

The background of the slide is a photograph of the Singapore skyline. In the foreground, the Merlion fountain is prominent, with water spraying from its mouth. Behind it, several modern skyscrapers are visible, including one with the HSBC logo. The sky is a clear, bright blue.

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UNDERSTANDING THE SINGAPORE VARIABLE CAPITAL COMPANY (VCC) FRAMEWORK

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SECTION 1

THE ASSET MANAGEMENT LANDSCAPE IN SINGAPORE

SECTION 2

FEATURES OF THE VCC

- Key Features**
- Singapore Tax Considerations**
- US Tax Considerations**

SECTION 2: FEATURES OF THE VCC

KEY FEATURES

1. General

- VCC will be governed by the Variable Capital Companies Act, administered by the Accounting and Regulatory Authority of Singapore (ACRA).
 - VCC bill passed by Parliament in October 2018.
 - MAS recently consulted on proposed regulations relating to operational aspects of a VCC.
- VCC structure can only be used as a vehicle for collective-investment schemes (CIS) - can be structured as an open-ended or closed-ended fund.
- VCCs can adopt an umbrella structure – multiple sub-funds with different investment strategies and objectives, investors, and segregated assets and liabilities, or created as a stand-alone.

2. Flexibility to Vary Capital

- A VCC will be allowed to redeem shares and pay dividends using its capital.
- The constitution of a VCC would be deemed to imply that, subject to adjustments for fees and charges (as provided in the constitution), the shares of the VCC shall be issued, redeemed, or repurchased at the price equal to the proportion of the Net Asset Value (NAV) of the VCC represented by each share.
- An exception to this requirement for issuance and redemption of shares at NAV will be made for shares of closed-end funds listed on a securities exchange. These shares will be issued and redeemed in accordance with applicable listing requirements.

3. Utility as an Umbrella Fund

- Incorporation will be required only for the VCC while sub-funds, each without a legal personality, will be constituted by registration with ACRA.
- A VCC 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 following:
 - The name of the sub-fund.
 - The unique sub-fund identification number, provided to it by ACRA.
 - That the sub-fund has segregated assets and liabilities.
- The segregation of assets and liabilities of sub-funds will apply during insolvency, i.e., in the event of a sub-fund's insolvency, each sub-fund may be wound up as if it were a separate legal person.

3. Utility as an Umbrella Fund

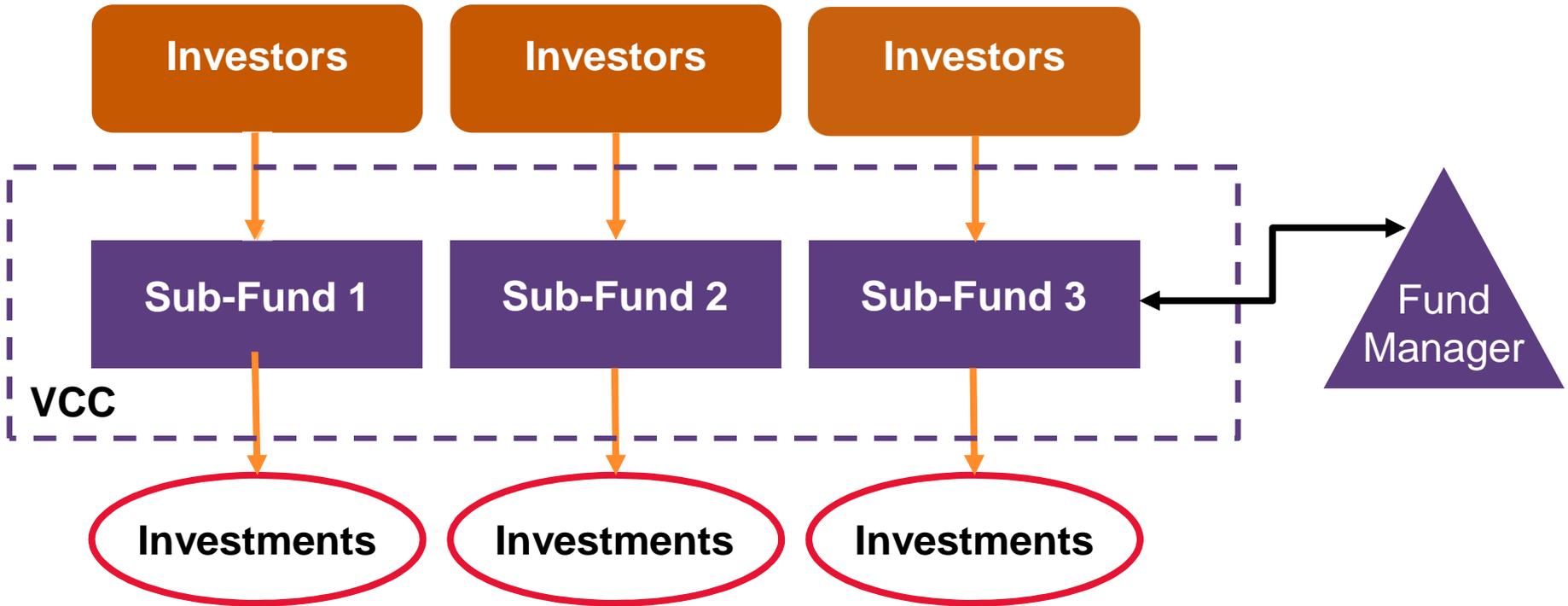


Figure 1: VCC umbrella fund structure

4. Governance

- **Fund Manager:** A VCC must be managed by a fund manager that is licensed, registered, or exempted under the Securities and Futures Act of Singapore (SFA).
- **Directors:**
 - A VCC must have at least one Singapore resident director.
 - At least one director of the VCC must also be a director or qualified representative of the VCC's fund manager.
 - Directors must be "fit and proper persons."
- **Sole Member:** A VCC is allowed to have a single member.
- **Registered Office/Company Secretary:** A VCC's registered office must be in Singapore and it must appoint a Singapore-based company secretary.

4. Governance

- **Annual General Meetings (AGMs):**
 - AGMs may be dispensed with at the discretion of the VCC's directors, provided that at least 60 days' written notice is given to shareholders.
 - Shareholders with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the VCC.

5. Others

- **Custodian Requirements:** VCCs that are Authorized Schemes shall have a custodian that is an approved trustee under the SFA.
 - MAS will align the duties of a custodian with those of an approved trustee, other than the obligation to safeguard the rights and interests of the VCC's shareholder.
- **Re-domiciliation:** Foreign structures that are equivalent to a VCC will be permitted to re-domicile as VCCs in Singapore.
- **Winding-up:** Intended that the insolvency and winding up regime for a VCC and its sub-funds to be aligned with that of the insolvency and winding up regime for other corporate structures in Singapore under the new Insolvency, Restructuring and Dissolution Act.

5. Others

- **Audits and Accounting:**

- Flexibility for non-authorized schemes to present its financial statements using US GAAP, IFRS or SFRS
- For an umbrella VCC, separate accounts must be prepared for each sub-fund which apply the same accounting standard under the same VCC umbrella
- Financial statements are not required to be made public

SECTION 2: FEATURES OF THE VCC

SINGAPORE TAX CONSIDERATIONS

1. Tax Treatment of the VCC

- During Budget 2018, the Singapore Ministry of Finance announced tax-related policy positions for the VCC framework.
 - A VCC will be treated as a **single entity** for tax purposes.
 - Only one set of tax returns need to be filed by the umbrella VCC.
 - Existing **fund tax incentives** under sections 13R and 13X of the Singapore Income Tax Act will be extended to VCCs.
 - 10% concessionary tax rate under the **FSI-FM** scheme will be extended to fund managers managing an incentivised VCC; and
 - The existing **GST remission** for funds will be extended to VCCs

SECTION 2: FEATURES OF THE VCC
US TAX CONSIDERATIONS

1. Check-the-Box Election Available

- For U.S. federal income tax purposes, a VCC can choose to be treated as either a non-US corporation or, by making a “check-the-box” election on IRS form 8832, as a passthrough entity.
 - If a check-the-box election is made, the VCC also will be required to obtain a US employer identification number, or EIN.
 - The flexibility to make this check-the-box election means that VCCs can be used to create typical master-feeder hedge fund structures, as well as common structures seen in the private equity fund market.

2. Effect of US Tax Treatment as Passthrough

- If a VCC elects US tax treatment as a passthrough:
 - The VCC will be treated as a disregarded entity, or branch, of its owner, if it has only a single owner for US tax purposes. In this circumstance, a non-US owner may be required to file an annual US information return regarding the VCC, even if it has no US operations or assets.
 - The VCC will be treated as a partnership if it has two or more owners. As a result, in general, if the VCC has more than a small interest held by US persons and investments resulting in US source income, the VCC may be required to file annual US partnership tax returns.
 - The VCC's items of income and loss will be passed through annually to its owners, including for US taxpayer owners any capital gains (potentially eligible for lower rates of US tax) and tax losses (subject to various limitations, potentially useful in offsetting other taxable income).
 - US taxpayer managers can be allocated carried interest in a potentially tax-efficient manner.

3. Effect of US Tax Treatment as Corporation

- If a VCC is treated for US tax purposes as a non-US corporation:
 - The US passive foreign investment company, or PFIC, rules may apply to US taxpayer investors, if the VCC's activities consist, in general terms, largely of passive investments, and as a result, US taxpayer investors may seek additional information from the VCC to make a qualified electing fund, or QEF, election (effectively making the VCC into a partial passthrough for US tax purposes).
 - If the VCC is majority owned, by vote or value, by 10% or more US owners, the US controlled foreign corporation, or CFC, rules may apply to those 10% or more US owners, resulting in increased reporting obligations and potential phantom taxable income.

4. Potential US Tax Treaty Eligibility of Investors

- Regardless of whether the VCC makes a check-the-box election, if a non-US investor in a VCC is otherwise eligible for the benefits of a US tax treaty, and the VCC's investments include investments where tax treaty eligibility could be helpful (such as investments in US stocks expected to result in taxable dividends), eligibility through the VCC for tax treaty treatment will depend on whether the VCC is viewed as tax transparent in the non-US investor's home tax jurisdiction.

5. FATCA/CRS Reporting

- As with other investment vehicles, the VCC will need to comply with the US FATCA (foreign account tax compliance act) and the OECD CRS (common reporting standards) provisions, typically by following Singapore procedures.

SECTION 3

THE US MARKET'S PERSPECTIVE

- Sponsor Perspective**
- Investor Perspective**

SECTION 3: THE US MARKET'S PERSPECTIVE
SPONSOR PERSPECTIVE

1. What can the VCC be used for from a US sponsor's perspective?

- It can be used for traditional and alternative fund strategies (both open-ended and close-ended).
- It can be set up as an umbrella entity with multiple sub-funds for operational efficiency
- Foreign corporate entities set up as funds could be inward re-domiciled as VCCs
- VCCs can have a single shareholder. This allows for the application of VCCs as a Master-Feeder structure.
- Segregation of sub-funds' assets and liabilities are clarified through various provisions. For any agreements/arrangements, the contracting party will be the VCC umbrella and not the sub-fund. However, the name of the sub-fund should be identified.
- Delegation
 - The Fund Manager of the VCC can delegate fund management activity and operational duties to other parties (e.g. a sub-manager) that are regulated as fund managers in other jurisdictions, provided the Fund Manager of the VCC retains overall responsibility of the duties, and mitigates any conflicts.

2. What are the specific benefits to a US sponsor of using a VCC?

- Some of the benefits include improved operational and tax efficiency.
- It can be used:
 - for a variety of investment strategies (viz., traditional, hedge funds, private equity and real estate funds);
 - to list funds as information listing and for trading purposes; and
 - as a pooling and investing vehicle, thereby dispensing multiple tiered fund structures.
- It could also avail itself of the US “check-the-box” election.
- A VCC should be eligible to access Singapore’s tax treaty network where it is considered as a Singapore tax resident based its ‘control and management’ in Singapore.
- As regards incentives, a VCC will be eligible to apply for tax exemptions available to other funds managed by a Singapore-based fund manager. Such exempt VCCs will also be eligible for GST remissions reducing the Singapore GST incidence on management fees to a small fraction. Fund managers will be eligible to apply for concessional tax rate of 10% in respect of their fees from VCCs.

SECTION 3: THE US MARKET'S PERSPECTIVE

INVESTOR PERSPECTIVE

1. Potential Benefits and Attractions

- Flexibility of use of VCCs for a variety of open-ended and closed-ended fund structures should make the VCC attractive to a variety of investors.
- Pass-through tax treatment of VCCs, whether structured as master-feeder hedge funds or private equity funds, will be attractive to U.S. taxable investors and U.S. tax-exempt investors which are not sensitive to unearned business income tax.
- Exposure to Singapore-based managers as well as fund vehicles investing in Asian-focused investment strategies and opportunities should be attractive to many investors.
- Certain features of umbrella funds, particularly operational efficiencies, reduced expense loads and segregation of assets and liabilities, are likely to be attractive to investors aiming to allocate capital to a single multi-strategy manager.
- Potential tax treaty benefits should make the VCC attractive to certain investors, depending on their tax circumstances.

2. Potential Challenges

- Institutional investors may be slow to accept a new fund jurisdiction, preferring fund domiciles that are more familiar and have already been fully vetted.
- “Follow the herd” mentality may lead certain investors to take a “wait and see” position, whereby they avoid investing in VCC structures until they believe that a sufficient track record and market comfort level has been established.

Q&A

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Christopher J. Dlutowski counsels private investment funds—including US domestic and offshore hedge funds, private equity funds, and funds-of-funds—and investment management firms on forming and structuring funds, trading and other investment activities, raising capital, and ongoing operations. Christopher also represents institutional investors—including governmental and corporate pension plans, universities, family offices, and funds of funds—on their investments in hedge, private equity, and other private funds, managed accounts and co-investments, and advises clients on registration and other regulatory issues under the federal securities and commodities laws. Christopher has significant experience in customized investment products, including strategic partnerships, captive funds, and co-investment funds.

Christopher has lectured and served as a panelist on private investment funds topics at numerous investment management conferences and training programs. Prior to re-joining Morgan Lewis, Christopher was vice president and corporate counsel in the public equity and fixed income law unit of Prudential Financial, Inc. where he advised investment management clients on their hedge funds and other alternative investment products, US and foreign institutional investor mandates, trading activities (including securities, derivatives, lending, and financing transactions), marketing efforts, domestic and foreign registration, and other regulatory issues.

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Brendan R. Kalb utilizes his in-house asset management and corporate legal experience to counsel clients on issues relating to the establishment and ongoing operation of global hedge funds, private equity funds, commodity pools, UCITS funds, hybrid customized vehicles, and separately managed accounts, along with providing regulatory, compliance, and trading advice to managers investing in various asset classes in the United States and abroad. He also has deep experience advising on the structuring and operation of various registered fund products, including liquid alternative funds.

Prior to joining Morgan Lewis, Brendan was the managing director and general counsel at AQR Capital Management, LLC, a systematic global asset management firm based in Greenwich, CT, where he was responsible for managing the full spectrum of the firm's legal affairs, including involvement in all aspects of US and overseas regulatory exams, product structuring, derivatives and operational risk management, quantitative investment practices, drafting of investment guidelines and restrictions, creation and update of compliance policies and procedures, as well as implementation and interpretation of international rules and regulations regarding trading and marketing.

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Joel Seow advises sponsors throughout Asia on the establishment of private investment funds across various asset classes and jurisdictions, with a focus on private equity, venture capital, real estate, infrastructure, and hedge funds. He also counsels on myriad nontraditional private investment fund setups, including fund platform structures, hybrid funds, club deals, and open-ended illiquid funds, among others. Joel is keenly aware of Singapore's regulatory requirements for fund management and the offer of fund interests, and regularly advises international and local fund managers on their licensing and regulatory obligations, as well as assisting with the submission of fund management license applications to the Monetary Authority of Singapore.

Joel also works with both institutional and non-institutional limited partners (LPs) from Asia, Europe, and the United States, including financial institutions, pension funds, corporations, family offices, and fund of funds, advising on their investments into private funds. In these matters, he has served as LP counsel and across the table as general partner (GP) counsel.

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Jedd H. Wider focuses on global private investment funds and managed accounts, particularly global hedge, private equity, secondary, and venture capital funds. As co-leader of the global hedge funds practice, he represents leading financial institutions, fund managers, and institutional investors in their roles as fund sponsors, placement agents, and investment entities. He assists clients through all stages of product development and capital raising as well as customized arrangements, seed and lead investor arrangements, and joint ventures. He specializes in all aspects of secondary transactions, and complex financial structurings.

Jedd concentrates on all aspects of bespoke fund products and arrangements including funds of one and managed accounts and regularly advises clients on all aspects of regulatory compliance.

Members of the international media often seek out Jedd for his views on the hedge fund and private equity fund industries and capital markets. His analysis can be found in US and international publications, including *The Wall Street Journal*, *The Economist*, and *Financial Times*, as well as on television networks such as Bloomberg and CNN.

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Richard's work with investment funds and alternative investment vehicles includes those with a range of investment objectives, including private equity, venture capital, and hedge funds.

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Lavan Thiru joined the Monetary Authority of Singapore (“MAS”) in June 2006 and is currently the Chief Representative of the MAS New York Representative Office. He assumed this role on 1 November 2016. Previously, he was the head of the Financial Products and Investment Solutions Division, part of the Financial Markets Development Department of the MAS. In that role, he oversaw the development of Singapore financial markets. He was also responsible for developing initiatives related to infrastructure and trade finance. Lavan spent over a year on secondment to Clifford Capital, a specialist provider of structured finance solutions established with support from the Government of Singapore to act as a catalyst for companies that have a meaningful presence in Singapore, in support of their investments or exports overseas.

Lavan started his career in the Ministry of Finance overseeing budget policy formulation for the various Ministries. He then spent 10 years in tax policy formulation both in the Ministry of Finance and the MAS.

Lavan graduated with an Honours Degree in Business with a specialisation in Financial Analysis and obtained his MBA (Accountancy) from Nanyang Technological University’s Nanyang Business School.

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Fumin began his career with the Monetary Authority of Singapore (“MAS”) in 2007. He is currently a Deputy Director in the Financial Markets Development Department, where he leads the development and growth of Singapore’s asset management industry. Fumin and his team are primarily responsible for the development and implementation of the new Variable Capital Companies (VCC) framework for investment funds, among other MAS initiatives.

Fumin holds an Honours Degree in Business Administration from the National University of Singapore. In 2017, he graduated with a Master of Professional Accounting at the Singapore Management University and received the Institute of Singapore Chartered Accountants (ISCA) Gold Medal Award as the top graduate.

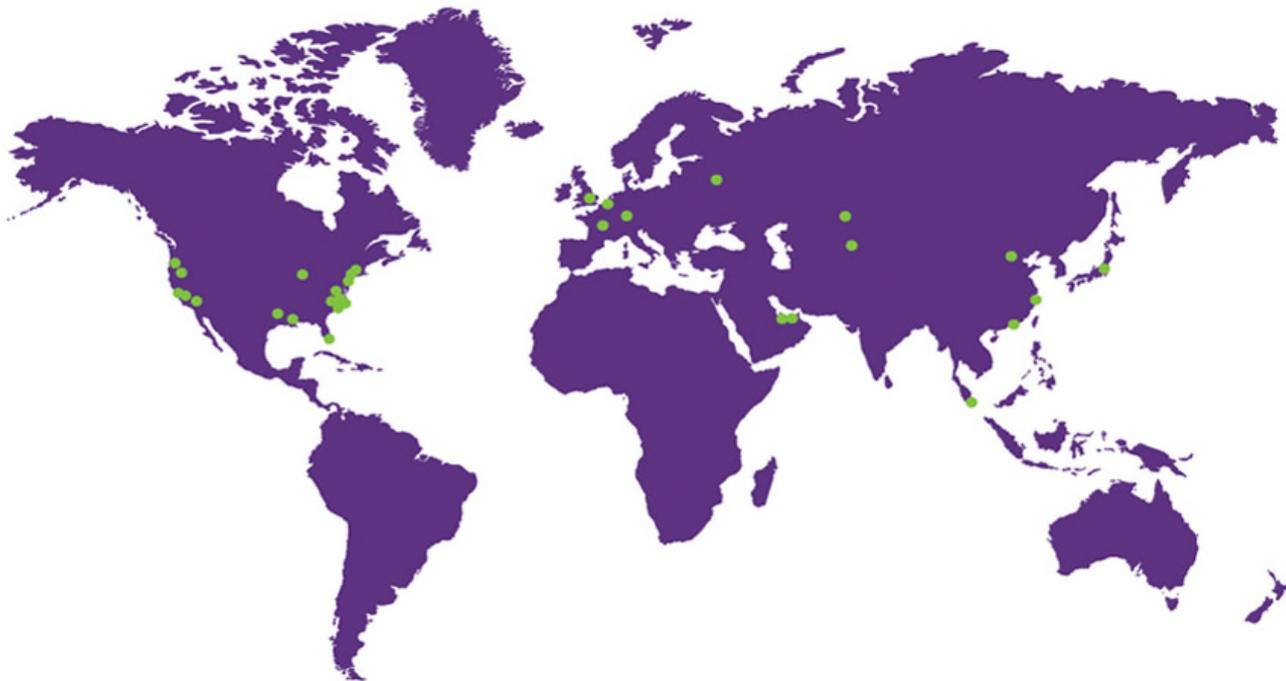
As a National Serviceman, Fumin also concurrently serves as a principal staff officer in the Singapore Armed Forces.

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