MAURITIUS

KEY FACTS
VARIABLE CAPITAL COMPANIES

A VARIABLE CAPITAL COMPANY (VCC) PROVIDES A FRAMEWORK MAINLY FOR FUNDS TO CARRY OUT BUSINESS THROUGH ONE OR MORE SUB-FUNDS OR SPECIAL PURPOSE VEHICLES (SPVS), ALL WITHIN ONE STRUCTURE. EACH SUB-FUND OR SPV MAY OPT TO HAVE A LEGAL PERSONALITY DISTINCT FROM THE VCC, ALLOWING IT TO REMAIN SEGREGATED AND INCUR LIABILITY ON ITS OWN, THUS ENSURING RING-FENCING OF THE ASSETS AND LIABILITIES OF EACH SUB-FUND OR SPV IN CASE OF INSOLVENCY.

LEGAL STRUCTURE

The Mauritius Variable Capital Companies Act 2022 ("VCC Act"), passed on 12 April 2022 and gazetted on 15 April 2022, allows the setting up of a VCC, which can be structured as a VCC fund ("VCC Fund") and carry out its activities through its sub-funds and SPVs, with its assets and liabilities segregated and ring-fenced.

A VCC Fund is comparable to a Protected Cell Company or an umbrella fund; however, a VCC Fund can accommodate a mix of strategies under the one and same structure. For instance, both collective investment schemes (CIS) and/or closed-end funds (CEF) can be structured under one VCC. For example:

- A sub-fund may be structured as a CEF, which has a fixed committed capital/corpus. Investors generally do not have the right to call for their shares to be redeemed. The sub-fund may have a limited life. Assets are distributed to investors on the winding up of the sub-fund.
- A sub-fund may also be structured as a CIS (also referred as an open-end fund), which has variable capital. Investors are generally allowed to redeem their shares at their option or predetermined times in accordance with the sub-fund's constitutive documents. The net asset value (NAV) is usually calculated daily, weekly, monthly or fortnightly.
- In addition, a VCC can accommodate several SPVs operating as vehicles ancillary to a sub-fund or the VCC Fund provided that the SPVs do not operate as a fund.

Each sub-fund and/or SPV may opt to have a separate legal personality from that of the VCC.

A single Global Business Licence will be required by the VCC, irrespective of whether its sub-funds or SPVs have separate legal personality, if criteria are met (principally owned by non-Mauritian citizens and carrying out activities principally outside of Mauritius).

Where the sub-fund and/or SPV has a legal personality, the directors of the VCC shall be the directors of each sub-fund and/or SPV, unless the constitution of the VCC provides otherwise.

A VCC can appoint a single CIS manager, custodian or other service provider for all its sub-funds. However, nothing prevents a sub-fund from appointing a separate CIS manager, custodian or other service provider from the VCC or other sub-funds.

A VCC should appoint the same company secretary or in case it holds a GBL, a management company, for all of its incorporated sub-funds/SPVs.

REGISTRATION REQUIREMENTS

Each sub-fund and/or SPV of a VCC needs to be incorporated and, where applicable, duly authorised by the Financial Services Commission (FSC) before it commences business.

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
- 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 agreements, subscription agreement, 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 CV and personal questionnaire, along with due diligence documents, for each person involved in a key position (including key persons)

FINANCIAL REPORTING AND TAXATION

The VCC may, at any time, by giving irrevocable notice in writing simultaneously to the Registrar of Companies and to the Director-General of the Mauritius Revenue Authority (MRA), elect to present separate financial statements in respect of each of its sub-funds and SPVs in accordance with International Financial Reporting Standards (IFRS).

Where a VCC elects to present separate financial statements for each of its sub-funds or SPVs under the VCC Act,

- each sub-fund or SPV shall be deemed to be an entity separate from the VCC and shall be liable for income tax in respect of its own income
- the Mauritius Revenue Authority shall not recover income tax due by a sub-fund or SPV from the assets of:
  - another sub-fund or SPV; or
  - from the assets of the VCC where such assets are directly attributable to another sub-fund or SPV of the company

Where the VCC opts to present consolidated financial statements, the VCC fund will be required to file a single tax return to the MRA and will be liable for income tax on the aggregated income of its sub-funds and SPVs.

Taxation for companies applies.

THE FUND MANAGER

The fund manager can be structured as a: (i) Mauritius CIS manager or (ii) fund manager licensed in an equivalent jurisdiction. However, option (i) is preferred given that it is less likely to compromise the central management and control of the fund given that the fund manager will be a tax resident vehicle in Mauritius.

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).

REPORTING

Funds are required to file yearly audited financial statements, prepared in accordance with IFRS and/or any other acceptable International Accounting Standards with the FSC within six months of its financial year end (except for Closed-end Funds who qualify as “Reporting Issuers” and which are also required to file quarterly unaudited management accounts). In addition to the disclosure requirements under IFRS/relevant accounting standards, these financial statements must include at least the following:

- An annual management report of the fund performance as prepared by the CIS Manager including but not limited to a brief summary of the fundamental investment objectives and strategies of the fund, any significant changes in the risk level of the fund over the year, recent developments/economic changes and market conditions affecting the performance of the fund, details of the investment portfolio and the movements in the period, disclosed by types of securities and type of market
- A statement of assets and liabilities, including the NAV of the fund
- The NAV per share

Unless otherwise provided under the VCC Act or applicable law, the assets of a sub-fund or SPV of a VCC shall not be used to discharge any liability of the VCC or any other sub-fund or SPV, including during the winding up, administration or receivership of the sub-fund, SPV or VCC.

Every asset attributable to a sub-fund or SPV shall only be available to the creditors of the company who are creditors in respect of that sub-fund or SPV.

The VCC must keep separate records for each of its sub-funds and SPVs.

SUPERVISION

The FSC has the right to inspect or to cause inspection of the books and records of the VCC Fund (and its sub-funds and SPVs) and request certificate copies of all due diligence documents in conformity with the Financial Intelligence and Anti-Money Laundering Act 2002.

HOW TRIDENT CAN HELP

We provide a full range of corporate and fund administration services and can assist with the formation of a new VCC structure or re-domiciliation to Mauritius of an existing fund.

- PEOPLE LED
- TECH ENABLED
- GLOBAL COVERAGE
- TAILORED SERVICE
- 1,100 STAFF
- 25 JURISDICTIONS
- 47,000 ENTITIES
- $177BN AUA
- FUNDS
- PRIVATE CLIENTS
- CORPORATE CLIENTS
- MARITIME

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