

Mauritius Variable Capital Companies Act 2022

Main features of the VCC Act

Setup & Licensing

- A VCC shall be incorporated as a Company and carry out its business activities through sub-funds and special purpose vehicles (SPVs).
- A company incorporated in Mauritius may be converted into a VCC and a foreign company may be inward re-domiciled and operate as a VCC in Mauritius.
- No company shall operate as a VCC unless that company is authorised by the FSC to operate a VCC Fund.
- No sub-fund or SPV shall be created without the approval of the FSC. A SPV so created shall not operate as a Fund and shall operate as a vehicle ancillary to the VCC or sub-fund of the VCC.
- The Financial Services Commission (“FSC”) may approve the operation of a sub-fund as a CIS or CEF.

Election for separate legal personality

- Where a sub-fund or SPV elects to have a separate legal personality separate from the VCC, the sub-fund or SPV shall be incorporated as a company.
- A sub-fund or SPV so incorporated shall have the same registered office as its VCC and unless otherwise provided by its Constitution, sub-fund or SPV shall have the same directors, CIS Manager, CIS administrator, custodian, MLRO and Compliance Officer, as relevant, as the VCC.

Segregation of assets and liabilities of sub-fund and SPV

- 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 of the VCC, including during winding up, administration or receivership of the sub-fund, SPV or VCC.
- Where a VCC is initiating, or is subject to, any legal proceeding in respect of a sub-fund or SPV, any order or judgment shall be restricted to that sub-fund or SPV.
- A sub-fund or SPV of a VCC may invest into another sub-fund or SPV of the VCC. However, a sub-fund or SPV is not allowed to invest in another sub-fund or SPV of the VCC that has already invested in it.

Shares and Capital

- A VCC may issue shares of varying amounts in its sub-funds and SPVs and pay dividend in respect of shares of a sub-fund or SPV by reference only to the assets and liabilities attributable to that sub-fund or SPV.
- A VCC may redeem or buy back its shares or those of its sub-funds or SPVs in accordance with its Constitution and shareholders shall be entitled to a refund in accordance with the number of shares he owns.
- A VCC may make an application to the Registrar of Companies for an authorisation to reduce its stated capital or that of its sub-funds or SPVs.

Reporting obligations

- A VCC shall keep separate records for the VCC and each of its sub-funds and SPVs.
- Inspection of company records by shareholders are however not available for VCC.
- A VCC may, at any time, by giving irrevocable notice in writing simultaneously to the Registrar of Companies and the Mauritius Revenue Authority, elect to present separate financial statements in respect of each of its sub-funds and SPVs in accordance with IFRS or any other internationally accepted accounting standards.
- Where a sub-fund or SPV has a legal personality separate from its VCC, it shall file its financial statements separately from the VCC.

Tax implications of the VCC Act

The Income Tax Act 1995 ('ITA') has been amended pursuant to enactment of the VCC Act as follows:

- The definition of 'company' has been amended to include 'a variable capital company, its sub fund or special purpose vehicle'.
- This implies that for income tax purposes VCCs, sub funds and SPVs set up under the VCC Act would be treated similar to companies and would have to comply with the provisions as applicable to companies under the ITA.
- The definition of a 'special purpose vehicle' and 'sub fund' under the Income Tax Act has the same meaning as under the VCC Act.
- Where a VCC elects to present separate financial statements for each of its sub-funds or SPVs, each sub-fund or SPV shall be deemed to be an entity separate from the VCC. Accordingly, each sub-fund and SPV would be liable to income tax in respect of its own income and would accordingly be required to file a separate tax return.
- Where the VCC opts to present consolidated financial statements, the umbrella VCC would be required to file a single tax return to the Mauritius Revenue Authority ('MRA') and would be liable to income tax on the aggregated income of its sub funds and SPVs.
- Although the assets and liabilities of the sub funds and SPVs are segregated from the assets and liabilities of the VCC under the VCC Act, the ITA allows the Director-General of the MRA to recover any income tax due by a sub-fund or SPV of a VCC from the VCC or from that sub-fund or SPV.