**VCC Model Constitutions**

**Guidance Notes**

The two template constitutions for Variable Capital Companies ("**VCCs**") and the following Guidance Notes have been prepared by the Working Group on Variable Capital Companies under the Singapore Academy of Law (the "**Working Group**") following consultation with the asset management industry.

The template constitutions have been drafted with a view to meeting the baseline requirements for a constitution under the Variable Capital Companies Act 2018 (Act 44 of 2018)[[1]](#footnote-2) (the "**Act**"). However, users should be aware that the template constitutions serve as a starting point only and should be tailored to meet specific requirements while being mindful of complying with the requirements under all applicable laws and regulations[[2]](#footnote-3), including the Act and the Securities and Futures Act (Cap. 289) of Singapore[[3]](#footnote-4) (the "**SFA**"). The template constitutions should not be construed as legal or professional advice for any particular facts or circumstances. Users are encouraged to seek proper legal or professional advice on the contents of the constitution of their particular VCC, and to ensure compliance with all applicable laws and regulations. In particular, it is emphasised that the template constitutions:

1. are meant to be generic and flexible documents that can be adapted for use by different types of private funds, and the provisions that have been included in the template constitutions are not intended to be prescriptive. The Working Group expects that users would customise, amend, replace, add to and/or remove provisions from the respective template to produce a constitution that is suitable for their own particular VCC;
2. have not been prepared for VCCs whose shares would be offered to retail investors in Singapore, and amendments to the template constitutions would be necessary if the VCC (or a sub-fund thereof) intends to apply for authorisation by the Monetary Authority of Singapore (the "**MAS**") under section 286 of the SFA; and
3. were last reviewed on 28 November 2019, and as at this date, the proposed amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (the "**SFR(CIS)**") to support the VCC framework have not been finalised. Users should therefore review the template constitutions once the amendments to the SFR(CIS) have been finalised by the MAS.

*Every effort has been made by the Working Group to ensure that these Guidance Notes and the template constitutions are up to date. For the avoidance of doubt, the MAS and the Accounting and Corporate Regulatory Authority (“****ACRA****”) do not form part of the Working Group and were not involved in the drafting of these Guidance Notes and the template constitutions. The Working Group, the Singapore Academy of Law, the MAS and ACRA do not guarantee, do not accept any legal liability arising from or connected with, the accuracy, reliability, currency or completeness of any material contained in these Guidance Notes or template constitutions, and do not take any responsibility for the contents or endorse the template constitutions or these Guidance Notes.*

The purpose of a VCC's constitution is to regulate the rights conferred on holders of shares in the VCC (referred to in the draft constitutions as "**Members**", and each a “**Member**”) and to govern the terms of the Members' investment in the VCC, or the relevant sub-fund thereof (where the VCC is an umbrella VCC with one or more sub-funds).

Open-ended and closed-end

The Working Group has prepared two template constitutions, one for open-ended VCCs and another for closed-end VCCs (i.e., VCCs in which shares that are issued are exclusively or primarily non-redeemable at the election of the Members). The difference between the templates for these constitutions is that the template for open-ended VCCs provides that Members may apply to the VCC to redeem shares held by them, whereas this right is not provided for in the template for closed-end VCCs. While the MAS has clarified that it will be possible for an umbrella VCC to consist of both open-ended and closed-end funds as its sub-funds,[[4]](#footnote-5) the Working Group has not prepared a template constitution specifically for such an umbrella VCC. Users should also ensure that the types of liquidity management tools that the VCC manager intends to use have at least been broadly provided for in the constitution.[[5]](#footnote-6)

Mandatory provisions

The Act provides that the following must be stated in the constitution of every VCC:[[6]](#footnote-7)

1. the name of the VCC and that it is incorporated under the Act;
2. the name of the manager of the VCC;
3. the full name, address and occupation of the subscriber or each subscriber to the constitution;
4. that the subscriber or each subscriber is desirous of being formed into a VCC and agrees to take the number of shares in the capital of the VCC set out opposite the subscriber’s name;
5. details of the right of the Member to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property of the VCC, or to receive sums paid out of such profits, income, or other payments or returns;
6. details of the following rights (if any) of the Member:
7. the right to vote at any general meeting or at any meeting of Members holding that class of shares;
8. the right to redeem or repurchase shares;
9. the right in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the VCC;
10. if any right in paragraph (f) does not apply, that fact;
11. in respect of a VCC that consists of, or is to consist of, 2 or more collective investment schemes:
12. that fact; and
13. the policy of the VCC for forming a sub‑fund, and allocating (in accordance with section 29(3) of the Act) any assets and liabilities mentioned in that provision between sub‑funds;
14. the regulations for the VCC; and
15. such additional requirements as may be prescribed, including, for example, in the SF(OIS)(CIS)R where applicable, and must be dated.

These matters have been provided for in the template constitutions. Note that the constitution of the proposed VCC must be submitted to the Registrar for the VCC to be incorporated. Also, a declaration that *inter alia* all requirements of the Act relating to the formation of the VCC have been complied with must be made to the Registrar before the VCC may be incorporated.

The Act also provides that a number of provisions are to be implied into the constitution of every VCC,[[7]](#footnote-8) and that any provision in the constitution that it is inconsistent with any of these provisions implied by the Act is void. In preparing the template constitutions, the Working Group has endeavoured to reflect international best practices insofar as they are not inconsistent with the express requirements of the VCC Act. Hence, where possible, the template constitutions incorporate terms in the VCC's offering document by reference.[[8]](#footnote-9) Where the VCC does not have a formal offering document (for instance, in the case of a family office or single investor fund), references in the template constitution to the VCC's Offering Documents should be amended accordingly.

With reference to the requirement to state the "occupation" of each subscriber to the VCC constitution,[[9]](#footnote-10) where the subscriber is not a natural person, users may consider stating the nature of the business of the subscriber in lieu of stating the subscriber's occupation.

Manager

It is mandatory for the name of the manager of the VCC to be stated in the constitution of the VCC,[[10]](#footnote-11) and any appointment or change of the manager of the VCC would require an alteration to the constitution of the VCC.[[11]](#footnote-12) The manager of the VCC is required to meet the criteria under section 46(2) of the Act. While there is no express requirement in the Act that a VCC may only have one manager, the Working Group has proceeded on the assumption that only one manager would act as the manager of the VCC at all times, given that the definition of "manager" in section 2(1) of the Act refers to "*the* manager appointed by the VCC…" (emphasis added), which seems to contemplate a singular manager. In practice, collective investment schemes may be managed or sub-managed by delegates of the manager of the scheme, and the template constitutions provide that the manager of the VCC may delegate its duties to sub-managers in accordance with such powers of sub-delegation as the directors of the VCC may determine.

Umbrella VCC with sub-funds

The Act implies into the constitution of every umbrella VCC that the umbrella VCC's assets and liabilities must be allocated to, and used to discharge the liabilities of, each of its sub-funds in accordance with sections 29(1) and (3) of the Act, which establish the segregation of assets and liabilities between sub-funds. Any provision of *inter alia* the constitution of an umbrella VCC that is inconsistent with section 29(1) of the Act is void to the extent of such inconsistency. Section 29(3) provides that an umbrella VCC may allocate assets or liabilities held or incurred for the purpose of its sub‑funds or in order to enable the operation of the sub‑funds and that are not attributable to any particular sub-fund in a manner that it considers to be fair to Members. These points have accordingly been reflected in the template constitutions. As a consequence of the aforementioned segregation of assets and liabilities between sub-funds, each sub-fund would have a separate net asset value, and a specific class or classes of shares referable to such sub-fund.

As required by section 19(4)(h)(i) of the Act, regulation 2 of both template constitutions provide in square brackets that the VCC is intended to consist of two or more collective investment schemes. However, this language should be deleted if the template is being used for a VCC that is not an umbrella VCC.

Shares of VCC

Where it is intended for the VCC to issue more than one class of shares, the constitution of the VCC should provide for the ability of the VCC to do so.[[12]](#footnote-13) The rights attaching to the shares in each class should also be clearly set out in the VCC’s constitution.[[13]](#footnote-14) The Act:

1. prescribes certain rights attaching to shares in the VCC that must be stated in the constitution;[[14]](#footnote-15)
2. provides that, where provided in the constitution, certain prescribed rights attach to each share of any class; [[15]](#footnote-16) and
3. provides that any other rights (apart from the rights prescribed under sections 34(4)(a) and (b) of the Act) that are stated in the constitution to apply to shares of a particular class would attach to each share of that class. [[16]](#footnote-17)

The share rights prescribed in paragraphs (a) and (b) above (the "**Prescribed Share Rights**") are set out in the template constitutions. The Working Group's view is that not all rights of holders of shares in the VCC must necessarily be provided as rights attaching to shares in the constitution, and rights other than the Prescribed Share Rights may be provided for as contractual rights by other means, and set out elsewhere (i.e. the VCC's offering document or shareholders' agreement (as applicable)). Also, the Working Group's view is that, consistent with international best practice, the Act permits providing for the rights of holders of shares in the VCC[[17]](#footnote-18) in the constitution in broad terms, with more detailed provisions for such rights incorporated by reference (for example, by reference to the VCC's offering document). While the Working Group understands that this approach has support within the private funds industry, the Working Group urges users to form their own view on this issue and prepare their VCC constitutions accordingly. If preferred, users may modify the relevant template constitution accordingly to provide for such additional rights as may be required.

In addition, consistent with market practice, voting shares have been termed "management shares" in the templates, while non-voting shares have been termed "participating shares". The management shares may, as with international practice, be issued to the VCC's sponsor (which would ordinarily subscribe to the initial constitution for the purposes of incorporating the VCC).[[18]](#footnote-19) If desirable, users may also provide for the priority of distribution of the residual assets of the VCC (or a sub-fund thereof) between holders of management shares and participating shares in the event of that VCC's (or sub-fund's) winding up.

Alteration of constitution

The constitution of the VCC should also provide the procedure for altering the constitution, including any majority of the votes cast by Members who are entitled to vote on a resolution.[[19]](#footnote-20) In addition, the constitution of the VCC may only be altered by the directors of the VCC without the approval of its Members in the following circumstances if so provided in the constitution:[[20]](#footnote-21)

1. an alteration for the purpose of forming a sub‑fund;
2. an alteration to reflect any appointment or change of the manager of the VCC;
3. an alteration that does not prejudice the interests of any Member, and does not release to any material extent the manager or any director from any responsibility to the Members;
4. an alteration that is necessary for the purpose of complying with any order of court, law, direction of a public authority, code of conduct or other quasi‑legislation; or
5. the removal of an obsolete provision or the correction of any manifest error.

Note that section 24 of the Variable Capital Companies (Miscellaneous Amendments) Act 2019 (Act 28 of 2019) amends section 20 of the Act to require the VCC to lodge with the Registrar a copy of the constitution as altered and any documentary evidence of the directors’ decision to make the alteration within 14 days after any amendment under section 20(2) of the Act is made.

The Working Group considers that section 20(2)(a) of the Act does not require an umbrella VCC to amend its constitution each time that a new sub-fund is formed. Also, section 19(4)(h)(ii) of the Act provides that "the policy of the VCC for forming a sub-fund" must be disclosed in the constitution, but the Act does not require that the name of each sub-fund to be provided in the constitution. As such, the template constitutions provide that additional sub-funds may be formed by a resolution of the board of directors.

Similarly, as the Act does not require the name of each class or series of shares to be disclosed in the constitution, the template constitutions provide that shares may be allotted and issued in different classes and/or series pursuant to a resolution of the board of directors.

It should be noted that while the term "series" has been used in the template constitutions, the VCC Act does not mandate the use of series accounting. Hence, users may adapt the template constitutions accordingly if equalisation accounting is desired instead.

Issue of shares

As a "VCC must not repurchase or redeem its own shares unless they are fully paid",[[21]](#footnote-22) the template constitutions have been prepared on the assumption that all shares in the VCC would be issued on a fully paid up basis. Also, as the requirement for shares of a VCC "to be issued, redeemed or repurchased at a price equal to the proportion of the net asset value of the VCC represented by each share"[[22]](#footnote-23) does not apply during the initial offer period of the shares,[[23]](#footnote-24) users who intend to use series accounting and issue shares of the VCC at a fixed subscription price may do so by specifying (either in the constitution or offering document of the VCC) the initial offer period applicable to specific series or sub-series of shares.

Financial Statements and Meetings

Section 105(1) of the Act read with sections 105(4) and 17(2) of the Act sets out that all Members of a VCC would be entitled to request the consolidated financial statements of all sub-funds of the umbrella VCC prior to a general meeting, even if such a Member does not hold shares in all sub-funds of the umbrella VCC. For this reason, the Working Group has not provided any provisions in the template constitutions restricting access to financial statements of a sub-fund solely to Members of that sub-fund.

Note that the term "consolidated financial statements"[[24]](#footnote-25) in the template constitutions refers to a set of financial statements comprising financial information of only those VCC that would be consolidated with other legal entities (including other VCCs) pursuant to generally accepted accounting principles. It would not refer to horizontal aggregation of financial information of all of the sub-funds of the umbrella VCC.

Miscellaneous

If a VCC will not be issuing share or debenture certificates to Members or debenture holders, the VCC's constitution should include a provision stating that share certificates will not be issued, and that written confirmations of entry in the register of members will be issued to Members or debenture holders in lieu of physical certificates.[[25]](#footnote-26)

In addition, if the VCC intends to require its directors to resign in a manner other than by giving the VCC a written notice of his or her resignation, such manner of resignation should be provided for in the VCC's constitution.

1. Including the relevant cross-referenced provisions of the Companies Act (Cap. 50) of Singapore (the "**Companies Act**"). [↑](#footnote-ref-2)
2. References herein to any statute or subsidiary legislation or governmental regulation include any modification, amendment, extension or re-enactment thereof and any subsidiary legislation and rules made from time to time under that statute, instrument, regulation or under that subsidiary legislation. [↑](#footnote-ref-3)
3. Including, in particular, the relevant requirements under the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (“**SF(OIS)(CIS)R**”). [↑](#footnote-ref-4)
4. Paragraph 2.15 of the MAS's Response to Feedback Received on the Proposed Framework for Singapore Variable Capital Companies dated 10 September 2018 (the "**September 2018 Response Paper**"). [↑](#footnote-ref-5)
5. Paragraph 2.15 of the September 2018 Response Paper. [↑](#footnote-ref-6)
6. Sections 19(4), (5) and (6) of the Act. [↑](#footnote-ref-7)
7. Section 19(1) and where applicable section 19(2) of the Act. [↑](#footnote-ref-8)
8. The definition of "Offering Documents" in the template constitutions refers to the offering documents of the VCC, including, for open-ended funds, the offering memorandum or private placement memorandum of the VCC. Where references to additional documents (for example, a shareholders' agreement) are necessary, these should be provided for in the VCC constitution. [↑](#footnote-ref-9)
9. Section 19(4)(c) of the Act. Compare with section 22(1)(f) of the Companies Act. [↑](#footnote-ref-10)
10. Section 19(4)(b) of the Act. [↑](#footnote-ref-11)
11. Section 20(2)(b) of the Act. [↑](#footnote-ref-12)
12. Section 34(3) of the Act. [↑](#footnote-ref-13)
13. Paragraph 2.9 of the September 2018 Response Paper. [↑](#footnote-ref-14)
14. Sections 19(4)(e) and (f) of the Act. [↑](#footnote-ref-15)
15. Sections 34(4)(a) and (b) of the Act. [↑](#footnote-ref-16)
16. Section 34(4)(c) of the Act. [↑](#footnote-ref-17)
17. Or, where applicable, in any class or sub-fund thereof. Such rights may also include Prescribed Share Rights. [↑](#footnote-ref-18)
18. Paragraph 3.8 of the September 2018 Response Paper. [↑](#footnote-ref-19)
19. Section 20(1) of the Act. [↑](#footnote-ref-20)
20. Section 20(2) of the Act. [↑](#footnote-ref-21)
21. Section 35(2) of the Act. [↑](#footnote-ref-22)
22. Section 19(1)(e) of the Act. [↑](#footnote-ref-23)
23. Section 19(1)(g) of the Act. [↑](#footnote-ref-24)
24. Defined in section 2(1) of the Act. [↑](#footnote-ref-25)
25. Section 38(2)(a) of the Act. [↑](#footnote-ref-26)