

Draft VCC Structure For GIFT-IFSC Published by the DEA – An Analysis

The Department of Economic Affairs (**DEA**), Ministry of Finance, has released the draft of an amendment bill which proposes to amend the International Financial Services Centres Authority Act, 2019 and provide for the setting up Variable Capital Companies (**VCC**) through which Fund Management Entities (**FME**) may launch VCC funds in GIFT-IFSC. The key features of the International Financial Services Centres Authority (Amendment) Bill, 2026 (**IFSCA Amendment Bill**), released by the DEA on its website, are as follows:

Legal status and structure

- A VCC is a body corporate and is a separate legal entity. It has the capacity to contract, sue and be sued in its own name, have perpetual succession, and the liability of its members is limited. It operates through a two-tier structure, with VCC as the first tier and one or more sub-funds being constituted under it.
- The funds shall be pooled at the sub-fund level and not at the VCC level. No asset, liability, income or expenditure shall be held to the account of VCC and shall be either attributed to a particular sub-fund or apportioned amongst multiple sub-funds.
- A VCC can be a holding company or a subsidiary of another VCC.

Sub-fund

- Sub-funds constituted under VCC shall not be a separate legal entity. The VCC shall execute contracts for and on behalf of its sub-funds.
- The assets and liabilities of sub-funds shall be segregated, and assets of one sub-fund should not be used to meet the liabilities of another sub-fund. Obligations arising on account of insolvency proceedings or litigation against one sub-fund of a VCC should not cast liability against the other sub-fund of such VCC.
- Each sub-fund shall be treated as a separate person for the purpose of taxation.
- A sub-fund may invest in another sub-fund of the same VCC. Such cross sub-fund investment shall not be treated as a buy-back, even though the VCC purchases its own participating shares from one sub-fund on behalf of another sub-fund.

Registration of VCCs

The IFSCA will be responsible for managing the incorporation of VCCs. A separate Registrar shall be designated for the purpose of VCC by IFSCA, who shall be an officer of IFSCA.

Confidentiality of charter documents

The charter documents of a VCC shall be confidential and shall not be available for public inspection.

Classification of capital

- VCCs may issue management shares, participating shares and debentures.
- Management share capital shall be issued at the VCC level to the persons who incorporate the VCC or subscribe to the memorandum, who control the VCC or to whom the management shares may be transferred. Management share capital cannot be redeemed but can be bought back and shall have restricted transferability. Management shares shall carry only voting rights and no economic rights, unless otherwise specified in the regulations. However, a management shareholder may derive economic benefits only by investing in participating share capital. The vote of

a management shareholder shall be in proportion to the paid-up value of the management shares held by such person.

- Participating share capital shall be issued at the sub-fund level to the investors, wherein an investor can be any person who pools money in the sub-fund, including a management shareholder.
- Various classes and sub-classes of participating shares can be issued under a single sub-fund, facilitating the creation of different rights within the same sub-fund. Participating share capital shall carry economic rights and limited voting rights only in case of variation of rights. Differential voting rights are allowed. A dividend can be paid out of profits or paid-up participating share capital.
- Redeemable debentures can be issued by VCC on behalf of a sub-fund. Such debentures shall not carry voting rights.
- A VCC can also borrow funds for the benefit of any sub-fund.

Governance

- There shall be a common board of directors at the VCC level for all sub-funds, and the directors shall be appointed by the management shareholders.
- The board of directors of VCC shall appoint the FME as well as a fund manager, who shall be an officer of the FME.
- Separate fund managers may be appointed or designated for each of the sub-funds, if required.
- A compliance officer shall be appointed or designated at the VCC level for legal compliance and investor grievance redressal.

Limited supervision by NCLT

The National Company Law Tribunal (NCLT) will adjudicate only specific matters, such as compromises and arrangements by a VCC with its creditors or members. The appeal against the orders of the NCLT shall lie with the National Company Law Appellate Tribunal (**NCLAT**) and thereafter to the Supreme Court on questions of law.

Mergers or amalgamations between two or more sub-funds or a holding VCC and its wholly-owned subsidiary shall be under the supervision of IFSCA. NCLT will not have any jurisdiction over the same.

IFSCA is empowered to initiate the winding-up of VCCs and sub-funds in non-insolvency situations.

NCLT will be involved in winding up only in specified circumstances, including public interest concerns, fraud, or threats to sovereignty or security.

ELP Comments

- *From the information available so far, it appears that a VCC will not be a company under the Companies Act, 2013. The Ministry of Corporate Affairs will not be registering or administering VCCs. Instead, an IFSCA officer shall act as the Registrar for VCCs. One of the drivers for giving control over VCCs to IFSCA could be the need to maintain confidentiality over the charter documents of the VCC and its sub-funds, as well as details of investors in VCCs.*
- *Taxation will be one of the key considerations for VCCs, and the proposed tax regime for VCCs is yet to be published. Under the Income Tax Act, 2025, an "Indian company" is defined to include any corporation established by or under a Central Act or State Act or Provincial Act and any institution or association or body which is declared by the Central Board of Direct Taxes to be a company, the registered or principal office of which is in India. It is possible that the CBDT may declare VCC to be an "Indian company".*
- *In October 2022, an Expert Committee led by Dr. M.S. Sahoo, former Chairperson of IBBI, submitted a report to IFSCA for drafting a legal framework for allowing the Variable Capital Company structure in the IFSC. This Expert Committee recommended that a VCC could be a stand-alone VCC with a single pool of assets and liabilities or an*

umbrella VCC comprising multiple sub-funds. The IFSCA Amendment Bill provides only for umbrella VCCs since the Explanatory Note states that “The funds shall be pooled at the sub-fund level and not at VCC level.”

The draft IFSCA Amendment Bill issued by the DEA can be found [here](#).

We hope you have found this information useful. For any queries/clarifications, please write to us at insights@elp-in.com or write to our authors:

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