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VCC structure recommended for funds in GIFT city

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With the objective of promoting innovative structures and attracting international players in International Financial Services Centres (IFSC), the International Financial Services Centre Authority (IFSCA) is contemplating to allow variable capital company (VCC) structure in the funds space in the IFSC – GIFT City (Gujarat International Finance Tec-City) and has recently released the Report of the Expert Committee for drafting a Legal Framework for allowing Variable Capital Company Structure in the IFSCs ([available here](#)) (**Expert Committee Report**). This is one of the many other moves to position GIFT City as a global financial hub.

Earlier, IFSCA had constituted an expert committee (**Krishnan Committee**) to examine the relevance and adaptability of VCCs for IFSCs in India, which released its report on the introduction of VCCs in the IFSC in May 2021. Following the report of the Krishnan Committee, IFSCA had discussions with the relevant stakeholders and meetings with Ministry of Corporate Affairs and other representatives and pursuant to this discussion, IFSCA constituted another expert committee (**Expert Committee**) to draft a legal framework for allowing the VCC structure to operate in IFSCs in India.

The recommendations of the Expert Committee have been analysed in detail in the table below.

Recommendations	Detailed analysis		
<p>Principles driving the design of the proposed legal framework for VCC</p>	<p>The legal framework should recognise VCCs as a vehicle to house only pooled funds. The Expert Committee agreed that the following key principles should drive the design of the proposed legal framework for VCCs:</p>		
	<table border="1"> <tr> <td data-bbox="443 929 670 1377"> <p>Promoting the competitiveness of the VCC structure</p> </td> <td data-bbox="678 929 1428 1377"> <ul style="list-style-type: none"> ▪ Given that VCCs are intended to house funds, the legal framework be drafted to ensure that VCCs are at least as attractive to house funds as existing structures, such as trusts. ▪ Specifically, the legal framework should ensure that VCCs are low-cost structures, which attract lower governance requirements, can be wound up quickly and can maintain confidentiality of investor information. ▪ The fundamental features of a VCC should be retained – specifically variable capital requirements, ability to house multiple pools of assets that are ring-fenced from each other and flexibility on pay-outs to investors. </td> </tr> </table>	<p>Promoting the competitiveness of the VCC structure</p>	<ul style="list-style-type: none"> ▪ Given that VCCs are intended to house funds, the legal framework be drafted to ensure that VCCs are at least as attractive to house funds as existing structures, such as trusts. ▪ Specifically, the legal framework should ensure that VCCs are low-cost structures, which attract lower governance requirements, can be wound up quickly and can maintain confidentiality of investor information. ▪ The fundamental features of a VCC should be retained – specifically variable capital requirements, ability to house multiple pools of assets that are ring-fenced from each other and flexibility on pay-outs to investors.
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<p>Principle based legislation with flexibility to introduce subordinate legislation</p>	<ul style="list-style-type: none"> ▪ The legislation introducing VCCs should be principle-based and should avoid prescriptive requirements. ▪ There should be sufficient flexibility for the legal framework to be adapted to the needs and challenges that may arise in practice. ▪ Vast latitude should be given to specify subordinate legislation relating to VCCs. The approach followed under the SEBI Act, 1992 should serve as a model for deciding the extent of reliance on subordinate legislation. 		
<p>Framework to focus on the 'entity' not 'activity'</p>	<ul style="list-style-type: none"> ▪ Presently, Fund Management Entities (FMEs) launch schemes in separate vehicles, such as trusts etc. In addition to FMEs launching schemes in trusts, etc., the VCC should be another vehicle that can be used by FMEs to launch and house schemes. ▪ The IFSCA (Fund Management) Regulations, 2022 (FME Regulations) which puts in place certain regulatory requirements for funds housed in trusts, companies, etc., 		

Recommendations	Detailed analysis	
		<p>including requirements relating to minimum corpus, permissible investments, winding up and listing should apply to the schemes housed within a VCC as well, and the FME Regulations should be amended to accommodate this.</p> <ul style="list-style-type: none"> ▪ Requirements that apply to establish and register FMEs, however, would not apply to VCCs, as VCCs will not be FMEs and will only be structures established by FMEs to house schemes. Consequently, the legal framework for introduction of VCCs should clarify the basic structure of a VCC that can operate in a VCC and lay down standards for the incorporation and dissolution of a VCC. ▪ However, the framework for the formation of VCCs should not venture into regulating its business operations, as this would lead to overlaps and potentially more onerous compliances for VCCs that would render it a less competitive vehicle for fund activities.
	<p>Alignment with activity regulation</p>	<p>The framework introducing VCCs should be closely aligned with the requirements under the FME Regulations that would apply to funds housed within the VCC. This will ensure that VCCs are subject to a cohesive regulatory framework.</p>
<p>Inclusion of the legal framework as part of the IFSCA Act</p>	<p>The Expert Committee recommended that instead of introducing the VCC framework as part of a nationally applicable legislation, such as the Companies Act, 2013 (“CA2013”) or a stand alone law, it should be introduced as an amendment to the International Financial Services Centre Authority Act, 2019 (“IFSCA Act”) for the following reasons:</p> <ul style="list-style-type: none"> ▪ <u>Compliance with a single legislation:</u> The Expert Committee felt that there was a need to ensure that the business regulation and entity regulation was intrinsically linked, and that VCCs would have to comply with requirements under a single legislation, instead of attempting disjointed compliances across different legislations. ▪ <u>Regulation by IFSCA under the same legislation ensuring ease of doing business for VCCs:</u> IFSCA, which has already been discharging its functions under the IFSCA Act, would not need to attempt regulation from different lenses as a regulator under multiple legislations, thereby avoiding gaps and overlaps in regulation and ensuring greater ease of doing business for VCCs, and more streamlined regulation of VCCs as well. ▪ <u>IFSCA Act to regulate all financial entities:</u> This would serve as a first step towards converting the IFSCA Act to a code for regulating all financial entities and activities that take place within the IFSCs. ▪ <u>Cohesive and unified approach to regulate financial activities within IFSC:</u> As IFSC becomes a hub for international finance, more innovative structures and activities would be carried out from within the IFSC. Given this, it would be important to update the legal framework relating to these activities from time to time. Instead of creating various pieces of legislation, it would be useful to update the IFSCA Act, so that a cohesive and unified approach to regulation of financial activities in the IFSCs can be taken. 	
<p>Administration of VCCs to be carried out by IFSCA</p>	<ul style="list-style-type: none"> ▪ <u>One regulatory agency i.e. IFSCA:</u> The Expert Committee noted that a VCC is essentially a vehicle to house funds. IFSCA already regulates funds in the IFSCs and the Expert Committee believes that VCCs should have interface with only one regulatory agency. Having different agencies for entity regulation, and activity regulation of VCCs could 	

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	<p>lead to overlaps in compliances and gaps in regulation. This would reduce the attractiveness of the VCC as a structure to house funds.</p> <ul style="list-style-type: none"> ▪ <u>Entity regulation to be carried out by IFSCA:</u> The Expert Committee felt that since entity regulation (e.g. incorporation, prescription of governance norms, requirement of filings, dissolution, etc.) would be closely linked to activity regulation, there may not be the need to introduce another agency for entity regulation. Therefore, even functions such as incorporation, registration and dissolution of a VCC, should be carried out under the aegis of IFSCA, instead of the Central Government. ▪ <u>“Registry activity” to be carried out by IFSCA:</u> The Expert Committee is of the view that processes such as registration of a sub-fund of a VCC, which could be conceived of as a ‘registry activity’, would have to go hand in hand with obtaining permissions from IFSCA to launch the schemes which would be housed in the sub-fund of VCC. To ensure that these processes can be streamlined, such activities should be carried out by the IFSCA itself, and requisite capacity should be built within the IFSCA to enable this.
<p>Types of securities Equity/debt securities, Management and Participating shares</p>	<ul style="list-style-type: none"> ▪ <u>Issuance of equity/ debt securities:</u> A VCC may be able to issue both debt and equity securities. Where a VCC is an umbrella VCC, it may issue different classes of equity and debt securities to represent the interest of the holder in the specific sub-fund that each class of securities would correlate to. ▪ <u>Management shares and participating shares:</u> Drawing reference from the Model Constitution for VCCs prepared by the Singapore Academy of Law and taking into account the manner in which funds are organised in India, the Expert Committee is of the view that a VCC should be given an option to segregate its equity share capital into management shares and participating shares. <ul style="list-style-type: none"> – Management shares: The initial subscribers/ incorporators of the VCC may subscribe to management shares. Management shareholders should have voting rights but limited economic rights, with no right to receive any share of the profits of the VCC or any proceeds of realisation of the assets of the VCC. A management shareholder would have a right to vote in proportion to her share in the paid-up management share capital of the VCC. – Participating shares: Participating shareholders should have economic rights, specifically the right to participate in the distributable proceeds, income and profits earned by the VCC from holding or disposal of investments. However, their voting rights should be limited to those proposals that involve a variation of their rights, or such other matters as may be provided in the articles of the VCC. A participating share holder should have a right to vote in proportion to her share in the net asset value of the participating share capital of the VCC. – Total voting power of management shareholders and participating shareholders: Where a resolution is to be approved both by management shareholders and participating shareholders, the total voting power should be calculated as an aggregate of the paid-up management share capital and the aggregate net asset value of the holders of the participating share capital who are entitled to vote on the resolution. <p>Given this option for a VCC to issue management and participating shares, the Expert Committee was of the view that it may not be necessary to allow VCCs to issue preference shares.</p>
<p>Insolvency and closure of a VCC to be</p>	<ul style="list-style-type: none"> ▪ <u>Winding down/insolvency of VCC to be regulated by FME Regulations:</u> The FME Regulations provide a mechanism for the winding down of funds, including at the direction of IFSCA. The Expert Committee was of the view these should and would deal with the winding down or transfer of the business of a VCC where a VCC is insolvent when the FME Regulations are extended to cover the schemes housed in the VCC itself.

Recommendations	Detailed analysis
<p>regulated by FME Regulations</p>	<p>Once the business is either wound up under the activity specific regulation, only the corporate entity of the VCC would remain and this would not be carrying out any business. Given this, there would not be the need to provide a detailed winding down process.</p> <ul style="list-style-type: none"> ▪ <u>Summary process for dissolution of corporate entity:</u> A summary process for the dissolution of the corporate entity, such as that employed for striking off under the CA2013, should be provided. This process should only be such that IFSCA can satisfy itself that there are no pending liabilities to any participating members of the VCC; and sufficient provision has been made for the realisation of all amounts due to the VCC and for the payment or discharge of any other liabilities and obligations within a reasonable time. ▪ <u>Rescuing a VCC:</u> With regard to rescue, the Expert Committee noted that the process for schemes of arrangement for VCCs could also be used to ‘rescue’ the VCC or its sub-funds, in case of an insolvency situation. The FME Regulations already empower IFSCA to order merger of funds and order change in the fund manager of a fund. They also provide for the maintenance of business continuity plans and for the restructuring of schemes. The Expert Committee recommended that these should be extended to funds housed in a VCC, and no further rescue tools would need to be provided for in the proposed legal framework.
<p>Audit and Accounting as per the FME Regulations</p>	<p>The Expert Committee recommend that accounting and auditing should be done for VCCs in the same manner that it is done for other vehicles housing funds. The Expert Committee noted that the FME Regulations have put in place certain requirements for audit. The committee recommended that IFSCA should have broad flexibility to prescribe audit and accounting requirements that are consistent with the requirements under the FME Regulations, which should evolve with market dynamics and therefore be provided for in the subordinate legislation.</p>
<p>Basic Structure and Incorporation of VCC Stakeholders of a VCC, structure of entity, internal governance mechanisms, constitution documents, incorporation, registered office, nomenclature of the VCC</p>	<ul style="list-style-type: none"> ▪ <u>Stakeholders of a VCC:</u> The stakeholders of a VCC shall be Shareholders/ Investors, Board of Directors, Fund Manager and Custodian. However, the requirement to appoint a fund manager and a custodian should flow from the regulations governing the business of the VCC, i.e. the FME Regulations, and need not find place in the legislative framework to introduce VCCs. ▪ <u>Structure of entity:</u> A VCC should be a body corporate with separate legal existence, perpetual succession, limited liability and ability to sue and be sued in its own name, similar to a public listed company, but with variable capital, i.e., no minimum capital requirement and flexible norms on issue or redemption of shares. Further, IFSCA should specify higher governance/ compliance requirements for “public VCCs” in case certain thresholds are met. ▪ <u>Internal governance mechanisms:</u> In addition to the governance requirements provided in legislation (which would include the requirement to set up a board) or by the applicable regulator, the VCC would define its internal governance mechanisms in its constitutional documents, i.e., certificate of incorporation, memorandum of association and articles of association. ▪ <u>Minimum requirements of constitution documents of a VCC:</u> The approach adopted in the CA2013 should broadly be followed: <ul style="list-style-type: none"> – The constitution documents of a VCC should include a Memorandum of Association setting out the main objective of the VCC and other objectives ancillary to the main objective, and an Article of Association, setting out the rules for the internal management of the VCC. – A certain threshold for the alteration of these constitution documents should be prescribed in the act. A more stringent process for the alteration of these

Recommendations	Detailed analysis
	<p>constitution documents, as and when required, may be prescribed in the respective documents, subject to the requirement of filing the details of alterations with the registrar.</p> <ul style="list-style-type: none"> ▪ <u>Incorporation of a VCC:</u> The system followed in relation to the companies to be followed. However, IFSCA to administer the incorporation. ▪ <u>Registered office of the VCC:</u> VCCs should at all times have their registered office in the IFSC. Further, IFSCA may prescribe requirements, if any, in relation to physical presence of directors/ employees of the VCC in IFSC. ▪ <u>Nomenclature of a VCC/sub-funds:</u> To allow people dealing with VCCs to distinguish them from companies incorporated under the CA2013 and limited liability partnerships, the VCC should have its name registered with the Registrar of VCC with the last words ‘Variable Capital Companies (International Financial Services Company) Limited’ or ‘VCC (IFSC) Ltd’. The process of obtaining the name of a VCC/ sub-funds shall be similar to the one for companies under the CA2013. The restrictions applicable to certain undesirable names would be as prescribed by the MCA. ▪ <u>Open-ended or close ended funds and conversion of funds:</u> VCC structure should be available for both open-ended and close-ended strategies. The funds may be allowed to convert from open-ended to close-ended, and vice versa, in accordance with the norms specified by the IFSCA. In case of public sub-funds, conversion of open-ended to close-ended schemes shall be subject to consent of investors and exit shall be provided to investors who dissent for such conversion.
<p style="text-align: center;">Governance and Management of VCCs Register of shareholders, significant beneficial owners, accounting standards, related party transactions, board of directors of a VCC</p>	<ul style="list-style-type: none"> ▪ <u>Register of shareholders of a VCC:</u> A register of shareholders should be created and made available for inspection only to the members of the concerned sub-fund and public authorities for regulatory, supervisory and law enforcement purposes. The register should also be filed with the ROVCC. However, shareholders should only be able to access that information on the register that pertains to themselves. ▪ <u>Collection and disclosure of information relating to significant beneficial owners:</u> A VCC should also be mandated to maintain information relating to significant beneficial owners and file with the Registrar of VCC regularly. The Registrar of VCC should however ensure that this information is not made public. The Registrar of VCC / the IFSCA may seek this information in certain circumstances, in which case, the VCC should be mandated to provide the same. However, such disclosures should only be made to IFSCA. ▪ <u>Accounting standards:</u> The VCC should be allowed to prepare their financial statements using any financial reporting standard, i.e., US GAAP, or IndAS or IFRS. The accounting policy followed by sub-funds should clearly be documented in the financial statements. ▪ <u>Preparation of financial statements of umbrella VCCs:</u> The financial statements of each sub-fund should be maintained separately but may be aggregated (not consolidated) at the VCC level for filing with the Registrar of VCC/IFSCA. ▪ <u>Disclosure requirement for related party transactions:</u> VCCs should disclose related party transactions, including those with directors and fund managers in their financial statements per relevant accounting standards. It is to be noted that certain related party transactions are already restricted under the FME Regulations. ▪ <u>Constitution of board of directors of a VCC:</u> VCCs should have a board of directors that should be constituted in line with the requirements of the CA2013: <ul style="list-style-type: none"> – The board should have a minimum of <u>two directors</u> of whom at least <u>one should be an Indian resident</u>. – Where VCCs are publicly traded or have publicly traded sub-funds, they should appoint <u>one independent director</u>. In other cases, investors should be able to

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	<p>require the appointment of an independent director as part of their fund subscription agreement.</p> <ul style="list-style-type: none"> – Directors should be ‘<u>fit and proper</u>’ persons, and at least one director of the VCC should be common with that of the fund manager. – The requirements for qualifications of directors should be synchronised with the requirements under the FME Regulations. <ul style="list-style-type: none"> ▪ <u>Role of the board of directors of a VCC:</u> The Board should take the responsibility for the overall conduct of the VCC along with the Fund Manager. ▪ <u>Appointment of Company Secretaries:</u> Appointment of company secretaries should be mandated only if the share capital of the VCC exceeds a prescribed threshold. Such a secretary should be an Indian resident. Company secretaries need not be ‘employed’ but may be ‘engaged’ as well. ▪ <u>Administration of VCC’s affairs:</u> IFSCA may provide details for administration and management of VCCs in subordinate legislation. While it may take inspiration from the CA2013 as applied to companies licensed to operate from the IFSC, it may prescribe more flexible requirements.
<p>Capital and Rights and Powers of Shareholders Transferability of securities, fresh issue or redemption/ buy-back of securities, payment of dividend, valuation of securities, shareholder meeting requirements</p>	<ul style="list-style-type: none"> ▪ <u>Organisation of VCC’s capital:</u> VCCs would issue shares that would either represent the investment in the VCC itself or in its sub-funds in case of an umbrella VCC. The VCC must issue a separate class or classes of shares for each sub-fund. ▪ <u>Transferability of securities of a VCC or sub-fund:</u> A sub-fund may be set up as a publicly traded or privately traded sub-fund. The IFSCA may specify the conditions which a publicly traded sub-fund must comply with or the circumstances in which a sub-fund must be necessarily classified as a publicly traded sub-fund (such as a threshold linked to the number of investors, etc.). <ul style="list-style-type: none"> – Public sub-funds should be able to list their securities on IFSCA’s stock exchange. – Private sub-funds should be able to list their debt securities on IFSCA’s stock exchange. Any restrictions on transferability of equity securities may be built in their scheme documents. ▪ <u>Fresh issue or redemption/buy-back of securities or capital reduction by VCCs:</u> There should not be any need for shareholder or regulatory approval for the same. However: <ul style="list-style-type: none"> – Publicly traded sub-funds or VCCs should not be able to redeem capital except in cash. – Public VCCs or sub-funds should make buy-back offers to all shareholders of a class, unless otherwise approved by a requisite majority of shareholders. Buy-back or redemption of shares should only be done if shares are fully paid up. – Redemptions and consequent reductions of capital should be reflected in the Annual Report. – Redemption to be at NAV or any other internationally accepted valuation mechanism, as chosen in the scheme document. – Only redemption should be envisaged for participating shares. The mechanism for redemption should not require shareholder or regulatory approval (subject to certain limitations). However, management shares should not be redeemable. Instead VCCs may have the option to buy back or reduce some (but not all) management shares with requisite shareholder/ regulatory approval. ▪ <u>Payment of dividends:</u> Dividends should be paid out of both capital and profits subject to positive net worth of the sub-fund, VCC. ▪ <u>Valuation of securities of a VCC/sub-fund:</u> Valuation of securities of VCC should be at NAV or any other internationally accepted valuation mechanism, as chosen in the

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	<p>scheme document. Valuation to be conducted every 3 months for publicly traded VCCs/ sub-funds and as per scheme document for privately traded VCCs and sub-funds.</p> <ul style="list-style-type: none"> ▪ <u>Shareholder meeting requirements of VCC:</u> Private VCCs and sub-funds should not have mandatory annual general meeting requirements. Public VCCs and sub-funds should be able to have video conference annual general meetings. <ul style="list-style-type: none"> – Shareholders should be able to call for extraordinary general meetings, with flexibility to call for such meetings at a sub-fund level. – Basic principles for conducting meetings should be in the act but the procedure for conducting meetings should be left to each VCCs constitutional documents. They can be in line with those mandated under CA2013.
<p>Sub-funds Structure and setting up of sub-funds, activities of sub-funds, cross cell contagions</p>	<ul style="list-style-type: none"> ▪ <u>No mandatory requirement for sub-funds:</u> The VCC may be a stand-alone VCC or an umbrella VCC containing sub-funds. ▪ <u>Structure of sub-funds:</u> The sub-fund of a VCC should not be a legal person separate from the VCC; it should derive its character from the VCC. In mutual fund parlance, a sub-fund is akin to a scheme of a mutual fund. Each sub-fund’s assets and liabilities however would remain separate from the assets and liabilities of the VCC. ▪ <u>Setting up of sub-funds:</u> A VCC may set up one or more sub-funds, without the prior approval of the Registrar of VCC. On the creation of new sub-funds under a particular VCC, the IFSCA should suo-moto intimate information about the sub-fund to the Registrar of VCC. The IFSCA and the Registrar of VCC must have an appropriate information sharing mechanism to facilitate this exchange. Thereupon, the Registrar of VCC should allot a unique identification number to each sub-fund that may be linked to the VCC. The IFSCA should administer the registration. ▪ <u>Activities of sub-fund to be carried at VCC/ sub-fund level:</u> As a VCC is the legal entity, it will enter contracts with external parties alone. Further, only a VCC can sue (or be sued by) an investor or a third party and not the sub-funds. Any charge created on the assets of the VCC shall be registered with the Registrar of VCC. The legal framework should recognise that administrative activities, such as filing of charges, should take place at the VCC level, to ensure lower costs of administration. ▪ <u>Prevention of cross cell contagion:</u> It should be the explicit duty of board of directors to prevent cross-cell contagion in constitutional documents, adequate penalty provisions in law, and cross-cell investments to be restricted in accordance with scheme documents or in IFSCA regulations. <ul style="list-style-type: none"> – Disclosure of details: A VCC should be required to disclose the name, unique sub-fund identification number and that the sub-funds have segregated assets and liabilities in all documents in which its sub-fund is referred to, prior to entering into agreements on behalf of its sub-fund. – Umbrella VCC: The letterhead of an umbrella VCC should contain the phrase ‘An umbrella fund with segregated liability between sub-funds’. – Segregation of liability clause in third party agreements: To ensure that the third party is aware about the implications of having segregated liability, the act should provide to incorporate the below clause in third party agreements: <i>‘the party or parties contracting with the umbrella fund shall not seek, by whatever means, to have recourse to any assets of any sub-fund in the discharge of all or part of a liability which was not incurred by that sub-fund’</i>. Appropriate penal provisions should be introduced in case the provisions are not complied with. – Prohibition in constitutional documents: The constitutional documents should also contain prohibitions on direct/ indirect commingling of assets and liabilities.

Recommendations	Detailed analysis
<p>Segregation of assets and liabilities of sub-funds amongst themselves and vis-à-vis each other</p>	<p>The governing act for VCC should specifically provide for the segregation of the assets and liabilities of sub-funds:</p> <ul style="list-style-type: none"> ▪ The assets of a sub-fund cannot be used to discharge the liabilities of or claims against the VCC or any other sub-fund of the VCC; ▪ Any liability incurred on behalf of or attributable to any sub-fund of a VCC must be discharged solely out of the assets of that sub-fund; ▪ Any income accruing to the sub-fund must be distributed to the investors of that sub-fund or re-invested by that sub-fund, and any loss incurred by a sub-fund must be absorbed by that sub-fund alone; and ▪ Each sub-fund is bankruptcy remote from the insolvency proceedings initiated in respect of another sub-fund. This would mean that the investors and creditors of a particular sub-fund may claim their returns and fulfil their claims out of the assets of that sub-fund only, and not from the other assets of the VCC (including the assets of any other sub-fund). ▪ A VCC should be permitted to allocate common assets and liabilities not attributable to any sub-fund between the sub-funds in a manner that it considers fair to shareholders. The allocation method based on which various expenses should be allocated, may be prescribed in the constitution document.
<p>Mergers and Acquisitions of VCCs/ their sub-funds</p>	<ul style="list-style-type: none"> ▪ <u>Mergers of VCCs/ their sub-funds</u>: The merger/ acquisition of a sub-fund of the VCC with another sub-fund of the same or another VCC should be permitted. The merger/ acquisition of one VCC with another VCC should also be permitted. ▪ <u>Approvals required to effect a merger</u>: At the sub-fund/ VCC level, approval should be taken from shareholders. The threshold for approval and the manner of taking approval should be prescribed in the scheme/ constitution document. Approvals should be taken after full disclosure regarding the merger, including the nature of the merger, benefits of the merger, the rights and obligations of the shareholders, and the expected timelines <ul style="list-style-type: none"> – IFSCA should prescribe a specified percentage of creditors who would be required to approve a merger if such merger affects creditor rights. – IFSCA may prescribe guidelines for approval of and reporting of mergers in the case of publicly traded funds. – No NCLT approval should be sought. – It also agreed that the IFSCA Act and subordinate provisions should provide enabling provisions for such mergers. Broadly, these provisions should provide that: <ul style="list-style-type: none"> – The appropriate “approval” authority for mergers would be IFSCA, and it should be empowered to provide detailed conditions for mergers in subordinate legislation. – An exit mechanism should be provided for dissenting investors, in line with any regulations issued by IFSCA. ▪ <u>Off market transfer of securities</u>: Once the merger/ acquisition of VCC/ sub-funds of VCC is completed, all the assets and liabilities of the merged/ acquired VCC/ sub-fund should be transferred to the remaining VCC/ sub-fund. To provide ease in such transfers, the VCC/ sub-funds should be permitted to undertake the off-market transfer of the securities it holds. ▪ <u>Cross border mergers</u>: Cross-border merger of sub-funds of a VCC may also be contemplated, in line with the cross-border mergers permissible under the Undertakings for Collective Investment in Transferable Securities Regulations, 2011. Details of a cross-border merger process should be provided for in regulations.

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<p>Redomiciliation to be allowed</p>	<ul style="list-style-type: none"> ▪ IFSCA may consider granting recognition to offshore corporate funds set up in Financial Action Task Force compliant jurisdictions to operate under the IFSC AIF guidelines with minimum disruptions. This flexibility of migration may also be extended to domestic funds for migration to the IFSC. ▪ On redomiciliation, the corporate entity will be required to seek registration as an IFSC VCC along with its sub-fund, if any, under the act. The registration process of such entities should be similar to any other new VCCs to be set up in the IFSC. ▪ Redomiciliation should only be permitted for the entity that substantially resembles a VCC. ▪ IFSCA should engage with the Central Government to pave the way forward for its introduction and to prescribe the minimum standards/ requirements for such redomiciliation/ cross border merger. ▪ The legal framework should recognise/ enable outbound redomiciliation.
<p>Taxation of VCCs</p>	<ul style="list-style-type: none"> ▪ <u>Separate tax regime</u>: The taxability of the VCC and its sub-funds from India sourced income would be dependent upon the type of registration obtained by the VCC/ sub-funds, i.e. whether as an AIF, Mutual Fund, REITs, InvIT, etc. Accordingly, there should be no requirement to have a separate tax regime for the VCCs and its sub-funds for the income earned from investment in India. ▪ <u>Assessment and filing of income tax of an umbrella VCC</u>: Each sub-fund should be deemed to be a separate 'person' for the purposes of the Income-tax Act, 1961, and be permitted to obtain a separate PAN in its own name and file tax returns for itself. All the provisions of the Income-tax Act, 1961 should be applicable to the sub-funds treating them as a separate person. The PAN as a 'Company' should be allotted to each sub-funds. Appropriate changes be made to the Income Tax Act, 1961. ▪ <u>Taxation of VCCs abroad</u>: Tax Residency Certificates should be issued at the sub-fund level to ensure they can take advantage of DTAA's. VCCs should have features that make it available for checking the box selection. appropriate changes be made to the Income Tax Act, 1961. ▪ <u>Taxation of M&As between VCC sub-funds or VCCs themselves</u>: Both mergers and acquisitions of VCC/sub-funds are tax neutral irrespective of whether they are within the same VCC or between two separate VCCs. appropriate changes be made to the Income Tax Act, 1961

The above recommendations have been provided in detail in Part A of the Expert Committee Report and Part B of the Expert Committee Report provides for the recommended draft legislation as well as a recommended structure for subordinate legislation relating to VCCs. The Expert Committee Report released on November 30, 2022 is [available here](#).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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