

**Variable Capital Companies (Application of Bankruptcy Act Provisions)  
Regulations 2020**

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**No. S 21**

VARIABLE CAPITAL COMPANIES ACT 2018  
(ACT 44 OF 2018)

VARIABLE CAPITAL COMPANIES  
(APPLICATION OF BANKRUPTCY ACT PROVISIONS)  
REGULATIONS 2020

In exercise of the powers conferred by section 165 of the Variable Capital Companies Act 2018, the Minister for Finance makes the following Regulations:

PART 1

PRELIMINARY

**Citation and commencement**

**1.** These Regulations are the Variable Capital Companies (Application of Bankruptcy Act Provisions) Regulations 2020 and come into operation on 14 January 2020.

PART 2

APPLICATION OF BANKRUPTCY ACT PROVISIONS  
TO WINDING UP OF VCC

## **Modifications of sections 98, 99, 100, 102 and 103 of Bankruptcy Act**

2.—(1) For the purposes of section 130 of the Act (called in this Part the VCC Act) read with section 329 of the Companies Act (Cap. 50), sections 98, 99, 100, 102 (other than subsections (7), (8) and (9)) and 103 of the Bankruptcy Act (Cap. 20) apply subject to —

- (a) the modifications set out in paragraph (2) and this Part; and
- (b) any textual and other modifications as are necessary for their application to a VCC being wound up.

(2) The modifications are —

- (a) a reference to section 98, 99, 100 or 102 of the Bankruptcy Act is to that section as applied under paragraph (1); and
- (b) a reference to an associate of a person or an individual, or a person who is connected with an individual or a person, is to a person connected with a VCC against which a winding up order has been made.

## **Person connected with VCC**

3.—(1) In this Part, a person is connected with a VCC if —

- (a) the person is a director of the VCC or an associate of such director;
- (b) the person is the manager of the VCC or an associate of such manager; or
- (c) the person is an associate of the VCC.

(2) In paragraph (1), “associate” has the meaning given by section 101 of the Bankruptcy Act, subject to the following modifications:

- (a) a reference in section 101 (other than in subsections (2) and (7)) of the Bankruptcy Act to an individual is to a person;
- (b) the following subsection applies in place of section 101(6) of the Bankruptcy Act:

“A company is an associate of a person if the person has control of it or if the person and persons who are the person’s associates together have control of it.”;

- (c) a company is an associate of another company if —
  - (i) the same person has control of both companies;
  - (ii) a person has control of one company and other persons who are

the person's associates, or the person and other persons who are the person's associates, have control of the other company; or

- (iii) a group of 2 or more persons has control of each company, and such groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom the person is an associate;
- (d) regulation 5(4) and (5) applies for the purpose of determining whether a person that is an umbrella VCC is an associate of a person under the provision that replaces section 101(6) of the Bankruptcy Act under sub-paragraph (b), and under sub-paragraph (c);
- (e) an umbrella VCC that is a beneficiary or one of the beneficiaries of a trust, or for whose benefit a power under a trust may be exercised, is an associate of a person under section 101(5) of the Bankruptcy Act only if it is an associate of the person on account of the sub-fund (within the meaning of regulation 5) in relation to which it is such beneficiary, or in relation to which the power may be exercised for its benefit.

(3) In paragraph (2), “company” has the meaning given by section 101(10) of the Bankruptcy Act and, accordingly, includes a VCC.

#### **Antecedent transactions involving umbrella VCC for purpose of its sub-fund**

4.—(1) Where —

- (a) the unfair preference mentioned in section 99(5) or 100(1)(b) of the Bankruptcy Act is given by the VCC to an umbrella VCC for the purpose of a sub-fund of the umbrella VCC;
- (b) the transaction mentioned in section 100(3) of the Bankruptcy Act is entered into by the VCC with an umbrella VCC for the purpose of a sub-fund of the umbrella VCC;
- (c) the interest mentioned in section 102(3A) of the Bankruptcy Act is acquired by an umbrella VCC for the purpose of a sub-fund of the umbrella VCC; or
- (d) the benefit or unfair preference mentioned in section 102(3A) of the Bankruptcy Act is received by an umbrella VCC for the purpose of a sub-fund of the umbrella VCC,

then, for the purpose of that provision of the Bankruptcy Act, the umbrella VCC is connected with —

- (e) the VCC; or
- (f) in the case of sub-paragraph (c) or (d), the person with whom the VCC entered into the transaction, or to whom the VCC gave the unfair preference, as the case may be,

only if the umbrella VCC is an associate of the following (whichever is applicable) on account of the sub-fund of the umbrella VCC as defined in regulation 5:

- (g) the VCC or the manager or any director of the VCC;
- (h) the person mentioned in sub-paragraph (f), as the case may be.

(2) In paragraph (1), a reference to a provision of the Bankruptcy Act is to that provision as applied by regulation 2.

#### **Associate on account of sub-fund**

**5.—**(1) For the purposes of regulations 3(2)(e) and 4 and this regulation, an umbrella VCC (*B*) is an associate of a person (*A*) on account of a sub-fund of *B* (*BI*) if —

- (a) *A* is in partnership with *B*, either in relation to *BI* only or 2 or more of *B*'s sub-funds that include *BI*;
- (b) *A* is a spouse or relative of any individual who is in partnership with *B*, either in relation to *BI* only or 2 or more of *B*'s sub-funds that include *BI*;
- (c) *A* is employed by *B* for the purpose of *BI* only or 2 or more of *B*'s sub-funds that include *BI*;
- (d) *A* is a trustee of a trust the beneficiary or one of the beneficiaries of which is *B* in relation to *BI* only or 2 or more of *B*'s sub-funds that include *BI*, or a person to whom *B* is an associate on account of *BI* (as defined by this regulation);
- (e) *A* is a trustee of a trust the terms of which confer a power that may be exercised for the benefit of *B* in relation to *BI* only or 2 or more of *B*'s sub-funds that include *BI*, or a person to whom *B* is an associate on account of *BI* (as defined by this regulation);
- (f) *A* is a corporation and —
  - (i) the same person has control of *A* and *BI*;