



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 40]

MONDAY, SEPTEMBER 10

[2018

First published in the *Government Gazette*, Electronic Edition, on 10 September 2018 at 5 pm.

Notification No. B 40 — The Variable Capital Companies Bill is published for general information. It was introduced in Parliament on 10 September 2018.

Variable Capital Companies Bill

Bill No. 40/2018.

Read the first time on 10 September 2018.

VARIABLE CAPITAL COMPANIES ACT 2018

(No. of 2018)

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A BILL

i n t i t u l e d

An Act to provide for the incorporation, operation and regulation of bodies corporate to be known as variable capital companies and to provide for related matters, and to make consequential and related amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1

PRELIMINARY

Short title and commencement

5 **1.** This Act is the Variable Capital Companies Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

General interpretation

2.—(1) In this Act, unless the contrary intention appears —

“Accounting Standards”, in relation to a VCC, means —

10 (a) the accounting standards mentioned in section 100(8)(a) or the accounting standards or practices prescribed under section 100(8)(b); or

 (b) where those accounting standards or practices (as the case may be) are substituted with other accounting standards under section 100(9) in relation to that VCC, the other accounting standards;

15

“accounts” means profit and loss accounts and balance sheets and includes notes (other than auditors’ reports or directors’ reports) attached or intended to be read with any of those profit and loss accounts or balance sheets;

20

“ACRA” means the Accounting and Corporate Regulatory Authority established under section 3 of the Accounting and Corporate Regulatory Authority Act (Cap. 2A);

25 “book-entry securities” has the meaning given by section 81SF of the Securities and Futures Act (Cap. 289);

“books” has the meaning given by section 4(1) of the Companies Act (Cap. 50);

30 “borrowing VCC” means a VCC that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the VCC;

“business day” means any day other than a Saturday, Sunday or public holiday;

“certified” —

(a) in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document; and 5

(b) in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise; 10

“closed-end fund” has the meaning given by section 2(1) of the Securities and Futures Act;

“collective investment scheme” has the meaning given by section 2(1) of the Securities and Futures Act; 15

“company” has the meaning given by section 4(1) of the Companies Act;

“consolidated financial statements” has the meaning given by the Accounting Standards; 20

“constitution”, in relation to a VCC, means the constitution of the VCC that is registered with the Registrar under section 16(4), as may be amended from time to time;

“contributory” —

(a) in relation to a VCC, means a person liable to contribute to the assets of the VCC in the event of its being wound up, and includes the holder of fully paid shares in the VCC and (before the final determination of the persons who are contributories) any person alleged to be a contributory of the VCC; and 25 30

(b) in relation to a sub-fund, means a person liable to contribute to the assets of the sub-fund in the event of its being wound up, and includes the holder of fully

paid shares in the VCC that are issued in respect of that sub-fund and (before the final determination of the persons who are contributories) any person alleged to be a contributory of the sub-fund;

5 “corporation” has the meaning given by section 4(1) of the Companies Act and (to avoid doubt) includes a VCC;

“Court” means the High Court or a judge of the High Court;

10 “creditors’ voluntary winding up” means a winding up under Division 3 of Part X of the Companies Act as applied by section 130, but not a members’ voluntary winding up;

“custodian” —

(a) in relation to a non-umbrella VCC, means an entity to which the assets of the VCC are entrusted for safekeeping; and

15 (b) in relation to a sub-fund, means an entity to which the assets of the sub-fund are entrusted for safekeeping;

“debenture” includes debenture stock, bonds, notes and any other securities of a VCC whether constituting a charge on the assets of the VCC or not, but does not include —

20 (a) a cheque, letter of credit, order for the payment of money or bill of exchange;

(b) subject to the regulations made under section 165, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; and

25 (c) for the purposes of a prescribed provision of this Act, such instrument or class of instruments as may be prescribed;

30 “default penalty” means a default penalty within the meaning of section 147;

“director” has the meaning given by section 4(1) of the Companies Act;

“document” includes any summons, order and other legal process, and any notice and register;

“electronic communication” has the meaning given by section 4(1) of the Companies Act;

“emoluments”, in relation to any director or auditor of a VCC, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that VCC or by a holding company or a subsidiary of that VCC, whether made or given to him or her in his or her capacity as a director or an auditor or otherwise in connection with the affairs of that VCC or of the holding company or the subsidiary; 5 10

“expert” includes an engineer, a valuer, an accountant and any other person whose profession or reputation gives authority to a statement made by him or her; 15

“financial statements”, in relation to a VCC, means the financial statements of the VCC required to be prepared in accordance with the Accounting Standards;

“financial year”, in relation to a VCC, means — 20

(a) the period in respect of which its financial statements are made up, whether that period is a year or not; and

(b) which is determined in accordance with section 98;

“fund administration service” includes valuation, accounting, settlement of expenses and acting as a transfer agent; 25

“holding company” has the meaning given by section 5 of the Companies Act;

“liquidator” includes the Official Receiver when acting as the liquidator of a VCC or a sub-fund;

“manager”, in relation to a VCC, means the manager appointed by the VCC to manage its property or to operate the collective investment scheme or schemes that comprise the VCC; 30

“marketable securities” has the meaning given by section 4(1) of the Companies Act;

“MAS” means the Monetary Authority of Singapore established under section 3 of the MAS Act;

5 “MAS Act” means the Monetary Authority of Singapore Act (Cap. 186);

10 “members’ voluntary winding up” means a winding up under Division 3 of Part X of the Companies Act as applied by section 130, where a declaration has been made and lodged pursuant to section 293 of that Act as applied by section 130;

“net asset value”, in relation to a VCC, means the total assets less the total liabilities of the VCC, as determined in accordance with the Accounting Standards;

“non-umbrella VCC” means a VCC that is not an umbrella VCC;

15 “officer”, in relation to a VCC or other corporation, includes —

(a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

20 (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of the corporation (being a VCC or company) appointed in a voluntary winding up,

but does not include —

(d) any receiver who is not also a manager;

25 (e) any receiver and manager appointed by the Court;

(f) any liquidator appointed by the Court or by the creditors; or

(g) a judicial manager appointed by the Court under Part VIIIA of the Companies Act (if applicable);

30 “Official Receiver” means the Official Assignee appointed under the Bankruptcy Act (Cap. 20), and includes the deputy of any

such Official Assignee and any person appointed as Assistant Official Assignee;

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period; 5

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of shares in a VCC or proposed VCC, but does not include —

(a) a profile statement mentioned in section 296(2) of the Securities and Futures Act; 10

(b) any material, advertisement or publication which is authorised by section 300 of that Act (other than subsection (3)); or

(c) a product highlights sheet mentioned in section 296A(1) of that Act; 15

“public accountant” means a person who is registered or treated as registered under the Accountants Act (Cap. 2) as a public accountant;

“qualified representative”, in relation to the manager of a VCC, means a representative (within the meaning of section 2(1) of the Securities and Futures Act) of the manager who is — 20

(a) a person described in section 99B(1)(a), (b), (c) or (d) of the Securities and Futures Act; or

(b) a person who is exempt from section 99B(1) of that Act under section 99B(2) of that Act; 25

“register of auditors” means a register of auditors kept by the Registrar under section 173 of the Companies Act as applied by section 71(1);

“register of directors” means a register of directors kept by the Registrar under section 173 of the Companies Act as applied by section 71(1); 30

“register of managers” means a register of managers kept by the Registrar under section 71(3);

“register of members” means a register of members kept by a VCC under section 81;

5 “register of secretaries” means a register of secretaries kept by the Registrar under section 173 of the Companies Act as applied by section 71(1);

10 “registered qualified individual” means a qualified individual registered under section 28G of the Accounting and Corporate Regulatory Authority Act;

“Registrar” means the Registrar of VCCs appointed under this Act, and includes any Deputy or Assistant Registrar of VCCs;

15 “registration number”, in relation to a sub-fund, means the registration number given by the Registrar to the sub-fund upon its registration under section 27;

“related corporation”, in relation to a corporation, means a corporation that is treated as related to the firstmentioned corporation under section 4;

20 “share”, in relation to a VCC, means a unit in a collective investment scheme that is part of the VCC, and includes a share taken by a subscriber to the constitution of a VCC, whether or not it is such unit;

“solicitor” means an advocate and solicitor of the Supreme Court;

25 “sub-fund” means a collective investment scheme that is part of an umbrella VCC;

“subsidiary” has the meaning given by section 5 of the Companies Act;

30 “umbrella VCC” means a VCC the constitution of which provides that it consists of, or is to consist of, 2 or more collective investment schemes, or words to that effect;

“unit”, in relation to a collective investment scheme, has the meaning given by section 2(1) of the Securities and Futures Act;

“VCC” or “variable capital company” means a body corporate incorporated as such under this Act;

5

“wholly owned subsidiary” has the meaning given by section 5B of the Companies Act.

(2) In this Act (including a provision of the Companies Act applied by this Act) —

(a) a reference to the directors of a VCC is, in the case of a VCC that has only one director, to that director; and

10

(b) a reference to the doing of any act by 2 or more directors is, in the case of a VCC that has only one director, to the doing of that act by that director.

(3) In this Act —

15

(a) a reference to a debt, obligation or liability of a sub-fund 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;

(b) a reference to a debenture of a sub-fund is to a debenture issued by the umbrella VCC concerned in respect of a debt, obligation or liability of the sub-fund;

20

(c) a reference to any asset, property or undertaking of a sub-fund 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; and

25

(d) a reference to a creditor of a sub-fund is to a creditor of the umbrella VCC concerned in respect of a debt, obligation or liability of the sub-fund.

(4) Subject to section 5, section 4(2), (5), (5A) and (7) of the Companies Act applies for the purposes of interpreting this Act, including a provision of the Companies Act applied by this Act.

30

(5) A reference to the Minister in any of the following provisions includes the Minister of State for the Ministry of the Minister, who is authorised by the Minister for the purposes of hearing an appeal under that provision:

- (a) sections 18(3), 21(4), 135(9) and 136(3);
- (b) sections 27(5), (5AA), (5A) and (12C), and 28(3), (3D), (3DA) and (3E) of the Companies Act as applied by section 21;
- (c) section 155B(8) of the Companies Act as applied by section 59.

(6) Subject to section 5 and the modifications in subsection (7), section 7 (except subsections (1) and (6A)) of the Companies Act applies for the purposes of —

- (a) section 66;
- (b) section 163 of the Companies Act as applied by section 65; and
- (c) section 165 of the Companies Act as applied by section 67.

(7) The modifications mentioned in subsection (6) are as follows:

- (a) subsection (3) of section 7 of the Companies Act only applies in relation to a share of a corporation other than a VCC;
- (b) paragraph (ca) of section 7(9) of that Act is omitted;
- (c) a book-entry security is treated as an interest in a share;
- (d) a person that is a subsidiary of a VCC does not have an interest in the shares of the VCC by reason only that that interest is purchased or otherwise acquired by the subsidiary under section 22(6) or (11).

(8) For the purposes of any provision of this Act (including a provision of the Companies Act applied by this Act) that provides that an officer of a corporation who is in default is guilty of an offence or is liable to a penalty or punishment, an officer of the corporation is in default if the officer knowingly and wilfully —

- (a) commits the offence; or
- (b) authorises or permits the commission of the offence.

(9) Where it is necessary, in a proceeding for an offence under this Act, to establish the conduct of the manager of a VCC or the custodian of a non-umbrella VCC or sub-fund, any conduct engaged in or on behalf of the manager or custodian —

- (a) by a director, an employee or an agent of the manager or custodian within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee or an agent of the manager or custodian, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

is treated as having been engaged in by the manager or custodian.

(10) Where it is necessary, in a proceeding for an offence under this Act, to establish the state of mind of a manager of a VCC, or a custodian of a non-umbrella VCC or sub-fund, in respect of conduct engaged in, or treated under subsection (9) as having been engaged in by the manager or custodian, it is sufficient to show that a director, an employee or an agent of the manager or custodian, being one by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(11) A reference in subsection (10) to the state of mind of a person includes the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Affairs of corporation or sub-fund

3.—(1) Unless the context otherwise requires, a reference to the affairs of a VCC or other corporation (called in this subsection the corporation) in the following provisions:

- (a) Part 9, including a provision of the Companies Act applied by that Part;

- (b) section 130(13);
- (c) paragraph (f) of the provision that replaces section 254(1) of the Companies Act because of section 130(8);
- (d) section 142;
- 5 (e) section 145;
- (f) section 155,

is a reference to —

- 10 (g) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person and liabilities as trustee), profits and other income, receipts, 15 losses, outgoings and expenditure of the corporation;
- 20 (h) in the case of a corporation (not being a trustee corporation) that is a trustee (but without affecting paragraph (g)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
- 25 (i) the internal management and proceeding of the corporation;
- (j) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
 - 30 (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
 - (ii) the corporation is under judicial management (where applicable);

- (iii) a compromise or an arrangement made between the corporation and another person or other persons is being administered; or
- (iv) the corporation or (if it is an umbrella VCC) the corporation or any of its sub-funds, is being wound up, 5
and includes any conduct of the receiver, the receiver and manager, or the judicial manager of the person administering the compromise or arrangement or of any liquidator or provisional liquidator of the corporation or sub-fund (where applicable); 10
- (k) the ownership of shares in, debentures of, and interests issued by, the corporation;
- (l) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares; 15
- (m) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially influence the policy of the corporation; 20
- (n) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the corporation; 25
- (o) where the corporation has issued interests, matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which those interests relate; and 30
- (p) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters in paragraphs (g) to (o).

(2) Unless the context otherwise requires, a reference to the affairs of a sub-fund in the following provisions:

(a) section 114(5)(a)(ii);

(b) section 145;

5 (c) paragraph (f) of the provision that replaces section 254(1) of the Companies Act because of paragraph 14 of the First Schedule;

(d) paragraph 19 of the First Schedule,

is a reference to —

10 (e) the promotion, formation, control, business, trading, transactions and dealings of the sub-fund (whether by the umbrella VCC alone or jointly with another person and including transactions and dealings as agent, bailee or trustee), property of the sub-fund (whether held by the
15 umbrella VCC alone or jointly with another person and including property held as agent, bailee or trustee), liabilities of the sub-fund (including liabilities owed by the umbrella VCC jointly with another person and liabilities as trustee), profits and other income, receipts,
20 losses, outgoings and expenditure of the umbrella VCC received or incurred on behalf of the sub-fund;

(f) the internal management and proceeding of the umbrella VCC in respect of the sub-fund;

25 (g) any act or thing done (including any contract made and any transaction entered into) —

(i) by the umbrella VCC on behalf of the sub-fund; or

(ii) to or in relation to the umbrella VCC in respect of the sub-fund or the business or property of the sub-fund,

at a time when —

30 (iii) a receiver, or a receiver and manager, is in possession of, or has control over, property of the sub-fund;

- (iv) a compromise or an arrangement made between the umbrella VCC (on behalf of the sub-fund) and the creditors of the sub-fund (or any class of them), members holding shares issued in respect of that sub-fund (or any class of them), or another person or other persons, is being administered; or 5
- (v) the sub-fund is being wound up,
and includes any conduct of the receiver, the receiver and manager, of the person administering the compromise or arrangement or of any liquidator or provisional liquidator of the sub-fund, as the case may be; 10
- (h) the ownership of shares in and interests issued by the umbrella VCC in respect of the sub-fund, or the debentures of the sub-fund;
- (i) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares issued by the umbrella VCC in respect of the sub-fund, or to dispose of, or to exercise control over the disposal of, such shares; 15
- (j) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the sub-fund or are or have been able to control or materially influence the policy of the umbrella VCC in relation to the sub-fund; 20
- (k) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in or interests issued by the umbrella VCC in respect of the sub-fund, or the debentures of the sub-fund; 25
- (l) matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the shares of the umbrella VCC in respect of the sub-fund relate; and 30
- (m) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters in paragraphs (e) to (l).

When corporations related to each other

4. For the purposes of this Act, where a corporation —

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation; or

5 (c) is a subsidiary of the holding company of another corporation,

then the firstmentioned corporation and the other corporation are treated as related to each other.

Purpose of Act and application of Companies Act provisions in this Act

5.—(1) The purpose of this Act is to enable a body corporate known as a variable capital company or VCC, to be formed, and to provide for its operation and regulation.

15 (2) This Act (except for Part 7) applies the provisions of the Companies Act subject to the modifications set out by this Act.

(3) Where a provision of the Companies Act (called in this section an incorporated provision) is incorporated by reference in this Act, whether with or without modifications, then, in addition to any specific modifications set out in this Act —

20 (a) the incorporated provision applies with the necessary modifications;

(b) a reference in the incorporated provision to another incorporated provision is to that other provision as applied by this Act;

25 (c) a reference in the incorporated provision to the Registrar of Companies is to the Registrar;

(d) subject to section 2(5), a reference in the incorporated provision to the Minister is to the Minister having charge of this Act;

30 (e) a reference in the incorporated provision to the Authority is to ACRA;

- (f) a reference in the incorporated provision to a default penalty is to the default penalty in section 147;
- (g) a reference in the incorporated provision to a prescribed matter is to the matter prescribed by regulations made under section 165; and
- (h) the incorporated provision applies subject to such other modifications as may be prescribed by regulations made under subsection (4).

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(4) The Minister may, for a period of 2 years starting on the date of commencement of this Act, make regulations to prescribe further modifications to an incorporated provision in its application by this Act.

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Application of Companies Act to VCC, etc.

6.—(1) Where a provision of the Companies Act is incorporated by reference in this Act and applies to or in relation to a VCC, a person of a VCC or a matter concerning a VCC, as that Companies Act provision applies to or in relation to a corporation, a person of a corporation or a matter concerning a corporation, then (despite a VCC being a corporation within the meaning of the Companies Act) the Companies Act provision is disapplied, but only to the extent of such application in this Act.

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(2) Where a provision of the Companies Act has a corresponding provision in this Act that applies to or in relation to a VCC, a person of a VCC or a matter concerning a VCC, as that Companies Act provision applies to or in relation to a corporation, a person of a corporation or a matter concerning a corporation, then (despite a VCC being a corporation within the meaning of the Companies Act) the Companies Act provision is disapplied, but only to the extent of such application in the corresponding provision.

25

(3) Despite anything in the Companies Act —

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- (a) Division 5 of Part X of that Act does not apply for the purpose of the winding up of a VCC or a sub-fund of an umbrella VCC; and

- (b) Division 6 of Part X of that Act does not apply to any proceedings concerning a VCC or a sub-fund of an umbrella VCC.

PART 2

ADMINISTRATION OF ACT

Application of Part

7. This Part does not apply to Part 7.

Administration of Act and appointment of Registrar of VCCs, etc.

8.—(1) ACRA is responsible for the administration of this Act other than Part 7, subject to the general or special directions of the Minister.

- (2) The Minister may, after consulting ACRA —

(a) appoint an officer of ACRA as the Registrar of VCCs; and

(b) appoint from among the officers of ACRA, public officers and the officers of any other statutory body, such number of Deputy Registrars and Assistant Registrars of VCCs as the Minister considers necessary,

for the proper administration of this Act.

(3) ACRA may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of the Registrar's powers, functions or duties under this Act, and the Registrar is to give effect to the directions.

(4) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed by regulations made under section 165, anything which the Registrar is authorised or required to do or sign under this Act may be done or signed by a Deputy or an Assistant Registrar and is as valid and effectual as if done or signed by the Registrar.

(5) A person dealing with a Deputy or an Assistant Registrar need not inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or an Assistant

Registrar so far as it affects that person is as valid and effectual as if done or omitted by the Registrar.

(6) A court, judge or person acting judicially must take judicial notice of the seal and signature of the Registrar or of a Deputy or an Assistant Registrar.

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Registers, etc.

9.—(1) Subject to this Act, the Registrar must keep such registers as the Registrar considers necessary and in such form as the Registrar thinks fit.

(2) Any person may, on payment of the prescribed fee —

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(a) inspect any document (other than a return or a copy of the constitution of a VCC) filed or lodged with the Registrar, including a microfilm of such document;

(b) require a copy of the notice of incorporation of a VCC, any certificate issued under this Act, or any document or extract from any document kept by the Registrar (other than a return or a copy of the constitution of a VCC), to be given or certified by the Registrar; or

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(c) inspect any register of directors, managers, secretaries or auditors, or require a copy of or an extract from any such register.

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(3) Despite subsection (2)(b), a certificate of confirmation of incorporation of a VCC mentioned in section 16(7) may only be issued to the VCC upon an application made in accordance with that provision.

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(4) Despite subsection (2)(a) and (c), a director, manager, secretary, auditor or member of a VCC or a custodian of a non-umbrella VCC or a sub-fund may, without charge —

(a) inspect the register of directors, managers, secretaries or auditors of that VCC; or

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(b) obtain from the Registrar a copy of or an extract from such a register.

(5) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar using a non-electronic medium that is certified to be a true copy or an extract by the Registrar is, in any proceedings, admissible in evidence as of equal validity with the original document.

(6) In any legal proceedings, a certificate issued by the Registrar that a requirement of this Act specified in the certificate —

(a) had or had not been complied with on a date or within a period specified in the certificate; or

(b) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(7) If the Registrar is of the opinion that any document submitted to the Registrar —

(a) contains any matter contrary to any law;

(b) by reason of any omission or misdescription, has not been duly completed;

(c) does not comply with the requirements of this Act; or

(d) contains any error, alteration or erasure,

the Registrar may refuse to register or receive the document, and may request that the document be appropriately amended or completed and resubmitted, or that a fresh document be submitted in its place.

(8) If the Registrar is of the opinion that it is no longer necessary or desirable to retain any document lodged, filed or registered with the Registrar and which has been microfilmed or converted to electronic form, the Registrar may —

(a) destroy the document with the authorisation of the National Library Board under section 14D of the National Library Board Act (Cap. 197); or

(b) transfer the document to the National Archives of Singapore under section 14C of that Act.

(9) In subsection (5), “non-electronic medium” means a medium other than the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act.

Electronic transaction system

10.—(1) The Registrar may —

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(a) require or permit any person to carry out any transaction with the Registrar under this Act; and

(b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction mentioned in paragraph (a),

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using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act.

(2) If the Registrar is satisfied that a transaction should be treated as having been carried out at some earlier date and time, than the date and time which is reflected in the electronic transaction system, the Registrar may cause the electronic transaction system and the registers kept by the Registrar to reflect such earlier date and time.

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(3) The Registrar must keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

(4) In this section —

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“document” includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to the Registrar;

“transaction”, in relation to the Registrar, means —

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(a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;

(b) the making of any application, submission or request to the Registrar;

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- (c) the provision of any undertaking or declaration to the Registrar; or
- (d) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar.

5 **Rectification of registers**

11. Subject to section 5, sections 12B, 12C and 12D of the Companies Act apply in relation to a register kept by the Registrar as they apply in relation to a register kept by the Registrar of Companies under that Act.

10 **Enforcement of duty to make returns**

12.—(1) This section applies if a VCC or any person —

- (a) having failed to comply with any provision of this Act or of any other law which requires any return, account, notice or other document to be filed or lodged with, or submitted to, the Registrar or the Official Receiver;
- (b) having failed to comply with any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document; or
- (c) having failed to comply with the Registrar's request under section 12D(7) of the Companies Act (as applied by section 11) to take such steps within such time as the Registrar may specify to ensure that any error or defect in any particulars or document in a register is rectified,

fails to make good the failure within 14 days after service of the notice of the Registrar or the Official Receiver on the VCC or the person requiring compliance with the provision or request.

(2) The Court may, on an application by any member or creditor of the VCC or by the Registrar or the Official Receiver, make an order directing the VCC, any officer of the VCC, or such person to make good the failure within the time specified in the order.

(3) Such order may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC

responsible for the failure, or by the person mentioned in subsection (2).

(4) Nothing in this section limits the operation of any written law imposing penalties on a VCC or its officers or such person in respect of the failure.

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Relodgment of lost registered documents, and size, durability and legibility of documents lodged with Registrar

13. Subject to section 5, sections 14 and 15 of the Companies Act apply in relation to documents filed or lodged with, or delivered, sent, forwarded, produced or given to, the Registrar under this Act as they apply in relation to documents filed or lodged with, or delivered, sent, forwarded, produced or given to, the Registrar of Companies under the Companies Act.

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VCC auditors

14.—(1) Subject to section 5 and subsection (2), section 10 of the Companies Act applies in relation to a VCC as it applies in relation to a company.

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(2) A reference in section 10(2) of the Companies Act to a report required to be prepared by an auditor of a company under that Act is to a report required to be prepared by an auditor of a VCC under this Act (including under a provision of the Companies Act applied by this Act).

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PART 3

CONSTITUTION OF VCC

Object of VCC

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15.—(1) The sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate.

(2) A VCC may not carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Singapore or elsewhere, any business that is inconsistent with the object in subsection (1).

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(3) If a VCC contravenes subsection (2), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and —

(a) the VCC shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction; and

(b) the officer shall be liable on conviction to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$15,000 for every day or part of a day during which the offence continues after conviction.

Registration of VCC

16.—(1) Subject to this Act, any person may, whether alone or together with another person, by subscribing the person's name or their names to a constitution and complying with the requirements in subsection (2), incorporate a VCC.

(2) The person or persons must —

(a) submit to the Registrar the constitution of the proposed VCC and such other documents as may be prescribed;

(b) submit to the Registrar the name of the manager of the proposed VCC;

(c) submit to the Registrar the names of the directors of the proposed VCC;

(d) provide the Registrar with the last day of the first financial year of the proposed VCC and such other information as may be prescribed; and

(e) pay the Registrar the prescribed fee.

(3) Either of the following persons:

(a) a registered qualified individual engaged in the formation of the proposed VCC;

- (b) a person named in the constitution as a director or the secretary of the proposed VCC,

must make a declaration to the Registrar that —

- (c) all of the requirements of this Act relating to the formation of the VCC have been complied with; and
- (d) the person has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed VCC,

and the Registrar may accept such declaration as sufficient evidence of those matters.

(4) Subject to this Act, if the requirements in subsections (2) and (3) are satisfied, the Registrar must —

- (a) register the VCC by registering its constitution; and
- (b) issue to the VCC a notice of incorporation.

(5) Subject to this Act, beginning on the date of registration specified in the notice of incorporation, the subscribers to the constitution, together with such other persons as may from time to time become members of the VCC, are a body corporate by the name contained in the constitution —

- (a) capable immediately of exercising all of the functions of a VCC and of suing and being sued;
- (b) having perpetual succession with power to hold land; and
- (c) with such liability on the part of the members to contribute to the assets of the VCC in the event of it or any of its sub-funds being wound up, as is provided by this Act.

(6) Subject to this Act and any other written law and its constitution, a VCC has —

- (a) in furtherance of its sole object under section 15(1), full capacity to do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

(7) Upon the application of a VCC and payment of the prescribed fee, the Registrar must issue to the VCC a certificate of confirmation of incorporation.

5 (8) Each subscriber to the constitution of a VCC must make a declaration to the Registrar, either personally or through a registered qualified individual, as to the number of shares that the subscriber agrees to take.

Members of VCC

10 **17.—**(1) The subscribers to the constitution of a VCC are considered to have agreed to become members of the VCC and, on the incorporation of the VCC, must be entered as members in the register of members.

15 (2) Apart from the subscribers, every other person who agrees to become a member of the VCC and whose name is entered in the register of members is a member of the VCC.

(3) The liability of a member of a VCC is limited to the amount (if any) unpaid on the shares held by the member.

(4) Subsection (3) does not affect any other liability to which a member may be subject under this Act.

20 Duty to refuse registration

25 **18.—**(1) Without affecting the powers of the Registrar under section 9(7), the Registrar must not register a constitution of a proposed VCC under section 16 unless the Registrar is satisfied that all the requirements of this Act in respect of the registration have been complied with.

(2) Despite anything in this Act or any rule of law, the Registrar must refuse to register the constitution of a proposed VCC if the Registrar is satisfied that —

30 (a) the person named as its manager does not satisfy section 46(2);

(b) none of its directors is either a director or qualified representative of the manager;

- (c) it is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (d) it would be contrary to national security or the national interest for it to be registered.

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(3) Any person aggrieved by the Registrar's decision under subsection (2) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

Constitution of VCC

19.—(1) The following provisions are implied in the constitution of every VCC:

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- (a) the liability of a member of the VCC is limited to the amount, (if any) unpaid on the shares held by the member;
- (b) the sole object of the VCC is to be one or more collective investment schemes in the form of a body corporate;
- (c) the property of the VCC must be measured on a fair value basis;
- (d) the actual value of the paid-up share capital of the VCC is at all times equal to the net asset value of the VCC;
- (e) shares of the VCC are to be issued, redeemed or repurchased at a price equal to the proportion of the net asset value of the VCC represented by each share, although the price may be adjusted by adding or subtracting (as the case may be) fees and charges in accordance with the constitution;
- (f) shares of the VCC that relate to a closed-end fund and listed for quotation on a securities exchange, are to be issued, redeemed or repurchased in accordance with the applicable listing requirements of the securities exchange;
- (g) the provisions in paragraphs (e) and (f) do not apply in relation to any shares during the initial offer period of the shares.

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(2) It is also implied in the constitution of every VCC that is an umbrella VCC that the VCC's assets and liabilities must be allocated to, and used to discharge the liabilities of, each of its sub-funds in accordance with section 29(1) and (3).

5 (3) Any provision in the constitution is void to the extent that it is inconsistent with any provision implied in it under subsection (1) or (2).

(4) The constitution of every VCC must state —

- 10 (a) the name of the VCC and that it is incorporated under this Act;
- (b) the name of the manager of the VCC;
- (c) the full name, address and occupation of the subscriber or each subscriber to the constitution;
- 15 (d) that the subscriber or each subscriber is desirous of being formed into a VCC and agrees to take the number of shares in the capital of the VCC set out opposite the subscriber's name;
- 20 (e) details of the right of the holder of a share in the VCC to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property of the VCC, or to receive sums paid out of such profits, income, or
25 other payments or returns;
- (f) details of the following rights (if any) of the holder of a share in the VCC:
 - (i) the right to vote at any general meeting or at any meeting of shareholders of that class of shares;
 - 30 (ii) the right to redeem or repurchase shares;
 - (iii) the right in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the VCC;

- (g) if any right in paragraph (f) does not apply, that fact; and
- (h) in respect of a VCC that consists of, or is to consist of, 2 or more collective investment schemes —

- (i) that fact; and

- (ii) the policy of the VCC for forming a sub-fund, and allocating in accordance with section 29(3) any assets and liabilities mentioned in that provision between sub-funds.

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(5) The constitution of a VCC must contain the regulations for the VCC.

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(6) The constitution of each VCC must comply with such additional requirements as may be prescribed, and must be dated.

(7) A copy of the constitution, duly signed by the subscriber or each subscriber and stating the number of shares that the subscriber has agreed to take, must be kept at the registered office of the VCC.

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(8) Subject to section 5, sections 23(1B), 39 and 40 of the Companies Act apply in relation to the constitution of a VCC as they apply in relation to the constitution of a company.

Alteration of constitution

20.—(1) Unless otherwise provided in this Act, the constitution of a VCC may not be altered unless the alteration has been approved —

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- (a) by ordinary resolution, or by a resolution passed by such majority of the members as may be prescribed; or

- (b) if the constitution so requires, by a resolution passed by a majority specified in the constitution of the votes cast by the members of the VCC who are entitled to vote on the resolution and who vote in person or by proxy at a general meeting of the VCC.

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(2) Subsection (1) does not apply to an alteration of any of the following in the constitution of a VCC, if (and only if) the constitution provides that the directors of the VCC may so alter the constitution without the approval of its members:

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- (a) an alteration for the purpose of forming a sub-fund;
- (b) an alteration to reflect any appointment or change of the manager of the VCC;
- 5 (c) an alteration that does not prejudice the interests of any member, and does not release to any material extent the manager or any director from any responsibility to the members;
- (d) an alteration that is necessary for the purpose of complying with any order of court, law, direction of a public authority, code of conduct or other quasi-legislation;
- 10 (e) the removal of an obsolete provision or the correction of any manifest error.

(3) Subject to this Act, any alteration to the constitution under subsection (1) is treated as part of the original constitution starting on the date of the resolution approving the alteration or such later date as may be specified in the resolution.

(4) Subject to section 5, section 26(2), (2A), (3), (5), (6) and (7) of the Companies Act applies in relation to a resolution, an order of the Court or any other document affecting the constitution of a VCC, as it applies in relation to a resolution, an order of Court or any other document affecting the constitution of a company.

Name of VCC

21.—(1) Except with the consent of the Minister or as provided in subsection (3), the Registrar must refuse to register a VCC under a name which, in the opinion of the Registrar —

- (a) is undesirable;
- (b) is identical to the name of any other VCC or any company, limited liability partnership, limited partnership or corporation or to any registered business name;
- 30 (c) is identical to a name reserved under any of the following:
 - (i) section 27(12B) or 378(15) of the Companies Act;

- (ii) section 27(12B) of that Act as applied by section 357(2) of that Act;
 - (iii) section 27(12B) of that Act as applied by subsection (8);
 - (iv) section 27(12B) of that Act as applied by section 133(2); 5
 - (v) section 16 of the Business Names Registration Act 2014 (Act 29 of 2014);
 - (vi) section 19(4) of the Limited Liability Partnerships Act (Cap. 163A); 10
 - (vii) section 17(4) of the Limited Partnerships Act (Cap. 163B); or
- (d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.
- (2) In addition to subsection (1), the Registrar must (except with the consent of the Minister) refuse to register a VCC under a name if — 15
- (a) it is identical to the name of a VCC or company that was dissolved unless —
 - (i) in a case where the VCC or company was dissolved following its winding up under Part 11, or Part X of the Companies Act (as the case may be), a period of at least 2 years has passed after the date of dissolution; or 20
 - (ii) in a case where the VCC or company was dissolved following its name being struck off the register under section 344 or 344A of the Companies Act as applied by section 130, or section 344 or 344A of the Companies Act (as the case may be), a period of at least 6 years has passed after the date of dissolution; 25
 - (b) it is identical to the business name of a person whose registration and registration of that business name has been cancelled under the Business Names Registration Act 2014 or had ceased under section 22 of that Act, unless a period 30

of at least one year has passed after the date of cancellation or cessation;

5 (c) it is identical to the name of a foreign company notice of the dissolution of which has been given to the Registrar of Companies under section 377(2) of the Companies Act, unless a period of at least 2 years has passed after the date of dissolution;

(d) it is identical to the name of a limited liability partnership that was dissolved, unless —

10 (i) in a case where the limited liability partnership was dissolved following its winding up under section 30 of, and the Fifth Schedule to, the Limited Liability Partnerships Act, a period of at least 2 years has passed after the date of dissolution; or

15 (ii) in a case where the limited liability partnership was dissolved following its name being struck off the register under section 38 of the Limited Liability Partnerships Act, a period of at least 6 years has passed after the date of dissolution; or

20 (e) it is identical to the name of a limited partnership that was cancelled or dissolved, unless —

25 (i) in a case where the registration of the limited partnership was cancelled under section 14(1) or 19(4) of the Limited Partnerships Act, a period of at least one year has passed after the date of cancellation; or

30 (ii) in a case where notice was lodged with the Registrar of Limited Partnerships that the limited partnership was dissolved under section 19(2) of the Limited Partnerships Act, a period of at least one year has passed after the date of dissolution.

(3) Despite subsection (1), the Registrar may register a VCC —

(a) under a name that is identical to the name of a foreign company registered under Division 2 of Part XI of the Companies Act —

(i) in respect of which notice was lodged under section 377(1) of that Act that the foreign company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore, if a period of at least 3 months has passed after the date of cessation; and

(ii) the name of which was struck off the register under section 377(8), (9) or (10) of that Act, if a period of at least 6 years has passed after the date the name was so struck off; or

(b) under a name that is identical to the name of a limited partnership in respect of which notice was lodged under section 19(1) of the Limited Partnerships Act that the limited partnership ceased to carry on business in Singapore, if a period of at least one year has passed after the date of cessation.

(4) Despite this section and section 28 of the Companies Act as applied by subsection (8), where the Registrar is satisfied that the VCC has been registered (whether through inadvertence or otherwise) by a name —

(a) which is one that is not permitted to be registered under subsection (1)(a), (b) or (d);

(b) which is one that is not permitted to be registered under subsection (2) until the expiry of the relevant period mentioned in that subsection;

(c) which is one that is permitted to be registered under subsection (3) only after the expiry of the relevant period mentioned in that subsection;

(d) which so nearly resembles the name of any other VCC or any company, corporation, limited liability partnership or

limited partnership, or any registered business name, as to be likely to be mistaken for it; or

(e) the use of which has been restrained by an injunction granted under the Trade Marks Act (Cap. 332),

5 the Registrar may direct the firstmentioned VCC to change its name, and the VCC must comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled on appeal by the Minister.

10 (5) The Minister must cause a direction made under subsection (1)(d) to be published in the *Gazette*.

(6) Subject to section 5, section 27(2A) to (5A) of the Companies Act applies for the purposes of subsection (4) as it applies for the purposes of section 27(2) of that Act, and for this purpose —

15 (a) a reference to a ground in section 27(2) of the Companies Act is to a ground in subsection (4);

(b) the reference in section 27(5) of the Companies Act to the date of commencement of section 22 of the Companies (Amendment) Act 2014 is to the date of
20 commencement of this Act; and

(c) the reference in section 27(5A) of the Companies Act to an injunction in section 27(2)(c) of that Act is to an injunction in subsection (4)(e).

(7) A VCC must have “VCC” as part of and at the end of its name.

25 (8) Sections 27(10) to (15) and 28 of the Companies Act apply in relation to a VCC or an intended VCC as they apply in relation to a company or an intended company, subject to section 5 and the following modifications:

30 (a) a reference in section 27(11) of the Companies Act to section 19(3) of that Act is to section 16(4) of this Act;

(b) a reference in sections 27(12) and 28 of the Companies Act to section 27(1), (1A) and (1B) of that Act is to subsections (1), (2) and (3), respectively;

- (c) the reference in section 28(3)(a) of the Companies Act to section 27(1)(a), (b) and (d) of that Act is to subsection (1)(a), (b) and (d), respectively;
- (d) the reference in section 28(3)(d) of the Companies Act to the name of another company is to the name of another VCC or a company; 5
- (e) the reference in section 28(3AA) of the Companies Act to section 27(1)(c) of that Act is to subsection (1)(c);
- (f) the reference in section 28(3D) of the Companies Act to the date of commencement of section 23 of the Companies (Amendment) Act 2014 is to the date of commencement of this Act; 10
- (g) subsection (4) of section 28 of the Companies Act is omitted.

(9) In this section, “registered business name” has the meaning given by section 2(1) of the Business Names Registration Act 2014. 15

Membership of holding company

22.—(1) A corporation cannot be a member of a VCC which is its holding company, and any allotment or transfer of shares in a VCC to its subsidiary is void. 20

(2) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, does not apply to a disposition of book-entry securities, but the Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1). 25

(3) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or as trustee, unless the VCC or a subsidiary of the VCC is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business (including the lending of money). 30

(4) This section does not prevent a subsidiary from continuing to be a member of a VCC that is its holding company if, at the time when it becomes a subsidiary of the VCC, it already holds shares in that VCC, but —

5 (a) subject to subsection (3), the subsidiary has no right to vote at meetings of the VCC or any class of members of the VCC; and

10 (b) subject to subsections (5) and (6), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of the VCC, dispose of all of its shares in the VCC.

(5) To avoid doubt, subsection (4)(b) ceases to apply if, during the period in that provision, the subsidiary ceases to be a subsidiary of the VCC.

15 (6) Any shares in the VCC that are not disposed of in accordance with subsection (4)(b) may, subject to subsections (12) and (13) and sections 23 and 24, be held or continued to be held by the subsidiary.

20 (7) Subject to subsection (3), subsections (1), (4), (6), (9) and (11) apply in relation to a nominee for a corporation which is a subsidiary, as if references in those subsections to such a corporation included references to a nominee for it.

25 (8) This section does not prevent the allotment of shares in a holding company that is a VCC to a subsidiary which already lawfully holds shares in the VCC, if the allotment is made by way of capitalisation of reserves of the VCC and is made to all members of the VCC on a basis which is in direct proportion to the number of shares held by each member in the VCC.

30 (9) This section does not prevent the transfer of shares in a holding company that is a VCC to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

 (a) subject to subsection (3), the subsidiary has no right to vote at meetings of the VCC or any class of members of the VCC; and

- (b) subject to subsections (10) and (11), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the VCC, dispose of all of the shares in the VCC.

(10) To avoid doubt, subsection (9)(b) ceases to apply if, during the period mentioned in that subsection, the subsidiary ceases to be a subsidiary of the holding company. 5

(11) Any shares in the VCC that are not disposed of in accordance with subsection (9)(b) may, subject to subsections (12) and (13) and sections 23 and 24, be held or continued to be held by the subsidiary. 10

(12) The VCC must, within 14 days after any change in the number of shares in the VCC which are held by any of its subsidiaries under subsection (6) or (11), lodge with the Registrar a notice in the prescribed form of this change.

(13) With respect to any share mentioned in subsection (6) or (11) — 15

(a) where the VCC has shares of only one class, the total number of shares held by all its subsidiaries under subsection (6) or (11), must not at any time exceed 10% of the total number of shares of the VCC at that time; 20

(b) where the share capital of the VCC is divided into shares of different classes, the total number of the shares of any class held by all its subsidiaries under subsection (6) or (11), must not at any time exceed 10% of the total number of the shares in that class of the VCC at that time; 25

(c) where paragraph (a) or (b) is contravened, the VCC must dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 24 before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow; 30

(d) where the subsidiary is a wholly-owned subsidiary of the VCC, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the VCC's assets 35

(including any distribution of assets to members on a winding up of the VCC or any of its sub-funds (if applicable)) may be made, to the subsidiary in respect of the shares mentioned in subsection (6) or (11); and

5 (e) where the subsidiary is not a wholly-owned subsidiary of the VCC, a dividend may be paid and other distribution (whether in cash or otherwise) of the VCC's assets (including any distribution of assets to members on a winding up of the VCC or any of its sub-funds
10 (if applicable)) may be made, to the subsidiary in respect of the shares mentioned in subsection (6) or (11).

(14) In subsection (13)(c), "excess shares" means such number of the shares, held by any subsidiary under subsection (6) or (11) at the time in question, as resulted in the limit mentioned in
15 subsection (13)(a) or (b) being exceeded.

(15) Where, but for this section, a subsidiary would have been entitled to subscribe for shares in the VCC, the VCC may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

20 (16) For the purposes of this section, a VCC must inform the Registrar of the occurrence of any of the following events by lodging a notice in the prescribed form within 14 days after the date of occurrence:

25 (a) where a shareholder of a VCC becomes a subsidiary of the VCC;

(b) where shares of the VCC are held by a subsidiary of the VCC and there is a change in the number of shares held by the subsidiary.

Rights attached to shares in section 22(6) and (11)

30 **23.—**(1) This section applies to the shares mentioned in section 22(6) and (11).

(2) The subsidiary mentioned in section 22(6) or (11) must not exercise any right in respect of those shares and any purported exercise of such right is void.

(3) The rights mentioned in subsection (2) include any right to attend or vote at meetings and for the purposes of this Act, the subsidiary is treated as having no right to vote and the shares are treated as having no voting rights.

(4) Nothing in this section prevents —

5

(a) an allotment of shares as fully paid bonus shares in respect of the shares mentioned in section 22(6) or (11); or

(b) the subdivision or consolidation of any share mentioned in section 22(6) or (11) into shares of a greater or smaller number, if the total value of the shares after the subdivision or consolidation is the same as the total value of the shares before the subdivision or consolidation, as the case may be.

10

(5) Any shares allotted as fully paid bonus shares in respect of the shares in section 22(6) are treated for the purposes of this Act as if they were already held by the subsidiary at the time they were allotted, in circumstances in which section 22(4) applied.

15

(6) Any shares allotted as fully paid bonus shares in respect of the shares in section 22(11) are treated for the purposes of this Act as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 22(9) applied.

20

Disposal and cancellation of shares in section 22(6) and (11)

24.—(1) This section applies to the shares in a VCC mentioned in section 22(6) and (11).

(2) The subsidiary mentioned in section 22(6) or (11) may at any time —

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(a) sell the shares (or any of them) for cash;

(b) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for employees, directors or other persons;

(c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or VCC or assets of a person;

30

(d) cancel the shares (or any of them); or

(e) sell, transfer or otherwise use the shares for such other purposes as the Minister may by order prescribe.

(3) Any cancellation or disposal of shares under subsection (2) by a subsidiary that is a private company within the meaning of the Companies Act, must be done by lodging a prescribed notice of the cancellation or disposal with the Registrar together with the prescribed fee.

(4) A cancellation or disposal of shares under subsection (2) does not take effect until the electronic register of members of the subsidiary is updated by the Registrar under section 196A(5) of the Companies Act.

(5) Where the subsidiary is a public company within the meaning of the Companies Act or a VCC, the directors of the VCC must, within 30 days after cancelling or disposing of shares under subsection (2), lodge a prescribed notice of the cancellation or disposal of shares with the Registrar together with the prescribed fee.

(6) In subsection (2), “cash”, in relation to a sale of shares by the subsidiary, means —

(a) cash (including foreign currency) received by the subsidiary;

(b) a cheque received by the subsidiary in good faith which the directors have no reason for suspecting will not be paid;

(c) a release of a liability of the subsidiary for a liquidated sum;
or

(d) an undertaking to pay cash to the subsidiary on or before a date not more than 90 days after the date on which the subsidiary agrees to sell the shares.

(7) But if the subsidiary (being a company) receives a notice under section 215 of the Companies Act that a person desires to acquire any of the shares, the subsidiary must not, under subsection (2), sell or transfer the shares to which the notice relates except to that person.

(8) The directors of the subsidiary (being a company) may take such steps as are requisite to enable the subsidiary to cancel its shares under

subsection (2), without complying with section 78B, 78C or 78I of the Companies Act (if applicable).

Application of other provisions of Part III of Companies Act

25.—(1) Sections 24, 25, 25A, 25B, 25C and 25D of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to section 5 and the following modifications:

(a) paragraph (c) of section 25(2) of the Companies Act is omitted;

(b) a reference in section 25 of the Companies Act to a lack of capacity or power of a company is to a lack of capacity or power of a VCC by reason of section 15(1) or anything in the VCC's constitution;

(c) a reference in section 25B of the Companies Act to a limitation on the powers of the directors of a VCC under the company's constitution is to a limitation on such powers under —

(i) the VCC's constitution;

(ii) section 15(1);

(iii) a resolution of the VCC or of any class of shareholders; or

(iv) any agreement between the members of the VCC or of any class of shareholders;

(d) sections 25 and 25B of the Companies Act do not apply to any limitation or lack of capacity arising from section 19(2).

(2) Sections 41 to 41C of the Companies Act apply in relation to a VCC as they apply in relation to a corporation or a company (as the case may be), subject to section 5 and the following modifications:

(a) subsection (9) of section 41 of the Companies Act is omitted;

- (b) a reference in section 41B(3) of the Companies Act to more than one company is to 2 or more VCCs, or one or more VCCs and one or more companies.

Holding out as VCC

5 **26.** A person other than a VCC, that —

(a) uses any name or title, or trades or carries on business under any name or title, that includes the words “Variable Capital Company” or any abbreviation, imitation or translation of those words; or

10 (b) in any way holds out that the business is incorporated under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

15

PART 4

SUB-FUNDS

Registration of sub-fund

27.—(1) Within 7 days after forming a sub-fund, an umbrella VCC must apply to the Registrar for the registration of the sub-fund.

20 (2) An application for the registration of a sub-fund —

(a) must be made in the form and manner determined by the Registrar; and

(b) must be accompanied by such information as the Registrar may require and the prescribed fee.

25 (3) If subsection (2)(a) and (b) is satisfied, the Registrar must —

(a) register the sub-fund; and

(b) issue a notice of the registration together with its registration number to the umbrella VCC.

30 (4) If an umbrella VCC contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an

offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

Duty to provide certain information to Registrar

28.—(1) An umbrella VCC must, within one business day after —

(a) the name of any of its sub-funds is changed; or

(b) any of its sub-funds is dissolved,

give a written notice of this to the Registrar.

(2) The written notice must be given in the form and manner determined by the Registrar.

(3) If an umbrella VCC contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

Segregated assets and liabilities of sub-funds

29.—(1) Despite any written law or rule of law to the contrary —

(a) the assets of a sub-fund of an umbrella VCC must not be used to discharge any liability of the VCC or any other sub-fund of the VCC, including in the winding up of the VCC or the other sub-fund; and

(b) any liability of a sub-fund of an umbrella VCC must be discharged solely out of the assets of that sub-fund, including in the winding up of the sub-fund.

(2) Any provision of the constitution of an umbrella 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.

(3) An umbrella VCC may allocate any assets or liabilities —

(a) that it holds or incurs on behalf of its sub-funds or in order to enable the operation of the sub-funds; and

(b) that are not attributable to any particular sub-fund, between its sub-funds in a manner that it considers fair to shareholders.

5 (4) Where an umbrella VCC without reasonable excuse contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction —

(a) if the offence was committed with intent to defraud any person, to a fine not exceeding \$150,000; or

10 (b) in any other case, to a fine not exceeding \$50,000.

Disclosure of sub-fund details

15 **30.**—(1) An umbrella VCC must set out in every agreement, business letter, statement of account, invoice, official notice, publication, bill of exchange, promissory note, indorsement, cheque, order, receipt or letter of credit in which any of its sub-funds is mentioned, all of the following:

(a) the name of the sub-fund;

(b) the registration number of the sub-fund;

20 (c) the fact that the assets and liabilities of the sub-fund are segregated in accordance with section 29.

(2) Before entering into an oral agreement on behalf of any of its sub-funds, an umbrella VCC must disclose to the other party to the agreement all of the following:

(a) the name of the sub-fund;

25 (b) the registration number of the sub-fund;

(c) the fact that the assets and liabilities of the sub-fund are segregated in accordance with section 29.

(3) An umbrella VCC that fails to comply with subsection (1) or (2) shall be guilty of an offence.

30 (4) An officer of an umbrella VCC, or a person acting on his or her behalf, who —

- (a) signs, issues, or authorises to be signed or issued, on behalf of the VCC any document mentioned in subsection (1) in which the information in subsection (1)(a), (b) or (c) is not set out; or
- (b) authorises or enters into any agreement on behalf of a sub-fund of the VCC without ensuring that the information in subsection (2)(a), (b) and (c) has been disclosed to the other party to the agreement,

shall be guilty of an offence and, if the document mentioned in paragraph (a) is a bill of exchange, promissory note, indorsement, cheque or order, be liable to the holder of it for the amount due on it, unless that liability has been discharged by the VCC.

Cross sub-fund investment

31. Despite any written law or rule of law to the contrary, an umbrella VCC may, for the account of any of its sub-funds and in accordance with regulations made under section 165, acquire by subscription or transfer for consideration, shares of any class or classes (however described) that are issued in respect of other sub-funds of the VCC.

Further matters about sub-funds

32.—(1) A sub-fund of an umbrella VCC is not a legal person separate from the VCC, but the VCC may sue or be sued in respect of a sub-fund and may exercise rights of set-off (if any) as between its sub-funds as if each sub-fund were a legal person.

(2) The property of a sub-fund is subject to orders of a court as it would have been if the sub-fund were a separate legal person.

Winding up of sub-fund

33.—(1) Despite not being a legal person, a sub-fund of an umbrella VCC may be wound up in accordance with subsection (2) as if it were a legal person.

(2) Part X and section 389 (as it relates to the provisions of Part X) of the Companies Act apply in relation to the winding up of a sub-fund of an umbrella VCC as they apply in relation to the winding up of a

company limited by shares, subject to section 5 and the modifications in the First Schedule.

(3) Section 129 applies (with the necessary modifications) in relation to the appointment of a liquidator of a sub-fund and a person acting as such liquidator, as it applies in relation to the appointment of a liquidator of a VCC and a person acting as such liquidator, and for this purpose —

(a) a reference in section 129(1)(b) and (c) to the VCC is to the umbrella VCC of which the sub-fund is a part; and

(b) the reference in section 129(2)(b) to creditors is to the creditors of the sub-fund.

PART 5

SHARES, DEBENTURES AND CHARGES

Division 1 — Shares

Shares of VCC

34.—(1) The shares or other interest of any member in a VCC are movable property and transferable in the manner provided by the constitution of the VCC and is not of the nature of immovable property.

(2) A shareholder has no interest in the property of a VCC.

(3) Subject to its constitution, a VCC may issue more than one class of shares.

(4) The rights which attach to each share of any given class are —

(a) the right, in accordance with the constitution of the VCC, to participate in or receive profits, income or other payments or returns arising from —

(i) the acquisition, holding, management or disposal of the property or part of the property of the VCC; or

(ii) the exercise, redemption or expiry of any right, interest, title or benefit in the property or part of the

property of the VCC, or to receive sums paid out of such profits, income or other payments or returns;

- (b) the right (if any), in accordance with the constitution of the VCC, to vote at any general meeting of the VCC or at any meeting of shareholders of that class of shares; and
- (c) such other rights as may be provided in the constitution in relation to shares of that class.

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(5) A VCC may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.

(6) Section 74 of the Companies Act (as applied by section 36) applies where a conversion of shares undertaken by a VCC involves a variation or an abrogation of the rights attached to any class of shares.

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Power to repurchase or redeem own shares

35.—(1) The repurchase or redemption by a VCC of its own shares must be —

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- (a) on such terms and carried out in such manner as may be provided by its constitution; and
- (b) in accordance with subsections (2) and (4).

(2) A VCC must not repurchase or redeem its own shares unless they are fully paid.

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(3) Subsection (2) does not prevent a repurchase or redemption being made under section 31.

(4) Shares of a VCC which have been repurchased or redeemed by or otherwise transferred to the VCC must be cancelled and the amount of the issued share capital of the VCC must be reduced by the amount of the consideration paid by the VCC for the repurchase, redemption or transfer of the shares.

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(5) Subsection (4) does not apply to any repurchase or redemption made under section 31.

Application of provisions of Division 3 of Part IV of Companies Act

36.—(1) Sections 65, 66(1), 72, 73, 73A and 74 (except subsection (6)) of the Companies Act apply in relation to a VCC as they apply in relation to a company, a company having a share capital or a limited company (as the case may be), subject to subsections (2) and (3) and section 5.

(2) The following provision applies in place of section 65(2) of the Companies Act (which enables a company to reserve part of its uncalled share capital for calling up in the event of a winding up):

“A VCC may, by special resolution of its members, or by resolution of one or more members holding shares that represent —

(a) at least 75%; or

(b) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members holding shares that are issued in respect of a particular sub-fund, determine that any portion of its share capital which has not already been called up is not capable of being called up except in the event and for the purposes of the VCC or the sub-fund (as the case may be) being wound up, and in that event that portion of its share capital is not capable of being called up except in such event and for such purposes; but such resolution does not affect the rights of any person acquired before the passing of the resolution.”.

(3) The reference to treasury shares in section 74(1A) of the Companies Act is to shares held by a subsidiary of the VCC under section 22(6) or (11) (if any).

Division 2 — Debentures

Application of provisions of Division 5 of Part IV of Companies Act

37.—(1) Sections 93, 94, 95, 96 and 100 of the Companies Act apply in relation to a VCC and debentures issued by it as they apply in

relation to a company or a corporation (as the case may be) and debentures issued by it, subject to section 5 and the modifications in subsection (2).

(2) The modifications are as follows:

- (a) in addition to the information in section 93(3) of the Companies Act, the register of holders of debentures required to be kept by a VCC under section 93(1) of that Act as applied by subsection (1) must contain, where the debenture in question is a debenture of a sub-fund, the name and registration number of the sub-fund; 5 10
- (b) subsection (8) of section 93 of the Companies Act is omitted;
- (c) a reference in sections 95 and 96 of the Companies Act to 29 December 1967 is to the date of commencement of this Act; 15
- (d) a reference in section 100 of the Companies Act to a borrowing corporation is to a borrowing VCC.

Division 3 — Title and Transfer of Shares and Debentures

Duties of VCC with respect to allotments and transfers

38.—(1) Subject to subsection (2), every VCC must — 20

- (a) within 60 days after the allotment of any of its shares or debentures; and
- (b) within 30 days after the date on which a transfer (other than a transfer that the VCC is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the VCC, 25

complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

(2) Subsection (1) does not require a VCC to complete and have ready for delivery share certificates in the following circumstances: 30

(a) where the VCC's constitution states that share certificates will not be issued, and contains a provision for the issue of written confirmations of entry in the register of members;

(b) where the shareholder has indicated to the VCC in writing that the shareholder does not wish to receive a certificate.

(3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(4) If any VCC on which a notice has been served requiring the VCC to make good a failure to comply with subsection (1), fails to make good the failure within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or debenture delivered to the person, make an order directing the VCC and any officer of the VCC to make good the failure within the time specified in the order.

(5) The order in subsection (4) may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC in default in such proportions as the Court thinks fit.

Certificate is evidence of title

39.—(1) A certificate under the common seal or official seal of a VCC specifying any shares held by any member of the VCC is prima facie evidence of the title of the member to the shares.

(2) Every share certificate must be under the common seal of the VCC and must state as at the date of the issue of the certificate —

(a) the name of the VCC and the authority under which the VCC is constituted;

(b) the address of the registered office of the VCC in Singapore, or, where the certificate is issued through a branch office, the address of that branch office; and

(c) the class of the shares (if applicable), the name and registration number of the sub-fund to which the shares

relate (if applicable), whether the shares are fully or partly paid up, and the amount (if any) unpaid on the shares.

(3) Failure to comply with this section does not affect the rights of any holder of the shares.

(4) If this section is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence.

5

Transfer of shares or debentures

40.—(1) Subject to section 5 and subsections (2) to (6), sections 130AA, 130AB, 130AC and 130AD of the Companies Act apply in relation to a VCC and a transfer of any share, debenture or other interest in it, as they apply in relation to a company or public company (as the case may be) and a transfer of any share, debenture or other interest in it.

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(2) The following provision applies in place of section 130AD(3) and (4) of the Companies Act (which provides that a company and its officers are not liable as respects a transfer of its interests if a specified act in relation to the instrument of transfer is not done within the time limit of its certification of the instrument):

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“Where any certification by a VCC of an instrument of transfer of shares, debentures or other interests in the VCC is expressed to be limited to 42 days or any longer period from the date of certification, the VCC and its officers are not (in the absence of fraud) liable in respect of the registration of any transfer comprised in the certification after the expiry of the period so limited or any extension of the period given by the VCC, if the instrument has not within that period been lodged with the VCC for registration.”.

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(3) Despite anything in its constitution, a VCC must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the VCC.

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(4) Subsection (3) does not affect any power of the VCC to register as shareholder or debenture holder any person to whom the right to any shares or debentures of the VCC has been transmitted by operation of law.

(5) A VCC may refuse to register a transfer of shares under section 130AA of the Companies Act (as applied by subsection (1)) if —

(a) there exists a minimum requirement under the VCC's constitution or the prospectus in respect of the issue of those shares, as to the number or value of shares that are to be held by any shareholder of the VCC, and the transfer would result in either the transferor or transferee holding less than the required minimum; or

(b) the transfer is inconsistent with any provision of the VCC's constitution.

(6) Nothing in this Act requires a VCC to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any law (including any law that is for the time being in force in a country or territory other than Singapore).

Application of other provisions of Division 7 of Part IV of Companies Act

41.—(1) Subject to section 5, section 122 of the Companies Act applies in relation to a VCC's shares as it applies in relation to a company's shares, except that the reference in section 122(2)(b) to section 123 of that Act is to section 39.

(2) Subject to section 5, sections 124 and 125 (except subsection (3)) of the Companies Act apply in relation to a VCC and any certificate or other document of title to shares or debentures of a VCC, as they apply in relation to a company and any certificate or other document of title to shares or debentures of a company.

Division 4 — Charges

Registration of charges

42.—(1) Division 8 of Part IV of the Companies Act applies in relation to a VCC and a charge created by it (including one created over any property or undertaking of a sub-fund), as it applies in

relation to a company and a charge created by it, subject to the modifications in subsection (2) and to sections 5 and 43.

(2) The modifications are as follows:

- (a) sections 131(3AA), 140 and 141 of the Companies Act are omitted; 5
- (b) the reference in section 131(3) of the Companies Act to the date of commencement of section 63 of the Companies (Amendment) Act 2014 is to the date of commencement of this Act;
- (c) in the case of a charge over any property or undertaking of a sub-fund, the statement mentioned in section 131(5) of the Companies Act in respect of that charge must contain, in addition to the particulars in that provision, the name and registration number of the sub-fund; 10
- (d) in the case of a charge over any property or undertaking of a sub-fund, there must be entered in the register of charges under section 134(1) of the Companies Act, in addition to the particulars set out in that provision, the name and registration number of the sub-fund; 15
- (e) section 136(1) of the Companies Act also applies in a case where the property or undertaking that is the subject of a registered charge ceases to form part of the property or undertaking of a sub-fund, and in that event the statement to be lodged under that provision is a statement of that fact; 20
- (f) in the case of a charge over any property or undertaking of a sub-fund, the reference in section 138(1A)(b)(ii) of the Companies Act to the date the property or undertaking ceases to form part of the company's property or undertaking is to the date the property or undertaking ceases to form part of the property or undertaking of the sub-fund; 25 30
- (g) in the case of a charge over the property or undertaking of a sub-fund, the register of charges in section 138(2) of the Companies Act must also contain (in addition to a

description of the matters set out in that provision) the name and registration number of the sub-fund.

Duty of VCC to register charges existing on property acquired

43.—(1) This section applies in place of section 133 of the Companies Act.

(2) Where a VCC acquires any property which is subject to a charge of any such kind as would, if it had been created by the VCC after the acquisition of the property, have been required to be registered under section 131 of the Companies Act (as applied by section 42), the VCC must lodge a statement of the prescribed particulars with the Registrar for registration within 30 days after the date on which the acquisition is completed.

(3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

PART 6

MANAGEMENT AND ADMINISTRATION

Division 1 — Preliminary

Interpretation of this Part

44.—(1) In this Part —

“capital markets services licence” has the meaning given by section 2(1) of the Securities and Futures Act;

“Registered Fund Management Company” has the meaning given by regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10);

“residential address” means —

(a) in the case of a person registered under the National Registration Act (Cap. 201), the place of residence of that person as registered under that Act; or

- (b) in the case of a person not registered under the National Registration Act, the usual residential address of that person.

(2) A reference to a secretary in sections 69 and 71 to 76, and in the provisions of the Companies Act applied by those sections, includes an assistant or a deputy secretary.

(3) A reference in this Part (including a provision of the Companies Act applied by this Part) to an alternate address is the alternate address that is recorded in place of the residential address of a director or secretary in the register of directors or register of secretaries (as the case may be) of a VCC.

Division 2 — Office and Name

Registered office, office hours, and publication of name and registration number

45. Subject to section 5, sections 142, 143 and 144 of the Companies Act apply in relation to a VCC or proposed VCC (as the case may be) as they apply in relation to a company or proposed company.

Division 3 — Managers

Manager

46.—(1) A VCC must at all times have a manager that complies with subsection (2), to manage its property or operate the collective investment scheme or schemes that comprise the VCC.

(2) A manager of a VCC must be —

- (a) a holder of a capital markets services licence for fund management under the Securities and Futures Act;
- (b) a Registered Fund Management Company;
- (c) a person mentioned in section 99(1)(a), (b), (c) or (d) of the Securities and Futures Act; or
- (d) such person, or a person within such class of persons, as may be prescribed.

(3) A VCC cannot be its own manager.

(4) To avoid doubt, the reference in subsection (2)(a) to a holder of a capital markets services licence for fund management does not include a holder of a suspended licence.

5 **Restrictions on naming of manager in document or register**

47.—(1) A person must not be named as manager or proposed manager of a VCC in —

(a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of the VCC;
10 or

(b) the register of managers of the VCC,

unless, before —

(c) the incorporation of the VCC; or

(d) the filing of any return containing the particulars required to
15 be specified in the register of managers,

as the case may be, the person has complied with the condition set out in subsection (2).

(2) The condition in subsection (1) is that the person must have, by itself or through a registered qualified individual authorised by the
20 person, filed with the Registrar —

(a) a declaration in the prescribed form that the person has consented to act as manager of the VCC; and

(b) a statement in the prescribed form stating that the person is a person mentioned in section 46(2).

25 (3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$10,000, and also to a default penalty.

Division 4 — Directors and Secretaries

Subdivision (1) — Preliminary provisions

VCC must have certain description of director, etc.

48.—(1) Every VCC must have —

(a) at least one director who is ordinarily resident in Singapore; 5
and

(b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC.

(2) A director of a VCC must be a natural person who has attained 10
the age of 18 years and who is otherwise of full legal capacity.

(3) Subject to subsection (5), unless the constitution otherwise provides, a director of a VCC may resign by giving the VCC a written notice of his or her resignation.

(4) Subject to subsection (5), the resignation of a director is not 15
conditional upon the VCC's acceptance of his or her resignation.

(5) Despite anything in this Act, the constitution of the VCC or any agreement with the VCC, a director of a VCC must not resign or vacate his or her office unless there is remaining in the VCC —

(a) at least one director who is ordinarily resident in Singapore; 20
and

(b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC.

(6) Any purported resignation or vacation of office in breach of 25
subsection (5) is invalid.

(7) Subsection (5) does not apply where a director of a VCC is required to resign or vacate his or her office —

(a) if the director has not within the period in section 147(1) of the Companies Act (as applied by section 54) obtained his 30
or her qualification; or

(b) by reason of his or her disqualification or removal or the revocation of his or her appointment as a director (as the case may be) under section 53, 55, 56, 57, 58, 59, 60 or 61.

(8) If there is a contravention of subsection (1), the Registrar may,
 5 either of his or her own motion or on the application of any person, direct the members of the VCC to appoint —

(a) a director who is ordinarily resident in Singapore; or

(b) a director who is either a director or a qualified representative of the manager of the VCC,

10 if the Registrar considers it to be in the interests of the VCC for such appointment to be made.

(9) If the direction under subsection (8) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a
 15 continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.

(10) If there is a contravention of subsection (1) and —

(a) the Registrar fails to give the direction under subsection (8);
 20 or

(b) such direction has been given but is not complied with,
 the court may, on the application of the Registrar or any person, order the members of the VCC to appoint —

(c) a director who is ordinarily resident in Singapore; or

25 (d) a director who is either a director or a qualified representative of the manager of the VCC,

if the court considers it to be in the interests of the VCC for such appointment to be made.

(11) If a VCC carries on business for more than 6 months without
 30 having —

(a) at least one director who is ordinarily resident in Singapore;
 and

- (b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC,

a person who, for the whole or any part of the period that the VCC so carries on business after those 6 months —

5

- (c) is a member of the VCC; and

(d) knows that the VCC is carrying on business in that manner, is liable for the payment of all the debts of the VCC contracted during the period or (as the case may be) that part of the period, and may be sued for the debts.

10

Restrictions on naming of director in document or register

49. Section 146 (except subsection (5)) of the Companies Act applies in relation to a VCC or proposed VCC as it applies in relation to a company or proposed company, subject to section 5 and the following modifications:

15

- (a) a reference in section 146(1)(b) and (ii) of the Companies Act to the register of chief executive officers of a company is to the register of managers of a VCC;
- (b) in addition to the conditions in section 146(1A) of the Companies Act, the person to be named as a director or proposed director in a document or register mentioned in section 146(1)(a) or (b) of that Act must also —

20

- (i) by himself or herself; or

- (ii) through a registered qualified individual authorised by him or her,

25

file with the Registrar a statement in the prescribed form and made by both the VCC and the person as to the person's compliance with the prescribed factors in section 53(3);

- (c) the following provision applies in place of section 146(3) of the Companies Act (which disapplies section 146(1) and (2) of that Act to certain entities and documents):

30

“Subsections (1) and (2) (other than the provisions relating to the signing of a consent to act as director) do not apply to a constitution adopted by a VCC after the expiration of one year from the date on which the VCC was entitled to commence business.”.

Appointment of directors

50. Subject to section 5, sections 149B and 150 of the Companies Act apply in relation to the appointment of a director of a VCC as they apply in relation to the appointment of a director of a company or a public company, as the case may be.

Validity of acts of directors and secretary

51. The acts of a director or secretary of a VCC are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

Removal of director

52. Subject to section 5, section 152(1) to (8) of the Companies Act applies in relation to a VCC as it applies in relation to a public company.

Subdivision (2) — Qualifications and disqualifications of directors and officers

Directors must be fit and proper persons

53.—(1) A VCC must appoint only fit and proper persons as the VCC’s directors.

(2) The Registrar may by notice direct a VCC to remove a director or replace the director where the Registrar —

- (a) is satisfied that the director is not a fit and proper person to act as director; and
- (b) considers that the removal or replacement is necessary in the interests of the VCC, the VCC’s shareholders or potential shareholders, the public or a section of the public.

(3) In determining whether a person is a fit and proper person to act as a director of a VCC, the Registrar may consider such factors as may be prescribed.

(4) Before directing a VCC under subsection (2), the Registrar must notify the VCC and the director in writing that — 5

(a) the Registrar intends to make the direction; and

(b) the VCC and the director may show cause within such time as may be specified in the notice why that director should not be removed or replaced.

(5) The Registrar may give a direction under subsection (2) only if the VCC and the director — 10

(a) fail to show cause within the time specified in the notice mentioned in subsection (4) or within such extended period of time as the Registrar may allow; or

(b) fail to show sufficient cause. 15

(6) The direction under subsection (2) must state the date on or before which the removal or replacement of the director must take effect.

(7) Any person who is aggrieved by a direction of the Registrar under subsection (2) may, within 30 days after receiving the direction, appeal to the Minister. 20

(8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) has effect pending the decision of the Minister.

(9) Subject to subsection (11), a VCC that fails to comply with subsection (1), and every officer of the VCC who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues after conviction. 25

(10) Subject to subsection (11), a VCC that fails to comply with any direction of the Registrar under subsection (2), and every officer of the VCC who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$10,000, and also to a default penalty. 30

(11) No criminal or civil liability is incurred by a VCC, or any person acting on behalf of the VCC, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the VCC under this section.

Qualification of director

54. Subject to section 5, section 147 of the Companies Act applies to a director of a VCC as it applies to a director of a company, and for this purpose a reference in that section to section 145 of the Companies Act is to section 48.

Restriction on undischarged bankrupt

55. Subject to section 5, section 148 of the Companies Act applies in relation to a VCC as it applies in relation to a corporation.

Disqualification of unfit director of insolvent VCC

56.—(1) The Court may —

(a) on the application of the Minister or the Official Receiver as provided for in section 149(9)(a) of the Companies Act as applied by subsection (11); and

(b) on being satisfied as to the matters in subsection (2), make an order (called in this section a disqualification order), which must not in any case exceed 5 years after the date of the disqualification order disqualifying a person specified in the order from being a director or in any way (whether directly or indirectly) being concerned in, or take part in, the management of a VCC during such period as is specified in the order.

(2) The Court must make a disqualification order under subsection (1) if the Court is satisfied that —

(a) the person is or has been a director of a VCC which has at any time gone into liquidation (either while he or she was a director or within 3 years of his or her ceasing to be a director) and was insolvent at that time;

- (b) the conduct of the person as director of that VCC (either taken alone or together with his or her conduct as a director of any other VCC or corporation) makes him or her unfit to be a director of or in any way (whether directly or indirectly) be concerned in, or to take part in, the management of a VCC; and 5
- (c) the person has been given not less than 14 days' notice of the application.

(3) If —

- (a) in the case of a person who is or has been a director of a VCC which is being wound up by the Court, it appears to the Official Receiver or the liquidator (if the liquidator is not the Official Receiver); or 10
- (b) in the case of a person who is or has been a director of a VCC which is being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator, 15

that the conditions mentioned in subsection (2)(a) and (b) are satisfied as respects that person, the Official Receiver or the liquidator (as the case may be) must immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver, the liquidator or the former liquidator of the VCC — 20

- (a) to furnish the Minister with such information of any person's conduct as a director of the VCC; and
- (b) to produce any books, papers and other records relevant to that person's conduct as such a director, 25

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of the Minister's functions under this section.

(5) If any person fails to comply with a requirement of the Minister under subsection (4), the Court may, on the application of the Minister, make an order requiring that person to comply with the requirement within the time specified in the order. 30

(6) For the purposes of this section —

(a) a VCC has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

(ii) if a provisional liquidator was appointed under section 291(1) of the Companies Act as applied by section 130, at the time when the declaration made under that provision was lodged with the Registrar; and

(iii) in any other case, on the date of the passing of the resolution for the voluntary winding up;

(b) a VCC was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of section 254(2) of the Companies Act as applied by section 130; and

(c) a reference to a person's conduct as a director of any VCC or other corporation that has become insolvent includes that person's conduct in relation to any matter connected with or arising out of the insolvency of that VCC or corporation.

(7) In deciding whether subsection (2)(b) is satisfied, the Court —

(a) must have regard generally to the matters mentioned in subsection (8); and

(b) must have regard particularly to the matters mentioned in subsection (9),

regardless of whether or not the director has been convicted or may be criminally liable in respect of any of these matters.

(8) The matters to which the Court must have regard generally are —

(a) whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the VCC;

(b) whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to

an obligation to account for, any money or other property of the VCC; and

- (c) the extent of the director's responsibility for any failure by the VCC to comply with —

(i) section 138, 191 or 199 of the Companies Act as applied by section 42, 81(7) or 99 (as the case may be);

(ii) section 81(1) to (6) or 97; or

(iii) section 100, and the provisions of section 201 of the Companies Act as applied by section 100.

- (9) The matters to which the Court must have regard particularly are —

(a) the extent of the director's responsibility for the causes of the VCC becoming insolvent;

(b) the extent of the director's responsibility for any failure by the VCC to supply any goods or services which have been paid for (in whole or in part);

(c) the extent of the director's responsibility for the VCC entering into any transaction liable to be set aside under section 259 of the Companies Act as applied by section 130; and

(d) whether the causes of the VCC becoming insolvent are attributable to the VCC carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(10) The Minister may, by notification in the *Gazette*, add to, vary or amend the matters mentioned in subsections (8) and (9) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(11) Subject to section 5 and subsection (12), section 149(9), (11) and (12) of the Companies Act applies in relation to an application for and the making of a disqualification order under subsection (1) and to a person disqualified by such order, as it applies in relation to the application for and the making of a disqualification order under

section 149(1) of the Companies Act and to a person disqualified by such order.

(12) For the purpose of subsection (11), references to a person acting as judicial manager and to acts done in such capacity are omitted.

(13) Subject to section 5, section 149(13) and (14) of the Companies Act applies in relation to an application for leave of the Court to be concerned in or take part in the management of a VCC, as it applies in relation to an application for leave of the Court to be concerned in or take part in the management of a company.

Disqualification of director of VCC wound up on grounds of national security or interest

57.—(1) Subject to subsections (2) and (3), where under paragraph (k) of the provision that replaces section 254(1) of the Companies Act because of section 130(8), a VCC is ordered to be wound up by the Court on the ground that the VCC is being used for purposes against national security or the national interest, the Court may, on the application of the Minister, make an order (called in this section a disqualification order) disqualifying any person who is a director of that VCC from being a director or in any way (whether directly or indirectly) being concerned in, or from taking part in, the management of another VCC for a period of 3 years from the date of the making of the winding up order.

(2) The Court must not make a disqualification order against any person unless the Court is satisfied that the person has been given not less than 14 days' notice of the application for the order.

(3) The Court must not make a disqualification order against any person if the person proves to the satisfaction of the Court that —

- (a) the VCC had been used for purposes against national security or the national interest without his or her consent or connivance; and
- (b) he or she had exercised such diligence to prevent the VCC from being so used as he or she ought to have exercised,

having regard to the nature of his or her function in that capacity and to all the circumstances.

(4) A person who contravenes a disqualification order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

5

Disqualification of director on conviction of certain offences, etc.

58.—(1) A person is subject to the disqualifications in subsection (3) if —

10

(a) the person is convicted of any of the following:

(i) any offence, whether in Singapore or elsewhere, involving fraud or dishonesty and punishable with imprisonment for a term of 3 months or more;

(ii) any offence under Part XII of the Securities and Futures Act;

15

(b) the person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act;

(c) a direction under section 97(1A) of the Securities and Futures Act is made directing a holder of a capital markets services licence to remove the person from the person's office or employment as a director or executive officer of the holder;

20

(d) the person has been removed as a director, executive officer or chief executive officer of a person mentioned in section 99(1) of the Securities and Futures Act, in compliance with a condition imposed on the second-mentioned person under section 99(4) of that Act; or

25

(e) a prohibition order is made against the person under section 101A(1) of the Securities and Futures Act.

30

(2) Where a person is convicted in Singapore of —

(a) any offence in connection with the formation or management of a VCC; or

(b) any offence under section 157 or 339 of the Companies Act as applied by section 63 or 130 (as the case may be),

the court may make a disqualification order against the person in addition to any other sentence imposed.

(3) Subject to any leave which the Court may give pursuant to an application under subsection (6), a person who —

(a) is disqualified under subsection (1); or

(b) has had a disqualification order made against him or her under subsection (2),

must not act as a director, or take part (whether directly or indirectly) in the management of a VCC during the period of the disqualification or disqualification order.

(4) The disqualifications in subsection (3) —

(a) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1)(a) or (2)(a) or (b) but has not been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);

(b) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1)(a) or (2)(a) or (b) and has been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years after his or her release from prison;

(c) in a case where the disqualified person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act, take effect upon the imposition of the civil penalty and continue for a period of 5 years after the imposition of the civil penalty;

- (d) in a case where the disqualified person is the subject of a direction under section 97(1A) of the Securities and Futures Act, take effect upon the issue of the direction and continue for a period of 5 years after such issue;
- (e) in a case where the disqualified person has been removed as a director, executive officer or chief executive officer of a person mentioned in section 99(1) of the Securities and Futures Act pursuant to a condition imposed on the second-mentioned person under section 99(4) of that Act, take effect upon the removal and continue for a period of 5 years after such removal; and
- (f) in a case where the disqualified person is the subject of a prohibition order under section 101A(1) of the Securities and Futures Act, take effect upon the making of the prohibition order and continue for a period of 5 years after the expiry of the period specified in the order.

(5) A person who contravenes subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) A person who —

- (a) is disqualified under subsection (1); or
- (b) has had a disqualification order made against him or her under subsection (2),

may apply to the Court for leave to act as a director, or to take part (whether directly or indirectly) in the management of a VCC during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of his or her intention to apply for such leave.

(7) On the hearing of an application under subsection (6), the Minister may be represented at the hearing and may oppose the granting of the application.

(8) Without affecting section 409 of the Companies Act as applied by section 144, a District Court may make a disqualification order under this section.

Disqualification and debarment from being director or secretary in connection with default in filing documents under this Act

59. Sections 155 (except subsections (8) and (11)) and 155B of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to section 5 and the following modifications:

(a) a reference in those sections of the Companies Act to a relevant requirement of that Act is to a provision of this Act (including a provision of the Companies Act applied by this Act) that requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar;

(b) in section 155 of the Companies Act —

(i) a reference to an order under section 13 of that Act is to an order under section 12; and

(ii) a reference to an order under section 399 of that Act is to an order under that section as applied by section 160;

(c) the reference in section 155(5) of the Companies Act to an offence under section 154(2)(a) of the Companies Act is to an offence under section 58(2)(a);

(d) the following provision applies in place of section 155(7) of the Companies Act (which provides that a certificate of the Registrar of Companies is prima facie evidence of certain matters relevant to section 155(3) and (4) of that Act):

“A certificate of the Registrar stating that a person —

(a) has been adjudged guilty of 3 or more offences; or

(b) has had made against him or her 3 or more orders under section 12, or under section 399 of the Companies Act as applied by section 160,

in relation to any relevant requirement of this Act, is prima facie evidence of the facts stated in the certificate.”.

Disqualification for being director of not less than 3 VCCs that were struck off within 5-year period

60.—(1) Subject to section 5, a person —

(a) who was a director of a VCC (*VCC A*) at the time that the name of *VCC A* had been struck off the register under section 344 of the Companies Act as applied by section 130; and

(b) who, within a period of 5 years immediately before the date on which the name of *VCC A* was struck off the register —

(i) had been a director of not less than 2 other VCCs the names of which have been struck off that register; and

(ii) was a director of each of those VCCs at the time its name was so struck off,

must not act as a director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any other VCC for a period of 5 years commencing immediately after the date on which the name of *VCC A* was struck off.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who is subject to a disqualification under subsection (1) may apply to the Court for leave to act as a director of, or to take part in or be concerned in the management of, a VCC during the period of disqualification upon giving the Minister not less than 14 days’ notice of his or her intention to apply for such leave.

(4) On the hearing of the application, the Minister may be represented at the hearing and may oppose the granting of the application.

Disqualification under Limited Liability Partnerships Act and Companies Act

61.—(1) Subject to section 5, section 155C of the Companies Act applies in relation to a VCC as it applies in relation to a company.

(2) Subject to any leave which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification, disqualification order or debarment order under section 149, 149A, 154, 155, 155A or 155B of the Companies Act must not act as a director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any VCC during the period of the disqualification, disqualification order or debarment order.

(3) A person who is subject to a disqualification, disqualification order or debarment order under section 149, 154, 155, 155A or 155B of the Companies Act, may apply to the Court for leave to act as a director of, or to take part in or be concerned in the management of, a VCC during the period of the disqualification, disqualification order or debarment order, upon giving the Minister not less than 14 days' notice of his or her intention to apply for such leave.

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.

(5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Subdivision (3) — Duties and powers of directors, etc.

Disclosure by director of interests in transactions, property, offices, etc.

62.—(1) Section 156 of the Companies Act applies to a director of a VCC as respects the VCC as it applies to a director of a company as respects the company, subject to section 5 and subsection (2). 5

(2) For the purpose of subsection (1), the reference in section 156(4) of the Companies Act to a corporation which by virtue of section 6 of that Act is deemed to be related to the company is to a related corporation of the VCC. 10

Duty and liability of officers, etc.

63.—(1) Section 157(1), (2), (3) and (5) of the Companies Act applies in relation to a director, officer or agent of a VCC as it applies in relation to a director, officer or agent of a company, subject to section 5 and subsections (2) and (3). 15

(2) For the purpose of subsection (1), a reference in section 157(2), (3) and (5) of the Companies Act to an agent of the company is to an agent of the VCC, the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC), or any person who at any time has been such agent, manager or custodian. 20

(3) In addition to the duties imposed on a director or officer of a VCC under subsection (1), a director or officer of a VCC also owes the same duties to the VCC as those owed by a director or officer of a company to the company under the common law.

Powers of directors 25

64. Sections 157A, 157B, 157C, 158 and 159 of the Companies Act apply in relation to a VCC and a director of a VCC as they apply in relation to a company and a director of a company, subject to section 5 and the following modifications:

(a) the reference in section 157C(1)(b) of the Companies Act to a professional adviser or an expert includes the manager of the VCC; 30

(b) section 159(b) of the Companies Act is omitted.

Loans and quasi-loans to directors, credit transactions and related arrangements, etc., and related provisions

65.—(1) Sections 162, 163, 163A and 163B of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to section 5, subsection (2) and the following modifications:

(a) a reference in any of those sections of the Companies Act to a company that by virtue of section 6 of that Act is deemed to be related to the company, or to a related company, is to a company that is a related corporation of the VCC;

(b) sections 162(3), (4), (5) and (10) and 163(3D)(b) and (c) and (4)(b) of the Companies Act are omitted;

(c) a reference to another company or the other company in section 163(1), (3D)(a) or (4)(a) of the Companies Act is to a company or another VCC.

(2) In section 163 of the Companies Act, a person who has an interest in a share is treated as having an interest in the voting power conferred on the holder of that share.

Register of director's shareholdings

66.—(1) A VCC must keep a register showing, with respect to each director of the VCC, particulars of —

(a) shares in the VCC or in a related corporation, being shares of which the director is a registered holder or in which the director has an interest, and the nature and extent of that interest;

(b) debentures of the VCC or a related corporation which are held by the director or in which the director has an interest, and the nature and extent of that interest;

(c) units in a collective investment scheme made available by a related corporation of the VCC which are held by the director or in which the director has an interest, and the nature and extent of that interest;

(d) rights or options of the director or of the director and another person in respect of the acquisition or disposal of shares in the VCC or a related corporation; and

(e) contracts to which the director is a party or under which the director is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the VCC or in a related corporation.

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(2) A VCC need not show in its register, with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the VCC or of another corporation.

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(3) A VCC that is a wholly-owned subsidiary of another company or VCC (called in this subsection an entity) is treated as having complied with this section in relation to —

(a) a director of that entity; or

(b) a chief executive officer (as defined in section 4(1) of the Companies Act of that entity (being a company)), whether or not he or she is also a director of that entity,

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if the particulars required by this section to be shown in the registers of the VCC with respect to the director or chief executive officer (as the case may be) are shown in the registers of the entity.

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(4) For the purposes of subsections (2) and (3), a company or VCC (called in this subsection the first entity) is a wholly-owned subsidiary of another company or VCC (called in this subsection the second entity) if the first entity does not have any member that is not —

(a) the second entity;

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(b) a nominee of the second entity;

(c) a subsidiary of the second entity, being a subsidiary that does not have any member that is not the second entity or a nominee of the second entity; or

(d) a nominee of such a subsidiary.

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(5) A VCC must, within 3 days after receiving notice from a director under section 165(1)(a) of the Companies Act as applied by

section 67, enter in its register in relation to the director the particulars mentioned in subsection (1), including —

(a) the number and description of shares, debentures, units in a collective investment scheme (if applicable), rights, options and contracts to which the notice relates; and

(b) the particulars mentioned in subsection (6) in respect of shares, debentures, units in a collective investment scheme (if applicable), rights or options acquired or contracts entered into after the director became a director.

(6) The particulars in subsection (5)(b) are —

(a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and

(b) the date of —

(i) the agreement for the transaction or (if it is later) the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(7) A VCC must, within 3 days after receiving a notice from a director under section 165(1)(b) of the Companies Act as applied by section 67, enter in its register the particulars of the change mentioned in the notice.

(8) A VCC is not, by reason of anything done under this section, to be taken for any purpose to have notice of, or to be put upon inquiry as to, the right of a person or in relation to a share in the VCC or a debenture of the VCC.

(9) Subject to this section, a VCC must keep its register at its registered office, and the register must be open for inspection —

(a) by a member of the VCC without charge; and

(b) by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the VCC requires.

(10) A person may request a VCC to furnish the person with a copy of its register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the VCC requires for every page or part of a page required to be copied, and the VCC must send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day the VCC received the request. 5

(11) The Registrar may by notice in writing require a VCC to send to the Registrar within such time as may be specified in the notice a copy of its register or any part of its register.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 165 of the Companies Act as applied by section 67 with respect to those particulars. 10

(13) In this section, a reference to a person who holds or acquires shares, debentures or units in a collective investment scheme, or an interest in any of these, includes a person who, under an option, holds or acquires a right to acquire or dispose of a share, debenture or a unit in a collective investment scheme, or an interest in any of these. 15

(14) For the purposes of this section and section 165 of the Companies Act as applied by section 67, section 7 of the Companies Act (except subsection (3)) as applied by section 2(6), and section 2(7), apply in determining whether a person has an interest in a debenture or unit in a collective investment scheme, and in applying section 7 of the Companies Act, a reference to a share is to a debenture or unit in a collective investment scheme. 20
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(15) For the purposes of this section —

(a) a director of a VCC is considered to hold or have an interest or a right in or over any shares or debentures if —

(i) a wife or husband of the director (not being herself or himself a director of the VCC) holds or has an interest or a right in or over those shares or debentures; or 30

(ii) a child below 18 years of age of that director (not being himself or herself a director of the VCC) holds or has an interest in those shares or debentures; 35

(b) a contract, assignment or right of subscription is considered as having been entered into or exercised or made by a director if it is entered into, exercised or made by —

(i) the wife or husband of the director (not being herself or himself a director of the VCC); or

(ii) a child below 18 years of age of the director (not being himself or herself a director of the VCC); and

(c) a grant is considered as having been made to a director if it is made to —

(i) the wife or husband of the director (not being herself or himself a director of the VCC); or

(ii) a child below 18 years of age of the director (not being himself or herself a director of the VCC).

(16) In subsection (15), “child” includes stepson, adopted son, stepdaughter and adopted daughter.

(17) If subsection (1), (5), (7), (9) or (10) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day or part of a day during which the offence continues after conviction.

Disclosure of director’s emoluments and general duty to make disclosure

67. Sections 164A and 165 of the Companies Act apply in relation to a VCC and a director of a VCC, as they apply in relation to a company and a director of a company, subject to sections 5 and 66(14) and the following modifications:

(a) the reference in section 164A(1)(a) of the Companies Act to the company itself if it is registered as its own member, is to the VCC itself if it is registered as its own member, and to a subsidiary of the VCC that is registered as a member of the VCC;

- (b) the reference to treasury shares in section 164A(1)(b) of the Companies Act is to shares held by a subsidiary of the VCC under section 22(6) or (11) (if any);
- (c) the reference in section 165(1) of the Companies Act to section 164 of that Act is to section 66; 5
- (d) all references in section 165 of the Companies Act relating to a chief executive officer are omitted;
- (e) section 165(7), (8) and (10) of the Companies Act is omitted.

Payments to director for loss of office, and director's emoluments

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68. Sections 168 and 169 of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to section 5 and the following modifications:

- (a) a reference in section 168(1B)(a) and (7) of the Companies Act to a corporation which is by virtue of section 6 of that Act deemed to be related to the company is to a related corporation of the VCC; 15
- (b) section 168(5)(a) of the Companies Act is omitted;
- (c) the reference in section 168(2) of the Companies Act to any requirement of the Take-over Code mentioned in section 139 of the Securities and Futures Act is omitted. 20

Subdivision (4) — Secretaries

Secretary

69. Subject to section 5, section 171 (except subsections (1AA)(a), (1AB), (1C), (1D) and (2)) of the Companies Act applies in relation to a VCC and the directors and secretary of a VCC as it applies in relation to a company or public company (as the case may be) and the directors and secretary of a company, private company or public company. 25

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Division 5 — Provisions Applicable to Officers

Officer liability, insurance and third party indemnity

70. Sections 172, 172A and 172B of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to
 5 section 5 and the following modifications:

(a) the reference in section 172B(4) of the Companies Act to section 76A(13) of that Act is omitted;

(b) the reference in section 172B(1)(b)(ii) of the Companies Act to a related company is to a company
 10 that is a related corporation of the VCC.

Registers of directors, secretaries, auditors and managers

71.—(1) Subject to section 5, section 173 of the Companies Act applies in relation to a VCC, a director, secretary or auditor of a VCC, and a VCC's register of directors, register of secretaries or register of
 15 auditors, as it applies in relation to a company, a director, secretary or auditor of a company, and a company's register of directors, register of secretaries or register of auditors.

(2) Subject to section 5, section 173F(1), (3), (4) and (5) of the Companies Act applies in relation to a register of directors, register of secretaries and register of auditors of a VCC, as it applies in relation to
 20 those registers of a company.

(3) The Registrar must, in respect of each VCC, keep a register of the VCC's managers.

(4) The register of managers of a VCC must contain the following
 25 information in respect of each manager of the VCC:

(a) full name and any former name;

(b) the address of the manager's principal place of business;

(c) date of appointment;

(d) date of cessation of appointment.

(5) Section 173(4) and (8) to (10) of the Companies Act applies in relation to a manager and the register of managers of a VCC as it
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applies in relation to a director and the register of directors of a company.

(6) Any document required to be served under this Act on a person who is for the time being a manager of a VCC is sufficiently served if addressed to the person and left at or sent by post to the address that is entered in the register of managers.

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(7) Where the Registrar has reasonable cause to believe that a manager has ceased to be a person mentioned in section 46(2), the Registrar may on his or her own initiative amend the register of managers of the VCC to indicate that the person has ceased to be a manager of the VCC by virtue of that fact.

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(8) Where the Registrar has reasonable cause to believe that he or she has made an amendment to the register of managers under subsection (7) under a mistaken belief that a manager of a VCC has ceased to be a person mentioned in section 46(2), the Registrar may on his or her own initiative amend the register of managers to restore the name of the person in such register.

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Duty to provide information

72.—(1) Section 173A of the Companies Act applies in relation to a VCC as it applies in relation to a company, subject to section 5 and the following modifications:

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- (a) a reference in section 173A of the Companies Act to a chief executive officer is to a manager of the VCC;
- (b) a reference in section 173A of the Companies Act to the register of chief executive officers in section 173(5) of that Act is to the register of managers;
- (c) a reference in section 173A(1) of the Companies Act to information required under section 173(5) of that Act is to information required under section 71(4).

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(2) Section 173B of the Companies Act applies to a director, a manager, a secretary and an auditor of a VCC as it applies to a director, a chief executive officer, a secretary and an auditor of a company, subject to section 5 and the following modifications:

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(a) subsection (4) of section 173B of the Companies Act does not apply to a manager;

(b) a reference in section 173B of the Companies Act to a chief executive officer, the register of chief executive officers, and information referred to in section 173(5) of that Act, are to the manager, the register of managers and information mentioned in section 71(4), respectively.

(3) If a VCC fails to comply with section 173A(1) of the Companies Act as applied by subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

(4) Subject to section 75(4) to (6), a person who fails to comply with section 173B of the Companies Act as applied by subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

Duty to keep consents of directors, secretaries and managers

73.—(1) Section 173C of the Companies Act applies in relation to a VCC as it applies in relation to a company, subject to section 5 and subsections (2) and (3).

(2) In addition to the matters in section 173C of the Companies Act, every VCC must keep at its registered office —

(a) in respect of each director, the statement mentioned in section 49(b); and

(b) in respect of each manager —

(i) a signed copy of the manager's consent to act as manager; and

(ii) the statement mentioned in section 47(2)(b).

(3) If section 173C(1) of the Companies Act as applied by subsection (1) or (2), is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

Self-notification in certain circumstances

74.—(1) Section 173E of the Companies Act applies to a director or secretary of a VCC as it applies to a director or secretary of a company.

(2) A manager of a VCC that ceases to be a person mentioned in section 46(2) —

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(a) must notify the VCC of the cessation as soon as practicable but not later than 14 days after the manager ceases to be such a person; and

(b) may give the notice mentioned in section 173A(1)(b) of the Companies Act as applied by section 72 to the Registrar if the manager has reasonable cause to believe that the VCC will not do so.

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(3) The manager of a VCC the appointment of which is revoked or has otherwise ceased may give to the Registrar the notice mentioned in section 173A(1)(b) of the Companies Act as applied by section 72, if the manager has reasonable cause to believe that the VCC will not do so.

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(4) A manager that has changed its address entered in the register of managers may give to the Registrar the notice mentioned in section 173A(1)(b) of the Companies Act as applied by section 72, if the manager has reasonable cause to believe that the VCC will not do so.

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Provision of residential address to Registrar

75.—(1) Subject to this section, every director and secretary of a VCC must —

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(a) at incorporation or within 14 days after the date of his or her appointment (as the case may be), give notice to the Registrar of his or her residential address, unless his or her residential address has already been entered in the register of directors or register of secretaries; and

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(b) if there is any change to his or her residential address, give notice to the Registrar of the particulars of the change within 14 days after the change, unless such change has

already been entered in the register of directors or register of secretaries.

(2) Where a director or secretary of a VCC has made a report of a change of his or her residential address under section 8 of the National Registration Act, he or she is taken to have notified the Registrar of the change in compliance with subsection (1)(b).

(3) Subject to subsection (4), a person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

(4) A director or secretary who has opted to provide the VCC with an alternate address instead of his or her residential address for the purpose of section 173(3)(b) or (6)(b) of the Companies Act as applied by section 71, must ensure that the alternate address that he or she has provided is and continues to be an address at which he or she may be located.

(5) A person who contravenes subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(6) For the purposes of subsection (4), a director or secretary is located at an address if he or she may be physically found at the address after reasonable attempts have been made to contact him or her at the address.

(7) Despite sections 9 and 10, where the residential address of a person is notified to the Registrar under subsection (1), or is transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act, that residential address is protected from disclosure, and is not available for public inspection or access, except —

(a) as provided for under this section or section 76; or

(b) where the residential address is entered in the register of directors or register of secretaries.

(8) This section and section 76 do not prevent the residential address of an individual that is notified to the Registrar under subsection (1), or transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act, from —

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- (a) being used by the Registrar for the purposes of any communication with the individual;
- (b) being disclosed for the purposes of issuing any summons or other legal process against the individual for the purposes of this Act or any other written law;
- (c) being disclosed in compliance with the requirement of any court or the provisions of any written law;
- (d) being disclosed for the purpose of assisting any public officer or officer of any other statutory body in the investigation or prosecution of any offence under any written law; or
- (e) being disclosed in such other circumstances as may be prescribed.

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When residential address may be entered in register in place of alternate address

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76.—(1) Where —

- (a) the alternate address of a director or secretary is entered in the register of directors or register of secretaries, as the case may be; and
- (b) the circumstances set out in subsection (2) apply,

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the Registrar may enter the residential address of the director or secretary in the register of directors or register of secretaries, as the case may be.

(2) Subsection (1) applies where —

- (a) communications sent by the Registrar under this Act, or by any officer of ACRA under any ACRA-administered Act to the director or secretary (as the case may be) at his or her

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alternate address and requiring a response within a specified period remain unanswered; or

- (b) there is evidence to show that service of any document under this Act or under any ACRA-administered Act at the alternate address is not effective to bring it to the notice of the director or secretary, as the case may be.

(3) Before proceeding under subsection (1), the Registrar must give notice to the director or secretary affected, and to every VCC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(4) The notice mentioned in subsection (3) must —

- (a) state the grounds on which it is proposed to enter the individual's residential address in the register of directors or register of secretaries, as the case may be; and

- (b) specify a period within which representations may be made before that is done.

(5) The Registrar must take account of any representations received within the specified period.

(6) Where the Registrar enters the residential address in the register of directors or register of secretaries under subsection (1), the Registrar must give notice of that fact to the director or secretary affected, and to every VCC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(7) A notice to a director or secretary under subsection (3) or (6) must be sent to the individual at his or her residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any other last known address of that individual.

(8) Where the Registrar enters an individual's residential address in the register of directors or secretaries under subsection (1), or a Registrar appointed under any other ACRA-administered Act discloses and makes available for public inspection under that Act

the particulars of an individual's residential address under a provision of that Act equivalent to subsection (1) —

(a) the residential address ceases to be protected under section 75(7) from disclosure or from public inspection or access; and

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(b) the individual is not, for a period of 3 years after the date on which the residential address is entered in the register of directors or register of secretaries, allowed to provide an alternate address under section 173B(1)(b) of the Companies Act as applied by section 72(2), or section 173E(4) of the Companies Act as applied by section 74(1), as the case may be.

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(9) Any individual aggrieved by the Registrar's decision under subsection (1) may, within 30 days after the date of receiving the notice under subsection (6), appeal to the Court which may confirm the decision or give such directions in the matter as seem proper or otherwise determine the matter.

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(10) In this section, "ACRA-administered Act" means the Accounting and Corporate Regulatory Authority Act and any of the written laws specified in the Second Schedule to that Act.

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Division 6 — Meetings and Proceedings

Annual general meeting

77.—(1) Subject to this section and section 78, a general meeting of every VCC called the "annual general meeting" must, in addition to any other meeting, be held after the end of each financial year within 6 months.

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(2) The Registrar may extend the period mentioned in subsection (1) —

(a) upon an application by the VCC, if the Registrar thinks there are special reasons to do so; or

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(b) in respect of any prescribed class of VCCs.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and

the VCC may resolve that any meeting held or summoned to be held is the annual general meeting of the VCC.

(4) If default is made in holding an annual general meeting —

(a) the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty; and

(b) the Court may on the application of any member order a general meeting to be called.

(5) The Minister may, by order in the *Gazette*, specify such other period in substitution of the period mentioned in subsection (1).

When VCC need not hold annual general meeting

78.—(1) A VCC need not hold an annual general meeting for a financial year if —

(a) the directors of the VCC give written notice to the VCC's members, at least 60 days before the last date on which a VCC must hold an annual general meeting under section 77, that an annual general meeting for the financial year will not be held; or

(b) the VCC has sent to all persons entitled to receive notice of general meetings of the VCC the documents mentioned in section 105(1) and (2) within the period specified in section 105(1)(b).

(2) The notice under subsection (1) may specify more than one financial year for which an annual general meeting will not be held, and subsection (1) is effective for each of those years.

(3) However, subsection (1) does not affect any liability already incurred by reason of default in holding an annual general meeting.

(4) For any financial year in which —

(a) an annual general meeting would be required to be held but for this section; and

(b) no such meeting has been held,

one or more members of the VCC holding, or together holding, not less than 10% of the total number of paid-up shares carrying the right of voting at general meetings may, by notice to the VCC not later than 14 days before the date by which an annual general meeting would have been required under section 77 to be held, require the holding of an annual general meeting for that financial year.

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(5) The power of a member under subsection (4) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the VCC at such address as may for the time being be specified for the purpose by or on behalf of the VCC of an electronic communication containing the requirement.

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(6) If such a notice is given or an electronic communication is transmitted, section 77(1) and (4) applies with respect to the calling of the meeting and the consequences of default.

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(7) Unless the contrary intention appears, if a VCC need not hold an annual general meeting for a financial year then, for that financial year —

(a) a reference in a provision of this Act (including a provision of the Companies Act as applied by this Act) to the doing of anything at an annual general meeting is to the doing of that thing by way of a resolution by written means under section 184A of the Companies Act as applied by section 80(3);

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(b) a reference in a provision of this Act (including a provision of the Companies Act as applied by this Act) to the date or conclusion of an annual general meeting is, unless the meeting is held, to the date of expiry of the period within which an annual general meeting is required under section 77 to be held; and

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(c) the reference in section 97(1) to the lodging of a return with the Registrar after its annual general meeting is to the lodging of that return after the VCC has sent to all persons

entitled to receive notice of general meetings of the VCC the documents mentioned in section 105(1) and (2).

(8) In this section, an address of a person includes any number or address used for electronic communication.

5 **Convening of extraordinary general meeting on requisition and calling of meetings**

79. Sections 176 and 177 of the Companies Act apply in relation to a VCC as they apply in relation to a company with a share capital, subject to section 5 and the following modifications:

- 10 (a) a reference to treasury shares in sections 176(1A) and 177(1) of the Companies Act is to shares held by a subsidiary of a VCC under section 22(6) or (11) (if any);
- (b) section 177(4) of the Companies Act is omitted;
- 15 (c) all references relating to a company not having a share capital are omitted.

Other provisions as to meetings and resolutions

80.—(1) Sections 178 to 183 and 185 to 189 of the Companies Act apply in relation to a VCC as they apply in relation to a company having a share capital, subject to section 5 and the following
20 modifications:

- (a) sections 178(1A), 180(3), (4) and (5) and 181(1B) of the Companies Act are omitted;
- (b) the reference in section 179(1) of the Companies Act relating to sections 64 and 64A of that Act is omitted;
- 25 (c) the reference in section 179(5) of the Companies Act relating to section 41(9) of that Act is omitted;
- (d) a reference in sections 179(6) and (7), 182, 185 and 186 of the Companies Act to that Act or a provision of that Act are to this Act or any provision of this Act (including a
30 provision of the Companies Act as applied by this Act), as the case may be;

- (e) the following provision applies in place of section 179(8) of the Companies Act (which provides that a reference to a member of a company under section 179 of that Act excludes the company itself if it is a member by reason of holding treasury shares):

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“A reference in this section to a member of a VCC does not include a subsidiary of the VCC if it is such a member by reason only of its holding shares under section 22(6) or (11).”;

- (f) the reference in section 180(2) of the Companies Act to the provisions of section 64 of that Act is to the provisions of the constitution of the VCC;

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- (g) the following provision applies in place of section 183(2)(b) of the Companies Act (which states the number of members needed for a requisition under section 183(1)):

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“not less than 100 members holding shares in the VCC.”;

- (h) the reference in section 186(1) of the Companies Act to a resolution passed under section 175A(1)(a) of that Act is omitted;

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- (i) all references in those sections of the Companies Act relating to a chief executive officer or to any stock or units of stock of a company are omitted.

(2) Section 184 of the Companies Act applies in relation to a VCC as it applies in relation to a public company, subject to section 5 and the following modifications:

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- (a) section 184(4A), (7) and (8) of the Companies Act is omitted;

- (b) a reference in section 184(4) of the Companies Act to a member does not include the VCC itself if it is registered as a member, unless the VCC is so registered in respect of the shares relating to a sub-fund of the VCC;

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(c) the reference in section 184(4)(b)(i) of the Companies Act to treasury shares is to shares held by a subsidiary of the VCC under section 22(6) or (11) (if any);

(d) the reference in section 184(5) of the Companies Act to the number of votes to which each member is entitled by that Act is omitted.

(3) Sections 184A (except subsections (4A) and (9)), 184B, 184C, 184D, 184DA, 184E, 184F and 184G of the Companies Act apply in relation to a VCC as they apply in relation to a private company or an unlisted public company (as the case may be), subject to section 5 and the following modifications:

(a) the reference in section 184A(2) of the Companies Act to a resolution mentioned in section 175A(1)(a) of that Act is omitted;

(b) a reference in sections 184A(1), (7) and (8), 184F(4) and 184G of the Companies Act to that Act is to this Act including any provision of the Companies Act as applied by this Act.

Division 7 — Register of Members

Register of members

81.—(1) A VCC must keep a register of its members and enter in it —

(a) the name and address of each member;

(b) a statement of the shares held by each member, distinguishing each share by its number (if any) or by the number (if any) of the certificate (if any) evidencing the member's holding;

(c) the name and registration number of the sub-fund, and share class, if applicable, to which the shares held by each member relates;

(d) the amount paid or agreed to be considered as paid on the shares of each member;

- (e) the date at which the name of each person was entered in the register as a member;
- (f) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (g) the date of every allotment of shares to members and the number of shares comprised in each allotment.

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(2) Despite subsection (1), a VCC may keep the names and particulars relating to persons who have ceased to be members of the VCC separately, and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless that person specifically requests the names and particulars of former members.

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(3) The register of members is prima facie evidence of any matter required or authorised by this Act to be included in it.

(4) Every VCC having more than 50 members must —

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(a) unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members; and

(b) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration to the index.

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(5) The index must, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be readily found.

(6) If subsection (1), (4) or (5) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

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(7) Sections 191 and 194 of the Companies Act apply in relation to the register of members and index of a VCC, as they apply in relation to the register of members and index of a public company, subject to section 5 and subsection (8).

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(8) In addition to the grounds in section 194(1) of the Companies Act, an application under that provision may be made

to the Court for any default in entering in the register of members any information in subsection (1) concerning shares held by a person.

(9) Despite section 194 of the Companies Act as applied by subsection (7), a VCC may, without an application to the Court, at any time rectify any error or omission in the register of members (including any overstatement or understatement of the VCC's issued share capital), but only if —

- (a) the rectification does not adversely affect any person; or
- (b) the person so adversely affected agrees to the rectification.

(10) Where —

(a) by reason of section 191(1)(b) of the Companies Act as applied by subsection (7), the register of members is kept at the office of some person other than the VCC; and

(b) by reason of any default of that other person, the VCC contravenes section 191(1) or (2) of the Companies Act as applied by subsection (7), section 82(1), (2) or (3), or any requirement of this Act as to the production of the register,

then that other person shall be liable to the same penalties for such contravention as if the person were an officer of the VCC who was in default, and the power of the Court under section 399 of the Companies Act (as applied by section 160) extends to making an order against that other person as well as the person's officers and employees.

(11) Subject to section 5, section 195 of the Companies Act applies in relation to shares in a VCC as it applies in relation to shares in a company.

Inspection of register

82.—(1) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, a VCC must, on the request of —

- (a) the manager of the VCC;
- (b) the custodian of the VCC (being a non-umbrella VCC);

(c) a public authority, or any person acting on behalf of a public authority, for the purpose of enabling the public authority to administer or enforce any written law; or

(d) any person entitled to inspect the register of members of the VCC pursuant to an order of the Court,

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provide to that person or public authority any information in the register of members of the VCC, or allow that person or public authority to inspect the register.

(2) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, a VCC must, on the request of a member of the VCC, provide to the member any information in the register of members of the VCC relating to that member, or allow that member to inspect any part of the register relating to that member.

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(3) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, an umbrella VCC must, on the request of the custodian of a sub-fund of the VCC, provide to the custodian any information in the register of members of the VCC relating to members holding shares issued in respect of that sub-fund, or allow the custodian to inspect any part of the register relating to those members.

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(4) Any person or public authority allowed to inspect the register under subsection (1) may request the VCC to furnish the person with a copy of the register, or any part of the register, on payment in advance of \$1 or such lesser sum as the VCC requires for every page.

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(5) A member of a VCC or the custodian of a sub-fund of a VCC may request the VCC to furnish the member or custodian with a copy of any part of the register that relates to the member or a member of the VCC holding shares in respect of the sub-fund (as the case may be), on payment in advance of \$1 or such lesser sum as the VCC requires for every page.

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(6) The VCC must cause any copy requested under subsection (4) or (5) to be sent to the person, public authority, member or custodian within a period of 21 days (or such further period as agreed with the person, public authority, member or custodian) starting on the day

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immediately after the day on which the request is received by the VCC.

(7) If any copy so requested is not sent within the period mentioned in subsection (6), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$400, and also to a default penalty.

(8) If subsection (1), (2) or (3) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(9) In this section, “public authority” means —

(a) the Government, including any ministry, department or agency of the Government, or an Organ of State;

(b) ACRA;

(c) MAS;

(d) any other statutory body; or

(e) any tribunal appointed under any written law.

PART 7

INTERNATIONAL OBLIGATIONS AND PREVENTION OF MONEY LAUNDERING, TERRORISM FINANCING AND OTHER OFFENCES

Division 1 — Directions and Regulations to Implement International Obligations and Prevent Money Laundering and Terrorism

Directions and regulations to discharge Government’s international obligations

83.—(1) MAS may, from time to time —

(a) issue such directions concerning any VCC or class of VCCs; and

- (b) make such regulations concerning any VCC or class of VCCs or relating to the activities of any VCC or class of VCCs,

as MAS considers necessary in order to discharge or facilitate the discharge of any obligation binding on Singapore by virtue of a decision of the Security Council of the United Nations.

(2) A VCC to which a direction is issued under subsection (1)(a) or that is bound by any regulations made under subsection (1)(b) must comply with the direction or regulations despite any other duty imposed on the VCC by any rule of law, written law or contract.

(3) In carrying out any act in compliance with any direction or regulations made under subsection (1), a VCC is not considered as being in breach of any such rule of law, written law or contract.

(4) A VCC must not disclose any direction issued under subsection (1)(a) if MAS notifies the VCC that MAS is of the opinion that the disclosure of the direction is against the public interest.

(5) A VCC that —

- (a) contravenes any direction issued to it under subsection (1)(a);
- (b) contravenes any regulations made under subsection (1)(b); or
- (c) discloses a direction issued to it in contravention of subsection (4),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million.

(6) Any regulation under subsection (1)(b) may make provision for or in relation to a matter by applying, adopting or incorporating by reference (with or without modification) any regulation made under section 27A of the MAS Act or a part of any such regulation, as in force at a particular time or from time to time, which relates to the same matter.

Requirements for prevention of money laundering and terrorism financing

5 **84.**—(1) MAS may, from time to time, issue such directions or make such regulations concerning any VCC or class of VCCs as MAS considers necessary for the prevention of money laundering or for the prevention of the financing of terrorism.

(2) In particular, the directions and regulations may provide for —

10 (a) customer due diligence measures to be conducted by VCCs to prevent money laundering and the financing of terrorism; and

(b) the records to be kept for that purpose.

(3) A VCC must —

15 (a) conduct such customer due diligence measures as may be specified by the directions mentioned in subsection (2) that are issued to it, or as may be prescribed by the regulations mentioned in that subsection that are applicable to it; and

20 (b) maintain records on transactions and information obtained through the conduct of those measures for such period and in such manner as may be specified by the directions mentioned in subsection (2) that are issued to it, or as may be prescribed by the regulations mentioned in that subsection that are applicable to it.

(4) A VCC that contravenes —

25 (a) any direction issued to it under subsection (1);

(b) any regulation under subsection (1); or

(c) subsection (3),

30 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine of \$100,000 for every day or part of a day during which the offence continues after conviction.

(5) Any regulation under subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating by reference (with or without modification) any regulation made under

section 27B of the MAS Act or any part of any such regulation, as in force at a particular time or from time to time, which relates to the same matter.

Inspection of VCCs for compliance with directions and regulations

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85.—(1) MAS may, from time to time, inspect under conditions of secrecy the books of —

(a) a VCC; or

(b) any subsidiary, branch, agency or office outside Singapore of a VCC,

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for the purpose of determining the extent of compliance by the VCC with the directions issued and the regulations made under sections 83 and 84.

(2) MAS may appoint any person, including an auditor (not being an auditor of the VCC), to carry out an inspection under this section.

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(3) If the inspection is carried out on the ground that MAS has reason to believe that the VCC has contravened or is contravening any such direction or regulation, and if MAS so directs, then the VCC is liable to pay for the remuneration and expenses of any person appointed under subsection (2) for the inspection.

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(4) MAS may recover from the VCC the remuneration and expenses mentioned in subsection (3) as a civil debt due to MAS.

(5) MAS may, in its discretion, waive the payment of all or any part of the remuneration and expenses mentioned in subsection (3).

(6) Where, in the course of an inspection under subsection (1), MAS obtains any protected information as defined in section 152(1) of the MAS Act, and that information is not necessary for taking any action regarding non-compliance with any direction issued or regulation made under section 83 or 84, then MAS must treat that information as secret.

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(7) Subsection (6) does not prevent the transmission by MAS under —

(a) section 27F(1) of the MAS Act as applied by subsection (11); or

(b) section 155(1), 157(1) or 160 of the MAS Act as applied by section 88, 89 or 90, as the case may be,

5 of any information to any authority mentioned in the applicable provision.

(8) Section 27D of the MAS Act applies for the purpose of an inspection under subsection (1) as it applies for the purpose of an inspection under section 27C(1) of that Act, subject to the necessary
10 modifications and to subsection (9).

(9) In this section and section 27D of the MAS Act as applied by subsection (8), “book” has the meaning given by section 152(1) of the MAS Act.

(10) Section 27E of the MAS Act applies with the necessary
15 modifications in relation to a written report produced by MAS in respect of a VCC following an inspection under subsection (1), as it applies in relation to a written report mentioned in that section.

(11) Section 27F of the MAS Act applies in relation to information obtained from an inspection under subsection (1) as it applies in
20 relation to information obtained from an inspection under section 27C(1) of that Act, subject to the necessary modifications and the following further modifications:

(a) the reference in section 27F(1) of the MAS Act to a corresponding authority as defined in section 152(1) of that
25 Act, is to a corresponding authority as defined in section 86(1);

(b) the reference in section 27F(1) of the MAS Act to any AML/CFT requirement as defined in section 152(1) of that
30 Act, is to any AML/CFT requirement as defined in section 86(1);

(c) the reference in section 27F(2) of the MAS Act to any prescribed written law as defined in section 152(1) of that Act or any requirement imposed under any such written

law, is to this Act or any requirement imposed under this Act.

*Division 2 — Assistance to Foreign Authorities and
Domestic Authorities*

Interpretation of this Division

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86.—(1) In this Division —

“AML/CFT authority”, “supervision” and “supervisory action” have the meanings given by section 152 of the MAS Act, except that a reference to a foreign financial institution in the definitions of those terms in that section is to a foreign financial institution as defined in this subsection;

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“AML/CFT requirement”, “applicable offence”, “domestic authority”, “employee”, “enforcement action”, “foreign country”, “information”, “investigation” and “public authority”, have the meanings given by section 152 of the MAS Act;

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“corresponding authority” means a public authority of a foreign country that exercises a function that corresponds to a regulatory function of —

(a) ACRA under this Act;

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(b) MAS under this Part; or

(c) MAS under a prescribed written law as defined in section 152 of the MAS Act;

“director”, in relation to a VCC, includes —

(a) any person, by whatever name described, occupying the position of a director of the VCC;

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(b) a person in accordance with whose directions or instructions the directors of the VCC are accustomed to act; and

(c) an alternate director, or a substitute director, of the VCC;

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“executive officer”, in relation to a VCC, means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the VCC; and

(b) is concerned with or takes part in the management of the VCC on a day-to-day basis;

“foreign financial institution” has the meaning given by section 152 of the MAS Act, except that the reference in the definition of that term in that section to a corresponding authority is to a corresponding authority as defined in this subsection;

“office holder”, in relation to a VCC, means any person acting as the liquidator or provisional liquidator of the VCC or any of its sub-funds (if applicable), the receiver or the receiver and manager of the property of the VCC or any of its sub-funds (if applicable), or acting in an equivalent capacity in relation to the VCC or any of its sub-funds (if applicable).

(2) In this Division, an AML/CFT authority exercises consolidated supervision authority over a VCC if —

(a) the VCC is a subsidiary of a foreign financial institution established or incorporated in the foreign country of the AML/CFT authority; and

(b) the AML/CFT authority carries out consolidated supervision of the foreign financial institution, and its subsidiaries, branches, agencies and offices outside that foreign country, for compliance with the AML/CFT requirements of that foreign country that are applicable to the foreign financial institution.

(3) To avoid doubt, the definition of “agent” in section 152 of the MAS Act does not apply for the purposes of this Division.

Purpose of Division

87. The purposes of this Division are —

- (a) to enable MAS to provide information in relation to a VCC to an AML/CFT authority in connection with the AML/CFT authority's supervision of foreign financial institutions carrying on any financial activities in that country for compliance with the AML/CFT requirements of that country applicable to those institutions, including the taking of supervisory action against them for a contravention of those requirements; 5 10
- (b) to enable MAS to provide information in relation to a VCC to a domestic authority in connection with —
 - (i) an investigation into the commission or an alleged commission of an applicable offence by a person;
 - (ii) an enforcement action against a person for the commission or an alleged commission of an applicable offence; or 15
 - (iii) a supervisory action against a person regulated by the domestic authority for a contravention of an applicable AML/CFT requirement of Singapore; and 20
- (c) to enable an AML/CFT authority to carry out an inspection in Singapore of a VCC over which the AML/CFT authority exercises consolidated supervision authority.

Assistance to AML/CFT authorities

88. Division 2 of Part VC of the MAS Act applies in relation to a request to MAS from an AML/CFT authority for assistance in relation to a VCC as it applies in relation to a request to MAS from an AML/CFT authority (as defined in section 152 of that Act) for assistance in that Division, subject to the necessary modifications and the following further modifications: 25 30

- (a) the reference in section 154(1)(a) of the MAS Act to the date of commencement of section 5 of the Monetary Authority of Singapore (Amendment) Act 2015 (Act 14 of 2015) is to the date of commencement of this Act;

- (b) the reference in section 154(1)(g)(ii) of the MAS Act to the identity of the financial institution is to the identity of the VCC;
- (c) the reference in section 154(3)(a) of the MAS Act to any direction or regulation issued or made under section 27A or 27B of that Act is to a direction or regulation issued or made under section 83 or 84;
- (d) a reference in section 155 of the MAS Act to any prescribed written law or any requirement imposed under any such written law is to any prescribed written law as defined in section 152(1) of that Act or this Act, or any requirement imposed under such prescribed written law or this Act;
- (e) the reference in section 155(2)(a) of the MAS Act to a financial institution is to the VCC;
- (f) the reference in section 155(2)(a) of the MAS Act to a chief executive, a director, an executive officer, an employee, an agent or an office holder of a financial institution, is to a director, an executive officer, the manager, an employee, an agent or an office holder of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC.

Assistance to domestic authorities

89. Division 3 of Part VC of the MAS Act applies in relation to a request to MAS from a domestic authority for assistance in relation to a VCC as it applies in relation to a request to MAS from a domestic authority for assistance in that Division, subject to the necessary modifications and the following further modifications:

- (a) the reference in section 156(a) of the MAS Act to the date of commencement of section 5 of the Monetary Authority of Singapore (Amendment) Act 2015 is to the date of commencement of this Act;
- (b) a reference in section 157 of the MAS Act to any prescribed written law or any requirement imposed under any such written law is to any prescribed written law as defined in

section 152(1) of that Act or this Act, or any requirement imposed under such prescribed written law or this Act;

(c) the reference in section 157(2) of the MAS Act to a financial institution is to the VCC;

(d) the reference in section 157(2) of the MAS Act to a chief executive, a director, an executive officer, an employee, an agent or an office holder of a financial institution, is to a director, an executive officer, the manager, an employee, an agent or an office holder of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of the sub-fund of a VCC. 5 10

Other provisions applicable to sections 88 and 89

90.—(1) Division 4 of Part VC of the MAS Act applies for the purposes of sections 88 and 89, subject to the necessary modifications and subsection (2). 15

(2) For the purpose of subsection (1), a reference in section 160 of the MAS Act to any prescribed written law or any requirement imposed under any such written law is to any prescribed written law as defined in section 152(1) of the MAS Act or this Act, or any requirement imposed under such prescribed written law or this Act. 20

Inspection by AML/CFT authority

91.—(1) Sections 161 and 162 of the MAS Act apply for the purpose of an inspection in Singapore by an AML/CFT authority of a VCC over which it exercises consolidated supervision authority, as they apply for the purpose of an inspection in Singapore by an AML/CFT authority (as defined in section 152 of the MAS Act) of a financial institution over which it exercises consolidated supervision authority, subject to the necessary modifications and the following further modifications: 25

(a) section 161(5) of the MAS Act is omitted; 30

(b) the reference in section 162(3) of the MAS Act to any prescribed written law or any requirement imposed under any such written law, is omitted;

(c) a reference in sections 161 and 162 of the MAS Act to a financial institution is to the VCC.

(2) Section 163 of the MAS Act applies in relation to a report produced in respect of an inspection carried out pursuant to section 161 of the MAS Act as applied by subsection (1), as it applies in relation to a report produced in respect of an inspection carried out pursuant to section 161 of the MAS Act, subject to the necessary modifications and with each reference to a financial institution replaced with a reference to the VCC concerned.

Division 3 — Miscellaneous Provisions

Corporate offenders and unincorporated associations

92.—(1) Section 28B (except subsection (7)) of the MAS Act applies in relation to an offence committed under this Part as it applies in relation to an offence committed under the MAS Act.

(2) MAS may make regulations to provide for the application of any provision of section 28B of the MAS Act (with such modifications as MAS considers appropriate) to any body corporate or unincorporated association formed or recognised under the law of a territory outside Singapore.

Composition of offences

93.—(1) MAS may, in its discretion, compound any offence under this Part that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

(2) MAS may, in its discretion, compound any offence under this Part (including an offence under a provision that has been repealed) which —

(a) was compoundable under this section at the time the offence was committed; but

(b) has ceased to be so compoundable,
by collecting from a person reasonably suspected of having
committed the offence a sum of money not exceeding one half of
the amount of the maximum fine prescribed for that offence at the time
it was committed. 5

(3) On payment of the sum of money mentioned in subsection (1) or
(2), no further proceedings may be taken against that person in respect
of the offence.

(4) MAS may make regulations to prescribe the offences which may
be compounded. 10

(5) All sums collected by MAS under subsection (1) or (2) must be
paid into the Consolidated Fund.

MAS officers, etc., treated as public officers

94. The directors (including the managing director) and the officers
and employees of MAS are, in relation to their administration,
collection and enforcement of payment of any moneys to be paid into
the Consolidated Fund under section 93(5), treated as public officers
for the purposes of the Financial Procedure Act (Cap. 109), and
section 20 of that Act applies to such persons despite the fact that they
are not or were not in the employment of the Government. 15 20

Power to exempt and to make regulations for further modifications

95.—(1) MAS may make regulations exempting any person or class
of persons from all or any provisions of this Part and any regulations
made under this Part, subject to such conditions or restrictions as may
be prescribed. 25

(2) MAS may, on the application of any person, by notice in writing
exempt the person from —

(a) any regulations made under section 83 or 84; and

(b) all or any of the requirements specified in any direction made by MAS under this Part,

subject to such conditions or restrictions as MAS may specify by notice in writing.

5 (3) MAS may at any time, by notice in writing to a person, add to, vary or revoke any condition or restriction imposed on the person under subsection (2).

(4) It is not necessary to publish any exemption granted under subsection (2) in the *Gazette*.

10 (5) The Minister may, for a period of 2 years starting on the date of commencement of this Act, make regulations to prescribe further modifications to a provision of the MAS Act that is incorporated by reference in this Part (whether with or without modifications), and that
15 provision of the MAS Act applies in this Part subject to those prescribed modifications.

PART 8

ANNUAL RETURN, FINANCIAL STATEMENTS AND AUDIT

Division 1 — Interpretation

20 **Interpretation of this Part**

96. Unless the contrary intention appears, in this Part (including the provisions of the Companies Act applied by this Part) —

25 “accounting records”, in relation to a VCC or its sub-fund, includes such working papers and other documents as are necessary to explain the methods and calculations by which the accounts of the VCC or sub-fund (as the case may be) are made up;

30 “balance sheet”, in relation to a VCC, means the balance sheet (by whatever name called) of the VCC prepared in accordance with the Accounting Standards;

“directors’ statement” means the statement of the directors mentioned in section 201(16) of the Companies Act as applied by section 100(6);

“group” has the meaning given by the Accounting Standards;

“parent company” means a company or VCC that is required under the Accounting Standards to prepare financial statements in relation to a group; 5

“subsidiary company” means a company or VCC that is a subsidiary as defined in the Accounting Standards;

“subsidiary corporation” means a corporation that is a subsidiary as defined in the Accounting Standards; 10

“ultimate parent corporation” means a corporation that is a parent but not a subsidiary, within the meaning of the Accounting Standards.

Division 2 — Annual Return

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Annual return

97.—(1) Every VCC must lodge a return with the Registrar after its annual general meeting and within 7 months after the end of its financial year.

(2) The Registrar may, if the Registrar thinks there are special reasons to do so, extend any period within which a VCC must lodge a return under subsection (1) — 20

(a) upon an application by the VCC; or

(b) in respect of any prescribed class of VCCs.

(3) The return in subsection (1) —

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(a) must be in such form;

(b) must contain such particulars and information; and

(c) must be accompanied by such documents,
as may be prescribed.

(4) The particulars to be contained in, and the documents that are to accompany, the return in subsection (1) may differ according to the class or description of VCC prescribed.

(5) If a VCC is required under section 78(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the VCC must lodge a notice of the date on which the annual general meeting was held with the Registrar within 14 days after that date.

(6) If a VCC fails to comply with this section, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

Division 3 — Financial Statements

Financial year

98.—(1) A VCC's financial year is determined as follows:

(a) the VCC's first financial year starts on the VCC's date of incorporation and (subject to subsection (3)) ends on the last day of the VCC's first financial year as provided under section 16(2)(d);

(b) each of the VCC's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

(2) A VCC's first financial year must not be longer than 18 months unless the Registrar on the application of the VCC otherwise approves.

(3) Despite subsection (1), but subject to subsections (4) and (5), a VCC may, by notice lodged with the Registrar in the prescribed form, specify a new date as the last day of the VCC's financial year to apply to its previous or current financial year.

(4) The Registrar's approval must be obtained if the notice mentioned in subsection (3) —

- (a) results in a financial year being longer than 18 months; or
- (b) is lodged less than 5 years after the end of an earlier financial year, if the end of that earlier financial year was changed under this section.

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(5) The notice in subsection (3) cannot specify a new date as the last day of the VCC's financial year —

- (a) after the expiry of the period under section 77 within which an annual general meeting of the VCC must be held after that financial year;
- (b) after the expiry of the period under section 97 within which an annual return of the VCC must be lodged with the Registrar after that financial year; or
- (c) after the expiry of the period under section 105 within which a copy of the financial statements, or consolidated financial statements and balance sheet, and other documents mentioned in section 105(1) and (2) are required to be sent to all persons entitled to receive notice of general meetings of the VCC.

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Accounting records and systems of control

99.—(1) Subject to section 5, section 199 of the Companies Act applies in relation to a VCC and a subsidiary company of a VCC, as it applies in relation to a company or public company, and a subsidiary company of a public company.

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(2) In addition to the requirements of section 199 of the Companies Act as applied by subsection (1), an umbrella VCC must also —

- (a) keep separate accounting and other records for each sub-fund —
 - (i) that sufficiently explain the transactions and financial position of the sub-fund; and

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(ii) that will enable true and fair financial statements, and any document required to be attached to those records, to be prepared from time to time; and

(b) devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

(i) assets of each sub-fund are safeguarded against loss from unauthorised use or disposition; and

(ii) transactions of each sub-fund 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.

(3) The VCC mentioned in subsection (2) must —

(a) keep the records mentioned in subsection (2)(a) in a manner that will enable them to be conveniently and properly audited; and

(b) keep any such record that relates to a particular transaction or operation for a period of not less than 5 years starting on the last day of the financial year in which the transaction or operation is completed.

(4) Subject to section 5 and subsection (5), section 199(3), (4) and (5) of the Companies Act applies in relation to the records mentioned in subsection (2)(a) as it applies in relation to the accounting and other records of a company.

(5) If subsection (2) or (3), or section 199(3) or (4) of the Companies Act as applied by subsection (4), is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty.

Financial statements and consolidated financial statements

100.—(1) The directors of every VCC must lay before the VCC at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.

(2) Subject to section 201(12), (13) and (14) of the Companies Act as applied by subsection (6), the financial statements in subsection (1) must —

(a) comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the VCC and its sub-funds (if any); and 5

(b) if the VCC is an umbrella VCC, contain separate accounts for each sub-fund that are prepared using the same Accounting Standards as those used to prepare the accounts of the VCC. 10

(3) The directors of a VCC that is a parent company at the end of its financial year need not comply with subsection (1), but must cause to be made out and laid before the VCC at its annual general meeting —

(a) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and 15

(b) a balance sheet dealing with the state of affairs of the VCC and its sub-funds (if any) at the end of its financial year.

(4) Subject to section 201(12), (13) and (14) of the Companies Act as applied by subsection (6), the consolidated financial statements in subsection (3)(a) and the balance sheet in subsection (3)(b) must — 20

(a) comply with the requirements of the Accounting Standards and give a true and fair view of the matters mentioned in subsection (3)(a) and (b) (respectively), so far as they concern members of the VCC; and 25

(b) if the VCC is an umbrella VCC, contain separate accounts for each sub-fund that are prepared using the same Accounting Standards as those used to prepare the accounts of the VCC.

(5) Before the financial statements in subsection (1) and the balance sheet in subsection (3)(b) are made out, the directors of the VCC must take reasonable steps — 30

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for

doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the VCC or its sub-funds (if any) and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

(c) to ascertain whether any non-current asset is shown in the books of the VCC or its sub-funds (if any) at an amount which, having regard to its value to the VCC or the sub-fund (as the case may be) as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in the financial statements such information and explanations as will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

(6) Subject to section 5 and subsection (7), section 201(8) to (14), (16) and (17) of the Companies Act applies in relation to a VCC and its financial statements in subsection (1) or its consolidated financial statements and balance sheet in subsection (3) as they apply in relation to a company and its financial statements in section 201(1) of that Act or its consolidated financial statements and balance sheet in section 201(5) of that Act.

(7) For the purpose of subsection (6) —

(a) a reference in section 201(9) and (16) of the Companies Act to Part VI of the Companies Act is to this Part;

- (b) the reference in section 201(12) and (13) of the Companies Act to section 201(1) or (5) of that Act is to subsection (1) or (3);
 - (c) a reference in section 201(12), (13) and (14) of the Companies Act to the Accounting Standards is to the Accounting Standards as defined in section 2(1);
 - (d) the reference in section 201(13) of the Companies Act to a matter required by section 201 of that Act to be dealt with in the financial statements or consolidated financial statements of a company, is to a matter required to be dealt with under subsection (2)(a) or (4)(a) (as the case may be) in the financial statements or consolidated financial statements of a VCC;
 - (e) the reference in section 201(16) of that Act to the Twelfth Schedule to that Act is to the Second Schedule; and
 - (f) the reference in section 201(17) of the Companies Act to that Act is to this Act.
- (8) In this section, “Accounting Standards” means —
- (a) accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Act and applicable to companies, with each reference to a company substituted with a reference to a VCC, and with such other modifications as may be prescribed; or
 - (b) such other accounting standards or practices as may be prescribed.
- (9) The Minister may, by order in the *Gazette*, in respect of VCCs of a specified class or description, substitute other accounting standards for the Accounting Standards applicable to those VCCs.

Retention of documents laid before VCC at annual general meeting

101.—(1) Every VCC must cause to be kept at the VCC’s registered office, or such other place as the directors think fit —

(a) a copy of each of the documents that was laid before the VCC at its annual general meeting under section 100, for a period of not less than 5 years after the date of the annual general meeting; or

(b) in respect of any financial year for which the VCC need not hold an annual general meeting because of section 78(1) —

(i) a copy of the financial statements; or

(ii) in the case of a VCC that is a parent company, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached to them),

and a copy of the auditors' report where such financial statements or consolidated financial statements are duly audited, that were sent to all persons entitled to receive notice of general meetings of the VCC in accordance with section 105(1) and (2), for a period of not less than 5 years after the date on which the documents were sent.

(2) Subject to section 5, section 201AA(2) to (5) of the Companies Act applies in relation to subsection (1) and any document kept or required to be kept under that subsection, as it applies in relation to section 201AA(1) of that Act and any document kept or required to be kept under that section.

When directors need not lay financial statements before VCC

102.—(1) The directors of a VCC need not comply with the requirement in section 100 to lay before the VCC at its annual general meeting the financial statements, or the consolidated financial statements and balance sheet (as the case may be), of the VCC if the VCC need not hold an annual general meeting because of section 78(1).

(2) Where the financial statements, or the consolidated financial statements and balance sheet (as the case may be), are not laid before the VCC at its annual general meeting under subsection (1), the reference in section 207(1) of the Companies Act (as applied by section 109(3)) to financial statements required to be laid before the

VCC in general meeting is to the documents required to be sent to persons entitled to receive notice of general meetings of the VCC under section 105(1) and (2).

Relief from requirements as to form and content of financial statements, consolidated financial statements and directors' statement

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103. Section 202 of the Companies Act applies in relation to a VCC and its financial statements, consolidated financial statements and directors' statement, as it applies in relation to a company and its financial statements, consolidated financial statements and directors' statement, subject to section 5 and the following modifications:

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- (a) a reference in section 202 of the Companies Act to the Accounting Standards is to the Accounting Standards as defined in section 2(1);
- (b) a reference in section 202 of the Companies Act to that Act is to this Act.

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Defective financial statements, or consolidated financial statements and balance sheet

104.—(1) Sections 202A (except subsection (5)) and 202B of the Companies Act apply in relation to the financial statements of a VCC, or the consolidated financial statement and balance sheet of a VCC that is a parent company, as they apply in relation to the financial statements of a company, or the consolidated financial statement and balance sheet of a company that is a parent company.

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(2) For the purpose of subsection (1) —

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- (a) the reference in section 202A(1) of the Companies Act to section 175A of that Act is to section 78;
- (b) the reference in section 202A(1) of the Companies Act to section 203 of that Act is to section 105;
- (c) a reference in sections 202A and 202B of the Companies Act to the Accounting Standards is to the Accounting Standards as defined in section 2(1); and

30

(d) a reference in sections 202A and 202B of the Companies Act to that Act or a provision of that Act is to this Act or a provision of this Act (including a provision of the Companies Act applied by this Act).

5 (3) The Minister may make regulations under section 165 for the same matters as those in section 202A(5) of the Companies Act with the reference in section 202A(5)(b) to a provision of the Companies Act substituted with a reference to a provision of this Act (including a provision of that Act applied by this Act).

10 **Members of VCC entitled to financial statements, etc.**

105.—(1) A copy of the financial statements or (in the case of a VCC that is a parent company) of the consolidated financial statements and balance sheet (including every document required by law to be attached to them), which is duly audited and which
15 (or which, but for section 102) is to be laid before the VCC in general meeting, must be sent to all persons entitled to receive notice of general meetings of the VCC —

(a) not less than 14 days before the date of the meeting; or

20 (b) if the VCC is not required to hold an annual general meeting because of section 78(1)(a), not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance sheet, relate.

25 (2) The documents mentioned in subsection (1) must be accompanied by a copy of the auditor's report on them.

(3) Despite subsection (1)(a), the documents mentioned in subsections (1) and (2) may be sent less than 14 days before the date of the meeting if all the persons entitled to receive notice of general meetings of the VCC so agree.

30 (4) On a request made to a VCC by —

(a) any member of the VCC to whom the documents mentioned in subsections (1) and (2) have not been sent (whether or not the member is entitled to be sent such documents); or

(b) any holder of a debenture,

the VCC must, without charge, send to the member or holder the documents mentioned in subsections (1) and (2), as the case may be.

(5) If subsection (1) or (4) is contravened, the VCC and every officer of the VCC who is in default (unless it is proved that the member or holder of a debenture in question has already made a request for and has been furnished with a copy of the financial statements, or consolidated financial statements and balance sheet, and all documents mentioned in subsections (1) and (2)), shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

(6) In a case mentioned in subsection (1)(b), any member or auditor of the VCC may, by notice to the VCC not later than 14 days after the day on which the documents mentioned in subsections (1) and (2) were sent out, require that a general meeting be held for the purpose of laying those documents before the VCC.

(7) Where a VCC is not required to hold an annual general meeting because of section 78(1)(b), any member or auditor of the VCC may, by notice to the VCC not later than 14 days after the day on which the documents mentioned in subsections (1) and (2) were sent out, require that a general meeting be held for the purpose of laying those documents before the VCC.

(8) Section 78(5) applies, with the necessary modifications, to the giving of a notice under subsection (6) or (7).

(9) The directors of the VCC must, within 14 days after the date of giving the notice in subsection (6) or (7), convene a meeting for the purpose mentioned in that subsection.

(10) If subsection (9) is contravened —

(a) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000; and

(b) the Court may, on application of the member or auditor, order a general meeting to be called.

(11) Section 203A(1) to (7) of the Companies Act applies in relation to a VCC as it applies in relation to a company, subject to section 5 and the following modifications:

(a) the reference in section 203A(1) of the Companies Act to section 203 of that Act is to subsections (1) to (10);

(b) a reference in section 203A(1) and (4) of the Companies Act to copies of the documents mentioned in section 203(1) of the Companies Act is to copies of the documents mentioned in subsections (1) and (2);

(c) the reference in section 203A(2) of the Companies Act to a member of a company or holder of a debenture entitled to be furnished by the company with a copy of the documents mentioned in section 203(3) of the Companies Act is to a member of a VCC or holder of a debenture (as the case may be) mentioned in subsection (4);

(d) the reference in section 203A(1), (5), (6) and (7) of the Companies Act to regulations is to regulations made under section 165.

(12) Regulations made under section 165 may make provision to give effect to subsection (11), including the manner in which it is to be ascertained whether a member of a VCC wishes to receive copies of the documents mentioned in subsections (1) and (2) or does not wish to receive the summary financial statement under section 203A of the Companies Act as applied by subsection (11).

Penalty

106.—(1) Subject to section 5 and subsection (2), section 204 of the Companies Act applies with the necessary modifications in relation to a failure to comply with a provision of this Division (including a provision of that Act as applied by this Division) as it applies in relation to a failure to comply with the corresponding provision of Division 1 of Part VI of that Act.

(2) For the purpose of subsection (1) —

(a) a reference in section 204 of the Companies Act to section 201(2) of that Act is to section 100(2);

- (b) a reference in section 204 of the Companies Act to section 201(5) of that Act is to section 100(3) and (4);
- (c) a reference in section 204 of the Companies Act to section 201(16) of that Act is to section 201(16) of that Act as applied by section 100(6); and 5
- (d) a reference in section 204(2) of the Companies Act to section 201 of that Act is to section 100.

Division 4 — Audit

Appointment and remuneration of auditors

107.—(1) Subject to section 5 and subsection (2), section 205 (except subsection (12A)) of the Companies Act applies in relation to a VCC as it applies in relation to a company. 10

(2) Where a VCC need not hold an annual general meeting for a financial year under section 78(1), and the auditor or auditors of the VCC is or are appointed by a resolution by written means under section 184A of the Companies Act (as applied by section 80(3)) by reason of section 78(7), the references in subsections (11) and (12) of section 205 of the Companies Act to the date of an annual general meeting are to the time — 15

- (a) agreement to the resolution is sought in accordance with section 184C of the Companies Act (as applied by section 80(3)); or 20
- (b) documents mentioned in section 183(3A) of the Companies Act (as applied by section 80(1)) in respect of the resolution are served or made accessible in accordance with section 183(3A) of that Act (as applied by section 80(1)), 25

as the case may be.

Resignation of auditor of VCC

108. Sections 205AA to 205AF of the Companies Act apply in relation to an auditor of a VCC or a subsidiary company of a VCC as they apply in relation to an auditor of a company or a subsidiary 30

company of a company, subject to section 5 and the following modifications:

- (a) a reference in those sections of the Companies Act to a public interest company is to a VCC that comprises at least one collective investment scheme authorised under section 286(1) of the Securities and Futures Act, or such other VCC as may be prescribed;
- (b) a reference in those sections of the Companies Act to a non-public interest company is to a VCC that is not a VCC mentioned in paragraph (a);
- (c) the reference in section 205AF(3) of the Companies Act to the Companies Act is to this Act.

Other provisions concerning auditors

109.—(1) Subject to section 5 and subsection (2), section 206 of the Companies Act applies in relation to a VCC as it applies in relation to a company or public company.

(2) For the purposes of subsection (1), the reference in section 206(1)(b) of the Companies Act to treasury shares is to shares held by a subsidiary of a VCC under section 22(6) or (11), if any.

(3) Sections 207, 208 and 208A of the Companies Act apply in relation to an auditor of a VCC as they apply in relation to an auditor of a company, subject to section 5, subsection (4) and the following modifications:

- (a) a reference in section 207 of the Companies Act to a company's accounting and other records is, in the case of an umbrella VCC, to the accounting and other records of the VCC and each of its sub-funds;
- (b) a reference in section 207 of the Companies Act to the Accounting Standards is to Accounting Standards as defined in section 2(1);
- (c) a reference in sections 207, 208 and 208A of the Companies Act to that Act or a provision of that Act is

to this Act or a provision of this Act (including a provision of the Companies Act applied by this Act);

- (d) the reference in section 207(1A) of the Companies Act to section 203(1) of that Act is to section 105(1) and (2);
- (e) the reference in section 207(1A) of the Companies Act to Part VI of the Companies Act is to this Part; 5
- (f) the reference in section 207(2)(aa) of the Companies Act to section 201 of that Act is to section 100;
- (g) in addition to the matters mentioned in section 207(2) of the Companies Act, an auditor must, in a report under section 207 of that Act as applied by this subsection, state, in the case of an umbrella VCC — 10
 - (i) whether the financial statements and the consolidated financial statements (if applicable), in the auditor's opinion, comply with section 100(2) and (4), respectively; and 15
 - (ii) if the auditor is not satisfied as to the matter in sub-paragraph (i), the auditor's reasons for not being so satisfied;
- (h) the reference in section 207(3)(b) of the Companies Act to section 199(1) of that Act is to section 199(1) of that Act as applied by section 99(1), and section 99(2)(a); 20
- (i) the reference in section 207(5) of the Companies Act to a related company is to a company that is a related corporation of the VCC; 25
- (j) the reference in section 207(9A) of the Companies Act to a public company is to the VCC;
- (k) the reference in section 207(9A) of the Companies Act to officers of a company is to the officers and manager of the VCC; 30
- (l) the reference in section 207(9A) of the Companies Act to employees of a company is to employees of the VCC and persons engaged by the VCC to provide any fund administration service;

(*m*) the reference in section 208A of the Companies Act to section 76A(13) of that Act is omitted.

(4) The following provision applies in place of section 207(11) of the Companies Act (which excludes certain registers to which an auditor of a company may have access):

“The reference to registers in subsections (5), (6) and (10) does not include any register kept by the VCC, by a subsidiary corporation of a parent company, or by a corporation, pursuant to a direction under Part 7, or a requirement under Part XIA of the Companies Act.”.

(5) Section 209 of the Companies Act applies in relation to an auditor of a borrowing VCC as it applies in relation to an auditor of a borrowing corporation within the meaning of that Act, except that a reference to that Act is to this Act.

PART 9

INVESTIGATIONS

Interpretation of this Part

110.—(1) This section applies for the interpretation of the provisions of this Part, including provisions of the Companies Act applied by this Part.

(2) A reference to a declared VCC is to a VCC declared by an order under section 111 as a VCC to which this Part applies.

(3) A reference to an officer or agent of a corporation that is not a VCC includes —

(*a*) a director, a banker, a solicitor or an auditor of the corporation;

(*b*) a person who at any time —

(i) has been a person mentioned in paragraph (*a*); or

(ii) has been otherwise employed or appointed by the corporation;

(c) a person who —

- (i) has in the person's possession any property of the corporation;
- (ii) is a creditor of the corporation; or
- (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

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(d) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (c) — that person.

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(4) Except as otherwise provided in section 116(c), a reference to an officer or agent of a corporation that is a VCC includes —

- (a) a director, a banker, a solicitor or an auditor of the VCC or a person who has been such a person at any time;
- (b) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC, or a person who has been such a person at any time;
- (c) a person who has been otherwise employed or appointed at any time by the VCC;

15

(d) a person who —

20

- (i) has in the person's possession any property of the VCC;
- (ii) is a creditor of the VCC; or
- (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the VCC; and

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(e) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (d) — that person.

Power to declare VCC

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111. The Minister may by order declare that a VCC is one to which this Part applies if the Minister is satisfied —

(a) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the VCC, it is desirable that the affairs of the VCC should be investigated under this Part;

5 (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the VCC should be investigated under this Part; or

10 (c) that for any other reason it is in the public interest that the affairs of the VCC should be investigated under this Part.

Appointment and powers of inspector

15 **112.**—(1) Where a VCC has been declared as a VCC to which this Part applies, the Minister must appoint one or more inspectors to investigate the affairs of that VCC, and to report his or her opinion on those affairs to the Minister.

20 (2) Sections 231(2) to (9) and 239 of the Companies Act apply in relation to an inspector appointed under subsection (1) and an investigation mentioned in that subsection, as they apply in relation to an inspector appointed under section 231(1) of that Act and an investigation mentioned in that provision, subject to section 5 and the following modifications:

(a) if the investigation relates solely to a sub-fund of an umbrella VCC, then —

25 (i) any expenses ordered to be paid by the VCC under section 231(4) of the Companies Act are to be paid out of the assets of the sub-fund only; and

30 (ii) if the sub-fund is in liquidation or subsequently goes into liquidation, those expenses are treated as part of the costs and expenses of the winding up of the sub-fund for the purposes of section 328(1)(a) of the Companies Act as applied by section 33;

(b) the reference in section 231(4) of that Act to section 233(4) of that Act is to section 114(5).

Investigation of affairs of VCC by inspectors at direction of Minister

113.—(1) The Minister may, on an application mentioned in subsection (2) or (3), appoint one or more inspectors to investigate the affairs of a VCC or such aspects of the affairs of the VCC as are specified in the instrument of appointment, and to report on those affairs or aspects in such manner as the Minister directs.

(2) For an investigation into any matter other than one specified in subsection (3), the Minister may exercise the power under subsection (1) —

(a) on the application of —

(i) not less than 200 members (excluding the VCC itself or a subsidiary of the VCC if the VCC or subsidiary, as the case may be, is registered as a member) or of members holding not less than 10% of the shares issued (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any); or

(ii) holders of debentures holding not less than 20% in nominal value of all debentures issued by the VCC; or

(b) on the application of the VCC pursuant to a special resolution.

(3) For an investigation that relates solely to a sub-fund of an umbrella VCC, the Minister may exercise the power under subsection (1) —

(a) on the application of —

(i) not less than 200 members holding shares that are issued in respect of that sub-fund;

(ii) members holding not less than 10% of the shares that are issued in respect of that sub-fund (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any); or

(iii) holders of debentures holding not less than 20% in nominal value of all debentures issued in respect of that sub-fund by the VCC; or

(b) on the application of the VCC pursuant to a resolution passed, in accordance with the VCC's constitution, by one or more members holding shares that represent —

(i) at least 75%; or

(ii) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members holding shares that are issued in respect of that sub-fund who have the right to vote on that resolution.

(4) An application under this section must be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation.

(5) The Minister may, before appointing an inspector, require the applicants to give security for such amount as the Minister thinks fit for payment of the cost of the investigation.

Reports of inspectors

114.—(1) An inspector appointed by the Minister may and, if so directed by the Minister must, make one or more interim reports to the Minister.

(2) On the conclusion of an investigation, the inspector must make a report to the Minister of —

(a) the inspector's opinion on or in relation to the affairs that the inspector is appointed to investigate; and

(b) the facts upon which that opinion is based.

(3) Subject to section 233(1B) of the Companies Act as applied by subsection (4), the Minister must forward one copy of the report to each of the following:

(a) the VCC at its registered office;

- (b) the applicant for the investigation under section 113, but only if the applicant requests for it.

(4) Subject to section 5, sections 233(1A) to (3) and 238 of the Companies Act apply in relation to a report under subsection (1) or (2) as they apply in relation to a report mentioned in section 233(1) of that Act.

(5) If from a report of an inspector, it appears to the Minister that proceedings ought in the public interest to be brought by the VCC that is the subject of, or whose sub-fund is the subject of, the report —

- (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct —

(i) in connection with the promotion or formation of the VCC or sub-fund; or

(ii) in the management of the affairs of the VCC or the affairs of the sub-fund; or

- (b) for the recovery of any property of the VCC or sub-fund which has been misapplied or wrongfully retained,

the Minister may himself or herself bring proceedings for that purpose in the name of the VCC.

Investigation of affairs of related corporation

115. Where an inspector thinks it necessary for the purpose of an investigation of the affairs of a VCC to investigate the affairs of a corporation that is or has at any relevant time been a related corporation of the VCC, the inspector may, with the written consent of the Minister, investigate the affairs of that corporation.

Procedure and powers of inspector

116. Section 236 of the Companies Act applies in relation to an investigation of the affairs of a VCC under this Part as it applies in relation to an investigation of the affairs of a company under Part IX of that Act, subject to section 5 and the following modifications:

- (a) a reference in section 236(1) and (4A) of the Companies Act to a corporation which is or has at any

relevant time been deemed to be or to have been related to the company by virtue of section 6 of that Act, is to the VCC's related corporation;

(b) subject to paragraph (c), a reference in section 236 of the Companies Act to an officer or agent of a corporation whose affairs are being investigated is to an officer or agent of the VCC or the VCC's related corporation;

(c) a reference in section 236(3) of the Companies Act to an officer or agent of a corporation is to —

(i) an officer or agent of the VCC or of the VCC's related corporation as defined in section 110(3) or (4) (as the case may be) that is an individual;

(ii) an officer of the manager of the VCC, or of the manager of the VCC's related corporation (being also a VCC);

(iii) an officer of the custodian of the VCC, or of the custodian of the VCC's related corporation (if the VCC or related corporation is a non-umbrella VCC);

(iv) an officer of the custodian of a sub-fund of the VCC, or of the custodian of a sub-fund of the VCC's related corporation (if the VCC or related corporation is an umbrella VCC);

(d) a reference in section 236(4A) and (5) of the Companies Act to a director or past director of the company or the corporation whose affairs are being investigated, is to a person who is or was —

(i) a director of the VCC or the VCC's related corporation;

(ii) the manager of the VCC or of the VCC's related corporation (being also a VCC); or

(iii) the custodian of the VCC (being a non-umbrella VCC) or of the VCC's related corporation (being also a non-umbrella VCC).

Costs of investigations

117.—(1) Section 237 of the Companies Act applies in relation to an investigation of the affairs of a VCC under section 113 or 120 and any proceedings brought by the Minister in the name of the VCC, as it applies in relation to an investigation and proceedings mentioned in subsection (1) of that section, subject to section 5 and subsection (2). 5

(2) The expenses of and incidental to an investigation under section 113 or 120 that relates solely to a sub-fund of an umbrella VCC (including the costs of any proceedings brought by the Minister in the name of the umbrella VCC in relation to such investigation) are to be paid — 10

(a) out of the assets of the sub-fund; or

(b) if the Minister so directs —

(i) by the applicant for the investigation; or

(ii) in part out of such assets and in part by the applicant, 15

and section 237(2) of the Companies Act (as applied by subsection (1)) applies accordingly.

Suspension of actions and proceedings in respect of VCC

118.—(1) Section 240 of the Companies Act applies in relation to a declared VCC as it applies in relation to a declared company under Part IX of that Act, subject to section 5 and subsection (2). 20

(2) Where the investigation relates solely to a sub-fund of an umbrella VCC that is a declared VCC, then section 240 of the Companies Act only applies to an action or proceeding in respect of any instrument mentioned in that section that is made, drawn or accepted by, or issued, transferred, negotiated or endorsed by or to the VCC on behalf of the sub-fund. 25

Winding up of VCC

119.—(1) An application to the Court for the winding up of a declared VCC may be made by the Minister at any time after a report has been made by an inspector in respect of the VCC (but not one mentioned in subsection (2)), whereupon the provisions of this Act as 30

to the winding up of a VCC apply with the necessary modifications, as if an application for such winding up had been made by the VCC to the Court.

(2) An application to the Court for the winding up of a sub-fund of an umbrella VCC that is a declared VCC may be made by the Minister at any time after a report has been made by an inspector in respect of the sub-fund, whereupon the provisions of this Act as to the winding up of a sub-fund of a VCC apply with the necessary modifications, as if an application for such winding up had been made by the VCC to the Court.

Appointment and powers of inspectors to investigate ownership of VCC

120.—(1) Where it appears to the Minister that there is good reason to do so, the Minister may appoint one or more inspectors to investigate and report on the membership of any VCC (whether or not it is a declared VCC), and otherwise for the purpose of determining the true persons who are or have been —

(a) financially interested in the success or failure (real or apparent) of the VCC; or

(b) able to control or materially influence the policy of the VCC.

(2) An application may be made to the Minister for an investigation with respect to particular shares in or debentures of any VCC (whether or not it is a declared VCC), for the purpose mentioned in subsection (1), by —

(a) in a case other than one mentioned in paragraph (b) —

(i) not less than 200 members (excluding the VCC itself or a subsidiary of the VCC if the VCC or the subsidiary, as the case may be, is registered as a member); or

(ii) members holding not less than 10% of the shares issued (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any); or

(b) in a case where the shares or other matter in question relate solely to a sub-fund of a VCC —

- (i) not less than 200 members holding shares that are issued in respect of that sub-fund; or
- (ii) members holding not less than 10% of the shares that are issued in respect of that sub-fund (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any).

5

(3) On an application made under subsection (2), the Minister must appoint an inspector or inspectors to conduct an investigation, unless the Minister is satisfied that the application is vexatious.

10

(4) An inspector appointed pursuant to an application made under subsection (2) may investigate any matter which the application seeks to have investigated, except insofar as the Minister is satisfied that it is unreasonable for that matter to be investigated.

15

(5) Subject to section 5, section 243(2) and (4) of the Companies Act applies, with the necessary modifications in relation to an investigation under this section as it applies in relation to an investigation under that section.

(6) The provisions of this Part applicable to an investigation into the affairs of a declared VCC apply to an investigation under this section, subject to the necessary modifications and the following further modifications:

20

(a) a reference in this Part (including a provision of the Companies Act applied by this Part) to an officer or agent of a VCC or other corporation is to a person who is or has been, or whom the inspector has reasonable cause to believe to be or to have been —

25

- (i) financially interested in the success or failure or the apparent success or failure of the VCC or any other corporation the membership of which is investigated with that of the VCC; or

30

(ii) able to control or materially influence the policy of that VCC or corporation,

and a person concerned only on behalf of others; and

(b) the Minister is not bound to furnish to the VCC or any other person a copy of any report by an inspector appointed under this section if the Minister is of the opinion that there is good reason for not divulging the contents of the report or any part of it, but may (if the Minister thinks fit) cause to be kept by the Registrar a copy of the report or (as the case may be) the parts of the report, as respects which the Minister is not of that opinion.

Power to require information as to persons interested in shares or debentures

121.—(1) Where it appears to the Minister that —

(a) there is good reason to investigate the ownership of any shares in or debentures of a VCC; and

(b) it is unnecessary to appoint an inspector for the purpose, the Minister may require any person whom the Minister has reasonable cause to believe to have or to be able to obtain any information as to —

(c) the present and past interests in those shares or debentures; and

(d) the names and addresses of the persons interested and of any person who act or have acted on their behalf in relation to the shares or debentures,

to give such information to the Minister.

(2) Subject to section 5, section 244(2) to (7) of the Companies Act applies for the purposes of subsection (1) as it applies for the purposes of section 244(1) of that Act.

(3) For the purposes of subsection (1) and the provisions of the Companies Act applied by subsection (2), a book-entry security is treated as an interest in a share.

Power to impose restrictions on shares or debentures

122.—(1) Subject to section 5 and subsection (2), section 245 of the Companies Act applies in relation to an investigation under section 120 or 121 as it applies in relation to an investigation under section 243 or 244 of that Act.

5

(2) Where the investigation relates solely to a sub-fund of an umbrella VCC, then the reference in section 245(1)(d) of the Companies Act to a liquidation is to a liquidation of the sub-fund.

Inspectors appointed in other countries

123.—(1) Where —

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- (a) under a corresponding law of another country, an inspector has been appointed to investigate the affairs of a VCC; and
- (b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

15

the Minister may by notice declare that the inspector so appointed has the same powers and duties in Singapore in relation to the investigation as if the VCC were a declared VCC.

(2) Upon the declaration, the inspector has the powers and duties mentioned in subsection (1).

20

Miscellaneous provisions

124.—(1) Subject to section 5, sections 242 and 389 (as it applies to an investigation under this Part) of the Companies Act apply in relation to this Part as they apply in relation to Part IX of the Companies Act.

25

(2) An inspector appointed under this Part must not require a solicitor to disclose any privileged communication made to the solicitor in that capacity, except as respects the name and address of the solicitor's client.

PART 10

RECEIVERS AND MANAGERS

Application of Part VIII of Companies Act

5 **125.**—(1) Part VIII of the Companies Act applies in relation to a receiver or manager of the property of a VCC or a particular sub-fund of an umbrella VCC, as it applies in relation to a receiver or manager of the property of a company or corporation, subject to section 5, the modifications set out in this section and sections 126, 127 and 128.

10 (2) A reference in a provision of Part VIII of the Companies Act to the assets, property, debts, liabilities or creditors of a company or other corporation is to the assets, property, debts, liabilities or creditors of the VCC or of the sub-fund, as the case may be.

15 (3) Except as otherwise stated in this section and sections 126, 127 and 128, a reference in a provision of Part VIII of the Companies Act to the company is to the VCC.

(4) In addition to the persons mentioned in section 217(1) of the Companies Act, the following persons are also not qualified to be appointed as a receiver of the property of the VCC or the sub-fund of the VCC, and must not act as such:

20 (a) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC;

 (b) a director, a secretary or an employee of such manager or custodian.

25 (5) Section 217(3) of the Companies Act is omitted.

(6) The reference in section 218(1) of the Companies Act to the rights of a receiver or other authorised person against the company is to the rights of a receiver or other authorised person against the VCC or the umbrella VCC in respect of the sub-fund, as the case may be.

30 (7) A reference in section 218(4) or 223(1)(c) of the Companies Act to holders of debentures of the company is to holders of debentures of the VCC or of the sub-fund, as the case may be.

(8) The following provision applies in place of section 219(1) of the Companies Act (which enables the Court to fix the remuneration of a receiver or manager of a company):

“The Court may —

- (a) on an application by the liquidator of a VCC, by order 5
fix the amount to be paid as remuneration to a person
who, under a power contained in any instrument, has
been appointed as receiver or manager of the property
of the VCC or its sub-fund; or
- (b) on an application by the liquidator of a sub-fund, by 10
order fix the amount to be paid as remuneration to a
person who, under a power contained in any
instrument, has been appointed as receiver or
manager of the property of the sub-fund.”.

(9) The following provision applies in place of section 220 of the 15
Companies Act (which is about the appointment of a company’s
liquidator as receiver of the company):

“Where an application is made to the Court to appoint a receiver
on behalf of holders of debentures or other creditors of —

- (a) a VCC; or 20
- (b) a sub-fund,

which is being wound up by the Court, the Court may appoint the
liquidator as such receiver.”.

(10) A reference in sections 223(1) and 224 of the Companies Act to 25
a statement in the prescribed form as to the affairs of a company or of
any particulars concerning a company in the statement, is to a
statement in the prescribed form as to the affairs of the VCC or of the
sub-fund (as the case may be), or of those particulars concerning the
VCC or the sub-fund, as the case may be.

(11) The reference in section 223(3) of the Companies Act to the 30
winding up of the company is to the winding up of the VCC or the
sub-fund, as the case may be.

(12) The reference in section 224(2)(a) and (d) of the Companies
Act to an officer of the company is to —

(a) where the statement in that provision is to be submitted to the receiver of the property of a VCC — an officer or the manager of the VCC or the custodian of the VCC (being a non-umbrella VCC);

5 (b) where the statement in that provision is to be submitted to the receiver of the property of a sub-fund — an officer or the manager of the VCC or the custodian of the sub-fund.

(13) The reference in section 224(2)(b) of the Companies Act to persons who have taken part in the formation of the company is to
10 persons who have taken part in the formation of the VCC or the sub-fund, as the case may be.

(14) The reference in section 224(2)(c) of the Companies Act to a person in the employment of the company is to a person in the employment of the VCC, or a person engaged by the VCC to provide
15 any fund administration service.

(15) An application under section 225(2) of the Companies Act for the audit of the accounts of the receiver or manager of the property of the VCC may be made by the VCC or a creditor of the VCC.

(16) An application under section 225(2) of the Companies Act for
20 the audit of the accounts of the receiver or manager of the property of the sub-fund may be made by the umbrella VCC of which the sub-fund is a part, or a creditor of the sub-fund.

(17) A reference in section 225(3) of the Companies Act to a request of the company or corporation or a creditor is to a request of the VCC,
25 the umbrella VCC of which the sub-fund is a part, or a creditor of the VCC or the sub-fund, as the case may be.

Statement that receiver appointed

126.—(1) This section applies in place of section 222 of the Companies Act.

30 (2) Where a receiver or manager of the property of a VCC has been appointed, every invoice order for goods or business letter issued by or on behalf of —

(a) the VCC or any of its sub-funds;

- (b) the receiver or manager of the property of the VCC or any of its sub-funds (if applicable); or
- (c) the liquidator of the VCC or any of its sub-funds (if applicable),

being a document in which the name of the VCC or any of its sub-funds appears, must contain a statement immediately following the name of the VCC or sub-fund, that a receiver or manager has been appointed in respect of the property of the VCC.

5

(3) Where a receiver or manager of the property of a sub-fund of an umbrella VCC has been appointed, every invoice order for goods or business letter issued by or on behalf of —

10

- (a) the umbrella VCC for the sub-fund;
- (b) the receiver or manager of the property of the sub-fund; or
- (c) the liquidator of the sub-fund,

being a document in which the name of the sub-fund appears, must contain a statement immediately following the name of that sub-fund, that a receiver or manager has been appointed in respect of the property of the sub-fund.

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(4) To avoid doubt, subsections (2) and (3) apply cumulatively in a case where a receiver or manager has been appointed in respect of the property of an umbrella VCC, and the same or another receiver or manager has been appointed in respect of the property of any of its sub-funds.

20

(5) If subsection (2) or (3) is contravened, the VCC and each of the following shall be guilty of an offence:

25

- (a) every officer of the VCC who knowingly and wilfully authorises or permits the default;
- (b) the liquidator of the VCC or the sub-fund (as the case may be), if he or she knowingly and wilfully authorises or permits the default;
- (c) the receiver or manager of the property of the VCC or the sub-fund (as the case may be), if he or she knowingly and wilfully authorises or permits the default.

30

**Payment of certain debts out of assets subject to floating charge
in priority to claims under charge**

127.—(1) This section applies in place of section 226 of the Companies Act.

(2) Where —

(a) a receiver is appointed on behalf of the holders of any debentures of a VCC secured by a floating charge; or

(b) possession is taken, by or on behalf of holders of debentures of a VCC, of any property of a VCC comprised in or subject to a floating charge,

then, if the VCC is not at the time in the course of being wound up, the following:

(c) debts which in every winding up of a VCC are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments;

(d) any amount which in the winding up of a VCC is payable pursuant to section 328(4) or (6) of the Companies Act as applied by section 130,

must be —

(e) paid out of any assets coming in to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures; and

(f) paid in the same order of priority as prescribed by section 328 of the Companies Act (as applied by section 130) in respect of those debts and amount.

(3) Where —

(a) a receiver is appointed on behalf of the holders of any debentures of a particular sub-fund of an umbrella VCC secured by a floating charge; or

(b) possession is taken, by or on behalf of holders of debentures of a particular sub-fund of an umbrella VCC, of any property comprised in or subject to a floating charge, then, if the sub-fund is not at the time in the course of being wound up, the following:

5

(c) debts which in every winding up of a sub-fund are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments;

(d) any amount which in the winding up of a sub-fund is payable pursuant to section 328(4) or (6) of the Companies Act as applied by section 33,

10

must be —

(e) paid out of any assets coming in to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures; and

15

(f) paid in the same order of priority as prescribed by section 328 of the Companies Act (as applied by section 33) in respect of those debts and amount.

(4) For the purposes of subsections (2) and (3) —

20

(a) a floating charge is a charge which, as created, was a floating charge; and

(b) a reference in section 328(1)(c), (d), (e), (f) and (g) of the Companies Act (as applied by section 33 or 130, as the case may be) to the commencement of the winding up is to the date of the appointment of the receiver or of the possession being taken as described in subsection (2) or (3), as the case may be.

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(5) Any payments made under this section must be recouped, as far as possible, out of the assets of the VCC or the sub-fund (as the case may be) that are available for payment of general creditors.

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Enforcement of duty of receiver, etc., to make returns

128.—(1) This section applies in place of section 227 of the Companies Act.

(2) If a receiver or manager of the property of a VCC that is a non-umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

(a) a member of the VCC;

(b) a creditor of the VCC; or

(c) a trustee for holders of debentures of the VCC,

the Court may, on an application by the person who gave the notice, make an order directing the receiver or manager to make good the default within the time specified in the order.

(3) If a receiver or manager of the property of an umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

(a) a creditor of the umbrella VCC; or

(b) a trustee for holders of debentures of the umbrella VCC,

the Court may, on an application by the person who gave the notice, make an order directing the receiver or manager to make good the default within the time specified in the order.

(4) If a receiver or manager of the property of a particular sub-fund of an umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

(a) a member of the umbrella VCC holding shares issued in respect of the sub-fund;

(b) a creditor of the sub-fund; or

(c) a trustee for holders of debentures of the sub-fund,
the Court may, on an application by the person who gave the notice,
make an order directing the receiver or manager to make good the
default within the time specified in the order.

(5) If it appears that a receiver or manager of the property of a VCC — 5

(a) has misapplied, retained or become liable or accountable
for any money or property of the VCC; or

(b) has been guilty of any misfeasance or breach of trust or duty
in relation to the VCC, 10

the Court may, on an application by a creditor or contributory or the
liquidator of the VCC, examine the conduct of the receiver or manager
and compel him or her to —

(c) repay or restore the money or property or part of it with
interest at such rate as the Court thinks just; or 15

(d) contribute such sum to the assets of the VCC by way of
compensation in respect of the misapplication, retainer,
misfeasance or breach of trust or duty, as the Court thinks
just.

(6) If it appears that a receiver or manager of the property of a particular sub-fund of an umbrella VCC — 20

(a) has misapplied, retained or become liable or accountable
for any money or property of the sub-fund; or

(b) has been guilty of any misfeasance or breach of trust or duty
in relation to the property of the sub-fund, 25

the Court may, on an application by a creditor or contributory or the
liquidator of the sub-fund, examine the conduct of the receiver or
manager and compel him or her to —

(c) repay or restore the money or property or part of it with
interest at such rate as the Court thinks just; or 30

(d) contribute such sum to the assets of the sub-fund by way of
compensation in respect of the misapplication, retainer,

misfeasance or breach of trust or duty, as the Court thinks just.

(7) This section has effect whether or not the act in question is one for which the receiver or manager is criminally liable.

PART 11

WINDING UP

Disqualification of liquidators

129.—(1) Subject to this section, a person must not, except with the leave of the Court, consent to be appointed, and must not act as liquidator of a VCC —

- (a) if the person is not an approved liquidator;
- (b) if the person is indebted to the VCC, any sub-fund of the VCC or a related corporation of the VCC in an amount exceeding \$2,500;
- (c) if the person is —
 - (i) an officer of the VCC;
 - (ii) a partner, an employer or an employee of an officer of the VCC;
 - (iii) a partner or an employee of an employee of an officer of the VCC;
 - (iv) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC; or
 - (v) an officer or employee of such manager or custodian;
- (d) if the person is an undischarged bankrupt;
- (e) if the person has assigned the person's estate for the benefit of the person's creditors or has made an arrangement with the person's creditors pursuant to any law relating to bankruptcy; or

- (f) if the person has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.

(2) Subsection (1)(a) and (c) does not apply to —

- (a) a members' voluntary winding up; or 5
- (b) a creditors' voluntary winding up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which 7 days' notice has been given to every creditor stating the object of the meeting, it is determined that that 10
provision does not so apply.

(3) For the purposes of subsection (1) —

- (a) a person is treated as an officer of a VCC if the person is an officer of a related corporation of the VCC or has, at any time within the preceding period of 24 months, been an officer or a promoter of the VCC or of such a corporation; 15
and
- (b) a person is treated as a manager of the VCC, a custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC if it has, at any time within the 20
preceding period of 24 months, been such manager or custodian.

(4) A person must not be appointed as liquidator of a VCC unless the person has prior to such appointment consented in writing to act as such liquidator. 25

(5) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(6) In this section —

- (a) a person is an approved liquidator if — 30
 - (i) the person falls within a class of persons declared as approved liquidators under section 9(1) of the Companies Act; or

(ii) the person has been approved under section 9(2) of the Companies Act as a liquidator and the approval has not been revoked; and

(b) a person is indebted to a sub-fund if the debt is incurred in relation to the sub-fund.

Application of Part X of Companies Act

130.—(1) Part X and section 389 (as it applies to the provisions in Part X) of the Companies Act apply in relation to the winding up of a VCC as they apply in relation to the winding up of a company limited by shares, subject to section 5 and the modifications in this section.

(2) Sections 250(1)(f), (2) and (3), 253(2)(b), 257(3), 288 and 342(7) and Divisions 5 and 6 of Part X of the Companies Act are omitted.

(3) Subject to subsection (5), a reference to an officer of a company in the following:

(a) Division 2 of Part X of the Companies Act (other than section 285(1) and (2));

(b) Subdivision (4) of Division 4 of Part X of that Act (other than section 339(1));

(c) sections 344(4)(a) and 344A(7)(a) of that Act,

is a reference to —

(d) an officer of the VCC;

(e) the manager of the VCC; and

(f) the custodian of the VCC (being a non-umbrella VCC).

(4) A reference in section 285(1) and (2) of the Companies Act to an officer of the company is to an officer of the VCC, an officer of the manager of the VCC or an officer of the custodian of the VCC (being a non-umbrella VCC).

(5) A reference in section 286(1) of the Companies Act to the making of a direction to an officer or former officer of a company to attend before the Court for examination, is to the making of such direction to any officer or former officer of the VCC, any officer of the manager of the VCC, or any officer of the custodian of the VCC (being a non-umbrella VCC), whether or not the report mentioned in that provision states that an act mentioned in that provision has been committed by that officer, former officer, manager or custodian. 5

(6) In section 254(4) of the Companies Act —

(a) the reference to employees of a company is to employees of the VCC and any person engaged by the VCC to provide any fund administration service; and 10

(b) the reference to a chief executive officer is omitted.

(7) The following provision applies in place of section 253(1) of the Companies Act (which sets out who may apply to the Court for the winding up of a company): 15

“AVCC, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:

(a) the VCC; 20

(b) any creditor, including a contingent or prospective creditor, of the VCC;

(c) a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory; 25

(d) the liquidator;

(e) the Minister pursuant to section 119(1);

(f) the Minister on a ground specified in paragraph (c), (j), (l), (m) or (n) of the provision that replaced section 254(1) of the Companies Act under subsection (8); 30

- (g) MAS on a ground specified in paragraph (o) of the provision that replaced section 254(1) of the Companies Act under subsection (8).”.

(8) The following provision applies in place of section 254(1) of the Companies Act (which sets out the grounds on which the Court may order a company to be wound up):

“The Court may order the winding up of a VCC if —

- (a) the VCC has by special resolution resolved that it be wound up by the Court;

- (b) the VCC does not commence business within a year starting on the date of its incorporation or suspends its business for a whole year;

- (c) the VCC has no member;

- (d) the VCC is unable to pay its debts;

- (e) MAS has under section 288 of the Securities and Futures Act revoked or withdrawn the authorisation of the collective investment scheme constituted as the VCC;

- (f) the directors have acted in the affairs of the VCC in their own interests rather than in the interests of the members as a whole, or in any other manner which appears to be unfair or unjust to other members;

- (g) an inspector appointed under Part 9 has reported that he or she is of the opinion —

- (i) that the VCC cannot pay its debts and should be wound up; or

- (ii) that it is in the interests of the public or of the shareholders or of the creditors that the VCC should be wound up;

- (*h*) when the period, if any, fixed for the duration of the VCC by the constitution expires or the event, if any, happens on the occurrence of which the constitution provides that the VCC is to be dissolved;
- (*i*) the Court is of the opinion that it is just and equitable that the VCC be wound up; 5
- (*j*) the VCC has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling; 10
- (*k*) the VCC is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or the national interest;
- (*l*) the VCC, being a foreign corporate entity that was registered as a VCC under section 135(1), has breached any of the conditions imposed under that section for its registration; 15
- (*m*) the VCC has conducted business outside the scope of its sole object in section 15; 20
- (*n*) the VCC has contravened section 46 for no less than the period prescribed by regulations under section 165; or
- (*o*) the VCC has —
 - (i) contravened a direction issued under section 83(1) or 84(1); or 25
 - (ii) contravened section 84(3), or any regulation made under section 83(1) or 84(1).”.

(9) A reference in a provision of the Companies Act as applied by this section in the first column of the following table, to a paragraph of section 254(1) of that Act in the second column of the table, is to the paragraph of the provision that replaces section 254(1) of the Companies Act in subsection (8) and is opposite the firstmentioned paragraph in the third column of the table: 30

Provision of Companies Act that is applied by this section	Paragraph of section 254(1) of Companies Act	Paragraph of provision in subsection (8)
Section 253(2)(a)	Paragraph (a)	Paragraph (a)
	Paragraph (b)	—
	Paragraph (c)	Paragraph (b)
	Paragraph (e)	Paragraph (d)
	Paragraph (i)	Paragraph (i)
Sections 254(3) and (4), 263(da) and 322A	Paragraph (m)	Paragraph (k)

(10) The reference in section 268(4) of the Companies Act to treasury shares is to shares held by a subsidiary of the VCC under section 22(6) or (11) (if any).

(11) The following provision applies in place of section 281(1) of the Companies Act (which enables the Court to direct a contributory to pay to a company moneys due from the contributory and the extent to which set-off is allowed):

“The Court may make an order directing any contributory on the list of contributories to pay to the VCC, in the manner directed by the order, any money due from the contributory or from the estate of the person whom the contributory represents (excluding any money payable by the contributory or the estate by virtue of any call in pursuance of this Act), and when all the creditors are paid in full, any money due on any account to a contributory from the VCC may be allowed to the contributory by way of set-off against any subsequent call.”.

(12) A reference in sections 286 and 287 of the Companies Act to the affairs of the company is to the affairs of the VCC.

(13) The reference in section 287 of the Companies Act to a contributory, director or former director of a company is to —

- (a) a contributory, director or former director of a VCC; or
- (b) a director or former director of a manager or custodian of the VCC (being a non-umbrella VCC).

(14) Rules made under section 164 may make provision enabling or requiring all or any of the powers and duties conferred and imposed on the Court by Part X of the Companies Act (as applied by this section) in respect of —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; 5
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator; 10
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved, 15

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator may not, except with the special leave of the Court, rectify the register of members, or make any call except with the special leave of the Court or the sanction of the committee of inspection. 20

(15) A reference in section 289(1) or 305 of the Companies Act to any power of, given to or conferred on the Court or the liquidator under or by that Act is to any power of, given to or conferred on the Court or the liquidator (as the case may be) under or by a provision of this Act (including by a provision of the Companies Act applied by this Act). 25

(16) The reference in section 257(2)(b), 270(4), 274(1), 288 or 298(3) of the Companies Act to rules is to rules made under section 164.

(17) The reference in section 313(5) of the Companies Act to an officer of a company is to an officer or the manager of the VCC, or the custodian of the VCC (being a non-umbrella VCC). 30

(18) The reference in section 313(5) of the Companies Act to an agent of a company is to an agent of the VCC, and includes a person engaged by the VCC to provide any fund administration service.

(19) The reference in section 322 of the Companies Act to the Companies Liquidation Account is to a VCC Liquidation Account.

(20) The reference in section 328(8) of the Companies Act to 29 December 1967 is to the date of commencement of this Act.

(21) The reference in section 328(9)(a) of the Companies Act to reconstruction or amalgamation of a company with another company is to the reconstruction or amalgamation of the VCC with a company or another VCC.

(22) A reference in section 331 of the Companies Act to an acquisition or sale of any property, business or undertaking from or to a company includes any such acquisition or sale from or to a VCC, and that section applies accordingly.

(23) The reference in section 339(1) of the Companies Act to an investigation under any other Part of the Companies Act is to an investigation under any other Part of this Act.

(24) The following provision applies in place of section 339(2) of the Companies Act (which sets out when proper books of accounts are considered not to have been kept by a company under section 339(1) of that Act):

“For the purposes of section 339(1), proper books of account are considered not to have been kept if —

(a) there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the VCC, including —

(i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and

(ii) where the trade or business involved dealings in goods, statements of the annual stocktakings and of all goods sold and purchased, showing

the goods and the buyers and sellers of those goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

- (b) such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the VCC has appointed an auditor.”.

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(25) The reference in section 342(6) of the Companies Act to an agent of a company is to an agent of the VCC, and includes —

- (a) a banker or solicitor of the VCC;
- (b) any person employed by the VCC as an auditor, whether or not an officer of the VCC; and
- (c) any person engaged by the VCC to provide any fund administration service.

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(26) The reference in section 347(1) of the Companies Act to the operation of a previous written law corresponding with section 346 of the Companies Act or of a law of a designated country corresponding with section 354 of the Companies Act is omitted.

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(27) The reference in section 348 of the Companies Act to the operation of a previous written law corresponding with Subdivision (5) of Division 4 of Part X of the Companies Act is omitted.

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PART 12

TRANSFER OF REGISTRATION

Foreign corporate entities to which this Part applies

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131. This Part applies to a foreign corporate entity that intends to be registered as a VCC under this Act.

Interpretation of this Part

132. In this Part, unless the context otherwise requires —

“date of registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC, means the date of

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registration of the foreign corporate entity specified in the notice of transfer of registration;

“foreign corporate entity” means a body corporate that is incorporated outside Singapore, and that comprises one or more collective investment schemes;

“notice of transfer of registration” means the notice of transfer of registration issued under section 135(3);

“place of incorporation” means, in the case of a foreign corporate entity that had transferred its domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

“registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC under this Part, means registration by the Registrar under section 135(1), and “register” and “registered” are to be construed accordingly.

Name of VCCs to be registered under this Part

133.—(1) A foreign corporate entity that intends to be registered as a VCC under this Act must apply to reserve the name of the intended VCC.

(2) Section 21 applies to and in respect of an application under subsection (1) as if it were an application to reserve the name of an intended VCC under that section.

(3) A foreign corporate entity must not be registered under section 135(1) unless the name which it is proposed to be registered has been reserved under section 21, as applied by subsection (2).

Application for registration

134.—(1) A foreign corporate entity may apply to the Registrar to be registered as a VCC under this Act.

(2) An application under subsection (1) —

(a) must be made in such form and manner, and contain such particulars, as may be prescribed; and

(b) must be accompanied by —

- (i) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation; 5
- (ii) the constitution by which the foreign corporate entity proposes to be registered;
- (iii) the name of the manager and directors of the proposed VCC;
- (iv) such other documents as may be prescribed; and 10
- (v) the prescribed fee.

(3) The Registrar may require an applicant to furnish to the Registrar such further information or documents as the Registrar may require.

Registration

135.—(1) Subject to section 136, upon compliance by the foreign corporate entity with section 134, the Registrar may, if he or she thinks fit, register the foreign corporate entity as a VCC by registering its constitution. 15

(2) The registration of the foreign corporate entity is subject to such conditions that the Registrar may impose. 20

(3) Upon registration of the foreign corporate entity, the Registrar must issue a notice of transfer of registration in the prescribed form stating that the entity is, on and starting on the date specified in the notice —

(a) registered by way of transfer of registration under this Act; 25
and

(b) a VCC.

(4) A certificate of confirmation of registration must be issued by the Registrar upon the application of the VCC.

(5) A notice of transfer of registration issued under subsection (3), and a certificate of confirmation of registration issued under subsection (4), is each conclusive evidence — 30

(a) that the foreign corporate entity is registered under this section; and

(b) of the date of the VCC's registration.

(6) A foreign corporate entity registered under this section must, within 60 days after the issue of the notice of transfer of registration under subsection (3), or such further period as may be extended under subsection (7), submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation.

(7) The Registrar may, on the application of the foreign corporate entity registered under this section, extend the 60-day period mentioned in subsection (6) subject to such conditions as the Registrar considers fit.

(8) The Registrar may, at any time in the Registrar's discretion, waive or modify any condition imposed by the Registrar under subsection (2).

(9) Any person aggrieved by —

(a) the refusal of the Registrar to register a foreign corporate entity under subsection (1);

(b) any condition of registration imposed by the Registrar under subsection (2); or

(c) the modification of any condition by the Registrar under subsection (8),

may within 30 days after the date of the refusal to register, or the imposition or modification of the condition, as the case may be, appeal to the Minister whose decision is final.

When registration must be refused

136.—(1) The Registrar must refuse to register a foreign corporate entity if the Registrar is not satisfied that the minimum requirements prescribed for registration have been met and that all other requirements for registration have been complied with.

(2) The Registrar must refuse to register a foreign corporate entity if the Registrar is satisfied that —

- (a) the person named as manager of the proposed VCC does not satisfy section 46(2);
- (b) none of the directors of the proposed VCC is a qualified representative of the manager;
- (c) the proposed VCC is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (d) it would be contrary to national security or the national interest for the proposed VCC to be registered.

(3) Any person aggrieved by the Registrar's decision under subsection (1) or (2) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

Effect of registration

137.—(1) Starting on the date of registration specified in the notice of transfer of registration —

- (a) the foreign corporate entity is treated as a VCC and all provisions of this Act pertaining to a VCC apply with such adaptations, exceptions and modifications as may be specified in the regulations;
- (b) the collective investment schemes of the foreign corporate entity are treated as sub-funds of an umbrella VCC and all provisions of this Act pertaining to sub-funds apply with such adaptations, exceptions and modifications as may be specified in the regulations; and
- (c) if the foreign corporate entity was registered as a foreign company under Division 2 of Part XI of the Companies Act immediately before that date, it ceases to be so registered under Division 2 of that Part despite anything under that Act.

(2) To avoid doubt, the registration of a foreign corporate entity does not —

- (a) create a new legal entity;

(b) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity, or its continuity as a body corporate;

(c) affect the property, or the rights or obligations, of the foreign corporate entity; or

(d) render defective any legal proceedings by or against the foreign corporate entity,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the VCC after the registration.

Revocation of registration

138.—(1) The Registrar may by order revoke the registration of a VCC if the VCC fails to comply with section 135(6).

(2) The Registrar must, before making an order of revocation —

(a) give the VCC notice in writing of the Registrar's intention to revoke the registration;

(b) specify in the notice a period of at least 30 days within which the VCC may make written representations to the Registrar; and

(c) consider the VCC's written representations (if any) that are received by the Registrar within the time specified in the notice.

(3) At the expiration of the time specified in the notice mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, order that the registration of the VCC be revoked.

(4) The Registrar must —

(a) cause a notice of the order of revocation to be published in the *Gazette*; and

(b) serve a copy of the notice of the order of revocation on the VCC which registration is revoked.

(5) Upon publication of the notice of the order of revocation in the *Gazette*, the order of revocation takes effect, and the VCC ceases to be a VCC, and the provisions of this Act cease to apply to the VCC and to its sub-funds (if any).

(6) An order of revocation under subsection (3) is final. 5

(7) Despite the order of revocation in respect of a VCC under subsection (3), the liability, if any, of every officer and member of the VCC continues.

(8) Nothing in this section affects —

(a) the enforcement by any person of any right or claim against the VCC; or 10

(b) the enforcement by the VCC of any right or claim against any person,

whether such right or claim is enforced against, or by the VCC in its own right or in respect of any of its sub-funds. 15

Duty of VCC to register pre-existing charges

139.—(1) If, before the registration of a foreign corporate entity, there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered under Division 8 of Part IV of the Companies Act (as applied by section 42) if the foreign corporate entity had been incorporated as a VCC under this Act, there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the date of registration of the VCC, a statement containing the prescribed particulars of the charge. 20 25

(2) Documents and particulars required to be lodged for registration under subsection (1) may be lodged by the VCC concerned or by any person interested in the documents.

(3) Where registration under subsection (1) is effected by some person other than the VCC concerned, that person is entitled to recover from the VCC the amount of any fees properly paid by him or her for the registration. 30

(4) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

5 (5) To avoid doubt, a failure to comply with subsection (1) does not affect the continuity of status, operation or effect of any security, right, priority or obligation of the charge.

(6) The Court, on being satisfied —

10 (a) that the omission to register a charge requiring registration under subsection (1), or that the omission or misstatement of any particular with respect to such charge, was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders; or

15 (b) that on other grounds it is just and equitable to grant relief, may on the application of the VCC or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the VCC or any of its
20 officers in respect of the default) order that the time for registration be extended or that the omission or misstatement be rectified.

(7) In respect of any charge that is required to be lodged under subsection (1), sections 134, 135, 136 and 138 of the Companies Act (as applied by section 42) apply as if the charge were a charge to
25 which Division 8 of Part IV of the Companies Act (as applied by section 42) applied.

Duties of VCC with respect to issue of certificates

30 **140.**—(1) Within 60 days after the date of registration of a VCC, the VCC must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as at the date of registration.

(2) Section 38(2) applies with the necessary modifications to the duty of the VCC under subsection (1).

(3) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures cease to be operative and cease to have any validity for the purposes of this Act.

(4) Any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the VCC is void.

(5) If any VCC on which a notice has been served requiring the VCC to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him or her, make an order directing the VCC and any officer of the VCC to make good the default within such time as is specified in the order.

(6) An order under subsection (5) may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC in default in such proportions as the Court thinks fit.

Regulations

141. The Minister may make regulations under section 165 in respect of applications for registration, and registration of a foreign corporate entity, under this Part, including —

- (a) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 135(1);
- (b) waiving any requirement of this Part in respect of any foreign corporate entity, or class of foreign corporate entities; and
- (c) adapting, modifying or excluding the provisions of this Act in their application to any foreign corporate entity or class of foreign corporate entities registered under this Part.

PART 13

GENERAL PROVISIONS

*Division 1 — Remedies of Members and Debenture Holders
for Oppression, etc.*5 **Personal remedies in cases of oppression or injustice, and
derivative or representative action**

142. Sections 216 (except subsection (2)(e)), 216A and 216B of the Companies Act apply in relation to a VCC as they apply in relation to a company, subject to section 5 and the following modifications:

- 10 (a) a reference in sections 216 and 216A of the Companies Act to a declared company under Part IX of that Act is to a declared VCC as defined in section 110;
- (b) a reference in section 216 of the Companies Act to the affairs of the company is to the affairs of the VCC;
- 15 (c) the reference in section 216(3) of the Companies Act to the provisions of that Act relating to the winding up of a company is to Part 11;
- (d) the reference in section 216(4) of the Companies Act to a provision of that Act is to a provision of this Act (including
20 a provision of the Companies Act applied by this Act).

*Division 2 — Offences***Application**

143. This Division does not apply in relation to any offence under Part 7 or to anything done or purportedly done under or for the
25 purposes of Part 7.

**Application of provisions of Division 2 of Part XII of
Companies Act, etc.**

144.—(1) Sections 401, 407, 409 and 409A of the Companies Act apply in relation to this Act (including a provision of the Companies
30 Act as applied by this Act) as they apply in relation to the Companies Act, subject to section 5 and the following further modifications:

- (a) a reference in those sections of the Companies Act to a corporation or company is to a VCC;
 - (b) a reference in section 401(2) of the Companies Act to financial statements is to financial statements or consolidated financial statements (as the case may be) required to be prepared under Part 8; 5
 - (c) a reference in sections 401, 407, 409 and 409A of the Companies Act to the Companies Act is to this Act (including a provision of the Companies Act applied by this Act). 10
- (2) Every person who, while an officer or the manager of a VCC —
- (a) by deceitful, fraudulent or dishonest means, induces any person to grant credit to the VCC, whether for the VCC itself or on account of any of its sub-funds (if applicable);
 - (b) with intent to defraud creditors of the VCC or any of its sub-funds, makes or causes to be made any gift or transfer of or charge on, or causes or connives at the levying of any execution against, the property of the VCC or any of its sub-funds (if applicable); or 15
 - (c) with intent to defraud creditors of the VCC or any of its sub-funds, has concealed or removed any part of the property of the VCC or any of its sub-funds after or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the VCC or the property of any of its sub-funds (if applicable), 20 25

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

False statements or reports

145. A person who, while an officer or the manager of a VCC, the custodian of a VCC (being a non-umbrella VCC) or the custodian of a sub-fund, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any 30

false or misleading statement or report relating to the affairs of the VCC or sub-fund (as the case may be), to —

(a) a director, an auditor, a member, the holder of a debenture of the VCC or sub-fund or a trustee for such holder;

5 (b) in the case of a VCC that is a subsidiary, an auditor of the holding company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

10 **Obtaining payment, etc., to VCC by false promise of officer or agent of VCC**

146.—(1) A person who, while an officer, the manager or an agent of a VCC, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid, or any chattel or
15 marketable security to be delivered to the VCC or to the person or any other person for the use or benefit or on account of the VCC or its sub-funds (if any), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 5 years or to both.

20 (2) In a proceeding for an offence under subsection (1), the opinion of a registered or public accountant as to the financial position of a VCC or its sub-funds (if any) at any time or during any period in respect of which the accountant has made an audit or examination of its affairs according to recognised audit practice, is admissible either
25 for the prosecution or the defence as evidence of the financial position of the VCC or its sub-funds at that time or during that period.

(3) Subsection (2) applies even if the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

30 **Default penalties**

147.—(1) Where a default penalty is provided in a provision of this Act, a person who —

(a) is convicted of an offence in relation to that provision; or

- (b) who has been dealt with under section 148 for an offence in relation to that provision,

shall be guilty of a further offence if the offence continues after the person is so convicted or after the person has been so dealt with, and shall be liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the provision as the amount of the default penalty or, if an amount is not so expressed, of not more than \$200.

(2) For the purposes of subsection (1), where any offence is committed by a person by reason of a failure to do any thing within a particular period, that offence is considered to continue so long as the thing remains undone, even if the period has elapsed.

(3) A reference in subsection (1) to a provision of this Act includes a provision of the Companies Act applied by this Act.

Composition of offences

148.—(1) The Registrar may, in his or her discretion, compound any offence under a provision of this Act that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

(2) The Registrar may, in his or her discretion, compound any offence under a provision of this Act (including an offence under a provision that has been repealed) that —

- (a) was compoundable under this Act at the time the offence was committed; but
- (b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:

(c) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;

(d) \$5,000.

5 (3) On payment of the sum of money mentioned in subsection (1) or (2), no further proceedings may be taken against that person in respect of the offence.

(4) The Minister may prescribe the offences which may be compounded.

10 (5) All sums collected under this section must be paid into the Consolidated Fund.

(6) A reference in this section to a provision of this Act includes a provision of the Companies Act applied by this Act.

Division 3 — Other General Provisions

Service of documents

15 **149.** A document may be served on a VCC by leaving it at or sending it by registered post to the registered office of the VCC.

Electronic transmission of documents

20 **150.**—(1) Subject to subsections (2) to (4) and section 5, sections 387A, 387B and 387C (except subsections (3) and (4)) of the Companies Act apply in relation to any notice of meeting, accounts, balance sheet, financial statements, report or other document required or permitted to be given, sent or served under this Act or under the constitution of a VCC, as they apply in relation to a similar document that is required or permitted to be given, sent or
25 served under this Act or under the constitution of a company.

(2) In sections 387B and 387C of the Companies Act, “financial statements” means the financial statements or consolidated financial statements (as the case may be) required to be prepared under Part 8.

30 (3) Subject to the regulations mentioned in subsection (5), a member of a VCC is treated as having consented to be given, sent or served using electronic communications, a notice or document mentioned in

section 387C(1) of the Companies Act as applied by subsection (1), if —

- (a) the company gave to the member by written notice an opportunity to elect, within a period specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and
- (b) the member failed to make an election within the specified period.

(4) For the purposes of subsection (1), the Minister may make regulations under section 165 for the same matters as those in section 387C(4) of the Companies Act.

Costs of proceedings and security for costs

151.—(1) The costs of any proceeding before a court under this Act must be borne by such party to the proceeding as the court may, in its discretion, direct.

(2) Subsection (1) does not apply to any proceedings under Part 7 except for proceedings for the recovery of any remuneration or expense under section 85(3) and (4).

(3) Where a VCC is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the VCC will be unable to pay the costs of the defendant if successful in his or her defence —

- (a) require sufficient security to be given for those costs; and
- (b) stay all proceedings until the security is given.

Disposal of shares of shareholder whose whereabouts are unknown

152.—(1) Subject to section 5 and subsection (2), section 390 of the Companies Act applies in relation to a VCC as it applies in relation to a company.

(2) The reference in section 390(3) of the Companies Act to section 322 of that Act is to —

- (a) in the case of shares that relate to a sub-fund of an umbrella VCC — section 322 of that Act as applied by section 33; and
- (b) in the case of any other shares — section 322 of that Act as applied by section 130.

Power to grant relief

153. Subject to section 5, section 391 of the Companies Act applies in relation to the following persons as it applies in relation to the persons mentioned in subsection (3) of that section:

- (a) officers of a VCC;
- (b) the manager of a VCC, the custodian of a VCC (being a non-umbrella VCC) or the custodian of a sub-fund;
- (c) persons engaged by a VCC to provide any fund administration service;
- (d) persons engaged by a VCC as auditors, whether they are or are not officers of the VCC;
- (e) experts of a VCC;
- (f) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a VCC or a sub-fund of an umbrella VCC, and all other persons so appointed or so directed.

Irregularities

154. Subject to section 5, section 392 of the Companies Act applies in relation to this Act (other than Part 7) as it applies in relation to the Companies Act.

Inspection of books of VCC and related provisions

155. Sections 8A to 8F and 8H of the Companies Act apply in relation to a VCC as they apply in relation to a corporation, subject to section 5 and the following modifications:

- (a) a reference in sections 8A and 8D of that Act to an officer of the corporation is to an officer or the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC, and section 8D(4) of that Act applies accordingly; 5
- (b) a reference in section 8A of that Act to a person employed by the corporation is to a person employed by the VCC, or a person engaged by the VCC to provide any fund administration service;
- (c) a reference in sections 8A, 8C and 8D of that Act to the affairs of the corporation is to the affairs of the VCC; 10
- (d) a reference in sections 8C, 8F and 8H of that Act to the Companies Act is to this Act (including a provision of the Companies Act applied by this Act);
- (e) a reference in section 8H of that Act to an inspector appointed under Part IX of the Companies Act is to an inspector appointed under Part 9; 15
- (f) a reference in section 8H of that Act to proceedings for the winding up of a corporation under the Companies Act is to proceedings for the winding up of a VCC under Part 11 or a sub-fund of an umbrella VCC under section 33; 20
- (g) to avoid doubt, section 8H of that Act (as applied by this Act) does not affect the sharing of information under section 161.

Production and inspection of books or papers where offence suspected 25

156.—(1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that —

- (a) a person has, while an officer of a VCC, committed an offence in connection with the management of the VCC's affairs; and 30

(b) evidence of the commission of the offence is to be found in any books or papers of or under the control of the VCC,
an order may be made —

(c) authorising any person named in it to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(d) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) For the purposes of subsection (1), a reference to an officer of a VCC includes the manager of the VCC.

(3) No appeal lies against any order or decision of a judge under subsection (1).

(4) This section does not apply to any offence under Part 7.

VCC records

157.—(1) Subject to subsections (2) and (3) and section 5, sections 395, 396 and 396A of the Companies Act apply in relation to any register, index, minute book, accounting record, minute or other document required to be kept by a VCC under this Act as they apply in relation to a similar document required to be kept by a company under the Companies Act.

(2) A reference in section 396A of the Companies Act to that Act is to this Act.

(3) Subsection (1) does not apply to records required to be kept by a VCC under Part 7.

Translations of instruments, etc.

158.—(1) Subject to subsections (2) and (3) and section 5, section 397 of the Companies Act applies in relation to a VCC as it applies in relation to a company.

(2) A reference in section 397(1) and (2) of the Companies Act to that Act is to this Act except Part 7.

(3) A reference in section 397(3) of the Companies Act to that Act is to this Act including Part 7.

(4) In section 397(3) of the Companies Act, “financial statements” means the financial statements or consolidated financial statements (as the case may be) required to be prepared under Part 8.

5

Certificate of incorporation is conclusive evidence

159. A notice of incorporation issued by the Registrar under this Act and a certificate of confirmation of incorporation of the Registrar issued under this Act is each conclusive evidence that —

- (a) all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with; and
- (b) the VCC mentioned in it is duly incorporated under this Act.

10

Court may compel compliance

15

160.—(1) Subject to section 5 and subsection (2), section 399 of the Companies Act applies in relation to this Act (other than Part 7) as it applies in relation to the Companies Act.

(2) For the purpose of subsection (1), a reference in section 399 of the Companies Act to an officer or a former officer of a company is to an officer or the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC), a custodian of a sub-fund, or a person who was formerly such a person.

20

Disclosure of information by Registrar to MAS

161. Despite the provisions of this Act or any requirement imposed under any written law, rule of law, contract or rule of professional conduct, the Registrar or any person authorised by the Registrar may furnish any information, report or document obtained in the performance of his or her duties or in the exercise of their functions under this Act to MAS or any person authorised by MAS, for the purpose of enabling the performance or discharge by MAS of its functions or duties under Part 7 or any other written law.

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30

Disclosure of information by MAS to ACRA or Registrar

5 **162.** Despite the provisions of this Act or any requirement imposed under any written law, rule of law, contract or rule of professional conduct, MAS or any person authorised by MAS may furnish any information, report or document obtained in the performance of their duties or in the exercise of their functions under Part 7 or any other written law, to the Registrar, ACRA or any person authorised by ACRA, for the purpose of —

10 (a) enabling the Registrar to carry out his or her function or duty under a provision of this Act set out in the Third Schedule; or

15 (b) enabling ACRA or the person authorised by ACRA to enforce a provision of this Act set out in the Third Schedule, pursuant to section 31 or 33 of the Accounting and Corporate Regulatory Authority Act.

Appeals against act or decision of Registrar

20 **163.**—(1) Subject to section 5 and subsection (2), section 409C of the Companies Act applies in relation to an act or a decision of the Registrar as it applies in relation to an act or a decision of the Registrar of Companies.

(2) The reference to the Companies Act in section 409C of the Companies Act is to this Act (including a provision of the Companies Act applied by this Act).

Rules of Court

25 **164.**—(1) Rules of Court may make provision —

(a) with respect to proceedings and the practice and procedure of the Court under this Act;

(b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;

30 (c) with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court; and

- (*d*) generally with respect to the winding up of a VCC or a sub-fund of a VCC.

(2) Any rule in subsection (1) may make provision for or in relation to a matter by applying, adopting or incorporating by reference, with or without modification, any rule mentioned in section 410 of the Companies Act or a part of any such rule, as in force at a particular time or from time to time, which relates to any matter with which the rule deals.

Regulations

165.—(1) The Minister may make such regulations as are necessary or expedient for carrying out the purposes and provisions of this Act (other than Part 7).

(2) Without limiting subsection (1), the Minister may make regulations for or with respect to —

- (*a*) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;
- (*b*) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;
- (*c*) prescribing forms for the purposes of this Act;
- (*d*) prescribing the fees payable for the purposes of this Act, including but not limited to fees for —
 - (i) the lodgment or registration of any document required to be lodged or registered with the Registrar;
 - (ii) the issue of any document by the Registrar;
 - (iii) any act required to be performed by the Registrar; and
 - (iv) the inspection of any document mentioned in sub-paragraphs (i) and (ii);
- (*e*) prescribing the penalties payable for the late lodgment of any document;

(f) prescribing the manner in which fees and penalties are to be paid;

(g) the waiver, refund or remission, whether wholly or in part, of any fee or penalty;

(h) prescribing all matters connected with or arising from the restrictions under this Act as to the reservation or registration of names of VCCs (including rules for determining when a name falls within those restrictions);

(i) prescribing times for the lodging of any documents with the Registrar; and

(j) all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for giving effect to this Act.

(3) Any regulation made under this section may make provision for or in relation to a matter by applying, adopting or incorporating by reference, with or without modification, any regulation made under the Companies Act or a part of any such regulations, as in force at a particular time or from time to time, which relates to any matter with which the regulations deal.

(4) Any regulation made under this section may provide that a contravention of a provision of the regulations shall be an offence, and may provide for penalties not exceeding a fine of \$50,000.

Amendment of Schedules

166. The Minister may, by notification in the *Gazette*, add to, vary or amend the Second or Third Schedule.

Consequential and related amendments to other Acts

167.—(1) The Accounting and Corporate Regulatory Authority Act (Cap. 2A, 2005 Ed.) is amended —

(a) by renumbering section 2 as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“(2) A reference in this Act to a written law specified in the Second Schedule includes a part of a written law specified in that Schedule.

(3) To avoid doubt, a reference to “company” in the definition of “securities” in subsection (1), and in section 7(2)(b), includes a VCC as defined in the Variable Capital Companies Act 2018.”;

(b) by deleting the word “and” at the end of section 33(3)(d);

(c) by deleting the full-stop at the end of paragraph (e) of section 33(3) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

“(f) the Registrar of VCCs and any Deputy or Assistant Registrar of VCCs appointed under the Variable Capital Companies Act 2018.”; and

(d) by inserting, immediately after item 6 of the Second Schedule, the following item:

“7. All Parts of the Variable Capital Companies Act 2018, other than Part 7.”.

(2) The Companies Act (Cap. 50, 2006 Ed.) is amended —

(a) by inserting, immediately after the definition of “unlimited company” in section 4(1), the following definitions:

““VCC” means a VCC or variable capital company as defined in section 2(1) of the VCC Act;

“VCC Act” means the Variable Capital Companies Act 2018;”;

(b) by deleting the words “or section 17(4) of the Limited Partnerships Act (Cap. 163B)” in section 27(1)(c) and substituting the words “, section 17(4) of the Limited Partnerships Act (Cap. 163B), subsection (12B) as applied by section 21(8) of the VCC Act, or subsection (12B) as applied by section 133(2) of the VCC Act”;

(c) by deleting the word “or” at the end of section 27(1A)(d);

(d) by deleting the full-stop at the end of paragraph (e) of section 27(1A) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(f) it is identical to the name of a VCC that was dissolved —

(i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.”;

(e) by inserting, immediately after section 155C, the following section:

“Disqualification under VCC Act

155D.—(1) Subject to any leave which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification, disqualification order or debarment order under section 56, 57, 58, 59 or 60 of the VCC Act must not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any company or any foreign company to which Division 2 of Part XI applies during the period of the disqualification, disqualification order or debarment order.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to

imprisonment for a term not exceeding 2 years or to both.

(3) A person who is subject to a disqualification, disqualification order or debarment order mentioned in sections 56, 58, 59 and 60 of the VCC Act may apply to the Court for leave to act as director of, or to take part in or be concerned in the management of, a company or a foreign company to which Division 2 of Part XI applies during the period of the disqualification, disqualification order or debarment order, upon giving the Minister not less than 14 days' notice of his intention to apply for such leave.

(4) On the hearing of any application under subsection (3), the Minister may be represented at the hearing and may oppose the granting of the application.”;

(f) by deleting the words “or a limited liability partnership” in section 163(1)(a) to (d) and substituting in each case the words “, a limited liability partnership or a VCC”;

(g) by deleting the words “or the limited liability partnership” in section 163(1) and substituting the words “, the limited liability partnership or the VCC”;

(h) by inserting, immediately after the words “another company” wherever they appear in section 163(3D)(a), the words “or VCC”;

(i) by inserting, immediately after the words “other company” wherever they appear in section 163(3D)(a), the words “or VCC”;

(j) by deleting paragraph (b) of section 163(3D) and substituting the following paragraph:

“(b) the expression “interest in shares”, in relation to a company, has the meaning assigned to it in section 7 and, in relation to a VCC, has the meaning assigned to it in section 7 as applied by section 2(6) of the

VCC Act and read with section 2(7) of that Act;”;

(*k*) by deleting the words “under section 7” in section 163(3D)(*c*) and substituting the words “or a VCC”;

(*l*) by inserting, immediately after the words “Singapore or otherwise)” in section 163(4)(*a*), the words “or VCC”;

(*m*) by deleting the words “or section 17(4) of the Limited Partnerships Act (Cap. 163B)” in section 378(1)(*c*) and substituting the words “, section 17(4) of the Limited Partnerships Act (Cap. 163B), or section 27(12B) as applied by section 21(8) of the VCC Act”;

(*n*) by deleting the word “or” at the end of section 378(2)(*d*);

(*o*) by deleting the full-stop at the end of paragraph (*e*) of section 378(2) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(f) it is identical to the name of a VCC that was dissolved —

(i) unless, in a case where the VCC was dissolved following its winding up under Part 11 of the VCC Act, a period of at least 2 years has passed after the date of dissolution; or

(ii) unless, in a case where the VCC was dissolved following its name being struck off the register under section 344 or 344A of this Act as applied by section 130 of the VCC Act, a period of at least 6 years has passed after the date of dissolution.”;

(*p*) by deleting the word “or” at the end of section 386AC(*c*)(vi); and

(*q*) by deleting the full-stop at the end of sub-paragraph (vii) of section 386AC(*c*) and substituting the word “; or”, and by

inserting immediately thereafter the following sub-paragraph:

“(viii) a VCC.”.

(3) The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A, 2000 Ed.) is amended —

(a) by inserting, immediately after the words “that Act” in the definition of “financial institution” in section 2(1), the words “, and includes a VCC”;

(b) by deleting the full-stop at the end of the definition of “value of property” in section 2(1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

““VCC” means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018.”;

(c) by inserting, immediately after subsection (5) of section 31, the following subsection:

“(5A) In subsection (5), each reference to a customer of a financial institution is, if the financial institution is a VCC, a reference to its member.”; and

(d) by inserting, immediately after the word “identification” in paragraph (g) of the definition of “financial transaction document” in section 36(1), the words “, or if the institution is a VCC, records of identification of its members”.

(4) The Mutual Assistance in Criminal Matters Act (Cap. 190A, 2001 Ed.) is amended —

(a) by deleting the full-stop at the end of the definition of “thing” in section 2(1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

““VCC” means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018.”;

(b) by inserting, immediately after the words “financial institution” in section 22(2), the words “or VCC”; and

(c) by inserting, immediately after the words “financial institution” in section 33(3) and (4), the words “or VCC”.

5 (5) The Securities and Futures Act (Cap. 289, 2006 Ed.) is amended —

(a) by inserting, immediately after the word “entity” in paragraph (aa)(i)(A) of the definition of “closed-end fund” in section 2(1) as amended by section 3(i) of the
10 Securities and Futures (Amendment) Act 2017 (Act 4 of 2017), the words “, a sub-fund”;

(b) by inserting, immediately after the word “entity” in paragraph (aa)(ii)(B) of the definition of “closed-end fund” in section 2(1) as amended by section 3(i) of the
15 Securities and Futures (Amendment) Act 2017, the words “, sub-fund”;

(c) by inserting, immediately after the word “entity” in paragraph (x) of the definition of “collective investment scheme” in section 2(1), the words “, a sub-fund”;

20 (d) by inserting, immediately after the definition of “corporation” in section 2(1), the following definition:

““custodian”, in relation to a collective investment scheme constituted as a VCC or sub-fund, means an entity to which the assets of the
25 scheme are entrusted for safekeeping;”;

(e) by deleting the definition of “responsible person” in section 2(1) and substituting the following definition:

““responsible person”, in relation to a collective investment scheme, means —

30 (a) in the case of a scheme that is constituted as a VCC or a sub-fund — the VCC;

- (b) in the case of a scheme that is constituted as a corporation other than a VCC — the corporation; or
 - (c) in the case of any other scheme — the manager for the scheme;”;
- (f) by inserting, immediately before the definition of “subsidiary” in section 2(1), the following definition:
 - ““sub-fund” has the meaning given by section 2(1) of the Variable Capital Companies Act 2018;”;
- (g) by inserting, immediately after the definition of “user information” in section 2(1), the following definition:
 - ““VCC” means a VCC or variable capital company as defined in section 2(1) of the Variable Capital Companies Act 2018;”;
- (h) by inserting, immediately after the words “subsection (2)” in section 286(1)(a), the words “or (2A), as the case may be”;
- (i) by inserting, immediately after subsection (2) of section 286, the following subsection:
 - “(2A) The Authority may authorise under subsection (1) a collective investment scheme constituted as a VCC or a sub-fund, if and only if the Authority is satisfied that —
 - (a) there is a manager for the scheme that satisfies the requirements in subsection (3);
 - (b) there is a custodian for the scheme that is a trustee approved under section 289;
 - (c) the constitution of the VCC and contractual arrangements in respect of the scheme comply with prescribed requirements and the Variable Capital Companies Act 2018;
 - (d) there are at least 3 directors of the VCC, at least one of whom is independent in

accordance with the criteria set out in the Code on Collective Investment Schemes; and

(e) the VCC, the scheme, the manager for the scheme and the custodian for the scheme comply with this Act and the Code on Collective Investment Schemes.”;

(j) by inserting, immediately after the words “unit trust” in section 286(4), the words “, a VCC or a sub-fund”;

(k) by inserting, immediately after the words “subsection (2)” in section 286(5), the words “or (2A)”;

(l) by deleting subsection (10) of section 286 and substituting the following subsection:

“(10) The responsible person for a collective investment scheme authorised under subsection (1) and either —

(a) the approved trustee for the scheme if it is one constituted as a unit trust; or

(b) the custodian for the scheme if it is one constituted as a VCC or sub-fund,

to the extent applicable, must ensure that —

(c) every condition or requirement set out in subsection (2) or (2A) (as the case may be), and subsections (3) and (4); and

(d) every condition or restriction imposed by the Authority under subsection (1)(c) or (1A),

as applicable to that scheme, continue to be satisfied.”;

(m) by inserting, immediately after subsection (14) of section 286, the following subsection:

“(14A) Where the manager for a collective investment scheme that is constituted as a VCC or a sub-fund, and authorised under subsection (1), fails to

comply with this Act or the Code on Collective Investment Schemes, the Authority may direct the VCC to remove that person and appoint a new manager for the scheme.”;

- (n) by deleting sub-paragraph (i) of section 288(1)(c) and substituting the following sub-paragraphs: 5

“(i) a scheme authorised under section 286 that is constituted as a unit trust, the responsible person for the scheme or the trustee for the scheme (where applicable) fails to comply with section 286(10) or (13); 10

(ia) a scheme authorised under section 286 that is constituted as a VCC or as a sub-fund, the responsible person for the scheme, the manager for the scheme, or the custodian for the scheme (where applicable), fails to comply with section 286(10) or (13); or”; 15 20

- (o) by deleting paragraphs (a) and (b) of section 293(1) and substituting the following paragraphs:

“(a) where a collective investment scheme is constituted as a corporation, VCC or sub-fund of a VCC, the corporation or VCC, as the case may be; 25

(b) the manager, trustee, custodian or representative for a collective investment scheme; or”;

- (p) by deleting paragraph (a) of section 294(1) and substituting the following paragraphs: 30

“(a) is authorised under section 286 and constituted as a unit trust, any document relating to the scheme is sufficiently served

if served on the responsible person for the scheme at his last known address;

(aa) is authorised under section 286 and constituted as a VCC or sub-fund, any document relating to the scheme is sufficiently served if served on the VCC in accordance with section 149 of the Variable Capital Companies Act 2018; or”;

(q) by deleting subsection (2) of section 294 and substituting the following subsection:

“(2) Any notice or direction to be given or served by the Authority on —

(a) in a case where a collective investment scheme is constituted as a corporation — the corporation;

(b) in a case where a collective investment scheme is constituted as a VCC or a sub-fund — the VCC;

(c) the manager for a collective investment scheme;

(d) the trustee or custodian for a collective investment scheme; or

(e) the representative for a collective investment scheme,

is for all purposes regarded as duly given or served if it has been delivered or sent by post or by fax to such person at the person’s last known address.”;

(r) by inserting, immediately after the word “company” in section 294(3)(a), the words “or VCC”;

(s) by inserting, immediately after the words “collective investment scheme” in section 295(1), the words “(other than one constituted as a VCC or sub-fund)”;

- (t) by inserting, immediately after subsection (1) of section 295, the following subsection:

“(1A) Where a collective investment scheme constituted as a VCC or sub-fund is being wound up under the Variable Capital Companies Act 2018, the VCC must give written notice to the Authority of the winding up within 3 days after the commencement of the winding up.”;

- (u) by inserting, immediately after the words “section 286” in section 295(3)(a), the words “which is constituted as a unit trust”;

- (v) by inserting, immediately after subsection (6) of section 295, the following subsection:

“(6A) Any VCC that without reasonable excuse contravenes subsection (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.”; and

- (w) by inserting, immediately after the words “Companies Act (Cap. 50)” in section 308, the words “, Division 2 of Part 13 of the Variable Capital Companies Act 2018,”.

(6) Section 2 of the United Nations Act (Cap. 339, 2002 Ed.) is amended by inserting, immediately after subsection (2), the following subsections:

“(2A) The measures to be applied under subsection (1) do not apply to any VCC or class of VCCs to the extent that the VCC or class of VCCs is or may be subject to the directions or regulations made by the Monetary Authority of Singapore under section 83 of the Variable Capital Companies Act 2018.

(2B) In subsection (2A), “VCC” has the meaning given by section 2(1) of the Variable Capital Companies Act 2018.”.

(7) The Minister may, by order in the *Gazette*, make amendments to other Acts that are consequential on the enactment of this Act, including applying a provision of any Act to a VCC as it applies to a

company, or disapplying to a VCC a provision of any Act that applies to a company, corporation or body corporate.

(8) An order under subsection (7) —

(a) may be made at any time within the period of 2 years after the commencement of this subsection; and

(b) must be presented to Parliament as soon as possible after publication in the *Gazette*.

FIRST SCHEDULE

Sections 3(2) and 33(2)

MODIFICATIONS OF PART X OF COMPANIES ACT IN ITS APPLICATION TO WINDING UP OF A SUB-FUND OF AN UMBRELLA VCC

1. A reference in a provision of Part X of the Companies Act (including a provision that replaces a provision of that Part because of this Schedule) (called in this Schedule a Part X provision) to any act, power, right, duty or responsibility of the company is to that of the umbrella VCC concerned, on account of the sub-fund.

2. A reference in a Part X provision to a member or shareholder is to the holder of a share issued in respect of the sub-fund.

3. A reference in a Part X provision to a creditor is to a creditor of the sub-fund.

4. A reference in a Part X provision to any asset, property, undertaking, obligation, debt or liability (however described) of the company is to such asset, property, undertaking, obligation, debt or liability of the sub-fund.

5. A reference in a Part X provision to a resolution passed by the company in general meeting is to a resolution passed, in accordance with the VCC's constitution, by one or more members holding shares that represent —

(a) a majority; or

(b) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members holding shares issued in respect of that sub-fund who have the right to vote on that resolution.

6. A reference in a Part X provision to a special resolution passed by the company is to a resolution passed, in accordance with the VCC's constitution, by one or more members holding shares that represent —

(a) at least 75%; or

FIRST SCHEDULE — *continued*

- (b) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,
of the total voting rights of all the members holding shares issued in respect of that sub-fund who have the right to vote on that resolution. 5
7. The appointment of a liquidator or provisional liquidator is, and the powers, rights, duties and responsibilities of the liquidator or provisional liquidator are, confined to the sub-fund.
8. Sections 250(1)(f), (2) and (3), 253(2)(b), 257(3), 288 and 342(7), and Divisions 5 and 6 of Part X of the Companies Act are omitted. 10
9. Subject to paragraph 11, a reference to an officer of a company in the following:
- (a) Division 2 of Part X of the Companies Act (other than section 285(1) and (2));
 - (b) Subdivision (4) of Division 4 of Part X of that Act (other than section 339(1)); 15
 - (c) sections 344(4)(a) and 344A(7)(a) of that Act,
- is a reference to —
- (d) an officer of the umbrella VCC;
 - (e) the manager of the umbrella VCC; and 20
 - (f) the custodian of the sub-fund.
10. A reference in section 285(1) and (2) of the Companies Act to an officer of the company is to an officer of the umbrella VCC, an officer of the manager of the umbrella VCC or an officer of the custodian of the sub-fund.
11. A reference in section 286(1) of the Companies Act to the making of a direction to an officer or former officer of a company to attend before the Court for examination is to the making of such direction to any officer or former officer of the umbrella VCC, any officer of the manager of the umbrella VCC, or any officer of the custodian of the sub-fund, whether or not the report mentioned in that provision states that an act mentioned in that provision has been committed by that officer, former officer, manager or custodian. 25 30
12. In section 254(4) of the Companies Act —
- (a) the reference to an employee of a company is to an employee of the umbrella VCC, and includes a person engaged by the umbrella VCC to provide any fund administration service; and 35
 - (b) the reference relating to a chief executive officer is omitted.

FIRST SCHEDULE — *continued*

13. The following provision applies in place of section 253(1) of the Companies Act (which sets out who may apply to a court for the winding up of a company):

“A sub-fund of an umbrella VCC, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:

- (a) the umbrella VCC;
- (b) any creditor, including a contingent or prospective creditor, of the sub-fund;
- (c) a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;
- (d) the liquidator of the sub-fund;
- (e) the Minister pursuant to section 119(2);
- (f) the Minister on a ground specified in paragraph (c), (j), (k) or (l) of the provision that replaced section 254(1) of the Companies Act under paragraph (14);
- (g) MAS on a ground specified in paragraph (m) of the provision that replaced section 254(1) of the Companies Act under paragraph (14).”.

14. The following provision applies in place of section 254(1) of the Companies Act (which sets out the grounds on which a court may order a company to be wound up):

“The Court may order the winding up of a sub-fund of an umbrella VCC if —

- (a) the umbrella VCC has by resolution passed, in accordance with the VCC’s constitution, by one or more members holding shares that represent —
 - (i) at least 75%; or
 - (ii) if the constitution of the VCC requires a greater majority for that resolution, that greater majority, of the total voting rights of all the members holding shares issued in respect of that sub-fund who have the right to vote on that resolution, resolved that the sub-fund be wound up by the Court;

FIRST SCHEDULE — *continued*

- (b) the umbrella VCC does not commence business of the sub-fund within a year starting on the date of its formation or suspends its business for a whole year;
- (c) none of the members of the umbrella VCC hold shares issued in respect of the sub-fund; 5
- (d) the umbrella VCC is unable to pay the debts of the sub-fund;
- (e) MAS has under section 288 of the Securities and Futures Act (Cap. 289) revoked or withdrawn the authorisation of the collective investment scheme constituted as the sub-fund; 10
- (f) the directors have acted in the affairs of the sub-fund in their own interests rather than in the interests of the members holding shares issued in respect of the sub-fund as a whole, or in any other manner which appears to be unfair or unjust to other members holding shares issued in respect of the sub-fund; 15
- (g) an inspector appointed under Part 9 has reported that he or she is of the opinion —
 - (i) that the umbrella VCC cannot pay the debts of the sub-fund and the sub-fund should be wound up; or 20
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the sub-fund should be wound up;
- (h) when the period, if any, fixed for the duration of the sub-fund by the constitution expires or the event, if any, happens on the occurrence of which the constitution provides that the sub-fund is to be dissolved; 25
- (i) the Court is of the opinion that it is just and equitable that the sub-fund be wound up;
- (j) the umbrella VCC has, on behalf of the sub-fund, carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling; 30
- (k) the umbrella VCC has used the sub-fund for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or the national interest; 35

FIRST SCHEDULE — *continued*

(*l*) the umbrella VCC has, on behalf of the sub-fund, conducted business outside the scope of its sole object in section 15;

(*m*) the umbrella VCC has, in respect of the sub-fund —

(i) contravened a direction issued under section 83(1) or 84(1); or

(ii) contravened section 84(3), or any regulation made under section 83(1) or 84(1); or

(*n*) the umbrella VCC has been or is in the course of being wound up.”.

15. A reference in a Part X provision in the first column of the following table, to a paragraph of section 254(1) of the Companies Act in the second column of the table, is to the paragraph of the provision that replaces section 254(1) of the Companies Act in paragraph 14, that is opposite the firstmentioned paragraph in the third column of the table:

Provision of Companies Act that is applied by this section	Paragraph of section 254(1) of Companies Act	Paragraph of provision in paragraph (14)
Section 253(2)(<i>a</i>)	Paragraph (<i>a</i>)	Sub-paragraph (<i>a</i>)
	Paragraph (<i>b</i>)	—
	Paragraph (<i>c</i>)	Sub-paragraph (<i>b</i>)
	Paragraph (<i>e</i>)	Sub-paragraph (<i>d</i>)
	Paragraph (<i>i</i>)	Sub-paragraph (<i>i</i>)
Sections 254(3), (4), 263(<i>da</i>) and 322A	Paragraph (<i>m</i>)	Sub-paragraph (<i>k</i>)

16. The reference in section 268(4) of the Companies Act to treasury shares is a reference to shares held by a subsidiary of the VCC under section 22(6) or (11) that are issued in respect of the sub-fund (if any).

17. The following provision applies in place of section 281(1) of the Companies Act (which enables the Court to direct a contributory to pay to a company moneys due from the contributory and the extent to which set-off is allowed):

“The Court may make an order directing any contributory on the list of contributories to pay to the umbrella VCC (on behalf of the sub-fund), in the manner directed by the order, any money due from the contributory or from the estate of the person whom the contributory represents (excluding any money payable by the contributory or the estate by virtue of any call in pursuance of this Act) and when all the creditors are

FIRST SCHEDULE — *continued*

paid in full, any money due on any account whatever to a contributory from the VCC (in respect of the sub-fund) may be allowed to the contributory by way of set-off against any subsequent call.”.

18. A reference in sections 286 and 287 of the Companies Act to the affairs of the company is to the affairs of the sub-fund. 5

19. The reference in section 287 of the Companies Act to a contributory, director or former director of a company is to —

- (a) a contributory, director or former director of the umbrella VCC; or
- (b) a director or former director of the manager of the umbrella VCC or of the custodian of the sub-fund. 10

20. Rules made under section 164 may make provision enabling or requiring all or any of the powers and duties conferred and imposed on the Court by a Part X provision (as applied by section 33) in respect of —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories; 15
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator; 20
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator may not, except with the special leave of the Court, rectify the register of members in respect of any information of members holding shares issued in respect of the sub-fund, or make any call except with the special leave of the Court or the sanction of the committee of inspection. 25

21. A reference in section 289(1) or 305 of the Companies Act to any power of, given to or conferred on the Court or the liquidator under or by that Act is to any power of, given to or conferred on the Court or the liquidator (as the case may be) under or by a provision of this Act (including by a provision of the Companies Act applied by this Act). 30

22. The reference in section 257(2)(b), 270(4), 274(1), 288 or 298(3) of the Companies Act to rules is to rules made under section 164.

23. The reference in section 313(5) of the Companies Act to an officer of a company is to an officer or the manager of the umbrella VCC or the custodian of the sub-fund. 35

FIRST SCHEDULE — *continued*

24. The reference in section 313(5) of the Companies Act to an agent of a company is to an agent of the umbrella VCC, and includes a person engaged by the VCC to provide any fund administration service.

5 25. The reference in section 322 of the Companies Act to the Companies Liquidation Account is to a Sub-fund Liquidation Account.

26. Section 328(1)(b) to (g) of the Companies Act only applies to an amount of any matter mentioned in those paragraphs that is allocated to the sub-fund by the umbrella VCC under section 29(3).

10 27. The reference in section 328(8) of the Companies Act to 29 December 1967 is to the date of commencement of this Act.

28. The reference in section 328(9)(a) of the Companies Act to reconstruction or amalgamation of a company with another company is to the merger of a sub-fund with another sub-fund (whether of the same umbrella VCC or another umbrella VCC), or the reconstruction or amalgamation of the umbrella VCC with another
15 company or VCC.

29. A reference in section 331 of the Companies Act to an acquisition or sale by a company of any property, business or undertaking from or to a company is to such acquisition or sale by the umbrella VCC on behalf of the sub-fund from or to a
20 company or another VCC, and that section applies accordingly.

30. The reference in section 339(1) of the Companies Act to an investigation under any other Part of the Companies Act is to an investigation under any other Part of this Act.

25 31. The following provision applies in place of section 339(2) of the Companies Act (which sets out when proper books of accounts are deemed not to have been kept by a company under section 339(1) of that Act):

“For the purposes of subsection (1), proper books of account are considered not to have been kept in respect of a sub-fund if —

30 (a) there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the sub-fund, including —

35 (i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and

 (ii) where the trade or business involved dealings in goods, statements of the annual stocktakings and of all goods sold and purchased, showing the goods and

FIRST SCHEDULE — *continued*

the buyers and sellers of those goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or

- (b) such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the umbrella VCC has appointed an auditor.”. 5

32. The reference in section 342(6) of the Companies Act to an agent of a company is to an agent of the umbrella VCC, and includes —

- (a) a banker or solicitor of the VCC; 10
 (b) any person employed by the VCC as auditor, whether or not an officer of the VCC; and
 (c) any person engaged by the VCC to provide any fund administration service.

33. The reference in section 347(1) of the Companies Act to the operation of a previous written law corresponding with section 346 of the Companies Act or of a law of a designated country corresponding with section 354 of the Companies Act is omitted. 15

34. The reference in section 348 of the Companies Act to the operation of a previous written law corresponding with Subdivision (5) of Division 4 of Part X of the Companies Act is omitted. 20

SECOND SCHEDULE

Section 100(7)

CONTENT OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors — 25

- (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the VCC and its sub-funds (if any) and, if applicable, of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and 30
 (b) at the date of the statement there are reasonable grounds to believe that the VCC will be able to pay its debts and the debts of its sub-funds (if any) as and when they fall due.

2. The names of the persons who are the directors in office at the date of the statement. 35

SECOND SCHEDULE — *continued*

3. Whether at the end of the financial year to which the financial statements or, where the VCC is a parent company, consolidated financial statements relate —

(a) there subsist arrangements to which the VCC is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the VCC to acquire benefits by means of the acquisition of shares in, or debentures of, the VCC or any other body corporate; or

(b) there have, at any time in that year, subsisted any arrangements mentioned in sub-paragraph (a) to which the VCC was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the VCC and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements.

4. In respect of each person who, at the end of the financial year, was a director of the VCC —

(a) whether or not (according to the register kept by the VCC for the purposes of section 66) the person was, at the end of that year, interested in shares in, or debentures of, the VCC, a subsidiary or the holding company of the VCC, or a subsidiary of the VCC's holding company; and

(b) if the person was interested as mentioned in sub-paragraph (a) —

(i) the number and amount of shares in, and debentures of, each VCC or body corporate (specifying the VCC or body corporate) in which, according to that register, the person was then interested;

(ii) whether or not, according to that register, the person was, at the beginning of that year (or, if the person was not then a director, when the person became a director), interested in shares in, or debentures of, the VCC or any other body corporate; and

(iii) if the person was interested as mentioned in sub-paragraph (ii), the number and amount of shares in, and debentures of, each VCC or body corporate (specifying the VCC or body corporate) in which, according to that register, the person was interested at the beginning of that year or (as the case may be) when the person became a director.

THIRD SCHEDULE

Section 162

PROVISIONS FOR APPLICATION OF SECTION 162

1. For the purposes of section 162, the provisions of this Act are —
 - (a) section 15; 5
 - (b) section 18(1) and (2)(a) and (b);
 - (c) section 29;
 - (d) section 46;
 - (e) section 47(2)(b);
 - (f) section 48(1)(b); 10
 - (g) section 49(b);
 - (h) section 53;
 - (i) section 58; and
 - (j) section 401(2A) of the Companies Act as applied by section 144(1) (in respect of the statements mentioned in sections 47(2)(b) and 49(b)). 15

EXPLANATORY STATEMENT

The purpose of this Bill is to create a regime for the incorporation and regulation of variable capital companies, or VCCs. VCCs are investment funds that are constituted as bodies corporate. A VCC may be a single investment fund or may be an “umbrella VCC” comprising a number of sub-funds.

The Bill applies the provisions of the Companies Act with modifications appropriate to the nature and operation of a VCC. In particular, the restrictions on capital reduction, the requirement to disclose substantial shareholdings, and the judicial management regime under the Companies Act (Cap. 50) do not apply to a VCC.

Clause 1 relates to the short title and commencement.

Clause 2 contains definitions of terms used in the Bill. In particular, the clause applies the following provisions of the Companies Act to the Bill:

- (a) section 4(2) (which sets out a situation where a person is not regarded as one in accordance with whose directions the directors of a corporation are accustomed to act);

- (b) section 4(5) and (5A) (which provides that an invitation to lend money to a corporation is treated as an invitation to subscribe for debentures of corporation, and that a document issued by a corporation acknowledging indebtedness of such money is treated as a debenture);
- (c) section 4(7) (which defines a reference to a person being or becoming bankrupt, etc.);
- (d) section 7 (which defines when a person has an interest in shares).

Clause 2 also attributes to the manager or the custodian of a non-umbrella VCC or sub-fund, for the purposes of proceedings for an offence against the manager or custodian, the conduct and state of mind of certain individuals.

Clause 3 defines the terms “affairs of corporation” and “affairs of sub-fund”. The definitions are substantially similar to section 4(8) of the Companies Act.

Clause 4 defines when a corporation is related to another corporation. The clause is identical to section 6 of the Companies Act.

Clause 5 sets out the purpose of the Bill, which is to enable bodies corporate known as VCCs to be formed and to provide for their operation and regulation. The clause provides that the Bill applies the provisions of the Companies Act but with modifications. The clause sets out the modifications to all Companies Act provisions that are incorporated by reference in the Bill. It also allows the Minister to make further modifications to the incorporated Companies Act provisions within a period of 2 years starting on the date of commencement of this Act.

Clause 6(1) disapplies provisions of the Companies Act that are either incorporated by reference or replicated in the Bill, to the extent of such application. This is intended to deal with overlapping provisions in the Bill and the Companies Act. Such overlap arises because a VCC is also a corporation.

An example is section 41(3) of the Companies Act, which is incorporated by reference under clause 25(2). Section 41(3) sets out how contracts may be made on behalf of a corporation and would have applied to a VCC. However, section 41(3) is disapplied by clause 6, but only to the extent of its application under clause 25(2). This means (for example) that the operation of section 41(3) is unaffected when the legal subject of that provision (not being a VCC) enters into a contract with any person including a VCC.

Clause 6(3) sets out the provisions of the Companies Act that do not apply to a VCC.

Part 2 (comprising clauses 7 to 14) sets out provisions concerning the administration of the Act.

Clause 7 provides that Part 2 does not apply to Part 7, as the latter is administered by the Monetary Authority of Singapore (MAS).

Clause 8 provides that the Accounting and Corporate Regulatory Authority (ACRA) is responsible for the administration of the Bill except for Part 7. The clause also provides for the appointment of various officers to administer the Bill including the Registrar of VCCs (the Registrar), the duty of the Registrar to give effect to ACRA's directions, and that a Deputy or an Assistant Registrar of VCCs may do anything that the Registrar is authorised or required to do under the Bill.

Clause 9 requires the Registrar to keep registers that he or she considers necessary. The clause also provides for the following:

- (a) the inspection of the registers and any document filed with the Registrar;
- (b) the provision by the Registrar to a person of copies of documents kept by the Registrar;
- (c) the admissibility of copy of documents filed with the Registrar;
- (d) a certificate by the Registrar is prima facie evidence of matters in it;
- (e) the power of the Registrar to refuse to register or receive a document, or to destroy documents or transfer them to the National Archives of Singapore in certain cases.

Clause 10 allows the Registrar to require or permit transactions with the Registrar under the Bill to be carried out using the electronic transaction system established under the Accounting and Corporate Regulatory Authority Act (Cap. 2A), and to issue documents connected with such transactions using that system.

Clause 11 applies the following sections of the Companies Act to a register kept by the Registrar:

- (a) section 12B (which empowers the High Court (called the Court) to direct the rectification of an erroneous or a defective particular in a register);
- (b) section 12C (which empowers the Registrar of Companies to correct certain errors in a register when notified of these by an officer of a company);
- (c) section 12D (which empowers the Registrar of Companies to rectify or update a register in certain circumstances on his or her own initiative).

Clause 12 enables a member or creditor of a VCC, the Registrar or the Official Receiver to apply to the Court to direct a VCC, an officer of a VCC or any person to make good certain defaults (e.g. a failure to comply with a provision for the lodgment of a document with the Registrar or the Official Receiver) within a specified time.

Clause 13 applies sections 14 and 15 of the Companies Act to documents filed with the Registrar. Section 14 provides for the relodgment with the Registrar of Companies of lost registered documents by a corporation, and section 15 sets out the requirements as to size, durability and legibility that documents delivered to the Registrar of Companies must comply with.

Clause 14 applies section 10 of the Companies Act to the appointment of an auditor of a VCC. Section 10 provides that only an accounting entity which has consented to act as a company auditor may be appointed as such, and the effect of such appointment.

Part 3 (comprising clauses 15 to 26) provides for the constitution of a VCC and related provisions.

Clause 15 sets out the sole object of a VCC, which is to be one or more collective investment schemes in the form of a body corporate. If a VCC enters into any arrangement or does any business that is inconsistent with that object, the VCC and its officers in default are guilty of an offence.

Clause 16 provides that a person may, by subscribing the person's name to a constitution and complying with various requirements, incorporate a VCC. If the prescribed requirements are satisfied, the Registrar must register the VCC by registering its constitution, and issue to it a notice of incorporation.

Clause 16 also sets out the effects of incorporation of a VCC, which are the same as the effects of incorporating a company under section 19(5) of the Companies Act. The clause further provides that the VCC has full capacity to do anything in furtherance of its sole object under clause 15, and full rights, powers and privileges.

Clause 17 provides that subscribers to the constitution of a VCC are considered to have agreed to be its members. It also provides that a person is a member of a VCC if the person agrees to be such member and the person's name is entered in the register of members. The clause also provides that the liability of a member is limited to the amount unpaid on the member's shares.

Clause 18 sets out certain circumstances in which the Registrar must refuse to register a constitution of a VCC. Among other circumstances, the Registrar must refuse such registration if satisfied that the person named as its manager is not one of the persons set out in clause 46(2), or if none of its directors is either a director or qualified representative of its manager.

Clause 19 provides that certain provisions are implied in the constitution of every VCC. These include —

- (a) the sole object of a VCC mentioned in clause 15;
- (b) that its property must be measured on a fair value basis;
- (c) that the actual value of its paid-up share capital is at all times equal to its net asset value;

- (d) that its shares are to be issued, redeemed or repurchased at a price equal to the proportion of the VCC's net asset value represented by each share; and
- (e) that the assets and liabilities of every sub-fund are segregated in accordance with clause 29.

A provision of the constitution that is inconsistent with any implied provision is void to the extent of the inconsistency.

Clause 19 also sets out the matters that a VCC's constitution must state.

Finally clause 19 applies the following provisions of the Companies Act to a VCC's constitution:

- (a) section 23(1B) (which provides that a company's constitution may restrict its capacity, rights, powers and privileges);
- (b) section 39 (which provides, among other things, that a company's constitution constitutes a contract between a company and its members and among its members);
- (c) section 40 (which requires a company to send a copy of the constitution to a member if so required and to take certain actions if the constitution is altered).

Clause 20 provides for how the constitution of a VCC may be altered. It may be altered by ordinary resolution passed by the prescribed majority of members or (if the constitution so requires) by a resolution passed by a majority specified in the constitution of the members entitled to vote on the resolution. The clause also sets out the matters which may be altered without approval of members. These include an alteration for the purpose of forming a sub-fund, and an alteration that does not prejudice the interests of a member or release to any material extent the manager or a director from any responsibility to members.

Clause 20 also applies section 26(2) to (7) of the Companies Act in relation to a VCC's constitution. Section 26(2) to (7) requires a company to lodge with the Registrar of Companies a copy of any resolution or other document affecting its constitution, and the Registrar of Companies to register that resolution or document.

Clause 21 provides that the Registrar must refuse to register a VCC under a name that comes within one of several prohibitions, such as if it is identical to the name of another entity (including one that has been dissolved unless a specified period has lapsed since the dissolution), or if it is identical to a name that is reserved under an Act administered by ACRA.

Clause 21 also provides that the Registrar may direct a VCC to change its registered name if the name comes within one of several prohibitions, if it so nearly resembles the name of another entity as to be likely to be mistaken for it, or if the

use of the name has been restrained by an injunction under the Trade Marks Act. The clause also applies section 27(2A) to (5A) of the Companies Act in relation to such direction. Section 27(2A) to (5A) allows a person to apply to the Registrar of Companies to give a similar direction to a company and provides for appeals to the Minister against such direction or the refusal to give such direction.

Clause 21 further provides for the following:

- (a) that a VCC must have the term “VCC” as part of and at the end of its name;
- (b) the application of the following provisions of the Companies Act to the name of a VCC:
 - (i) section 27(10) to (15) (which provides for the reservation of a name of a company);
 - (ii) section 28 (which provides for the manner by which a company’s name may be changed, and the circumstances in which the Registrar of Companies may direct a company to change its name).

Clauses 22, 23 and 24, which are substantially similar to section 21 of the Companies Act, deal with a corporation’s membership of a VCC that is its holding company.

Clause 22 prohibits such corporation from being a member of the VCC. Any allotment or transfer of shares in a VCC to the corporation is void.

Clause 22 does not prevent the allotment of shares in a VCC to its subsidiary which already lawfully holds shares in the VCC, if the allotment is made by way of capitalisation of reserves and is made to all members.

A corporation may also be a member of a VCC that is its holding company if the corporation already holds shares in the VCC at the time it becomes a subsidiary. Further, a VCC may transfer shares to its subsidiary by way of distribution in specie, amalgamation or scheme of arrangement. In both cases (the permitted cases), the subsidiary has no right to vote at meetings and must dispose of its shares in the VCC within a specified period. Any shares not disposed of may be held by the subsidiary but with restrictions as set out in clauses 22 and 23. These include:

- (a) a cap on the total percentage of shares which all its subsidiaries can hold at any time (clause 22(13)(a), (b) and (c));
- (b) no payment of dividends or distribution of assets may be made in respect of the shares if the subsidiary is a wholly-owned subsidiary (clause 22(13)(d));
- (c) any exercise of rights by the subsidiary in respect of those shares is void (clause 23(2) and (3)).

Clause 24 provides that shares of a subsidiary in the permitted cases may be sold for cash, transferred under a share scheme, transferred as consideration for the acquisition of other shares or assets, cancelled, or disposed of or used for a purpose prescribed by the Minister.

Clause 25 applies the following provisions of the Companies Act in relation to a VCC:

- (a) section 24 (which provides that a company has the power to make provision for the benefit of its employees or former employees or those of its subsidiary in connection with the cessation of any part of its business or its subsidiary's business);
- (b) section 25 (which provides that no transaction with a company is invalid by reason only that it is ultra vires);
- (c) section 25A (which provides that a person is not affected by or treated as having notice of anything in the constitution of a company);
- (d) section 25B (which provides that the power of directors to bind a company is free of any limitation in its constitution);
- (e) section 25C (which provides that an ultra vires transaction of a company with a director or a person connected with a director is voidable at the instance of the company);
- (f) section 25D (which defines persons connected with a director);
- (g) section 41 (which provides for ratification by a company of contracts made before incorporation and how contracts are made on behalf of a corporation, among other things);
- (h) section 41A (which provides that a company may but need not have a common seal);
- (i) sections 41B and 41C (which provides for how a company may execute a deed without a common seal, and that such execution satisfies any law requiring execution under a common seal).

In particular, sections 25 and 25B of the Companies Act are modified to apply also to a lack of capacity by reason of clause 15(1) (sole object of a VCC). The effect is that a transaction with a VCC that contravenes the sole object clause is nonetheless valid. A contravention of the sole object clause however remains an offence under clause 15(3), and may be a ground for a winding up application by the Minister under clause 33 or 130.

However, sections 25 and 25B of the Companies Act do not apply to any contract or transaction that is inconsistent with the term of the constitution giving effect to clause 29.

Clause 26 provides that a person other than a VCC that uses any name or title that includes the words “Variable Capital Company” (or an abbreviation, imitation or translation of those words), or holds out that its business is incorporated under the Bill, commits an offence.

Part 4 (comprising clauses 27 to 33) contains provisions dealing with the sub-funds of an umbrella VCC.

Clause 27 requires an umbrella VCC to apply to the Registrar for the registration of a sub-fund within 7 days after forming it. If the prescribed requirements are satisfied, the Registrar must register the sub-fund and issue a notice of registration to the umbrella VCC.

Clause 28 requires an umbrella VCC to notify the Registrar within one business day after the name of its sub-fund is changed, or its sub-fund is dissolved.

Clause 29 provides for the rule that sub-funds are segregated portfolios of assets and liabilities. The assets of a sub-fund belong exclusively to that sub-fund and cannot be used to discharge the liabilities of any other sub-fund or the umbrella VCC itself. Conversely, any liability of a sub-fund must be discharged solely out of the assets of the sub-fund including in its winding up. A provision of the VCC’s constitution or a contract that is inconsistent with this rule, is void to the extent of the inconsistency. Any attempt to apply assets in contravention of this rule is also void.

Clause 29 also provides that an umbrella VCC may allocate any assets or liabilities, relating to the sub-funds but not attributable to a particular sub-fund (e.g. expenses for the VCC’s registered office), between the sub-funds in a manner it considers fair to the shareholders.

Clause 30 requires an umbrella VCC to set out in any agreement or other business document in which a sub-fund is mentioned, various details of the sub-fund and also the fact that its assets and liabilities are segregated in accordance with clause 29. Before entering into an oral agreement on behalf of its sub-fund, an umbrella VCC must also disclose to the other party those details and that fact.

An officer of the umbrella VCC (or a person acting on his or her behalf) who signs or issues or authorises to be signed or issued any document in contravention of the clause, or authorises or enters into an oral agreement in contravention of the clause, commits an offence. If the document is a bill of exchange, promissory note, indorsement, cheque or order, the officer or person is also liable to its holder for the amount due on it unless that amount has been discharged by the VCC.

Clause 31 enables an umbrella VCC to acquire or transfer shares of one of its sub-funds, for the account of another of its sub-funds. The acquisition or transfer must be in accordance with regulations made under the Bill.

Clause 32 provides that a sub-fund is not a separate legal person from its umbrella VCC. However, the umbrella VCC may sue or be sued in respect of each

of its sub-funds and may exercise a right of set-off between them as if they were legal persons. The property of a sub-fund is also subject to an order of a court as if it were a separate legal person.

Clause 33 provides that a sub-fund may be wound up as if it were a legal person. It also applies Part X of the Companies Act (which deals with the winding up of companies) and section 389 of that Act (which concerns the right of a person summoned for examination to legal representation), to the winding up of a sub-fund. The application of these Companies Act provisions is subject to the modifications set out in the First Schedule.

Clause 33 also applies clause 129 (which sets out the disqualifications for a liquidator of a VCC) to the appointment of a liquidator of a sub-fund and a person acting as such liquidator.

Part 5 (comprising clauses 34 to 43) contains provisions dealing with the shares, debentures and charges of a VCC.

Clause 34 contains provisions relating to the shares of a VCC and in particular provides for the following:

- (a) that the shares are movable property and transferable in accordance with a VCC's constitution;
- (b) the rights attaching to each share, in particular the right (in accordance with the constitution) to participate in or receive profits, income or other payments or returns arising from dealings with the VCC's property or rights in its property;
- (c) a VCC may make provision in its constitution to authorise the conversion of one class of shares into another class. Any conversion of shares that involves a variation or an abrogation of the rights attached to any class of shares is subject to section 74 of the Companies Act as applied under clause 36. Section 74 gives holders of a specified percentage of issued shares of that class a right to apply to the Court to have the variation or abrogation cancelled.

Clause 35 provides that a VCC may repurchase or redeem its own shares in accordance with its constitution and this clause. A VCC may only repurchase or redeem its own shares that are fully paid. Shares that have been repurchased or redeemed must be cancelled and the amount of the issued share capital of the VCC reduced by the amount of consideration paid by the VCC for the repurchase or redemption.

Clause 36 applies the following provisions of the Companies Act in relation to a VCC:

- (a) section 65 (which among other things, provides that a company may make arrangements on the issue of shares for varying the amounts and

times of payment of calls as between shareholders, except from a member any amount unpaid on the shares even without a call, and pay dividends in proportion to the amount paid up);

- (b) section 66(1) (which provides that a company must not issue a share warrant that states that its bearer is entitled to the shares specified in it and which enables the shares to be transferred by delivering the warrant);
- (c) section 72 (which enables the Court on application to validate the issue or allotment of shares that is otherwise invalid);
- (d) section 73 (which deals with the redenomination of shares by a company);
- (e) section 73A (which provides that a redenomination of shares does not affect the rights and obligations of a member or any entitlement to dividends);
- (f) section 74 (which gives holders of a specified percentage of issued shares of a particular class a right to apply to the Court to cancel a purported variation or abrogation of any rights in those shares).

Clause 37 applies the following provisions of the Companies Act to the debentures of a VCC:

- (a) section 93 (which, among other things, requires a company that issues debentures to keep a register of holders of those debentures at its registered office);
- (b) section 94 (which provides that a contract with a company to take up and pay for the company's debentures may be enforced by specific performance);
- (c) section 95 (which allows a company to issue perpetual, irredeemable debentures or debentures redeemable on the happening of a contingency);
- (d) section 96 (which enables a company to reissue debentures that have been redeemed);
- (e) section 100 (which enables the Court to enforce the security for irredeemable debentures or debentures redeemable on the happening of a contingency).

Clause 38 provides that a VCC must (except in certain circumstances) within a specified time after the allotment or transfer of its shares or debentures, complete and have ready for delivery the appropriate certificates and debentures. If a VCC defaults on this and fails to make good the default, a person entitled to a certificate

or debenture may apply to the Court to make an order directing the VCC to make good the default.

Clause 39 provides that a share certificate under the seal of the VCC is prima facie evidence of the title of the member to the shares concerned. It also sets out what each certificate must contain.

Clause 40 applies the following provisions of the Companies Act in relation to the transfer of a share, debenture or other interest in a VCC:

- (a) section 130AA (which provides that the transferor of interests in a company may request the company to enter the transferee's name in the appropriate register, or to require a person to deliver the share certificate, debenture or instrument of transfer to the company to have it cancelled, rectified or otherwise dealt with);
- (b) section 130AB (which requires a company that refuses to register a transfer of interests in it to give notice to the transferor or transferee of this);
- (c) section 130AC (which provides that a transfer of interests by a personal representative is as valid as if he or she had been a member of the company);
- (d) section 130AD (which deals with the effect and limits of a certification by the company of an instrument of transfer of interests).

Clause 40 further provides for the following:

- (a) a VCC must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the VCC;
- (b) a VCC may refuse to register a transfer of shares if either it would result in the transferor or transferee holding less than the minimum number or value of shares required under the VCC's constitution or the prospectus, or the transfer is inconsistent with the VCC's constitution;
- (c) a VCC is not required to register a transfer or give notice of its refusal to register a transfer if this would contravene any law of Singapore or another country or territory.

Clause 41 applies the following provisions of the Companies Act to the shares of a VCC and the share certificates, document of title or debentures issued by a VCC:

- (a) section 122 (which provides that each share must have an appropriate number);
- (b) section 124 (which provides that a certificate under a duplicate seal of the VCC is treated as sealed with the VCC's common seal);
- (c) section 125 (which deals with the loss or destruction of certificates).

Clause 42 applies the provisions of Division 8 of Part IV of the Companies Act (which deals with the registration of charges) to charges created by a VCC. Those provisions provide that where a company creates certain types of charges over its property, it must register those charges with the Registrar, and the effects of non-registration. Modifications are made to the application of those provisions to a charge created over the property of a sub-fund.

Clause 43 sets out a provision that replaces section 133 of the Companies Act. It provides that where a VCC acquires property that is subject to a registrable charge under clause 42, it must lodge a statement of the prescribed particulars with the Registrar.

Part 6 (comprising clauses 44 to 82) contains provisions dealing with the management and administration of a VCC.

Clause 44 is an interpretation clause for Part 6.

Clause 45 applies the following provisions of the Companies Act to a VCC or proposed VCC:

- (a) section 142 (which requires a company to have a registered office in Singapore with a minimum number of opening hours);
- (b) section 143 (which requires the location and opening days and hours of the registered office of a company to be lodged with the Registrar);
- (c) section 144 (which requires the name of a company to appear on its seal and business documents and its registration number to appear on its business documents).

Clause 46 requires a VCC to have at all times a manager to manage its property or operate the collective investment scheme or schemes comprising the VCC. The manager must be either the holder of a capital markets services licence for fund management or fall within certain descriptions of exemptees from such licence under the Securities and Futures Act (Cap. 289), a Registered Fund Management Company, or a prescribed person. A VCC cannot be its own manager.

Clause 47 provides that before a person may be named as a manager or proposed manager of a VCC in any document lodged with the Registrar or in the register of managers, the person must have satisfied a condition before a specified time. The condition is that the person must have filed with the Registrar a declaration of consent to act as manager, and a statement that the person is a person who is qualified to be a manager under clause 46.

Clause 48 provides that —

- (a) a VCC must have at least one director who is ordinarily resident in Singapore; and

- (b) a VCC must have at least one director who is either a director or a qualified representative of its manager.

If a VCC carried on business for more than 6 months without having satisfied paragraphs (a) and (b), a person who for any part of that period is a member of the VCC and knows that the VCC has carried on business in that manner, is liable for all debts of the VCC contracted during that period.

Clause 48 also provides a director may resign by giving a written notice of resignation to the VCC. However, he or she must not resign unless there is remaining in the VCC at least one director who is ordinarily resident in Singapore, and at least one director who is either a director or a qualified representative of its manager, and any such resignation is invalid. This does not apply if the director is required to resign because he or she failed to obtain his or her qualification within the prescribed period, or because he or she is subject to certain disqualifications from office, is removed or had his or her appointment revoked under a specified provision of the Bill.

Clause 49 applies section 146 of the Companies Act to a VCC. Section 146 provides that a person must not be named as a director or proposed director in any document filed with the Registrar for incorporating a company, or in certain registers of the company, unless before a specified time he or she has filed with the Registrar certain declarations, statements and undertakings. In addition to the declarations, statements and undertakings, the person must also file with the Registrar a statement made by him or her and the VCC as to his or her compliance with the factors prescribed for determining if he or she is fit and proper to be such director.

Clause 50 applies sections 149B (which provides that a company may appoint a director by ordinary resolution) and 150 (which requires the appointment of each director of a public company to be voted on individually) of the Companies Act to the appointment of directors of a VCC.

Clause 51 provides that the acts of a director or secretary of a VCC are valid despite any defect that may be subsequently discovered in his or her appointment or qualification.

Clause 52 applies section 152(1) to (8) of the Companies Act (which provides for how a public company may remove a director from office) to a VCC.

Clause 53 provides that a VCC must appoint only fit and proper persons as its directors. The Registrar may direct a VCC to remove or replace a director whom the Registrar is satisfied is not a fit and proper person to act as director, and if such removal or replacement is necessary in the interests of the VCC, its shareholders or potential shareholders, or the public or a section of the public. The Registrar may consider the factors prescribed in regulations in determining if a person is fit and proper to act as a director.

Clause 54 applies section 147 of the Companies Act to a director of a VCC. Section 147 requires a director who is required by the company's constitution to hold a specified share qualification to obtain that qualification within a prescribed time or vacate his or her office.

Clause 55 applies section 148 of the Companies Act to a VCC. Section 148 prohibits an undischarged bankrupt from acting as a director of a corporation except with the permission of the Court or the Official Assignee.

Clause 56 provides that the Court may, on an application by the Minister or the Official Receiver, make an order disqualifying a person from being a director of a VCC for a period of not more than 5 years. An order must be made under the clause if the Court is satisfied that —

- (a) the person has been a director of a VCC that went into liquidation and was insolvent either while he or she was a director or within 3 years after he or she ceased to be a director; and
- (b) his or her conduct as such director makes him or her unfit to be a director of a VCC.

Clause 56 sets out the matters which the Court must have regard to for this purpose.

Clause 56 also provides that if, in the course of the winding up of a VCC, it appears to the Official Receiver or liquidator that the conditions in paragraphs (a) and (b) above are satisfied, the Official Receiver or liquidator must immediately report this to the Minister.

Finally, clause 56 applies various subsections of section 149 of the Companies Act for the purposes of the clause. These subsections deal with (among other matters) the hearing of an application for a disqualification order, that a disqualification order may not be made against a receiver or receiver manager, and that a disqualified person may apply for leave of court to take part in the management of a VCC.

Clause 57 provides that the Court may, on an application by the Minister, make an order disqualifying a person from being a director of a VCC for a period of 3 years, on the ground that the person was a director of another VCC ordered to be wound up on the ground that it was used for purposes against national security or interest.

Clause 58 provides that a person is automatically disqualified from acting as a director of a VCC for a specified period on any of the following grounds:

- (a) the person is convicted of an offence involving fraud or dishonesty and punishable with imprisonment for at least 3 months, or an offence under Part XII of the Securities and Futures Act (Market Misconduct);
- (b) the person is subject to a civil penalty under that Act;

- (c) a direction is made under that Act directing the holder of a capital markets services licence to remove that person from office as a director or executive officer, or the person has been removed from office as a director, executive officer or chief executive officer by a person exempted from holding a capital markets services licence in compliance with a condition of exemption;
- (d) a prohibition order is made against the person under that Act.

Clause 58 also provides that a court may make an order disqualifying a person from being a director of a VCC who has committed an offence in connection with the formation or management of a VCC or an offence under section 157 (duty and liability of officers) or 339 (liability where proper accounts are not kept) of the Companies Act as applied by the Bill.

Clause 59 applies sections 155 and 155B of the Companies Act in relation to a VCC. The effect of such application is that —

- (a) a person who within a 5-year period is thrice convicted of an offence for failing to file returns, accounts or other documents with the Registrar, or has had 3 or more orders under clause 12 or 160 made against him or her concerning such failure, is disqualified for 5 years from being a director of a VCC except with leave of court; and
- (b) the Registrar may make a debarment order against a person from being director or secretary of a VCC if he or she was a director or secretary of any VCC during a period where the VCC was in default of any requirement of the Bill to file returns, accounts or other document with the Registrar.

Clause 60 disqualifies a person from being a director of a VCC for 5 years if —

- (a) the person was a director of a VCC at the time it was struck off the register of VCCs for being a defunct VCC; and
- (b) in the period of 5 years before the date the VCC was so struck off, he or she had also been a director of at least 2 other VCCs at the time their respective names were struck off the register.

Clause 61 applies section 155C of the Companies Act in relation to a VCC. The effect of this is that a person subject to a disqualification or disqualification order under the Limited Liability Partnerships Act (Cap. 163A) must not be a director of a VCC. The clause also provides that a person who is subject to a disqualification, disqualification order or debarment order under the Companies Act must not be director of a VCC.

Clause 62 applies section 156 of the Companies Act in relation to a director of a VCC. Section 156 —

- (a) requires a director who is interested in a transaction with a company to declare to the board the nature of that interest or to send a notice with details of the interest to the company; and
- (b) requires a director who holds any office or possesses any property that may result in a conflict with his or her duties as director, to declare to the board the nature of that conflict or to send to the company details of that conflict.

Clause 63 sets out the duties and liabilities of a director, officer or agent of a VCC. These include —

- (a) a director's duty to act honestly and use reasonable diligence in the discharge of his or her office (section 157(1) of the Companies Act as applied by the clause);
- (b) the duty of an officer or agent not to make improper use of his or her position or any information acquired by reason of his or her position to gain an advantage for himself or herself or another person or to cause detriment to the VCC (section 157(2) of the Companies Act as applied by the clause); and
- (c) the same duties under the common law as those owed by a company director to a company.

For the purposes of clause 63, an agent of a company includes the manager or custodian of the VCC.

Clause 64 applies the following provisions of the Companies Act to a VCC and a director of a VCC:

- (a) section 157A (which provides that the business of a company must be managed by or under the direction or supervision of its directors, and that the directors may exercise all powers of a company except those that must be exercised in general meeting);
- (b) section 157B (which provides that if a company has only one director, he or she may make a declaration under the Act by recording it and signing the record);
- (c) section 157C (which provides that a director, when doing anything as a director, may rely on information and professional or expert advice given by certain persons);
- (d) section 158 (which provides that a director may disclose information obtained in his or her capacity as such to certain persons, if the disclosure is not likely to prejudice the company and is authorised by the board);

- (e) section 159 (which sets out certain matters which a director may have regard to when exercising his or her powers).

Clause 65 applies sections 162, 163, 163A and 163B of the Companies Act in relation to a VCC, the effect of which is that —

- (a) a VCC cannot enter into certain transactions such as giving a loan, or a guarantee in connection with a loan, to a director of the VCC or a related corporation of the VCC;
- (b) a VCC cannot, except with the requisite approval of the VCC, enter into certain transactions such as giving a loan, or a guarantee in connection with a loan, to a company or limited liability partnership or another VCC if one or more directors of the first VCC has or together have at least 20% of the total voting power in that company or limited liability partnership or that other VCC;
- (c) the prohibitions in paragraphs (a) and (b) do not apply to the provision of funds by the VCC to a director to meet or avoid expenditure incurred in defending proceedings in connection with anything done by the director in relation to the VCC, if the provision of funds is done on certain terms; and
- (d) the prohibitions in paragraphs (a) and (b) do not apply to the provision of funds by the VCC to a director to meet or avoid expenditure incurred in defending himself or herself in an investigation or action taken by a regulatory authority for anything done by the director in relation to the VCC.

Clause 66 requires a VCC to keep a register of director's shareholdings which contains (among other things) particulars of —

- (a) the shares and debentures in the VCC or a related corporation in which a director has an interest; and
- (b) units of a collective investment scheme made available by a related corporation of the VCC, in which a director has an interest.

The register must be kept at the registered office of the VCC. Within 3 days after receiving a notice from a director under clause 67, the VCC must enter in the register the particulars set out in the notice.

Clause 67 applies sections 164A and 165 of the Companies Act to the Bill, the effect of which is that —

- (a) a VCC must, if served with a notice from a specified number of members, prepare and lay before its general meeting a statement showing the total emoluments received by each director of the VCC or its subsidiary; and

- (b) every director must give a notice to the VCC of such particulars of the shares and other interests held by the director as are necessary to enable the company to comply with clause 66, including particulars of any change to the firstmentioned particulars.

Clause 68 applies sections 168 and 169 of the Companies Act in relation to a VCC. Section 168 prohibits a company from making a payment to a director as compensation or consideration for loss of office or retirement as an officer of the company or its subsidiary (except in certain circumstances), and from making a payment to a director in connection with the transfer of any undertaking or property of the company. Section 169 provides that a company must not provide or improve the emoluments of a director unless approved by a resolution not related to other matters.

Clause 69 applies the requirements of a company secretary under section 171 of the Companies Act to a VCC.

Clause 70 applies sections 172, 172A and 172B of the Companies Act in relation to a VCC. These sections —

- (a) render void any provision in a constitution, contract or other document that purports to exempt or indemnify an officer of a company from liability for negligence, default, breach of duty or breach of trust in relation to the company;
- (b) provide that a company is not thereby prevented from procuring insurance for the officer for such liability; and
- (c) provide that the prohibition against provision for an indemnity does not (with certain exceptions) apply to a provision for an indemnity against liability to a person that is not the company.

Clause 71 applies section 173 of the Companies Act to a VCC. Section 173 requires the Registrar of Companies to keep registers of directors, secretaries and auditors for a company, and provides that an entry in a register or the Registrar's certificate stating particulars of a register is *prima facie* evidence of the matters stated in it.

Clause 71 also applies section 173F of the Companies Act to such registers, which enables the Registrar of Companies to amend registers in certain circumstances.

Clause 71 also further requires the Registrar to keep a register of a VCC's managers and applies the provisions of section 173 of the Companies Act to such register. The clause further enables the Registrar to indicate in the register of managers that a person named in it has ceased to be a manager of the VCC because the person is no longer one mentioned in clause 46(2).

Clause 72 provides for the following:

- (a) a VCC must give the Registrar certain information within 14 days after a person is appointed a director, manager, secretary or auditor, or after any change in such appointment or in certain information contained in the register of directors, managers, secretaries or auditors (section 173A of the Companies Act as applied by the clause);
- (b) a director, manager, secretary or auditor of a VCC must give the VCC the information it needs to comply with paragraph (a) no later than 14 days after the initial appointment or change (section 173B of the Companies Act as applied by the clause).

Clause 73 requires a VCC to keep at its registered office copies of consent to act by each director, secretary and manager, a statement by each director that he or she is not disqualified to act, documentary evidence of any change of a director's name, the filed statement as to each director's satisfaction of the prescribed factors for determining if he or she is a fit and proper person, and the filed statement that the manager is a person mentioned in clause 46(2).

Clause 74 requires a director, secretary or manager of a VCC to give notices of certain events to the Registrar in certain circumstances. These include —

- (a) a notice that the director has ceased to be qualified to act because of clause 55 or 59;
- (b) a notice that the director or secretary has resigned from office if he or she has reasonable cause to believe that the VCC will not give such notice to the Registrar; and
- (c) a notice that the manager has ceased to be the manager if it has reasonable cause to believe that the VCC will not give such notice to the Registrar.

Clause 75 requires every director or secretary of a VCC to notify the Registrar of his or her residential address and any change to the address. An address so provided is protected from disclosure with certain exceptions. Where a director or secretary opted to provide an alternate address instead, he or she must ensure that the address continues to be one where he or she may be located.

Clause 76 provides that the Registrar may enter the residential address of the director or secretary in the relevant register even though an alternate address has been entered in the register. The Registrar may do so where —

- (a) communications sent by the Registrar to the alternate address remain unanswered; or
- (b) there is evidence that service of a document under this Bill or certain other Acts at the alternate address is not effective to bring it to the director's or secretary's notice.

Before exercising his or her power under clause 76, the Registrar must give notice to the director or secretary and every VCC that the Registrar has been notified that the individual is a director or secretary, specifying a period within which they may make representations. After the Registrar has exercised his or her power under clause 76, the individual's residential address ceases to be protected from disclosure or from public inspection or access. In addition, the individual may not furnish an alternate address for a period of 3 years. An individual aggrieved by the exercise of the power may appeal to the Court.

Clause 77 requires a VCC to hold an annual general meeting within 6 months after the end of each financial year. A VCC may hold a general meeting at any time and the VCC may resolve for any such meeting to be its annual general meeting.

Clause 78 provides for 2 situations where a VCC need not hold an annual general meeting. The first is if the directors give notice of this to the members at least 60 days before the last date on which the annual general meeting must be held. The second is if the VCC has sent to all persons entitled to receive notice of general meetings a copy of the financial statements, or copies of the consolidated financial statements and balance sheet, relating to the financial year in question. The documents must be sent no later than 5 months after the end of the financial year and must be accompanied by a copy of the auditor's report on them.

However, one or more members holding no less than 10% of the total number of paid-up shares carrying the right to vote at general meetings, may by notice to the VCC require the annual general meeting to be held.

Clauses 79 and 80 apply the following sections of the Companies Act in relation to meetings of VCCs:

- (a) section 176 (which provides that an extraordinary general meeting may be requisitioned by members holding a specified percentage of paid-up shares with voting rights);
- (b) section 177 (which provides that 2 or more members holding at least 10% of the issued shares may call a meeting);
- (c) section 178 (which provides that the requisite number of members may demand a poll despite anything in the constitution);
- (d) section 179 (which provides for the quorum and chairman of a meeting and voting at a meeting, and the power of a member corporation or creditor corporation to authorise a person to act as its representative at meetings);
- (e) section 180 (which provides for members' rights at meetings);
- (f) section 181 (which provides for a member's right to appoint a proxy to attend and vote at meetings);

- (g) section 182 (which enables the Court to order a meeting in certain circumstances);
- (h) section 183 (which provides for the circulation of member's resolutions by a company upon requisition);
- (i) section 184 (which provides for how a special resolution may be passed);
- (j) section 184A (which provides that a written resolution may be passed in accordance with this section and sections 184B to 184F);
- (k) section 184B (which provides that a private company or unlisted public company may only pass a written resolution if certain conditions are satisfied);
- (l) section 184C (which provides that a private company or unlisted public company that wishes to pass a written resolution must send a copy of the resolution text to every member having a right to vote on that resolution at a general meeting);
- (m) section 184D (which provides that a member or members of a private company or unlisted public company representing the requisite percentage of voting rights may require a general meeting to be convened for the written resolution);
- (n) section 184DA (which provides that a written resolution lapses if not passed before the end of a specified period);
- (o) sections 184E and 184F (which provide that when a written resolution of a private company or unlisted public company is passed, the company must notify every member of this, and to have certain particulars duly recorded);
- (p) section 184G (which provides that a company with only one member may pass a resolution by the member recording the resolution and signing the record);
- (q) section 185 (which provides that a resolution requiring special notice is ineffective unless certain conditions as to the giving of notice to the company and the members are satisfied);
- (r) section 186 (which requires a company to lodge copies of certain resolutions with the Registrar of Companies);
- (s) section 187 (which sets out the effect of the passing of a resolution at an adjourned meeting);
- (t) section 188 (which provides that minutes of proceedings of general meetings and board meetings must be kept and signed by the chairman of the meeting);

- (u) section 189 (which requires minute books to be kept at the registered office or principal place of business of the company and open to inspection).

Clause 81 requires a VCC to keep a register of members and (if it has more than 50 members) an index of the members' names. The register of members is *prima facie* evidence of the matters required or authorised by the Bill to be included in it.

The register must generally be kept at the registered office of the VCC (section 191 of the Companies Act as applied by clause 81). If the name of a person is without sufficient cause entered in or omitted from the register, there is a failure or unnecessary delay in entering in the register the fact that a person has ceased to be a member, or there is a failure to enter in the register any information concerning shares held by a person, an application may be made to the Court to rectify the register (section 194 of the Companies Act as applied by clause 81). The VCC may however, on its own initiative, rectify any error or omission in the register so long as this does not adversely affect any person, or if a person so adversely affected agrees to it.

A trustee, executor or administrator of the estate of a deceased person who was registered in the register of members or is beneficially entitled to a share, may be registered in that register as holder of the share in that capacity, and is subject to the same liabilities as if the share had been registered in the name of the deceased person. In no other case may notice of any trust of shares (whether express, implied or constructive) be entered in the register of members (section 195 of the Companies Act as applied by clause 81).

Clause 82 provides for the right of various persons to information in the register of members. These persons are —

- (a) the manager of the VCC;
- (b) the custodian of the VCC;
- (c) the custodian of a sub-fund, but only as regards information relating to the sub-fund;
- (d) a public authority, but only for the purpose of enabling it to administer or enforce any written law;
- (e) any person entitled to inspect the register by virtue of an order of court; and
- (f) a member of the VCC, but only as regards information relating to that member.

Part 7 (comprising sections 83 to 95) contains provisions to enable Singapore to comply with certain of its international obligations, and to prevent money laundering and terrorism financing, in relation to VCCs. The provisions are substantially similar to the corresponding provisions in the Monetary Authority of

Singapore Act (MAS Act) that apply in relation to financial institutions. The provisions of this Part are administered by MAS.

Clause 83 enables MAS to issue directions to VCCs, and make regulations concerning VCCs, which MAS considers necessary to discharge Singapore's obligations pursuant to a decision of the Security Council of the United Nations. A VCC is not in breach of any law or contract for doing any act in compliance with such direction or regulation. A VCC must not disclose any direction of MAS if MAS notifies it that such disclosure is against the public interest.

Clause 84 enables MAS to issue directions to VCCs, and make regulations concerning VCCs, which MAS considers necessary for the prevention of money laundering or terrorism financing. The directions and regulations may provide for customer due diligence and record keeping obligations.

Clause 85 provides that MAS may inspect the books of a VCC or its subsidiary, branch, agency or office outside Singapore, to determine the extent of compliance with the directions issued and regulations made under clauses 83 and 84. If an inspection is carried out on the ground that MAS has reason to believe that the VCC has contravened or is contravening a direction or regulation and the inspection is not carried out by MAS, then the VCC is liable to pay for the remuneration and expenses of the inspector, if so directed by MAS.

Clause 85 also applies the following sections of the MAS Act in relation to such inspection:

- (a) section 27D (which sets out the obligations that a financial institution under inspection must comply with);
- (b) section 27E (which provides for the confidentiality of an inspection report);
- (c) section 27F (which allows MAS to transmit information obtained from an inspection to a corresponding authority of a foreign country that exercises consolidated supervisory authority over the financial institution that was inspected).

In relation to the application of section 27F of the MAS Act, the authority to whom information from the inspection may be transmitted to is an authority of a foreign country that —

- (a) exercises a regulatory function that corresponds to ACRA's functions under the Bill, or MAS' functions under Part 7 of the Bill or under certain Acts administered by the MAS; and
- (b) exercises consolidated supervision authority over the VCC.

Clause 86 is an interpretation clause for Division 2 of Part 7 of the Bill. Many of the definitions are substantially the same as the definitions of similar terms in section 152 of the MAS Act.

Clause 87 sets out the purposes of Division 2 of Part 7 of the Bill, which are —

- (a) to enable MAS to provide information in relation to a VCC to a foreign authority (called an AML/CFT authority) responsible for the supervision of foreign financial institutions for compliance with Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) requirements, in connection with the latter's supervision of foreign financial institutions for compliance with AML/CFT requirements;
- (b) to enable MAS to provide information in relation to a VCC to certain domestic authorities in connection with their investigation, enforcement action or supervisory action; and
- (c) to enable an AML/CFT authority to carry out an inspection in Singapore of a VCC over which it exercises consolidated supervision action.

Clause 88 applies Division 2 of Part VC of the MAS Act to a request to MAS by an AML/CFT authority for assistance in relation to a VCC. That Division —

- (a) provides that MAS may provide assistance to an AML/CFT authority on request if the request satisfies the prescribed conditions; and
- (b) sets out the assistance that MAS may provide, including transmitting information in MAS' possession and ordering a financial institution to provide information to MAS for transmission to the AML/CFT authority.

In the application of section 155(1) of the MAS Act under clause 88 (as well as section 157(1) of the MAS Act under clause 89 and section 160 of the MAS Act under clause 90), there is a need to override any restriction on disclosure imposed on MAS in respect of information in its possession that is obtained under any written laws prescribed under the MAS Act.

Clause 89 applies Division 3 of Part VC of the MAS Act to a request to MAS by a domestic authority for assistance in relation to a VCC. That Division —

- (a) provides that MAS may provide assistance to a domestic authority for certain purposes on request if the request satisfies the prescribed requirements; and
- (b) sets out the assistance that MAS may provide, including transmitting information in MAS' possession and ordering a financial institution to provide information to MAS for transmission to the domestic authority.

Clause 90 applies Division 4 of Part VC of the MAS Act for the purposes of clauses 88 and 89. Division 4 provides for the following:

- (a) offences for not complying with an order by MAS for information to satisfy a request;
- (b) immunities for complying with the order;
- (c) MAS may on its own motion transmit information in its possession to an AML/CFT authority or a domestic authority.

Clause 91 applies sections 161 and 162 of the MAS Act to enable an AML/CFT authority to carry out an inspection in Singapore of a VCC over which it exercises consolidated supervision authority. Section 161 sets out the conditions that must be satisfied for a similar inspection under the MAS Act. Section 162 sets out the duties of a financial institution under inspection, which include giving the AML/CFT authority access to its books and providing such information and facilities as it may require for the inspection. The clause also applies section 163 of the MAS Act (which provides for the confidentiality of an inspection report) to an inspection report of the AML/CFT authority.

Clause 92 applies section 28B of the MAS Act to offences committed under Part 7 of the Bill. Section 28B sets out the circumstances where an officer of an entity is liable for the same offence as that committed by the entity.

Clause 93 enables MAS to compound an offence under Part 7 of the Bill that is prescribed as a compoundable offence.

Clause 94 treats directors, officers and employees of MAS as public officers under the Financial Procedure Act (Cap. 108) when administering, enforcing or collecting moneys to be paid into the Consolidated Fund. The moneys in question are the composition sums to be collected under clause 93.

Clause 95 enables MAS to exempt any person from the provisions of Part 7 of the Bill, and to make regulations to prescribe further modifications to provisions of the MAS Act incorporated by reference in Part 7.

Part 8 (comprising clauses 96 to 109) sets out the requirements for the annual return, financial statements and audit of a VCC.

Clause 96 is an interpretation provision for Part 8 of the Bill.

Clause 97 provides that a VCC must lodge a return with the Registrar after its annual general meeting and within 7 months after the end of its financial year. If a VCC which is otherwise not required to hold an annual general meeting because of clause 78 is required to do so by its members under clause 78(4) after the VCC has filed its annual return for the financial year, it must file a notice of the date of the meeting with the Registrar.

Clause 98 provides for how the financial year of a VCC is to be determined. It is substantially similar to section 198 of the Companies Act.

Clause 99 applies section 199 of the Companies Act in relation to a VCC. Section 199 requires a company to keep such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements to be prepared from time to time, and to keep the records in a manner that will enable them to be conveniently and properly audited. The section also provides for a minimum retention period for the records, the internal accounting controls to be maintained and the place where the records must be kept. The clause also applies the same requirements in section 199 in relation to each sub-fund of an umbrella VCC.

Clause 100 provides that the directors of a VCC must lay before each annual general meeting of the VCC the financial statements or (if the VCC is one that is required to prepare financial statements for its group) the consolidated financial statements for the group and the balance sheet for the VCC and its sub-funds (if any), for the financial year in question. The financial statements, or consolidated financial statements and balance sheet (individually and collectively the financial statements) must comply with the Accounting Standards. The financial statements of an umbrella VCC must contain separate accounts for each sub-fund that comply with the Accounting Standards. The Accounting Standards are the same Accounting Standards that apply to companies or such other accounting standards as may be prescribed. The Minister has the power to substitute different accounting standards for those Accounting Standards.

Clause 100 also provides for the following:

- (a) the directors must take steps to —
 - (i) write off all known bad debts and make provision for doubtful debts, write down current assets to their realisable amount or make provision for the difference between the amount shown and the realisable amount; and
 - (ii) ascertain if any amount of non-current assets is overstated and include in the financial statements information and explanation so they will not be misleading as to the actual recoverable amount (subsection (5));
- (b) the financial statements must be duly audited before the annual general meeting, and the auditor's report attached to them (section 201(8) and (9) of the Companies Act as applied by subsection (6));
- (c) if the VCC is a subsidiary of another corporation at the end of the financial year, the financial statements must state the name of its ultimate parent corporation (section 201(11) of the Companies Act as applied by subsection (6));
- (d) the financial statements need not comply with a requirement of the Accounting Standards if the Registrar approves the non-compliance, or

if such compliance would not give a true and fair view of a matter required to be dealt with in them. In the latter event, there must be included in the financial statements an auditor's statement stating the auditor's concurrence to this and other particulars (section 201(12) to (14) of the Companies Act as applied by subsection (6));

- (e) the financial statements laid before the annual general meeting must be accompanied by a statement of the directors containing the information in the Second Schedule (section 201(16) of the Companies Act as applied by subsection (6));
- (f) any document (other than the financial statements) or advertisement of the VCC must not contain a representation that the VCC has any reserve unless it is accompanied by a statement as to the manner of investment or use of the reserve (section 201(17) of the Companies Act as applied by subsection (6)).

Clause 101 requires a VCC to keep at its registered office copies of documents laid before its annual general meeting for a period of not less than 5 years after the date of the meeting. Where the VCC need not hold an annual general meeting for a financial year, copies of the financial statements, or consolidated financial statements and balance sheet, together with the auditor's report, are to be kept at the registered office for a period of 5 years after the date those documents were sent to persons entitled to notice of general meetings. The Registrar or an officer authorised by the Registrar may require the VCC to furnish any document so kept, and make copies or extracts from it (section 201AA(3) of the Companies Act as applied by subsection (2)).

Clause 102 provides that the directors of a VCC need not lay before the VCC's annual general meeting the financial statements, or consolidated financial statements and balance sheet under clause 100 if the VCC need not hold an annual general meeting under clause 78.

Clause 103 applies section 202 of the Companies Act to a VCC's financial statements and directors' statement, the effect of which is to enable the Registrar to make an order relieving the directors of a VCC or class of VCCs from complying with any form and content requirement (other than one under the Accounting Standards) that apply to any of those statements.

Clause 104 applies sections 202A and 202B of the Companies Act in relation to a VCC's financial statements, the effect of which is as follows:

- (a) after financial statements have been laid before the annual general meeting or (if the VCC has dispensed with an annual general meeting) after copies of these have been sent to the members of the VCC, the directors of the VCC may amend them to address any non-compliance with a requirement of the Bill (including the Accounting Standards);

- (b) if it appears to the Registrar that there is or may be a question whether the financial statements comply with a requirement of the Bill (including the Accounting Standards), the Registrar may give notice to the directors indicating this. The directors must give an explanation if they do not propose to revise the financial statements, or inform the Registrar how they propose to revise them. If the directors fail to respond within the period specified in the notice or if the Registrar is not satisfied with the explanation or does not agree with the manner of revision, the Registrar may apply to the Court for a declaration of non-compliance or an order directing a revision of the financial statements.

Clause 105 requires copies of financial statements along with the auditor's report to be sent to all persons entitled to receive notice of general meetings of a VCC. A member of a VCC or a holder of a debenture may request those documents to be sent to him or her, and those documents must be sent by the VCC to the member or holder without charge.

In a case where an annual general meeting was dispensed under clause 78, a member or an auditor may by notice within 14 days after the day the documents were sent out, require that a general meeting be held for the purpose of laying those documents before the VCC.

A VCC may, instead of sending those documents to the members, send a summary financial statement to them under specified circumstances (section 203A of the Companies Act as applied by clause 105).

Clause 106 applies section 204 of the Companies Act to prescribe penalties for non-compliance with a provision in this Division.

Clause 107 applies section 205 of the Companies Act in relation to a VCC. Section 205 deals with the appointment of an accounting entity as the auditor of a company, the removal of an auditor, the power of the Registrar of Companies to appoint an auditor if the directors fail to do so, and the remuneration of an auditor.

Clause 108 applies sections 205AA to 205AF of the Companies Act in relation to an auditor of a VCC. The effect of this is as follows:

- (a) an auditor of a VCC that is not one mentioned in paragraph (b) may resign before the end of the term of office for which the auditor was appointed by giving the VCC a notice of resignation;
- (b) an auditor of a VCC with at least one authorised collective investment scheme under the Securities and Futures Act, a prescribed VCC, or a subsidiary company of any such VCC, may resign before the end of the term of office for which the auditor was appointed if the auditor has applied for and obtained consent from the Registrar to the resignation, and has notified the VCC of the application;

- (c) a VCC mentioned in paragraph (b) which receives a notice of resignation from its auditor and a written statement of the auditor's reasons for the auditor's resignation is required to send a copy of the written statement to every member of the VCC, unless an application is made to the court for a determination that the auditor has abused the use of the written statement or is using this requirement to secure needless publicity for defamatory matter;
- (d) a person will not be liable to any action for defamation in respect of publication of a written statement of an auditor's reasons for resignation if there is an absence of malice or if the publication is made upon a refusal of an application made to the Court under paragraph (c);
- (e) the directors of a VCC, whose financial statements are required to be audited under the Bill or where the resigning auditor is the sole auditor of the VCC, must appoint an auditor in place of the auditor who has resigned, failing which the Registrar may, on the application of any member of the VCC, make the appointment.

Clause 109 applies various provisions of the Companies Act concerning auditors to a VCC. These are —

- (a) section 206 (which deals with disclosure and review of auditors' remuneration);
- (b) section 207 (which deals with the powers and duties of auditors when reporting on financial statements);
- (c) section 208 (which gives an auditor immunity from liability for defamation in certain circumstances);
- (d) section 208A (which invalidates any provision in the constitution or any agreement that seeks to exempt or indemnify an auditor from or against certain liabilities); and
- (e) section 209 (which requires an auditor of a borrowing corporation to send to every trustee for the holders of debentures of the corporation any financial statements, report or other document given to the corporation; and to send a report to the corporation and to the trustee of any matter which the auditor opined to be relevant to the carrying out of any power or duty imposed by the Companies Act or the trust deed).

Part 9 (comprising clauses 110 to 124) deals with an investigation into the affairs or ownership of a VCC on the order of the Minister.

Clause 110 is an interpretation provision for Part 9.

Clause 111 enables the Minister to make an order declaring a VCC as one to which Part 9 applies (a declared VCC). The Minister may make such an order if satisfied that —

- (a) a prima facie case has been established that an investigation is desirable for the protection of the public, or the shareholders or creditors of the VCC;
- (b) it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons concerned in the formation or management of the VCC be investigated; or
- (c) for any other reason it is in the public interest for the VCC's affairs to be investigated.

Clause 112 provides for the appointment and powers of an inspector to investigate the affairs of a declared VCC. The clause applies sections 231(2) to (9) and 239 of the Companies Act in relation to such inspector and investigation. Sections 231(2) to (9) and 239 provide for the following:

- (a) that an inspector may at any time during the investigation inform the Minister of matters coming to his or her knowledge that tend to show the commission of an offence;
- (b) how the expenses of an investigation are to be defrayed;
- (c) the power of an inspector to employ other persons to help in the investigation and to authorise them to exercise his or her powers.

Clause 113 enables the Minister to appoint an inspector to investigate the affairs of a VCC on the application of the prescribed number of members or debenture holders, or on the application of the VCC pursuant to a special resolution. The Minister may initiate an investigation that relates only to a sub-fund on the application of the prescribed number of members holding shares relating to the sub-fund or the holders of debentures of the sub-fund, or on the application of the umbrella VCC pursuant to a resolution passed by members holding the prescribed percentage of voting rights of shares relating to the sub-fund.

Clause 114 provides that an inspector may make one or more interim reports and must make a final report to the Minister. The clause also applies sections 233(1A) to (3) and 238 of the Companies Act to such report, which deal with who the report may be given to, the publication of the report, and the institution of prosecution arising from the report.

If from the report, it appears to the Minister that proceedings ought to be brought by the VCC in the public interest to recover damages in respect of any misconduct in connection with the promotion, formation or management of the affairs of the VCC or any sub-fund, the Minister may bring such proceedings in the name of the VCC.

Clause 115 provides that where the inspector thinks it necessary for the investigation to also investigate the affairs of a related corporation of the VCC, the inspector may do so with the Minister's consent.

Clause 116 applies section 236 of the Companies Act to an investigation under Part 9 of the Bill. Section 236 sets out various powers of an inspector when carrying out an investigation, including —

- (a) requiring the production of books in the custody, power or control of an officer or agent, and taking possession of these books;
- (b) examining officers and agents on oath; and
- (c) requiring a director or past director to produce documents relating to a bank account into or out of which money has been paid in the course of his or her misconduct.

Clause 117 applies section 237 of the Companies Act to an investigation under clause 113 or 120 and proceedings brought by the Minister in the VCC's name, the effect of which is that the expenses of the investigation and the cost of any such proceedings are in the first instance to be paid by the VCC investigated, or by the applicants or in part by both (if the Minister so directs). If the investigation relates solely to a sub-fund, the expenses are in the first instance to be paid out of the assets of the sub-fund, or by the applicants or in part by the applicants and in part out of the assets of the sub-fund (if the Minister so directs). Any shortfall of payment by the VCC is to be paid by the applicants up to a specified amount. Any balance still unpaid will be defrayed by moneys provided by Parliament.

Clause 118 applies section 240 of the Companies Act in relation to a declared VCC. The effect of this is that upon the appointment of an inspector until the end of 3 months after the inspector has given his or her final report to the Minister, no proceedings may be commenced or proceeded (except with the Minister's consent) by the VCC in relation to any contract, bill of exchange or promissory note, or by any person in respect of a bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the VCC, except in certain circumstances.

Clause 119 enables the Minister to apply to the Court to wind up a declared VCC or a sub-fund of a declared VCC after a report has been made by the inspector.

Clause 120 enables the Minister (on his or her own initiative or on the application of the prescribed number of members) to appoint an inspector to investigate and report on the membership of a VCC, and for the purpose of determining the persons financially interested in the success or failure (real or apparent) of the VCC, or able to control or materially influence the policy of the VCC. The clause applies section 243(2) (which provides that the appointment of an inspector may define the scope of his or her investigation) and (4) (which provides that an inspector's power extends to investigating any circumstances that suggest the existence of a relevant, non-legally binding arrangement or understanding that is or was observed or likely to have been observed in practice) to the investigation.

Clause 121 provides that if it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a VCC, but that a formal investigation is unnecessary, the Minister may require a person to provide information concerning those shares or debentures to the Minister. The clause applies section 244(2) to (7) of the Companies Act for this purpose. Those provisions provide for when a person is treated as having an interest in a share or debenture, the penalty for not giving the information or for giving false information, and the right of a bank not to give customer information.

Clause 122 provides (via the application of section 245 of the Companies Act) that the Minister may impose certain restrictions on shares or debentures if there is difficulty in finding out the relevant facts and circumstance about them under clause 120 or 121. These restrictions include restrictions on the transfer of the shares or debentures, the exercise of voting rights and the payment of sums due from the VCC on the shares or debentures.

Clause 123 enables an inspector appointed under a foreign law corresponding to the Bill to investigate the affairs of a VCC in Singapore. The Minister may declare such inspector as having the same powers and duties for investigating a declared VCC, and the inspector has those powers and duties upon such declaration.

Clause 124 applies the following provisions of the Companies Act in relation to an investigation under Part 9:

- (a) section 242 (which prescribes penalties for obstructing the conduct of an investigation);
- (b) section 389 (right of a person summoned for examination to legal representation).

It also provides that an inspector appointed under Part 9 must not require a solicitor to disclose any privileged communication made to the solicitor.

Part 10 (comprising clauses 125 to 128) deals with receivers and managers of VCCs.

Clauses 125 to 128 apply the provisions in Part VIII of the Companies Act (which deals with receivers and managers of a company) in relation to a receiver or manager of the property of a VCC or a sub-fund. Part VIII contains provisions that deal with (among other matters) who is qualified to be a receiver of the property of a company, the liability of a receiver for debts incurred in the course of receivership, a receiver's right to apply to the Court for directions as to the performance of his or her functions, the Court's power to fix the remuneration of a receiver or manager, notification of the Registrar of the appointment of a receiver, the requirement that the business documents of a company in receivership include a statement to that effect, the duty of certain persons of the company to submit a statement of affairs of a company to the receiver, and lodgment by the receiver or manager of periodic accounts with the Registrar.

Clauses 125 to 128 contain modifications to the provisions of Part VIII of the Companies Act in their application in the Bill. These are mainly for the following purposes:

- (a) to disqualify certain other persons (namely the manager and custodian of the VCC and their officers and employees) from being the receiver of the property of the VCC or sub-fund;
- (b) to modify those provisions in their application in relation to a sub-fund that is under receivership;
- (c) to require the former or present manager or custodian of a VCC, persons who are or have been officers of or employed by the manager or custodian within one year of the receiver's appointment, as well as persons engaged by the VCC to provide fund administration service, to submit a statement of affairs of the VCC to the receiver;
- (d) to provide that different persons may apply to the Court for an order directing a receiver or manager to make good any default in lodging any return, account or return, depending on whether it is a non-umbrella VCC, an umbrella VCC or a sub-fund that is under receivership.

Part 11 (comprising clauses 129 and 130) contains provisions for the winding up of a VCC. The Part applies the winding up regime for companies to a VCC, with modifications.

Clause 129 provides that, except with the Court's leave, a person may not be appointed as liquidator of a VCC if the person comes within a list of disqualifications. The disqualifications are the same as those in section 11 of the Companies Act but with the following additional disqualifications:

- (a) the person is indebted to a sub-fund of a VCC for an amount exceeding \$2,500;
- (b) the person is the manager or custodian of the VCC, or an officer or employee of such manager or custodian.

Clause 130 applies Part X (Winding up) and section 389 (rights of witnesses to legal representation) of the Companies Act for the purposes of the winding up of a VCC. The application is subject to modifications in the clause, which are for the following main purposes:

- (a) to provide that certain references to officers of a company is to officers of a VCC as well as its manager or custodian;
- (b) to provide that certain references to an employee or agent of a company is to an employee or agent of the VCC as well as a person engaged to provide fund administration service;

- (c) to provide that a VCC may be wound up by the Court on the application of the Minister on additional grounds besides those set out in section 254(1) of the Companies Act, viz. the VCC had conducted business outside its sole object under clause 15, or the VCC had not had a manager that satisfies clause 46 for a prescribed period;
- (d) to provide that a VCC may be wound up by the Court on the application of the MAS on the ground that it had contravened a direction or regulation under clause 83 or 84;
- (e) to provide that the Court may wind up a VCC on the additional grounds mentioned in paragraphs (c) and (d), and also on the ground that the authorisation of the VCC as a collective investment scheme has been revoked or withdrawn under section 288 of the Securities and Futures Act;
- (f) to extend the power of arrest under section 287 of the Companies Act to an absconding director or a former director of a manager or custodian of a VCC.

Part 12 (comprising clauses 131 to 141) deals with the redomiciliation of a foreign corporate entity as a VCC registered under the Bill. The provisions are substantially similar to Part XA of the Companies Act.

Clause 131 provides that Part 12 applies to a foreign corporate entity that intends to be registered as a VCC under the Bill.

Clause 132 is an interpretation provision for Part 12.

Clause 133 provides that a foreign corporate entity that intends to be registered as a VCC under the Bill must apply to reserve the name of the VCC, that clause 21 applies to such an application and that a foreign corporate entity cannot be registered under clause 135 unless the name by which the foreign corporate entity proposes to be registered has been reserved.

Clause 134 provides that a foreign corporate entity may apply to the Registrar to be registered as a VCC under the Bill and provides for the requirements for registration.

Clause 135 deals with —

- (a) the registration by the Registrar of a foreign corporate entity as a VCC;
- (b) the requirement of a foreign corporate entity registered as a VCC under the clause to submit to the Registrar documentary evidence that the foreign corporate entity has been de-registered in its place of incorporation;
- (c) the power of the Registrar to impose, waive and modify conditions of registration;

- (d) the requirements relating to the issue by the Registrar of a notice of transfer of registration and a certificate of confirmation of registration; and
- (e) the right of a person aggrieved by certain decisions of the Registrar to appeal to the Minister.

Clause 136 sets out the circumstances in which the Registrar must refuse to register a foreign corporate entity as a VCC under clause 135 and provides for a right of a person aggrieved by such refusal to appeal to the Minister.

Clause 137 sets out the effects of the registration of a foreign corporate entity as a VCC under clause 135. In particular —

- (a) the foreign corporate entity is treated as a VCC and all provisions of the Bill pertaining to VCCs apply with such adaptations, exceptions and modifications as may be specified in regulations; and
- (b) if the foreign corporate entity was registered as a foreign company under Division 2 of Part XI of the Companies Act immediately before the date of registration specified in the notice of transfer of registration, the foreign corporate entity ceases to be so registered under Division 2 of that Part.

Clause 138 —

- (a) empowers the Registrar by order to revoke the registration of a VCC if the VCC has failed to comply with clause 135(6), that is, the VCC has failed to submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation within the prescribed time;
- (b) provides for the steps that the Registrar must take before making an order of revocation;
- (c) provides for the publication of the notice of the order of revocation in the *Gazette* and for the service of a copy of the notice of the order of revocation on the VCC which registration is revoked; and
- (d) provides for when the order of revocation takes effect and the consequences of the order of revocation.

Clause 139 provides for the duty of a foreign corporate entity that is registered as a VCC under clause 135 to lodge with the Registrar a statement of prescribed particulars of charges created before the registration of the foreign corporate entity as a VCC, which would have been required to be registered under Division 8 of Part IV of the Companies Act (as applied by clause 42) if the foreign corporate entity had been incorporated as a VCC under the Bill, and for certain ancillary matters.

Clause 140 provides that, within 60 days after the date of registration of the foreign corporate entity as a VCC under clause 135, the VCC must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as of the date of registration. However, any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the VCC is void. The clause also provides for certain ancillary matters.

Clause 141 empowers the Minister to make regulations under clause 165 in respect of applications for registration, and registration of a foreign corporate entity, under Part 12, including —

- (a) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under clause 135;
- (b) waiving any requirement of Part 12 in respect of any foreign corporate entity or class of foreign corporate entities; and
- (c) adapting, modifying or excluding the provisions of the Bill in their application to any foreign corporate entity or class of foreign corporate entities registered under Part 12.

Part 13 (comprising clauses 142 to 167) contains general provisions.

Clause 142 applies sections 216, 216A and 216B of the Companies Act in relation to a VCC. Section 216 gives a member or debenture holder a right to apply to the Court for a remedy if there has been oppression of the member or holder, if the interests of the member or holder are disregarded, or if there is any act or resolution that unfairly discriminates against or is otherwise prejudicial to the member or holder. Sections 216A and 216B provide for the right of certain persons to apply to the Court for leave to bring an action or arbitration in the name and on behalf of a company or intervene in an action or arbitration to which a company is a party.

Clause 143 provides that Division 2 of Part 13 (which deals with offences in general) does not apply to offences under Part 7.

Clause 144 applies the following provisions of the Companies Act in relation to the Bill:

- (a) section 401 (which criminalises several acts such as the advertisement, circulation or publication by a corporation of a misleading statement as to the amount of its capital, the making by a person of a false or misleading statement in a return, financial statement or other document required under the Companies Act, and the filing with the Registrar of a false or misleading document);

- (b) section 407 (which provides that a person is guilty of an offence who does an act prohibited by the Companies Act, fails to do what he or she is required to do under that Act, or contravenes a provision of that Act and provides a general penalty for offences);
- (c) section 409 (which provides for who may conduct proceedings for an offence under the Companies Act and the court for the proceedings);
- (d) section 409A (which enables the Court to grant an injunction to restrain a person from engaging in a contravention of the Companies Act or to compel a person to carry out a duty under that Act).

Clause 144 also criminalises fraudulent acts of an officer or manager of a VCC. It is based on section 146 of the Companies Act.

Clause 145 makes it an offence for an officer, manager or custodian of a VCC or a custodian of a sub-fund to make or authorise the making of a false or misleading statement to certain persons as to the affairs of a VCC or sub-fund, with intent to deceive.

Clause 146 makes it an offence for an officer, manager or agent of a VCC who, by deceitful means and with intent to defraud, causes money, chattel or marketable security to be paid or delivered for the use or benefit or on account of the VCC or its sub-funds.

Clause 147 provides that where a default penalty is provided in a provision of the Bill, then a person who is convicted of an offence under that provision or has had that offence compounded, is guilty of a further offence if the offence continues after this and is liable to an additional penalty.

Clause 148 allows the Registrar to compound an offence under the Bill that is prescribed as a compoundable offence.

Clause 149 provides for the service of documents on a VCC.

Clause 150 applies sections 387A, 387B and 387C of the Companies Act in relation to documents to be served under the Bill or the constitution of a VCC. Section 387A allows a company to electronically transmit notices of meetings to its members, officers and auditors. Section 387B allows a company to electronically transmit accounts, financial statements, reports or other documents required or permitted to be served under the Companies Act or a company's constitution, to its members, officers and auditors. Section 387C allows the documents in sections 387A and 387B to be electronically transmitted to a member with the express, implied or deemed consent of the member in accordance with the company's constitution.

Clause 151 provides that the costs of proceedings under the Bill are to be borne by such party as the court may direct. This does not apply to proceedings under Part 7 except for the recovery of any remuneration or expense of an inspector for an

inspection undertaken on the ground that an MAS direction or regulation is reasonably believed to have been contravened.

Clause 151 also enables a court in an action where the VCC is plaintiff, to require sufficient security for costs if the court reasonably believes that the VCC will be unable to pay the costs of the defendant if the defence succeeds.

Clause 152 applies section 390 of the Companies Act in relation to a VCC, which provides that a company may transfer the shares of a shareholder whose whereabouts are unknown, to the Official Receiver after publishing the requisite advertisement and after the expiration of one month from the date of the advertisement.

Clause 153 applies section 391 of the Companies Act in relation to the officers, manager and custodian of a VCC, the custodian of a sub-fund, persons engaged by a VCC to provide fund administration service and certain other persons. The effect of the application is that where —

- (a) proceedings for negligence, default, breach of duty or breach of trust is instituted against any of these persons;
- (b) any of these persons reasonably apprehend that any claim will or might be made against him or her in respect of such misconduct and applies to the Court for relief; or
- (c) and it appears to the Court that the person had acted honestly and reasonably and ought fairly to be excused for the misconduct, the Court may grant full or partial relief from liability.

Clause 154 applies section 392 of the Companies Act in relation to the Bill. Section 392 provides for the following:

- (a) a proceeding under the Companies Act is not invalidated for a procedural irregularity unless the Court is of the opinion that it has caused or may cause irremediable substantial injustice;
- (b) a meeting of a company is not invalidated by reason of an accidental omission to give a notice of meeting or the non-receipt of such notice, unless the Court declares it void;
- (c) the Court may on the application of an interested person, make various orders such as an order that an act purportedly done under the Companies Act is not invalid by reason only of a contravention of that Act or the constitution.

Clause 155 applies sections 8A to 8F and 8H of the Companies Act in relation to a VCC, the effect of which is summarised as follows:

- (a) the Minister or a person authorised by the Minister may give directions to a VCC (including a person who appears to be in possession of those

books) to produce books relating to its affairs, and to require an officer, manager, custodian or employee of a VCC, the custodian of a sub-fund, or a person engaged by the VCC to provide fund administration service, to provide an explanation of the books;

- (b) if there are reasonable grounds to suspect that there are on any premises any books which have not been produced in compliance with a requirement under paragraph (a), a Magistrate may issue a warrant authorising a police officer to enter and search the premises to take possession of such books or to take steps to prevent any interference with them;
- (c) a copy or extract from a book relating to the affairs of a VCC is admissible in evidence as if it were the original;
- (d) a person who is or was an officer, manager, custodian of a VCC, or the custodian of a sub-fund, who destroys, mutilates or falsifies any document affecting or relating to the property or affairs of the VCC, or makes a false entry in such document, or fraudulently parts with, alters or makes an omission in any such document, or is privy to any of these, is guilty of an offence;
- (e) an advocate and solicitor is not required to produce a document that contains a privileged communication;
- (f) the Minister may make an investigation if he or she reasonably suspects that a person has committed an offence under the Bill;
- (g) information or document obtained under paragraphs (a) and (b) may not be published or disclosed without the prior consent of the VCC, subject to certain exceptions.

Clause 156 provides that the Minister may apply to the Court for an order —

- (a) authorising a person to inspect any books or papers under the control of a VCC for the purpose of investigating and obtaining evidence of any offence by an officer or manager of a VCC in connection with the management of the VCC's affairs; or
- (b) requiring the secretary or any officer or manager of a VCC to produce such books or papers to the authorised person.

Clause 157 applies sections 395, 396 and 396A of the Companies Act in relation to records and other documents required to be kept by the VCC. Section 395 provides for the form and manner in which company records are to be kept. Section 396 requires a company to take reasonable precautions to ensure the authenticity of its records and to prevent falsification. Section 396A provides that company records are to be available for inspection at a specified place and during specified hours.

Clause 158 applies section 397 of the Companies Act in relation to a VCC. Section 397 requires documents lodged with the Registrar, made available for public inspection, or kept by a company, to be accompanied by a translation in the English language if the documents are not in the English language.

Clause 159 provides that a notice of incorporation and certificate of confirmation of incorporation are each conclusive evidence that all registration requirements of the Bill have been complied with, and that the VCC mentioned in it is duly incorporated under the Bill.

Clause 160 applies section 399 of the Companies Act in relation to this Bill, the effect of which is that the Court may compel —

- (a) a person to permit the inspection of a register or other document or to supply a copy of such document if that person has failed to do so in contravention of this Bill; or
- (b) an officer of a VCC, the manager or custodian of a VCC, the custodian of a sub-fund, or a person who was formerly such person, to do any act that the person was required or directed to do.

Clause 161 provides that the Registrar or a person authorised by him or her may furnish any information or document obtained in carrying out the Registrar's functions or duties under this Bill, to MAS to enable MAS to carry out its functions and duties under Part 7 or any other written law.

Clause 162 provides that MAS or a person authorised by MAS may furnish any information or document obtained in carrying out MAS' functions or duties under Part 7 or any other written law, to the Registrar, ACRA or a person authorised by ACRA, for the administration or enforcement of the provisions of the Bill that are set out in the Third Schedule.

Information may be shared under clauses 161 and 162 despite any legal restriction to such sharing.

Clause 163 provides (vide the application of section 409C of the Companies Act) that a person aggrieved by an act or decision of the Registrar may appeal to the Court against it. The Court may confirm the act or decision or give such directions as are proper to determine the matter.

Clause 164 provides that Rules of Court may provide for various matters pertaining to the Bill.

Clause 165 is a regulation-making power for the Bill. Regulations may incorporate by reference any regulations made under the Companies Act as in force at a particular time or from time to time.

Clause 166 enables the Minister to add to, vary or amend the Second or Third Schedule.

Clause 167 makes consequential and related amendments to various Acts as follows:

- (a) the Accounting and Corporate Regulatory Authority Act, to enable ACRA and its officers and employees to administer and enforce the provisions of the Bill (other than Part 7), an authorised officer of ACRA to conduct prosecution for an offence under the Bill (other than under Part 7) with the authorisation of the Public Prosecutor, and to enable a legal officer of ACRA who is an advocate and solicitor to appear in civil proceedings involving ACRA or the Registrar in the performance of his or her functions or duties under the Bill;
- (b) the Companies Act, for the following purposes:
 - (i) to include, as names by which a company or foreign company may not be registered under that Act, a name that is identical to a name reserved under the Bill, and a name that is identical to a name of a VCC that was dissolved unless a specified period has elapsed since the dissolution;
 - (ii) to provide that a person may not be a director of a company, or a foreign company that establishes a place of business or carries on business in Singapore (or intends to do so), if he or she is subject to a disqualification, disqualification order or debarment order from being a director of a VCC under certain provisions of the Bill;
 - (iii) to provide under section 163 of that Act that, except with the company's approval, a company may not make a loan or quasi loan to, or enter into other credit transaction for the benefit of, a VCC that is connected with a director of the company;
 - (iv) to provide that a controller (*A*) of a company or foreign company (*X*) is not registrable under Part XIA of that Act if *A*'s significant interest or control in or over *X* is only through another controller (*B*) that is a VCC, and *A* is a controller of *B*;
- (c) the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A), so as to apply the provisions applicable to a financial institution (e.g. a production order in relation to anything in a financial institution's possession, and record-keeping duties of a financial institution) to a VCC;
- (d) the Mutual Assistance in Criminal Matters Act (Cap. 190A), so as to require an application for a production order or a search and seizure warrant in relation to anything in a VCC's possession to be made to the High Court, similar to financial institutions;

- (e) the Securities and Futures Act, for the following purposes:
- (i) to specify that the responsible person for a collective investment scheme that is constituted as a VCC or a sub-fund, is the VCC;
 - (ii) to prescribe the conditions to be satisfied before a collective investment scheme that is constituted as a VCC or a sub-fund may be authorised by MAS as an authorised scheme. These conditions include a condition that the custodian is a public company approved to act as a trustee for an authorised collective investment scheme that is constituted as a unit trust, and a condition that the scheme complies with the Act and the Code on Collective Investment Schemes;
 - (iii) to provide that the VCC and the custodian of an authorised scheme constituted as a VCC or a sub-fund is responsible for ensuring continued compliance with the conditions mentioned in sub-paragraph (ii);
 - (iv) to enable MAS to direct a VCC that is an authorised scheme or whose sub-fund is an authorised scheme, to remove the manager of the scheme who contravened the Act or the Code on Collective Investment Schemes and appoint a new manager;
 - (v) to enable MAS to revoke the authorisation of a scheme that is a VCC or a sub-fund, if the VCC or its manager or custodian fails to comply with section 286(10) or (13) of the Act;
 - (vi) to make consequential amendments to sections 293 (Authority may issue directions), 294 (Service), 295 (Winding up) and 308 (Transactions under exempted offers subject to Division 2 of Part XII of Companies Act and Part XII of Securities and Futures Act) of the Act;
- (f) the United Nations Act, so as to disapply regulations under that Act to a VCC that is subject to directions and regulations under Part 7 of the Bill.

Clause 167 also enables the Minister to make amendments to other Acts that are consequential on the enactment of this Act, including applying a provision of any Act to a VCC as it applies to a company, or disapplying to a VCC a provision of any Act that applies to a company, body corporate or corporation.

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

TABLE OF DERIVATIONS

This Table of Derivatives is provided for the convenience of users of the Act. It is not part of the Act.

<i>Variable Capital Companies Bill 2018</i>		<i>Derivations</i>			
<i>Section Heading</i>	<i>Clause</i>	<i>Companies Act (Cap. 50) (as modified)</i>	<i>Irish Collective Asset- Management Vehicles Act 2015 (as modified)</i>	<i>The Open- Ended Investment Companies Regulations 2001 (United Kingdom) (as modified)</i>	<i>Others (as modified)</i>
		<i>Section</i>	<i>Section</i>	<i>Regulation</i>	
PRELIMINARY	PART 1				
Short title and commencement	1	—	—	—	—
Interpretation	2	4, 21(6G) and 408(3)	—	—	Section 283 of Securities and Futures Act (Cap. 289) (SFA) Section 52 of Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A)
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When corporations related to each other	4	6	—	—	—
Purpose of Act and application of Companies Act provisions in this Act	5	—	—	—	—
Application of Companies Act to VCC, etc.	6	—	—	—	—
ADMINISTRATION OF ACT	PART 2				
Application of Part	7	—	—	—	—
Administration of Act and appointment of Registrar of VCCs, etc.	8	8	—	—	Section 3 of Business Names Registration Act 2014 (Act 29 of 2014) (BNRA)
Registers, etc.	9	12	—	—	—

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Electronic transaction system	10	12A	—	—	—
Rectification of registers	11	—	—	—	—
Enforcement of duty to make returns	12	13	—	—	Section 39 of BNRA
Relodgment of lost registered documents, and size, durability and legibility of documents lodged with Registrar	13	—	—	—	—
VCC auditors	14	—	—	—	—
CONSTITUTION OF VCC	PART 3				
Object of VCC	15	—	5(2)	—	Section 30 of Banking Act (Cap. 19)
Registration of VCC	16	17(1) and (9), 19(1) to (5) and 23(1)	—	—	—
Members of VCC	17	19(6) and (6A)	5(3) and (4)	—	—
Duty to refuse registration	18	20	—	—	—
Constitution of VCC	19	22(1), 22(4) and 35(1)	—	—	—
Alteration of constitution	20	26(1AA)	31(1)(a)	—	—
Name of VCC	21	27(1) to (2), (6), (7) and (16)	—	—	—
Membership of holding company	22	21(1) to (2), (4) to (4B), (4C)(b), (5) to (6C), (6D)(b), (6E), (6F), (7) and (9)	—	—	—
Rights attached to shares in section 22(6) and (11)	23	21(4C) and (6D) and 76J(1), (2), (3), (5) and (6)	—	—	—
Disposal and cancellation of shares in section 22(6) and (11)	24	21(4C) and (6D) and 76K	—	—	—
Application of other provisions of Part III of Companies Act	25	—	—	—	—

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Holding out as VCC	26	405(1)	—	—	—
SUB-FUNDS	PART 4				
Registration of sub-fund	27	—	—	—	—
Duty to provide certain information to Registrar	28	—	—	—	—
Segregated assets and liabilities of sub-fund	29	—	35	11A(1) to (4)	—
Disclosure of sub-fund details	30	144	36(1) and (2)	—	—
Cross sub-fund investment	31	—	—	11B	—
Further matters about sub-funds	32	—	37(1)	—	—
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Shares of VCC	34	74A(1), (5) and 121	38(4) and (5)	45(1)	—
Power to repurchase or redeem own shares	35	—	46 and 47	—	—
Application of provisions of Division 3 of Part IV of Companies Act	36	21(6G)	—	—	—
<i>Debentures</i>	<i>Division 2</i>				
Application of provisions of Division 5 of Part IV of Companies Act	37	—	—	—	—
<i>Title and transfer of shares and debentures</i>	<i>Division 3</i>				
Duties of VCC with respect to allotments and transfers	38	130AE	39(3)	—	—
Certificate is evidence of title	39	123	—	—	—
Transfer of shares or debentures	40	130(1)	42 and 43	—	—

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Application of other provisions of Division 7 of Part IV of Companies Act	41	—	—	—	—
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<i>Office and Name</i>	<i>Division 2</i>				
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Manager	46	—	—	—	—
Restrictions on naming of manager in document or register	47	146	—	—	—
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<i>Preliminary Provisions</i>	<i>Subdivision (1)</i>				
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Restrictions on naming of director in document or register	49	—	—	—	—
Appointment of directors	50	—	—	—	—
Validity of acts of directors and secretary	51	151	—	—	—
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<i>Qualifications and disqualifications of directors</i>	<i>Subdivision (2)</i>				

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<i>Section Heading</i>	<i>Clause</i>	<i>Companies Act (Cap. 50) (as modified)</i>	<i>Irish Collective Asset-Management Vehicles Act 2015 (as modified)</i>	<i>The Open-Ended Investment Companies Regulations 2001 (United Kingdom) (as modified)</i>	<i>Others (as modified)</i>
Directors must be fit and proper persons	53	—	—	25(1)(c)	Sections 81ZF(1) and 81ZJ(1) of SFA Section 28F(3)(c) and (4) of Accounting and Corporate Regulatory Authority Act (Cap. 2A) Section 31(12) to (15) and (19) of Insurance Act (Cap. 142)
Qualification of director	54	—	—	—	—
Restriction on undischarged bankrupt	55	—	—	—	—
Disqualification of unfit director of insolvent VCC	56	149(1) to (7)	—	—	—
Disqualification of director of VCC wound up on grounds of national security or interest	57	149A	—	—	—
Disqualification to act as director on conviction of certain offences, etc.	58	154	—	—	—
Disqualification and debarment from being a director or secretary in connection with default in filing documents under this Act	59	—	—	—	—
Disqualification for being director of not less than 3 VCCs that were struck off within 5-year period	60	155A	—	—	—
Disqualification under Limited Liability Partnerships Act and Companies Act	61	155C	—	—	Section 37 of Limited Liability Partnerships Act (Cap. 163A) (LLP Act)
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<i>Section Heading</i>	<i>Clause</i>	<i>Companies Act (Cap. 50) (as modified)</i>	<i>Irish Collective Asset- Management Vehicles Act 2015 (as modified)</i>	<i>The Open- Ended Investment Companies Regulations 2001 (United Kingdom) (as modified)</i>	<i>Others (as modified)</i>
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Duty and liability of officers, etc.	63	—	—	—	—
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Disclosure of director's emoluments and general duty to make disclosure	67	21(6G)	—	—	—
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<i>Provisions applicable to officers</i>	<i>Division 5</i>				
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When residential address may be entered in register in place of alternate address	76	173G(5) to (12), (15) and (16)	—	—	—

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First Schedule		21(6G), 253(1), 254(1), 281(1), 288 and 339(2)	—	—	—

<i>Variable Capital Companies Bill 2018</i>		<i>Derivations</i>			
<i>Section Heading</i>	<i>Clause</i>	<i>Companies Act (Cap. 50) (as modified)</i>	<i>Irish Collective Asset- Management Vehicles Act 2015 (as modified)</i>	<i>The Open- Ended Investment Companies Regulations 2001 (United Kingdom) (as modified)</i>	<i>Others (as modified)</i>
Second Schedule		Twelfth Schedule	—	—	—
Third Schedule		—	—	—	—