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Variable Capital Companies – Fact sheet

Mauritius introduced the **Variable Capital Companies (VCC)** scheme on **15 April 2022**, with the aim to diversifying its product base and enhancing its competitiveness as a fund management hub.

The VCC Act came into force in **May 2022**, enabling the incorporation, conversion, or re-domiciliation of funds as VCCs, complementing the existing structures used by asset and wealth managers, such as trusts, partnerships and corporations.

A Variable Capital Company ("VCC") is a company incorporated under the Companies Act and which carries its activities through its sub-funds and Special Purpose Vehicles ("SPVs"). A VCC needs to be authorised by the Financial Services Commission, Mauritius (the "Commission") as a VCC Fund pursuant to the Variable Capital Companies Act ("VCC Act").

A sub-fund of a VCC Fund, subject to the approval of the FSC, operates as a Collective Investment Scheme (CIS) or a Closed-End Fund (CEF) of any category, and may elect to have a separate legal personality from that of the VCC Fund. For example, a sub-fund can be approved to operate as a CIS and an Expert Fund. The sub-fund shall comply with all requirements under the legal framework listed below, and other relevant FSC Rules and Guidelines:

- The Companies Act 2001
- The Financial Services Act 2007
- The Variable Capital Companies Act 2022
- The Securities Act 2005
- The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008
- The Financial Intelligence and Anti-Money Laundering Act 2002

MAJOR FEATURES OF A VCC

A VCC can comprise sub-funds and special purpose vehicles ("SPV") within the same VCC entity;

- A sub-fund or SPV may elect to have a legal personality that is distinct from a VCC;
- A sub-fund or an SPV of a VCC may subject to its constitution invest in assets of another sub-fund or SPV of the VCC;
- A sub-fund or SPV is entitled to have a distinct name from that of the VCC;
- A VCC must at all times have a written constitution;
- A sub-fund or SPV incorporated under the Act is not a subsidiary of the VCC;
- The assets of a sub-fund or VCC shall be available only to the creditors of the company who are creditors in respect of the sub-fund or of the SPV;
- A sub-fund of a VCC may invest in another sub-fund or SPV but such sub-fund or SPV of the VCC shall not invest in another sub-fund or SPV that has already invested in it;
- In a legal proceeding against any sub-fund or SPV, an order or judgment shall be restricted to that sub-fund or SPV;
- A VCC may issue shares of varying amounts and/or issue shares for payment of calls as agreed between its shareholders;

MAJOR FEATURES OF A VCC

- The directors of the SPV or the sub-fund may if the constitution of the VCC so provide be distinct;
- Flexibility for the increase and reduction of capital; The assets of a sub-fund or an SPV of a VCC shall not be used to discharge the liability of the VCC or any sub-fund or SPV of the VCC including during the winding up, administration or receivership of the SPV, sub-fund or the VCC;The assets of a sub-fund or VCC shall be available only to the creditors of the company who are creditors in respect of the sub-fund or of the SPV
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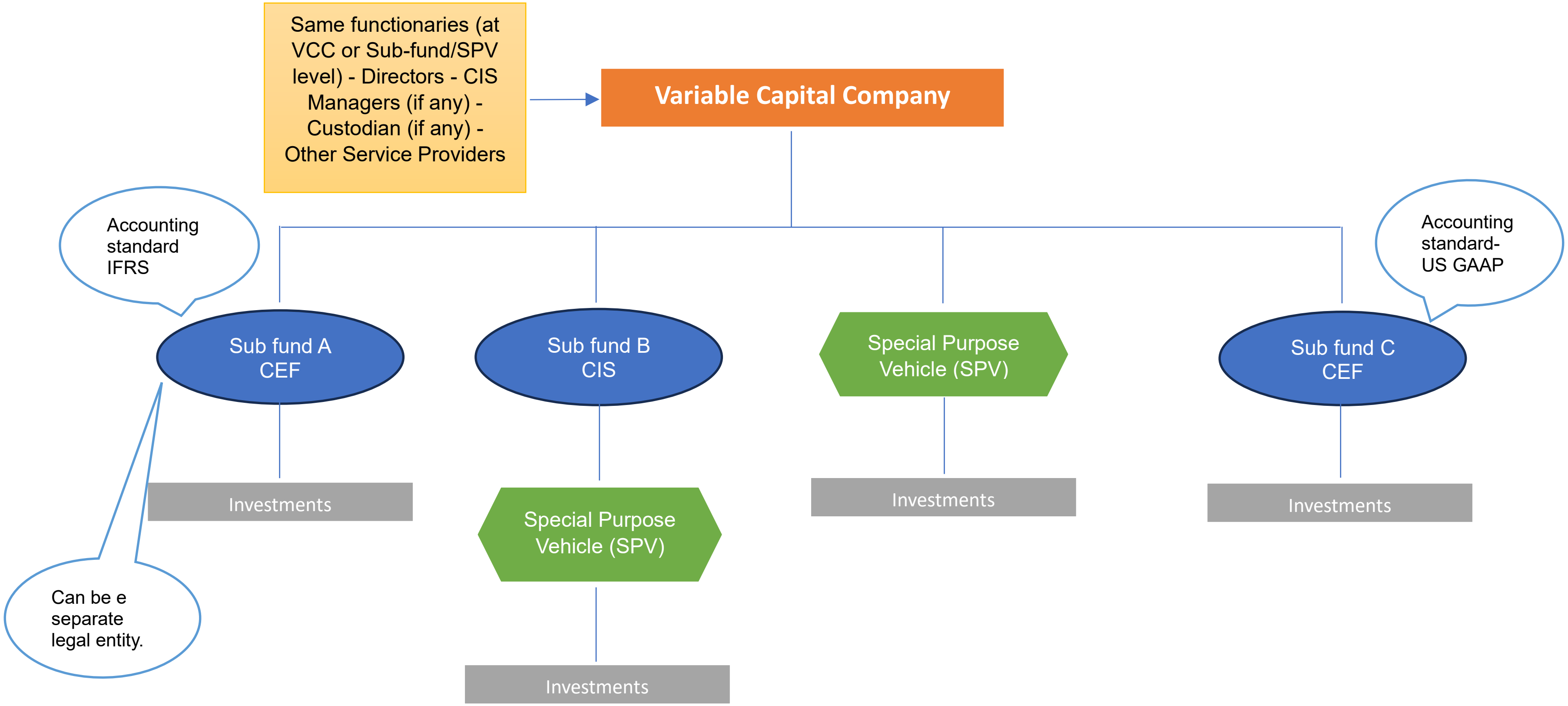
EXAMPLE OF A MULTIPLE FUND STRUCTURE CHART OF A VCC



DRIVING COST EFFICIENCIES

VCCs can achieve economies of scale by driving a number of cost efficiencies, and also streamlining management and operational activities into a single entity

Description	Impact	How
Administrative Burden	Reduced working time	A CIS and a CEF can both be set up under the same VCC structure - this drives operational efficiency.
Service Provision	Cost and resource efficiencies	The VCC Act allows managers to appoint the same service providers – a CIS Manager, CIS Administrator, custodian for all sub-funds – this facilitates favourable group fee quotes from service providers and functionaries for the VCC structure.
Management	Streamlined compliance and conduct procedures	Anti-Money Laundering/Combating the Financing of Terrorism ("AML"/"CFT") obligations, including but not limited to, the appointments of the MLRO, Deputy MLRO, Compliance Officer and conduct and completion of the independent audit, can be dealt with either at the level of the VCC or the sub-fund – this is highly cost effective compared to setting up similar structures under the existing CIS/CEF regimes
Operational Efficiencies	Reduced overheads	The VCC Act requires any sub-fund/SPV incorporated under the VCC Act to have the same registered office – this avoids duplication and facilitates operational efficiencies.

FORMAL APPLICATION

An application for authorisation as a VCC Fund under Section 7 of the VCC Act is submitted online through the FSC One Platform. Documents to be submitted with the application include a draft offer document, outline memorandum, prospectus, private placement memorandum or term sheet, and draft constitutive documents containing (among other things) the following information:

For Each Sub-Fund

- Formal application for creation of sub-fund(s) pursuant to Section 8(4) of the VCC Act
- Formal application for approval to operate as either a CIS or CEF under Section 7(3) of the VCC Act
- General information regarding the sub-fund, namely its objectives, size of the fund and minimum subscription
- Investment objective, investment policy and investment restrictions – Investment process (if known at this stage)
- Target sector(s) of investment and investment instrument
- Country or region of investment –Exit strategies for investors
- Details of risks involved in the scheme (if known at this stage)
- An indication of the profile and location of investors
- Capital structure, classes of shares, rights and obligations attached to each class of shares and indication of the holder(s) of each class of shares
- Compliance requirements of other regulatory bodies (if any)
- Details and track record on the functionaries (e.g., investment manager, investment advisor, custodian, administrator, prime broker, registrar/secretary)
- Duties and obligations of each functionary
- Details on the core investment management team
- Responsibility for NAV calculation, reporting and basis of calculation as well as frequency of NAV calculations
- Any corporate governance issues related to independence between the board of the fund and the board or investment team of the investment manager or advisor

FORMAL APPLICATION - CONTINUED

For Each Sub-Fund - Continued

- An indication as to who will be responsible to carry out the customer due diligence (CDD) and anti-money laundering (AML) checks on investors in the fund;
- Confirmation as to where the CDD and AML check documents will be kept;
- In case a sub-fund elects to have legal personality, the following are required:
  - certified copies of statutory documents lodged with the Corporate and Business Registration Department (CBRD) for incorporation ;
  - constitution of the incorporated VCC sub-fund accompanied by its legal certificate.

For Each SPV

- Formal application for creation of SPV(s) pursuant to Section 9(5) of the VCC Act
  - Detailed business plan outlining the activities to be carried out by the SPV(s) including, but not limited to, the following:
  - business objective, strategy and a clear description of the proposed activity that will be ancillary to the VCC Fund or a sub-fund of the VCC;
  - details on the target market(s) and target sector(s);
  - an indication of the amount to be invested;
  - source of funding ;
  - details on the shareholding structure and a structure chart illustrating up to the level of the ultimate beneficial owner(s)
  - three (3) years' financial forecasts (profit and loss, cash flow and balance sheet);
  - any other relevant information

- In case a SPV elects to have legal personality, the following are required:
  - certified copies of statutory documents lodged with the CBRD for incorporation;
  - constitution of the incorporated VCC SPV accompanied by its legal certificate.

SUPPORTING DOCUMENTS

Further supporting documents to be lodged with the FSC are as follows:

- Information documents (prospectus, private placement memorandum, information memorandum or term sheet);
- The sub-fund's or SPV's agreements, shareholders or partnership agreements, and management or advisory agreements;
- The material contracts to be concluded with the different functionaries (i.e., investment manager, custodian, auditor, CIS administrator and investment adviser);
- A legal certificate from a Mauritius lawyer certifying the conformity of the constitutive documents with Mauritius laws;
- Detailed curriculum vitae and personal questionnaire, along with due diligence documents, for each person involved in a key position (including key persons)

REPORTING OBLIGATIONS

A VCC has the statutory obligations to adhere to the record keeping requirements of the Companies Act 2001 and in addition must

- keep separate records of the VCC and each sub-fund and SPVs setting out sufficient explanations of the transactions of the VCC and its sub-funds and SPVs necessary for the preparation of the true and fair financial statements thereof;
- establish and maintain adequate internal accounting controls to ensure that the assets of the VCC and its sub-funds or SPVs are safeguarded against loss from unauthorised use or disposition;
- that the transactions of the VCC or its sub-funds or SPVs are duly authorised.

TAXATION

The Act has amended The Income Tax 1995 to include a variable capital company, its sub-fund or SPV in the definition of "company". The implication of this amended definition of "company" is that a VCC, its sub-fund or SPV must file a tax return with the Mauritius Revenue Authority. The filing of a tax return will depend very much on whether each sub-fund or SPV has elected to have a separate legal personality. In such a situation, each sub-fund or SPV must file a separate return. It is relevant to note that the tax liability of one sub-fund or SPV shall not affect the other sub-funds or SPVs. On the other hand, if a VCC under an umbrella structure intends to file a consolidated Financial Statement, then a single tax return would be appropriate.

In the 2023/2024 budget, the partial exemption rate has increased to 95% for Collective Investment Schemes and Closed End Funds means they are being effectively taxed at 0.75% with respect to interest. This sends a clear message to Funds that Mauritius wishes to maintain its competitiveness as an IFC. This will definitely encourage more debt funds to structure through Mauritius.

THE FUND MANAGER

The fund manager can be structured as a Mauritius CIS manager or as a fund manager licensed in an equivalent jurisdiction. If structured as a Mauritius CIS manager, the CIS manager licence specifies that the fund manager shall be engaged solely in the business of the management of collective investment schemes, unless otherwise authorised. The fund manager also has to demonstrate that it has suitably qualified staff with the appropriate expertise and experience to carry out the functions of a CIS manager. The minimum unimpaired capital is one million Mauritius rupees (approximately US $23,000).

WINDING UP

A sub-fund or an SPV can only be wound up voluntarily if it has a plan for such winding up approved by the FSC. In giving its approval, the FSC shall ensure that the interests of the participants of the sub-fund or the SPV are protected. Once the FSC approves the plan, the provisions relating to the voluntary winding up under the Insolvency Act 2009 apply if the sub-fund or the SPV has a distinct legal personality.

The court may also make an order for the winding up of a sub-fund or an SPV where an application is made by the FSC, a creditor, a CIS Manager or the board of the VCC or any of its sub-funds.

SANCTIONS

The Act provides for criminal sanctions and any person who contravenes the Act shall upon conviction be liable to a fine of up to MUR 500,000 and a term of imprisonment for a term of up to 5 years.

ROCKMILLS FINANCIALS LTD

What we do?

- Accompany Fund Managers in selection of appropriate CIS category, desired structure and review of Offer documents and Investor profile and KYC;
- Accounting and Administration Services including NAV workings;
- Investor related services like NAV reporting, mailings. Capital call payments etc. in short Subscription to Redemption. Follow ups with Investors;
- Monitoring of proceeds;
- Compliance to International Exchange of Information rules, i.e. CRS, FATCA registrations etc;
- Assisting in drafting relevant manuals to meet the licensing requirements and liaising with legal advisers;
- Any other corporate and fund administration services which will assist with the formation of a new VCC structure or re-domiciliation to Mauritius of an existing fund.