

Variable Capital Companies Regulations 2020

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THE SCHEDULE

No. S 20

VARIABLE CAPITAL COMPANIES ACT 2018 (ACT 44 OF 2018)

VARIABLE CAPITAL COMPANIES 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:

Citation and commencement

1. These Regulations are the Variable Capital Companies Regulations 2020 and come into operation on 14 January 2020.

Forms

2.—(1) Subject to these Regulations, where a provision of the Act is specified in the first column of the Schedule, the form the number or alphanumeric characters of which are specified in the third column of the Schedule that corresponds to that provision is prescribed as the form to be used for the purposes of that provision.

(2) The forms mentioned in these Regulations are those set out at the Internet website at <http://www.acra.gov.sg>, and a reference in these Regulations to a form identified by a number or alphanumeric characters is a reference to the current version of the form set out on that website bearing the corresponding number or alphanumeric characters.

(3) For the purpose of these Regulations, where the forms set out at that website are not available, forms of the like character, with such variations as the circumstances may require, are to be used.

(4) Any document required to be lodged with the Registrar under any provision of these Regulations must be lodged in the relevant form and in the manner specified on the website mentioned in paragraph (2), or in the manner specified by the Registrar.

(5) All forms must be completed in the English language and in accordance with the

directions specified in the form or by the Registrar.

(6) The Registrar may refuse to accept any form if it is not completed or lodged in accordance with this regulation.

(7) Where strict compliance with any form is not possible, the Registrar may allow the necessary modifications to be made to that form, or for the requirements of that form to be complied with in any other manner that the Registrar thinks fit.

Particulars prescribed by forms

3. Where a form prescribed by these Regulations requires completion by the insertion of, or the attachment to the form of a document that contains, particulars or other matters mentioned in the form, those particulars or other matters are prescribed as the particulars or other matters required under the provisions of the Act or these Regulations for the purposes for which the form is prescribed.

Directions in forms

4. A form prescribed by these Regulations must be completed in accordance with the directions specified by the Registrar or in the form prescribed.

Factors for determining whether person is fit and proper person

5.—(1) For the purposes of section 53(3) of the Act, the factors which the Registrar may consider in determining whether a person is a fit and proper person to act as a director of a VCC are —

- (a) whether the person's previous conduct as a director of a VCC, a financial institution or an overseas institution had been satisfactory, including whether the person had previously breached or failed to comply with any law in force in Singapore or elsewhere or requirement imposed under any law in force in Singapore or elsewhere, as such director;
- (b) whether the person had a previous application to be a director of a financial institution rejected by MAS;
- (c) whether MAS had previously directed a financial institution to remove the person as a director of the financial institution under any written law;
- (d) whether the Registrar had previously directed a VCC under section 53(2) of the Act to remove the person as a director of the VCC;
- (e) whether the person had previously acted in a manner that reflects adversely on the integrity of the person, including whether the person had previously —

- (i) committed professional misconduct or serious negligence, or breached any fiduciary duty or any AML/CFT requirement; or
 - (ii) caused, contributed to or facilitated the commission of professional misconduct or serious negligence, or the breach of any fiduciary duty or any AML/CFT requirement, by another person; and
- (f) whether it would be contrary to the public interest for the person to be a director of a VCC.

(2) In this regulation —

“AML/CFT requirement” has the meaning given by section 152(1) of the MAS Act;

“corresponding authority” means a public authority of a foreign country which exercises a function that corresponds to a regulatory function of MAS under the MAS Act, the Banking Act (Cap. 19), the Business Trusts Act (Cap. 31A), the Finance Companies Act (Cap. 108), the Financial Advisers Act (Cap. 110), the Insurance Act (Cap. 142), the Payment Services Act 2019 (Act 2 of 2019), the Securities and Futures Act (Cap. 289) or the Trust Companies Act (Cap. 336);
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“financial institution” has the meaning given by section 27A(6) of the MAS Act, read with section 27A(7) of that Act;

“foreign country” means any country or territory other than Singapore;

“overseas institution” means an entity or a trust —

- (a) that is formed or incorporated in a foreign country; and
- (b) whose carrying on of an activity in the foreign country is regulated by a corresponding authority of the foreign country.

Minimum period VCC must be in contravention of section 46 of Act

6. For the purposes of paragraph (n) of the provision that applies in place of section 254(1) of the Companies Act (Cap. 50) under section 130(8) of the Act, the prescribed period is a continuous period of 3 months.

Rectification or updating of register on Registrar’s initiative

7.—(1) For the purposes of section 12D(1)(b)(ii) of the Companies Act (as applied by section 11 of the Act), the prescribed departments, Ministries of the Government, statutory bodies and bodies corporate are —

- (a) the Department of Statistics, Ministry of Trade and Industry;
- (b) MAS;
- (c) the Ministry of Home Affairs;
- (d) the Ministry of Manpower; and
- (e) Singapore Post Limited.

(2) For the purposes of section 12D(2) of the Companies Act (as applied by section 11 of the Act), the prescribed circumstances are —

- (a) there is evidence of a conflict between the particulars of the VCC or a person in a register, and —
 - (i) other information relating to the VCC or person that is stated in the Singapore Standard Industrial Classification which is obtained from the Department of Statistics of the Ministry of Trade and Industry;
 - (ii) other information relating to the person that is registered under the National Registration Act (Cap. 201) which is obtained from the Ministry of Home Affairs;
 - (iii) the foreign identification number of the person obtained from the Ministry of Manpower;
 - (iv) other information relating to the VCC or person (including regulatory status) that is obtained from MAS; or
 - (v) the building name, postal code or street name of an immovable property obtained from Singapore Post Limited; and
- (b) the Registrar has reasonable grounds to believe that the VCC or person whose particulars are to be rectified or updated is unlikely to object to the rectification or updating.

Requirements of secretary

8. For the purposes of section 171(1AA)(b) of the Companies Act (as applied by section 69 of the Act), the prescribed requirement relating to experience, professional and academic requirements and membership of professional associations of a secretary of a VCC is any of the following:

- (a) the person has, for at least 3 years in the period of 5 years immediately preceding his or her appointment as secretary, held the office of secretary