

**Report of the Expert Committee
for drafting a Legal Framework
for allowing Variable Capital
Company Structure in the
IFSCs**



12 October, 2022

CONTENTS

PREFACE	4
BACKGROUND	6
1. <i>Introduction.....</i>	<i>6</i>
2. <i>Working Process of the Committee.....</i>	<i>7</i>
3. <i>Structure of the Report.....</i>	<i>8</i>
PART A: ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE.....	9
1. <i>Principles driving the design of the Proposed Legal Framework.....</i>	<i>9</i>
2. <i>Inclusion of the Legal Framework as part of the IFSCA Act</i>	<i>11</i>
3. <i>Administration.....</i>	<i>12</i>
4. <i>Types of Securities</i>	<i>12</i>
5. <i>Insolvency and Closure of a VCC.....</i>	<i>14</i>
6. <i>Audit and Accounting.....</i>	<i>15</i>
7. <i>Other Recommendations.....</i>	<i>15</i>
PART B: DRAFT LEGISLATION AND SKELETAL STRUCTURE FOR REGULATIONS	27
ANNEXURE I: OFFICE ORDERS CONSTITUTING THE COMMITTEE.....	41
ANNEXURE II: SUGGESTED CHANGES TO THE INCOME-TAX ACT, 1961 TO ACCOMODATE VARIABLE CAPITAL COMPANIES AND THEIR SUB-FUNDS. 45	
ANNEXURE III: TABLE COMPARING PROVISIONS FROM INTERNATIONAL JURISDICTIONS (With an attachment of 84 pages)	49

**The Expert Committee for drafting a Legal framework for allowing
Variable Capital Company Structure in the IFSCs**

12 October, 2022

To

The Chairperson

The International Financial Services Centres Authority

Second & Third Floor, PRAGYA Tower

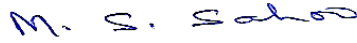
GIFT SEZ, GIFY City, Gandhinagar-382355,

Gujarat, India

Dear Chairperson,

We submit herewith the Report of the Expert Committee for drafting a legal framework for allowing Variable Capital Company structure in the IFSCs.

Yours sincerely,



M. S. Sahoo, Chairperson



Ajay Bahl, Member



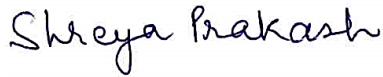
Somasekhar Sundaresan, Member



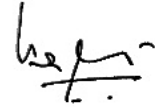
Vikas Mehta, Member



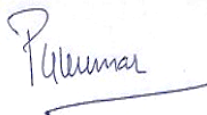
J. Ranganayakulu, Member



Shreya Prakash, Member



K. V. R. Murthy, Member



Pawan Kumar, Member



Ankit Bhansali, Member Secretary

PREFACE

Financial markets, domestic or international, are all about channelisation of funds from suppliers of funds to users of funds. A competitive market channelises funds to efficient uses, working towards the best returns for suppliers of funds and optimum economic wellbeing. Financial markets enable direct channelisation of funds from suppliers to users through a variety of processes like public issue of securities, which puts them face to face to work out the terms of supply and use of funds for competing uses. Alternatively, a variety of fund management structures step into the shoes of the suppliers of funds. With a variety of value-added services, they professionalise fund management and channelisation of funds, and thereby improve returns for both suppliers and users of funds.

There is intense competition in the market for every financial product or service. Such competition promotes innovative transactions and structures to satisfy the needs of participants that minimise costs and maximise returns. The space of fund management has seen several innovations in recent years. A variety of fund structures have emerged. These include collective investment schemes, mutual funds, alternate investments funds, venture capital funds, portfolio managers, Real Estate Investment Trusts and Infrastructure Investment Trusts with substantial funds under their belt. Mutual funds, for example, are managing net assets of about ₹40 lakh crore in the domestic securities market. With growing sophistication of markets, the need for professional fund management has been increasing, which is deepening the market for fund management services in the overall financial markets.

International financial centres (IFCs) compete among themselves in terms of providing an environment that would support a comprehensive suite of cost effective, efficient financial services. Availability of a thriving market for fund management services, which provides several options, is a key source of competitive edge for an IFC. In the recent past, IFCs are witnessing emergence of variable capital company (VCC) structure in the space of fund activity. A few jurisdictions have come up with supporting legal frameworks and even offering incentives to promote VCCs. This structure is emerging as a preferred option as it combines the benefits of company and trust structures of fund activity, while dispensing with some of their key limitations.

The International Financial Services Centres Authority (IFSCA) recognised the need for VCCs in International Financial Centres (IFSCs) in India. It set up an Expert Committee under the chairpersonship of Dr. K. P. Krishnan (Krishnan Committee) in September 2020 to examine the feasibility of the VCC in India. The Krishnan Committee believed that the introduction of the VCC regime would be a step in the right direction to develop the IFSCs in India as the preferred global hub for international financial services and bring back offshore financial services business. In May 2021, it recommended a broad framework for the implementation of the VCC structure in the IFSCs, and suggested a special law for this purpose.

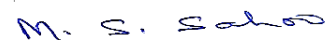
On consideration of the report of the Krishnan Committee and in consultation with stakeholders, the IFSCA set up this Expert Committee to draft a legal framework for allowing the VCC structure to operate in IFSCs in India. This Committee, after detailed deliberation, has proposed a legal framework within the International Financial Services Centres Authority Act, 2019. The framework provides for one implementing agency, namely, IFSCA, which registers VCCs as body corporates, as well as authorises and supervises their operations.

On behalf of the Expert Committee, I express gratitude to Mr. Injeti Srinivas, Chairperson, IFSCA for the recognising the need for VCCs so early in the life of IFSCA and also IFSCs in India, and for the opportunity to work on this interesting and innovative area. We are also grateful to the Krishnan Committee which laid down the broad framework for VCCs, which became the starting point for this Committee's deliberations. We sincerely thank Dr. K. P. Krishnan who chaired the earlier Expert Committee and Mr. Tushar Sachtey, a member of the said Committee for attending the first meeting of this Committee to brief us on the Krishnan Committee's thought process.

At different stages and in different forms, we received support from Ms. Priyamvada Shenoy, Partner, AZB & Partners; Mr. Ayush Tandon, Partner, AZB & Partners; Mr. Shivang Sargoch, Partner, AZB & Partners; Mr. Abhinav Ashwin, Partner, AZB & Partners; Mr. Suresh Swamy, Partner at Price Waterhouse & Co LLP; Dr. Risham Garg, Associate Professor, National Law University Delhi; Mr. Denning K. Babu, Deputy General Manager, IFSCA; Mr. Mihir Shukla, Assistant Manager, IFSCA; and Mr. Kiran Kumar GG, Assistant Manager, IFSCA. We deeply appreciate their support.

Ms. Shreya Prakash, Mr. J. Ranganayakulu and Mr. Ajay Bahl, members of this Committee deserve special appreciation for attempting and refining the proposed legal framework several times. I sincerely thank Mr. Vikas Mehta, Mr. Ajay Bahl and Ms. Shreya Prakash, members of this Committee for examining legal frameworks in several international jurisdictions to draw lessons for our purpose. Thanks are also due to Mr. Pawan Kumar and Mr. Ajay Bahl, members of the Committee for working out minimal amendments to the Income-Tax Act, 1961 to accommodate VCCs in IFSCs.

I am deeply grateful to each member of the Expert Committee for high quality debate in meetings and reviewing several drafts of the proposed legal framework. Their openness to consider out-of-box ideas and sincerity to arrive at a consensus are remarkable. I thank Mr. Ankit Bhansali, Deputy General Manager, IFSCA and member Secretary of this Committee for his contribution at every stage of the work from logistics to research to deliberations to agenda and minutes.



(Dr. M. S. Sahoo)
Chairperson

Expert Committee for drafting a legal framework for allowing Variable Capital Company structure in the IFSCs

BACKGROUND

1. Introduction

1.1. The International Financial Services Centres Authority Act, 2019 (**IFSCA Act**) provides for the establishment of a unified statutory regulator, namely, the International Financial Services Centres Authority (**IFSCA**), for the development and regulation of financial products, financial services and financial institutions in the International Financial Services Centres (**IFSCs**) in India. Pursuant to the IFSCA Act, IFSCA was established in April 2020.

1.2. IFSCA has regulatory jurisdiction over the IFSCs, with the GIFT City in Gujarat being the first and the only IFSC in India as on date. The IFSC reinforces India's strategic position as a global hub for financial products and services. Apart from providing a global financial platform, it provides easy access to the Indian economy, which is amongst the largest and fastest growing economies in the world. It has a thriving market in the areas of banking, insurance and reinsurance, securities and investments, and asset management. It is poised to emerge as a leading fund-raising destination for both Indian and foreign issuers and as a global hub for fintech start-ups. The latest Global Financial Centres Index, London¹ places the IFSC at the 3rd position amongst 15 centres globally, which are likely to gain greater significance in the next 24 months.

1.3. *"The global International financial services market in the 21st century is one in which competition is driven by rapid innovation in financial products, services, instruments, structures, and arrangements to accommodate and manage myriad requirements, risks, and a ceaseless quest for cost reduction. One of the hallmarks of a first-class financial system is its ability to steadily create innovative new financial contracts and instruments to satisfy different risk appetites and needs."*² IFSCA has been promoting innovative structures to rapidly catapult the IFSC into the next orbit. Among others, it has been contemplating to promote variable capital company (**VCC**) in the fund activity space in the IFSC.

1.4. A VCC is a body corporate that, as its name suggests, has a variable capital base. It issues and redeems shares on an on-going basis, somewhat similar to issue and redemption of units by mutual funds, which are typically trusts in Indian securities market. With every transaction - issue or redemption, the capital base of the VCC changes. Further, a VCC may house a single pool or multiple pools of capital along with corresponding investments, each pool constituting a separate island with separate

¹ The Global Financial Centres Index 32, September 2022 available at https://www.longfinance.net/media/documents/GFCI_32_Report_2022.09.22_v1.0_.pdf (accessed on 30th September 2022)

² Ministry of Finance, *Report of the High-Powered Expert Committee on Making Mumbai an International Financial Centre* (2007) available at https://prsindia.org/files/bills_acts/bills_parliament/2007/bill128_20070621128_Report_of_the_High_Powered_Expert_Committee_Percy_Mistry.pdf (accessed on 30th September 2022)

assets and liabilities. Accordingly, a VCC may either be a stand-alone entity with a single pool of capital/investments or may be an umbrella entity with multiple pools of capital/investments, each partitioned from the other. In case of former, the entity and the pool are synonymous. In case of latter, not only is every pool distinct from the entity, but also from every other pool. The rights and interests of an investor, either as a shareholder or creditor, are limited to the assets and liabilities of the pool to which she has lent money, or in which she holds shares, to the extent of her shareholding. As a creditor, she does not have recourse to another pool of capital/investments in case her own pool proves inadequate, and as a shareholder she cannot benefit from the surplus of another pool. A pool is typically known as sub-fund, which is distinct from every other sub-fund.

1.5. Considering the advantages of VCCs as a vehicle to house funds, IFSCA has been exploring the introduction of the VCC structure in IFSCs. It constituted an Expert Committee under the chairpersonship of Dr. K. P. Krishnan to examine the relevance and adaptability of VCCs for IFSCs in India (**Krishnan Committee**). In its report in May 2021, the Krishnan Committee recommended the introduction of VCCs in the IFSC by way of a separate law containing the substantive provisions governing the VCC structure in IFSCs for this purpose. It delineated the benefits of this structure over the traditional ones. The Krishnan Committee noted that as a hybrid structure, a VCC carries the benefits of a company, limited liability partnership and trust, while avoiding their limitations. It allows access to various treaty benefits that do not typically extend to unincorporated entities. These make a VCC a preferred entity to house funds in IFSCs.³

2. Working process of the Expert Committee

2.1. Following the report of the Krishnan Committee, IFSCA had discussions with the relevant stakeholders and meetings with Ministry of Corporate Affairs and other representatives. Pursuant to this discussion, IFSCA constituted this Expert Committee (**the Committee**), *vide* office memorandum dated 11th May, 2022, to draft a legal framework for allowing the VCC structure to operate in IFSCs in India, with the following specific terms of reference:

- (a) a comprehensive analysis of the legislation governing VCC structures in different international jurisdictions, and
- (b) examine the laws in India, and provide a broad framework to draft the legal for governance of VCCs in IFSCs.

³ See chapter 7 of *Report of the Expert Committee on feasibility of the Variable Capital Company in International Financial Services Centres in India* (2021), pgs 23-30

- 2.2. The Committee was initially mandated to submit its report within 60 days from the date of its constitution. Subsequently, its tenure was extended to 30th September, 2022.
- 2.3. The Committee initially comprised seven members. One member each was inducted to the Committee vide office memoranda dated 8th August, 2022 and 30th August, 2022.
- 2.4. The Committee had its first meeting on 24th May 2022. Thereafter it met three times on 25th June 2022, 9th July 2022 and 3rd September 2022. Every member of the Committee attended all the meetings of the Committee held when they were members.
- 2.5. To inform its recommendations, the Committee considered the recommendations of the Krishnan Committee. It also conducted a comprehensive examination of legislations governing VCCs in different international jurisdictions, including Singapore, United Kingdom, Mauritius, Ireland and Luxembourg to arrive at best dispensation in the context of the IFSCs in India. It also examined the legal framework governing fund structures in India. Based on these, the Committee has recommended a legal framework for the introduction of VCCs in IFSCs in this Report. It has also suggested changes that need to be made to income tax laws to accommodate VCCs and their sub-funds.

3. Structure of the Report

- 3.1. This Report is divided into two parts. The first part, **Part A** summarises the key recommendations and analysis of the Committee. While the Committee has agreed with many recommendations of the Krishnan Committee, its views have differed on some key issues. This part focusses on these areas of deviation. The second part, **Part B** carries a recommended draft legislation as well as a recommended structure for subordinate legislation relating to VCCs (**Proposed Legal Framework**).
- 3.2. The Report also has three annexures. **Annexure I** (a, b, and c) comprise the office memoranda dated 11th May, 2022, 8th August, 2022 and 30th August 2022 relating to the constitution of the Expert Committee. **Annexure II** comprises the Committee's suggestions on accommodating VCCs and their sub-funds within the framework of the Income Tax Act, 1961. **Annexure III** comprises a table comparing legislation governing VCCs in different international jurisdictions.

PART A: ANALYSIS AND RECOMMENDATIONS OF THE COMMITTEE

1. Principles driving the design of the Proposed Legal Framework

1.1. The Committee considered the basic principles that should drive the design and drafting of the Legal Framework to introduce VCCs in IFSCs. Since a good legal framework for VCCs would further the purpose of introducing VCCs, the Committee felt it was essential to have clarity in this regard. The Committee noted Krishnan Committee's recommendation that VCCs should be introduced as a vehicle for investment management in IFSCs, so as to boost asset management activities in IFSCs. The Committee agreed that while VCCs could be deployed to carry out a variety of financial activities, at first, it would be prudent for the legal framework to recognise VCCs as a vehicle to house only pooled funds. The Committee also agreed that VCCs should first be introduced in IFSCs as international players that the IFSC hopes to attract would be familiar with the use of VCC-like structures in other jurisdictions and would want to deploy such a structure for their operations in IFSCs as well. The functioning of the VCC-structure in IFSCs would provide a template to consider the introduction of a VCC-structure for the domestic Indian financial system too at a later stage after taking into account the applicable regulatory considerations.

1.2. In this background, the Committee agreed that the following key principles should drive the design of the Proposed Legal Framework:

(i) *Promoting the competitiveness of the VCC structure*

Given that VCCs are intended to house funds, it is important that the legal framework be drafted to ensure that VCCs are at least as attractive to house funds as existing structures, such as trusts. Specifically, the legal framework should ensure that VCCs are low-cost structures, which attract lower governance requirements, can be wound up quickly and can maintain confidentiality of investor information.⁴

This should be in addition to ensuring that the fundamental features of a VCC – specifically variable capital requirements, ability to house multiple pools of assets that are ring-fenced from each other and flexibility on pay-outs to investors- are retained.

(ii) *Principle based legislation with flexibility to introduce subordinate legislation*

The legislation introducing VCCs should be principle-based and should avoid prescriptive requirements. Moreover, as this would be the first time VCCs

⁴ See: IFSCA, *Report of the Expert Committee on feasibility of the Variable Capital Company in International Financial Services Centres in India* (2021), pgs 19-22

would have been introduced in India, there should be sufficient flexibility for the legal framework to be adapted to the needs and challenges that may arise in practice. Given this, vast latitude should be given to specify subordinate legislation relating to VCCs. The approach followed under the SEBI Act, 1992 should serve as a model for deciding the extent of reliance on subordinate legislation.

(iii) *Framework to focus on the 'entity' not 'activity'*

Presently, Fund Management Entities (**FMEs**) launch schemes in separate vehicles, such as trusts etc. The Committee recommended that in addition to FMEs launching schemes in trusts, etc., the VCC should be another vehicle that can be used by FMEs to launch and house schemes. The IFSCA (Fund Management) Regulations, 2022 (**Fund Management Regulations**) put in place certain regulatory requirements for funds housed in trusts, companies, etc., including requirements relating to minimum corpus, permissible investments, winding up and listing. The Committee recommended that the provisions in the Fund Management Regulations that apply to schemes housed in trusts, etc. should apply to the schemes housed within a VCC as well, and that the Fund Management Regulations should be amended to accommodate this.

Requirements that apply to establish and register FMEs, however, would not apply to VCCs, as VCCs will not be FMEs and will only be structures established by FMEs to house schemes. Consequently, the legal framework for introduction of VCCs should clarify the basic structure of a VCC that can operate in a VCC and lay down standards for the incorporation and dissolution of a VCC.

However, the framework for the formation of VCCs should not venture into regulating its business operations, as this would lead to overlaps and potentially more onerous compliances for VCCs that would render it a less competitive vehicle for fund activities.

(iv) *Alignment with activity regulation*

Finally, the Committee recommended that the framework introducing VCCs should be closely aligned with the requirements under the Fund Management Regulations that would apply to funds housed within the VCC. This will ensure that VCCs are subject to a cohesive regulatory framework.

2. Inclusion of the legal framework as part of the IFSCA Act

- 2.1. The Committee considered various pathways for how the legal framework for VCCs should be introduced. One pathway was to recommend a legal framework that may provide for VCCs as a generic form or primarily in the domestic context, which may be used with appropriate modifications to VCCs in IFSCs. Another pathway was to consider the introduction of a framework that is tailor-made for VCCs in IFSCs. If and when VCCs are introduced in the domestic market, the framework for VCCs for IFSCs can be tweaked to make it suitable for domestic market after taking into account the applicable regulatory considerations. In this context, one option before the Committee was to recommend the adoption of a stand-alone law, another was to recommend the amendment of the Companies Act, 2013 and a third was to recommend the amendment of the IFSCA Act.
- 2.2. While each of the approaches had their respective strengths, the Committee was of the view that the introduction of VCCs as part of the IFSCA Act would be most appropriate. Given the mandate of the Committee and of IFSCA, and the need for IFSCs to have VCCs at the earliest, the Committee believed that VCCs should, at least to start with, only be introduced in IFSCs. Therefore, introducing the VCC framework as part of a nationally applicable legislation, such as the Companies Act, 2013 would not be appropriate.
- 2.3. Moreover, as VCCs would be used primarily to house funds, their business would be regulated by IFSCA under its powers to regulate fund activities in the IFSCs under the IFSCA Act. The Committee felt that there was a need to ensure that the business regulation and entity regulation was intrinsically linked, and that VCCs would have to comply with requirements under a single legislation, instead of attempting disjointed compliances across different legislations. Moreover, IFSCA, which has already been discharging its functions under the IFSCA Act, would not need to attempt regulation from different lenses as a regulator under multiple legislations, thereby avoiding gaps and overlaps in regulation.⁵ This would ensure greater ease of doing business for VCCs, and more streamlined regulation of VCCs as well.
- 2.4. Finally, the Committee believed that this would serve as a first step towards converting the IFSCA Act to a code for regulating all financial entities and activities that take place within the IFSCs. Currently, the IFSCA Act has incorporated provisions from various existing legislations and conferred powers upon the IFSCA. However, as IFSCs become a hub for international finance, more innovative structures and activities would be carried out from within the IFSCs. Given this, it would be important to update the

⁵ Concern noted by the Financial Sector Legislative Reforms Commission in the context of its recommendation to shift away from a sectoral perspective in regulation of financial activities in Department of Economic Affairs, *Report of the Financial Sector Legislative Reforms Commission Volume I: Analysis and Recommendations* (2013), pgs 12-13 available at https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf (accessed on 13 September 2022)

legal framework relating to these activities from time to time. Instead of creating various pieces of legislation, it would be useful to update the IFSCA Act, so that a cohesive and unified approach to regulation of financial activities in the IFSCs can be taken.

3. Administration

3.1 The Committee considered various approaches for the administration of the legal framework for introduction of VCCs. One approach would be to provide for a single administering agency to register VCCs as body corporates, as well as authorise and supervise their fund activities. Another approach would involve deploying two agencies, with one agency incorporating VCCs and supervising their governance, etc. as entities and another agency supervising their operations and activities, akin to a banking company which is incorporated by Registrar of Companies, but its operations are supervised by the Reserve Bank of India.

3.2. The Committee noted that a VCC is essentially a vehicle to house funds. IFSCA already regulates funds in the IFSCs and the Committee believed that that VCCs should have interface with only one regulatory agency. Having different agencies for entity regulation, and activity regulation of VCCs could lead to overlaps in compliances and gaps in regulation. This would reduce the attractiveness of the VCC as a structure to house funds. Moreover, the Committee felt that as entity regulation (e.g. incorporation, prescription of governance norms, requirement of filings, dissolution, etc.) would be closely linked to activity regulation, there may not be the need to introduce another agency for entity regulation. Given this, the Committee was of the view that even functions such as incorporation, registration and dissolution of a VCC, should be carried out under the aegis of IFSCA, instead of the Central Government as recommended by the Krishnan Committee. The Government may make and amend legislation relating to VCCs, but the legislation may be administered entirely by IFSCA.

3.3. The Committee considered the counter view that IFSCA as a specialized financial regulator may not be the appropriate body to manage such activities, which are typically carried out by Registrars under other legislation. However, the Committee was of the view that processes such as registration of a sub-fund of a VCC, which could be conceived of as a 'registry activity', would have to go hand in hand with obtaining permissions from ISFCA to launch the schemes which would be housed in the sub-fund of VCC.⁶ To ensure that these processes can be streamlined, the Committee felt that they should be carried out by the IFSCA itself, and requisite capacity should be built within the IFSCA to enable this.

4. Types of securities

⁶ See for example, Regulations 31 and 43, IFSCA (Fund Management) Regulations, 2022

- 4.1. The Committee considered how the capital of a VCC may be constituted. The Committee agreed with the view of the Krishnan Committee that a VCC may be able to issue both debt and equity securities. Where a VCC is an umbrella VCC, it may issue different classes of equity and debt securities to represent the interest of the holder in the specific sub-fund that each class of securities would correlate to.
- 4.2. In addition, the Committee was of the view that legislation should recognise different types of equity shares, in keeping with the business requirements of a VCC. Specifically, the Committee noted that in jurisdictions such as Singapore, the Model Constitution for VCCs prepared by the Singapore Academy of Law provides for the concept of ‘management shares’ and ‘participating shares’. Management shareholders have been given the right to vote, however they are not entitled to any share of the profits of the VCC or any proceeds of realization of the assets of the VCC. Participating shareholders, on the other hand, have limited rights to vote but have a share in the distributable proceeds of the VCC.⁷
- 4.3. Drawing reference from Singapore and taking into account the manner in which funds are organised in India, the Committee was of the view that a VCC should be given an option to segregate its equity share capital into management shares and participating shares. The initial subscribers/ incorporators of the VCC may subscribe to management shares. Shares issued to correlate to the economic interest in a VCC or its sub-funds, as applicable, may be participating shares.
- 4.4. Management shareholders, as in Singapore, should have voting rights but limited economic rights, with no right to receive any share of the profits of the VCC or any proceeds of realisation of the assets of the VCC. On the other hand, participating shareholders should have economic rights, specifically the right to participate in the distributable proceeds, income and profits earned by the VCC from holding or disposal of investments. However, their voting rights should be limited to those proposals that involve a variation of their rights, or such other matters as may be provided in the articles of the VCC.
- 4.5. Given this option for a VCC to issue management and participating shares, the Committee was of the view that it may not be necessary to allow VCCs to issue preference shares.
- 4.6. The Committee also suggested that the legal framework for VCCs recognise that a management shareholder would have a right to vote in proportion to her share in the paid-up management share capital of the VCC. A participating share holder should, on the other hand, have a right to vote in proportion to her share in the net asset value of the participating share capital of the VCC. Where a resolution is to be approved both

⁷ Singapore Academy of Law, *VCC Model Constitution (Closed)*, (2019) Articles 8, 9

by management shareholders and participating shareholders, the total voting power should be calculated as an aggregate of the paid-up management share capital and the aggregate net asset value of the holders of the participating share capital who are entitled to vote on the resolution.

5. Insolvency and closure of a VCC

5.1. The Committee considered the manner in which a VCC's insolvency and closure should be dealt with. It noted the importance of allowing for easy exit for a VCC to be an attractive fund vehicle. Equally, the Committee was conscious that the insolvency or closure process for VCCs should not be more cumbersome than the process used to wind down other vehicles used for fund activities, in the interest of policy neutrality.

5.2. The Committee noted the recommendation of the Krishnan Committee to provide for the rescue or winding up of VCCs using the processes under Insolvency and Bankruptcy Code, 2016 (IBC). However, the Committee felt that this approach may not be workable. The IBC would not apply to VCCs as they would be financial service providers that establish and operate an investment scheme, under authorisation by IFSCA. They are also not notified financial service providers under section 227 of the IBC.⁸ Recommending the extension of the IBC to VCCs, when they are not notified financial service providers, would not be appropriate as *first*, it would make a different insolvency resolution regime applicable to VCCs than is applicable to other fund entities and may make it more unattractive. *Secondly*, the IBC may not be the most appropriate mechanism to promote financial stability and protect investors in the VCC as it has not been designed to deal with financial service providers like VCCs, collective investment schemes, etc. for which a dedicated law is under contemplation. Moreover, the Krishnan Committee was of the view that the sub-funds should not be resolved under the IBC. This would imply that a different approach would be followed for resolution of umbrella VCCs and stand-alone VCCs. The Committee felt that having two different resolution regimes for umbrella VCCs with sub-funds and stand-alone VCCs that do not have sub-funds, could result in arbitrage, and would not be appropriate.

5.3. Nevertheless, should the government wish to apply the IBC (with modifications to suit fund structures) or the proposed dedicated law for resolution of financial service providers to VCCs as well as their sub-funds, nothing in the Proposed Legal Framework should prevent it from doing so.

5.4. In the absence of extension of the IBC or the proposed dedicated law for resolution of financial service providers to VCCs by the government, the Committee noted that, at present, the Fund Management Regulations provide a mechanism for the winding down

⁸ See: Ministry of Corporate Affairs, Notification S.O. 4139(E) dated 18 November 2019.

of funds, including at the direction of IFSCA.⁹ The Committee was of the view these should and would deal with the winding down or transfer of the business of a VCC where a VCC is insolvent when the Fund Management Regulations are extended to cover the schemes housed in the VCC itself as recommended in para 1 above. Once the business is either wound up under the activity specific regulation, the Committee noted that only the corporate entity of the VCC would remain and this would not be carrying out any business. Given this, there would not be the need to provide a detailed winding down process. Instead, a summary process for the dissolution of the corporate entity, such as that employed for striking off under the Companies Act, 2013, should be provided.¹⁰ This process should only be such that IFSCA can satisfy itself that there are no pending liabilities to any participating members of the VCC; and sufficient provision has been made for the realisation of all amounts due to the VCC and for the payment or discharge of any other liabilities and obligations within a reasonable time.

5.5. With regard to rescue, the Committee noted that the process for schemes of arrangement for VCCs (discussed in para 7 below), could also be used to ‘rescue’ the VCC or its sub-funds, in case of an insolvency situation. The Fund Management Regulations already empower IFSCA to order merger of funds and order change in the fund manager of a fund. They also provide for the maintenance of business continuity plans and for the restructuring of schemes.¹¹ The Committee recommended that these should be extended to funds housed in a VCC, and no further rescue tools would need to be provided for in the Proposed Legal Framework.

6. Audit and Accounting

6.1. The Committee also considered the mechanism through which VCCs should be prepare their accounts and have them audited. It considered the Krishnan Committee’s suggestion that the mechanism for preparation of financial statements and auditing should be adapted from the Companies Act, 2013. While this could result in good governance outcomes, the Committee felt that it would be more appropriate for accounting and auditing to be done for VCCs in the same manner that it is done for other vehicles housing funds. In this regard, the Committee also noted that the Fund Management Regulations have put in place certain requirements for audit.¹²

6.2. Given this, the Committee recommended that IFSCA should have broad flexibility to prescribe audit and accounting requirements that are consistent with the requirements under the Fund Management Regulations, which should evolve with market dynamics and therefore be provided for in the subordinate legislation.

7. Other recommendations

⁹ Regulation 131, IFSCA (Fund Management) Regulations, 2022

¹⁰ Section 248, Companies Act, 2013

¹¹ Regulations 121, 130, 131 IFSCA (Fund Management) Regulations, 2022

¹² Regulation 135, IFSCA (Fund Management) Regulations, 2022

7.1. In addition to the recommendations discussed in detail above, the Committee considered issues relating to:

- (i) Basic structure and incorporation
- (ii) Governance and management of VCCs
- (iii) Capital and rights and powers of shareholders
- (iv) Sub-funds
- (v) Inspection, investigation, inquiry
- (vi) Mergers and acquisitions
- (vii) Redomiciliation, and
- (viii) Taxation.

Broadly, the Committee agreed with the views of the Krishnan Committee on these issues. Key recommendations are summarised below in Table 1 below.

S. No.	Issue	Recommendation of the Krishnan Committee	Recommendation of this Expert Committee
1	Who would be stakeholders of the VCC?	Shareholders/ Investors Board of Directors Fund Manager Custodian	The Committee broadly agreed with the views of the Krishnan Committee. However, it was of the view that the requirement to appoint a fund manager and a custodian should flow from the regulations governing the business of the VCC, namely, the Fund Management Regulations, and need not find place in the legislative framework to introduce VCCs.
2	What kind of entity should the VCC be?	A body corporate with separate legal existence, perpetual succession, limited liability and ability to sue and be sued in its own name, similar to a public listed company, but with variable capital, i.e., no minimum capital requirement and flexible norms on issue or redemption of shares. <i>(Pg 36, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee. It also agreed that IFSCA should specify higher governance/ compliance requirements for “public VCCs” in case certain thresholds are met.
3	How would the internal governance mechanisms of a VCC be defined?	In addition to the governance requirements provided in legislation (which would include the requirement to set up a Board) or by the applicable regulator, the VCC would define its internal governance mechanisms in its constitutional	The Committee broadly agreed with the views of the Krishnan Committee.

		documents, i.e., certificate of incorporation, memorandum of association and articles of association. <i>(Pg 36, Para 10.1)</i>	
4	What minimum requirements relating to the MoA and AoA should be placed in legislation?	The constitution documents of a VCC should include a Memorandum of Association setting out the main objective of the VCC and other objectives ancillary to the main objective, and an Article of Association, setting out the rules for the internal management of the VCC. A certain threshold for the alteration of these constitution documents should be prescribed in the VCC Act. A more stringent process for the alteration of these constitution documents, as and when required, may be prescribed in the respective documents, subject to the requirement of filing the details of alterations with the registrar. <i>(Pg 38, Para 10.1)</i>	The Committee agreed that the approach adopted in the Companies Act, 2013 and as suggested by the Krishnan Committee should broadly be followed.
5	How should a VCC's capital be organised?	VCCs would issue shares that would either represent the investment in the VCC itself or in its sub-funds in case of an umbrella VCC. The VCC must issue a separate class or classes of shares for each sub-fund. <i>(Pgs 36-37, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee.
6	Would it be mandatory to have sub-funds?	No, the VCC may be a stand-alone VCC or an umbrella VCC containing sub-funds. <i>(Pgs 36-37, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee.
7	How would the sub-funds be structured?	The sub-fund of a VCC should not be a legal person separate from the VCC; it should derive its character from the VCC. In mutual fund parlance, a sub-fund is akin to a scheme of a mutual fund. Each sub-fund's assets and liabilities however would remain separate from the assets and liabilities of the VCC. <i>(Pg 37, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee. It specifically emphasised the need to ensure that the segregation of assets and liabilities between sub-funds and the VCC is respected.
8	How should a VCC be incorporated?	It should be incorporated in a similar manner to companies with an RoC deputed to GIFT City. <i>(Pgs 38-39, Para 10.1)</i>	The Committee agreed that the system followed in relation to companies may be followed. However, as discussed in para 2, IFSCA should administer the incorporation.

9	How should sub-funds be set up?	A VCC may set up one or more sub-funds, without the prior approval of the Registrar of VCC. On the creation of new sub-funds under a particular VCC, the IFSCA should suo-moto intimate information about the sub-fund to the Registrar of VCC. The IFSCA and the Registrar of VCC must have an appropriate information sharing mechanism to facilitate this exchange. Thereupon, the Registrar of VCC should allot a unique identification number to each sub-fund that may be linked to the VCC. <i>(Pgs 39-40, Para 10.1)</i>	The Committee broadly agreed with the views of the Krishnan Committee. However, as discussed in para 2, IFSCA should administer the registration.
10	What should be the registered office of the VCC?	VCCs should at all times have their registered office in the IFSC. Further, IFSCA may prescribe requirements, if any, in relation to physical presence of directors/ employees of the VCC in IFSC. <i>(Pg 40, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee.
11	What would be the appropriate nomenclature for the VCC/ its sub-funds?	To allow people dealing with VCCs to distinguish them from companies incorporated under the Companies Act, 2013 and LLPs, the Committee recommended that the VCC should have its name registered with the Registrar of VCC with the last words 'Variable Capital Companies (International Financial Services Company) Limited' or 'VCC (IFSC) Ltd'. The process of obtaining the name of a VCC/ sub-funds shall be similar to the one for companies under the Companies Act, 2013. The restrictions applicable to certain undesirable names would be as prescribed by the MCA. <i>(Pg 41, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee.
12	Should the VCC structure be allowed to house both open-ended and closed-ended funds?	VCC structure should be available for both open-ended and close-ended strategies. <i>(Pg 41, Para 10.1)</i>	The Committee agreed with the views of the Krishnan Committee.
13	Should open-ended funds be allowed to convert into close-ended	The funds may be allowed to convert from open-ended to close-ended, and vice versa, in accordance with the norms specified by the IFSCA. In case	The Committee agreed with the views of the Krishnan Committee.

	funds and vice-versa?	of public sub-funds, conversion of open-ended to close-ended schemes shall be subject to consent of investors and exit shall be provided to investors who dissent for such conversion. <i>(Pg 41, Para 10.1)</i>	
14	How should the segregation of assets and liabilities of sub-funds amongst themselves and vis-à-vis each other be defined?	<p>The governing act for VCC should specifically provide for the segregation of the assets and liabilities of sub-funds. This means that:</p> <ul style="list-style-type: none"> • The assets of a sub-fund cannot be used to discharge the liabilities of or claims against the VCC or any other sub-fund of the VCC; • Any liability incurred on behalf of or attributable to any sub-fund of a VCC must be discharged solely out of the assets of that sub-fund; • Any income accruing to the sub-fund must be distributed to the investors of that sub-fund or re-invested by that sub-fund, and any loss incurred by a sub-fund must be absorbed by that sub-fund alone; and • Each sub-fund is bankruptcy remote from the insolvency proceedings initiated in respect of another sub-fund. • This would mean that the investors and creditors of a particular sub-fund may claim their returns and fulfil their claims out of the assets of that sub-fund only, and not from the other assets of the VCC (including the assets of any other sub-fund). • A VCC should be permitted to allocate common assets and liabilities not attributable to any sub-fund between the sub-funds 	The Committee agreed with the views of the Krishnan Committee.

		<p>in a manner that it considers fair to shareholders. The allocation method based on which various expenses should be allocated, may be prescribed in the constitution document.</p> <p><i>(Pg 43-44, Para 10.2)</i></p>	
15	<p>What activities of the sub-funds should be carried out at the VCC level? Which activities should be carried out at a sub-fund level?</p>	<p>As a VCC is the legal entity, it will enter contracts with external parties alone. Further, only a VCC can sue (or be sued by) an investor or a third party and not the sub-funds. Any charge created on the assets of the VCC shall be registered with the Registrar of VCC. Where the sub-fund acquires any property, which is subject to a charge of any kind, the sub-fund should file a statement of the prescribed particulars with the Registrar of VCC within such time as stipulated.</p> <p><i>(Pg 44, Para 10.2)</i></p>	<p>The Committee was broadly in agreement with the recommendations of the Krishnan Committee. However, the Committee recommended that the legal framework should recognise that administrative activities, such as filing of charges, should take place at the VCC level, to ensure lower costs of administration.</p>
16	<p>How should cross-cell contagion be prevented?</p>	<p>Explicit duty of Board of Directors to prevent cross-cell contagion in constitutional documents, adequate penalty provisions in law, and cross-cell investments to be restricted in accordance with scheme documents or in IFSCA regulations.</p> <p>A VCC should be required to disclose the name, unique sub-fund identification number and that the sub-funds have segregated assets and liabilities in all documents in which its sub-fund is referred to, prior to entering into agreements on behalf of its sub-fund.</p> <p>The letterhead of an umbrella VCC should contain the phrase ‘An umbrella fund with segregated liability between sub-funds’.</p> <p>To ensure that the third party is aware about the implications of having segregated liability, the VCC Act should provide to incorporate the below clause in third party agreements: <i>‘the party or parties contracting with the umbrella fund shall not seek, by</i></p>	<p>The Committee was broadly in agreement with the recommendations of the Krishnan Committee. In addition, the Committee recommended that the constitutional documents should also contain prohibitions on direct/indirect commingling of assets and liabilities.</p>

		<p><i>whatever means, to have recourse to any assets of any sub-fund in the discharge of all or part of a liability which was not incurred by that sub-fund</i>'. Appropriate penal provisions should be introduced in case the provisions are not complied with. (Pg 44-46, Para 10.2)</p>	
17	Should the securities of a VCC or its sub-fund be freely tradeable?	<p>A sub-fund may be set up as a publicly traded or privately traded sub-fund. The IFSCA may specify the conditions which a publicly traded sub-fund must comply with or the circumstances in which a sub-fund must be necessarily classified as a publicly traded sub-fund (such as a threshold linked to the number of investors, etc.).</p> <p>Public sub-funds should be able to list their securities on IFSCA's stock exchange. Private sub-funds should be able to list their debt securities on IFSCA's stock exchange. Any restrictions on transferability of equity securities may be built in their scheme documents. (Pgs 48-49, Para 10.3)</p>	The Committee agreed with the recommendations of the Krishnan Committee.
18	Should there be any restrictions on fresh issue or redemption/ buy-back of securities or capital reduction by VCCs?	<p>There should not be any need for shareholder or regulatory approval for the same. However:</p> <ul style="list-style-type: none"> • Publicly traded sub-funds or VCCs should not be able to redeem capital except in cash; • Public VCCs or sub-funds should make buy-back offers to all shareholders of a class, unless otherwise approved by a requisite majority of shareholders; • Buy-back or redemption of shares should only be done if shares are fully paid up. • Redemptions and consequent reductions of capital should be reflected in the Annual Report. • Redemption to be at NAV or any other internationally accepted valuation mechanism, as chosen in the scheme document. 	<p>The Committee broadly, agreed with the views of the Krishnan Committee. It was also of the view that only redemption should be envisaged for participating shares. The mechanism for redemption should not require shareholder or regulatory approval (subject to certain limitations) as suggested by the Krishnan Committee.</p> <p>However, management shares should not be redeemable. Instead VCCs may have the option to buy back or reduce some (but not all) management shares with requisite shareholder/regulatory approval.</p>

		<i>(Pgs 49-51, Para 10.3)</i>	
19	How would dividends be paid out?	They should be paid out of both capital and profits subject to positive net worth of the sub-fund, VCC. <i>(Pg 52, Para 10.3)</i>	The Committee agreed with the views of the Krishnan Committee.
20	How should the securities of a VCC/ sub-fund be valued?	Valuation to be at NAV or any other internationally accepted valuation mechanism, as chosen in the scheme document Valuation to be conducted every 3 months for publicly traded VCCs/ sub-funds and as per scheme document for privately traded VCCs and sub-funds. <i>(Pg 51, Para 10.3)</i>	The Committee broadly agreed with the recommendations of the Krishnan Committee.
21	Should VCCs have shareholder meeting requirements?	Private VCCs and sub-funds should not have mandatory AGM requirements. Public VCCs and sub-funds should be able to have VC AGMs. Shareholders should be able to call for EGMs, with flexibility to call for EGMs at a sub-fund level. Basic principles for conducting meetings should be in the VCC Act but the procedure for conducting meetings should be left to each VCCs constitutional documents. They can be in line with those mandated under CA, 2013. <i>(Pg 53, 58 Para 10.4 and 10.5)</i>	The Committee broadly agreed with the recommendations of the Krishnan Committee.
22	Should there be a register of shareholders? Who should be able to access this register?	A register of shareholders should be created, and made available for inspection only to the members of the concerned sub-fund and public authorities for regulatory, supervisory and law enforcement purposes. The register should also be filed with the ROVCC. <i>(Pg 54, Para 10.4)</i>	The Committee broadly agreed with the views of the Krishnan Committee. However, it agreed that shareholders should only be able to access that information on the register that pertains to themselves.
23	Should VCCs be required to collect and disclose information relating to significant beneficial owners?	A VCC should also be mandated to maintain information relating to significant beneficial owners and file with the Registrar of VCC regularly. The Registrar of VCC should however ensure that this information is not made public. The Registrar of VCC / the IFSCA may seek this information in certain circumstances, in which case,	The Committee agreed with the views of the previous Expert Committee. However, as discussed in para 2, disclosures should only be made to IFSCA.

		the VCC should be mandated to provide the same. <i>(Pg 57, Para 10.4)</i>	
24	What accounting standards should a VCC adopt?	The VCC should be allowed to prepare their financial statements using any financial reporting standard, i.e., US GAAP, or IndAS or IFRS. The accounting policy followed by sub-funds should clearly be documented in the financial statements. <i>(Pg 56, Para 10.4)</i>	The Committee agreed with the views of the Krishnan Committee.
25	How should umbrella VCCs prepare their financial statements?	The financial statements of each sub-fund should be maintained separately but may be aggregated (not consolidated) at the VCC level for filing with the ROVCC/IFSCA. <i>(Pgs 55, 58, Para 10.4)</i>	The Committee broadly agreed with the recommendation of the Krishnan Committee
	Should there be disclosure requirements regarding related party transactions?	VCCs should disclose related party transactions, including those with directors and fund managers in their financial statements per relevant accounting standards. <i>(Pg 59, Para 10.5)</i>	The Committee agreed with the recommendations of the Krishnan Committee. In addition, it noted that certain related party transactions are already restricted under the Fund Management Regulations.
26	Should a VCC have a board of directors? How should it be constituted?	VCCs should have a board of directors that should be constituted in line with the requirements of the CA, 2013. The board should have a minimum of two directors of whom at least one should be an Indian resident. Where VCCs are publicly traded or have publicly traded sub-funds, they should appoint one independent director. In other cases, investors should be able to require the appointment of an independent director as part of their fund subscription agreement. Directors should be ‘fit and proper’ persons, and at least one director of the VCC should be common with that of the fund manager. <i>(Pgs 58, 60, Para 10.5)</i>	The Committee broadly agreed with the recommendations of the Krishnan Committee. However, it was of the view that the requirements for qualifications of directors should be synchronised with the requirements under the Fund Management Regulations.

27	What should be the role of the Board of the VCC?	The Board should take the responsibility for the overall conduct of the VCC along with the Fund Manager. <i>(Pg 60, Para 10.5)</i>	The Committee agreed with the recommendations of the Krishnan Committee.
28	Should VCCs be required to appoint Company Secretaries?	Appointment of company secretaries should be mandated only if the share capital of the VCC exceeds a prescribed threshold. Such a secretary should be an Indian resident. Company secretaries need not be 'employed' but may be 'engaged' as well. <i>(Pg 59, Para 10.5)</i>	The Committee broadly agreed with the recommendations of the Krishnan Committee.
29	How should a VCC's affairs be administered?	The manner of administration of the VCC along with the sub-funds shall be in accordance with Chapter VII – Management and Administration as prescribed under the Companies Act, 2013. However, certain exemptions and modifications applicable to the specified company licensed to operate from the IFSC should be made equally applicable to the VCC set up under the VCC regime. Specific provisions may be made in the VCC Act in this regard. <i>(Pg 62, Para 10.6)</i>	The Committee agreed that IFSCA may provide details for administration and management of VCCs in subordinate legislation. While it may take inspiration from the Companies Act, 2013 as applied to companies licensed to operate from the IFSC, it may prescribe more flexible requirements.
30	Should mergers of VCCs/ their sub-funds be allowed?	The merger/ acquisition of a sub-fund of the VCC with another sub-fund of the same or another VCC should be permitted. The merger/ acquisition of one VCC with another VCC should also be permitted. <i>(Pg 68, Para 10.8)</i>	The Committee agreed with the recommendations of the Krishnan Committee.
31	What approvals should VCCs require to effect a merger?	At the sub-fund/ VCC level, approval should be taken from shareholders. The threshold for approval and the manner of taking approval should be prescribed in the scheme/ constitution document. Approvals should be taken after full disclosure regarding the merger, including the nature of the merger, benefits of the merger, the rights and obligations of the shareholders, and the expected timelines IFSCA should prescribe a specified percentage of creditors who would be required to approve a merger if such merger affects creditor rights.	The Committee largely agreed with the recommendations of the Krishnan Committee. It also agreed that the IFSCA Act and subordinate provisions should provide enabling provisions for such mergers. Broadly, these provisions should provide that: The appropriate "approval" authority for mergers would be IFSCA, and it should be empowered to provide detailed conditions

		<p>IFSCA may prescribe guidelines for approval of and reporting of mergers in the case of publicly traded funds.</p> <p>No NCLT approval should be sought. (Pgs 68-70, Para 10.8)</p>	<p>for mergers in subordinate legislation.</p> <p>An exit mechanism should be provided for dissenting investors, in line with any regulations issued by IFSCA.</p>
32	Should off-market transfer of securities be permitted?	<p>Once the merger/ acquisition of VCC/ sub-funds of VCC is completed, all the assets and liabilities of the merged/ acquired VCC/ sub-fund should be transferred to the remaining VCC/ sub-fund. To provide ease in such transfers, the VCC/ sub-funds should be permitted to undertake the off-market transfer of the securities it holds. (Pg 70, Para 10.8)</p>	<p>The Committee agreed with the recommendations of the Krishnan Committee that this should be allowed to enable/ facilitate mergers.</p>
33	Should cross-border mergers be allowed?	<p>Cross-border merger of sub-funds of a VCC may also be contemplated, in line with the cross-border mergers permissible under the UCITS regulations (Pg 70, Para 10.8)</p>	<p>The Committee agreed with the recommendations of the Krishnan Committee. It recommended that details of a cross-border merger process should be provided for in regulations.</p>
34	Should redomiciliation be allowed? How?	<p>IFSCA may consider granting recognition to offshore corporate funds set up in Financial Action Task Force compliant jurisdictions to operate under the IFSC AIF guidelines with minimum disruptions. This flexibility of migration may also be extended to domestic funds for migration to the IFSC.</p> <p>On redomiciliation, the corporate entity will be required to seek registration as an IFSC VCC along with its sub-fund, if any, under the VCC Act. The registration process of such entities should be similar to any other new VCCs to be set up in the IFSC.</p> <p>Redomiciliation should only be permitted for the entity that substantially resembles a VCC.</p> <p>No clarity if both in-bound and out-bound redomiciliation should be</p>	<p>The Committee agreed with the recommendations of the Krishnan Committee in this regard. It also recommended that the legal framework should recognise/ enable outbound redomiciliation.</p>

		permitted. IFSCA should engage with the Central Government to pave the way forward for its introduction and to prescribe the minimum standards/requirements for such redomiciliation/cross border merger. <i>(Pgs 73-74, Para 10.10)</i>	
35	Is there a need for a separate tax-regime only for VCCs?	The taxability of the VCC and its sub-funds from India sourced income would be dependent upon the type of registration obtained by the VCC/ sub-funds, i.e. whether as an AIF, Mutual Fund, REITs, InvIT, etc. Accordingly, there should be no requirement to have a separate tax regime for the VCCs and its sub-funds for the income earned from investment in India. <i>(Pg 75, Para 11)</i>	The Committee agreed with the recommendations of the Krishnan Committee.
36	At what level in an umbrella VCC should assessment and filing of Income Tax be carried out?	Each sub-fund should be deemed to be a separate 'person' for the purposes of the Income-tax Act, 1961, and be permitted to obtain a separate PAN in its own name and file tax returns for itself. All the provisions of the Income-tax Act, 1961 should be applicable to the sub-funds treating them as a separate person. The PAN as a 'Company' should be allotted to each sub-funds. <i>(Pgs 75- 76, Para 11)</i>	The Committee agreed with the recommendations of the Krishnan Committee. In this regard, it recommended that appropriate changes be made to the Income Tax Act, 1961.
37	How would VCCs be taxed abroad?	Tax Residency Certificates should be issued at the sub-fund level to ensure they can take advantage of DTAAs. VCCs should have features that make it available for checking the box selection. <i>(Pgs 77-78, Para 11)</i>	The Committee agreed with the recommendations of the Krishnan Committee. In this regard, it recommended that appropriate changes be made to the Income Tax Act, 1961.
38	How should M&As between VCC sub-funds or VCCs themselves be taxed?	Both mergers and acquisitions of VCC/sub-funds are tax neutral irrespective of whether they are within the same VCC or between two separate VCCs. <i>(Pg 77, Para 11)</i>	The Committee agreed with the recommendations of the Krishnan Committee. In this regard, it recommended that appropriate changes be made to the Income Tax Act, 1961.

**PART B: DRAFT LEGISLATION AND SKELETAL STRUCTURE FOR
REGULATIONS**

**THE INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY
(AMENDMENT) ACT, 2022**

1. Short title and commencement.

- (1) This Act may be called the International Financial Services Centres Authority (Amendment) Act, 2022.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Amendment of section 3.

In section 3 of the International Financial Services Centres Authority Act, 2019 (hereinafter referred to as the principal Act),—

(a) after clause (k), the following clauses shall be inserted, namely:—

“(l) “specified” means as specified by regulations made by the Authority under the Act,

(m) “stand-alone VCC” means a VCC that is not an umbrella VCC;

(n) “sub-fund” means a sub-fund of an umbrella VCC registered as such under sub-section (4) of section 13A of this Act;

(o) “umbrella VCC” means a VCC whose articles of association allow it to have two or more sub-funds;

(p) “VCC” or “variable capital company” means a body corporate incorporated as such under this Act.”

3. Amendment of section 12.

In sub-section (2) of section 12 of the principal Act, after clause (c), the following shall be inserted, namely:—

“(ca) regulating and providing for the establishment and management of variable capital companies which may be incorporated in the International Financial Services Centres.”

4. Insertion of new Chapter III-A.

After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER III-A
VARIABLE CAPITAL COMPANIES

13A. Variable Capital Company.

(1) A VCC-

- (a) shall, as its main object, carry on business as a collective investment scheme, mutual fund or any other type of pooled fund launched by a fund management entity, through it; and
- (b) may carry on such other objects as are ancillary to the achievement of its main object, as may be specified.

(2) A VCC shall-

- (a) be a body corporate having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible, and intangible, to contract and to sue and be sued, in its name, and the liability of its members shall be limited to the amount unpaid on their shares, if any,
- (b) carry the words “VCC (IFSC) Ltd.” in its name, and such name:
 - (i) shall not be identical with or resemble too nearly to the name of any VCC incorporated under this Act, a company formed under the Companies Act, 2013 (18 of 2013), a limited liability partnership under the Limited Liability Partnership Act, 2008 (6 of 2009) or such other entity as may be specified, and
 - (ii) shall not be undesirable in the opinion of the Authority.

(3) A VCC shall have a memorandum of association and articles of association that-

- (a) provide for such matters and have such effect as may be specified,
- (b) are in the form specified in the model memorandum and articles of association, and
- (c) may not be altered except in accordance with such regulations as may be specified:

Provided that the articles of association may contain provisions for entrenchment to the effect that specified provisions of the articles of association may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(4) A VCC may be-

(a) a standalone VCC, or

(b) an umbrella VCC consisting of two or more sub-funds, where each sub-fund shall be registered with the Authority in such manner as may be specified.

(5) An application seeking incorporation of a VCC shall be filed with the Authority along with such information and documents, in such form and in such manner as may be specified and on being satisfied that the requirements specified have been complied with, the Authority shall issue a certificate of incorporation.

(6) The Authority may allow re-domiciliation of-

(a) a fund established outside the International Financial Services Centre, to the International Financial Services Centre, subject to such conditions as may be specified, provided the fund is from a Financial Action Task Force compliant jurisdiction or such other jurisdiction as may be specified, and

(b) VCCs incorporated or domiciled in the International Financial Services Centre to another jurisdiction, subject to such conditions as may be specified.

13B. Capital of a VCC.

(1) The share capital of VCC shall be equity share capital, which may include, participating share capital and management share capital, each having such rights as provided for in its articles of association and such shares shall be freely transferable in the manner provided by the articles of association:

Provided that the transfer of management shares shall be subject to such conditions as may be specified.

(2) Where a VCC is an umbrella VCC, it shall issue different classes of shares to correspond to the rights and interests in its different sub-funds:

Illustration: An umbrella VCC has three sub-funds A, B and C. It shall issue class A shares, class B shares, class C shares in respect of sub-funds A, B and C, respectively, that is, class A shares would be issued to and held by those that wish to acquire rights and interests in sub-fund A, class B shares would be issued to and held by those that

wish to acquire rights and interests in sub-fund B and class C shares would be issued to and held by those that wish to acquire rights and interests in sub-fund C.

(3) A holder of –

(a) a participating share shall not have the right to vote as a member at any general meeting of the VCC, except in respect of any proposal that involves a variation of its rights or winding up of a VCC or its sub-fund or such matters as may be specified; and

(b) a management share shall not be entitled to any share of the profits of the VCC or any proceeds of realisation of the assets of the VCC, unless otherwise provided for in the articles of the VCC.

(4) Where the share capital of VCC is divided into different classes of shares, the rights attached to shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class and subject to such requirements as may be specified, which shall include a requirement to provide an exit offer to a dissenting shareholder.

(5) A VCC may redeem its own participating share capital and purchase or reduce its management share capital on such terms and in such manner as provided in its articles, and in compliance with such regulations as may be specified.

(6) A VCC may declare and pay dividends both out of the profits and from the capital of the VCC, subject to such conditions as may be specified.

(7) A VCC may call meetings of its members in accordance with such regulations as may be specified.

(8) A VCC may issue debentures or borrow money for any such purposes and subject to such conditions, as may be specified:

Provided that an umbrella VCC shall not issue debentures or borrow money for a purpose that is not directly attributable to a sub-fund, without receiving such shareholder approvals as may be specified.

(9) A VCC may either on its own or on behalf of its sub-funds, create a charge, within or outside India, on its property or assets or those of its sub-funds, whether tangible or otherwise, if permitted as per its articles and where it creates such charge, it shall register such charge with the Authority within thirty days of its creation, in such form, on payment of such fees and in such manner as may be specified:

Provided that where a VCC proposes to create a charge to secure a liability that is not directly attributable to a sub-fund, it shall take shareholder approvals as may be specified and the charge over the assets of a sub-fund shall be limited to cover only such liability that is allocated to the sub-fund in accordance with section 13C (3).

- (10) A VCC shall, in such form and manner as may be specified, maintain-
- (a) a register of its members containing therein, *inter alia*, details of beneficial owners,
 - (b) a register of debenture holders,
 - (c) a register of security holders, and
 - (d) such other registers as may be specified.

13C. Sub-fund of an umbrella VCC.

- (1) A sub-fund of an umbrella VCC is not a legal person separate from the VCC:

Provided however-

- (a) its assets and liabilities shall stand segregated such that:
 - (i) the assets of a sub-fund cannot be used to discharge any liability of the VCC that is not allocated to such sub-fund under sub-section (3) or any other sub-fund of the VCC, including in the winding up of the VCC or any sub-fund, and
 - (ii) any liability of a sub-fund, including any liability that is allocated to such sub-fund under sub-section (3) shall be discharged solely out of the assets of that sub-fund, including in the winding up of the sub-fund,
 - (b) an umbrella VCC may sue or be sued in respect of a sub-fund and may exercise rights of set-off (if any) as between its sub-funds as if each sub-fund were a legal person, and
 - (c) the property of a sub-fund is subject to orders of a court, the Authority, the Central Government, or any other authority constituted under any other law for the time being in force, as it would have been if the sub fund were a separate person.
- (2) An umbrella VCC shall make such disclosures and take such actions as may be specified to maintain the segregation of assets and liabilities of its sub-funds.
- (3) An umbrella VCC shall-

- (a) allocate any of its incomes, expenses, assets or liabilities that it holds or incurs for the purpose of any of its sub-funds or in order to enable the operation of any of its sub-funds and that are specifically attributable to a sub-fund, to such sub-fund.
- (b) allocate any of its incomes, expenses, assets, or liabilities, that are not attributable to any particular sub-fund, between or amongst all sub-funds in a manner that it considers fair to the members of the sub-funds, subject to such requirements as may be specified.

13D. Board of Directors of a VCC.

- (1) A VCC shall constitute a board of directors consisting of such number of directors, having such qualifications, and discharging such duties and powers as may be specified.
- (2) A VCC shall have such officers and create such committees of its directors as may be specified.

13E. Valuation, audit and accounts.

- (1) Where a valuation is required for a VCC under this Chapter or regulations made thereunder, it shall be conducted by such valuer and in accordance with such standards as may be specified.
- (2) A VCC shall-
 - (a) maintain books of accounts and prepare financial statements in such form and manner as may be specified,
 - (b) have its financial statements audited in such manner as may be specified.
- (3) The board shall prepare a Board's report for the VCC and each of its sub-funds, if any, containing such details as may be specified and as are necessary to provide a true and fair view of the operations of the VCC.
- (4) The Board's Report and the financial statements of the VCC or an abridged summary thereof, prepared in such manner as may be specified shall be provided to each member of the VCC and to the Authority in such manner and within such time as may be specified.
- (5) The VCC and its board shall make such disclosures or submit such documents as they may be called upon to do so by the Authority.

13F. Power to compromise or make arrangements with creditors and members.

- (1) Where a compromise or arrangement is proposed between—

- (a) a stand-alone VCC and its creditors or any class of them,
- (b) a stand-alone VCC and its members or any class of them,
- (c) an umbrella VCC on behalf of its sub-fund and the creditors of the VCC or any class of them whose debt is allocated or attributable to such sub-fund, or
- (d) an umbrella VCC on behalf of its sub-fund and the members of the VCC who hold shares that correspond to an interest in such sub-fund

including for the purpose of merger or amalgamation of two or more VCCs, two or more sub-funds or a VCC and a sub-fund, or for the purpose of demerger of a sub-fund from a VCC, the Authority may, on the application of the VCC or of any creditor or member of the VCC, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as may be specified and where the requisite majority of creditors or members approve the compromise or arrangement, such compromise or arrangement may be sanctioned by the Authority.

- (2) The Authority shall not sanction a scheme of compromise or arrangement unless—
 - (a) the scheme provides an exit offer to any dissenting member, having such attributes as may be specified, if the compromise or arrangement is one proposed under clauses (b) or (d) of sub-section (1); and
 - (b) the scheme meets such conditions as may be specified.
- (3) The Authority shall supervise the implementation of the compromise or arrangement and may pass orders or give directions for the proper implementation of the compromise or arrangement, including orders modifying the compromise or arrangement to the extent necessary for implementation.

13G. Dissolution of VCC.

- (1) Where the Authority, on an application made by the VCC or otherwise, has reasonable cause to believe that the VCC has wound up its funds, if any, and is not carrying on any business and has made provision for any pending liabilities, it shall pass an order dissolving the VCC, after following such procedures as may be specified.
- (2) Where a VCC stands dissolved, it shall on and from the date of dissolution, cease to operate as a VCC and the certificate of incorporation issued to it shall be deemed to have been cancelled from such date.

13H. Inquiry, inspection and investigation of a VCC.

- (1) A VCC may be subject to inquiry, inspection and investigation by the Authority, or such person as may be designated by the Authority, in such form and manner as may be specified, to ensure that the provisions of the Act, regulations and circulars made thereunder, are complied with.
- (2) On the basis of such inquiry, inspection or investigation and after giving the VCC a reasonable opportunity to be heard, the Authority may pass such order as it deems fit in the interests of protecting the members and creditors of the VCC and the participants of the financial market, including orders-
 - (a) levying a penalty on the VCC or its officers,
 - (b) winding up the VCC or its sub-funds,
 - (c) suspending the business of the VCC or its sub-funds,
 - (d) regulating the management of the VCC,
 - (e) requiring any refund or money,
 - (f) prohibiting any officer of the VCC from accessing the financial market for a specified period of time, or
 - (g) requiring any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.
- (3) Where the inspection or investigation discloses a contravention that is also an offence under section 13K, the Authority shall file a complaint to the Special Court under section 13K of this Act.
- (4) If a person fails to pay the penalty imposed under this Chapter, or fails to comply with any order of the Authority for refund of money or disgorgement, section 28A of the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply in relation to this Act with necessary modifications as if the said provision was a provision of this Act, with all references to the Board under the said section 28A being regarded as references to the Authority
- (5) Sections 15J, 24B, 27 and 28B of the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply in relation to this Chapter with necessary modifications as if the said provisions were provisions of this Act, with all references to the Board under these provisions being regarded as references to the Authority.

13I. Penalties.

- (1) Where an umbrella VCC fails to maintain segregation between the assets and liabilities of different sub-funds, the umbrella VCC at the time of contravention shall be liable to penalty imposed by the Authority, which shall not be less than XXX rupees but which may extend to XXX rupees for each day during which such failure continues subject to

a maximum of XXX rupees or three times the amount of gains made out of such failure, whichever is higher.

(2) Where any person fails to comply with -

- (a) any of the provisions of this Act in respect of VCCs,
- (b) any of the regulations made by the Authority in respect of VCCs, or
- (c) any order of the Authority,

such person shall be liable to penalty imposed by the Authority, which shall not be less than XXX rupees but which may extend to XXX rupees for each day during which such failure continues subject to a maximum of XXX rupees or three times the amount of gain made out of such failure, whichever is higher.

13J. Appeals.

- (1) Any person aggrieved by an order of the Authority under this Chapter may prefer an appeal to a Securities Appellate Tribunal established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) having jurisdiction in the matter.
- (2) Sections 15U, 15V, 15W, 15Y and 15Z of the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply in respect of any appeal preferred under sub-section (1) with necessary modifications as if the said provisions were provisions of this Act, with all references to the Board under these provisions being regarded as references to the Authority

13K. Offences.

- (1) If any person-
 - (a) knowingly or wilfully contravenes or abets the contravention of these provisions or the regulations framed by the Authority under this Chapter, where such contravention involves fraud or manipulation or affects the integrity of the financial services market in the international financial services centres, or
 - (b) makes any statement, including in any return, report, certificate, financial statement or other document, required by or for the purposes of any of the provisions of this Chapter or the regulations made thereunder, which is false in material particulars, knowing it to be false or which omits any material fact, knowing it to be material,such person shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to ten years and shall also be liable to

fine which shall not be less than the one lakh rupees, but which may extend to three times the amount of gain made or loss caused on account of the contravention.

- (2) Where the contravention under sub-section (1) involves public interest, the term of imprisonment shall not be less than three years.
- (3) For the purposes of this section—
 - (a) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
 - (b) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.
- (4) Notwithstanding anything contained in any other law for the time being in force, all offences under this Act shall be triable by the Special Court established or designated for the purpose of providing speedy trial of offences under this Act.
- (5) The provisions of sections 26 to 26E of the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall apply in relation to the Special Court under sub-section (4), with necessary modifications as if the said provisions were provisions of this Act.”

--X--

SKELETAL STRUCTURE FOR THE REGULATIONS RELATING TO VARIABLE CAPITAL COMPANIES

CHAPTER I PRELIMINARY

1. Short title and commencement
2. Definitions

CHAPTER II INCORPORATION

3. Memorandum of association
4. Articles of association
5. Act to override memorandum and articles
6. Incorporation
7. Name
8. Registered office
9. Alteration of memorandum
10. Alteration of articles
11. Alteration of memorandum or articles to be noted in every copy
12. Rectification of name
13. Copies of memorandum, articles, etc., to be given to members.
14. Service of documents.
15. Authentication of documents, proceedings and contracts.

16. Execution of bills of exchange, etc.
17. Redomiciliation

CHAPTER III Capital

18. Kinds of share capital
19. Rights of holders of management shares
20. Rights of holders of participating shares
21. Voting rights
22. Variation of shareholders' rights
23. Power to redeem participating shares
24. Power to buy-back or reduce management shares
25. Nature of shares or debentures
26. Numbering of shares
27. Certificate of shares
28. Calls on shares of same class to be made on uniform basis
29. Company to accept unpaid share capital, although not called up
30. Payment of dividend in proportion to amount paid-up
31. Transfer and transmission of securities
32. Restrictions on transfer of management shares
33. Refusal of registration and appeal against refusal
34. Rectification of register of members
35. Restrictions on purchase by company or giving of loans by it for purchase of its shares
36. Debentures
37. Power to nominate
38. Restrictions on issuing debentures or borrowing monies
39. Restrictions on creating charges
40. Duty to register charges
41. Date of notice of charge
42. Register of charges
43. VCC to report satisfaction of charge.
44. Power to make entries of satisfaction and release in absence of intimation from VCC
45. VCC's register of charges.

CHAPTER IV MANAGEMENT, ADMINISTRATION AND DIVIDENDS

46. Register of members and annual returns
47. Significant beneficial owners
48. General meetings
49. Annual general meeting.
50. Calling of extraordinary general meeting.
51. Notice of meeting
52. Quorum for meetings
53. Chairperson of meetings
54. Proxies
55. Restriction on voting rights
56. Voting by show of hands
57. Voting through electronic means
58. Demand for poll

59. Postal ballot
60. Circulation of members' resolution
61. Representation of President and Governors in meetings
62. Representation of corporations at meeting of companies and of creditors
63. Ordinary and special resolutions
64. Resolutions requiring special notice
65. Resolutions passed at adjourned meeting
66. Resolutions and agreements to be filed
67. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot
68. Inspection of minute-books of general meeting
69. Maintenance and inspection of documents in electronic form
70. Report on annual general meeting
71. Dividends

Chapter V Sub-Funds

72. Creation of sub-funds
73. Segregated assets and liabilities of sub-funds
74. Disclosures in transactions

CHAPTER VI BOARD OF DIRECTORS AND KEY MANAGERIAL PERSONNEL

75. Board of directors
76. Duties of directors
77. Disqualification of directors
78. Independent directors
79. Appointment of directors
80. Director Identification Number
81. Right of persons other than retiring directors to stand for directorship
82. Appointment of additional director, alternate director and nominee director
83. Vacation of office of director
84. Powers of the Board of directors
85. Meetings of Board
86. Quorum for meetings of Board
87. Passing of resolution by circulation
88. Defects in appointment of directors not to invalidate actions take
89. Restrictions on powers of Board
90. Disclosure of interest by director
91. Related party transactions
92. Loan to directors, etc.
93. Loan and investment by company
94. Investments of company to be held in its own name
95. Register of contracts or arrangements in which directors are interested
96. Contract of employment with managing or whole-time directors

97. Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares
98. Restriction on non-cash transactions involving directors

Chapter VI
Valuation, Accounts and Audit

99. Valuation
100. Books of account
101. Financial statements
102. Audit
103. Board's report
104. Disclosure

Chapter VII
Compromises, Arrangements, Amalgamations and Dissolution

105. Sanction of a compromise or make arrangements with creditors and members
106. Preservation of books and papers of amalgamated VCCs
107. Liability of officers in respect of contraventions committed prior to merger, amalgamation, etc
108. Dissolution

Chapter IX
Inspection

109. **Inspection**
110. Obligations of a VCC, etc. on inspection
111. Appointment of auditor or valuer
112. Submission of report and orders of the Authority
113. Settlement of proceedings
114. Appeals

Chapter X
Miscellaneous

115. Officers
116. Admissibility of certain documents as evidence
117. Provisions relating to filing of applications, etc., in electronic form
118. Inspection, production and evidence of documents kept by the Authority
119. Electronic form to be exclusive, alternative or in addition to physical form
120. Provision of value-added services through electronic form.
121. Application of provisions of Information Technology Act, 2000.
122. Fee for filing, etc.

ANNEXURE I: OFFICE ORDERS CONSTITUTING THE COMMITTEE
Annexure 1(a)



File No. 20/IFSCA/VCC/2020-21/03

May 11, 2022

OFFICE MEMORANDUM

Subject: Constitution of an Expert Committee for drafting legal framework for allowing Variable Capital Company (VCC) structure in the IFSC(s)

This is with reference to the suggestions made in the report titled "Report of the Expert Committee on feasibility of the Variable Capital Company in International Financial Services Centres in India" submitted to the IFSCA on 26th May, 2021. Amongst other things the said report has suggested a separate law to be introduced, containing the substantive provisions governing the VCC structure in the IFSC.

2. On the basis of the report, further discussions were held by IFSCA with relevant stakeholders. Subsequently, meetings were convened by IFSCA with MCA officials and other representatives.

3. In furtherance of the discussions / meetings with MCA with respect to a separate legal framework for the VCCs, it has been decided to constitute an Expert Committee with the following members for drafting a legal framework for allowing the VCC structure in the IFSC(s) established in the country: -

- | | |
|---|-------------------|
| (i) Dr. M.S Sahoo (former Chairperson IBBI) | - Chairperson |
| (ii) Shri Ajay Bahl, Founder & Managing Partner at AZB & Partners | - Member |
| (iii) Shri Somasekhar Sundaresan, Senior Advocate | - Member |
| (iv) Shri Vikas Mehta, Advocate | - Member |
| (v) Shri J. Ranganayakulu, former Executive Director (Legal) SEBI | - Member |
| (vi) Ms. Shreya Prakash, Senior Associate Shardul Amarchand Mangaldas | - Member |
| (vii) Shri Ankit Bhansali, Deputy General Manager, IFSCA | -Member Secretary |

4. In addition to the above members, Dr. K.P Krishnan, IAS(Retd.) will be a distinguished invitee to the committee.

5. The terms of reference for the Committee would be as follows:

- a) A comprehensive analysis of the legislations governing VCC structures in different international jurisdictions.
- b) Examine the laws in India and provide a broad framework to draft the law for governance of VCCs in IFSC;
- c) Any other issue which may be considered necessary but not mentioned above.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

Second & Third Floor, PRAGYA Tower, Block 15, Zone 1, Road 1C, GIFT SEZ, GIFT City,
Gandhinagar-382 355, Gujarat, India. P: +91 79 6180 9800

6. The Chairperson of the committee may also invite or co-opt any other practitioners, experts (subject specific) who have knowledge or experience in the field of corporate law and representatives from other Ministries or regulators under intimation to IFSCA.

7. The Committee may submit its report within 60 days from the date of its constitution.

8. Meetings:

- (1) The Committee shall meet at such times and places as it considers expedient.
- (2) 50 Percent of the existing strength of the Committee shall constitute quorum for its meetings.
- (3) Chairperson of the Expert Committee shall decide the agenda for the meetings and preside over the meetings of the committee.
- (4) In the absence of the Committee Chairperson, the Committee members shall elect one among themselves as the Committee Chairperson.

9. Sitting Fee:

- (1) A Member of the Committee shall be entitled to a sitting fee of Rs. 10,000/- for each formal sitting of the Committee.
- (2) A Committee Member shall be entitled to reimbursement of expenses on his travel and accommodation for attending the meetings of the Committee at par with the entitlement of Member of the Authority.

10. Conduct:

- (1) No Committee Member, including Committee Chairperson, shall communicate to the press or to any other public media on issues that have been considered or are under consideration of the Advisory/ Expert Committee.
- (2) A Committee Member, who is directly or indirectly interested in any issue coming up for consideration at a meeting of the Committee, shall disclose the nature of his interest at such meeting.
- (3) A Member shall not take part in any deliberation or discussion of the Committee with respect to such business except to the extent of professional advice if sought by the Committee.

11. Secretarial assistance shall be provided by IFSCA.

12. This issues with the approval of the Competent Authority.


(Sathyaraj C M)
Dy. General Manager

To

1. All the members of Expert Committee
2. Dr. K.P.Krishnan, IAS(Retd.)

Annexure 1(b)



F.No.20/IFSCA/VCC/2020-21 /512

August 8, 2022

OFFICE MEMORANDUM

Subject: Extension in the tenure of Expert Committee for drafting legal framework for allowing VCC structure in IFSC(s).

The International Financial Services Centres Authority has constituted a Committee of Experts for drafting legal framework for allowing Variable Capital Company (VCC) structure in the IFSC(s) vide OM No. 20/IFSCA/VCC/2020-21/03 dated May 11, 2022.

2. In partial modification to the said OM, Shri K.V.R.Murthy, IDAS, who had served as a Joint Secretary in the Ministry of Corporate Affairs, has been included in the said expert committee as a Member.

3. Further, the Competent Authority has considered the proposal of the Chairman of the Expert Committee and has approved the extension of its tenure upto September 30, 2022.


(Sathyaraj C M)
DGM(Admin.)

To

1. Dr. M.S.Sahoo, Chairman of Expert Committee
2. Shri K.V.R.Murthy, IDAS
3. All Members of Expert Committee.
4. Shri Ankit Bhansali, DGM & Member Secretary- with a request to circulate among the Committee Members.

Copy to:

1. Shri Manish, Sr. ACGDA(AN-1), Office of CGDA, Ultan Batar Road, Palam, Delhi Cantt.- 110010 – With reference to letter no. AN-1/1431/5/PF/I dated 01.08.2022.
2. Office order file.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

Second & Third Floor, PRAGYA Tower, Block 15, Zone 1, Road 1C, GIFT SEZ, GIFT City,
Gandhinagar-382 355, Gujarat, India. P: +91 79 6180 9800

Annexure 1(c)



F.No.20/IFSCA/VCC/2020-21

August 30, 2022

OFFICE MEMORANDUM

Subject: Nomination of Shri Pawan Kumar, DMD, IIFCL in the Expert Committee for drafting legal framework for allowing VCC structure in IFSC(s).

In continuation to the OM of IFSCA dated 11.05.2022 and 08.08.2022, the Competent Authority has approved the nomination of Shri Pawan Kumar, DMD, IIFCL as one of the members of the Expert Committee for drafting legal framework for allowing Variable Capital Company(VCC) structure in International Financial Services Centres(IFSCs).


(Sathyaraj C M)
DGM(Admin.)

To

1. Dr. M.S.Sahoo, Chairman of Expert Committee
2. Shri Pawan Kumar, Deputy Managing Director, India Infrastructure Finance Company Ltd.
3. All Members of Expert Committee.
4. Shri Ankit Bhansali, DGM & Member Secretary- with a request to circulate among the Committee Members.

Copy to:

1. Shri Soumyajit Gosh, Under Secretary, Dept. of Financial Services, Jeevan Deep Building, 3rd floor, Sansad Marg, New Delhi- With reference to letter no. 18/4/2020-IF-I dated 26.08.2022.
2. Office order file.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY

Second & Third Floor, PRAGYA Tower, Block 15, Zone 1, Road 1C, GIFT SEZ, GIFT City,
Gandhinagar-382 355, Gujarat, India. P: +91 79 6180 9800

ANNEXURE II: SUGGESTED CHANGES TO THE INCOME-TAX ACT, 1961 TO ACCOMMODATE VARIABLE CAPITAL COMPANIES AND THEIR SUB-FUNDS

1. It is proposed to amend the International Financial Services Centres Authority Act, 2019 (**IFSCA Act**) to provide for a framework of setting up of variable capital companies (**VCCs**) for fund-based activities in the International Financial Services Centres (**IFSCs**). However, given the unique nature of a variable capital company and its sub-funds, in contrast to companies, LLPs and trusts, it is imperative that appropriate changes are made to the (Indian) Income-tax Act, 1961 (“**IT Act**”), to recognize the existence of variable capital companies, and to extend the existing benefits available to funds operating from IFSCs, to such variable capital companies and their sub-funds.
2. **VCC and its sub-fund – Separate taxable persons**
 - 2.1 The draft IFSCA Act amendments recognize that a VCC and its sub-fund, though not separate legal persons, must maintain a clear segregation of their assets and liabilities. In other words, the assets of a sub-fund cannot be used to discharge any liability of the VCC or any other sub-fund of such VCC, and *vice versa*. In light of this cardinal principle, it is important that an VCC and its sub-fund(s) are treated as separate taxable persons under the IT Act.
 - 2.2 As per the provisions of the IT Act, every “person” is treated as a taxable entity and is required to obtain PAN and undertake applicable compliances, including filing of returns etc. The term “person” has been defined under section 2(31) of the IT Act to include “a company”. The term “company” has been defined under section 2(17) of the IT Act to include “any Indian company”. Further, section 2(26) of the IT Act defines an “Indian company”.
 - 2.3 In order to ensure that the VCC and its sub-funds constitute separate taxable persons under the IT Act, the definition of “Indian company” under section 2(26) of the IT Act may be amended. Suggestive language of the amendment is provided below:

“Definitions.

2. *In this Act, unless the context otherwise requires, -*

.....

(26) *"Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes—*

(i) *a company formed and registered under any law relating to companies formerly in force in any part of India (other than the State of Jammu and Kashmir and the Union territories specified in sub-clause (iii) of this clause) ;*

(ia) *a corporation established by or under a Central, State or Provincial Act;*

(ib) *any institution, association or body which is declared by the Board to be a company under clause (17);*

(ic) *a variable capital company or its sub-fund, incorporated or registered under [Chapter III-A of the International Financial Services Centres Authority Act, 2019];*

(ii) *in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State;*

(iii) *in the case of any of the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory:”*

3. Amendments to the Income-tax Act, 1961 to extend the existing taxation dispensation for IFSCs Alternative Investment Funds to VCCs and its sub-funds

3.1 Currently, the Income-tax Act provides for a distinct tax treatment of Category I, Category II and Category III Alternate Investment Funds (AIFs) set up in the IFSCs. Section 115UB of the Act defines the term “investment fund” to include Category I and Category II AIFs, whereas section 10(4D) defines the term “specified fund” to include Category III AIFs. These sections also define the term “units” in the context of such AIFs. All other sections which deal with any ancillary facet of such AIF taxation make a cross-reference to these two definitions, as applicable.

3.2 Therefore, in order to extend the existing income-tax dispensation pertaining to AIFs set-up in an IFSC, to a VCC and its sub-funds, necessary amendments may be required to the definitions of “investment fund” under section 115UB, “specified fund” under section 10(4D), as well as the definition of the term “units” under the above-mentioned provisions.

3.3 Further, section 56(2)(viib) of the Act defines “specified fund” to include Category I and Category II AIFs. This definition may also be amended to align it with the definition of “investment fund” under section 115UB, which deals with Category I and Category II AIFs.

3.4 In light of the above, the following amendments to the Income-tax Act may be considered (*the language of the suggested amendment is shown in RED against the text of the existing provision*):

3.5 Amendment to section 10(4D)

“Incomes not included in total income.

10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

.....
(4D) *any income accrued or arisen to, or received by a specified fund as a result of transfer of capital asset referred to in clause (viiab) of section 47, on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange or as a result of transfer of securities (other than shares in a company resident in India) or any income from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India or any income from a securitisation trust which is chargeable under the head "Profits and gains of business or profession", to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) or is attributable to the investment division of offshore banking unit, as the case may be, computed in the prescribed manner.*

Explanation.—For the purposes of this clause, the expression—

.....
(c) "specified fund" means,—

(i) a fund established or incorporated *or registered* in India in the form of a trust or a company, *including a variable capital company or its sub-fund* or a limited liability partnership or a body corporate,—

(I) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or International Financial Services Centres Authority Act, 2019 (50 of 2019);

(II) which is located in any International Financial Services Centre; and

(III) of which all the units other than unit held by a sponsor or manager are held by non-residents; or

.....
(f) "unit" means beneficial interest of an investor in the fund and shall include shares or partnership interests:

Explanation: The term "units" shall, in the context of a sub-fund of the variable capital company, shall mean equity shares issued by such variable capital company, in accordance with the International Financial Services Centres Authority Act, 2019, and held by an investor, which are intended for or applied for investment in such sub-fund only.

....."

3.3 Amendment to Section 56(viib)

"56. Income from other sources.

(1)

(2)

(viib)

Explanation.—For the purposes of this clause,—

.....

(aa) "specified fund" means a fund established or incorporated *or registered* in India in the form of a trust or a company, *including a variable capital company or its sub-fund* or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulated under the International Financial Services Centres Authority Act, 2019 (50 of 2019)

.....;"

3.4 Amendment to section 115 UB

"Tax on income of investment fund and its unit holders.

115UB. (1)

.....

(7)

Explanation 1.—For the purposes of this Chapter,—

(a) "investment fund" means any fund established or incorporated *or registered* in India in the form of a trust or a company, *including a variable capital company or its sub-fund* or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulated under the International Financial Services Centres Authority Act, 2019 (50 of 2019)

.....
(c) "unit" means beneficial interest of an investor in the investment fund or a scheme of the investment fund and shall include shares or partnership interests. *Explanation: The term "units" shall, in the context of a sub-fund of the variable capital company, shall mean equity shares issued by such variable capital company, in accordance with the International Financial Services Centres Authority Act, 2019, and held by an investor, which are intended for or applied for investment in such sub-fund only.*
....."

ANNEXURE III: TABLE COMPARING PROVISIONS FROM INTERNATIONAL JURISDICTIONS

The following table compares legislation governing VCCs in different international jurisdictions that the Committee has studied to make recommendations on the draft legislation on VCC.

[This space has been intentionally left blank]

Sl. No.	Issue	Practice/ Provision in Singapore	Practice/ Provision in the United Kingdom	Practice/ Provision in Mauritius	Practice/ Provision in Ireland	Practice/ Provision in Luxembourg
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	What kind of stand-alone legislation ought to be recommended?	<p>Singapore has a standalone legislation, i.e., the Variable Capital Companies Act, 2018 comprising 167 sections.</p> <p>All key concepts are contained in the legislation, and even though the legislation makes extensive reference to their Companies Act to deal with procedural issues, each provision is separately applied with requisite modifications. In this regard, see sections 5 and 6.</p>	<p>VCC referred to as “Open Ended Investment Companies” (“OEIC”) are defined and provided for under the Financial Services and Markets Act, 2000 (“FSMA”). Part XVII of the FSMA on Collective Investment Schemes contains the enabling provision for OEIC (See Chapter 1 - Section 236 and Section 262).</p> <p>However, the business of OEICs is governed by the Open-Ended Investment Companies Regulations, 2001 (“Regulations”) which is a self-contained code. The</p>	<p>The Variable Capital Companies Act (Act No. 3 of 2022) (“Mauritius VCC Act”) is a separate act which contains all the substantive provisions governing the VCC structure. Please note that pursuant to Section 28 of the Mauritius VCC Act, the Mauritius VCC act will come into force/operation by proclamation.</p>	<p>Irish Collective Asset-management Vehicles Act, 2015 (Act No. 2 of 2015) (“Ireland ICAV Act”) is a separate act which contains substantive provisions governing collective asset management vehicles, namely Irish Collective Asset-management Vehicles (“ICAV”), being VCC equivalent in Ireland.</p>	<p>Law of 17 December 2010 relating to undertaking for collective investment (“Luxembourg UCI Law”) which provides for a specific kind of company called the <i>Societe d’investissement a Capital Variable</i> (“SICAV”). Luxembourg does not have a specific legislation exclusively for variable capital companies i.e., SICAVs.</p> <p>Further, SICAVs shall be subject to the provisions applicable to <i>societes anonymes</i> (“SA”), i.e., public limited companies are applicable to SICAVs.</p>

			<p>Regulations, inter alia, lay down provisions for incorporation, operation, management, powers, duties, liabilities, winding up of the OEICs.</p> <p>The Regulations refer to and adopt provisions of the FSMA Act and Financial Conduct Authority Rules (“FCA Rules”) with respect to certain requirements and procedures to be followed by the OEICs. Reference is also made to applicable provisions of the Money Market Fund Regulations (“MMF Regulations”) and the Undertakings for Collective Investment in Transferable Securities Regulations, 2011</p>			<p>(Article 26)</p> <p>SA are governed by the provisions of the Commercial Companies Law 1915 (“Luxembourg Company Law”), which shall apply to SICAV subject to the Luxembourg UCI Law.</p> <p>The Law of 12 July 2013 on alternative investment fund managers to be applicable to SICAVs as mentioned in the Luxembourg UCI Law.</p> <p>(Article 95)</p>
--	--	--	--	--	--	--

			(“UCITS Regulations”)			
2	What should be the business purpose of a VCC? Should this be codified in law?	<p>Section 15 provides that</p> <p><i>“The sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate.”</i></p> <p>There is a restriction on carrying on any business that is inconsistent with this object. Contravention amounts to commission of an offence.</p>	<p>The business purpose of an OEIC is to function as a pooled investment vehicle in the nature of a Collective Investment Scheme as defined under Section 235 of the FSMA. The purpose of the OEIC is to invest in property of any description, as single-company fund or as an umbrella company with multiple sub-funds, with the aim of spreading investment risks and to enable the persons taking part in them to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income. The kind of property in which the</p>	<p>The written constitution of the VCC shall specify inter alia, the primary object of the VCC is to operate as a fund. (<i>Section 6(4)(b)</i>)</p>	<p>The sole object of the ICAV (other than ICAV authorized under European Communities (Undertakings for Investment in Transferable Securities) Regulations 2011 (“UCITS Regulations”) shall be the collective investment of its funds in property and giving members the benefit of the results of the management of its funds.</p> <p>For the ICAVs authorized under the UCITS Regulations, the sole object of the ICAVs shall be as per 4(3)(a) UCITS Regulations, i.e., the collective investment in either or both of transferable securities or other liquid</p>	<p>Luxembourg UCI Law provides that the sole object of the SICAV in respect of transferable securities is to invest their funds in transferable securities and/or other liquid financial assets in order to spread investment risks and to ensure for their unit-holders the benefit of the result of the management of their assets.</p> <p>(<i>Article 25</i>)</p> <p>The Luxembourg UCI Law permits various other investment vehicles.¹³</p>

¹³ Including a SICAV which may invest directly in assets. (*Article 93*)

			OEIC is to invest must be clearly stated in the instrument of incorporation. (Schedule 2, Para 3 of the Regulations.)		financial assets referred to in the UCITS Regulations, of capital raised from the public and which operate on the principle of risk-spreading. (Sections 5(2) and 6(3)(a) of Ireland ICAV Act read with Regulation 4(3)(a) of UCITS Regulations)	
3	Should the VCC legislation extend outside the GIFT city area?	N/A	The Regulations extend to the whole of the UK (Regulation 1(3))	The Mauritius VCC Act does not mention that the VCC is restricted to the IFSC in Mauritius.	The Ireland ICAV Act does not mention that the ICAV is restricted to the IFSC in Ireland.	The Luxembourg UCI Law does not mention that the SICAV is restricted to an IFSC or like specified territory in Luxembourg.
4	Which government authorities/ regulators should have supervisory powers over VCCs?	<ul style="list-style-type: none"> Administered by the Accounting and Corporate Regulatory Authority of Singapore (ACRA) (See Section 8) Anti-terrorism and money laundering obligations under purview of the Monetary Authority of Singapore (MAS) (See Part 7) 	<p>The FCA is the “Authority” defined under the FSMA that has the power to incorporate, monitor, supervise and regulate the functioning of the OEICs.</p> <p>The Registrar of Companies has the power to approve names, maintain an</p>	A company shall require to be incorporated or converted as a VCC as per the Mauritius Companies Act, 2001 (“ Mauritius Companies Act ”) with the Registrar of Companies or in the case of a foreign company, be registered as a VCC in Mauritius under	To operate as ICAV, a registration order (which shall effect the incorporation of the ICAV) and an authorization (for carrying on the business as ICAV) must be sought from the Central Bank. (Section 9, 10 and 19)	The competent authority in Luxembourg which is responsible for the supervision and authorisation of undertakings for collective investment and management of companies is the Commission de Surveillance du Secteur Financier (“ CSSF ”).

			<p>index of names and registered numbers of the Company and a record of documents of the Company. (Regulations 2(1)(a), 14, 18, 19, 20, 72 and 85)</p>	<p>the Mauritius Companies Act. (<i>Section 3; Section 4</i>)</p> <p>To operate as a VCC, authorization must be sought from the Financial Services Commission (Commission) set up under the Financial Services Act which provides for regulation and approval of financial services in Mauritius. (<i>Section 7</i>)</p> <p>A sub-fund is required to comply with the requirements of the Financial Services Act, 2007, Securities Act, 2005, the Mauritius Companies Act, the Insolvency Act, 2009, FSC Rules and any guideline issued by the Commission. (<i>Section 7 (3)</i>)</p> <p>The Minister to whom the</p>	<p>The Central Bank may impose conditions for granting authorization to and ICAV and approvals for a management company and a depository, which it considers appropriate for the purposes of the orderly and proper regulation of the business of ICAV, depositaries or management companies, as the case may be. (<i>Section 27(1)</i>)</p> <p>The Minister of Finance of Ireland may make regulations to carry out the provisions of the Ireland ICAV Act. (<i>Section 3(1)(a)</i>)</p>	<p>The CSSF shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the SICAV has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions. (<i>Article 27</i>)</p> <p>SICAVs shall be subject to the provisions applicable to public limited companies including for incorporation, filings, and disclosures. (<i>Article 26</i>)</p>
--	--	--	--	--	---	--

				responsibility for the subject of financial services is assigned may make such regulations as he thinks fit for the purposes of the Mauritius VCC Act, including any regulations for the purposes of sound management of a VCC, reporting obligations of the VCC, and penalties in case of contravention of the Mauritius VCC Act. (Section 27)		
5	Who are the stakeholders of the VCC?	<ul style="list-style-type: none"> ● Shareholders (Section 17) ● Board of Directors (Section 48) ● Fund Manager (Sections 46-47) ● Custodian (Section 2) 	<ul style="list-style-type: none"> ● Directors: An OEIC must have at least one director, and the directors must be named for authorization in the instrument of incorporation submitted with the authority. The OEIC must have at least one Director and in case the number of Directors is only one, the said 	Shareholders and Directors (Mauritius Companies Act) CIS Manager, CIS Administrator and Custodian (Section 12)	Shareholders (referred to as members in Ireland ICAV Act). (Definition of "member" and Section 38 and 48) Directors and secretaries (referred to as officers in Ireland ICAV Act) (Definition of "officer" and Sections 56 and 57)	<ul style="list-style-type: none"> i) Unit-holder ii) Directors/management board iii) Investment Managers/Management Company iv) Depository

			<p>Director must be a Body Corporate which is an authorised person and which has permission under Part IV-A of the FSMA Act to act as sole director of an open-ended investment company. If the company has two or more directors, the combination of their experience and expertise must be such as is appropriate for the purposes of carrying on the business of the company. (Regulations 15 (4) and (6) and (7))</p> <ul style="list-style-type: none"> ● Depositary: An OEIC must have a depositary. The depositary is responsible for the safekeeping of the property of the OEIC and also has oversight and 		<p>Management Company (may be designated by ICAV to undertake the management of the ICAV)</p> <p><i>(Definitions of "management company" and Section 23)</i></p> <p>Depositary (an ICAV which is not authorized under UCITS Regulations is required to appoint a Depositary) (<i>Section 21</i>)</p>	
--	--	--	---	--	--	--

			<p>monitoring functions relating to the activities of the Company. The depositary must be a body corporate incorporated in the UK (or EEA State). Its affairs must be administered in the country in which it is incorporated and it must have a place of business in the UK. It must also be an authorised person with permission under the FSMA to act as the depositary of an OEIC (Regulation 15(8), Schedule 1 of Regulations)</p> <ul style="list-style-type: none"> ● Shareholders: The OEIC issues shares to investors participating in the fund. It may issue one or more classes of shares. Shareholders of an OEIC inter alia have the right to participate in or 			
--	--	--	--	--	--	--

			<p>receive profits or income arising from the acquisition, holding, management or disposal of the scheme property. (Regulation 45)</p> <p>The holders of the <i>shares</i> or <i>securities</i> in the <i>body corporate</i> do not have day-to-day control over the management of the property (as specified in section 235(2) of the FSMA and the property is managed as a whole by or on behalf of the OEIC. They also do not have any beneficial interest in the fund property of the Company (section 236(2)).</p> <ul style="list-style-type: none"> • Auditor: Every OEIC is required to have an independent Auditor appointed in terms of Schedule 5 of the 			
--	--	--	---	--	--	--

			Regulations. The Auditor must be eligible under Part 42 of the Companies Act 2006 (Regulation 69)			
Basic Structure and Incorporation of a VCC						
6	What kind of entity should the VCC be?	A body corporate that is capable of suing and being sued, having perpetual succession and limited liability (Sections 2 and 16)	<p>(i) OEIC are Body Corporates with separate legal existence that can be structured as a single company fund or as an umbrella company with multiple sub-funds, each of which has its own investment aims and objectives.</p> <p>(ii) It can also be a public listed Company in terms of Listing Rules (Open-ended Investment Companies) Instrument 2021.</p> <p>(iii) OEIC can sue and be sued in its capacity as a legal entity. An umbrella company may also sue and be sued in</p>	<p>A VCC shall –</p> <p>(a) be a body corporate; and</p> <p>(b) carry out its business through sub-funds and special purpose vehicles. If elected to have legal personality, a sub-fund or special purpose vehicle (SPV) may have a legal personality that is distinct from the VCC, and is required to be incorporated as a company under the Mauritius Companies Act. (Section 5 read with Section 10 (1))</p> <p>A SPV shall however not operate as a fund and shall only operate as a vehicle ancillary to the VCC or the sub-fund of a VCC.</p>	<p>ICAV shall:</p> <p>(i) be a body corporate; (Section 5(1))</p> <p>(ii) have limited liability of members (to the extent of amount, if any, unpaid on the shares respectively held by them); (Section 5(3))</p> <p>(iii) have perpetual succession (Section 15(b))</p>	<p>SICAV requires an authorization from the CSSF to operate as a SICAV. (Article 27)</p> <p>The laws applicable to public limited companies are applicable to a SICAV. SICAV, being an investment company, would have separate legal existence, limited liability of the shareholders and be sued in its own name.</p> <p>The articles of incorporation of a SICAV shall provide that the amount of capital shall, at all times, be equal to the</p>

		<p>respect of a particular sub-fund.(Regulation 11A)</p> <p>(iv) The OEIC can also be proceeded against for any offence under the Regulations or for contravention of any provision of the FSMA, along with the officer responsible for such offence (Regulations 80, 81).</p> <p>(v) There is no minimum capital requirement under the UK Regime.</p> <p>(vi) Every OEIC must permit the Shareholders to have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company's instrument of</p>	<p>(Section 9 (2))</p>		<p>value of the net assets of the company.</p> <p>(Article 93)</p> <p>If the capital of the SICAV falls below two thirds of the minimum capital, the directors or the management board, as the case may be, shall submit the question of the dissolution of the SICAV to a general meeting for which no quorum shall be prescribed and which shall decide by a simple majority of the units represented at the meeting.</p> <p>(Article 30)</p>
--	--	---	------------------------	--	---

			<p>incorporation and FCA Rules or to sell their shares on an investment exchange at a price not significantly different from the net value of the scheme. (Regulation 15(11)).</p> <p>There are other entities available also such as Unit Trust Schemes established by a trust deed (section 237) or co-ownership scheme or partnership schemes (section 235A) or money market funds. But these are not companies.</p>			
7	How would the internal governance mechanisms of a VCC be defined?	In addition to what is provided in legislation, internal governance is defined in the constitution.	<p>An OEIC is required to submit its instrument of incorporation (not MOA/ AOA) for authorization with a certificate signed by a solicitor to the effect that the instrument of incorporation complies with Schedule 2 to the Regulations and with</p>	<p>The VCC is required to have a written constitution, which inter alia must specify the rights attached to each category of shares of the company. (Section 6(4))</p> <p>A sub-fund is required to comply with the requirements</p>	<p>The Ireland ICAV Act provides for the appointment of directors, removal of directors, payment of compensation to directors etc. of an ICAV.</p> <p>(Sections 56, 62, 70)</p> <p>Various actions and compliances set out in</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including provisions in respect of constitutional documents) subject to any derogation by the Luxembourg UCI Law.</p> <p>(Article 26)</p>

			<p>applicable requirements under the FCA. It has directors and there are provisions for their appointment and removal. General meetings are to be held and the manner in which the same can be dispensed is also specified (Regulations 34 to 44).</p>	<p>of the Financial Services Act, 2007, Securities Act, 2005, the Mauritius Companies Act, the Insolvency Act, 2009, FSC Rules and any guideline issued by the Commission. (Section 7 (3))</p> <p>Where the sub-fund elects to have a separate legal personality, it must be incorporated as a company under the Mauritius Companies Act. (Section 10)</p> <p>The Mauritius Companies Act provides for inter alia, a board of directors, constitution of a company, administration, accounting and governance. The directors of the VCC shall be directors of each of its sub-funds, unless</p>	<p>the Ireland ICAV Act are required to be subject to the provisions agreed under the instrument of incorporation of an ICAV including, <i>inter alia</i>, the object of the ICAV, provisions relating to issuance and transfer of shares and debentures, buyback of shares, convening of annual general meetings etc. (Sections 6(3), 38(1), 41, 46, 88(7))</p> <p>The Ireland ICAV Act provides that the relevant provisions of the Ireland Companies Act, 2014 are to be complied with, in respect of certain actions relating to ICAVs including, <i>inter-alia</i>, disqualification of directors (Chapter 4, Part 14 of the Ireland Companies Act), restrictions on directors of an</p>	<p>The SICAV is required to have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments, in order to invest its initial capital and ensuring, inter alia, that each transaction involving the company may be reconstructed according to its origin, the parties concerned, its nature, and the time when and the place at which it was effected and that the assets of the SICAV are invested</p>
--	--	--	--	---	---	---

				<p>otherwise provided in the written constitution of the VCC. (Section 10 (6))</p> <p>VCC can issue shares or issue shares in its sub-funds in case such a sub-fund has elected for a separate legal personality. (Section 20)</p>	<p>insolvent company (Chapter 3, Part 14 of the Ireland Companies Act), receivers (Part 8 of the Ireland Companies Act), winding up (Part 11 of the Ireland Companies Act) and investigations (Part 13 of the Ireland Companies Act), subject to such modifications/ substitutions in the provisions of the Ireland Companies Act, as provided in the Ireland ICAV Act.</p>	<p>according to the instruments of incorporation and the legal provisions in force. (Article 27)</p>
8	<p>What minimum requirements relating to the MoA and AoA should be placed in legislation?</p>	<p>Section 19 provides for a single constitution of the VCC. Certain terms (e.g. those relating to valuation of assets, object of the VCC, separation of sub-funds) are implied. Certain minimum requirements that the constitution must contain are also provided in legislation. The format is similar to the format provided in the Companies Act for constitutions.</p>	<p>As per Schedule 2 to the Regulations, -the instrument of incorporation not MoA/ AoA) must specify the following details:</p> <p>(i) Name of the Company (ii) Category of the Company (iii) Object of the Company including the kind of property it would invest in</p>	<p>A variable capital company shall, at all times, have a written constitution which shall –</p> <p>a) comply with the Companies Act; and b) specify –</p> <p>(i) that the primary object of the company is to operate as a fund; (ii) manner of measuring assets and liabilities (on fair value basis);</p>	<p>The instrument of incorporation of IVAC shall provide, <i>inter-alia</i>, that:</p> <p>(i) the actual value of the paid-up share capital of the ICAV shall be at all times equal to the value of its assets after deduction of liabilities;</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including provisions in respect of constitutional documents) subject to any derogation by the Luxembourg UCI Law. (Article 26)</p> <p>The articles of incorporation of a</p>

		<p>For alteration of the constitution, the threshold provided as a default is an ordinary resolution of the members (which is lower than the requirement of special resolution under the Companies Act, 1967). The constitution can provide for a different threshold for modification, and for certain matters such as the constitution of a sub-fund provide that no shareholder approval is required at all. (Section 20)</p>	<p>(iv) In case of an umbrella company, the investment objectives of each part of the scheme property that is pooled separately</p> <p>(v) Location of Head Office</p> <p>(vi) Maximum and Minimum Capital</p> <p>(vii) Class of shares that may be issued</p> <p>(viii) Rights attached to each class of shares and limitations on the same</p> <p>(ix) Procedure for the appointment, retirement and removal of any director of the company for which provision is not made in these Regulations or FCA rules;</p> <p>(x) Currency in which the</p>	<p>(iii) the rights attached to each category of shares of the company;</p> <p>(iv) issue, repurchase, redemption of shares to be in proportion to the net asset value of the sub-fund of the VCC; and</p> <p>(v) the policy of the company behind setting up a sub-fund or special purpose vehicle.</p> <p>(Section 6(4))</p> <p>The Mauritius Companies Act provides that for companies having a written constitution, the rights, powers, duties, and obligations of the company, the Board, each director, and each shareholder of the company shall be those set out in the Mauritius Companies Act except to the extent that they are restricted, limited or modified by the</p>	<p>(ii) the share capital of the ICAV shall be equal to the value for the time being of its issued share capital;</p> <p>(iii) share capital is to be divided into a specified number of shares without assigning any nominal value to them.</p> <p>(Section 6(3))</p> <p>Additionally, various actions and compliances set out in the Ireland ICAV Act are required to be subject to the provisions agreed under the instrument of incorporation of an ICAV including, <i>inter alia</i>, the object of the ICAV, provisions relating to issuance and transfer of shares and debentures, buyback of shares,</p>	<p>SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide.</p> <p>(Article 26(2))</p> <p>A UCI shall be authorised only if the CSSF has approved the instruments of incorporation and the management regulations respectively and the choice of the depositary.</p> <p>(Article 129)</p>
--	--	--	---	--	--	--

			<p>accounts of the company are to be prepared.</p> <p>(xi) Substituted procedures in case the Company dispenses with Regulation 46 requirements as to Share Certificates.</p> <p>Any amendment to the provisions pertaining to the objects of the company and internal procedure contained in the incorporation documents, once an authorization order is made, it shall have to be approved by the shareholders in a general meeting. (Schedule 2, Para 5)</p>	<p>constitution of the company in accordance with the Mauritius Companies Act.</p> <p>(Section 40 of the Mauritius Companies Act)</p>	<p>convening of annual general meetings etc.</p> <p>(Sections 6(3), 38(1), 41, 46, 88(7))</p>	
9	<p>Should model constitutional documents be provided as part of legislation?</p> <p>Should amendments of a certain nature</p>	<ul style="list-style-type: none"> These haven't been provided as part of legislation, but the Singapore Academy of Law has developed two model constitutions: https://www.singaporelawwatch.sg/About- 	<p>Schedule 2 to the Regulations provides detailed guidance to the contents of the Incorporation Instrument specifying the details required to be stated therein.</p>	<p>Mauritius VCC Act does not provide a model constitution.</p> <p>The constitution of the VCC must be in accordance with the</p>	<p>The Ireland ICAV Act provides that an ICAV shall have an instrument of incorporation. Various actions and compliances set out in the Ireland ICAV Act</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including provisions in respect of constitutional documents) subject to</p>

	<p>require some activities to require the prescription of a higher threshold? What should these activities be?</p> <p>Should the requirement for shareholder approvals for modification of constitutional documents be done away with for some modifications?</p>	<p><u>Singapore-Law/VCC-Model-Constitutions</u></p> <ul style="list-style-type: none"> • A higher threshold and relevant matters may be provided in the constitutional documents. • There is no requirement for member approval for: <ul style="list-style-type: none"> (a) an alteration for the purpose of forming a sub-fund; (b) an alteration to reflect any appointment or change of the manager of the VCC; (c) an alteration that does not prejudice the interests of any member, and does not release to any material extent the manager or any director from any responsibility to the members; (d) an alteration that is necessary for the purpose of complying with any order of court, law, direction of a public authority, code of conduct or other quasi-legislation; (e) the removal of an obsolete provision or the 	<p>Further, COLL 3.2.4 and 3.2.6 also provide for the format and contents of the instrument of incorporation.</p> <p>Any amendment to the provisions pertaining to the objects of the company and internal procedure contained in the incorporation documents, once an authorization order is made, shall have to be approved by the shareholders in a general meeting. (Sch 2, Para 5)</p>	<p>Mauritius Companies Act.</p> <p>(Section 6(4))</p> <p>Alteration of the constitution is provided for in the Mauritius Companies Act.</p> <p>(Section 44 of the Mauritius Companies Act)</p>	<p>are required to be subject to the provisions agreed under the instrument of incorporation of an ICAV including, <i>inter alia</i>, the object of the ICAV, provisions relating to issuance and transfer of shares and debentures, buyback of shares, convening of annual general meetings etc. (Sections 6(3), 38(1), 41, 46, 88(7))</p>	<p>any derogation by the Luxembourg UCI Law.</p> <p>(Article 26)</p> <p>The articles of incorporation of a SICAV and any amendment thereto shall be recorded in a special notarial deed drawn up in French, German or English as the appearing parties may decide.</p> <p>(Article 26(2))</p> <p>A UCI shall be authorised only if the CSSF has approved the instruments of incorporation and the management regulations respectively and the choice of the depositary.</p> <p>(Article 129)</p>
--	---	---	---	--	---	--

		<p>correction of any manifest error.</p> <p>(Section 20)</p> <p>According to the guidance notes for the Model Constitutions, formation of a sub-fund by itself doesn't require any alteration in the constitution.</p>				
10	How would the VCC's capital be organised?	<p>VCCs will be able to issue different classes of shares with different rights and dividend payment policies, although the rights attached to each share must be set out in the VCC's constitution. The VCC can specifically issue shares in respect of each sub-fund, although the manner of doing so is not clear in legislation.</p> <p>(See Sections 34-36)</p>	<p>OEICs raise capital from a number of investors with a view to invest the same in accordance with the Regulations and FCA Rules and its incorporation documents. The OEICs issue shares against the capital generated as one or more classes of shares with certain rights attached to the same.</p>	<p>A variable capital company may issue shares in its sub-funds and special purpose vehicles which chose to have a separate legal personality separate from the VCC.</p> <p>(Section 20(1)(a))</p>	<p>An ICAV may issue shares as fully paid up, or subscribed and partly paid up, in accordance with its instrument of incorporation, its prospectus, regulations of Central Bank and the conditions as may be imposed by the Central Bank.</p> <p>(Section 38(1) and (2))</p> <p>An ICAV may issue more than one class of shares, and may create more than one sub-fund.</p> <p>(Section 38(3))</p>	<p>The SICAV may issue its units at any time that would represent the investment of the unit holders in the SICAV.</p> <p>(Article 28)</p>

					<p>The assets of an ICAV shall belong exclusively to the ICAV and no shareholder has any interest in the assets of the ICAV.</p> <p><i>(Section 38(4))</i></p> <p>An ICAV may also issue debentures (defined under the Ireland ICAV Act as debenture stock, bonds and other securities), in accordance with its instrument of incorporation, its prospectus, regulations of Central Bank and the conditions as may be imposed by the Central Bank.</p> <p><i>(Section 38(1))</i></p>	
11	Would it be mandatory to have sub-funds?	No. The VCC may be a stand-alone VCC or an umbrella VCC.	OEICs in the UK can be structured as a single company fund or as an umbrella company with multiple sub-funds, each of which has its	VCCs can be set up as a standalone investment fund or structured as an umbrella fund with underlying sub-funds holding segregated portfolios.	The Ireland ICAV Act defined 'umbrella fund' as an ICAV which has one or more sub-funds.	A SICAV may have investment compartments (or "sub-funds") or separate parts of a common fund vehicle, subject to fund rules in their own right, and

			own investment aims and objectives.	(Section 8(1))	There is no specific requirement for all ICAVs to be set up as umbrella funds.	having their own investment objective. Assets of one compartment are kept separate from assets of other compartments. Furthermore, compartments are usually legally segregated from other compartments, meaning that a liability arising in one compartment cannot be offset by the assets in other compartments of the fund. However, the Luxembourg UCI Law does not expressly provide for a clear segregation of assets and liabilities.
12	How would the sub-funds be structured?	Sub-funds aren't separate legal persons but their property is separated from the VCC and other sub-funds. Sub-funds may also be wound up as though they are separate legal persons. An umbrella VCC may also allocate its assets amongst	Sub-fund means a separate part of the property of an umbrella company that is pooled separately. Regulation 11A provides for Segregated liability of sub-funds. While	A VCC may create one or more sub-funds in accordance with the Mauritius VCC Act and its written constitution. Such sub-fund, if it elects to do so, may have a distinct separate legal	Any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund. No umbrella fund shall apply the assets of any such sub-	Investment compartment is defined under the Luxembourg AIF Law which raises the capital from a number of investors, with a view to investing it in accordance with a defined investment

		<p>the sub-funds. (Sections 29 and 32)</p>	<p>sub-funds are not treated as separate legal entities, the properties of the sub-fund are subject to Court orders as if it were a separate entity. (Regulation 11A(5)). Under the said Regulations, the assets of each sub-fund belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella company or any other person or body, or any other sub-fund. Further, the liabilities of that sub-fund shall be discharged solely out of the assets of that sub-fund.</p> <p>However, an umbrella company may allocate any assets or liabilities which it receives or incurs on behalf of its sub-funds or in order to enable the</p>	<p>personality from the VCC and be required to be incorporated as a company under the Mauritius Companies Act. (Section 8)</p> <p>A sub-fund is required to comply with the requirements of the Financial Services Act, 2007, Securities Act, 2005, the Mauritius Companies Act, the Insolvency Act, 2009, FSC Rules and any guideline issued by the Commission. The sub-fund will have to be incorporated as a company under the Mauritius Companies Act. (Section 7 (3) read with Section 10(1))</p>	<p>fund in satisfaction of any liability attributable to any other sub-fund of the same umbrella fund. (Section 35(2))</p> <p>A sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, however, an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds, as provided in law, in respect of an ICAV. (Section 37(1))</p> <p>A sub-fund may be wound up as if the sub-fund were a separate ICAV however, in any such case, the appointment of the liquidator/provisional liquidator its powers, rights, duties and</p>	<p>policy for the benefit of those investors.</p>
--	--	--	---	--	---	---

			operation of the sub-funds and are not attributable to any particular sub-fund, between its sub-funds in a manner which it considers is fair to shareholders (Regulation 11A(4)).		responsibilities shall be confined to the sub-fund(s) which is/ are being wound up. (Section 37(3))	
13	How should a VCC be incorporated?	It is incorporated through a registration mechanism that is similar to the mechanism for registration of companies. The RoC is an officer of the ACRA. (Section 16 compared with Section 19, Companies Act, 1967)	OEICs are incorporated by making an application for an authorization order to the FCA under Regulation 12 fulfilling the requirements under Regulation 13, 14 and 15 and along with an incorporation instrument in accordance with Schedule 2 to the Regulation.	(i) A company may be incorporated under the Companies Act as a variable capital company. (ii) A company incorporated in Mauritius may be converted into a variable capital company. (iii) A company established in a jurisdiction other than Mauritius may be registered by way of continuation as a variable capital company. Provisions specific to incorporation and registration of VCC are provided for under Section 4. (Section 3)	A registration order would need to be obtained from the Central Bank which shall effect the incorporation of the ICAV. (Section 9) Subsequently, an authorization would need to be obtained by an ICAV from the Central Bank, for carrying on its business. (Section 19)	SICAVs shall be subject to the provisions applicable to public limited companies (including incorporation) subject to any derogation by the Luxembourg UCI Law. (Article 26)

				<p>Incorporation of a company must be in accordance with the Mauritius Companies Act with the Registrar of Companies.</p> <p>Filings under the Companies Act are to be made with the Corporate and Business Registration Department (CBRD) which is a government office, which falls under the aegis of the Ministry of Finance, Economic Planning and Development.</p>		
14	How should sub-funds be set up?	<p>An umbrella VCC must make an application for registration of a sub-fund to the Registrar within 7 days of the formation of the sub-fund. The Registrar should provide a registration number to each sub-fund.</p> <p>(Section 27)</p>	<p>The OEICs have to inform the FCA about the creation of a sub-fund and for the issuance of a separate Product Reference Number (PRN) for each sub-fund. The FCA scrutinises the investment objectives and policies of each sub-fund and will require model portfolios to be provided as well as</p>	<p>A sub-fund is created by the VCC and may have a separate legal personality if it so chooses.</p> <p>(Section 8)</p> <p>Where the sub-fund chooses to have a separate legal personality, it must be incorporated as a company under the Mauritius Companies Act.</p> <p>(Section 10)</p>	<p>No specific provision for any permission or application for setting up sub-fund.</p> <p>A sub-fund is created by the ICAV in accordance with the Ireland ICAV Act having separate liabilities from the ICAV.</p> <p>(Section 35)</p>	<p>Where a UCITS (which is incorporated and authorised as a SICAV) comprises more than one investment compartment, each compartment shall be regarded as a separate UCITS.</p> <p>(Article 40)</p>

			<p>commentary on the portfolio modelling and stress testing that should have been undertaken during the preparation phase. (Ref: COLL 4 Handbook of FCA)</p>	<p>The creation of a sub-fund has to be done with the prior approval of the Commission The creation of the sub-fund must be in accordance with the written constitution. Where the Commission approves the creation of the sub-fund, the Commission may assign an approval number to the sub-fund. (Section 8) An Application for the creation of a sub-fund shall be made in such form and manner as the Commission may specify and shall be accompanied by such fees as prescribed by FSC Rule. (Section 8)</p>	<p>A sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, however, an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds, as provided in law, in respect of an ICAV. (Section 37(1))</p>	<p>Each compartment of a UCITS with multiple compartments is to be considered as a separate issuer provided that the principle of segregation of the obligations of the various compartments <i>vis-à-vis</i> third parties is ensured. (Article 46) Each compartment, in this regard shall deem to be a UCITS and shall require authorisation from the CSSF.</p>
15	What should be the registered office of the VCC?	Like other Singaporean companies, a VCC should have a registered office in Singapore. (Section 45)	The head office of an OEIC must be located in England or in Wales, in Scotland or in Northern Ireland. (Regulation 15(3)).	The VCC and the sub-fund (where such sub-fund elects to have a separate legal personality) must be incorporated as a	An ICAV shall, at all times, have a registered office in the State to which all communications and notices may be	SICAVs shall be subject to the provisions applicable to public limited companies under the Luxembourg

		At least one director should be ordinarily resident in Singapore (Section 48) and the fund manager needs to be incorporated in Singapore and meet other criteria that show that it is Singapore based. (See Section 46)		company under the Mauritius Companies Act and comply with the provisions of the Companies Act in respect of its registered office. There is no specific clause on registered office in an IFSC.	addressed, and an ICAV shall give notice in writing of any change in the situation of its registered office or head office, within 14 days after the date of the change, to the Central Bank. (Section 7)	Company Law which provide for a registered office of a company. (Article 26)
16	What would be the appropriate nomenclature for the VCC/ its sub-funds?	<p>A VCC must have “VCC” as part of and at the end of its name. There are restrictions on using undesirable names, etc. similar to those under the Companies Act, 1967 (Section 21)</p> <p>The name of a sub-fund must be intimated to the Registrar, and any reference to a sub-fund must be accompanied by a reference to the registration number of the sub-fund and the separation of the sub-fund. (Sections 28, 30).</p>	<p>Every OEIC is required to get an approval from the Registrar of Companies on the name it proposes to use. Restrictions have been imposed on usage of certain terms and words under Regulation 19.</p> <p>As such, the following are prohibited from being used in the OEIC’s name: (i) limited, unlimited or public limited company, or their Welsh equivalents (ii) European Economic Interest</p>	<p>The name of a variable capital company shall include the words “Variable Capital Company” or “VCC” after its name. A sub-fund of a VCC may have its own distinct name. The name of an incorporated sub-fund or special purpose vehicle shall include the expression “incorporated VCC sub-fund”. (Section 6(1), Section 6(2) and Section 10(2))</p>	<p>The name of an ICAV shall end with one of the following: (a) Irish Collective Asset-management Vehicle; or (b) ICAV.</p> <p>The name shall not be, which in the opinion of the Central Bank, is undesirable or misleading. (Section 29)</p>	<p>The words “<i>société d’investissement à capital variable</i>” or the letters “SICAV”, or by the words “<i>société européenne d’investissement à capital variable</i>” (European investment company with variable capital) or “SICAV-SE” to be included after the name of the SICAV. (Article 32)</p>

			<p>Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989</p> <p>(iii) Abbreviation of any of the words or expressions referred above.</p> <p>The name should also not be one which already exists in the Registrar’s index of Company names.</p>			
17	Should the VCC structure be allowed to house both open-ended and closed-ended funds?	It is available for both open-ended and closed-ended strategies. This is enabled by the flexibility in redemption of the shares, i.e., they can be redeemed in accordance with the constitution as long as they are fully paid up and repurchase results in reduction in capital to the amount of consideration. (Section 31)	<p>Investment Companies with Variable Capital under the UK Regime are governed by the Regulations.</p> <p>Whereas, close-ended investment companies are treated differently and governed by the Companies Act and UK Alternative Investment Fund Managers Regulations (“AIFM”).</p> <p>(Source - W.R.T- Close-ended companies being</p>	<p>Reference only to a sub-fund as a collective investment scheme or a closed-end fund as understood under the Securities Act. (Section 7(3))</p> <p>Collective investment scheme may be regarded as an open-ended fund as per the Securities Act, 2005 and the amendment to the Mauritius Companies Act.</p>	No specific provision under the Ireland ICAV Act.	Yes, the SICAV can be both open-ended and closed-end as per the constitution and the authorisation of the CSSF.

			<p>governed by Company law- 1. Investment Funds- Overview, Article – Practical Law 2. Open-ended investment companies: An emerging form of investment fund. Article, Practical Law W.R.T- AIFM Regulations- Regulations 3 “Meaning of “AIF” 3.(1) “AIF” means a collective investment undertaking, including investment compartments of such an undertaking, which— (a) raises capital from a number of investors, with a view of investing it in accordance with a defined investment policy for the benefit of these investors; and (b) is not a UK UCITS;) (2) An AIF may be open-ended or</p>			
--	--	--	---	--	--	--

			closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.)			
18	Should open-ended funds be allowed to convert into close-ended funds and vice-versa?	Conversion appears to be possible if the constitution/ offer documents so provide or pursuant to a permissible alteration. No express guidance on this point in the law.	A body corporate incorporated as an OEIC may change from open-ended to closed-ended (and vice versa) if circumstances change so that a hypothetical reasonable investor would consider that the investment condition (Section 236 (3) of FSMA) is no longer met (or vice versa). This might happen where, for example, an open-ended investment company stops its policy of redeeming shares or securities at regular intervals. (Ref: Perimeter Guidance Manual – Chapter 9	No specific reference to conversion of the nature of funds created by the VCC. A sub-fund is required to comply with the requirements of the Financial Services Act, 2007, Securities Act, 2005, the Mauritius Companies Act, the Insolvency Act, 2009, FSC Rules and any guideline issued by the Commission. Any conversion/ change in the nature of the fund shall be subject to the corresponding applicable legislation. (Section 7(3))	No specific provision under the Ireland ICAV Act.	The Luxembourg UCI does not specifically provide for conversion of open-ended funds to closed-ended funds and vice-versa.
19	Should the VCC be required to take a separate mutual fund/ AIF	To make offers to retail investors, a VCC will need to be an “authorised scheme” under Section 286	OEICs are a special type of UK corporate vehicle which can be used for authorised	Apart from the requirement of incorporation under the Mauritius	Apart from the requirement of incorporation and registration and	SICAVs shall be subject to the provisions applicable to public limited

	<p>registration? How would this impact the corporate governance requirements encoded in legislation?</p>	<p>of the Securities and Futures Act, 2001. Additional corporate governance requirements relating to the number of directors, etc. would have to be complied with.</p>	<p>funds. They are not meant for close-ended schemes or other unauthorised funds. But there are other alternative vehicles such as Unit Trust Schemes established by a trust deed (section 237) or co-ownership scheme or partnership schemes (section 235A) or money market funds. OEICs are governed by Regulations as mentioned above.</p>	<p>Companies Act and the approval from the Commission to operate as a VCC, the Mauritius VCC Act does not specify any requirement for separate registration as a REIT, InvIT etc.</p>	<p>authorization from the Central Bank under the Ireland ICAV Act, the Ireland ICAV Act does not specify any requirement for any other separate registration.</p>	<p>companies (including incorporation) subject to any derogation by the Luxembourg UCI Law.</p> <p><i>(Article 26)</i></p> <p>The SICAV shall take authorisation from the CSSF prior to operating as an investment vehicle.</p>
Sub-funds						
20	<p>How should the segregation of assets and liabilities of sub-funds amongst themselves and vis-à-vis each other be defined?</p>	<p>Section 29 provides for the segregation of assets and liabilities of sub-funds in the following terms:</p> <ul style="list-style-type: none"> ➤ The assets of a sub-fund cannot be used to discharge the liabilities of or claims against the VCC or any other sub-fund of the VCC including in winding up; ➤ Any liability incurred on behalf of or attributable to any sub-fund of a VCC must be discharged solely out of the assets of that sub-fund including in winding up 	<p>OEICs in the UK have to mandatorily operate within a protected cell regime whereby the assets of a sub-fund belong exclusively to that sub-fund and cannot be used to discharge the liabilities of any other person, including the OEIC itself or another sub-fund. The statement to this effect is also required to be</p>	<p>The Act provides for the segregation of assets and liabilities of sub-fund. This means that:</p> <ul style="list-style-type: none"> (i) The assets of a sub-fund of a VCC cannot be used to discharge any liability of the VCC; (ii) Every asset attributable to a sub-fund shall be available only to the creditors of the Company who are 	<p>The Ireland ICAV Act provides for the segregation of assets and liabilities of sub-fund. This means that:</p> <ul style="list-style-type: none"> (i) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets 	<p>UCIs may be comprised of multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the UCI.</p> <p><i>(Article 181)</i></p> <p>The assets of a compartment are exclusively available to satisfy the rights of investors in relation to</p>

		<p>➤ A VCC must allocate/attribute assets and liabilities that it holds in relating to a sub-fund between its sub-funds in a manner that is fair to the shareholders. This is typically provided for in the constitution of the VCC.</p>	<p>included in the Incorporation Instrument of an Umbrella Company (Reg 11A(1)) Further, a liability incurred on behalf of a sub-fund must be discharged solely out of the assets of that sub-fund. (Reg 11A(2)) Where assets or liabilities are not attributable to any particular sub-fund, the OEIC can allocate them in a manner which it considers fair to shareholders. (Reg 11A(4)) Any deviation from the above even by stating the same in the instrument of incorporation, agreement, contract or otherwise would also be void (Reg 11A(3)) (Ref: Article on Protected Cell Regime, Practical Law)</p>	<p>creditors in respect of that sub-fund. Every asset attributable to a sub-fund shall, subject to section 48A of the Income Tax Act, be protected from the Creditors of the Company who are not creditors in respect of that sub-fund, including from any statutory, regulatory or Government body. A VCC may allocate any asset or liability that is not attributable to any particular sub-fund or special purpose vehicle, between its sub-funds in such manner as it considers not to be prejudicial to participants in the sub-funds. <i>(Section 11)</i> Where the VCC is initiating or is subject to, any legal proceeding in respect of a sub-fund, any order or judgement</p>	<p>of that sub-fund; and (ii) no umbrella fund shall apply the assets of any such sub-fund in satisfaction of any liability attributable to any other sub-fund of the same umbrella fund. The Ireland ICAV Act further provides that: (i) a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, however, an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds, as provided in law,</p>	<p>that compartment and the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the management regulations or instruments of incorporation provides otherwise. For the purpose of the relations between unit-holders, each compartment will be deemed to be a separate entity, unless a clause included in the management regulations or instruments of incorporation provides otherwise. <i>(Article 181)</i></p>
--	--	--	--	---	--	--

				<p>shall be restricted to that sub-fund. (Section 15)</p> <p>In respect of winding up, a sub-fund may be wound up voluntarily (with approval of the Commission) or by the Bankruptcy Division of the Supreme Court, in accordance with the provisions of the Insolvency Act, 2009. (Section 16 and Section 17)</p>	<p>in respect of an ICAV; and</p> <p>(ii) a sub-fund may be wound up as if the sub-fund were a separate ICAV however, in any such case, the appointment of the liquidator/ provisional liquidator its powers, rights, duties and responsibilities shall be confined to the sub-fund(s) which is/ are being wound up.</p> <p>(Section 35(2), 37(1) and 37(3))</p>	
21	<p>What activities of the sub-funds should be carried out at the VCC level? Which activities should be carried out at a sub-fund level?</p>	<p>Typically, all administrative activities are carried out at a VCC level. Since the sub-fund is not a separate legal person, the VCC enters into agreements on behalf of the sub-fund and can be sued and sues on behalf of the sub-fund.</p> <p>(Sections 27-33)</p>	<p>The sub-funds are not considered a separate legal entity and the OEIC/Umbrella Company may sue or be sued in respect of a particular sub-fund.</p> <p>However, a sub-fund can be treated as an OEIC in itself, for the</p>	<p>Given that a VCC and sub-fund may have distinct separate legal personalities if it so elects, the VCC and its sub-fund may enter into contracts and sue/ be sued in their own name. (Section 13)</p>	<p>The Ireland ICAV Act provides that:</p> <p>(i) a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, however, an umbrella fund may sue and be</p>	<p>The Luxembourg UCI Law does not specifically provide for the division of activities between the umbrella and the investment compartment.</p>

			<p>purpose of winding up of any particular sub-fund as if it is an OEIC, under Reg. 33C and can be wound-up without winding up of the Umbrella Company.</p>	<p>For a sub-fund that has not been setup as a separate legal entity, all activities must be carried out by the VCC.</p> <p>If a sub-fund having a separate legal personality creates a charge on any asset held by such sub-fund, any such charge will be registered in the name of such sub-fund, by virtue of such asset being held by such sub-fund.</p>	<p>sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds, as provided in law, in respect of an ICAV; and</p> <p>(ii) a sub-fund may be wound up as if the sub-fund were a separate ICAV however, in any such case, the appointment of the liquidator/provisional liquidator its powers, rights, duties and responsibilities shall be confined to the sub-fund(s) which is/ are being wound up.</p> <p><i>(Sections 37(1) and 37(3))</i></p>	
--	--	--	---	--	--	--

					<p>The Ireland ICAV Act provides that a charge may be created by an ICAV and may be registered with the Central Bank, in accordance with the procedure set out in the Ireland ICAV Act.</p> <p><i>(Sections 92 and 93)</i></p>	
22	<p>How should administration/ compliance for umbrella VCCs be carried out? Should these be at the sub-fund level or at the VCC level?</p>	<p>Compliances are carried out at the VCC level. For example, registration of charges, etc. is all done at the VCC level.</p>	<p>The authorised fund manager may choose to prepare annual and half- yearly reports for individual sub-funds of an umbrella in accordance with the requirement under the Regulations, and make them available on request to any unit holder investing in the relevant sub-fund. However, it is not mandatory to do the same. Since, each sub-fund would have its own investment objectives, strategies, assets, liabilities and transactions, it may</p>	<p>A VCC and a sub-fund (having separate legal personality) must be incorporated as a company in accordance with the Mauritius Companies Act which provides for disclosures, filings and administration for each company. Further, the written constitution of the VCC provides for the rights of shareholders of the VCC. <i>(Section 6(4))</i> In addition to the record keeping requirements in the Mauritius Companies</p>	<p>The Ireland ICAV Act does not specifically contain provisions relating to the administration of sub-funds/ umbrella funds.</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including administration and governance) subject to any derogation by the Luxembourg UCI Law.</p> <p><i>(Article 26)</i></p> <p>The SICAV may, if it elects, appoint a Management Company. Where the SICAV does not appoint a Management Company, the obligations on such</p>

			necessitate the authorised fund manager or the ACD, separate management and administration may be required for each sub-fund at their own level to ensure compliance at a micro-level, while the legal and regulatory compliances may remain at the OEIC level.	Act, a VCC shall keep separate records for the VCC and each of its sub-funds. <i>(Section 23)</i>		Management Company shall be applicable to the SICAV. <i>(Part IV)</i>
23	How would there be segregation between the VCC and the totality of its sub-funds? Would the VCC hold assets and liabilities outside of the sub-funds?	A VCC must allocate/attribute assets and liabilities that it holds in relating to a sub-fund between its sub-funds in a manner that is fair to the shareholders. This is typically provided for in the constitution of the VCC. <i>(Section 29)</i>	Sub-fund means a separate part of the property of an umbrella company that is pooled separately. Regulation 11A provided for Segregated liability of sub-funds. While sub-funds are not to be treated as separate legal entities, the properties of the sub-fund are subject to Court orders as if it were a separate entity. Each sub-fund is also	A sub-fund or SPV may elect to have a separate legal personality separate from the VCC. In that case, the sub-fund or SPV shall be incorporated as a company. <i>(Section 8)</i> The assets of a sub-fund or a special purpose vehicle of a VCC shall not be used to discharge any liability of the VCC or any other sub-fund or special purpose vehicle of the VCC,	The Ireland ICAV Act provides for the segregation of assets and liabilities of sub-fund. This means that: (i) any liability incurred on behalf of or attributable to any sub-fund of an umbrella fund shall be discharged solely out of the assets of that sub-fund; and (ii) no umbrella fund shall apply the assets of any such sub-fund in satisfaction of any	A SICAV may have investment compartments (or “sub-funds”) or separate parts of a common fund vehicle, subject to fund rules in their own right, and having their own investment objective. Assets of one compartment are kept separate from assets of other compartments. Furthermore, compartments are

			<p>treated as an OEIC for taxation purposes. Reg 11A(4(b) states that an OEIC may allocate any assets or liabilities incurred by it which are not attributable to any particular sub-fund, between its sub-funds in a manner which it considers fair to shareholders. This provision would imply that the OEIC cannot hold assets outside the sub-funds since it is required to distribute any assets received by it to one or more of its sub-funds. Further, under the Corporation Tax Act, an OEIC having sub-funds, i.e., an Umbrella Company is not assessed separately and only the sub-funds are taxed individually.</p>	<p>including during winding up, administration or receivership of the sub-fund, special purpose vehicle or VCC. (Section 11)</p>	<p>liability attributable to any other sub-fund of the same umbrella fund.</p> <p>The Ireland ICAV Act further provides that:</p> <p>(i) a sub-fund of an umbrella fund is not a legal person separate from that umbrella fund, however, an umbrella fund may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off, if any, as between its sub-funds, as provided in law, in respect of an ICAV; and</p> <p>(ii) a sub-fund may be wound up as if the sub-fund were a separate ICAV however, in any such case, the appointment of the liquidator/ provisional liquidator its powers, rights, duties and responsibilities shall be confined to the sub-fund(s) which is/ are being wound up.</p>	<p>usually legally segregated from other compartments, meaning that a liability arising in one compartment cannot be offset by the assets in other compartments of the fund. However, the Luxembourg UCI Law does not expressly provide for a clear segregation of assets and liabilities.</p>
--	--	--	---	--	--	--

					(Section 35(2), 37(1) and 37(3))	
24	How should cross-cell contagion be prevented?	<ul style="list-style-type: none"> • Explicit duty of the VCC and its officers under Section 29, contravention of which results in imposition of fine. • Section 30 provides detailed disclosure requirements that require identification of sub-funds, clarity on whether the VCC is acting in respect of a sub-fund and the disclosure of the sub-fund's separation of assets and liabilities. Fine for non-compliance. • Specific provision in Section 29 voiding any term of an agreement that is in contravention of the principle of separateness. • Cross-fund investments are allowed subject to relevant regulations. (Section 31) 	While the UK Regime prohibits cross-cell merging or transfer of assets and liability and makes it amply clear that the assets of a sub-fund would not be used in any way to discharge the liabilities under another sub-fund, the Regulations do permit an umbrella company for one of its sub-funds to acquire, subscribe or transfer for consideration, shares of any class or classes, representing other sub-funds of the same umbrella company, in accordance with FCA rules. (Regulation 11B). Therefore, it is possible for one sub-fund of an OEIC to invest in another sub-fund of the same	Sub-funds may invest into another sub-fund subject to certain conditions and the provisions of the constitution of the VCC. The condition for such cross-sub fund investment is that a sub-fund cannot invest in another sub-fund which has already invested in the first sub-fund. (Section 14) Any non-compliance of the provisions of the Mauritius VCC Act including for segregation of assets and liabilities between sub-funds is subject to a fine not exceeding 500,000 Mauritius Rupees and imprisonment not exceeding 5 years. (Section 25)	The Ireland ICAV Act provides that an umbrella fund shall disclose to all third party that it is a segregated liability umbrella fund before it enters into an oral contract with such third parties, and ensure that all its letterheads and in any agreement entered into by it in writing with a third party shall include the words " <i>An umbrella fund with segregated liability between sub-funds</i> ". (Section 36(1))	The Luxembourg UCI Law provides for certain restrictions for investment of one sub-fund into another: A UCITS may acquire the units of UCITS and/or other UCIs referred to in Article 41(1)(e), provided that no more than 20% of its assets are invested in the units of a single UCITS or other UCI (Article 46(1)) A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities

			<p>OEIC if the incorporation instrument states that cross-investing is permitted. (Ref: Article on Protected Cell Regime, Practical Law) Unit holders are also permitted to switch rights between two sub-funds in accordance with the Regulations. (COLL 3.3.10)</p>	<p>Approval numbers for each sub-fund to be provided by the Commission. (Section 9)</p>	<p>term not exceeding 6 months, or to both. (Section 36(2) read with 186(3))</p> <p>Further, an umbrella fund may, for the account of any of its sub-funds, acquire by subscription or transfer for consideration, shares of any class(es), however described, representing other sub-funds of the same umbrella fund. (Section 47(2))</p>	<p>to be issued or issued by one or more other compartments of the same UCI without that UCI being subject to the requirements of the Luxembourg Company Law. (Article 181(1) Article 181 (8))</p> <p>A compartment of a UCI may, subject to the conditions provided for in the management regulations or the instruments of incorporation as well as in the prospectus, subscribe, acquire and/or hold securities to be issued or issued by one or more other compartments of the same UCI without that UCI being subject to the requirements of the Luxembourg UCI Law on commercial companies. (Article 181(8))</p>
--	--	--	---	--	--	--

<i>Capital and Rights and Powers of Shareholders</i>						
25	What kind of securities should a VCC be allowed to issue? How would these securities correlate to a sub-fund, if any?	<ul style="list-style-type: none"> • VCCs should be able to issue shares in different classes. Some shares may not have any voting rights, and shares of one class may be converted into another. Fractional shares may also be issued. The constitution and the terms of the Offer Documents, etc. • Debentures may be issued either at the level of the VCC or specifically attributable to a sub-fund. 	<p>OEICs can issue shares or securities of one or more classes with different rights attached to the same that may vary from class to class. Each sub-fund would have its own class of shares.</p> <p>Share prices are arrived at after carrying out valuation.</p> <p>Most or all of the <i>shares</i> in, or <i>securities</i> of, the OEIC can be realised within a reasonable period. Realisation will typically involve the redemption or repurchase of shares in, or securities on the basis of the value of the property that the <i>body corporate</i> holds (that is, the net asset value).</p>	<p>VCC may issue shares in its sub-funds where such sub-fund has elected to have separate legal personality. (Section 20(1))</p> <p>Kind and nature of securities issued by the VCC must be in accordance with the constitution of the VCC. (Section 6 (4)(b)(iii))</p>	<p>An ICAV may issue shares, debentures, bonds and any other securities, in accordance with its instrument of incorporation, its prospectus, regulations of Central Bank and the conditions as may be imposed by the Central Bank. (Section 38(1))</p> <p>ICAV may issue more than one class of shares. (Section 38(3))</p> <p>An ICAV is required to maintain a register of its members with the particulars prescribed under the Ireland ICAV Act, including, <i>inter-alia</i>, the sub-fund (if any) and share class (if any) of such sub-fund</p>	<p>The SICAV or its compartment may issue its units at any time that would represent the investment of the unit holders in the SICAV. (Article 28)</p>

			<p>Therefore, a Body Corporate operating as an OEIC would largely issue redeemable shares or securities. Shareholders, however, do not have any underlying interest in the scheme property. (Ref: Perimeter Guidance Note 9.3.3., 9.9 and FAQs)</p> <p>COLL 5.2.6A lists out the permitted kinds of scheme property for UCITS Schemes as follows:</p> <p>(1) <i>transferable securities</i>; (2) <i>approved money-market instruments</i>; (3) <i>units in collective investment schemes</i>; (4) <i>derivatives</i> and forward transactions; (5) <i>deposits</i>; and (6) <i>movable and immovable property that is essential for the direct pursuit of the ICVC's business</i>;</p>		<p>to which the share belongs. (Section 49(1))</p>	
--	--	--	--	--	---	--

			Transferable Securities include: (a) <i>shares</i> (b) <i>debentures/ alternative debentures</i> (c) <i>government and public security</i> ; (d) <i>a warrant</i> ; or (e) <i>a certificate representing certain securities</i> .			
26	Should the securities of a VCC or its sub-fund be freely tradable?	The legislation <i>per se</i> doesn't separately define a public VCC and a private VCC with different rules for both. This is unlike the Companies Act, 1967 where a public and private company are different. However, cross-referencing from the Companies Act, 1967 suggests that the requirements applicable to a company or a public company may be applied here. This implies some distinction based on the nature of the constitution but requires confirmation. Secondary literature suggests that securities can be freely tradable as long as	Securities of the OEIC or its sub-funds can be listed for trading. The FCA lays down rules and guidelines to be followed for listing along with requirements to be met to qualify for listing. (Ref: The Listing Rules (Open-ended Investment Companies) Instrument 2021) Listing can take place on London Stock Exchange.	Not specifically covered under the Mauritius VCC Act. A sub-fund is required to comply with the requirements of the Financial Services Act, 2007, Securities Act, 2005, the Mauritius Companies Act, the Insolvency Act, 2009, FSC Rules and any guideline issued by the Commission. (Section 7 (3)) The Mauritius Securities Act provides for listing obligations, disclosures and prior approval from the	The shares or other interest of any member in an ICAV shall be personal property, transferable, subject to the provisions of the instrument of incorporation of ICAV, regulations of Central Bank and the conditions as may be imposed by the Central Bank. (Section 41)	The Luxembourg UCI Law does not specifically provide for restrictions on transfer of the units/shares.

		they meet the listing requirements.		Commission for listing of securities. The Mauritius Companies Act provides that the shares of a company are transferable subject to the limitations provided in the constitution of a company. Further the Securities Act provides that transfer of securities must be in compliance with the rules and procedure of the central depository.		
27	Should there be any restrictions on fresh issue or redemption/buy-back of securities or capital reduction by VCCs?	There is flexibility in redemption of the shares, i.e., they can be redeemed in accordance with the constitution as long as they are fully paid up and repurchase results in a reduction in capital to the amount of consideration. <i>(Section 31)</i>	There is no express provision restricting fresh issuance or redemption/buy-back of securities. In order to qualify as an OEIC, the company must meet one or both of the following requirements— (a) shareholders are entitled to have their shares redeemed or repurchased upon request at a price related to the net	Reduction of share capital can be made subject to the approval by the Registrar of an application made to such effect. <i>(Section 22)</i> A variable capital company may redeem or buy back its shares or those of its sub-funds and special purpose vehicles in	The manner of issuance of shares, debentures and other securities by an ICAV is governed by its instrument of incorporation, prospectus, regulations of Central Bank and the conditions as may be imposed by the Central Bank. <i>(Section 38)</i>	The units shall be issued at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.

			<p>value of the scheme property and determined in accordance with the company's instrument of incorporation and FCA rules or (b) shareholders are entitled to sell their shares on an investment exchange at a price not significantly different from that mentioned in sub-paragraph (a). Units can be issued or cancelled by the Authorised Corporate Director (fund manager) making a record of the issue or cancellation and of the number of the units of each class concerned, and cannot be issued or cancelled in any other manner, unless the instrument of incorporation authorises the OEIC or Depository to issue</p>	<p>accordance with its Constitution. <i>(Section 21(1))</i> The written constitution must be in compliance with the provisions of the Mauritius Companies Act. The Mauritius Companies Act which also provides for transfer of shares, annual filings, buy-back of shares and reduction in capital.</p>	<p>An ICAV may purchase by an ICAV of its own shares, subject to the provisions of its instrument of incorporation, regulations of Central Bank and the conditions as may be imposed by the Central Bank. However, An ICAV shall not purchase its own shares unless they are fully paid.</p> <p><i>(Section 46)</i></p> <p>Shares of an ICAV which have been purchased by or otherwise transferred to the ICAV shall be cancelled and the amount of the issued share capital of the ICAV shall be reduced by the amount of the consideration paid by the ICAV for the purchase/ transfer of the shares.</p>	<p>The units shall be redeemed at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.</p> <p>Units of a SICAV may not be issued unless the equivalent of the net issue price is paid into the assets of the SICAV within the usual time limits.</p> <p>The articles of incorporation shall determine the time limits for payments in respect of issues and repurchase and shall specify the principles and methods of valuation of the assets of the SICAV.</p>
--	--	--	---	---	---	---

			<p>or cancel units. (COLL 6.2.5R). Any restriction that the Company wishes to impose on sale and redemption of shares must be clearly set out in the incorporation instrument in the absence whereof the Authorised Fund manager is expected to give effect to any sale or redemption upon request from any unit holder. (COLL 6.2.16 to 6.2.20)</p>		(Section 47(1))	(Article 28)
28	<p>What rights of shareholders should be provided for in the VCC Act?</p>	<p>Section 34 only provides for a clear right to participate in or receive profits, income or other payments or returns arising from —</p> <ul style="list-style-type: none"> (i) the acquisition, holding, management or disposal of the property or part of the property of the VCC; or (ii) the exercise, redemption or expiry of any right, interest, title or benefit in the property or part of the property of the VCC, or to 	<p>The Shareholders must have the right to either have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company’s instrument of incorporation and FCA rules or to sell</p>	<p>The rights, obligations, powers, and meetings of shareholders are provided for in the Mauritius Companies Act. The written constitution of the VCC is required to be in accordance with the Mauritius Companies Act.</p> <p>Dividends may be paid in respect of</p>	<p>The rights which attach to each share of an ICAV of any given class are the following:</p> <ul style="list-style-type: none"> (i) the right, in accordance with the instrument of incorporation of the ICAV, to participate in or receive profits or income arising from the 	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including rights of shareholders) subject to any derogation by the Luxembourg UCI Law.</p> <p>(Article 26)</p>

		<p>receive sums paid out of such profits, income or other payments or returns. The right to vote may be provided or withheld. All other rights to be provided in the constitution of the VCC.</p>	<p>their shares on an investment exchange at a price not significantly different from the NAV. (Regulation 15) Shareholders also have the right to institute proceedings against the OEIC to restrain from doing an unauthorised act unless the same is done in fulfilment of a legal obligation arising from a previous act of the company (Reg. 42) Under Reg. 45, Shareholders may not have any interest in the scheme property of the company. They have the right, in accordance with the instrument of incorporation, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property.</p>	<p>shares of a sub-fund by reference only to the assets and liabilities attributable to that sub-fund. <i>(Section 20(2))</i></p> <p>Where shares in a sub-fund or special purpose vehicle are redeemed or bought back, a shareholder shall be entitled to a refund in accordance with the number of shares he owns <i>(Section 21(2))</i></p> <p>Apart from those shares that are issued during the initial offer period or of a closed-end fund listed on a securities exchange, a share in the sub-fund operating as a collective investment scheme shall be issued, redeemed or repurchased at a price equal to the proportion of the net</p>	<p>acquisition, holding, management or disposal of assets of the ICAV; (ii) the right, in accordance with the instrument of incorporation of the ICAV, to vote at any general meeting of the ICAV or at any meeting of shareholders of that class of shares; (iii) such other rights as may be provided for in the instrument of incorporation of the ICAV in relation to shares of that class, subject to the regulations of and the conditions imposed by the Central Bank. <i>(Section 38(5))</i></p>	
--	--	---	--	---	--	--

			<p>Shareholders further have the right to vote at any general meeting of the company or at any relevant class meeting in accordance with the instrument of incorporation. Any amendment proposed to the fundamental contents of the instrument of incorporation has to be approved by the shareholders of the company in a general meeting. (Schedule 2)</p>	<p>asset value of the sub-fund represented by that share. (Section 6(4)(b)(iv))</p> <p>A shareholder in a VCC may make an application to the Registrar for an authorization to reduce the share capital of the sub-fund or special purpose vehicle in which he holds shares. (Section 22(1)(b))</p>		
29	How would dividends be paid out?	There is no restriction on payment of dividends from the capital of the VCC.	<p>As per COLL 6.8.2B, the allocation or distribution of the income must be determined in accordance with its instrument constituting the fund and the general laws of the UK. The said COLL 6.8.2B sets out the manner in which income generated out of a fund that can be</p>	<p>A dividend may be paid in respect of shares of a sub-fund or special purpose vehicle by reference only to the assets and liabilities attributable to that sub-fund or special purpose vehicle. (Section 20(2))</p> <p>Dividends to be paid out of retained earnings, after having</p>	<p>The directors of an ICAV shall for each financial year prepare a director's report including the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves. (Section 118(1)(b))</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including payment of dividend) subject to any derogation by the Luxembourg UCI Law. (Article 26)</p>

			<p>said to include dividends, is to be distributed. It suggests that the fund must have a distribution account to which the amount of income allocated to classes of units that distribute income is transferred as at the end of the relevant accounting period. If it is to be allocated during an accounting period, appropriate adjustment is to be made to ensure the unit price does not change since the income becomes a part of the capital property requiring adjustment to the proportion of the value of the scheme property. (Source - Chapter 6.8 of COLL – Income: accounting, allocation and distribution- COLL 6.8.2B, 6.8.3 Income allocation and distribution.)</p>	<p>made good any accumulated losses at the beginning of the accounting period. (Section 63 of the <i>Mauritius Companies Act</i>)</p>	<p>No other specific provision relating to the process for payment of dividends under the Ireland ICAV Act.</p>	<p>(Article 461 of the <i>Luxembourg Company Law</i>)</p>
--	--	--	--	---	---	---

<p>30</p>	<p>How should the securities of a VCC/sub-fund be valued?</p>	<p>Valuation of shares to be at NAV (<i>Section 19</i>).</p> <p>Valuation to be conducted on the day the directors decide. (Model Constitution)</p>	<p>Reference is made to Net Asset Value in the Guidance issued by FCA for OEICs. COLL 6.3.3 dealing with Valuation and pricing which casts a duty on the authorised fund manager to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting and that subscription and redemption orders can be properly executed at that net asset value. The authorised fund manager must also follow the same method of pricing for each class of units in an authorised fund, or in a sub-fund of an umbrella so that the net asset value of each class can be extracted. (COLL 6.3.2)</p>	<p>Apart from those shares that are issued during the initial offer period or of a closed-end fund listed on a securities exchange, a share in the sub-fund operating as a collective investment scheme shall be issued, redeemed or repurchased at a price equal to the proportion of the net asset value of the sub-fund represented by that share. (<i>Section 6(4)(b)(iv)</i>)</p> <p>The written constitution of the VCC shall specify that the assets and liabilities of a company shall be measured on fair value basis. (<i>Section 6(4)(b)(ii)</i>)</p>	<p>The Ireland ICAV Act provides that the actual value of the paid-up share capital of the ICAV shall be at all times equal to the value of the assets of the ICAV after deduction of its liabilities. (<i>Section 6(3)(b)</i>)</p>	<p>The units shall be issued at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be increased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.</p> <p>The units shall be redeemed at a price arrived at by dividing the net asset value of the SICAV by the number of units outstanding; this price may be decreased by expenses and commissions, the maximum amounts and procedures for collection of which may be determined by a CSSF regulation.</p> <p>Units of a SICAV may not be issued</p>
-----------	---	---	---	--	---	---

						<p>unless the equivalent of the net issue price is paid into the assets of the SICAV within the usual time limits.</p> <p>The articles of incorporation shall determine the time limits for payments in respect of issues and repurchase and shall specify the principles and methods of valuation of the assets of the SICAV. Unless otherwise provided for in the articles of incorporation, the valuation of the assets of the SICAV shall be based, in the case of securities admitted to official listing on a stock exchange, on the last known stock exchange quotation, unless that quotation is not representative. For securities not so admitted on such a stock exchange and for securities which are admitted on such a</p>
--	--	--	--	--	--	--

						<p>stock exchange but for which the latest quotation is not representative, the valuation shall be based on the probable realisation value which shall be estimated with care and in good faith.</p> <p><i>(Article 28)</i></p>
31	Should VCCs have shareholder meeting requirements?	<p>There is a requirement to conduct AGMs, except if sufficient notice is given. However, even in such a case, shareholders with 10% of the paid-up share capital could require that an AGM be held.</p> <p>Provisions similar to those in the Companies Act relating to EGMs are applicable.</p> <p>The procedure for conducting meetings was adopted from the Companies Act, 1967.</p> <p><i>(Sections 77-80)</i></p>	<p>The Regulations provide for General meetings to be held each year, in addition to other meetings. Further, the directors of the company may elect to dispense with the holding of an annual general meeting for a particular year by giving sixty days written notice to all the company's shareholders.</p> <p>(Reg. 37, 37A)</p> <p>Appointment of Directors are to be made in AGMs, the</p>	<p>Not specifically covered under the Mauritius VCC Act. The constitution of the VCC must be in compliance with Mauritius Companies Act which provides for shareholder meeting requirements.</p> <p><i>(Section 6(4)(a))</i></p>	<p>An ICAV shall in each year hold a general meeting ("AGM") in addition to any other meetings, whether general or otherwise, it may hold in that year.</p> <p><i>(Section 89(1))</i></p> <p>If an ICAV holds its first AGM within 18 months after the date of its registration with the Central Bank in respect of the ICAV comes into operation, an ICAV may not hold any other meeting as its AGM in the year of</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including meeting requirements and governance) subject to any derogation by the Luxembourg UCI Law.</p> <p><i>(Article 26)</i></p>

			<p>Service Contracts of Directors are required to be made available for inspection at the AGMs, any act done by the Director beyond the Company's capacity may also be ratified. Class meetings may be held among the participating unit holders of a class of securities or sub-fund (COLL 4.4)</p> <p>Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for shareholders are to be set out in the incorporation instrument in accordance with COLL 4.4. (Ref: Article on Contents Requirement for OEIC Instrument of Incorporation</p>		<p>its incorporation or in the following year.</p> <p><i>(Section 89(2))</i></p> <p>Not more than 15 months may elapse between the date of one AGM of an ICAV and the date of the next AGM.</p> <p><i>(Section 89(3))</i></p> <p>The directors of an ICAV may elect to dispense with the holding of an AGM by giving 60 days written notice to all of the ICAV's shareholders.</p> <p><i>(Section 89(4))</i></p> <p>The directors of an ICAV may, whenever they think fit, convene an extraordinary general meeting.</p> <p><i>(Section 90(1))</i></p>	
--	--	--	--	--	--	--

			Checklist, Practical Law)			
32	Should there be a register of shareholders? Who should be able to access this register?	<p>A register of shareholders ought to be maintained. Members are allowed to inspect registers only with respect to themselves but the fund manager, the custodian, a public authority and a person with an order of the court should be allowed to inspect the register of the VCC/ relevant sub-fund.</p> <p>(Sections 81, 82)</p>	<p>Reg. 49 and Schedule 3 of the Regulations mandates that the Register of shareholders must be maintained by the Company at its head office or where an alternative inspection location has been notified to the Authority. The Register should be open to inspection by the shareholders and by the Authority.</p>	<p>Not specifically covered under the Mauritius VCC Act. Constitution of a VCC and sub-fund of a VCC must be in compliance with the provisions of the Companies Act. (Section 6(4)(a))</p> <p>The Mauritius Companies Act provides for register of shareholders to be maintained by a company. (Part II of the Mauritius Companies Act)</p>	<p>The Ireland ICAV Act provides that every person who agrees to become a member of an ICAV, and whose name is entered on its register of members, shall be a member of the ICAV. (Section 48)</p> <p>An ICAV shall keep a register of its members and enter the following particulars:</p> <p>(i) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, the sub-fund (if any) and share class (if any) of such sub-</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including maintenance of statutory registers) subject to any derogation by the Luxembourg UCI Law. (Article 26)</p>

					<p>fund to which the share belongs and any amount paid or agreed to be considered as paid on the shares held by each member;</p> <p>(ii) the date at which each person was entered in the register as a member; and</p> <p>(iii) the date at which any person ceased to be a member.</p> <p><i>(Section 49(1))</i> The persons entitled to inspect the register of members of an ICAV are:</p> <p>(i) the Central Bank,(ii) the Director of Corporate Enforcement of Ireland, and (iii) any statutory body which needs to inspect the register in order to properly exercise any of its function.</p>	
--	--	--	--	--	--	--

					(Section 50(6))	
33	Should VCCs be required to collect and disclose information relating to significant beneficial owners?	The MAS has authority to issue directions relating to customer due diligence in order to prevent money laundering. These directions must be complied with. (Sections 83-84)	While there is no specific requirement under the Regulations, FCA Guidance notes and Anti-Money Laundering Regime in the UK requires every Company incorporated in the UK to make disclosures with respect to significant beneficial owners and to maintain PSC (People with Significant Control) Registers and the same is also put into practice by existing OEICs/ICVCs.	Not specifically covered under the Mauritius VCC Act. VCC must be in compliance with Mauritius Companies Act which provides for the concept of beneficial owner and ultimate beneficial owner and the VCC will be required to maintain all disclosures and filings as provided for in the Mauritius Companies Act. (Section 6(4)(a))	Not specifically covered under the Ireland ICAV Act.	The Luxembourg law of 13 January 2019 on the register of beneficial owners provides for disclosure requirements and maintenance of records for all entities registered with the Luxembourg Trade and Company Register, which includes SICAV.
Accounting and Audit						
34	How should umbrella VCCs prepare their financial statements and annual reports? Who should these be disclosed to?	The VCC should maintain separate financial statements for itself and its sub-funds. Financial statements are prepared in line with Accounting Standards and the annual report is prepared in line with a prescribed format.	The OEIC Regulations contain requirements for the preparation of annual and half-yearly reports. The duty is cast on the Directors under Regulation 66. Under Regulation 67,	The VCC can at any time, by giving a written notice to the Registrar of Companies and Director – General, elect to present separate financial statements in respect		

		<p>These need not be published but every member or debenture holder should be provided a copy/ be entitled to ask for a copy.</p> <p><i>(Sections 99-105)</i></p>	<p>the Auditor must make a report on the accounts of the Company to the Shareholders which must form part of the annual report which is to be disclosed to the shareholders.</p> <p>The authorised fund manager may choose to prepare annual and half- yearly reports for individual sub-funds of an umbrella in accordance with the requirement under the Regulations, and make them available on request to any unit holder investing in the relevant sub-fund. However, it is not mandatory to do the same.</p> <p>The Reports are to be made available to the shareholders, filed with the FCA and also published within 4 months of making the same.</p>	<p>of each of its sub-funds (and SPVs).</p> <p>Separately, where a sub-fund has a legal personality separate from the VCC, it shall file its financial statements separately from the VCC.</p> <p><i>(Section 24 of VCC Act)</i></p>		
--	--	---	---	--	--	--

			(COLL 4.5.7R (4) and COLL 4.5.8R (3))			
35	What accounting standards should a VCC adopt?	<p>The VCC can adopt either the Singaporean Accounting Standards, US GAAP, IFRS or standards prescribed in the Securities and Futures Act, 2001.</p> <p><i>(Section 100(8) read with the Variable Capital Companies (Prescribed Accounting Standards) Regulations 2020)</i></p>	<p>An authorised fund manager of a UCITS scheme must ensure the employment of the accounting policies and procedures referred to so as to ensure the protection of unit holders.</p> <p>Accounting for the scheme shall be carried out in such a way that all assets and liabilities of the scheme can be directly identified at all times. Further, if the scheme is an umbrella, separate accounts must be maintained for each sub-fund. (COLL 6.3.3A)</p> <p>COLL 6.3.3A refers to SYSC 4.1.9 R (Accounting policies) issued by the FCA to be used as a guiding</p>	<p>IFRS or any other internationally accepted accounting standards.</p> <p><i>(Section 24(1) of VCC Act)</i></p>		

			<p>principle for accounting. The said SYSC 4.1.9 R (Accounting policies) states that “A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.”</p>			
36	<p>What audit requirements should be prescribed for VCCs?</p>	<p>Provisions of the Companies Act, 1967 have been applied. <i>(Sections 107-109)</i></p>	<p>Regulations require an independent auditor to be appointed for each OIEC who is required to make disclosures under Reg. 83A for not having contravened Chapter VIII of the UCITS Directive. Reg. 69</p>	<p>Provisions of the Mauritius Companies Act, that requires an auditor to audit the financial statements, apply.</p>		

			<p>read with Schedule 5 makes provision for the appointment and terms and conditions of appointment for auditors.</p> <p>COLL 4.5.7 read with COLL 4.5.12 requires that the auditor has to ensure that the accounting is prepared in accordance with the requirements of the IMA Statement of Recommended Practice, the COLL Guidelines and the Incorporation Instrument.</p>			
37	Should there be disclosure requirements regarding related party transactions?	<p>The same requirements as those in the Companies Act, 1967 apply in respect of related arrangements. These requirements bar certain related party transactions and impose requirements for obtaining prior approval of the members for such transactions.</p> <p>(Section 65)</p>	<p>The Regulations contemplate disclosure of related party transactions vis-à-vis Directors. The Director of an OEIC is under the obligation to disclose to the company any transaction entered into by the OEIC in which the Director or</p>	<p>In case accounts are prepared at the VCC level, then there would be no disclosure of RPTs within sub-funds. However, if there is an57lectionn of separate financial statements, then RPTs would be disclosed separately.</p>		

			<p>his associate is a party and such transactions are voidable under Regulation 44. An associate of the Director would include spouse, civil partner, child or stepchild (if under 18), employee, partner or anybody corporate of which that person is a Director, and if the Director is a body corporate, then any subsidiary undertaking or director of that body corporate (including any director or employee of such subsidiary undertaking).</p> <p>Further, COLL 4.2.5 which provides the table of contents of the Prospectus to be issued by an OEIC requires conflict of interest of the Depository and contracts and</p>			
--	--	--	---	--	--	--

			relations with third parties and if they are related parties, to be mentioned.			
Governance and Management of a VCC						
38	Should a VCC have a board of directors? How should it be constituted?	<p>Every VCC must have —</p> <p>(i) at least one director who is ordinarily resident in Singapore; and</p> <p>(ii) at least one director (who may be the same person as above) who is either a director or a qualified representative of the manager of the VCC.</p> <p>In addition, directors should meet ‘fit and proper’ requirements. (Sections 48, 53), where an authorised scheme is housed in the VCC, additional requirements would have to be met.</p>	<p>The minimum requirement under the UK regime is to have one Director. In case, the number of Directors is only one, the said Director must be a Body Corporate being an authorised person with permission under Part IV of the FSMA Act to act as sole director of an open-ended investment Company. If the company has two or more directors, the combination of their experience and expertise must be such as is appropriate for the purposes of carrying on the business of the company. The Directors of the</p>	<p>Not specifically covered under the Mauritius VCC Act.</p> <p>The Mauritius Companies Act provides for directors, their powers, duties, appointment, qualifications, and removal in addition to the requirements for the proceedings, quorum, fit and proper criteria of the board of directors. (Part XI of the Mauritius Companies Act)</p>	<p>An ICAV shall have at least 2 directors. An ICAV shall not have a body corporate or an unincorporated body of persons as a director of the ICAV.</p> <p>(Sections 56 and 58(1))</p> <p>For the appointment of 2 or more persons as directors of the ICAV, a resolution at a general meeting shall be passed, however, a motion for the appointment directors by a single resolution shall not be made unless a resolution has first been agreed to in the meeting without any vote being given against it.</p> <p>(Section 61)</p>	<p>SICAVs shall be subject to the provisions applicable to public limited companies (including board of directors and governance) subject to any derogation by the Luxembourg UCI Law.</p> <p>(Article 26)</p>

			<p>Company must be fit and proper to act. (Reg. 12, 15). For subsequent appointments, the same has to be ordinarily done in AGMs except in the initial stage when the Directors named in the Incorporation Instrument may appoint more Directors to fill vacancies until an AGM is held. (Reg. 34)</p>		<p>In all business letters on which the ICAV's name appears and which are sent by the ICAV to any person, the particulars in legible characters in relation to every director should appear.</p> <p>(Section 68)</p>	
39	<p>What should be the role of the Board of the VCC?</p>	<p>The Board and directors have the same responsibilities as provided for in the Companies Act, 1967.</p> <p>(Sections 63, 64)</p>	<p>The Role of the Directors is to conduct the business and manage the Company wholly and to ensure compliance with applicable laws. If the number of Directors is one- the business is to be managed by that Director known as the Authorized Corporate Director (ACD).</p>	<p>Not specifically covered under the Mauritius VCC Act. As per the Mauritius Companies Act, the VCC shall have a board of directors who must carry out their duties and functions in accordance with the Mauritius Companies Act.</p> <p>The VCC and, or the sub-fund shall</p>	<p>The directors of an ICAV shall have, <i>inter-alia</i>, the fiduciary duties:</p> <p>(i) to act in good faith in what the director considers to be the interests of the ICAV, (ii) to act honestly and responsibly in relation to the conduct of the affairs of the ICAV (iii) act in accordance with the instrument of incorporation of the</p>	<p>The conduct of the SICAV must be done with by the board of directors along with the Investment Manager which shall be separate entity.</p>

			<p>If the number is more than one then the Directors may allocate the responsibility of management of the Company among themselves. (Reg. 34). (PERG 9.10.10)</p>	<p>appoint a CIS Manager, CIS administrator or custodian where such appointment is required for a sub-fund by law or the Commission. (Section 12)</p>	<p>ICAV and exercise his/ her powers only for the purposes allowed by law, (iv) not use the ICAV's property, information/ opportunities for his/ her own or anyone else's benefit unless: (a) that is expressly permitted by the ICAV's instrument of incorporation, or (b) the use has been approved by a resolution of the ICAV in general meeting, (v) not agree to restrict the director's power to exercise an independent judgement unless: (a) expressly permitted by the ICAV's instrument of incorporation, or (b) approved by a resolution of the ICAV in general meeting, (vi) avoid any conflict between the director's duties to the ICAV and</p>	
--	--	--	---	---	--	--

					<p>the director's other (including personal) interests unless the director is released from his/ her duty to the ICAV in relation to the matter concerned, whether in accordance with provisions of the ICAV's instrument of incorporation in that behalf or by a resolution of it in general meeting,</p> <p>(vii) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both knowledge and experience that may reasonably be expected of a person in the same position as the director, and the knowledge and experience which the director has.</p> <p><i>(Section 79)</i></p>	
--	--	--	--	--	---	--

					<p>Further, the directors are required to prepare a directors' report for each financial year, which shall be approved by the board of directors and signed on behalf of the directors by 2 directors.</p> <p><i>(Section 118(1) and (2))</i></p>	
40	Should VCCs be required to appoint Company Secretaries?	<p>VCCs are required to appoint company secretaries as they would have under the Companies Act, 1967.</p> <p><i>(Section 69)</i></p>	<p>The UK Regime does not specify a requirement for appointment of Company Secretaries. It only contemplates Auditors for accounting requirements. The Director of the Company has the duty to ensure legal compliance. However, the OEIC may outsource certain functions such as shareholder administration and servicing, the registrar functions,</p>	<p>Not specifically covered under the Mauritius VCC Act. The VCC or the sub-fund may appoint service providers as required.</p> <p><i>(Section 12)</i></p>	<p>The Ireland ICAV Act provides that an ICAV is required to have secretary or joint secretary, who may be one of the directors, and that the directors of an ICAV shall ensure that the person appointed as secretary has the skills necessary to discharge his or her statutory and other legal duties and such other duties as may be delegated to the secretary by the directors, however, the roles and duties of such secretary or joint</p>	<p>The Luxembourg UCI Law does not specifically require the appointment of Company Secretaries.</p>

			<p>fund accounting and valuation which may mean that Company Secretaries may also be engaged as part of the delegated function. Such delegation has to be in terms of the Senior Management Arrangements, Systems and Controls sourcebook - SYSC 8 on Outsourcing and provisions of the COLL 6.6.15 in a manner so as to not create operational risk while outsourcing critical functionalities and to not impair the Company's internal control and the ability of the FCA to monitor compliance. The OEIC remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any</p>		<p>secretary are not specifically mentioned in the Ireland ICAV Act. (Section 57)</p>	
--	--	--	---	--	--	--

			<p>relevant services and activities. (SYSC 8 and COLL 6.6.15, 6.6.16) (Ref: Article on Procedure for authorization of an OEIC, Practical Law)</p>			
41	<p>Should a VCC have a fund manager? How should a fund manager be appointed?</p>	<p>A VCC must have a separate fund manager who is responsible for the conduct of its business. The fund manager must generally be a holder of a capital markets services licence. (Section 45) Secondary literature suggests a fund manager is typically appointed for all the sub-funds.</p>	<p>Under the Regulations, the Authorised Corporate Director of the Company is contemplated as the Fund Manager</p>	<p>The VCC and each sub-fund may have its own CIS Manager, CIS Administrator, the custodian or other service provider, as required. The duties, powers and licensing requirements of CIS Managers are provided for in the Mauritius Securities Act.</p>	<p>An ICAV may designate a company to undertake the management of the ICAV, subject to the approval of the Central Bank in this regard. <i>(Definition of "management company" and Sections 22 and 23)</i> The Central Bank shall approve a management company if the Central Bank is satisfied: (i) that the management company is: (a) an alternative investment fund manager authorised by</p>	<p>The SICAV may, if it elects, appoint a Management Company. Where the SICAV does not appoint a Management Company, the obligations on such Management Company shall be applicable to the SICAV. <i>(Part IV)</i></p>

					<p>the Central Bank under the European Union (Alternative Investment Fund Managers) Regulations, 2013 or by the competent authority in its home State in accordance with Chapter II of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011;</p> <p>(b) of competence of the management company in respect of matters of the kind with which it would be concerned in relation to an ICAV and its probity are such as to render it suitable to act as management company;</p> <p>(ii) that the management company is a body corporate that is incorporated under the law of the State and has, in the</p>	
--	--	--	--	--	--	--

					<p>opinion of the Central Bank, sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; and</p> <p>(iii) that the management company will be in a position to comply with the conditions as may be imposed by the Central Bank.</p> <p><i>(Section 23)</i></p>	
42	Should a VCC have a custodian?	The requirement to appoint a custodian flows from the Securities and Futures Act, 2001.	The UK OEIC must have a depository. The depository is responsible for the safekeeping of the scheme property of the OEIC. In effect, the Depository also acts as the Custodian of the funds. Although Reg 5(2)(b) prevents the Depository from entrusting a third party with all or some of the assets for	Where a sub-fund of a VCC is required by Law or the Commission to appoint a CIS manager, CIS administrator, custodian or other service provider, the VCC may appoint that CIS manager, CIS administrator, the custodian or other service provider, as the case may be. <i>(Section 12)</i>	An ICAV which is not authorized under UCITS Regulations is required to appoint a Depository <i>(Section 21)</i>	The SICAV shall appoint a Depository which shall act as the credit institution and monitor the continuous satisfaction of the minimum capitalisation requirements. <i>(Article 33 and Article 34)</i>

			safekeeping, the Depository may delegate its function to a custodian strictly in accordance with SYSC8 and COLL 6.6.15. and 6.6.16			
43	How should a VCC's affairs be administered?	N/A	The affairs of an OEIC are administered by the ACD in accordance with the FCA Rules and Guidelines and applicable provisions of the Alternative Investment Fund Managers Regulations 2013.	The written constitution of the VCC must inter alia comply with the provisions of the Mauritius Companies Act. Further, the operation of sub-funds must be in accordance with the Mauritius Companies Act, which provides for a board of directors to administer a company. <i>(Section 6(4) and Section 7(3))</i> The VCC and, or, the sub-fund may also appoint a CIS Manager, CIS Administrator, Custodian or other service provider, as required.	The instrument of incorporation of the ICAV must, <i>inter alia</i> , comply with the provisions of the Ireland ICAV Act, which provides for a board of directors to administer the ICAV. <i>(Section 6 and Part 4)</i>	SICAVs shall be subject to the provisions applicable to public limited companies (including administration and governance) subject to any derogation by the Luxembourg UCI Law. <i>(Article 26)</i>

				(Section 12) Unless otherwise specified by the written constitution of the VCC, the directors of the VCC shall be directors of each of its sub-funds.		
Inspection, investigation, inquiry						
44	How should any inspection, investigation and inquiry mechanism be designed?	The Minister declares that a VCC needs to be investigated for the protection of the public, etc. The VCC, a specified threshold of its members or debenture holders (or those of a sub-fund if the investigation relates to a sub-fund) may apply for this. Inspectors are appointed for this purpose and they make certain reports. The process of investigation, etc. is the same as provided in the Companies Act, 1967. (Sections 111-118)	The FCA, through a person appointed by it, has the power to conduct an investigation into the affairs of an OEIC under Regulation 30 if it deems it necessary for reasons stated in the Regulations. The person so appointed by the Authority to investigate has the power to call for and inspect documents that may be in the possession of any person. Further, provisions of Sections 174, 175, 176 of the FSMA pertaining to conduct of Investigations are	Direction to suspend activities of sub-fund or special purpose vehicle may be issued by the Chief Executive on the grounds of prevention of damage to the integrity of the financial service industry, protection of interests of the investors or for protection of repute of Mauritius as a centre for financial services. (Section 19) In addition to the record keeping requirements under the Mauritius Companies Act, a VCC is required to	The Ireland ICAV Act provides that the relevant provisions of the Ireland Companies Act, 2014 are to be complied with, in respect of investigations relating to ICAVs. (Section 173(1)) The Ireland Companies Act, 2014 provides for investigations into a company, powers of the inspectors, and procedure of such investigations. (Part 13 of the Ireland Companies Act)	The CSSF, in so far as a UCITS is established in Luxembourg, shall have the exclusive rights to take action against the UCITS if it infringes the laws, regulations or administrative provisions as well as the rules provided for by the management regulations or the instruments of incorporation of the investment company. (Article 136) SICAVs shall be subject to the provisions applicable to public limited

			<p>applicable to the investigation carried out against an OEIC under the Regulations. However, no person will be compelled to produce a document or disclose any information if it owes a duty of confidentiality by virtue of carrying on a banking business unless authorised by the person or the Authority or the Secretary of State to do so.</p>	<p>keep additional records. (Section 23) The Mauritius Companies Act provides for investigations into a company, powers of the inspectors, and procedure of such investigations. (Part XV of the Mauritius Companies Act)</p>	<p>In relation to the inspection, the Ireland ICAV Act provide that every document relating to an ICAV that is required to be deposited with, or sent or furnished or otherwise provided to, the Central Bank under the Ireland ICAV Act or the Companies Act, 2014 as it applies in relation to the ICAV: (i) shall be recorded on a register relating to the ICAV maintained by the Central Bank; and (ii) shall be open to inspection free of charge on a web-site maintained or used by the Central Bank.</p> <p>(Section 182(1))</p>	<p>companies (including investigation and penalty for offences) subject to any derogation by the Luxembourg UCI Law.</p> <p>(Article 26)</p> <p>The operation of the SICAV in derogation with the Luxembourg UCI Law and other applicable law would be subject to criminal law provisions under the Luxembourg UCI Law.</p> <p>(Chapter 22)</p>
Resolution, liquidation, voluntary liquidation						
45	How should the insolvency of a VCC/ sub-fund be resolved?	A VCC or its sub-funds may be wound up per the procedure in the IRDA/ Companies Act. Receivership provisions	An OEIC can be wound up either as a solvent company or as an unregistered company under Part	The consent of the Commission is mandatory in order that the sub-fund or a special purpose vehicle is wound up	No specific provision for insolvency or resolution of insolvency.	The <i>Tribunal d'Arrondissement</i> (District Court) dealing with commercial matters shall, at the request of

		<p>may also apply as per the IRDA/ Companies Act.</p> <p>The judicial management scheme does not apply to VCCs, nor does the scheme of arrangement.</p> <p>(See <i>Sections 33, 129, 130</i>)</p> <p>It is also possible to strike off/ dissolve sub-funds if they are not carrying on the business of the VCC. (<i>Sections 33A, 33B</i>)</p>	<p>V of the Insolvency Act.</p> <p>In the former situation, the OEIC may give a notice to the FCA for winding up in terms of its incorporation instruments for initiation of the process in accordance to the provisions of Regulation 33 and COLL 7.5</p> <p>In case of winding up due to insolvency which is provided for in Reg. 31, where a petition is presented in Court for winding up of the OEIC by any person, the procedure in Part V of the Act applies.</p> <p>In case of Umbrella Companies, sub-funds can be treated as separate legal persons and be wound up individually as if it is an OEIC itself, by following the same procedure without</p>	<p>voluntarily in accordance with a plan approved by the FSC.</p> <p>In this regard, the VCC Act expressly declares that the FSC will withhold its consent to a plan under a proposed voluntary winding up of a sub-fund or special purpose vehicle where the FSC is not satisfied that the interests of the participants of the sub-fund or special purpose vehicle have been adequately protected.</p> <p>However, no such consent is required where an application is lodged before the Bankruptcy Division of the Supreme Court to wind-up a sub-fund or a special purpose vehicle. Indeed, such applications are made either by the FSC, a creditor, the CIS</p>	<p>The Ireland ICAV Act provides that the relevant provisions of the Ireland Companies Act, 2014 are to be complied with, in respect of the appointment of a receiver and winding up of an ICAV.</p> <p>(<i>Section 153 and 154 of Ireland ICAV Act read with Part 8 and Part 11 of the Ireland Companies Act</i>)</p>	<p>the State Prosecutor, acting on its own initiative or at the request of the CSSF, pronounce the dissolution and order the liquidation of the UCIs.</p> <p>(<i>Article 143</i>)</p> <p>As per the Luxembourg Commercial Code, the competent district court, sitting in commercial matters, must conclude that the three cumulative conditions provided for under the Luxembourg Commercial Code are fulfilled, namely:</p> <ol style="list-style-type: none"> (1) that the entity is a commercial company with legal personality; (2) that it has ceased to make payments (cessation de paiement); and (3) that its creditworthiness is
--	--	--	--	---	--	--

			affecting the Umbrella Company. (Reg. 33C)	manager of a VCC or a sub-fund or the board of directors of a VCC or any of its sub-funds. (Section 16 and Section 17)		impaired.(ébranlement du crédit)
Mergers and Acquisitions						
46	Should mergers of VCCs/ their sub-funds be allowed?	They are allowed both within the VCC of different sub-funds, and between VCCs. No mechanism is separately provided. Instead, there is a requirement that the constitution set out shareholders' rights in respect of such mergers, etc. (See: https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/Response-to-Feedback-on-Proposed-VCC-Framework_10-Sep.pdf)	Mergers of OEICs are permitted under the UK Regime under Regulations 33B, 70 and Schedule 6 in the form of schemes of arrangement. Any OEIC can merge with another OEIC (Master UCITS) or with another sub-fund (Feeder UCITS) of the same OEIC or another OEIC.	Not specifically covered under the Mauritius VCC Act. The Mauritius Companies Act provides for merger and amalgamations of companies.	An ICAV authorized under the UCITS Regulations may, merge with any other UCITS in accordance with the provisions of the UCITS Regulations. (Section 183(1)) An ICAV authorized under the Ireland ICAV Act may merge with any other form of collective investment vehicle in accordance with the conditions imposed by the Central Bank. (Section 183(3))	Merger of a UCITS is provided for with the approval of the CSSF. Compartments of a SICAV may also merge subject to the authorisation of the SICAV and unit holders of the merging investment compartment. (Chapter 8)

<p>47</p>	<p>What approvals should VCCs require to effect a merger?</p>	<p>Please see above.</p>	<p>For a merger of an OEIC/authorised fund or sub-fund into another fund/sub-fund, the proposal is required to be approved by an extraordinary resolution of the unit holders of the transferor fund/sub-fund which is merging into another. In case implementation of the scheme of arrangement is likely to result in any material prejudice to the interests of the unit holders in any other sub-fund, an extraordinary resolution of the unit holders of other units in that umbrella will also be required. If an OEIC or sub-fund of an umbrella receives property (other than its first property) as a result of a merger which is entered into by some</p>	<p>Not covered under the Mauritius VCC Act. The Mauritius Companies Act provides for mergers and amalgamations of companies. A sub-fund, which elects to have a separate legal personality, must be incorporated as a company and any merger of such sub-fund must be in accordance with the Mauritius Companies Act.</p>	<p>The requirement for approval from shareholders and creditors is not specifically set out under the Ireland ICAV Act.</p> <p>An ICAV authorized under the UCITS Regulations may merge with any other UCITS in accordance with the provisions of the UCITS Regulations.</p> <p>An ICAV authorized under the Ireland ICAV Act may merge with any other form of collective investment vehicle in accordance with the conditions imposed by the Central Bank.</p> <p><i>(Section 183)</i></p>	<p>Approval from the CSSF is required for a merger in addition to the approvals under the Luxembourg Company Law.</p> <p><i>(Chapter 8)</i></p> <p>The SICAV would have to draft common terms of merger and appoint a statutory auditor for the purpose of inter alia valuation of assets, cash payment per unit, and exchange ratios, where applicable.</p> <p><i>(Article 72)</i></p>
-----------	---	--------------------------	---	---	---	---

			<p>other OEIC or sub-fund, or by a body corporate, the proposal requires sanction of an extraordinary resolution of the unit holders in the authorised fund or of the class or classes of units related to the sub-fund unless, the Directors and Depository of the authorised fund agree that such receipt of property is not likely to result in any material prejudice to the interests of the unit holders of the authorised fund. (COLL 7.6.2) In case of domestic mergers, FCA’s prior approval to the proposed merger under regulation 9 (Application for authorisation) of the UCITS Regulations 2011 is also required (COLL 7.7.6).</p>			
--	--	--	--	--	--	--

48	Should off-market transfer of securities be permitted?	See above	There is no express bar on off-market transfer of the securities held by the transferor company in case of a merger.	Transfer of shares of the VCC or the sub-fund that elects to have separate legal personality is subject to the provisions of the Mauritius Companies Act. The Mauritius Companies Act provides that the shares of a company are transferable subject to the limitations provided in the constitution of a company. Further the Securities Act provides that transfer of securities must be in compliance with the rules and procedure of the central depository.	The Ireland ICAV Act provides that the shares or other interest of any member in an ICAV shall be personal property, transferable, subject to the provisions and restrictions under the instrument of incorporation of ICAV, regulations of Central Bank and the conditions as may be imposed by the Central Bank. (Section 41)	The Luxembourg UCI Law does not specifically provide for off-market transfer of securities/units.
49	Should cross-border mergers be allowed?	See above	Cross border mergers are permissible in the UK under the UCITS Regulations. Regulation 7 (1) makes provision for cross-border mergers as a merger of UCITS where at least two	Not specifically covered under the Mauritius VCC Act. The Mauritius Companies Act provides for mergers and amalgamations of companies.	Not specifically covered under the Ireland ICAV Act. An ICAV authorized under the UCITS Regulations may merge with any other UCITS in accordance	Where the receiving UCITS is established in Luxembourg and the merging UCITS is established in another Member State, the CSSF shall receive copies of the information on the

			<p>entities are established in different European Economic Area States; or</p> <p>Merger of UCITS established in the same Member State into a newly constituted UCITS established in another EEA State.</p>	<p>(Section 244 of the Mauritius Companies Act)</p>	<p>with the provisions of the UCITS Regulations.</p> <p>An ICAV authorized under the Ireland ICAV Act may merge with any other form of collective investment vehicle in accordance with the conditions imposed by the Central Bank.</p> <p>(Section 183)</p>	<p>merger and the merger shall require authorisation from the CSSF and the authorisation for the host member state.</p> <p>(Article 68)</p> <p>The Luxembourg UCI Law provides for different requirements where the merging entity is established in Luxembourg or outside Luxembourg, as the case may be.</p>
Re-domiciliation						
50	Should re-domiciliation be allowed? How?	<ul style="list-style-type: none"> • A foreign corporate entity can apply for registration as a Singapore VCC. They must comply with Singapore laws and demonstrate deregistration in the parent/ home country. • Only in-bound re-domiciliation permitted. 	<p>The UK regime does not provide for Re-domiciliation of Companies incorporated in the UK or outside the UK seeking to be re-domiciled in the UK.</p>	<p>A company established in a jurisdiction other than Mauritius may be registered by way of continuation as a VCC subject to specific requirements as to the constitutional documents of such company, information</p>	<p>A body corporate which is established and registered under the laws of a relevant jurisdiction outside the State (as may be prescribed by the Minister of Finance) and which is a collective investment undertaking (termed as migrating body under the Ireland ICAV Act), may apply</p>	

		(Sections 135-141)		requirements, and corporate approval. (Section 4)	to the Central Bank to be registered as an ICAV in the State by way of continuation. (Section 147(1)) From the date of registration with the Central Bank, the migrating body shall be deemed to be an ICAV formed and registered under the Ireland ICAV Act. (Section 147(8))	
Taxation						
51	Is there a need for a separate tax-regime only for VCCs?	Existing tax exemptions for specified income from designated investments of a company incorporated and resident in Singapore arising from funds managed by a fund manager in Singapore (section 13R of the Income Tax Act) and for specified income from designated investments arising from funds managed by a fund manager in Singapore (section 13X of the Income	There provisions of the Corporation Tax 2010 in respect of income generated by the OEIC and the provisions of the Income Tax Act, 2007 in respect of income of the investors apply. Reference is to be made to the Alternative Investment Funds	There is no separate tax regime for VCCs in Mauritius. They are taxed under the (Mauritius) Income-tax Act, 1995 (“ Tax Act ”) as “companies”. The definition of “company” in section 2 of the Tax Act has been amended to include “ <i>a variable capital company, its</i>	There is no separate tax regime for taxation of ICAVs in Ireland. They are subject to existing Irish tax regime for regulated funds i.e. not subject to taxation in Ireland on its income or gains, and Irish tax only arises for the fund in the occurrence of certain chargeable events, where the	While there is no separate tax legislation for SICAVs, depending upon their structure, as an example, whether they have been set-up as a specialized investment fund, they are subject to a specific taxation regime. As an example, an annual

		<p>Tax Act) are extended to VCCs.</p> <p>VCC fund managers are also provided a concessionary tax rate of only 10% under an existing Financial Sector Incentive – Fund Management scheme.</p>	<p>(Tax Regulations 2013 (“AIF Regulations”) in order to determine the applicability of the provisions of these statutes and taxability of a certain kind of income based on its nature.</p> <p>(Ref: Article on Unit Trusts and Open-ended investment companies- tax overview, Practical Law)</p> <p>Income earned by the OEIC as Interest, Dividend or Rental Income from the underlying instrument/assets are liable to corporation tax. However, the OEIC is entitled to deduct from its taxable income all amounts that are distributed to the investors.</p> <p>Therefore, income that is distributed or deemed to be distributed by the</p>	<p><i>sub fund or special purpose vehicle”.</i></p>	<p>investors are Irish tax residents or appropriate investor declarations are not in place.</p> <p>(Source: https://www2.deloitte.com/content/dam/Deloitte/dk/Documents/finance/New-alternative-investment-vehicles-rising.pdf)</p>	<p>subscription tax on its quarterly net value or a capital duty, levied at the time of creation or subsequently, when new contributions are made or when a fund is converted or merged.</p> <p>(Source: https://www.kmgscivsif.com/why/taxation/#:~:text=It%20is%20charged%20at%20a,subject%20to%20the%20subscripti)</p>
--	--	--	--	---	--	---

			<p>OEIC among the investors is exempted from taxable income. However, all such deductions claimed must be shown as distributed or as being available for distribution either as yearly interest or dividends.</p> <p>OEICs are liable to pay Corporation Tax under the Corporation Act, 2010 on interest or other income that is earned by the Company that is not distributed. Capital Gains earned by the OEIC within the fund are not subject to Capital Gains.</p> <p>The income earned by the unit-holders/investors as dividend or interest is taxable under the Income Tax Act, 2007 as per applicable tax rates. Profit made by the Investor upon disposal of the Unit is</p>			
--	--	--	---	--	--	--

			<p>chargeable for Capital Gains Tax. Source: Articles: 1. Investment Funds: Overview, Practical Lawyer 2. Authorised unit trusts and open-ended investment companies: Tax, Practical law Unit trusts and open-ended investment companies: tax overview Taxation of OEICs and unit trusts- Techzone AIF (Tax) Regulations, 2006.</p>			
52	<p>At what level in an umbrella VCC should assessment and filing of Income Tax be carried out?</p>	<p>A VCC will be treated as a company and a single entity for tax purposes, and only one set of income tax returns will be required to be filed with the Inland Revenue Authority of Singapore even if the VCC is an umbrella VCC with multiple sub-funds.</p> <p>However, income is assessed at the sub-fund</p>	<p>Each sub-fund of an Umbrella Company is treated as an OEIC, i.e., a separate entity for the purpose of taxation and assessment is carried out of the sub-funds separately. However, the Umbrella Company as a whole is not regarded as a company for any</p>	<p>The definition of ‘company’ under Mauritian Income-tax Act, 1995, has been amended to include ‘a variable capital company, its sub fund or special purpose vehicle’.</p> <p>In case of a VCC, which does not elect to present separate financial statements</p>	<p>A separate registration number is not required for the sub-fund of an umbrella ICAV. A sub-fund can use the tax registration number of the Umbrella ICAV. The reporting and assessment would be carried out at the Umbrella ICAV level.</p>	<p>Based on the limited information available, it appears that the assessment and filing of returns is at the SICAV level and not at the sub-fund available.</p>

		<p>level and deductions and allowances are applied at the sub-fund level for determining the sub-fund's chargeable or exempt income</p>	<p>other purpose of the tax Act, unless an enactment expressly provides otherwise (Section 615 of the Corporation Tax Act, 2010) Corporation tax Act, 2010 Chapter 2- Authorised Investment Funds. Sections 612 and 615. Section 615 reads as follows: <i>“Umbrella companies</i> <i>(1) In this section “umbrella company” means an open-ended investment company—</i> <i>(a) whose instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are made to them, and</i> <i>(b) whose shareholders are entitled to exchange</i></p>	<p>for each of its sub-funds/ SPVs, the 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. In case of a VCC, which elects to present separate financial statements for each of its sub-funds or SPVs under section 24 of the Mauritius Variable Capital Companies Act, 2022 (“VCC Act”), 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</p>	<p>(Source: https://eyfinancialservicesthoughtgallery.ie/wp-content/uploads/2015/04/EY_Ireland-introduces-a-new-corporate-structure-for-funds.pdf)</p>	
--	--	---	--	--	--	--

			<p><i>rights in one pool for rights in another.</i></p> <p><i>(2) References in this section to a part of an umbrella company are to a separate pool.</i></p> <p><i>(3) For the purposes of this Chapter—</i></p> <p><i>(a) each of the parts of an umbrella company is to be regarded as an open-ended investment company, and (b) the umbrella company as a whole is not to be regarded as an open-ended investment company.</i></p> <p><i>(4) The umbrella company as a whole is not to be regarded as a company for any other purpose of the Tax Acts unless an enactment expressly provides otherwise.”</i></p> <p><i>Regulations of the AIF Tax Regulations, 2006, Regulation 7.</i></p>	<p>separate tax return to the MRA (<i>Section 48A(1) of the Tax Act</i>).</p> <p>It may be noted that 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 Tax Act 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 (<i>Section 48A(2) of the Tax Act</i>).</p>		
53	How would VCCs be taxed abroad?	VCCs can apply for a certificate of residence from IRAS, and consequently		The VCC would be entitled to the tax treaty network	The ICAV would be entitled to the tax	The Government has issued a circular relating to the types of

		<p>have access to Singapore’s DTAAAs. VCCs may also make an election under the US "check the box" rules to be treated as a "pass-through" entity for US federal income tax purposes.</p>		<p>between Mauritius and other jurisdictions.</p> <p>Where a VCC elects to present separate financial statements of each of its sub-funds or SPVs under section 24 of the Mauritius VCC Act, the VCC would be eligible to obtain a TRC for each sub-fund or SPV separately.</p> <p>In all other cases, the TRC shall be issued to the VCC, as a whole and on a consolidated basis, including its sub-funds/ SPVs.</p>	<p>treaty network between Ireland and other jurisdictions.</p>	<p>investment funds that need a certificate of tax residence, with the purpose of obtaining tax benefits under the double tax treaties signed by Luxembourg with other contracting states. This is also applicable to SICAV structures.</p> <p>(Source: https://www.startluxembourgfund.com/taxation-of-sicav-in-luxembourg)</p>
54	<p>How should M&As between VCC sub-funds or VCCs themselves be taxed?</p>	<p>There doesn’t appear to be any separate regime for this.</p>	<p>For tax reasons, a scheme of arrangement is generally regarded as a more preferable outcome for investors since it can usually be structured as a "rollover" whereby there is no immediate taxable event and the</p>	<p>Yes. They will be tax neutral.</p>	<p>No information available.</p>	<p>A SICAV SIF is subject to capital duty, when a fund is converted or merged. It is charged at a fixed rate of EURO 1,250 per operation.</p> <p>(Source: https://www.kmgsicavsif.com/why/taxatio)</p>

			<p>new shares received by investors will inherit the tax base cost of the original investment. (Ref: Article on Winding up an OEIC or OEIC sub-fund, Practical Law)</p>			<p>n/#:~:text=An%20annual%20subscription%20tax%20of,the%20quarterly%20net%20asset%20value.)</p>
--	--	--	--	--	--	---