HARRY ELIAS PARTNERSHIP

Legal Update

MAS Looks to allow Single Family Offices to Manage VCCs

27 January 2021

Latest Updates: MAS looking to allow SFOs to manage VCCs

The Monetary Authority of Singapore (“**MAS**” or the “**Authority**”) has revealed, in its response to questions posed by the Business Times, that it is looking into possibly “widening the scope of permissible fund managers to allow Single Family Offices (“**SFOs**”) to manage Variable Capital Companies (“**VCCs**”).” The Authority further shared that the proposal is “still under deliberation”.[1]

In this update, we take the opportunity to:

i. highlight why this is relevant to high-net worth individuals and families (“**HNWs**”) looking to set up a fund to manage their own monies;

ii. provide details on the VCC structure and the VCC Grant Scheme; and

iii. share insights from the **Asset Management Tax team of KPMG in Singapore** on the potential tax incentives that the VCC and other fund structures can rely on to significantly improve tax efficiency.

What does this mean for Single Family Offices?

- HNWs commonly use the SFO structure to manage their own monies (see box below on SFO structure), allowing the internally-controlled fund manager to rely on existing licensing exemptions under the SFA and FAA.
- The VCC is a fund management vehicle with attractive tax incentives and other benefits – however, a VCC currently must be managed by a Singapore-licenced fund manager. This precludes HNWs from setting up VCCs unless they engage an external licensed fund manager.
- Where SFOs’ internally-controlled fund managers are allowed to manage VCCs, this opens up a superior fund structuring option for SFOs, allowing SFOs access to tax treaty benefits and grant incentives under the VCC Grant Scheme (“**VCCGS**”), where the Authority will co-fund up to 70% of qualifying expenses for the establishment of a VCC, capped at S$150,000 per application.
- If SFOs become eligible for the VCCGS, this will significantly lower or defray the costs of setting up a SFO (using a VCC) for HNWs.
- This potential coupling of SFOs and VCCs will be a powerful structuring and wealth management tool given that SFOs are relatively easy to set-up and are generally exempt from licensing. Details on the VCCGS and the benefits of the VCC structure are elaborated in the following sections.

What is a single family office?

A single family office (“**SFO**”) is an entity which manages assets for or on behalf of only one family and is wholly owned or controlled by members of the same family.

Potential Structure

For instance, a family may set up a holding company (“**Hold Co.**”) to hold an investment fund (the “**Investment Fund**”) and a wholly-owned subsidiary (i.e. Company X) to manage or advise on the Investment Fund.

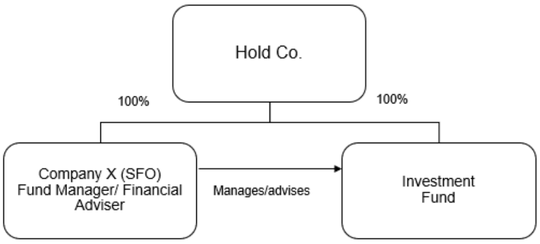

Diagram: Illustration of a possible ownership structure for an SFO

Licensing Exemptions for Family Offices

Where Company X manages the Investment Fund solely, Company X may be considered an SFO and be exempt from the requirement to be licensed or registered under the Securities and Futures Act (Cap. 289) (“**SFA**”) and/or the Financial Advisers Act (Cap. 110) (“**FAA**”).

[1] The Business Times, Singapore, Plan to tweak VCC framework to draw more single family offices, 7 December 2020.

What is the VCC?

The Variable Capital Company ("**VCC**") is a new corporate structure for investment funds that was launched on 15 January 2020. We summarise some of its key benefits below.

1

Segregation of sub-funds mitigates risk
Since the assets of one sub-fund cannot be used to discharge the liabilities of another sub-fund under the same umbrella VCC, this prevents the commingling of assets between sub-funds. This ring-fencing of assets and liabilities also extends to insolvency, as each sub-fund of the same umbrella VCC must be wound up separately.

2

Re-domiciliation
Foreign funds structured similarly to the VCC can re-domicile to Singapore via a simple registration process as long as it comprises one or more collective investment schemes. This allows foreign funds to preserve their corporate history and identity.

3

Economies of scale
The VCC's option of having an umbrella fund structure generates cost efficiencies. Sub-funds under the same umbrella VCC can share a board of directors and service providers such as the fund manager, custodian of assets and auditor.

4

Other important advantages
Greater ease of varying share capital and allowing the payment of dividends using capital.

How does the VCC compare to similar structures overseas?

The VCC allows Singapore to match other fund domiciles such as the Cayman Islands, Hong Kong, and Luxembourg. Consequently, funds no longer have to be domiciled overseas while utilising Singapore's fund management capabilities. As an example, we compare the VCC and the Cayman Island's segregated portfolio company ("**SPC**") structure, and note some key similarities and differences:

	Singapore's VCC	Cayman Island's SPC
Segregation of assets and liabilities of different sub-funds under single corporate entity	✓	✓
Possibility of inward re-domiciliation	✓	✓
Availability of financial statements and registers of shareholders to the public	X	X
Minimum capital requirement	X	X
Directors required	• At least 1 for non-authorised schemes • At least 3 for schemes authorised by the Authority • At least 1 Singapore resident director	At least 1
Location of fund manager	Singapore	No restriction
Singapore Court's Recognition of segregation of assets and liabilities	✓	Uncertain – no relevant litigated cases on point
Eligibility for VCC Grant Scheme	✓	X

Availability of the VCC Grant Scheme

To encourage the adoption of the VCC structure, the Authority introduced the VCCGS, funded by the Financial Sector Development Fund. The VCCGS aims to help defray the costs of incorporating or registering a VCC.

The details of the VCCGS are as follows:

Who can apply?	• Applicants should be Qualifying Fund Managers who have already incorporated or re-domiciled a VCC. Qualifying Fund Managers are defined as licensed or registered fund management companies, or certain exempt financial institutions such as banks. • Each applicant may only apply for grants for work done in relation to a maximum of 3 VCCs.
What is the deadline for applications?	• The VCCGS took effect on 15 January 2020 and will be available until 15 January 2023. • Applicants should submit their VCCGS application within 3 months from the incorporation or transfer of their VCC.
What is covered under the grant?	• Qualifying expenses under the grant must be paid to Singapore-based service providers for work done in Singapore. • Qualifying expenses include fees incurred for legal services, tax services, and fund administration or regulatory compliance services, that relate to the incorporation and registration of VCCs and their sub-funds. • Co-funding for the registration of sub-funds will only be available with the accompanying incorporation or transfer of registration of a VCC. This means that the grant does not apply for sole registrations of sub-funds.
Are there limits to the grant?	• Under the grant, the Authority will co-fund up to 70% of qualifying expenses, capped at S$150,000 for each application. • The setting up of the VCC cannot be simultaneously funded by other government grants in relation to the same set of qualifying expenses.

Potential Tax Incentives

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The tax framework for VCCs recognises the unique features of the structure. Broadly, a VCC is treated for income tax purposes as a single entity (whether for a stand-alone VCC or an umbrella VCC) and similar to that of a private limited company, subject to certain modifications. Whilst for stamp duty and Goods and Services Tax ("**GST**") purposes, the sub-funds of an umbrella VCC are treated as separate persons such that stamp duty and GST (as the case may be) are applied at the level of each sub-fund.

We summarise some of the key tax-related features and benefits of a VCC below:

1

Availability of Singapore fund tax incentives

The current suite of tax incentive schemes for Singapore funds, i.e. the Enhanced-Tier Fund Scheme ("**Section 13X Scheme**"), the Singapore Resident Fund Scheme ("**Section 13R Scheme**") and the tax exemption scheme for venture capital funds ("**Section 13H Scheme**") will also be extended to VCCs.

The prescribed conditions under these schemes would similarly apply to a VCC fund (as they would to funds set up in other legal forms). For an umbrella VCC, the prescribed conditions will be assessed at the VCC level rather than at the sub-fund level, hence making it easier for funds with smaller fund size to qualify for these schemes; case in point, only one set of economic conditions is required to be met by the umbrella VCC as a whole (regardless of the number of sub-funds it has).

Further, a VCC fund approved under one of these tax incentive schemes would enjoy (i) tax exemption on certain prescribed income and gains and (ii) partial recovery of GST incurred. A Section 13X / 13R-approved VCC fund would also be entitled to withholding tax exemption on interest payments made to non-residents.

2

Certificate of Residence ("COR")

VCCs that are tax residents of Singapore will also be eligible to access Singapore's extensive tax treaty network (with over 80 jurisdictions). In the case of an umbrella VCC, the COR will be issued in the name of the VCC, with the name of the relevant sub-fund(s) included in the COR. Accordingly, the VCC and its relevant sub-fund(s) should be able to access the tax treaties entered into by Singapore.

3

Availability of Financial Sector Incentive - Fund Management ("FSI-FM") Scheme and Fund Management Incentive ("FMI") Scheme to fund managers of incentivised VCCs

The FSI-FM Scheme and FMI Scheme (which provide concessionary tax rates of 10% and 5% respectively) have been extended to approved fund managers of VCC funds incentivised under the Sections 13X or 13R Schemes, and the Section 13H Scheme, respectively.

4

Certainty of non-taxation on disposal of ordinary shares

A stand-alone VCC or a sub-fund of an umbrella VCC is eligible for tax exemption on divestment gains provided under the Section 13Z safe-harbour provisions.

5

Tax framework for re-domiciliation

Tax framework for inward re-domiciliation of companies into Singapore (subject to necessary modifications) has been extended to the inward re-domiciliation of foreign investment funds with structure comparable to that of a VCC.

*This section is kindly contributed by **Partner, Head of Real Estate & Asset Management, Tax, Teo Wee Hwee** and **Director, Pearlyn Chew** from the Asset Management Tax team of **KPMG in Singapore**.*

Conclusion

Fund management companies and HNW/UHNW individuals and families should seriously consider whether they wish to adopt the SFO structure and the VCC structure for incorporating or re-domiciling their funds in Singapore and should do so as soon as possible in order to take advantage of the VCCGS and relevant tax incentives.

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