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VARIABLE CAPITAL COMPANIES ACT 2018
(ACT 44 OF 2018)

VARIABLE CAPITAL COMPANIES
(TRANSFER OF REGISTRATION)
REGULATIONS 2020

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

Regulation

1. Citation and commencement
2. Definitions
3. Forms

PART 2

APPLICATION FOR REGISTRATION

4. Prescribed form under section 134(2)(a) of Act
5. Certification of documents under section 134(2)(b)(i) of Act
6. Prescribed documents under section 134(2)(b)(iv) of Act

PART 3

REGISTRATION

7. Notice of transfer of registration
8. Form of application under section 135(7) of Act

PART 4

MINIMUM REQUIREMENTS FOR REGISTRATION

9. Minimum requirements

PART 5

APPLICATION OF ACT TO REGISTERED
FOREIGN CORPORATE ENTITIES

Regulation

10. Modification of section 19 of Act
 11. Modification of section 27 of Act
 12. Modification of section 144 of Companies Act as applied by section 45 of Act
 13. Modification of section 98 of Act
 14. Modification of section 107 of Act
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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:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations are the Variable Capital Companies (Transfer of Registration) Regulations 2020 and come into operation on 14 January 2020.

Definitions

2. In these Regulations —

“date of registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC under Part 12 of the Act, means that date of registration of the foreign corporate entity specified in the notice of transfer of registration issued under section 135(3) of the Act;

“disqualification order” means an order of Court made under section 56, 57 or 58 of the Act that disqualifies a person specified in the order from being a director of a VCC, or in any way (whether directly or indirectly) being concerned in,

or taking part in, the management of a VCC during any period specified in the order;

“foreign corporate entity” means a body corporate that is incorporated outside Singapore, and that comprises one or more collective investment schemes;

“place of incorporation” means, in the case of a foreign corporate entity that had transferred its place of domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

“registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC under Part 12 of the Act, means registration by the Registrar under section 135(1) of the Act, and “register” and “registered” are to be construed accordingly.

Forms

3.—(1) The Forms in these Regulations are those set out on the Internet website of ACRA 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.

(2) For the purpose of these Regulations, where the forms set out at that website are not applicable, forms of the like character, with any variation that the circumstances may require, are to be used.

(3) 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 (1), or in the manner specified by the Registrar.

PART 2

APPLICATION FOR REGISTRATION

Prescribed form under section 134(2)(a) of Act

4. For the purposes of section 134(2)(a) of the Act, an application by a foreign corporate entity to be registered as a VCC under the Act must be in Form TOR1.

Certification of documents under section 134(2)(b)(i) of Act

5.—(1) For the purposes of section 134(2)(b)(i) of the Act, a copy of a charter, statute, constitution or memorandum or articles or other instrument constituting or defining a foreign corporate entity's constitution (if any), in its place of incorporation, is certified if, within the period of 4 months immediately preceding the day on which the copy is lodged with the Registrar, the copy was certified to be a true copy —

- (a) by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation;
- (b) by a notary public;
- (c) by a director or secretary of the foreign corporate entity by statutory declaration; or
- (d) by the registered qualified individual who lodges the information and documents mentioned in section 134(2)(b) of the Act for the purpose of registering the foreign corporate entity as a VCC under the Act.

(2) The Registrar may, in a particular case, extend the period mentioned in paragraph (1).

Prescribed documents under section 134(2)(b)(iv) of Act

6.—(1) For the purposes of section 134(2)(b)(iv) of the Act, the prescribed documents are —

- (a) a certified copy of —
 - (i) the certificate of incorporation of the foreign corporate entity in its place of incorporation; or

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- (ii) a document of similar effect to the certificate of incorporation of the foreign corporate entity in its place of incorporation;
 - (b) where the foreign corporate entity is an entity of which its charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any) provides that it consists of, or is to consist of, 2 or more collective investment schemes, or words to that effect (called in these Regulations a foreign umbrella fund) —
 - (i) a certified copy of —
 - (A) the document of registration of each collective investment scheme of the foreign corporate entity in its place of incorporation; or
 - (B) a document of similar effect to the document of registration of the collective investment scheme of the foreign corporate entity in its place of incorporation; and
 - (ii) the name of each collective investment scheme;
 - (c) a declaration in writing signed by all the directors of the foreign corporate entity that they have formed the opinion that the foreign corporate entity meets the minimum requirements mentioned in regulation 9(1)(a) and (b);
 - (d) a declaration by each proposed director that he or she consents to act as a director upon registration of the foreign corporate entity as a VCC;
 - (e) a statement by each proposed director that he or she is not disqualified from acting as a director of a VCC under the Act or subject to a disqualification order;
 - (f) a statement by each proposed director that he or she is not debarred under section 155B of the Companies Act (Cap. 50) (as applied by section 59 of the Act) from acting as a director of a VCC;

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- (g) a statement by each proposed director and a statement by the foreign corporate entity as to each proposed director's compliance with the factors prescribed for the purposes of section 53(3) of the Act under the Variable Capital Companies Regulations 2020 (G.N. No. S 20/2020);
- (h) any one of the following documents, if applicable:
- (i) a declaration by each proposed director that he or she has agreed, upon registration of the foreign corporate entity as a VCC, to take a number of shares of the VCC that is not less than his or her qualification, if any;
 - (ii) an undertaking by each proposed director that he or she will, upon registration of the foreign corporate entity as a VCC, take from the VCC and pay for his or her qualification shares, if any;
- (i) a declaration by each proposed secretary —
- (i) that he or she consents, upon registration of the foreign corporate entity as a VCC, to act as a secretary;
 - (ii) that he or she is not debarred under section 155B of the Companies Act (as applied by section 59 of the Act) from acting as a secretary under the Act; and
 - (iii) that he or she satisfies section 171(1AA)(b) of the Companies Act (as applied by section 69 of the Act);
- (j) a declaration by the proposed manager —
- (i) that he or she consents, upon registration of the foreign corporate entity as a VCC, to act as a manager; and
 - (ii) that he or she is a person mentioned in section 46(2) of the Act; and
- (k) where an advocate and solicitor or a person registered as a registered filing agent under section 28F of the Accounting and Corporate Regulatory Authority Act (Cap. 2A) is engaged to submit an application under section 134(1) of

the Act, a confirmation by the advocate and solicitor or registered filing agent (as the case may be) that —

- (i) each proposed director —
 - (A) has consented to act as a director upon registration of the foreign corporate entity as a VCC;
 - (B) is not disqualified from acting as a director of a VCC under the Act or subject to a disqualification order; and
 - (C) complies with the factors prescribed for the purposes of section 53(3) of the Act under the Variable Capital Companies Regulations 2020;
- (ii) each proposed secretary has consented to act as a secretary upon registration of the foreign corporate entity as a VCC;
- (iii) the proposed manager —
 - (A) has consented to act as a manager upon registration of the foreign corporate entity as a VCC; and
 - (B) is a person mentioned in section 46(2) of the Act; and
- (iv) the foreign corporate entity is satisfied that each proposed director complies with the factors prescribed for the purposes of section 53(3) of the Act under the Variable Capital Companies Regulations 2020.

(2) For the purposes of paragraph (1)(a) and (b), any of the following documents is a certified copy if, within the period of 4 months immediately preceding the day on which the copy is lodged with the Registrar, the copy was certified to be a true copy by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation:

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- (a) a copy of the certificate of incorporation of the foreign corporate entity in its place of incorporation;
 - (b) where the foreign corporate entity is a foreign umbrella fund, a copy of the document of registration of each collective investment scheme of the foreign corporate entity in the foreign corporate entity's place of incorporation;
 - (c) a copy of a document of similar effect to the certificate of incorporation of the foreign corporate entity in its place of incorporation, or the document of registration of each collective investment scheme of the foreign corporate entity in the foreign corporate entity's place of incorporation.
- (3) Where the certificate or document mentioned in paragraph (1)(a) or (b) is an electronic document, the Registrar may accept a print-out of that certificate or document from an electronic database of an office corresponding to that of the Registry of VCCs in the foreign corporate entity's place of incorporation that has, within the period of 4 months immediately preceding the day on which it is lodged with the Registrar, been certified to be a true copy of the certificate or document by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation.
- (4) The Registrar may extend the period mentioned in paragraph (2) or (3) in any particular case.
- (5) A declaration, a statement or an undertaking mentioned in paragraph (1)(d), (e), (f), (g) and (h) must be lodged with the Registrar —
- (a) by the proposed director who made the declaration, statement or undertaking personally; or
 - (b) through a registered qualified individual authorised by that proposed director.
- (6) A declaration mentioned in paragraph (1)(i) must be lodged with the Registrar —

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- (a) by the proposed secretary who made the declaration personally; or
 - (b) through a registered qualified individual authorised by that proposed secretary.

(7) A declaration mentioned in paragraph (1)(j) must be lodged with the Registrar —

- (a) by the proposed manager who made the declaration personally; or
- (b) through a registered qualified individual authorised by that proposed manager.

(8) In this regulation —

“director”, in relation to a foreign corporate entity, includes any person occupying the position of director of the foreign corporate entity by whatever name called, and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of the foreign corporate entity are accustomed to act and an alternate or substitute director;

“electronic document” means a document that is filed, served, delivered or otherwise conveyed by electronic transmission;

“proposed director” means a person who is to be a director of the VCC upon registration of a foreign corporate entity that is applying for registration, whether or not that person is an existing director of the foreign corporate entity;

“proposed manager” means a person who is to be the manager of the VCC upon registration of a foreign corporate entity that is applying for registration, whether or not that person is an existing manager of the foreign corporate entity;

“proposed secretary” means a person who is to be a secretary of the VCC upon registration of a foreign corporate entity that is applying for registration, whether or not that person is an existing secretary of the foreign corporate entity;

“secretary” includes an assistant or deputy secretary.

PART 3
REGISTRATION

Notice of transfer of registration

7. For the purposes of section 135(3) of the Act, the notice of transfer of registration must be in Form TOR2.

Form of application under section 135(7) of Act

8. For the purposes of section 135(7) of the Act, an application for an extension of the 60-day period mentioned in section 135(6) of the Act must be in Form TOR3.

PART 4
MINIMUM REQUIREMENTS FOR REGISTRATION

Minimum requirements

9.—(1) For the purposes of section 136(1) of the Act, the minimum requirements prescribed for registration are —

- (a) as at the date of the application by the foreign corporate entity for registration under section 134(1) of the Act (called in this regulation the application date) —
 - (i) there is no ground on which the foreign corporate entity may be found to be unable to pay its debts;
 - (ii) in the case of a foreign corporate entity that is a foreign umbrella fund, there is no ground on which the foreign corporate entity may be found to be unable to pay the debts of any of its collective investment schemes;
 - (iii) the value of the foreign corporate entity's assets is not less than the value of its liabilities (including contingent liabilities); and
 - (iv) in the case of a foreign corporate entity that is a foreign umbrella fund, the value of each of its collective investment schemes' assets is not less than

the value of that collective investment scheme's liabilities (including contingent liabilities);

- (b) the foreign corporate entity —
- (i) if it is intended to commence winding up of the foreign corporate entity within 12 months immediately after the application date — is able to pay its debts in full within the period of 12 months after the date of commencement of the winding up;
 - (ii) if it is not intended to commence winding up of the foreign corporate entity within 12 months immediately after the application date — is able to pay its debts as they fall due during the period of 12 months immediately after the application date;
 - (iii) if the foreign corporate entity is a foreign umbrella fund and it is intended to commence winding up of any of its collective investment schemes within 12 months immediately after the application date — the foreign corporate entity is able to pay the debts of that collective investment scheme in full within the period of 12 months after the date of commencement of the winding up; or
 - (iv) if the foreign corporate entity is a foreign umbrella fund and it is not intended to commence winding up of any of its collective investment schemes within 12 months immediately after the application date — the foreign corporate entity is able to pay the debts of every collective investment scheme as they fall due during the period of 12 months immediately after the application date;
- (c) the foreign corporate entity is authorised to transfer its incorporation under the law of its place of incorporation;
- (d) the foreign corporate entity has complied with the requirements of the law of its place of incorporation in relation to the transfer of its incorporation;

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- (e) the application by the foreign corporate entity for registration under section 134(1) of the Act —
- (i) is not intended to defraud existing creditors of the foreign corporate entity; and
 - (ii) is made in good faith;
- (f) no receiver, or receiver and manager, is in possession of, or has control over, any property of the foreign corporate entity or (in the case of a foreign corporate entity that is a foreign umbrella fund) of any of its collective investment schemes, and no proceeding to appoint a receiver, or receiver and manager, in respect of any property of the foreign corporate entity or of any of its collective investment schemes (if applicable) is ongoing or pending;
- (g) neither the foreign corporate entity nor (in the case of a foreign corporate entity that is a foreign umbrella fund) any of its collective investment schemes is under judicial management, and no proceeding to place the foreign corporate entity or any of its collective investment schemes (if applicable) under judicial management is ongoing or pending;
- (h) no compromise or arrangement made between the foreign corporate entity and any person, or (in the case of a foreign corporate entity that is a foreign umbrella fund) between the foreign corporate entity in relation to any of its collective investment schemes and any person is being administered, and no proceeding to place the foreign corporate entity or any of its collective investment schemes (if applicable) under any compromise or arrangement is ongoing or pending;
- (i) neither the foreign corporate entity nor (in the case of a foreign corporate entity that is a foreign umbrella fund) any of its collective investment schemes is in liquidation or being wound up, and no proceeding for liquidation or winding up against the foreign corporate entity or any of its collective investment schemes (if applicable) is ongoing or pending; and

(j) no other judicial or administrative proceeding under a law relating to insolvency or adjustment of debt, in which the property or affairs of the foreign corporate entity or (in the case of a foreign corporate entity that is a foreign umbrella fund) any of its collective investment schemes is or would be subject to control or supervision by a judicial or administrative authority for the purpose of reorganisation or liquidation, is ongoing or pending.

(2) For the purposes of paragraph (1)(a)(i) and (b)(i) and (ii), all liabilities of the foreign corporate entity (including contingent liabilities) must be taken into account.

(3) For the purposes of paragraph (1)(a)(ii) and (b)(iii) and (iv), in assessing the debts of each collective investment scheme of the foreign corporate entity, all liabilities of that collective investment scheme (including contingent liabilities) must be taken into account.

(4) For the purposes of paragraph (1)(a)(iii), the following must be taken into account:

- (a) the most recent financial statements of the foreign corporate entity;
- (b) any other circumstance that the directors of the foreign corporate entity know or ought to know affect, or may affect, the value of the assets of the foreign corporate entity and the value of its liabilities (including contingent liabilities).

(5) For the purposes of paragraph (1)(a)(iv), the following must be taken into account:

- (a) the accounts for each collective investment scheme of the foreign corporate entity that are contained in the most recent financial statements of the foreign corporate entity;
- (b) any other circumstance that the directors of the foreign corporate entity know or ought to know affect, or may affect, the value of the assets of each collective investment scheme and the value of each of its liabilities (including contingent liabilities).

(6) For the purposes of paragraph (1)(a)(iii) and (iv), any valuation of the assets or estimate of the liabilities of the foreign corporate entity and of any of its collective investment schemes (respectively) that are reasonable in the circumstances may be relied on.

(7) In determining, for the purposes of paragraph (4)(b), the value of a contingent liability, the following may be taken into account:

- (a) the likelihood of the contingency occurring;
- (b) any claim the foreign corporate entity or (in the case of a foreign corporate entity that is a foreign umbrella fund) the foreign corporate entity on account of its collective investment schemes, is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(8) In this regulation —

- (a) a reference to a debt or liability of a collective investment scheme, in relation to a foreign corporate entity that is a foreign umbrella fund, is to a debt or liability that is incurred by the foreign corporate entity for the purpose of that collective investment scheme; and
- (b) a reference to any asset or property of a collective investment scheme, in relation to a foreign corporate entity that is a foreign umbrella fund, is to any asset or property that is held by the foreign corporate entity on account of that collective investment scheme.

PART 5

APPLICATION OF ACT TO REGISTERED FOREIGN CORPORATE ENTITIES

Modification of section 19 of Act

10. In the application of section 19 of the Act to a foreign corporate entity registered under Part 12 of the Act —

- (a) subsection (4)(c) and (d) of that section is omitted; and

- (b) the words “, duly signed by the subscriber or each subscriber and stating the number of shares that the subscriber has agreed to take,” in subsection (7) of that section are omitted.

Modification of section 27 of Act

11. In the application of section 27 of the Act to a foreign corporate entity registered as a VCC under Part 12 of the Act that is a foreign umbrella fund as at the date of its application for registration under section 134(1) of the Act, the following provision applies in place of subsection (1) of section 27:

“Where a foreign corporate entity that is a foreign umbrella fund as at the date of its application under section 134(1) of the Act becomes registered as a VCC, it must immediately apply to the Registrar for the registration of each of its collective investment schemes as a sub-fund.”.

Modification of section 144 of Companies Act as applied by section 45 of Act

12. Section 144 of the Companies Act as applied by section 45 of the Act does not apply to a foreign corporate entity registered as a VCC under Part 12 of the Act for a period of 3 months immediately after the date of registration of the foreign corporate entity.

Modification of section 98 of Act

13.—(1) In the application of section 98 of the Act to a foreign corporate entity registered as a VCC under Part 12 of the Act —

- (a) subsection (1)(a) of that section is omitted;
- (b) the first financial year of the foreign corporate entity as a VCC registered under the Act —
- (i) where one or more financial years of the foreign corporate entity had passed prior to its registration under Part 12 of the Act — starts immediately after the last day of the foreign corporate entity’s previous financial year specified in its application under section 134(1) of the Act and (subject to

section 98(3) of the Act as modified in sub-paragraph (c)) ends at the end of the foreign corporate entity's intended first financial year specified in the application; or

- (ii) where no financial year of the foreign corporate entity had passed before its registration under Part 12 of the Act — starts immediately on the date of incorporation of the foreign corporate entity at its place of incorporation and (subject to section 98(3) of the Act as modified in sub-paragraph (c)) ends at the end of the foreign corporate entity's intended first financial year specified in the application; and
- (c) the reference in subsection (3) of that section to the previous or current financial year of a VCC is to the previous or current financial year of the foreign corporate entity, but only where the financial year ends on or after the date of registration of the foreign corporate entity as a VCC under Part 12 of the Act.

(2) In this regulation, “financial year”, in relation to a foreign corporate entity before its registration under Part 12 of the Act, means the period (whether that period is a year or not) in respect of which the financial statements of the foreign corporate entity are required to be prepared in accordance with the law of the place of incorporation of the foreign corporate entity.

Modification of section 107 of Act

14. In the application of section 205 of the Companies Act (as applied by section 107 of the Act) to a foreign corporate entity registered as a VCC under Part 12 of the Act, the reference in section 205(1) of the Companies Act to 3 months after the incorporation of the company is to 3 months after the date of registration of the foreign corporate entity as a VCC.

Made on 13 January 2020.

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