appropriate steps to mitigate the risk.

4.7 The above measures will not entirely eliminate the risk of cross-cell contagion. MAS therefore proposes to require risks of cross-cell contagion to be clearly disclosed to shareholders of S-VACCs consisting of Authorised and Restricted Schemes. An example of such risks could be where a S-VACC with both solvent and insolvent sub-funds owns assets attributable to the solvent sub-fund in a foreign jurisdiction in which segregation of assets and liabilities of sub-funds may not be recognised. In such a situation, the creditors of the insolvent sub-fund could be allowed to claim against the assets of the solvent sub-fund.

Question 5. MAS seeks comments on the proposed cellular structure for S-VACCs.

Question 6. MAS seeks comments on the proposed safeguards against the risk of cross-cell contagion within a S-VACC.

Insolvent liquidation of sub-funds in a S-VACC

4.8 MAS proposes for segregation of assets and liabilities of sub-funds to apply during insolvency. Therefore, in the event of a sub-fund's insolvency, each sub-fund may be wound up as if it were a separate legal person. Similarly, claims of creditors of a sub-fund being wound up may only be paid out of the assets of that sub-fund, and not from the other assets of the S-VACC (including the assets of other sub-funds).

Question 7. MAS seeks comments on the proposal to allow a sub-fund to be wound up as if it were a separate legal person in the event of the sub-fund's insolvency, and on the ring-fencing of each sub-fund's assets and liabilities during insolvent liquidation.

5 Shares and Share Capital

Capital reduction

5.1 Restrictions on capital reduction in the CA can be operationally cumbersome for CIS, where redemption of shares may be made at the option of investors (for open-ended funds) or by the CIS (for closed-end funds). Payment of dividends out of capital is also not allowed under the CA. To meet these practical needs of CIS, a S-VACC will be allowed to freely redeem shares and pay dividends using its capital.

5.2 To safeguard the interests of creditors of a S-VACC, MAS proposes to imply in the constitution of a S-VACC that valuation and redemption of shares must be carried out at NAV. As NAV valuation is based on the assets of the fund less its liabilities, liabilities will always be accounted for in the price of redemption.

5.3 An exception to this requirement will be made for closed-end funds that are listed for quotation on a securities exchange. Such listed CIS may need or wish to conduct share buy-backs on the exchange, and in line with market practice, the price of such share purchases should be in accordance with the applicable listing requirements and does not need to be at the NAV.

Question 8. MAS seeks comments on the proposal for the valuation and redemption of shares in a S-VACC to be carried out at NAV, except where the S-VACC is listed on a securities exchange.

6 Meetings, Accounts and Shareholder Register

Meetings

6.1 In a CIS, investors generally do not have control over their capital, which is managed as a whole by the fund manager according to an agreed investment policy³. Certain specialised funds with a limited number of investors (e.g. private equity funds and venture capital funds) may provide their participants a degree of control in the running of the fund. In light of this, MAS proposes to not require a S-VACC to hold an AGM where, amongst others, directors elect to dispense with the AGM by giving at least 60 days' written notice to the shareholders of the S-VACC. However shareholder(s) with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the S-VACC before the date by which an AGM would have been required to be held.

Question 9. MAS seeks comments on the proposal to allow directors of S-VACCs to dispense with AGMs.

Audit and accounting

6.2 To provide assurance that the financial statements of S-VACCs are properly prepared, MAS proposes to require all S-VACCs to appoint an accounting entity to audit their accounts on an annual basis. However in line with the fund industry norms, MAS proposes to not require S-VACCs to have an audit committee.

³ A necessary condition of the definition of CIS is that the investors do not have day-to-day control over their investments.

6.3 Financial information of each sub-fund in a S-VACC must be kept separate, but must be prepared in accordance with a single accounting standard across all sub-funds of the S-VACC⁴. This is to ensure proper segregation of assets and liabilities of sub-funds, and in recognition that sub-funds can serve different investors and are thus operationally distinct from one another.

6.4 With regard to accounting standards, international fund jurisdictions have differing practices, with some allowing the use of local financial reporting standards, the IFRS or the Generally Accepted Accounting Practices in the United States. In practice, funds commonly use the accounting standards that are prevalent in the jurisdiction where their fund manager, assets or investors are based.

6.5 MAS proposes to allow S-VACCs to prepare their financial statements using an applicable ASC Standard (i.e., the SFRS or the forthcoming IFRS-identical Financial Reporting Standards⁵) or the IFRS. S-VACCs consisting of Authorised Schemes will be required to use the RAP 7, as is currently required for unit trusts under the CIS Code⁶.

6.6 For transparency to investors, MAS proposes to require that all audited financial statements of a S-VACC be made available to shareholders. However as the audited financial statements of funds contain proprietary information relating to investment strategy, MAS does not intend to require that the statements be made publicly available.

Question 10. MAS seeks comments on the proposals for the appointment of auditors, not requiring audit committees, as well as the preparation and disclosure of financial statements of S-VACCs.

Question 11. MAS seeks comments on whether S-VACCs should be allowed to prepare their financial statements using an applicable ASC Standard, the IFRS or RAP 7 (for S-VACCs consisting of Authorised Schemes). What are the considerations that may influence the accounting standards which a S-VACC uses (e.g. fund manager's operations, investors' preference or location of assets)?

⁴ The financial information of all sub-funds in the same S-VACC can in practice be presented side-by-side in one table in a single financial statement.

⁵ The Accounting Standards Council will be introducing a new Singapore financial reporting framework that is identical to the IFRS on 1 January 2018. More information can be found at <http://www.asc.gov.sg/IFRS-identical-Financial-Reporting-Standards>.

⁶ Consequential amendments will be made to the RAP 7 to apply to S-VACCs.

Register of shareholders, beneficial owners and nominee directors

6.7 In other fund jurisdictions, the shareholder register of a S-VACC is not commonly made public due to legitimate privacy needs of investors. At the same time, MAS recognises the need for some transparency to prevent S-VACCs from being used for illicit purposes such as money laundering and terrorism financing. To balance the two competing interests, MAS proposes that a S-VACC need not disclose the S-VACC's 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 shareholder register must also be maintained within Singapore at the S-VACC's registered office.

6.8 Amendments to the CA have recently been passed to enhance the transparency of companies. These include the requirements for companies incorporated under the CA to maintain information on their beneficial owners, and for nominee directors to disclose their nominee status and nominators to their companies. MAS proposes to adopt these same requirements for S-VACCs.

Question 12. MAS seeks comments on the proposal regarding the disclosure of a S-VACC's shareholder register.

Question 13. MAS seeks comments on the proposal to adopt the same requirements on beneficial ownership information and nominee directors as those under the CA amendments.

7 Corporate Governance

Board of directors

7.1 In a corporate structure, accountability to shareholders lies primarily with the board of directors. For a S-VACC, MAS proposes to require at least one director of the S-VACC to be a director of the S-VACC's fund manager, and for its directors to be subject to disqualification and duties broadly similar to those under the CA⁷. In addition, MAS proposes to require the directors to be fit and proper persons.

⁷ See Division 2 of Part V, CA which contains restrictions pertaining to, among others, undischarged bankrupts and individuals who have been convicted of certain offences. Duties of directors include, for example, duties relating to financial statements and audits, and duties to act in good faith in what the director considers to be in the best interest of the company and to avoid conflicts of interest.

7.2 To accord additional protection to retail investors, MAS proposes to require S-VACCs consisting of Authorised Schemes to have at least three directors, of which at least one director has to be independent of: (i) business relationships with the S-VACC; (ii) the fund manager of the S-VACC (and its related entities); and (iii) all substantial shareholders of the S-VACC.

Residency requirements

7.3 MAS proposes to require all S-VACCs to have both form and substance in Singapore, and be accessible to their stakeholders including investors and regulators. To this end, MAS proposes the following residency requirements which mirror those in the CA:

- (a) the registered office of a S-VACC must be in Singapore;
- (b) at least one of the S-VACC's directors must be resident in Singapore; and
- (c) a S-VACC must appoint a Singapore-based company secretary.

Naming requirements

7.4 In line with the CA, MAS proposes that a S-VACC cannot be registered with a name that is undesirable, identical or misleadingly similar to any name of any other company, business, or a restricted name.

Question 14. MAS seeks comments on the proposed requirements on a S-VACC's directors, residency and name of a S-VACC.

Permissible Fund Manager

7.5 MAS proposes that all S-VACCs must appoint a Permissible Fund Manager to manage their property. This will help to mitigate the risk of S-VACCs being abused for unlawful purposes. The fund manager of a S-VACC will carry out the day-to-day management and investment activities of the S-VACC. The fund manager will be subject to the oversight of the S-VACC's board of directors.

Question 15. MAS seeks comments on the proposal to allow only Permissible Fund Managers to manage S-VACCs.

AML/CFT requirements

- 7.6 To prevent the abuse of S-VACCs for unlawful purposes, MAS proposes to:
- (a) impose AML/CFT requirements on S-VACCs, which will be supervised by MAS for AML/CFT compliance;
 - (b) require a S-VACC to outsource the performance of AML/CFT duties to its fund manager, and to hold the S-VACC ultimately responsible for compliance with its AML/CFT requirements; and
 - (c) subject a S-VACC's directors to fit and proper checks, and require a S-VACC to have at least one director who is also a director of its fund manager.

These requirements are in line with international standards and the practices in other major fund jurisdictions.

Question 16. MAS seeks comments on the proposed AML/CFT requirements on S-VACCs.

8 Approved Custodian

8.1 Currently, Authorised and Restricted Schemes structured as unit trusts are required under the SFA to have an Approved Trustee. The Approved Trustee is required to safeguard the rights and interests of unitholders. It is also required to take custody of the property of a unit trust, for which it may engage custodians and sub-custodians. Further, an Approved Trustee of an Authorised Scheme must be independent⁸ from the fund manager and have independent oversight over the fund manager's compliance with the CIS Code.

8.2 To ensure that investors of funds are similarly protected regardless of the legal structure adopted by the fund, MAS proposes to require S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee. The approved custodian's duties will mirror those of an Approved Trustee under the SFA. Therefore, the approved custodian will be required to take custody of the property of a S-VACC, and be accountable to MAS for safeguarding the rights and interests of shareholders of the S-VACC. For S-VACCs consisting of Authorised Schemes, MAS further

⁸ The trustee may not be considered independent of the manager if any person that has an interest in 20% or more of the shares issued by the trustee also has an interest in 20% or more of the shares issued by the manager or its related corporations. Such interest would include deemed interest in the shares of the trustee or manager as the case may be under sections 4(4) and (5) of the SFA.

proposes to require the approved custodian to be independent of the S-VACC's fund manager and to monitor the fund manager's compliance with the CIS Code.

8.3 Other operational obligations relating to accounts and registers that are currently imposed on Approved Trustees for unit trusts will not be imposed on the approved custodian where they are already imposed on a S-VACC or its directors under S-VACC legislation.

Question 17. MAS seeks comments on the proposal for S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee, and to align the duties of the approved custodian with those of an Approved Trustee under the SFA, except where such duties are already imposed on the S-VACC or its directors as covered under the S-VACC legislation.

9 Re-domiciliation

9.1 Amendments to the CA have recently been passed to introduce an inward re-domiciliation regime in Singapore. This will allow foreign corporate entities to transfer their registration to Singapore. MAS proposes to adopt the same requirements under the inward re-domiciliation regime under the CA for foreign structures that are equivalent⁹ to a S-VACC to re-domicile as a S-VACC in Singapore.

Question 18. MAS seeks comments on the proposal to adopt the same requirements on re-domiciliation as those introduced by ACRA under the CA for S-VACCs. In particular, what aspects of the CA re-domiciliation provisions should be modified for S-VACCs?

Question 19. MAS seeks comments on the type of foreign structures (including their original jurisdiction of domicile) which would seek to re-domicile as an S-VACC in Singapore and the issues envisaged.

10 Winding-up of S-VACCs and Sub-Funds

10.1 The proposed winding-up regime for S-VACCs and sub-funds will be based on the winding-up regime for companies incorporated under the CA. Each sub-fund may be wound up as if it were a separate legal person. In line with the safeguards to govern the

⁹ For example, the Irish Collective Asset-management Vehicles of the Republic of Ireland and the Open-Ended Investment Companies of the UK.

unique nature of S-VACC as an investment fund, MAS proposes to provide the following additional grounds for winding up:

- (a) the S-VACC is being used to conduct business outside its permitted use as a vehicle for CIS only;
- (b) the S-VACC does not have a Permissible Fund Manager to manage its property for such period as may be prescribed; or
- (c) the S-VACC breaches its AML/CFT obligations.

Question 20. MAS seeks comments on the proposal to adopt a winding-up regime similar to that under the CA for S-VACCs and sub-funds, as well as the proposed modifications.

11 Debentures and Receivership

11.1 In line with global industry practice, MAS proposes to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds. Receivers or receivers and managers may therefore be appointed in respect of the property of the S-VACC as a whole, or in respect of the property of specific sub-funds. The S-VACC Bill will thus govern receivers and managers, adapted from the receivership regime under the CA.

Question 21. MAS seeks comments on the proposal to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds.

Question 22. MAS seeks comments on the proposal to adopt a receivership regime similar to that under the CA for S-VACCs and their sub-funds.

12 Arrangements, Reconstructions and Amalgamations

12.1 Consistent with the global industry practice, we propose to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA for S-VACCs. These mechanisms will be generally governed by the provisions set out in the constitution. For transparency to investors, MAS proposes to require the constitution of a S-VACC to clearly set out shareholders' rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds).

Question 23. MAS seeks comments on the proposal to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA.

Question 24. MAS seeks comments on the proposal to require the constitution of a S-VACC to clearly set out shareholders' rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds).

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- Question 17.** MAS seeks comments on the proposal for S-VACCs consisting of Authorised or Restricted Schemes to have an approved custodian that is an Approved Trustee, and to align the duties of the approved custodian with those of an Approved Trustee under the SFA, except where such duties are already imposed on the S-VACC or its directors as covered under the S-VACC legislation.16
- Question 18.** MAS seeks comments on the proposal to adopt the same requirements on re-domiciliation as those introduced by ACRA under the CA for S-VACCs. In particular, what aspects of the CA re-domiciliation provisions should be modified for S-VACCs?16
- Question 19.** MAS seeks comments on the type of foreign structures (including their original jurisdiction of domicile) which would seek to re-domicile as an S-VACC in Singapore and the issues envisaged.16
- Question 20.** MAS seeks comments on the proposal to adopt a winding-up regime similar to that under the CA for S-VACCs and sub-funds, as well as the proposed modifications..... 17
- Question 21.** MAS seeks comments on the proposal to allow S-VACCs to issue debentures, including to allow S-VACCs to issue debentures relating to specific sub-funds.....17
- Question 22.** MAS seeks comments on the proposal to adopt a receivership regime similar to that under the CA for S-VACCs and their sub-funds.....17
- Question 23.** MAS seeks comments on the proposal to not adopt the mechanisms for arrangements, reconstructions and amalgamations under the CA.18
- Question 24.** MAS seeks comments on the proposal to require the constitution of a S-VACC to clearly set out shareholders' rights in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the S-VACC (including any of its sub-funds)..... 18

Annex B

Draft Singapore Variable Capital Companies Act

[DISCLAIMER: THIS VERSION OF THE DRAFT S-VACC ACT IS IN DRAFT FORM AND SUBJECT TO CHANGE. IT IS ALSO SUBJECT TO REVIEW BY THE ATTORNEY-GENERAL'S CHAMBERS.]

[\[Link to draft S-VACC Act\]](#)



Monetary Authority of Singapore