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VARIABLE CAPITAL COMPANIES ACT 2018 (ACT 44 OF 2018)

VARIABLE CAPITAL COMPANIES REGULATIONS 2020

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
 2. Forms
 3. Particulars prescribed by forms
 4. Directions in forms
 5. Factors for determining whether person is fit and proper person
 6. Minimum period VCC must be in contravention of section 46 of Act
 7. Rectification or updating of register on Registrar's initiative
 8. Requirements of secretary
 9. Review of auditors' remuneration
 10. Statement of affairs of sub-fund or VCC to be submitted to Official Receiver or liquidator
 11. Statement of affairs of sub-fund or VCC to be laid before meeting of creditors
 12. Circumstances to be considered for determining whether umbrella VCC is carrying on business in relation to sub-fund
 13. Circumstances to be considered for determining whether VCC is carrying on business
 14. Safeguards for use of electronic communications
- The Schedule
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In exercise of the powers conferred by section 165 of the Variable Capital Companies Act 2018, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Variable Capital Companies Regulations 2020 and come into operation on 14 January 2020.

Forms

2.—(1) Subject to these Regulations, where a provision of the Act is specified in the first column of the Schedule, the form the number or alphanumeric characters of which are specified in the third column of the Schedule that corresponds to that provision is prescribed as the form to be used for the purposes of that provision.

(2) The forms mentioned in these Regulations are those set out at the Internet website at <http://www.acra.gov.sg>, and a reference in these Regulations to a form identified by a number or alphanumeric characters is a reference to the current version of the form set out on that website bearing the corresponding number or alphanumeric characters.

(3) For the purpose of these Regulations, where the forms set out at that website are not available, forms of the like character, with such variations as the circumstances may require, are to be used.

(4) Any document required to be lodged with the Registrar under any provision of these Regulations must be lodged in the relevant form and in the manner specified on the website mentioned in paragraph (2), or in the manner specified by the Registrar.

(5) All forms must be completed in the English language and in accordance with the directions specified in the form or by the Registrar.

(6) The Registrar may refuse to accept any form if it is not completed or lodged in accordance with this regulation.

(7) Where strict compliance with any form is not possible, the Registrar may allow the necessary modifications to be made to that form, or for the requirements of that form to be complied with in any other manner that the Registrar thinks fit.

Particulars prescribed by forms

3. Where a form prescribed by these Regulations requires completion by the insertion of, or the attachment to the form of a document that contains, particulars or other matters mentioned in the form, those particulars or other matters are prescribed as the particulars or other matters required under the provisions of the Act or these Regulations for the purposes for which the form is prescribed.

Directions in forms

4. A form prescribed by these Regulations must be completed in accordance with the directions specified by the Registrar or in the form prescribed.

Factors for determining whether person is fit and proper person

5.—(1) For the purposes of section 53(3) of the Act, the factors which the Registrar may consider in determining whether a person is a fit and proper person to act as a director of a VCC are —

- (a) whether the person's previous conduct as a director of a VCC, a financial institution or an overseas institution had been satisfactory, including whether the person had previously breached or failed to comply with any law in force in Singapore or elsewhere or requirement imposed under any law in force in Singapore or elsewhere, as such director;
- (b) whether the person had a previous application to be a director of a financial institution rejected by MAS;
- (c) whether MAS had previously directed a financial institution to remove the person as a director of the financial institution under any written law;
- (d) whether the Registrar had previously directed a VCC under section 53(2) of the Act to remove the person as a director of the VCC;

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- (e) whether the person had previously acted in a manner that reflects adversely on the integrity of the person, including whether the person had previously —
- (i) committed professional misconduct or serious negligence, or breached any fiduciary duty or any AML/CFT requirement; or
 - (ii) caused, contributed to or facilitated the commission of professional misconduct or serious negligence, or the breach of any fiduciary duty or any AML/CFT requirement, by another person; and
- (f) whether it would be contrary to the public interest for the person to be a director of a VCC.

(2) In this regulation —

“AML/CFT requirement” has the meaning given by section 152(1) of the MAS Act;

“corresponding authority” means a public authority of a foreign country which exercises a function that corresponds to a regulatory function of MAS under the MAS Act, the Banking Act (Cap. 19), the Business Trusts Act (Cap. 31A), the Finance Companies Act (Cap. 108), the Financial Advisers Act (Cap. 110), the Insurance Act (Cap. 142), the Payment Services Act 2019 (Act 2 of 2019), the Securities and Futures Act (Cap. 289) or the Trust Companies Act (Cap. 336);

[S 59/2020 wef 28/01/2020]

“financial institution” has the meaning given by section 27A(6) of the MAS Act, read with section 27A(7) of that Act;

“foreign country” means any country or territory other than Singapore;

“overseas institution” means an entity or a trust —

- (a) that is formed or incorporated in a foreign country; and
- (b) whose carrying on of an activity in the foreign country is regulated by a corresponding authority of the foreign country.

Minimum period VCC must be in contravention of section 46 of Act

6. For the purposes of paragraph (*n*) of the provision that applies in place of section 254(1) of the Companies Act (Cap. 50) under section 130(8) of the Act, the prescribed period is a continuous period of 3 months.

Rectification or updating of register on Registrar's initiative

7.—(1) For the purposes of section 12D(1)(b)(ii) of the Companies Act (as applied by section 11 of the Act), the prescribed departments, Ministries of the Government, statutory bodies and bodies corporate are —

- (a) the Department of Statistics, Ministry of Trade and Industry;
- (b) MAS;
- (c) the Ministry of Home Affairs;
- (d) the Ministry of Manpower; and
- (e) Singapore Post Limited.

(2) For the purposes of section 12D(2) of the Companies Act (as applied by section 11 of the Act), the prescribed circumstances are —

- (a) there is evidence of a conflict between the particulars of the VCC or a person in a register, and —
 - (i) other information relating to the VCC or person that is stated in the Singapore Standard Industrial Classification which is obtained from the Department of Statistics of the Ministry of Trade and Industry;
 - (ii) other information relating to the person that is registered under the National Registration Act (Cap. 201) which is obtained from the Ministry of Home Affairs;
 - (iii) the foreign identification number of the person obtained from the Ministry of Manpower;

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- (iv) other information relating to the VCC or person (including regulatory status) that is obtained from MAS; or
 - (v) the building name, postal code or street name of an immovable property obtained from Singapore Post Limited; and
- (b) the Registrar has reasonable grounds to believe that the VCC or person whose particulars are to be rectified or updated is unlikely to object to the rectification or updating.

Requirements of secretary

8. For the purposes of section 171(1AA)(b) of the Companies Act (as applied by section 69 of the Act), the prescribed requirement relating to experience, professional and academic requirements and membership of professional associations of a secretary of a VCC is any of the following:

- (a) the person has, for at least 3 years in the period of 5 years immediately preceding his or her appointment as secretary, held the office of secretary of any company or VCC;
- (b) the person is a qualified person under the Legal Profession Act (Cap. 161);
- (c) the person is a public accountant;
- (d) the person is a member of the Institute of Singapore Chartered Accountants;
- (e) the person is a member of the Chartered Secretaries Institute of Singapore;
- (f) the person is a member of the Association of International Accountants (Singapore Branch);
- (g) the person is a member of the Institute of Company Accountants, Singapore.

Review of auditors' remuneration

9. For the purposes of section 206(1A) of the Companies Act (as applied by section 109(1) of the Act), the prescribed circumstances where a VCC must undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised, are that the total amount of the fees paid to the auditor for non-audit services in any financial year of the VCC exceeds 50% of the total amount of the fees paid to the auditor in that financial year.

Statement of affairs of sub-fund or VCC to be submitted to Official Receiver or liquidator

10.—(1) For the purposes of section 270(1) of the Companies Act (as applied by section 33(2) of the Act), a statement of affairs of a sub-fund must be —

- (a) made out in Form VCR10; and
- (b) verified by an affidavit in Form VCR11 that is sworn or affirmed by a person who submits the statement of affairs to the Official Receiver or the liquidator of the sub-fund (as the case requires) under section 270(2) of the Companies Act (as applied by section 33(2) of the Act).

(2) For the purposes of section 270(1) of the Companies Act (as applied by section 130(1) of the Act), a statement of affairs of a VCC must be —

- (a) made out in Form VCR10; and
- (b) verified by an affidavit in Form VCR11 that is sworn or affirmed by a person who submits the statement to the Official Receiver or the liquidator of the VCC (as the case requires) under section 270(2) of the Companies Act (as applied by section 130(1) of the Act).

Statement of affairs of sub-fund or VCC to be laid before meeting of creditors

11.—(1) For the purposes of section 296(4) of the Companies Act (as applied by section 33(2) of the Act), a statement of affairs of a sub-fund must be —

- (a) made out in Form VCR14; and
- (b) verified by an affidavit in Form VCR15 that is sworn or affirmed by one or more directors of the umbrella VCC.

(2) For the purposes of section 296(4) of the Companies Act (as applied by section 130(1) of the Act), a statement of affairs of a VCC must be —

- (a) made out in Form VCR14; and
- (b) verified by an affidavit in Form VCR15 that is sworn or affirmed by one or more directors of the VCC.

Circumstances to be considered for determining whether umbrella VCC is carrying on business in relation to sub-fund

12. For the purposes of section 344(1A) of the Companies Act (as applied by section 33(2) of the Act), the circumstances to which the Registrar may have regard in determining whether there is reasonable ground to believe that an umbrella VCC is not carrying on business in relation to a sub-fund are —

- (a) whether the umbrella VCC has failed to respond to any correspondence sent by the Registrar relating to the sub-fund by registered post, where a response is required; and
- (b) whether credible information has been received by the Registrar indicating that the umbrella VCC is not carrying on business in relation to the sub-fund.

Circumstances to be considered for determining whether VCC is carrying on business

13. For the purposes of section 344(1A) of the Companies Act (as applied by section 130(1) of the Act), the prescribed circumstances to which the Registrar may have regard in determining whether there is reasonable ground to believe that a VCC is not carrying on business are —

- (a) whether the VCC has failed to file its annual return as required under section 97 of the Act;
- (b) whether the VCC has failed to respond to any correspondence sent by the Registrar by registered post, where a response is required;
- (c) whether any mail sent by the Registrar to the registered office of the VCC is returned undelivered;
- (d) whether any credible information has been received by the Registrar indicating that the VCC is not carrying on business;
- (e) whether any of the directors of the VCC resident in Singapore can be contacted or located by the Registrar after the Registrar had taken reasonable efforts to do so; and
- (f) whether the sole director or the last remaining director of the VCC, shown in the register of directors kept under section 173 of the Companies Act (as applied by section 71(1) of the Act), is dead or is disqualified from acting as a director under the Act.

Safeguards for use of electronic communications

14. For the purposes of section 387C of the Companies Act (as applied by section 150 of the Act), a VCC may only give, send or serve any notice or document to a member by publishing the notice or document on the VCC's website, if the VCC gives separate notice to the member (using any means specified in the VCC's constitution) of the publication and the manner in which the notice or document may be accessed.

THE SCHEDULE

<i>First column</i>	<i>Second column</i>	Regulation 2(1) <i>Third column</i>
<i>Provision</i>	<i>Matter</i>	<i>Form number</i>
1. Section 47(2) of the Act	Declaration of consent of a person to act as manager of a VCC and statement that the person is a person mentioned in section 46(2) of the Act	VCR1
2. Section 49(b) of the Act	Statement as to a person's compliance with factors for determining whether the person is a fit and proper person to act as director of a VCC	VCR2
3. Section 56(3) of the Act	Report by the Official Receiver or liquidator of a VCC that a director of the VCC satisfies the conditions in section 56(2)(a) and (b) of the Act	VCR3
4. Section 59(d) of the Act	Certificate of Registrar stating that a person — (a) has been adjudged guilty of 3 or more offences; or (b) has had made against him or her 3 or more orders under section 12 of the Act, or under section 399 of the Companies Act (as applied by section 160 of the Act), in relation to any relevant requirement of the Act	VCR4
5. Section 8A(1)(b) of the Companies Act (as applied by section 155 of the Act)	Authorisation by Minister of a person to require a VCC to produce to the person any books relating to the affairs of the VCC	VCR5

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Provision</i>	<i>Matter</i>	<i>Form number</i>
6. Section 146(1A) of the Companies Act (as applied by section 49 of the Act)	(a) Declaration of consent to act as director of a VCC and statement of non-disqualification from acting as director of a VCC	VCR6
	(b) Declaration of consent to act as director of a VCC with leave of Court or the written permission of the Official Assignee granted under section 148 of the Companies Act (as applied by section 55 of the Act)	
7. Section 171(1B) of the Companies Act (as applied by section 69 of the Act)	Declaration of consent to act as secretary	VCR7
8. Section 173(10) of the Companies Act (as applied by section 71 of the Act)	Certificate of the Registrar that a person was named as director, manager, secretary or auditor of a VCC in the register of directors, register of managers, register of secretaries or register of auditors	VCR8
9. Section 236(3) of the Companies Act (as applied by section 116 of the Act)	Notice by inspector to require officer or agent of VCC, etc., to —	VCR9
	(a) appear for examination; or (b) produce books and documents	
10. Section 270(1) of the Companies Act (as applied by section 33(2) of the Act)	(a) Statement of affairs of sub-fund to be submitted to Official Receiver or liquidator	VCR10
	(b) Affidavit verifying statement of affairs of sub-fund	VCR11

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Provision</i>	<i>Matter</i>	<i>Form number</i>
11. Section 270(1) of the Companies Act (as applied by section 130(1) of the Act)	(a) Statement of affairs of a VCC to be submitted to Official Receiver or liquidator	VCR10
	(b) Affidavit verifying statement of affairs of a VCC	VCR11
12. Section 291(1) of the Companies Act (as applied by section 33(2) of the Act)	Statutory declaration by directors of an umbrella VCC of a sub-fund —	VCR12
	(a) that the sub-fund cannot by reason of its liabilities continue its business; and (b) that meetings of the umbrella VCC and of the creditors of the sub-fund have been summoned	
13. Section 291(1) of the Companies Act (as applied by section 130(1) of the Act)	Statutory declaration by directors of a VCC —	VCR12
	(a) that the VCC cannot by reason of its liabilities continue its business; and (b) that meetings of the VCC and of its creditors have been summoned	
14. Section 295(1) of the Companies Act (as applied by section 33(2) of the Act)	Notice of meeting of creditors of sub-fund	VCR13
15. Section 295(1) of the Companies Act (as applied by section 130(1) of the Act)	Notice of meeting of creditors of a VCC	VCR13

THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Provision</i>	<i>Matter</i>	<i>Form number</i>
16. Section 296(4) of the Companies Act (as applied by section 33(2) of the Act)	(a) Statement of affairs of a sub-fund to be laid before meeting of creditors	VCR14
	(b) Affidavit verifying statement of affairs of sub-fund	VCR15
17. Section 296(4) of the Companies Act (as applied by section 130(1) of the Act)	(a) Statement of affairs of a VCC to be laid before meeting of creditors	VCR14
	(b) Affidavit verifying statement of affairs of a VCC	VCR15
18. Section 322(1) of the Companies Act (as applied by section 33(2) of the Act)	(a) Certificate of receipt for moneys paid to the Official Receiver to be placed to the credit of the Sub-fund Liquidation Account	VCR16
	(b) Particulars of unclaimed dividends or moneys payable by the sub-fund	VCR17
19. Section 322(1) of the Companies Act (as applied by section 130(1) of the Act)	(a) Certificate of receipt for moneys paid to the Official Receiver to be placed to the credit of the VCC Liquidation Account	VCR16
	(b) Particulars of unclaimed dividends or moneys payable by the VCC	VCR17

Made on 13 January 2020.

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