The Mauritian Variable Capital Company

The VCC joins the suite of corporate vehicles in the Mauritius IFC

The variable capital company ("VCC") has been added to the array of attractive commercial entities available in the Mauritius International Financial Centre by the coming into force of the Variable Capital Companies Act ("VCC Act") on 16 May 2022.

What is a VCC

The VCC is a new type of investment fund entity which complements the other fund entities in Mauritius. The VCC allows for the setting up of sub-funds and special purpose vehicles within the same entity, facilitating the segregation and ring-fencing of assets and liabilities of each of the sub-entities.

The Mauritius Financial Services Commission ("FSC") can approve the operation of a sub-fund as a collective investment scheme or a closed-end fund. The fund manager of a VCC can thus, under one single entity, manage a collective investment scheme sub-fund and a closed-end sub-fund. There is no restriction on the number of sub-entities that can be created under a VCC structure, although the creation of a sub-entity requires the prior approval of the FSC.

A VCC is governed by the VCC Act but is incorporated under the provisions of the Companies Act and is required to comply with the all the provisions of the Companies Act that are not expressly excluded under the VCC Act.

A VCC is now added to the definition of ‘financial institution’ under the Financial Intelligence and Anti-Money Laundering Act and a VCC has to fully comply with the AML/CFT laws of Mauritius.

Features of a VCC

Set up: A company already incorporated in Mauritius may be converted into a VCC and a company incorporated in a foreign jurisdiction may be redomiciled to Mauritius as a VCC.

Sub-entities: There is no limit to the number of sub-entities that can be created by a VCC under the VCC Act. However, the creation of any sub-entity requires the prior approval of the FSC. An SPV established by a VCC is not permitted to operate as a fund, but instead is required to operate as an ancillary vehicle to the VCC or a sub-fund of the VCC.

Shares: A VCC may issues shares of varying amounts. The variable capital basis allows for issuance, redemption, or repurchase of shares at NAV except for shares issued during initial offers and shares of closed-end funds listed on a securities exchange. Investors are entitled to refund in accordance with the number of shares they own in the sub-funds or special purpose vehicles, where shares are redeemed or brought back. Cross sub-fund investments and cross special purpose vehicle investments are permitted within the same VCC.

Dividends: The solvency test requirements that have to be satisfied under the Companies Act 2001 do not apply to a VCC. The board of directors of the VCC shall determine its solvency prior to distribution of dividends and the VCC may pay dividends out of its capital.

Directors: Unless otherwise stipulated, the directors of the variable capital company shall be the directors of each of its sub-funds or special purpose vehicles. The VCC can appoint different directors for each sub-entity, if its constitution permits, providing for a flexible management structure.

Disclosure: A VCC is required to inform any person with whom it transacts that it is a VCC, together with other disclosures required to be made under the VCC Act.

Reduction of share capital: A VCC requires the authorisation of the Registrar of Companies to be able to reduce its share capital or that of any of its sub-entities.

Legal proceedings: Any order or judgement in respect of a sub-entity will be restricted to that sub-entity only and will not apply to any other sub-entity of the VCC and/or the VCC itself.

Record keeping: A VCC is required to maintain additional records in respect of each of its sub-entities in accordance with the VCC Act. The records must sufficiently explain the transactions and financial position of the VCC and its sub-entities.

Segregation of assets: Setting up a VCC provides the benefit of segregation of assets and liabilities of each of its sub-entities: The VCC Act provides that the assets of a particular sub-entity cannot be used to discharge the liabilities of another sub-entity. Every asset attributable to a sub-entity can only be made available to the creditors of the VCC who are creditors in respect of that sub-entity, and as such will be protected from other creditors of the VCC, irrespective of whether a creditor is a statutory, regulatory, or government body.

Activities to be conducted by a VCC: There is no restriction on the types of activities that can be conducted by a VCC, as compared to, for example, a PCC, which can only conduct such activities as are provided for under the Protected Cell Companies Act 2000 of Mauritius.

Accounting: A wider choice of accounting standards is allowed, including IFRS or any other internationally accepted accounting standards, and the VCC may elect to present separate financial statements in respect of each of its sub-funds and special purpose vehicles.

Tax: The Income Tax Act 1995 ("IT Act") contains changes to bring the new VCC within the compass of the IT Act, with the definition of 'company' amended to include 'a variable capital company, its sub-fund, or special purpose vehicle'.

Where a VCC makes an election to present separate financial statements for each of its sub-funds or SPVs, each sub-fund or SPV will be required to file a separate income tax return and the VCC will be liable to income tax in respect of income derived by each sub-fund or SPV. Income tax due by a sub-fund or related SPVs of a VCC can be recovered from that sub-fund and the related SPVs.

Fees: Regulations in respect of fees to be paid under the VCC Act are yet to be issued by the FSC.

Guidelines: Explanatory guidelines in respect of the operation and enforcement of the VCC Act are expected to be issued by the FSC.

Economies of scale: The VCC operates like other fund structures which provide for a single fund or an umbrella fund with multiple sub-funds but offers the opportunity for managers to maximise cost efficiencies, streamlining management and operations in one entity comprising separate units, so benefiting from economies of scales.

Where required, a sub-fund may appoint its own CIS Manager, CIS administrator, custodian, or other service provider or a VCC can appoint one CIS Manager, CIS administrator, custodian, or other service provider for all its sub-funds.

A VCC can shares its board of directors with the boards of its sub-funds.

A single money laundering reporting officer or compliance officer can be appointed for all sub-funds.

How a VCC can be used

The VCC provides investment managers with a flexible and efficient vehicle that streamlines management and operations in a single entity. The VCC has proved to be very successful in Singapore, with approximately 160 VCCs having been established in the first year of the introduction of the VCC framework in Singapore. The VCC is typically used for both open-ended and closed-ended fund structures.

In Mauritius, a VCC provides considerable flexibility for different types of investment scenarios, including private equity structures, open or close-ended investment funds, hedge funds, and venture capital funds.

The VCC can also be used for a multi-family office, in place of the currently used structure of the protected cell company ("PCC"), as the VCC provides greater flexibility: The sub-funds may have a distinct legal personality, and the types of services being provided by a VCC are not restricted by law.

The VCC and the PCC compared

The PCC provides for the segregation of the assets and liabilities of its 'cells' to achieve greater flexibility in terms of the operations of each cell. By comparison, the VCC achieves this flexibility through creating sub-funds of the VCC that achieve segregation of assets and liabilities by having a separate and distinct legal identity from that of the VCC.

Conclusion

Mauritius is one of only two jurisdictions that now offer the VCC. The VCC's ability to incorporate a collective investment scheme and a closed-end fund within a single structure, its flexibility in respect of dividend distribution, taxation, variation of capital, and management, and its ability to generate cost efficiencies, make it attractive to both the traditional and the alternative investment fund market space, and to both private wealth managers and institutional investors. The VCC is a game changer which will increase Mauritius' competitiveness as a fund administration jurisdiction and cement its reputation as a forward thinking international financial centre.

How International Proximity can assist

If you are looking to set up a VCC, International Proximity can assist in:

- Arranging for the VCC to be registered and licensed
- Reviewing the offering documentation
- Drafting the governance framework between the fund manager and VCC

Once the VCC is set up, we will be able to administer the VCC on an ongoing basis.

Mauritius International Financial Centre: Accessing the Mauritius advantage

Suzanne Gujadhur Bell Tel: +230 401 2302
SGujadhur@internationalproximity.com

Ashish Jagarnath Tel: +230 401 2310
AJagarnath@internationalproximity.com

Business Development Tel: +230 401 2300
Businessdevelopment@internationalproximity.com

Disclaimer