

VARIABLE CAPITAL COMPANIES BILL

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Variable Capital Companies Act.

2. Interpretation

In this Act –

“administrator” has the same meaning as in the Insolvency Act;

“auditor” means a person –

- (a) qualified to act as auditor under the Companies Act; and
- (b) appointed as auditor of a variable capital company with the approval of the Commission;

“closed-end fund” has the same meaning as in the Securities Act;

“collective investment scheme” has the same meaning as in the Securities Act;

“Commission” means the Financial Services Commission established under Financial Services Act;

“company” has the same meaning as in the Companies Act;

“Director-General” means the Director-General of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act;

“Fund” means either a Collective Investment Scheme or a Closed-End Fund, or in the case of an umbrella VCC, a combination thereof for each sub-Fund, as defined in the Securities Act;

“financial services” has the same meaning as in the Financial Services Act;

“liability” has the same meaning as in the Companies Act;

“liquidator” has the same meaning as in the Insolvency Act;

“Minister” means the minister to whom responsibility for the subject of financial services is assigned;

“receiver” has the same meaning as in the Insolvency Act;

“Registrar” has the same meaning as in the Companies Act;

“register” has the same meaning as in the Companies Act;

“relevant Acts” has the same meaning as in the Financial Services Act;

“sub-Fund” means a sub-fund of an umbrella VCC which has been approved to operate as a Collective Investment Scheme or Closed End-Fund that is part of an umbrella VCC;

“SPC” means a special purpose sub-Fund that is part of an umbrella VCC;

“umbrella variable capital company or umbrella VCC” means a variable capital company whose constitution provides for, one or more sub-Funds or a Fund and at least one SPC;

“variable capital company” or “VCC” means a body corporate incorporated, registered by way of continuation or converted as such in accordance with section 4.

3. Administration of the Act

- (1) Subject to subsections (2) and (3), the Commission shall be responsible for the administration of this Act.
- (2) The Registrar shall be responsible for the administration of Part II, sub-part A of this Act.
- (3) The Director of Insolvency shall be responsible for the administration of Parts V, VI and VII of this Act.

PART II – VARIABLE CAPITAL COMPANIES

Sub-Part A – Incorporation, Conversion, Registration or Continuation of a VCC with the Registrar

4. Incorporation and Conversion

For the purposes of this Act, a variable capital company shall be –

- (a) a company incorporated under the Companies Act as a VCC;

(b) a company incorporated in a jurisdiction other than Mauritius and registered by way of continuation as a VCC in Mauritius; or

(c) an existing company duly authorised by its constitution or by special resolution to be converted into a VCC.

5. Registration and Continuation

(1) A company incorporated under a foreign law which –

(a) satisfies the requirements as provided in the Companies Act for the registration of a company;

(b) satisfies the requirements of this Act for the incorporation of a variable capital company; and

(c) is authorised under the law of the country in which it is constituted to be registered in Mauritius as a VCC;

may continue as a VCC under section 4 (1) (b).

(2) The articles of continuation containing the particulars referred to in subsection (3) shall be approved –

(a) by a majority of the directors or the other persons who are charged with exercising the powers of the company; or

(b) in such other manner as may be established by the company for exercising the powers of the company.

(3) The articles of continuation shall –

(a) contain –

(i) the name of the company and the name under which it is being continued;

(ii) the name of the jurisdiction under which it is incorporated;

(iii) the date on which it was incorporated;

(iv) the information required to be included in the constitution of a company in accordance with section 42 of the Companies Act; and

(v) the amendments to its constitution or their equivalent that are to be effective upon registration under this Act of the articles of continuation.

(b) be submitted, together with a copy of the constitution of the company, or their equivalent, and any evidence satisfactory to the Registrar that the company is in good standing, to the Registrar who shall retain and register them.

(4) Upon payment of such fee as may be prescribed by the Minister and on registration of the articles of continuation, the Registrar shall issue a certificate of continuation, certifying that the company is incorporated as a VCC.

6. Name and Constitution

(1) Notwithstanding section 35 of the Companies Act, the name of a variable capital company shall include clearly the words “VCC” or “variable capital company” after its name.

(2) Each sub-Fund or SPC of an umbrella VCC may have its own distinct name.

(3) A company incorporated under a foreign law and continued as a variable capital company may use the name designated in the articles of continuation with the addition of the word “VCC”.

(4) A variable capital company shall, at all times, have a written constitution which shall comply with the relevant provisions of the Companies Act and sub section (5).

(5) The constitution of a variable capital company shall, at a minimum, state –

(a) the primary object of the company is to operate as a Fund;

(b) that the assets and liabilities of the VCC must be measured on a fair value basis;

(c) the rights attached to each category of shares of the company;

(d) in the case Funds, or specific sub-Funds, that are collective investment schemes, define that shares of the particular Fund, or sub-Fund, are to be issued, redeemed

or repurchased at a price equal to the proportion of the net asset value of the Fund, or sub-Fund, represented by each share, subject to any applicable fees and charges provided in the constitution;

(e) the provisions in paragraph (d) shall not apply in relation to any shares during the initial offer period of the shares and to that relate to a closed-end fund and listed for quotation on a securities exchange; and

(f) the policy of the VCC for forming a sub-Fund or SPC.

7. Power to redeem shares

(1) The redemption by a variable capital company of its own shares shall be in accordance with the constitution of the company.

(2) In case of partially paid shares in any Fund or sub-Fund, the shareholder shall be entitled to only a pro-rata portion of any amount due upon the redemption or buy-back of such share unless provided otherwise and as defined in the constitution.

Sub - Part B – Authorisation

8. Objects of a VCC

(1) The sole object of a VCC or umbrella VCC is to operate as a Fund, which may have sub-Funds or SPCs.

(2) A VCC shall not carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Mauritius or elsewhere, any business that is inconsistent with the object in this subsection.

(3) No VCC shall operate as a Fund without being duly authorised by the Commission under the relevant Acts.

(4) A variable capital company may be set up as a single fund structure or an umbrella variable capital company that consists of, or is to consist of, one or more sub-Funds.

PART III – SUB-FUNDS

9. Creation of one or more sub-Funds

- (1) A VCC may create one or more sub-Funds in the manner provided by this Act and its constitution.
- (2) A sub-Fund of an umbrella VCC may have a legal personality separate from the variable capital company.
- (3) Where a sub-Fund elects to have a legal personality separate from the VCC, it shall –
 - (a) be incorporated in accordance with section 11 of this Act; and
 - (b) comply with all requirements as may be prescribed in any regulations or FSC Rules made under this Act or its constitutive documents.
- (4) No sub-Fund shall be created without the prior approval of the Commission.
- (5) An application for creation of a sub-Fund shall be made in such form and manner as may be specified by the Commission and accompanied by such fees as may be specified in the FSC Rules.
- (6) Where the Commission deems it appropriate, it may approve the creation of a sub-Fund and assign an approval number to the sub-Fund.

10. Creation of one or more SPCs

- (1) A variable capital company may create one or more SPCs in the manner provided by this Act and its constitution.
- (2) A SPC shall not operate as a Fund but solely as an investment holding or special purpose company as defined by the terms of the constitution.
- (3) A SPC of an umbrella VCC may have a legal personality separate from the VCC.
- (4) Where a SPC elects to have a legal personality separate from the VCC, it shall –

- (a) be incorporated in accordance with section 11 of this Act; and
 - (b) comply with all requirements as may be prescribed in any regulations or FSC Rules made under this Act or its constitutive documents.
- (5) A SPC shall only be set up with the prior approval of the Commission.
- (6) An application for creation of a SPC shall be made in such form and manner as may be specified by the Commission and accompanied by such fees as may be specified in FSC Rules.
- (7) Where the Commission deems it appropriate, it may approve the creation of a SPC and assign an approval number to the SPC.

11. Incorporation of a sub-Fund or SPC

- (1) Where a sub-Fund or a SPC elects to have a legal personality separate from the VCC, the sub-Fund or SPC shall be incorporated as a company in accordance with the provisions of the Companies Act.
- (2) The name of an incorporated sub-Fund or SPC shall include the expression “incorporated Sub-Fund” or “incorporated SPC”, as is applicable.
- (3) The constitution of an incorporated sub-Fund or SPC must state that it is an incorporated sub-Fund or SPC of a VCC.
- (4) Notwithstanding the provisions of any other enactment, a sub-Fund or SPC incorporated under this Act shall not be a subsidiary of its VCC by virtue only of the fact that it is a sub-Fund or SPC of its VCC.
- (5) A sub – Fund or SPC incorporated under this Act shall have the same registered address as its VCC.
- (6) Unless otherwise provided by its constitution, the directors of the VCC must be the directors of each of its sub-Fund or SPC.

12. Segregated assets and liabilities of sub-Funds and SPCs

- (1) The assets of a sub-Fund or SPC of a VCC shall not be used to discharge any liability of the VCC or any other sub-Fund or SPC of the VCC, including during the winding up, administration or receivership of the sub-Fund, SPC or the VCC.
- (2) Any liability of a sub-Fund or SPC of a VCC shall be discharged solely out of the assets of such sub-Fund or SPC, including during the winding up administration or receivership of the sub-Fund, SPC or VCC, irrespective of whether such sub-Fund or SPC has legal personality.
- (3) Without prejudice to sub-sections (1) and (2), assets attributable to a sub-Fund or SPC shall—
 - (a) only be available to the creditors of the company who are creditors in respect of that sub-Fund or SPC; and
 - (b) subject to section 48A of the Income Tax Act, be absolutely protected from the creditors of the company who are not creditors in respect of that sub-Fund or SPC.
- (4) Any provision of the constitution of a VCC, an agreement, a contract or otherwise, is void to the extent that it is inconsistent with subsection (1), and any application of or agreement to apply assets in contravention of subsection (1) is likewise void.
- (5) An umbrella VCC may allocate any assets or liabilities —
 - (a) that it holds or incurs on behalf of its sub-Funds or SPCs or in order to enable the operation of the sub-Funds or SPCs; and
 - (b) that are not attributable to any particular sub-Fund or SPC, between its sub-Funds or SPCs in a manner that it considers fair to participants in the sub-Funds or SPCs.

13. Disclosure of sub-Fund and SPC

- (1) A VCC shall—
 - (a) inform any person with whom it transacts that it is a variable capital company;

(b) disclose in every agreement, contracts, documents and transactions in which any of its sub-Funds or SPCs is mentioned, all of the following:

- (i) the name of the sub-Fund or SPC, and if the sub-Fund or SPC has legal personality, its registration number and certificate of incorporation or existence;
- (ii) the approval number of the sub-Fund or SPC; and
- (iii) the fact that the assets and liabilities of the sub-Fund or SPC are segregated in accordance with this Act.

(2) Where any sub-fund issues debentures, the register of debentures shall clearly state the name and the registration number of the relevant sub-fund.

(3) Where any sub-fund provides its assets are subject to a charge, the deed of the charge shall mention the name and registration number of the relevant sub-fund.

14. Cross sub-Fund or SPC investment

(1) Subject to subsection (2) and its constitution, a sub-Fund or SPC of a VCC may be allowed to invest its assets into another sub-Fund or SPC of the VCC.

(2) No sub-Fund or SPC shall be allowed to invest in another sub-Fund or SPC which is already investing in the former sub-Fund or SPC.

15. Legal proceedings

Where a VCC is initiating, or is subject to, Court actions in respect of a sub-Fund or SPC, any orders or judgment of the court shall be restricted to that sub-Fund or SPC.

16. Termination of a sub-Fund or SPC

(1) A purported termination of a sub-Fund or SPC shall not be effective unless approved by the Commission.

(2) A sub-Fund or SPC of a VCC shall not be terminated except in accordance with a plan approved by the Commission.

- (3) The Commission shall not approve a plan for the termination of a sub-Fund or SPC unless it is satisfied that the interests of the participants are properly protected.
- (4) This section shall apply subject to any order of the Court under section 17.
- (5) The directors of the VCC shall, within 7 days, inform the Registrar of Companies of the withdrawal of approval of any sub-fund.
- (6) Subject to section 12, any distribution of assets upon a termination under this section shall be made in accordance to the order set out in the Insolvency Act.
- (7) Notwithstanding any other provisions in this section, where a sub-Fund or SPC has legal personality, it shall be removed from the register or wound up in accordance with the provisions of the Companies Act or the Insolvency Act.

17. Termination of sub-Fund or SPC by Court

- (1) The Court may, on application, make orders terminating the operation of a sub-Fund or SPC.
- (2) Where the Court makes an order under subsection (1), it may also make any order it thinks fit for the termination of the sub-Fund or SPC.
- (3) An application under subsection (1) may be made by—
 - (a) the Commission; or
 - (b) a participant in the sub-Fund or SPC.
- (4) Where an application under subsection (1) is presented by any person other than the Commission, the Commission shall be entitled to be heard by the Court on the application.
- (5) The Court shall not make an order under subsection (1) unless it is satisfied that—
 - (a) the sub-Fund or SPC is being operated in contravention of this Act, any regulations made under this Act or any FSC Rules or its constitutive documents, and it is in the interests of the participants in the scheme, or the public interest, to terminate the sub-Fund or SPC;

- (b) it is just and equitable to make the order; or
 - (c) the termination of a sub-fund or SPC and distribution of assets are necessary to protect the interests of investors or creditors.
- (6) An application under this section shall be made in the presence of the Commission.
- (7) Subject to section 12, any distribution of assets upon a termination under this section shall be made in accordance to the order set out in the Insolvency Act.
- (8) Notwithstanding any other provisions in this section, where a sub-Fund or SPC has legal personality, it shall be removed from the register or wound up in accordance with the provisions of the Companies Act or the Insolvency Act.

18. Withdrawal of approval of sub-Fund or SPC

- (1) Without prejudice to its powers under the relevant Acts, where the Commission is satisfied that a sub-Fund or SPC —
- (a) has contravened any relevant Acts, any direction or order issued under any relevant Acts or any condition of an authorisation or approval granted by the Commission;
 - (b) is carrying out his business in a manner which threatens the integrity of the financial system of Mauritius or is contrary or detrimental to the interest of the public;
 - (c) has committed a financial crime;
 - (d) no longer fulfils any condition or criterion related to its approval;
 - (e) no longer carries out the business activity for which it is approved; and
 - (f) has failed to commence business within 6 months from the date on which it is approved.

it may withdraw the approval referred to in sections 9 and 10.

- (2) Where the Commission has withdrawn an approval under sub-section (1), it may-
- (a) issue the VCC or the relevant CIS Manager, a direction to take any measures it may deem necessary to safeguard the interests of investors and the reputation of Mauritius as an international financial centre, including measures to terminate the sub-funds and distribution of assets and liabilities; and
 - (b) appoint an administrator referred to in section 48 of the Financial Services Act to the sub-Fund or SPC.

PART IV – REPORTING OBLIGATIONS

19. Record keeping

In addition to the record keeping requirements provided in the Companies Act and the relevant Acts, a VCC shall —

- (a) keep separate records for the VCC and where applicable, each sub-Fund and SPC that —
 - (i) sufficiently explain the transactions and financial position of the VCC, the sub-Funds and SPCs; and
 - (ii) would be necessary for the preparation of true and fair financial statements; and
- (b) establish and maintain adequate internal accounting controls to ensure that the —
 - (i) assets of the VCC and each sub-Fund and SPC are safeguarded against loss from unauthorised use or disposition; and
 - (ii) transactions of the VCC and each sub-Fund and SPC are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements of the VCC and to maintain accountability of assets.

20. Filing of accounts

- (1) Notwithstanding sections 210 and 211 of the Companies Act, a company incorporated under this Act may, at any time, by giving irrevocable notice in writing simultaneously to the registrar and to the Director-General, elect to present separate financial statements in respect of each of its sub-Funds and SPCs in accordance with and in compliance with IFRS, or any other internationally accepted accounting standards.

- (2) Where a company makes an election under subparagraph (1), it shall present separate financial statements in respect of each of its sub-Funds and SPCs as from the accounting period in respect of which the notice is given.
- (3) For avoidance of doubt, a VCC or a sub-Fund or SPC (as applicable) shall comply with all requirements of the relevant Acts or Companies Act regarding filing of financial statements, annual reports and other relevant accounting documents.

PART V – ADMINISTRATION ORDER

21. Administration order for a VCC

- (1) An administrator can be appointed to a VCC, in accordance to the Insolvency Act.
- (2) Subject to section 12, the administrator of a VCC shall-
 - (a) be bound to deal with the VCC's assets in accordance with the Insolvency Act;
 - (b) in discharge of the claims of creditors of the VCC, apply the VCC's assets to those entitled to have recourse in conformity with the Insolvency Act.
- (3) The provisions of the Insolvency Act related to the administration of a company shall apply to a VCC subject to such modifications as may be necessary to bring them in conformity with this Act.

22. Administration order for a sub-fund or SPC

- (1) An administrator can be appointed to a sub-Fund or a SPC in accordance to the Insolvency Act where the sub-Fund or SPC has a legal personality.
- (2) Subject to section 12, the administrator of a sub-fund or SPC referred to in sub section (1) shall-
 - (a) be bound to deal with the sub-fund or SPC's assets in accordance with the Insolvency Act;

(b) in discharge of the claims of creditors of the sub-fund or SPC, apply the sub-fund or SPC's assets to those entitled to have recourse in conformity with the Insolvency Act.

(3) The provisions of the Insolvency Act related to the administration of a company shall apply to a sub-fund or SPC which has a legal personality subject to such modifications as may be necessary to bring them in conformity with this Act.

23. Remuneration of administrator

The remuneration of an administrator, and any expenses properly incurred by him, shall be payable in priority to all other claims in the case of the administration of a sub-Fund or SPC, from the assets attributable to the sub-Fund or SPC; and in the case of the administration of a VCC, from the assets of the VCC as the Court may direct.

24. The Commission's power to appoint an administrator

The provisions of this Part shall be without prejudice to the Commission's power to appoint an administrator under the Financial Services Act and other relevant Acts.

PART VI – RECEIVERSHIP ORDER

25. Receivership order

(1) A receiver can be appointed to the assets of a sub-fund or a SPC, in accordance with the Insolvency Act.

(2) Subject to section 12, the receiver of a sub-fund or SPC shall-

(a) be bound to deal with the sub-fund or SPC's assets in accordance with the Insolvency Act;

(b) in discharge of the claims of creditors of the sub-fund or SPC, apply the sub-fund or SPC's assets to those entitled to have recourse in conformity with the Insolvency Act.

- (3) The provisions of the Insolvency Act related to the receivership of a company shall apply to a sub-fund or SPC of a VCC subject to such modifications as may be necessary to bring them in conformity with this Act.

26. Remuneration of receiver

The remuneration of a receiver, and any expenses properly incurred by him, shall be payable in priority to all other claims in the case of the receivership of an asset of a sub-Fund or SPC, from the assets attributable to the sub-Fund or SPC.

PART VII – LIQUIDATION

27. Liquidation of a VCC

- (1) Notwithstanding any other enactment, in the winding up of a VCC, the liquidator shall-
- (a) be bound to deal with the VCC's assets in accordance with this Act;
 - (b) in discharge of the claims of creditors of the VCC, apply the VCC's assets to those entitled to have recourse in conformity with this Act.
- (2) The provisions of the Insolvency Act related to the distribution of property of a company on winding up shall apply to a VCC subject to such modifications as may be necessary to bring them in conformity with this Act.

PART VIII – MISCELLANEOUS

28. Application of the Companies Act

- (1) Unless otherwise provided in the Schedule, all the sections of the Companies Act shall be applicable to a VCC.
- (2) Unless otherwise provided in the Schedule, all the sections of the Companies Act shall be applicable to a sub-fund or SPC which has a legal personality.

29. Reference to sub-Fund or SPC

In this Act —

- (a) a reference to a debt, obligation or liability of a sub-Fund or SPC is to a debt, obligation or liability that is incurred by the umbrella VCC concerned on behalf of or that is attributable to that sub-Fund or SPC;
- (b) a reference to any asset, property or undertaking of a sub-Fund or SPC is to any asset, property or undertaking that is held by the umbrella VCC concerned on behalf of or that is attributable to that sub-Fund or SPC; and
- (c) a reference to a creditor of a sub-Fund or SPC is to a creditor of the umbrella VCC concerned in respect of a debt, obligation or liability of the sub-Fund or SPC.

30. Conflicting provisions

Where there is an inconsistency between this Act and the Companies Act, the provisions of this Act shall prevail to the extent of the inconsistency.

31. Offences and penalties

- (1) Any VCC, or present or former controller of a VCC, or any employee of the VCC, who fails to comply with any requirement imposed by or under this Act, or a direction or requirement issued under this Act, shall commit an offence and shall, where no specific penalty is provided, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.
- (2) Any person who contravenes this Act or any regulations made under this Act shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

32. FSC Rules

- (1) The Commission may, for the purposes of this Act, make rules to be known as FSC Rules and such rules shall be published in the *Gazette*.

- (2) Rules made under subsection (1) may provide for –
- (a) the taking of fees and the levying of charges; and
 - (b) such other matters as the Commission thinks fit.

33. Regulations

- (1) The Minister may -
- (a) make such regulations as he thinks fit for the purposes of this Act; and
 - (b) by regulations, amend the Schedules.
- (2) Any regulations made under this Act may provide for the taking of fees and levying of charges by the Registrar of Companies.

34. Consequential amendments

- (1) The Companies Act is amended –
- (a) in section 2(1) by adding in the appropriate alphabetical order, the following definitions –
 - ‘sub-fund’ has the same meaning as in the Variable Capital Company Act;
 - ‘SPC’ has the same meaning as the Variable Capital Company Act;
 - ‘variable capital company’ or ‘VCC’ means a company incorporated, registered by way of continuation or converted as a VCC in accordance with section 4 of the Variable Capital Company Act;

- (b) by inserting immediately after section 345 the following section -

345A Variable Capital Company

- (1) Notwithstanding any provision of this Act, a variable capital company may dispense with the holding of shareholders meetings if resolutions which would otherwise require the holding of a meeting are passed by means of entry in the minute book of the VCC under section 117 or by a unanimous resolution under section 106.
- (2) Notwithstanding any provision of this Act, a sub-fund or a SPC which has been incorporated under this Act, may dispense with the holding of

shareholders meetings if resolutions which would otherwise require the holding of a meeting are passed by means of entry in the minute book of the company under section 117 or by a unanimous resolution under section 106.

- (3) Notwithstanding sections 210 and 211, a variable capital company may, at any time, by giving irrevocable notice in writing simultaneously to the registrar and to the Director-General, elect to present separate financial statements in respect of each of its sub-funds or SPCs in accordance with and in compliance with International Accounting Standards, or any other internationally accepted accounting standards.
- (4) Where a company makes an election under sub-section (3), it shall present separate financial statements in respect of each of its sub-funds or SPCs as from the accounting period in respect of which the notice is given.
- (5) Notwithstanding section 212, any variable capital company that has, on its balance sheet date, one or more subsidiaries, shall present, within 6 months of its balance sheet date, separated consolidated financial statements in respect of each of its sub-funds or SPCs.
- (6) The separate consolidated financial statements under sub-section (5) shall be in accordance with and in compliance with the International Accounting Standards or with any other internationally accepted accounting standards.
- (7) The Minister may make any regulations providing for the conversion of an existing company including a company incorporated as a PCC as a variable capital company.
- (8) For the purposes of this section, “Director-General” means the Director-General of the Mauritius Revenue Authority established under the Mauritius Revenue Authority.

- (2) The Financial Services Act is amended in the First Schedule by adding the following item-

Variable Capital Companies Act

- (3) The Income Tax is amended –

- (a) in section 2 -

(i) in the definition of ‘company’ by including after the words "protected cell company following “a variable capital company (or ‘VCC’) or a sub-fund or a SPC of a VCC”

(ii) adding the following definitions in the appropriate alphabetical order-
‘sub-fund’ has the same meaning as in the Variable Capital Company Act;

‘SPC’ has the same meaning as the Variable Capital Company Act;

‘variable capital company’ or ‘VCC’ means a company incorporated, registered by way of continuation or converted as a VCC in accordance with section 4 of the Variable Capital Company Act;

- (b) by inserting immediately after section 48 the following section –

48A Variable Capital Company

(1) Where a VCC has made an election under the Companies Act to present separate financial statements in respect of each of its sub-funds or SPCs, each sub-fund or SPCs of that VCC shall be deemed to be an entity separate from the VCC and other sub-funds or SPCs of the VCC and shall be liable to income tax in respect of its own income.

(2) Where a sub-fund or a SPC of a VCC owes income tax under this Act, the Director-General may, for the recovery of the income tax due, have

recourse to the assets of the VCC and of that sub-fund or SPC as well as to the assets of the other Sub-Fund or SPC of the VCC."

(4) The Securities Act is amended –

(a) in section 2 by inserting in its appropriate alphabetic order the following definition-
‘umbrella VCC’ has the same meaning as in the Variable Capital Company Act

(b) by inserting immediately after section 97 the following section –

97A Umbrella VCC

(1) Subject to other provisions of this section, where an umbrella VCC is authorised to operate as a collective investment scheme, any of its sub-Fund may be approved by the Commission to operate as a collective investment scheme or a closed end fund.

(2) where an umbrella VCC is authorised to operate as a closed end fund, any of its sub-fund may be approved by the Commission to operate as a closed ended fund only.

(c) in section 154(2) by adding the following new item -

(j) requirements in respect to an umbrella VCC or any of its sub-fund authorised or approved to operate as a collective investment schemes or closed-ended fund under this Act.

(d) in section 155(2) by adding the following new item –

(j) requirements in respect to an umbrella VCC or any of its sub-fund authorised or approved to operate as a collective investment schemes or closed end fund under this Act.

35. Commencement

This Act shall come into operation on xxx

SCHEDULE

(section 30)

The following sections of the Companies shall not be applicable to a VCC

Item	Section
1.	6
2.	63(2)(c)
3.	
4.	211(2)
5.	226

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