

# LEGAL ALERT

## THE VARIABLE CAPITAL COMPANIES ACT 2022



Following the proclamation of the Variable Capital Companies Act 2022 (the "Act") in May 2022, the Financial Services Commission ("FSC") has earlier this month, published a [frequently asked questions](#) ("FAQ") document to shed more light on this novel investment structure.

This legal alert follows our April's [Legal Alert: The Variable Capital Companies Act 2022](#) where we address the concept of 'variable capital company' ("VCC") and the regulatory framework governing same.

We highlight below the major clarifications brought by the FSC in its FAQ.

### 1. Activities conducted by a VCC fund

A VCC fund is a company incorporated under the Companies Act 2001, structured to carry out its activities through its special purpose vehicles ("SPV") and sub-funds.

Subject to the FSC's approval, a SPV may operate as an ancillary vehicle parallel to the VCC sub-funds or the VCC fund itself. It may also elect to acquire separate legal personality, distinct from the VCC fund under which it operates.

A VCC sub-fund, on the other hand may operate under the following licences:

- Collective Investment Scheme ("CIS"); or
- Closed-End Fund ("CEF") of any category.

Similarly to a SPV, a VCC sub-fund may also acquire separate legal personality conditional upon the approval of the FSC.

A VCC fund may accommodate different investment vehicles under its structure. Unlike a protected cell company or an umbrella fund, a VCC fund may be constituted of both a CIS sub-fund and a CEF sub-fund at the same time and within the same structure.

## **2. Officers and promoters of a VCC fund**

The promoter of a VCC fund shall be promoter to each VCC sub-fund or SPV arising under the structure. The directors appointed to manage a VCC fund shall, even where each VCC sub-fund or SPV has legal personality, be appointed as directors of such VCC sub-fund or SPV. However, this appointment will be subject to any contrary provision in the constitution regulating the affairs of the VCC fund.

The FSC also sets out in the FAQ that the FSC expects the VCC sub-funds or SPVs have the same company secretary (of management company in the case of a GBL) as the VCC fund.

All sub-funds and SPVs are required to have the same registered office address as the VCC fund.

## **3. Functionaries and service providers of a VCC fund**

A VCC fund has the freedom to appoint a single CIS manager, CIS administrator or custodian to all its sub-funds or a sub-fund may elect to appoint separate functionaries distinct from the VCC fund.

## **4. Global Business Licence (“GBL”)**

A VCC fund can hold a GBL, subject to satisfying the conditions of the Financial Services Act 2007. It has been clarified by the FSC that a single global business licence is required for the VCC fund, irrespective of whether its sub-funds or SPVs opt for separate legal personality.

## **5. AML/CFT Obligations**

A VCC fund is categorised as a financial institution and shall therefore adhere to the Financial Intelligence and Anti-Money Laundering Act 2002 and related anti-money laundering laws and regulations. A VCC fund will have to appoint compliance and money laundering reporting officers and carry out independent audits accordingly.

## **6. Application for registration**

An application to register a VCC fund is made under section 7 of the Act, submitted on the FSC One Platform. The application must be accompanied by the application to create at least one sub-fund. Any subsequent registration of additional sub-funds or SPV shall also be made through the FSC One Platform.

## **7. Costs**

The annual fees payable by the VCC fund will vary based on the number of sub-funds or SPVs under the VCC structure. Should the VCC fund also hold a GBL license, the GBL fees shall be applicable.

## **Conclusion**

The innovative concept of VCC brings about more flexibility than other existing investment structures, for instance an umbrella fund, offering the possibility of operating both a CIS and CEF under the VCC. This flexibility and innovation afforded by the VCC structure seeks to boost the position of Mauritius as an international financial centre on the global financial market. The Act and ensuing FAQs issued by the FSC confirm the position adopted by the Mauritius authorities to diversify the financial product base.

*Authors:*  
**Kamna Sungkur**  
**Ashwin Mudhoo**

**For more information on the VCC Act, please contact:**



**JOHANNE HAGUE**

Managing Director

E: [jhague@prismchambers.com](mailto:jhague@prismchambers.com)

T: +230 403 0901



**ASHWIN MUDHOO**

Head - Transactions

E: [amudhoo@prismchambers.com](mailto:amudhoo@prismchambers.com)

T: +230 468 4408

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