



Intercontinental Trust Ltd

Newsletter

The introduction of the Variable Capital Companies Act 2022

Introduction

Rationale for
using a VCC

Illustration of
a VCC

Main features
of the VCC

Main features
of a sub-fund
and SPV in a
VCC

FSC Licensing
fees for a VCC

Taxation of a
VCC

Comparison
between PCC
and VCC

How can ITL
help?

The introduction of the Variable Capital Companies Act 2022

The enactment of the Variable Capital Companies Act 2022 (the “Act”) in April 2022 marks yet another milestone for Mauritius as it cements its position as the International Financial Centre of choice for the region.

First announced in April 2021, it will be recalled that the introduction of the Variable Capital Company (VCC) was one of the action points that emanated from the National Budget 2020/2021 in line with the 10-year Blueprint that was established for the Mauritius IFC. The VCC will aim to deliver on the increasing demands for innovation in the fund market space, and will indubitably be of interest to international investors looking at a cost effective and flexible structure.

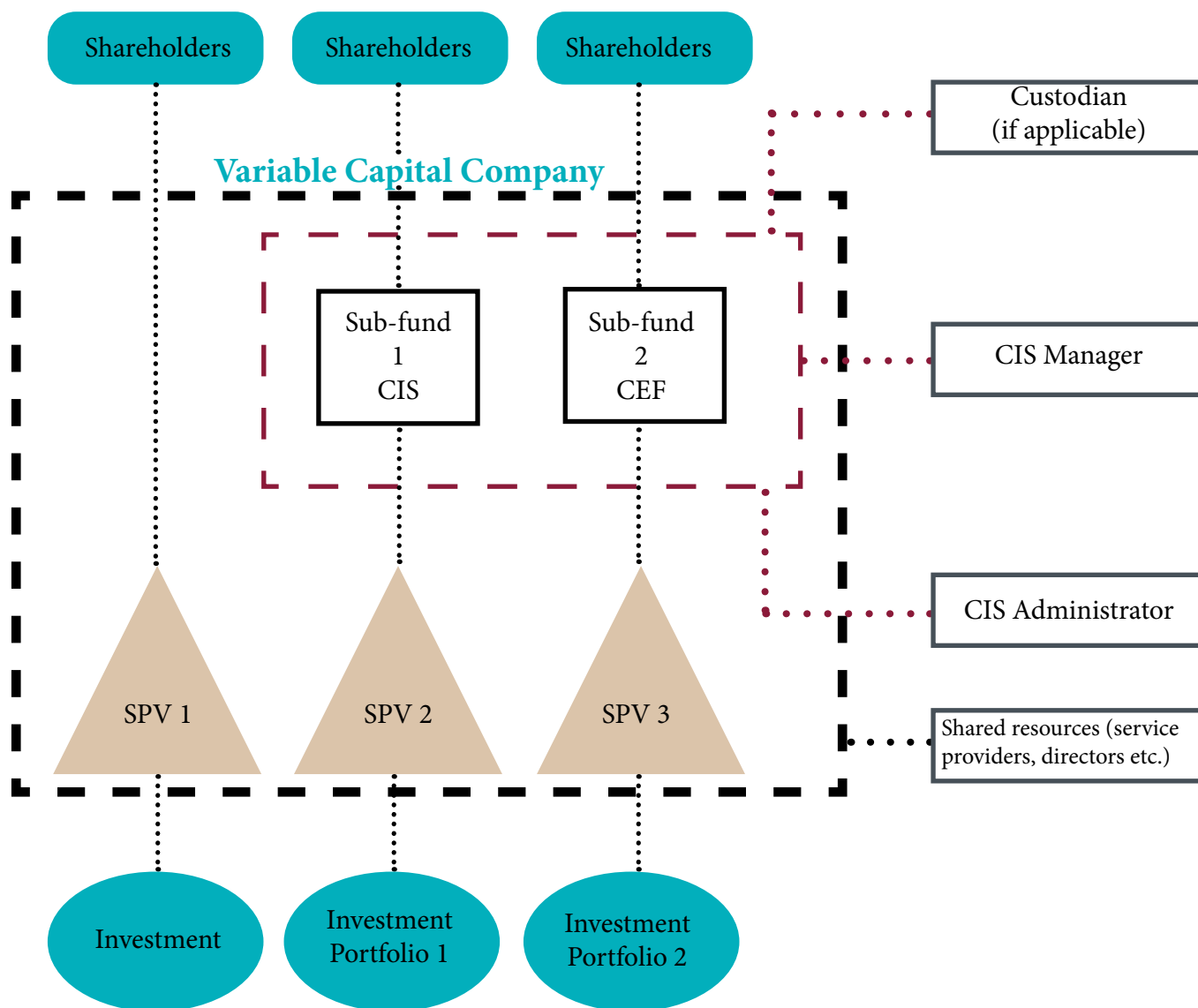
The Act has also ensured that the legislative framework regulating the VCC complies with the requirements of the Anti-Money Laundering/Combating the Financing of Terrorism.

The rationale for using a VCC

The VCC can operate as a standalone entity or as an umbrella structure comprising sub-funds. Special Purpose Vehicles (SPVs) can also be set up under the VCC or its sub-funds.

For fund managers having several investment strategies and objectives, the VCC could prove to be the ideal vehicle since it can have different sub-funds operating as either closed-end funds or open-ended funds as well as SPVs. If it so wishes, the VCC, its sub-funds and SPVs can all share a board of directors, a fund manager, CIS administrator and other service providers which ultimately provides significant economies of scale. Furthermore, the sub-funds and SPVs in a VCC can opt to have a separate legal personality and be structured as companies.

An illustration of a VCC



Main features of the VCC

Setting up /registration	<ul style="list-style-type: none"> Incorporated under the Companies Act An existing Mauritian company can apply for conversion to a VCC A foreign incorporated company can apply for registration by way of continuation as a VCC provided that the foreign jurisdiction allows for outward migration
Name	Must have the words “Variable Capital Company” or “VCC” after its name
Activities	Its primary objective is to operate as a fund. It must carry out its business through sub-funds and special purpose vehicles
Constitutive document	A VCC is required to have a constitution that complies with the Companies Act
Requirement to be authorised by the Financial Services Commission (FSC)	<p>It should apply for an authorisation with the Financial Services Commission (FSC) to operate as a VCC Fund.</p> <p>The FSC may also approve the operation of a sub-fund(s) as a collective investment scheme (CIS) or a closed-end fund (CEF) all within one structure</p>
Legal Proceedings	A VCC may sue or may be sued in respect of a sub-fund / SPV and this will only be ring-fenced to that specific sub-fund / SPV
Issue of shares and declaration of dividend	A VCC may issue shares of varying amounts in its sub-funds and SPVs and it can also declare and pay dividend in respect of shares of a sub-fund or SPV by reference only to the assets and liabilities attributable to that sub-fund or SPV
Power to redeem / buy back shares	A VCC may redeem or buy back its shares or those of its sub-funds and SPVs in accordance with its constitution - the shareholders will be entitled to a refund in line with the number of shares he/she owns
Reduction of share capital	<p>A VCC may seek an authorisation from the Registrar to reduce its share capital or that of its sub-funds or SPVs.</p> <p>Similarly, a shareholder may seek an authorisation from the Registrar to reduce the share capital of the sub-fund or SPV in which he/she holds shares.</p>
Filing of accounts	<p>The VCC may elect, through an irrevocable notice to the Registrar and the Mauritius Revenue Authority, to present separate financial statements in respect of each of its sub-funds and SPVs in accordance with IFRS or any other internationally accepted accounting standards.</p> <p>In the instance that the sub-funds and SPVs have a separate legal personality from the VCC, they are also required to present separate financial statements</p>

Main features of a sub-fund and SPV in a VCC

Main features	Sub-fund	SPV
Approval of the FSC required for its creation	Yes	Yes
Can the Sub-fund / SPV elect to have separate legal personality from the VCC?	Yes If it elects to have separate legal personality, it must be incorporated as a company under the Companies Act and its name must include “incorporated VCC sub-fund”. It will also have the same registered office address of the VCC and will have the same directors as the VCC unless as otherwise provided by its constitution.	Yes If it elects to have separate legal personality, it must be incorporated as a company under the Companies Act and its name must include “incorporated VCC special purpose vehicle”. It will also have the same registered office address of the VCC and will have the same directors as the VCC unless as otherwise provided by its constitution.
Can the Sub-fund / SPV operate as a CIS or CEF?	Yes	No
Ring-fencing of assets and liabilities of Sub-fund / SPV	Yes	Yes
	The assets of each Sub-fund / SPV must be ring-fenced to prevent financial contagion i.e. the assets of one sub-fund/SPV cannot be used to discharge the liabilities of the other Sub-funds / SPVs	
In the instance where the sub-fund(s) are licensed as a CIS or CEF, can they share functionaries?	In the instance where the sub-fund(s) are licensed as a CIS or CEF, the appointment of the CIS Manager, CIS Administrator, Custodian may be made at the VCC level i.e. all sub-funds will share the same functionaries. However, any of the sub-funds may appoint its own functionaries.	N/A
Is cross-investment allowed among sub-funds / SPVs?	Yes	Yes
	However a sub-fund / SPV cannot invest in another sub-fund / SPV which already holds investment in it	

Main features of a sub-fund and SPV in a VCC (contd.)

Main features	Sub-fund	SPV
Voluntary wind-up	Possible	Possible
	Voluntary wind-up should be approved by the FSC if the latter is satisfied that the interests of the participants in that sub-fund or special purpose vehicle are properly protected	
Winding up by Court	Possible	Possible
	The Court may order the winding up of any of the sub-funds / SPVs following an order received from the: <ul style="list-style-type: none"> • FSC • A creditor of the sub-fund / SPV • CIS Manager of the VCC or any of the sub-funds • Board of the VCC or any of its sub-funds 	

FSC Licensing fees for a VCC

	Processing Fee (One-off) USD	Annual Fee USD
<u>FSC fees</u>	Rs. 45,000 (USD 1000) inclusive of the first sub-fund; and Rs. 22,500 (USD 500) for each additional sub-fund or SPV	Rs. 135,000 (USD 3000) inclusive of the first sub-fund; Rs. 45,000 (USD 1,000) each, for the 2 nd to the 5 th sub-fund/SPV; and Rs. 87,750 (USD 1,950) for each additional sub-fund or SPV An additional annual fees of Rs. 225,000 (USD 5000) for each sub-fund which is authorized to operate as a Special Purpose Fund An additional annual fees of Rs. 225,000 (USD 5000) for each sub-fund which is authorised to operate as a REIT

Taxation of a VCC

In line with section 26(3)(b) of the Act, the VCC, its sub-funds and SPVs will be treated as a single entity for tax purposes if no election has been made by the VCC to present separate financial statements for the VCC, its sub-funds and the SPVs. Hence, only one tax return will have to be filed with the Mauritius Revenue Authority for the VCC.

In the instance that such an election is made, then the VCC, its sub-funds and SPVs will be required to file separate tax returns and each of them will be liable to income tax on its own income.

It is expected that where the sub-fund of a VCC holds a valid CIS or closed-end fund licence as issued by the FSC, the sub-fund may benefit from the partial exemption regime as long as it satisfies the prescribed substance conditions in Mauritius. As at the date of this writing, we await more clarification from the FSC with regards to the licensing of a sub-fund.

A comparison between the Protected Cell Company (PCC) and the VCC

The PCC has been in existence in Mauritius for a while now and is governed by the Protected Cell Companies Act 1999 (the “Act”), the ancillary regulations to the Act namely the Protected Cell Companies (Amendment of Schedule) Regulations 2005 and the Protected Cell Companies (Amendment of Schedule) Regulations 2013.

The PCC has been traditionally favoured by investors looking for a vehicle that could cater for varied investment strategies through the segregation of assets and risks.

A PCC is a single legal entity which operates in two distinct parts namely the Core and the Cells. There is one core but there may be an infinite number of Cells. None of the cells can have separate legal personality.

The table below compares the main features of a PCC and a VCC:

Main features	PCC	VCC
Permissible activities	<ul style="list-style-type: none"> • Asset Holding • Structured finance businesses • Collective investment schemes and close-ended funds • Specialised collective investment schemes and close-ended funds • Insurance business • External pension scheme • Real Estate Development 	Primary object of the VCC is to operate as a fund
Can an existing Mauritian company be converted to a PCC / VCC	Yes	Yes
Can a foreign entity be migrated to Mauritius as a PCC / VCC	Yes	Yes
	Assuming that the foreign jurisdiction allows for outward migration	
Do the PCC Cells / VCC sub-funds and SPVs provide for ring-fencing of assets and risks to prevent financial contagion?	Yes	Yes
Can the PCC Cells / VCC sub-funds and SPVs elect to present separate financial statements?	Yes	Yes
Can the PCC Cells / VCC sub-funds and SPVs elect to have separate legal personality?	No	Yes In case a sub-fund/SPV opt for separate legal personality, they have to be incorporated as a company
Dividends	A PCC may declare and pay a Cellular dividend in respect of Cell shares by reference only to the cellular assets and liabilities attributable to the cell	A VCC can declare and pay dividend in respect of shares of a sub-fund or SPV by reference only to the assets and liabilities attributable to that sub-fund or SPV
Directors	Only 1 board of directors	In the instance that the Sub-funds/SPVs opt for separate legal personality and are incorporated as companies, they will each have their own board of directors. If provided in its constitution, the board of directors of a sub-fund/SPV can be different from those of the VCC

A comparison between the Protected Cell Company (PCC) and the VCC (contd.)

Main features	PCC	VCC
Can the PCC / VCC hold different types of fund licences?	No The PCC can apply only for 1 type of licence	Yes Sub-funds of the VCC can each apply for a fund licence that is relevant to their investment strategies and objectives i.e. A sub-fund can apply for a CIS licence and operate as an open-ended fund while another sub-fund may apply for a closed-end fund licence
Can the PCC / VCC appoint a different CIS Manager, CIS Administrator, Custodian, other service provider for each of its cells / sub-fund?	No	Yes
Legal Proceedings	Legal proceedings can be undertaken against a specific cell without affecting the assets/liabilities of the other cells. However creditors could have recourse to the assets of the Core cell if the assets of the cell being sued are insufficient	Any order or judgement of court shall be restricted to that sub-fund or SPV which is subject to legal proceeding

From the above table, it is noted that although the PCC and the VCC have a number of features in common, the VCC still offers a greater deal of flexibility to its promoters and investors.

How can ITL help?

At the time of this writing, the application forms for the VCC are not yet available. We are also awaiting for the regulations to be made under the Act, which are expected to provide more clarity on the VCC. In the meantime, should you have any queries, please send us an email on info@intercontinentaltrust.com and our team will be happy to assist you.

For any additional information please contact us.

Mauritius Office

Email: mauritiust@intercontinentaltrust.com
Website: www.intercontinentaltrust.com

Seychelles Office

Email: seychelles@intercontinentaltrust.com

South Africa Office

Email: sa@intercontinentaltrust.com

Singapore Office

Email: singapore@intercontinentaltrust.com.sg
Website: www.intercontinentaltrust.com.sg

Kenya Office

Email: ke@intercontinentaltrust.com



**Proud Supporter of
THE GLOBAL GOALS
For Sustainable Development**



**ISAE 3402
COMPLETED TYPE II AUDIT**

DISCLAIMER

The content of this newsletter was produced by Intercontinental Trust Limited and may not be copied, reproduced and/or distributed in part and/or in its entirety without the prior written consent of Intercontinental Trust Limited

While all reasonable care has been taken in the preparation of this newsletter, Intercontinental Trust Limited accepts no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused, sustained by any person that relies on it. Readers are advised to consult with appropriate, qualified professional advisors before taking action. Intercontinental Trust Limited will be pleased to discuss any specific issues.

If you do not wish to receive further information from Intercontinental Trust Limited, please send an email to unews@intercontinentaltrust.com