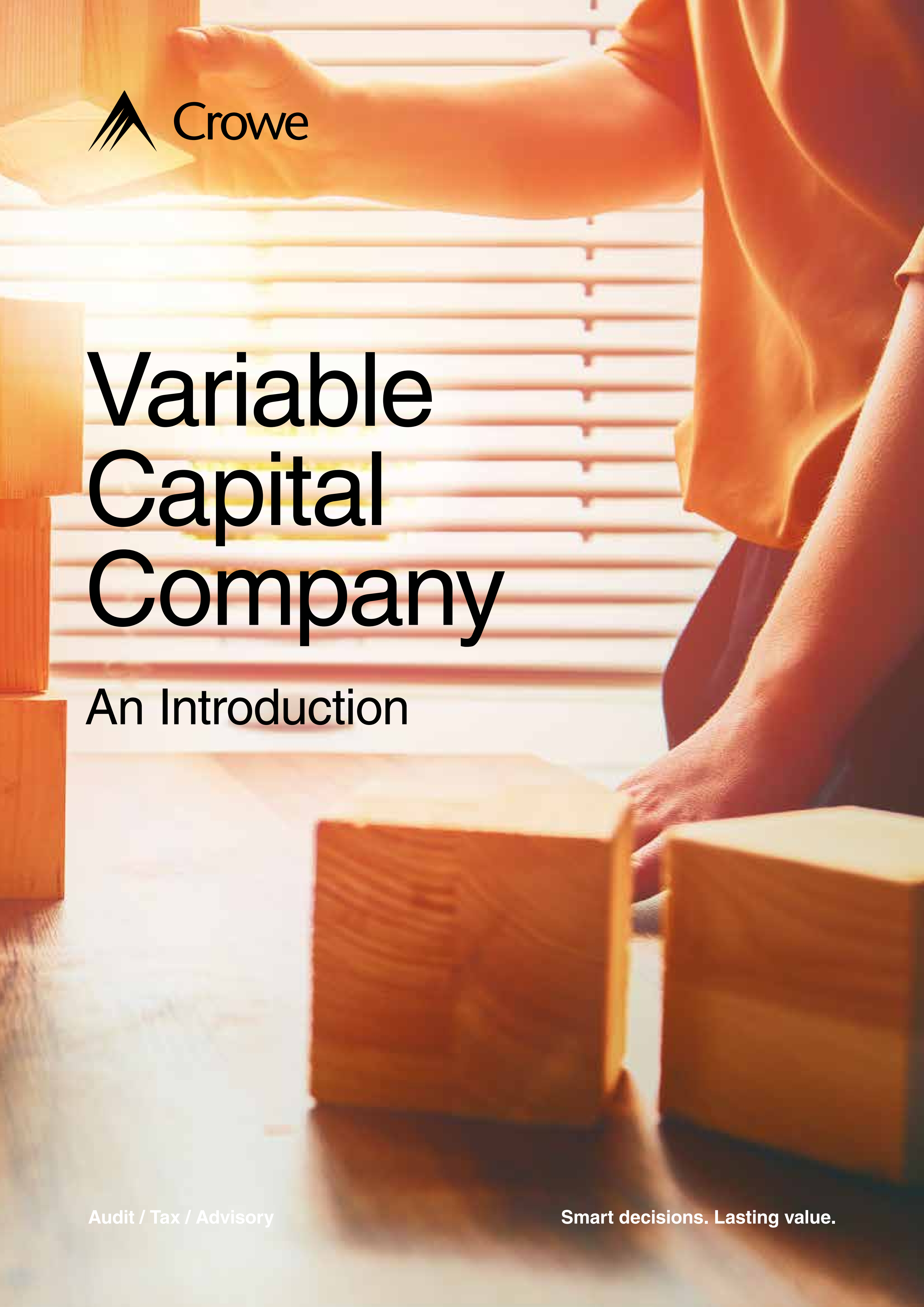


Crowe

Variable Capital Company

An Introduction

Audit / Tax / Advisory

Smart decisions. Lasting value.

Variable Capital Company (VCC), the much-awaited new corporate structure for investment funds, was launched on 15 January 2020.

The VCC structure is highly flexible to accommodate the creation of sub-funds with either open-ended or closed-ended strategies. The introduction of VCC into the asset management market will further augment Singapore as a global financial centre.

In this article, we have compiled some frequently asked questions regarding the VCC.

What are the key features of a VCC?

Some of the key features of a VCC are:

1. The VCC will be regulated by its own standalone legislation – the Variable Capital Companies Act (“**VCC Act**”) and the Accounting and Corporate Regulatory Authority (“**ACRA**”) will administer the VCC Act. The VCC will also be regulated by the Monetary Authority of Singapore (“**MAS**”).
2. A VCC is a separate legal entity from its members and directors; it can sue or be sued in its own name and own property in its own name. The liability of a member of the VCC is limited to the amount (if any) that is unpaid on the shares held by the member.
3. 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. 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.
4. The VCC can be used as a collective investment scheme **(“CIS”)** vehicle either as a stand-alone entity, or as an umbrella entity with multiple sub-funds with segregated assets and liabilities. It can be used as a retail fund (for retail investors), or restricted fund (for restricted class of investors like accredited investors). As a fund vehicle, a VCC can be open ended or closed but rights of redemption must be set out in the VCC constitution.
5. A VCC is permitted to freely redeem shares and pay dividends using its net assets/capital, thereby providing flexibility in the distribution and return of capital.
6. The register of members of a VCC is not required to be open for inspection by the public. That said, the register must be allowed for inspection by certain persons (manager of the VCC, custodian of VCC if applicable), public authority for regulatory, supervisory and law enforcement purposes (such as ACRA, MAS) or upon an order of court. A member is entitled to inspect the register only with respect to information of itself.

Why is Singapore introducing VCC and what are the benefits to the fund management industry?

The VCC complements existing fund structures available in Singapore, primarily limited partnerships, companies and unit trusts. Some of the limitations with the existing corporate fund structures in Singapore include restrictions under the Companies Act on the return of capital to shareholders, public access to identities of shareholders and the ability to declare dividends only if there is distributable profit. A VCC structure removes the above restrictions.

The new VCC framework will encourage the consolidation of fund domiciliation and fund management activities locally, creating a full-service fund ecosystem in Singapore and maximising value from the full fund management value chain. It will also strengthen Singapore's role as a key hub for fund managers to invest into the Asia-Pacific region.

What is the difference between an umbrella VCC and a non-umbrella VCC?

An umbrella VCC essentially has segregated sub-funds under it, through a cellular structure. In this structure, the VCC will be a single legal entity, with its sub-funds operating as separate cells (each without legal personality).

A sub-fund will be constituted by registration with ACRA, which will in turn provide the sub-fund with a unique sub-fund identification number. To prevent cross-cell contagion, the VCC Act provides for the segregation of assets and liabilities of sub-funds, where:

- 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; and
- 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.

To mitigate against cross-cell contagion, the VCC Act voids any provisions which are inconsistent with the segregation of assets and liabilities of sub-funds (e.g. provisions in the constitution or in agreements entered into by the VCC) and requires the VCC to ensure proper segregation of assets and liabilities of sub-funds. In circumstances where the VCC is dealing with a third party, the VCC must disclose the cellular structure to the third party.

There is no limit to the number of sub-funds within each VCC; however, an umbrella VCC must apply to ACRA for the registration of the sub-fund within seven (7) days of the sub-fund's formation.

What are the minimum regulatory/statutory compliance requirements for VCC?

Some of the key compliance requirements are:

1. Under the VCC Act, a VCC must appoint the following:
   - A fund management company that is licensed or registered by MAS, or is an exempt financial institution in Singapore;
   - At least one director who is resident in Singapore;
   - At least one director (who may be the same person as above) who is either a director or a qualified representative of the VCC's fund manager; and
   - A Singapore resident company secretary.
2. A VCC will also be required to comply with the following regulatory requirements under MAS:
   - Anti-Money Laundering/Countering the Financing of Terrorism ("**AML/CFT**") procedures, which would be supervised by MAS for compliance;
   - Outsourcing of performance of AML duties to its fund manager or a regulated financial institution; and
   - MAS' Guidelines on Outsourcing.
3. Retail CIS must meet additional requirements:
   - There must be at least three directors, including at least one independent director;
   - A prospectus for the offer of the VCC must be filed with MAS prior to the offer of shares in the VCC;
   - The VCC must be authorised by MAS; and
   - An approved trustee must be appointed as the custodian of the VCC assets.
4. A VCC is subject to audit by a Singapore based auditor.
5. An annual return must be filed after its AGM and within seven (7) months after the end of its financial year.
6. Umbrella VCC must also keep separate accounting and other records for each sub-fund that sufficiently explain the transactions and financial position of each sub-fund.

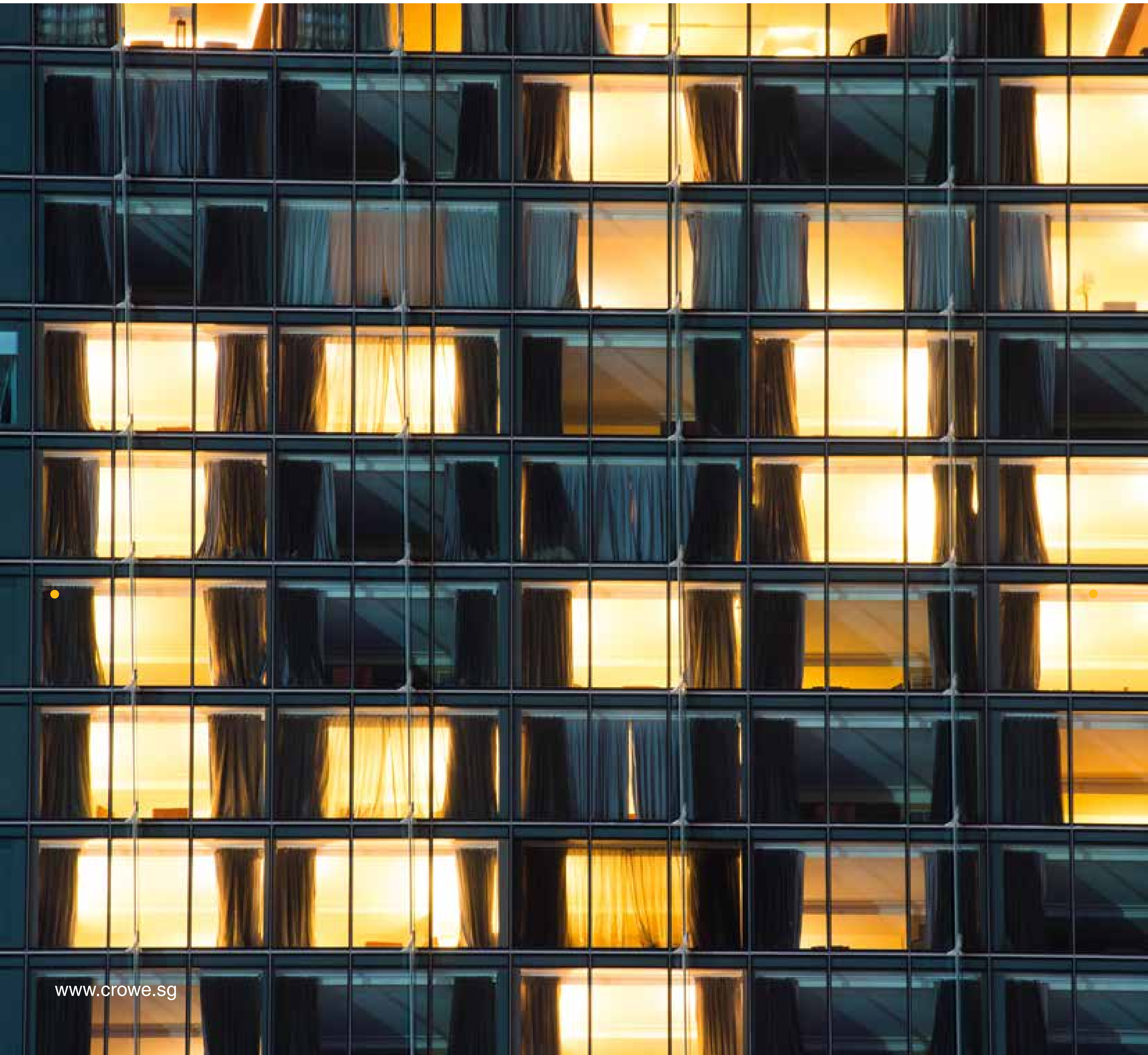
What are the types of tax exemptions available for VCC?

The tax incentives currently given to Singapore incorporated companies structured as funds (managed by a Singapore based fund manager) under Section 13R and Section 13X of the Income Tax Act are also being extended to VCCs.

Do VCC regulations allow inward re-domiciliation of foreign funds?

A foreign corporate entity (e.g. a Cayman Segregated Portfolio Company or a BVI Protected Cell Company) that is structured similarly to the VCC can re-domicile to Singapore and become a Singapore entity (provided the host country recognises or authorises re-domiciliation).

This will encourage fund managers with funds domiciled in offshore jurisdictions such as Cayman Islands, to shift fund domiciliation with their fund management activities to Singapore, with minimal disruption to its corporate history and identity.



Fund Vehicles in Singapore - A Comparison

Features	Company	Trust
The entity has a separate legal personality and is capable of suing and being sued in their own names.	Yes.	No.
The entity has limited liability.	Yes. Members are liable only to the extent of any amount unpaid on their shares.	As a trust has no se general law of trust obligations of the tr This also applies fo unless the unitholde contribute to any ou by the trustee-mana business trust.
Permitted to freely redeem shares and pay dividends using its net assets/capital, thereby providing flexibility in the distribution and return of capital.	No. Company may redeem shares out of capital provided that the shares are fully paid and if all the directors have made a solvency statement in relation to the redemption. Dividends may only be paid out of distributable profits.	Yes. Beneficiaries a Distributions may b
The law governing the entity structure provides for the segregation of assets and liabilities of sub-funds.	No.	No.
Tax exemption on specified income from designated investments under Section 13R is available.	Yes.	No.
Tax exemption on specified income from designated investments under Section 13X is available.	Yes.	Yes.
There is a minimum share capital requirement.	No.	No.
There is a requirement to file annual returns with the Accounting and Corporate Regulatory Authority (ACRA).	Yes.	No.
There is a statutory requirement to appoint a local director.	Yes.	No.
There is a statutory requirement to appoint a company secretary.	Yes.	No.
Shareholder/investor information is publicly available.	Yes.	No.
Financial statements are publicly available.	Yes, unless certain conditions are met for exemption.	No (Save for listed t

	Limited Partnership	Variable Capital Company
	Yes.	Yes.
eparate legal entity, under the , the trustee is liable for the legal ust. r a registered business trust, er has expressly agreed to utstanding debts/liabilities incurred ager under the registered	Yes, for the limited partners. A general partner is liable for all debts and obligations of the limited partnership incurred while it is a general partner.	Yes. Members are liable only to the extent of any amount unpaid on their shares.
are entitled to share of distributions. e paid out of operating cash flows.	Yes.	Yes.
	No.	Yes.
	No.	Yes.
	Yes.	Yes.
	No.	No.
	No.	Yes.
	No. However, a local manager is required if the general partner is not a Singapore resident.	Yes.
	No.	Yes.
	Yes, but it is possible to keep the particulars of limited partners confidential if certain conditions are met.	No.
trusts).	No.	No.

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