

# **Variable Capital Companies (Miscellaneous Amendments) Bill**

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**Bill No. 23/2019.**

*Read the first time on 5 August 2019.*

## A BILL

*instituted*

An Act to make amendments to the Goods and Services Tax Act (Chapter 117A of the 2005 Revised Edition), the Income Tax Act (Chapter 134 of the 2014 Revised Edition) and the Stamp Duties Act (Chapter 312 of the 2006 Revised Edition) in connection with variable capital companies and their sub-funds, to make amendments to the Variable Capital Companies Act 2018 (Act 44 of 2018) in connection with the enactment of the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018), and for other purposes, and to make related amendments to certain other Acts.

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

## **Short title and commencement**

1. This Act is the Variable Capital Companies (Miscellaneous Amendments) Act 2019 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

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## PART 1

### AMENDMENTS TO GOODS AND SERVICES TAX ACT

#### **Amendment of section 2**

2. Section 2 of the Goods and Services Tax Act (Cap. 117A) (called in this Part the GST Act) is amended —

- 10 (a) by deleting the full-stop at the end of the definition of “unit trust” in subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following definition:

15               ““VCC Act” means the Variable Capital Companies Act 2018 (Act 44 of 2018).”; and

- (b) by inserting, immediately after subsection (2), the following subsections:

20               “(3) The terms “share”, in relation to a VCC, “sub-fund”, “umbrella VCC” and “VCC” have the meanings given to them in the VCC Act.

(4) To avoid doubt, the term “company” includes a VCC.”.

#### **Amendment of section 32**

- 25 3. Section 32 of the GST Act is amended by inserting, immediately after subsection (3A), the following subsection:

“(3B) The registration under this Act of an umbrella VCC making taxable supplies for the purpose of one of its sub-funds must be in the name of that umbrella VCC in respect of that sub-fund, or in the name of that sub-fund.”.

## New section 33AA

4. The GST Act is amended by inserting, immediately before section 33A, the following section:

### “Umbrella VCCs

**33AA.**—(1) For the purposes of this Act, an umbrella VCC making or receiving a supply for the purpose of one of its sub-funds is taken to be a separate person from the same VCC making or receiving a supply for the purpose of another of its sub-funds.

(2) Accordingly —

(a) a supply that is made by an umbrella VCC for the purpose of one of its sub-funds, and received by the same VCC for the purpose of another of its sub-funds, is taken to be a supply made by one person to another person;

(b) supplies made or received by an umbrella VCC for the purpose of different sub-funds are taken to have been made or received by different persons; and

(c) an umbrella VCC making taxable supplies for the purpose of one of its sub-funds is to be registered as a person separately from the same umbrella VCC making taxable supplies for the purpose of another of its sub-funds and each is taken to be a separate taxable or registered person.

(3) For the purposes of this Act, a reference to a business carried on by a taxable person is, where the taxable person is an umbrella VCC in relation to any of its sub-funds, to its business in relation to that sub-fund.

(4) Where —

(a) the person who receives, is supplied or is the customer of the goods or services mentioned in section 14(1)(a)(i), 38(1) or (2) or 38A(2) is an umbrella VCC; and

- (b) the goods or services are supplied for the purpose of or in connection with the VCC's business in relation to any of its sub-funds,

then, for the purpose of section 14(2), 38(1) or (2) or 38A(2) (as the case may be), the recipient, person supplied or customer of those goods or services is taken to be the umbrella VCC for the purpose of that sub-fund.

(5) Any liability of an umbrella VCC for tax in relation to a supply made by it for the purpose of a sub-fund, together with any penalty or other amounts payable to the Comptroller in relation to the supply, is considered (for the purposes of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

(6) Any fine or penalty imposed on, or composition sum that may be paid by, an umbrella VCC for an offence under this Act that is committed in connection with any of its sub-funds, including but not limited to —

- (a) a supply received or made by it for the purpose of the sub-fund; and
- (b) any return, document, information or other matter concerning the sub-fund,

is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.”.

## Amendment of section 86

5. Section 86 of the GST Act is amended by inserting, immediately after subsection (4), the following subsection:

“(5) For a period of 2 years starting on the date of commencement of Part 1 of the Variable Capital Companies (Miscellaneous Amendments) Act 2019, the Minister may make regulations to prescribe further modifications to the provisions of this Act in their application to VCCs, umbrella VCCs and sub-funds.”.

## **Amendment of First Schedule**

**6.** Paragraph 1 of the First Schedule to the GST Act is amended by inserting, immediately after sub-paragraph (3), the following sub-paragraphs:

“(3A) Where a sub-fund (called *A*) is merged with another sub-fund (called *B*) (whether of the same umbrella VCC or of another umbrella VCC) and either —

(a) all of the following conditions are satisfied:

- (i) *B* is the surviving sub-fund following the merger;
- (ii) the umbrella VCC of *A* was a taxable person in relation to *A* immediately before the merger;
- (iii) the umbrella VCC of *B* is not a registered person in relation to *B* at the time of the merger; or

(b) all of the following conditions are satisfied:

- (i) a new sub-fund (called *C*) is formed following the merger;
- (ii) either —
  - (A) the umbrella VCC of *A* was a taxable person in relation to *A*; or
  - (B) the umbrella VCC of *B* was a taxable person in relation to *B*,

immediately before the merger, or both;

- (iii) the umbrella VCC of *C* is not a registered person in relation to *C* at the time of the merger,

then the umbrella VCC of *B* or *C* (as the case may be) becomes liable to be registered in relation to it at the time of the merger if —

(c) in the case of paragraph (a), the total value of all of its taxable supplies made in Singapore for the purpose of *B* in the calendar year immediately preceding the calendar year in which the time of merger falls exceeds \$1 million; or

(d) in the case of either paragraph (a) or (b), there are reasonable grounds for believing that the total value of all of its taxable supplies made in Singapore for the purpose of *B* or *C* in the period of 12 months then beginning will exceed \$1 million.

5 (3B) An umbrella VCC is not liable to be registered in relation to a sub-fund by virtue of sub-paragraph (3A)(c) at the end of any calendar year if the Comptroller is satisfied that the value of its taxable supplies made in Singapore for the purpose of that sub-fund in the next calendar year will not exceed \$1 million.”.

### **Amendment of Third Schedule**

7. The Third Schedule to the GST Act is amended by inserting, immediately after paragraph 5, the following paragraph:

10 “6. Paragraph 4 applies with the following modifications for the purposes of determining whether a person has control over a company that is an umbrella VCC making or receiving the supply in question for the purpose of a sub-fund:

- 15 (a) a reference to the issued shares or share capital of, or the voting power in, the company is to the issued shares or share capital of the umbrella VCC in respect of that sub-fund, or the voting power attached to such shares, as the case may be;
- (b) a reference to the income of the company is to the income of the umbrella VCC from the sub-fund;
- 20 (c) a reference to the assets of the company is to the assets held by the umbrella VCC for the purpose of or that are attributable to that sub-fund;
- (d) a reference to a creditor of the company is to the creditor of the umbrella VCC in respect of a loan that is taken by the umbrella VCC for the purpose of that sub-fund;
- 25 (e) a reference to the winding up of a company is to the winding up of the umbrella VCC or the sub-fund.”.

### **Amendment of Fourth Schedule**

8. Part III of the Fourth Schedule to the GST Act is amended by inserting, immediately after paragraph 1, the following paragraph:

30 “1A. In the definition of “equity security” in paragraph 1, the reference to a share in the capital of a body corporate includes a share in a VCC.”.

## PART 2

### AMENDMENTS TO INCOME TAX ACT

#### **Amendment of section 2**

**9.** Section 2 of the Income Tax Act (Cap. 134) is amended —

(a) by inserting, immediately after the definition of “treasury share” in subsection (1), the following definition:

““VCC Act” means the Variable Capital Companies Act 2018 (Act 44 of 2018);”; and

(b) by inserting, immediately after subsection (1), the following subsection:

“(1A) The terms “non-umbrella VCC”, “share”, in relation to a VCC, “sub-fund”, “umbrella VCC”, and “VCC” have the meanings given to them in the VCC Act.”.

#### **Amendment of section 13**

**10.** Section 13 of the Income Tax Act is amended by inserting, immediately after subsection (17), the following subsections:

“(18) In subsection (2D) —

(a) an umbrella VCC that holds securities for one sub-fund is treated as a different person from the same umbrella VCC that holds securities for another sub-fund;

(b) an umbrella VCC that holds securities for one sub-fund is considered a company that satisfies subsection (2D)(ii) and (iii) if —

(i) the umbrella VCC is resident in Singapore; and  
 (ii) the sub-fund is listed on the Singapore Exchange on the date of issue of the securities or within 6 months from that date;

(c) income that is received by an umbrella VCC from securities held by it for one sub-fund satisfies subsection (2D)(iv) if the income is declared to be

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distributable to holders of its shares in respect of that sub-fund within 6 months from the end of the basis period in which the income is received.

(19) In paragraph (AA) of the definition of “qualifying debt securities” and paragraph (A) of the definition of “qualifying project debt securities” in subsection (16), an umbrella VCC to which securities are issued during their primary launch for the purpose of one sub-fund, is treated as a different person from the same umbrella VCC to which securities are issued during their primary launch for the purpose of another sub-fund.

(20) A reference in this section to a related party of the issuer of qualifying debt securities or qualifying project debt securities is, if the securities are issued by or to an umbrella VCC in relation to any of its sub-funds, a reference to a person that is related to the sub-fund in such manner as may be prescribed by rules under section 7, and rules made for this purpose may make different provisions for different circumstances.”.

## New section 107

**11.** The Income Tax Act is amended by inserting, immediately after section 106, the following section:

### **“Variable capital companies or VCCs**

**107.—(1)** For the purposes of this Act, and subject to the modifications in this section and the rules under subsection (30), a reference to a company in this Act and the subsidiary legislation made under it includes a VCC.

(2) Accordingly, a reference to a body of persons (by reason of it being defined in section 2(1) as excluding a company) excludes a VCC.

### ***Chargeable or exempt income of umbrella VCC***

(3) Subject to the modifications in this section and the rules under subsection (30), a reference in this Act and the subsidiary legislation made under it to the chargeable income or exempt income of a person that is an umbrella VCC is to the total of the

chargeable income or exempt income (as the case may be) of each of its sub-funds.

(4) For the purpose of determining the chargeable income or exempt income of a sub-fund under subsection (3), the provisions of this Act and the subsidiary legislation made under it (as modified by subsection (1)) apply as if each sub-fund were a VCC, with the following modifications:

(a) a reference to a trade or business carried on by a VCC is to a trade or business carried on by the umbrella VCC in relation to the sub-fund;

(b) a reference to income derived or received by a VCC is to income derived or received by the umbrella VCC in relation to the sub-fund (called in this section income of a sub-fund);

(c) a reference to any outgoing or expense incurred by a VCC in producing income is to either or both of the following (called in this section an expense of a sub-fund):

(i) any outgoing or expense incurred in producing income of the sub-fund;

(ii) the amount of any outgoing or expense allocated to the sub-fund by the umbrella VCC in accordance with section 29(3) of the VCC Act;

(d) a reference to any capital expenditure incurred by a VCC for the purpose of a trade or business is to either or both of the following (called in this section a capital expenditure of a sub-fund):

(i) any capital expenditure incurred for the purpose of a trade or business carried on by the umbrella VCC in relation to the sub-fund;

(ii) the amount of any capital expenditure allocated to the sub-fund by the umbrella VCC in accordance with section 29(3) of the VCC Act;

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5 (e) a reference to any loss incurred by a VCC in carrying on a trade or business is to any loss incurred by the umbrella VCC in carrying on a trade or business in relation to the sub-fund (called in this section a loss of a sub-fund);

(f) a reference to a donation made by a VCC is to a donation made by the umbrella VCC for the purpose of the sub-fund (called in this section a donation of a sub-fund);

10 (g) a reference to a payment or distribution made to a VCC is to a payment or distribution made to the umbrella VCC for the sub-fund;

15 (h) a reference in sections 23, 37 and 37E to shareholders of a VCC is to holders of shares of the umbrella VCC in respect of the sub-fund;

(i) a sub-fund is resident in Singapore if its umbrella VCC is resident in Singapore, and a sub-fund is resident outside Singapore if its umbrella VCC is resident outside Singapore.

20 (5) Subsection (4) does not apply to any provision of this Act that is replaced with another provision under this section for the purpose of subsection (3).

(6) To avoid doubt —

25 (a) the umbrella VCC is not entitled to any further deduction for any expense, capital expenditure, loss or donation of a sub-fund taken into account in determining the chargeable income or exempt income of the sub-fund; and

30 (b) any expense, capital expenditure, loss or donation of a sub-fund is not available for deduction against the income of another sub-fund or any other income of the umbrella VCC.

(7) Each part of the chargeable income of an umbrella VCC that is chargeable income of a sub-fund is subject to tax at the

rate to which that part would have been subject had the sub-fund been a VCC.

### ***Segregated liabilities of sub-funds***

(8) The amount of any tax attributable to any part of the chargeable income of an umbrella VCC that is chargeable income of a sub-fund, together with any interest or penalty imposed under section 85(2) or 87 in respect of such amount, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

(9) Any fine or penalty imposed on, or composition sum that may be paid by, an umbrella VCC for an offence under this Act that is committed in respect of any information or other matter concerning a sub-fund, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

(10) Any fine or penalty imposed on, or composition sum that may be paid by, an umbrella VCC for an offence under this Act and to which subsection (9) does not apply, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of all of its sub-funds.

### ***Deductions not allowed***

(11) A VCC may not be allowed any deduction under sections 14A, 14B, 14D, 14DA, 14E, 14F, 14H, 14I, 14K, 14KA, 14N, 14O, 14P, 14PA, 14Q, 14V, 14WA, 14ZB and 37L (including the subsidiary legislation made under them, where applicable) and accordingly may not be approved (where applicable) under them.

(12) Despite subsection (1), no transfer of any deduction may be made under section 37C —

- (a) by a VCC to any claimant company or VCC of the same group; or
- (b) by a transferor company to any VCC of the same group.

## *Application of sections 13R and 13X*

(13) Section 13R and the regulations made under it apply for the purpose of determining the exempt income of a sub-fund under subsection (3) as if it were an approved company under that section if the umbrella VCC of the sub-fund is approved for the purpose of that section.

(14) Where the relevant owner mentioned in section 13R(3) is an umbrella VCC, the amount of any financial penalty under that provision that it is liable for is considered (for the purpose of section 29 of the VCC Act) liability incurred by it for the purpose of its sub-funds, and the amount of such liability in relation to each sub-fund is to be computed in accordance with the formula

$$\frac{A}{B} \times C,$$

where —

- (a) A is the total value of issued securities held by the umbrella VCC for the sub-fund on the relevant day as defined in section 13R(8);
  - (b) B is the total value of all the issued securities held by the umbrella VCC for all its sub-funds on the relevant day as defined in section 13R(8); and
  - (c) C is the amount of the penalty.

(15) Section 13X and the regulations made under it apply for the purpose of determining the exempt income of a sub-fund under subsection (3) as if it were —

- (a) an approved person under that section;
  - (b) the approved master fund of an approved master fund-SPV structure, master-feeder fund-SPV structure or master-feeder fund structure under that section; or

- (c) an approved feeder fund of an approved master-feeder fund-SPV structure or master-feeder fund structure under that section,

if its umbrella VCC is approved by the Minister or a person appointed by the Minister for the purpose of that section.

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(16) The amount of any tax recoverable from the umbrella VCC under the regulations made under section 13X that is attributable to any income of a sub-fund, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

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### *Application of section 13Z*

(17) Section 13Z in Part 1 of the Third Schedule applies in place of section 13Z for the purpose of determining the exempt income of a sub-fund under subsection (3) from the disposal of —

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- (a) ordinary shares in a company (other than a VCC); or
- (b) ordinary shares in a VCC (called in this subsection and subsection (18) VCC X).

(18) Where VCC X is an umbrella VCC, section 13Z in Part 1 of the Third Schedule applies for the purpose of determining the exempt income of a sub-fund under subsection (3) with the following further modifications:

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- (a) the section is to be applied in relation to the disposal of ordinary shares of VCC X in respect of each sub-fund as if VCC X only has that one sub-fund;
- (b) accordingly, a reference in the section to the legal and beneficial ownership of any ordinary shares in a VCC is to the legal and beneficial ownership of ordinary shares in VCC X in respect of that sub-fund.

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(19) Section 13Z applies for the purpose of determining the exempt income of a company (including a non-umbrella VCC but excluding an umbrella VCC) from the disposal of ordinary shares in an umbrella VCC with the following modifications:

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- (a) the section is to be applied in relation to the disposal of ordinary shares of the umbrella VCC in respect of each sub-fund as if the umbrella VCC only has that one sub-fund;
- 5 (b) accordingly, a reference in that section to the legal and beneficial ownership of any ordinary shares in a VCC is to the legal and beneficial ownership of ordinary shares in the umbrella VCC in respect of that sub-fund.

10 (20) In subsections (17), (18) and (19), “ordinary share”, in relation to a VCC, means any share other than a share that carries only a right to any dividend which is —

- (a) of a fixed amount or at a fixed rate per cent of the value of the share; or
- 15 (b) either —
- (i) where the VCC is a non-umbrella VCC, of a fixed rate per cent of the profits of the non-umbrella VCC; or
- (ii) where the VCC is an umbrella VCC, of a fixed rate per cent of the profits of the umbrella VCC in relation to the sub-fund in respect of which the share was issued.

### *Application of sections 34D, 34E and 34F*

25 (21) Section 34D applies for the purpose of determining the chargeable income or exempt income of a sub-fund under subsection (3), and section 34E applies for the recovery of any surcharge resulting from any adjustment by the Comptroller under section 34D as applied by this subsection, subject to the following modifications:

- 30 (a) a sub-fund is treated as a person;
- (b) a person is related to a sub-fund if it is related to the sub-fund in such manner as may be prescribed by rules under section 7.

(22) Any surcharge under section 34E as applied by subsection (21) is recoverable from the umbrella VCC and constitutes a liability incurred by the umbrella VCC for the purpose of the sub-fund concerned for the purpose of section 29 of the VCC Act.

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(23) Section 34F applies to an umbrella VCC —

- (a) as if a reference to the gross revenue of a company is to the gross revenue of any of its sub-funds; and
- (b) as if a reference to a transaction undertaken by a company with a related party is to a transaction undertaken by the umbrella VCC for the purpose of any of its sub-funds with any person that is related to the sub-fund in such manner as may be prescribed by rules under section 7.

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#### *Application of sections 34G and 34H*

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(24) Sections 34G and 34H apply to a body corporate incorporated outside Singapore that is a non-umbrella VCC registered as a VCC under Part 12 of the VCC Act, as they apply to a redomiciled company as defined in section 34G, subject to the following modifications:

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- (a) a reference to the registration date of a redomiciled company or an approved redomiciled company is to the date of registration of the VCC specified in the notice of transfer of registration issued to it under section 135(3) of the VCC Act;
- (b) a reference to the place of incorporation of an approved redomiciled company is to the jurisdiction where the VCC was domiciled at the time it applied for registration under Part 12 of the VCC Act;
- (c) section 34G(9) does not apply except in respect of section 14U;
- (d) section 34G(20A), (20B) and (20C) does not apply.

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(25) Section 34G in Part 2 of the Third Schedule applies in place of section 34G for the purpose of determining under subsection (3) the chargeable income or exempt income of a sub-fund of a body corporate incorporated outside Singapore that is registered as a VCC under Part 12 of the VCC Act and that is an umbrella VCC (called in this section a redomiciled umbrella VCC).

(26) Section 34H in Part 2 of the Third Schedule applies in place of section 34H for the purpose of determining the tax credits for a redomiciled umbrella VCC.

## *Application of sections 45, 45A, 45AA, 45B, 45D and 45F*

(27) Where —

- (a) section 45, 45A, 45AA, 45D or 45F applies to any payment by an umbrella VCC for the purpose of a sub-fund; or
  - (b) section 45B applies to any remuneration payable by an umbrella VCC to a director of the VCC that is allocated by the VCC to a sub-fund,

any resulting debt mentioned in that section (including, where applicable, section 45 as applied by that section), together with any penalty or fine imposed on the VCC, or composition sum that may be paid by the VCC, for an offence under that section (including, where applicable, section 45 as applied by that section), that is committed in relation to such income is considered (for the purpose of section 29 of the VCC Act) liability incurred by the VCC for the purpose of the sub-fund.

## *Application of sections 50, 50A and 50C*

(28) Sections 50, 50A and 50C in Part 3 of the Third Schedule apply in place of sections 50, 50A and 50C respectively, in a case where the income in question is that of an umbrella VCC.

### ***Miscellaneous***

(29) Rules made for the purposes mentioned in subsections (21)(b) and (23)(b) may make different provisions for different circumstances.

(30) The Minister may, for a period of 2 years starting on the date of commencement of the Variable Capital Companies (Miscellaneous Amendments) Act 2019, make rules to prescribe further modifications to any provision of this Act in its application to a VCC, an umbrella VCC or a sub-fund of an umbrella VCC.”.

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### **New Third Schedule**

**12.** The Income Tax Act is amended by inserting, immediately after the Second Schedule, the following Schedule:

#### **“THIRD SCHEDULE**

##### PART 1

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##### PROVISION THAT APPLIES IN PLACE OF SECTION 13Z WHERE INCOME IS THAT OF AN UMBRELLA VCC FROM DISPOSAL OF ORDINARY SHARES IN A COMPANY OR VCC

Section 107(17) and (18)

Section 13Z is replaced with section 13Z as set out below for the purpose of determining under section 107(3) the income of a sub-fund of an umbrella VCC:

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##### **“Exemption of gains or profits from disposal of ordinary shares**

**13Z.**—(1) There is exempt from tax any gains or profits derived by an umbrella VCC (called in this section the divesting VCC) for the purpose of a sub-fund from the disposal of ordinary shares in a company (called in this section company X) or of ordinary shares in a VCC (called in this section VCC X) that are legally and beneficially owned by the divesting VCC for the purpose of that sub-fund immediately before the disposal, being a disposal made —

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(a) on or before 31 May 2022; and

(b) after the divesting VCC has, at all times during a continuous period of at least 24 months ending on the date immediately prior to the date of disposal of such shares, legally and beneficially

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owned, for the purpose of that sub-fund, at least 20% of the ordinary shares in company X or VCC X, as the case may be.

5                   (2) Subsection (1) applies only if the divesting VCC provides, at the time of lodgment of its return of income for the year of assessment relating to the basis period in which the disposal occurs, or within such further time as the Comptroller may in the Comptroller's discretion allow, such information and supporting documents as may be specified by the Comptroller.

10                  (3) In determining the amount of gains or profits that are exempt from tax under subsection (1) for any year of assessment, there is to be deducted all outgoings and expenses wholly and exclusively incurred by the divesting VCC in the production of such gains or profits, including —

- (a) the price paid in acquiring those shares;
- (b) any sum payable by way of interest upon any money borrowed by the divesting VCC, where the Comptroller is satisfied that the interest was payable on capital employed to acquire those shares;
- (c) any sum payable in lieu of interest or for the reduction thereof, upon any money borrowed by the divesting VCC, being a sum of a type prescribed under section 14(1)(a)(ii), where the Comptroller is satisfied that it was payable on capital employed to acquire those shares;
- (d) any legal costs incurred for the acquisition or disposal of those shares;
- (e) any amount paid in respect of stamp duty for the acquisition or disposal of those shares; and
- (f) any other expenses allowable under this Act that are directly attributable to those gains or profits.

20                  (4) For the purposes of subsection (1), the divesting VCC remains the legal and beneficial owner of any ordinary shares in company X or VCC X (as the case may be) for the purpose of the sub-fund during the borrowing period when the legal interest in such shares had been transferred by the divesting VCC to another person under a securities lending or repurchase arrangement.

25                  (5) Where —

- (a) gains or profits derived from the disposal of ordinary shares in company X or VCC X by the divesting VCC for the purpose of the sub-fund are exempt from tax under subsection (1); and

- (b) one or more amounts mentioned in subsection (6) that are attributable to any of the ordinary shares disposed of, have been allowed as a deduction in determining the chargeable income of the sub-fund under section 107(3) for any year of assessment prior to the year of assessment relating to the basis period in which the ordinary shares are disposed of,

then the amounts in paragraph (b) are to be included in the chargeable income of the sub-fund under section 107(3) for the second-mentioned year of assessment.

- (6) Subsection (5) applies to the following amounts:

- (a) any amount provided for a diminution in the value of the ordinary shares;
- (b) any amount written off against the value of the ordinary shares;
- (c) any impairment loss for the ordinary shares;
- (d) any loss recognised in accordance with SFRS for Small Entities, FRS 109 or SFRS(I) 9 (as the case may be), in determining the profit or loss or expense in respect of the ordinary shares.

- (7) Where —

- (a) gains or profits derived from the disposal of ordinary shares by the divesting VCC for the purpose of the sub-fund are exempt from tax under subsection (1); and
- (b) any write-back for a diminution in the value of the ordinary shares, or profit recognised in accordance with SFRS for Small Entities, FRS 109 or SFRS(I) 9 (as the case may be), that is attributable to any of the ordinary shares (being chargeable income of the sub-fund under section 107(3)) has been charged to tax as income of the umbrella VCC for any year of assessment prior to the year of assessment relating to the basis period in which the shares are disposed of,

then the write-back or profit in paragraph (b) is taken to be an expense allowable under this Act in determining the chargeable income of the sub-fund under section 107(3) for the second-mentioned year of assessment.

- (8) This section does not apply to —

- (a) the disposal of shares in a company which is in the business of trading or holding Singapore immovable properties (excluding property development), where the shares are not listed on a stock exchange in Singapore or elsewhere; or

(b) the disposal of shares by a partnership, limited partnership or limited liability partnership one or more of the partners of which is a company or VCC, or are companies or VCCs.

(9) In this section —

5 “borrowing period” and “securities lending or repurchase arrangement” have the meanings given to those expressions in section 10N(12);

10 “disposal”, in relation to shares, means the transfer of both the legal and beneficial interests in the shares to another;

15 “FRS 109” and “SFRS(I) 9” have the meanings given to those expressions in section 34AA(15);

“SFRS for Small Entities” has the meaning given to it in section 34A(10);

15 “ordinary share”, in relation to a VCC, means any share other than a share that carries only a right to any dividend which is —

(a) of a fixed amount or at a fixed rate per cent of the value of the share; or

(b) either —

20 (i) where the VCC is a non-umbrella VCC, of a fixed rate per cent of the profits of the non-umbrella VCC; or

25 (ii) where the VCC is an umbrella VCC, of a fixed rate per cent of the profits of the umbrella VCC in relation to the sub-fund in respect of which the share was issued.”.

## PART 2

### PROVISIONS THAT APPLY IN PLACE OF SECTIONS 34G AND 34H TO AN UMBRELLA VCC INCORPORATED OUTSIDE SINGAPORE AND REGISTERED AS A VCC UNDER PART 12 OF VCC ACT

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Section 107(25) and (26)

Sections 34G and 34H are replaced with sections 34G and 34H respectively as set out below for the purposes of determining, under section 107(3), the income of a sub-fund of a body corporate incorporated outside Singapore that is registered as a VCC under Part 12 of the VCC Act and that is an umbrella VCC, and the tax credits for such a body corporate:

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**“Modifications of provisions for umbrella VCCs redomiciled in Singapore**

**34G.**—(1) This section applies for the purposes of determining under section 107(3) the income of a sub-fund of a redomiciled VCC.

***Interpretation***

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(2) In this section —

“FRS 109” and “SFRS(I) 9” have the meanings given to those expressions in section 34AA(15);

“redomiciled VCC” means a body corporate incorporated outside Singapore that is registered as a VCC under Part 12 of the VCC Act, and is an umbrella VCC;

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“registration date”, in relation to a redomiciled VCC, means the date of its registration specified in the notice of transfer of registration issued to it under section 135(3) of the VCC Act.

***Deductions for bad debts and impairment losses for debts***

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(3) Despite sections 10(1), 14(1)(d) and 34AA(1), where a redomiciled VCC has any debt owed to it in the course of carrying on a trade or business in relation to a sub-fund outside Singapore (called in this section the sub-fund’s trade or business outside Singapore) that was incurred before its registration date and, at any time on or after that date, the debt is written off as bad or impairment loss is provided for that debt —

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- (a) no deduction is allowed for the debt or any provision made for it; and
- (b) any amount recovered from the debt, or any reversal of the impairment loss, is not chargeable to tax.

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***Deductions for impairment losses***

(4) Despite sections 10(1) and 34AA(1), where a redomiciled VCC incurred before its registration date any impairment loss from any financial asset on revenue account acquired for the purpose of the sub-fund’s trade or business outside Singapore, any amount of the loss that is reversed after that registration date is not chargeable to tax.

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(5) Where a redomiciled VCC incurs on or after its registration date any impairment loss in the course of carrying on a trade or business in relation to a sub-fund in Singapore (called in this section the sub-fund’s trade or business in Singapore), from any financial asset on revenue account that was acquired for the purpose of the sub-fund’s trade or business outside Singapore before its registration date —

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(a) a deduction is allowed in determining the sub-fund's income for that loss to the extent that it becomes credit-impaired within the meaning of FRS 109 or SFRS(I) 9 (as the case may be); and

(b) any amount of that loss that is subsequently reversed is deemed as income of the sub-fund to the extent of the deduction allowed under paragraph (a).

5 (6) Subsections (4) and (5) do not apply to an impairment loss from a debt to which subsection (3) applies.

***Deductions for expenses***

10 (7) No deduction is allowed under section 14 for any expense incurred by a redomiciled VCC before its registration date for the purpose of the sub-fund's trade or business outside Singapore and for which the VCC has been allowed or given any deduction or relief under any law of a country outside Singapore that levies tax of a similar character to income tax (by whatever name called).

***Deductions for trading stocks***

15 (8) For the purposes of determining the amount of deduction to be allowed in determining the sub-fund's income under any provision of this Act for any trading stock that the redomiciled VCC acquired before its registration date for the purpose of the sub-fund's trade or business outside Singapore, the value of the trading stock is the lower of the following:

- (a) the cost of the trading stock to the redomiciled VCC;
- (b) the net realisable value of the trading stock on that date.

***Deductions under section 14U***

20 (9) Despite anything in section 14U, where the redomiciled VCC has never at any time carried on any trade or business in relation to the sub-fund in or outside Singapore before its registration date, a deduction may only be allowed for the purpose of determining the sub-fund's income under that section for any cost, payment or expenditure incurred or made before that registration date, if such cost, payment or expenditure is incurred or made for the purpose of the sub-fund's trade or business in Singapore.

25 (10) The deduction under subsection (9) may only be allowed for the year of assessment relating to the basis period in which the sub-fund's trade or business in Singapore commenced.

***Allowances for machinery or plant under section 19***

(11) Where a redomiciled VCC —

- (a) incurred capital expenditure before its registration date to acquire any machinery or plant for the purpose of the sub-fund's trade or business outside Singapore; and
- (b) uses the machinery or plant for the purposes of the sub-fund's trade or business in Singapore on or after that date,

then, for the purpose of determining the sub-fund's income, an initial allowance may be made for that capital expenditure, and an annual allowance may be made for the depreciation by wear and tear of that machinery or plant, in accordance with section 19 as modified under subsection (12). 5

(12) Section 19 applies in relation to the making of initial and annual allowances under subsection (11), and to initial and annual allowances so made, subject to the following modifications: 10

(a) the allowances may only be made under that section if the redomiciled VCC carries on a trade or business in relation to the sub-fund in Singapore on or after the redomiciled VCC's registration date;

(b) the capital expenditure is treated as having been incurred for the provisioning of the machinery or equipment for the sub-fund's trade or business in Singapore; 15

(c) except as provided under paragraph (d), the allowances under that section may only be made in respect of the lower of the following:

(i) the net book value of the machinery or plant as of the registration date; 20

(ii) the market value of the machinery or plant as of that date, and that lower amount is treated as the capital expenditure incurred in acquiring that machinery or plant, and the original cost of the machinery or plant; 30

- (d) for the purposes of making the initial allowance under section 19(1) in determining the sub-fund's income for any machinery or plant that is acquired under a hire-purchase agreement, the reference in that provision to the capital expenditure is a reference to an amount computed by the formula

$$\frac{A}{B} \times C,$$

where —

- (i) A is —

- (A) in the first year of claim for that allowance, the sum of all deposits and instalment payments (excluding finance charges) made up to the end of the basis period in which the date of commencement of the sub-fund's trade or business in Singapore falls; and

- (B) in each subsequent year of claim for that allowance, the sum of all instalment payments (excluding finance charges) made in the basis period to which the claim relates;

- (ii) B is the sum of all deposits and instalment payments (excluding any finance charges) under the hire-purchase agreement; and

- (iii) C is the lower amount of the machinery or plant mentioned in paragraph (c);

- (e) for the purposes of making the initial allowance in determining the sub-fund's income, the capital expenditure is treated as having been incurred by the redomiciled VCC on the first day on which it carries on the sub-fund's trade or business in Singapore;

- (f) section 19(1B), (2)(b), (3), (4), (5) and (5B) does not apply;

- (g) such other modifications as may be prescribed.

- (13) Except as provided under subsection (11), no allowance may be made under section 19 in determining the sub-fund's income in a case mentioned in subsection (11)(a) and (b), in relation to any capital expenditure mentioned in subsection (11)(a).

***Allowances for machinery, plant, etc., under section 19A***

(14) Where a redomiciled VCC —

(a) incurred capital expenditure before its registration date to acquire any item mentioned in section 19A(1), (2), (3), (4), (5), (6), (7) or (8) or develop a website mentioned in section 19A(10), for the purpose of the sub-fund's trade or business outside Singapore; and

(b) uses such item or website for the purposes of the sub-fund's trade or business in Singapore on or after that date,

then an allowance may be made in determining the sub-fund's income in lieu of the allowances under section 19 (as applied by subsection (11)), for the capital expenditure under section 19A(1), (2), (3), (4), (5), (6), (7), (8) or (10) (whichever is applicable), as modified under subsection (15).

(15) Section 19A applies in relation to the making of an allowance under subsection (14), and to any allowance so made, subject to the following modifications:

(a) the allowance may only be made under that section if the redomiciled VCC carries on a trade or business in relation to the sub-fund in Singapore on or after its registration date;

(b) the capital expenditure is treated as having been incurred for the provision of the item or website for the sub-fund's trade or business in Singapore;

(c) the allowance may only be made in respect of the lower of the following:

(i) the net book value of the item or website as of the registration date;

(ii) the market value of the item or website as of that date,

and that lower amount is treated as the capital expenditure incurred on the provision of the item or website for the sub-fund's trade or business in Singapore, and the original cost of the item in section 19A(1C) (if applicable);

(d) section 19A(1B), (1C), (1D), (2A), (2B), (2BAA), (2BA), (2BB), (2BC), (2C), (2D), (2E), (2F), (2FA), (2FB), (2G), (2GA), (2H), (2HA), (2HB), (2I), (2IA), (2J), (2K), (9), (9A), (13A), (13B), (16), (16A), (16B), (17) and (18) does not apply;

(e) such other modifications as may be prescribed.

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(16) Except as provided under subsection (14), no allowance may be made under section 19A in determining the sub-fund's income in a case mentioned in subsection (14)(a) and (b), in relation to any capital expenditure mentioned in subsection (14)(a).

5           *Writing-down allowances for intellectual property rights under section 19B*

(17) Where a redomiciled VCC —

- (a) incurred capital expenditure before its registration date to acquire any intellectual property rights for the purpose of the sub-fund's trade or business outside Singapore; and
- (b) uses those rights for the purpose of the sub-fund's trade or business in Singapore on or after that date,

10           then writing-down allowances may be made in determining the sub-fund's income for the capital expenditure, in accordance with section 19B as modified by subsection (18).

15           (18) Section 19B applies in relation to the making of writing-down allowances under subsection (17), and to writing-down allowances so made, subject to the following modifications:

- (a) the allowances may only be made under that section if the sub-fund's trade or business is carried on in Singapore on or after the registration date;
- (b) the capital expenditure is treated as having been incurred for the acquisition of those intellectual property rights for use in the sub-fund's trade or business in Singapore;
- (c) the allowances may only be made in respect of the lower of the following:
  - (i) the acquisition cost of the intellectual property rights less accumulated amortisation and impairment losses as of the registration date;
  - (ii) the open-market price of the rights as of that date,
 and that lower amount is treated as the capital expenditure incurred in acquiring those rights;
- (d) section 19B(1), (1A), (1AA)(b), (1AC), (1B), (1BAA), (1BA), (1BB), (1BC), (1C), (1D), (1E), (2B), (2C), (2D), (2E), (8), (9), (10D), (10E), (10F), (10G), (10H), (10I), (10J), (10K) and (12) does not apply;

(e) the election under section 19B(1AB) must be made at the time of lodgment of the redomiciled VCC's return of income for the year of assessment relating to the later of the following:

- (i) the basis period in which the redomiciled VCC's registration date falls;
- (ii) the basis period in which the date of commencement of the sub-fund's trade or business in Singapore falls;

(f) such other modifications as may be prescribed.

(19) In subsection (18)(c), "open-market price", in relation to intellectual property rights, has the meaning given to it by section 19B(10F), with the reference to the acquisition date of those rights substituted with a reference to the redomiciled VCC's registration date.

(20) Except as provided under subsection (17), no writing-down allowance may be made under section 19B in determining the sub-fund's income in a case mentioned in subsection (17)(a) and (b) in relation to any capital expenditure mentioned in subsection (17)(a).

#### ***Section 43(6C) inapplicable***

(21) Section 43(6C) does not apply.

#### ***Regulations***

(22) The Minister may make regulations necessary or convenient to be prescribed for carrying out or giving effect to this section and section 34H, and in particular, make regulations to provide for such transitional, supplementary or consequential matters as the Minister considers necessary or expedient.

#### **Tax credits for approved redomiciled VCCs**

**34H.—(1)** This section applies where —

(a) a body corporate incorporated outside Singapore is registered as a VCC under Part 12 of the VCC Act and is an umbrella VCC (called in this section the redomiciled VCC);

(b) the redomiciled VCC is approved by the Minister for the purposes of this section;

(c) the redomiciled VCC derived or received income for the purpose of a sub-fund (called in this section income A) that is chargeable to tax in one or more years of assessment beginning with the year of assessment for the basis period in which its registration date falls; and

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(d) the redomiciled VCC's place of incorporation levies on the VCC tax of a similar character to income tax (by whatever name called) on an estimate of income  $A$  (called in this section income  $B$ ).

5 (2) The redomiciled VCC must be allowed, in accordance with subsection (4), a tax credit against tax payable in respect of the part of income  $A$  that is derived or received in the basis period for each year of assessment specified by the Minister to the VCC at the time of its approval (called in this section a specified year of assessment).

10 (3) The total amount of tax credits to be allowed to the redomiciled VCC for all of its specified years of assessment in respect of income  $A$ , is an amount  $C$  that is computed by the formula  $(B - B1) \times D$ , where —

(a)  $B$  is the amount of income  $B$ ;

15 (b)  $B1$  is the part of income  $B$  that is derived wholly from any agreement or arrangement entered into on or after the registration date, as well as any other income prescribed by regulations made under section 34G; and

(c)  $D$  is the lower of the following:

20 (i) the rate by which the part of income  $A$  derived or received in the basis period in which its registration date falls is chargeable to tax;

(ii) the rate by which income  $B$  is chargeable to the tax described in subsection (1)(b).

(4) Where, throughout a basis period for a specified year of assessment, the redomiciled VCC —

25 (a) is resident in Singapore; and

(b) satisfies all of the conditions specified by the Minister to it at the time of its approval,

then there is to be allowed, against the amount of tax chargeable on income  $E$ , a credit of an amount that is the lower of the following:

30 (c) the amount of tax;

(d) an amount computed by deducting from the amount  $C$  the total amount of tax credits previously allowed under this section against the tax chargeable on any income of the sub-fund.

35 (5) In subsection (4), income  $E$  for a year of assessment is the amount of the part of income  $A$  derived or received in the basis period for that year of assessment after deducting the following:

(a) the expenses and donations of a sub-fund for that year of assessment that are attributable to or apportioned to the part of income *A*;

(b) any capital allowances in respect of any capital expenditure of a sub-fund for that year of assessment that is attributable to the part of income *A* whether or not any claim for those allowances has been made;

(c) any balance of those expenses, allowances and donations which have not been deducted under this subsection for the purpose of determining income *E* for any previous year of assessment.

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(6) The balance of any expenses, allowances or donations mentioned in subsection (5) may only be used to determine income *E* for a subsequent specified year of assessment, and is not available as a deduction against any other income in determining the chargeable income of the sub-fund under section 107(3).

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(7) However, any balance mentioned in subsection (6) that remains —

(a) after ascertaining income *E* for the last of the specified years of assessment; or

(b) as of the date of revocation of the approval of the redomiciled VCC,

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may be deducted against any other income in determining the chargeable income of the sub-fund under section 107(3) for a subsequent year of assessment, or the year of assessment for the basis period in which the approval is revoked or a subsequent basis period (whichever is applicable), in accordance with section 23 or 37 (as applied by section 107(3)), as the case may be.

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(8) Any balance of the amount *C* after a tax credit has been allowed for the last of the specified years of assessment must be disregarded.

(9) If, at any time after the registration date, and during a period specified by the Minister to it at the time of its approval, the redomiciled VCC ceases to carry on any trade or business in Singapore in relation to that sub-fund mentioned in subsection (1), an amount computed using the formula  $\frac{F-G}{F} \times H$  is recoverable by the Comptroller from the umbrella VCC as a debt due to the Government, where —

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(a) *F* is the total number of its specified years of assessment or 5, whichever is larger;

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(b) G is the total number of complete years where the umbrella VCC carried on a trade or business in Singapore in relation to that sub-fund; and

(c) H is the total amount of tax credits already allowed against the tax chargeable on the income of the sub-fund under this section.

5 (10) If the Comptroller is satisfied that —

(a) the redomiciled VCC gave to the Comptroller information that is false in any material particular, or omitted any material particular from any information or document given to the Comptroller; and

10 (b) as a result of the false information or omission, an amount of tax credit was allowed against tax chargeable on income under this section,

15 then an amount equal to the amount of tax credit so allowed is recoverable by the Comptroller from the VCC as a debt due to the Government.

20 (11) The amount of the tax credit recoverable from the VCC under subsection (9) or (10) is considered (for the purpose of section 29 of the VCC Act) liability incurred by the VCC for the purpose of the sub-fund mentioned in subsection (9), or for the purpose of the sub-fund to which the information or document mentioned in subsection (10) relates.

25 (12) The amount recoverable under subsection (9) or (10) must be paid at the place stated in the notice served by the Comptroller on the redomiciled VCC within 30 days after the service of the notice.

30 (13) The Comptroller may, in the Comptroller's discretion, and subject to such terms and conditions as the Comptroller may impose, extend the time within which payment is to be made.

(14) Sections 86(1), (2), (3), (4), (5) and (6), 87(1) and (2), 89, 90 and 91 apply to the collection and recovery by the Comptroller of the amount recoverable under subsection (9) or (10) as they apply to the collection and recovery of tax.

35 (15) In this section —

“capital expenditure of a sub-fund”, “donation of a sub-fund” and “expense of a sub-fund” have the meanings given to them in section 107(4);

“place of incorporation”, in relation to the redomiciled VCC, means the jurisdiction where the VCC was domiciled at the time it applied for registration under Part 12 of the VCC Act;

“registration” means registration under section 135(1) of the VCC Act;

“registration date”, in relation to the redomiciled VCC, means the date of its registration specified in the notice of transfer of registration issued to it under section 135(3) of the VCC Act.”.

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### PART 3

#### PROVISIONS THAT APPLY IN PLACE OF SECTIONS 50, 50A AND 50C WHERE INCOME IS THAT OF UMBRELLA VCC

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Section 107(28)

Sections 50, 50A and 50C as set out below apply in place of sections 50, 50A and 50C respectively in a case where the income in question is that of an umbrella VCC:

##### **“Tax credits**

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**50.—(1)** This section has effect where, under arrangements having effect under section 49, tax payable in the territory of the government of which the arrangements are made, in respect of any income of an umbrella VCC, is to be allowed as a credit against tax payable in respect of that income in Singapore.

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(2) Where the umbrella VCC is resident in Singapore, the amount of income tax chargeable on the income is reduced by deducting, from the amount of the income tax that is attributable to the part of the chargeable income of the umbrella VCC that is income derived or received by the umbrella VCC for the purpose of each of its sub-funds (called in this section a sub-fund’s assessable income), the amount of the credit that is attributable to the sub-fund’s assessable income.

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(3) The amount of the credit under subsection (2) must not exceed the amount produced by computing the amount of the income of the sub-fund in accordance with the provisions of this Act and the subsidiary legislation made under it (as modified by section 107 to apply to a VCC) as if it were a VCC, and then charging it to income tax at a rate ascertained by the formula

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$$\frac{A}{B},$$

where —

(a) A is the income tax chargeable (before making the reduction under subsection (2)) on the sub-fund's assessable income had it been a VCC; and

(b) B is the amount of the sub-fund's assessable income.

(4) Without limiting subsection (3), the amount of the reduction under subsection (2) in respect of any sub-fund for any year of assessment for foreign tax under all arrangements having effect under section 49 must not exceed the total amount of income tax payable by the umbrella VCC that is attributable to the assessable income of the sub-fund, excluding any tax payable by the umbrella VCC under section 45 or that section as applied by section 107(27), that is attributable to such income.

(5) In computing the amount of the sub-fund's assessable income under subsection (2) —

(a) no deduction may be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the income tax chargeable depends on the amount received in Singapore, that amount is to be increased by the appropriate amount of the foreign tax in respect of the income; and

(c) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any (and if so what) credit is to be given against income tax in respect of the dividend, the amount of the income is to be increased by the amount of the foreign tax not so chargeable that falls to be taken into account in computing the amount of the credit.

(6) Subsection (5)(a) and (b) applies to the computation of the sub-fund's assessable income in subsection (3) for the purposes of determining the rate mentioned in that subsection, and applies to such computation in relation to all income in the case of which credit falls to be given for foreign tax under arrangements for the time being in force under section 49.

## (7) Where —

- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any (and if so what) credit is to be given against income tax in respect of the dividends; and
- (b) a dividend is paid that is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to the umbrella VCC for the purpose of a sub-fund and the umbrella VCC controls directly or indirectly, through that sub-fund, not less than one-half of the voting power in the company paying the dividend, credit is to be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Where an umbrella VCC elects that credit may not be allowed under this section in respect of the income derived or received by the umbrella VCC for the purpose of its sub-funds for any year of assessment, credit may not be allowed under the arrangements against the income tax chargeable in respect of the umbrella VCC's income for that year.

(9) Where an umbrella VCC elects that credit may not be allowed under this section in respect of the income of one or some (but not all) of its sub-funds for any year of assessment, then this section applies as if the umbrella VCC only consists of the sub-fund or sub-funds for which no such election was made.

(10) Any claim for an allowance by way of credit must be made not later than 2 years after the end of the year of assessment, and in the event of any dispute as to the amount allowable the claim is subject to objection and appeal in like manner as an assessment.

(11) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Singapore or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief applies to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 2 years from the time when all such assessments, adjustments and other determinations have been made, whether in Singapore or elsewhere, as are material in determining whether any (and if so what) credit falls to be given.

(12) The amount that corresponds to the amount of tax attributable to a sub-fund's assessable income, that is considered liability incurred by the

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umbrella VCC for the purpose of the sub-fund under section 107(8), is to be reduced by the amount of the credit deducted from such income under subsection (2).

(13) In this section —

5 “foreign tax” means any tax payable in that territory which under the arrangements is to be so allowed;

“income tax” means tax chargeable under this Act.

### **Unilateral tax credits**

10 **50A.**—(1) Even if there are no arrangements in force under section 49 with the government of any territory outside Singapore, tax credit under section 50 must be given to any umbrella VCC resident in Singapore against tax chargeable in respect of any of the following for tax payable under the law of that territory —

15 (a) any royalty derived from that territory, where the payment is not —

20 (i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore); or

(ii) deductible against any income accruing in or derived from Singapore;

(b) any dividend derived from that territory;

25 (c) any profit derived from outside Singapore by a branch in that territory of the umbrella VCC;

(d) any income derived from any trade or business carried on in that territory through a permanent establishment in that territory;

30 (e) any discount or premium from debt securities or interest derived from that territory where the payment is not —

35 (i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore); or

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- (ii) deductible against any income accruing in or derived from Singapore;
  - (f) any rent or other income ancillary to the holding of immovable properties located in that territory but not including gains from the disposal of such immovable properties derived from a trade or business carried on in Singapore; and
  - (g) any gains or profits of an income nature not falling within paragraphs (a), (b), (c), (d), (e) and (f) that is derived from that territory.
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- (2) Where —
- (a) any dividend in respect of which tax credit is given under subsection (1)(b) is paid by a company resident outside Singapore to an umbrella VCC resident in Singapore;
  - (b) the dividend is paid to the umbrella VCC for a sub-fund; and
  - (c) the umbrella VCC owns, for the purpose of that sub-fund, not less than 25% of the total number of issued shares of the company paying the dividend,
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- then the tax credit by which the amount of income tax chargeable on the dividend is to be reduced under section 50(2) must take into account any tax paid by that company in the country in which it is resident in respect of its income out of which the dividend is paid.
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- (3) Where —
- (a) under arrangements for the time being in force under section 49 with the government of a territory outside Singapore, no provision is made for tax credit in respect of income out of which any dividend is paid by a company resident in that territory to an umbrella VCC resident in Singapore for a sub-fund;
  - (b) the dividend is paid to the umbrella VCC for a sub-fund; and
  - (c) the umbrella VCC owns, for the purpose of that sub-fund, not less than 25% of the total number of issued shares of the company paying the dividend,
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- tax credit under section 50 in respect of such income must be given to the umbrella VCC and applied in accordance with section 50.
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- (4) Section 50, with the necessary modifications, applies for the purposes of this section as if any territory to which this section and the
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regulations have effect were a territory with which arrangements have been made under section 49.

(5) Any umbrella VCC granted any tax credit under subsection (1) on any income may not be given any tax credit under section 50 in respect of that income.

(6) The Minister may, in any particular case, waive the requirement of 5 25% share ownership mentioned in subsections (2) and (3).

(7) In this section, “debt securities” has the same meaning as in section 43N(4).

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### **Pooling of credits**

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**50C.**—(1) Where, for any year of assessment, an umbrella VCC is entitled to 2 or more tax credits under any other provision of this Part, and some or all of which are attributable to the part of the chargeable income of the VCC that is income derived or received by the umbrella VCC for the purpose of any particular sub-fund (called in this section a sub-fund’s assessable income), the umbrella VCC may elect in relation to that sub-fund to be given a pooled credit for that year of assessment in lieu of any 2 or more of those credits (called in this section the replaced credits).

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(2) Subsection (1) only applies if the income that is the subject of each replaced credit (called in this section the elected income) satisfies all of the following conditions:

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(a) tax under the law of the territory from which the income is derived that is of a similar character to income tax (by whatever name called) has been paid on the income;

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(b) at the time the income is received in Singapore by the umbrella VCC, the highest rate of tax of a similar character to income tax (by whatever name called) levied under the law of that territory on any gains or profits from any trade or business carried on by a company in that territory at that time, is not less than 15%;

(c) the income tax payable under this Act on the income for the year of assessment (before allowance of any credit under this Part) is not nil.

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(3) The total amount of the income tax chargeable to the umbrella VCC in respect of all the elected income must be reduced by the amount of the pooled credit.

(4) The amount of the pooled credit is the lower of —

- (a) the sum of the income tax chargeable for the year of assessment on all the elected income; and
- (b) the sum of the taxes paid on all the elected income in the territory or territories outside Singapore from which the elected income is derived.

(5) In subsection (4)(a), the sum of the income tax chargeable for the year of assessment on all the elected income is ascertained by —

- (a) computing the amount of the income that is the subject of each replaced credit in accordance with the provisions of this Act and the subsidiary legislation made under it (as modified by section 107 to apply to a VCC) as if the sub-fund were a VCC, and then charging it to income tax at a rate ascertained by the formula

$$\frac{A}{B},$$

where —

(i) A is the income tax chargeable (before allowance of any credit under this Part) on the assessable income of the sub-fund had it been a VCC; and

(ii) B is the amount of that sub-fund's assessable income; and

(b) totalling the amounts computed in accordance with paragraph (a) of all the replaced credits.

(6) Sections 50(5), (6), (10), (11), (12) and (13) and 50A(2) apply, with the necessary modifications, for the purposes of this section.

(7) To avoid doubt, sections 50 and 50A continue to apply to any income that is the subject of a credit or credits allowed under any other provision of this Part for which no election under this section is made.”.”.

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### PART 3

#### AMENDMENTS TO STAMP DUTIES ACT

##### **Amendment of section 2**

**13.** Section 2 of the Stamp Duties Act (Cap. 312) is amended —

- 5           (a) by deleting the words “or society” in the definition of “stock” and substituting the words “, society or VCC”;
- (b) by deleting the full-stop at the end of the definition of “stock” and substituting a semi-colon, and by inserting immediately thereafter the following definition:

10                  ““VCC Act” means the Variable Capital Companies Act 2018 (Act 44 of 2018).”; and

- (c) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

15                  “(2) The following terms have the meanings given to them in the VCC Act:

- (a) share, in relation to a VCC;
- (b) sub-fund;
- (c) non-umbrella VCC;
- 20                   (d) umbrella VCC;
- (e) VCC.”.

##### **Amendment of section 60A**

**14.** Section 60A of the Stamp Duties Act is amended by inserting, immediately after subsection (2), the following subsection:

25                  “(3) To avoid doubt —

- (a) an instrument mentioned in subsection (1) includes an instrument between sub-funds mentioned in section 60I(1) and an instrument with a sub-fund mentioned in section 60J(1); and

- (b) an instrument mentioned in subsection (2) includes an instrument between sub-funds mentioned in section 60I(2) and an instrument with a sub-fund mentioned in section 60J(2).”.

## New Part VIIIB

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**15.** The Stamp Duties Act is amended by inserting, immediately after section 60H, the following Part:

### “PART VIIIB APPLICATION OF ACT TO VCCS

#### **Application of Act to instrument between sub-funds**

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**60I.—**(1) A reference in this Act to an instrument or a description of instrument that effects a transaction, includes an instrument (called in this Part an instrument between sub-funds) that effects a transaction between sub-funds of an umbrella VCC that would have been the same transaction had the sub-funds been legal persons.

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(2) A reference in this Act to an instrument or a description of instrument that is evidence of, or that signifies any matter relating to a transaction, includes an instrument (also called in this Part an instrument between sub-funds) that is evidence of, or that signifies the same matter relating to a transaction between sub-funds of an umbrella VCC, that would have been the same transaction had the sub-funds been legal persons.

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(3) In the case of an instrument between sub-funds, a reference in this Act to —

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- (a) a party (however described) to an instrument; or
- (b) a party who executes an instrument,

is to the umbrella VCC in relation to the relevant sub-fund.

(4) Accordingly —

- (a) any right of the party in subsection (3)(a) or (b) under this Act is a right of the umbrella VCC that is to be

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exercised for the purpose of the relevant sub-fund;  
and

5 (b) any liability or duty of that party under this Act is considered (for the purpose of section 29 of the VCC Act) a liability or duty of the umbrella VCC that is incurred, and to be discharged, for the purpose of the relevant sub-fund.

10 (5) To avoid doubt, the time and place of the execution of an instrument between sub-funds is the time and place at which the umbrella VCC executes the instrument.

(6) Where —

15 (a) an umbrella VCC effects a transaction between its sub-funds otherwise than by way of an instrument, or that is not evidenced or signified by an instrument; and

(b) had the transaction been effected, evidenced or signified by an instrument, the instrument would have been chargeable with duty under this Act,

20 the umbrella VCC must give notice to the Commissioner of the transaction, in such form as the Commissioner may require, within 14 days of the transaction.

(7) The notice mentioned in subsection (6) is treated for the purposes of this Act as an instrument mentioned in subsection (6)(b) and chargeable with duty accordingly.

25 (8) To avoid doubt, a reference to an instrument in subsections (6) and (7) includes an electronic instrument as defined in section 59(1).

30 (9) An umbrella VCC that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty that is otherwise chargeable on the notice.

## **Application of Act to instrument with a sub-fund**

**60J.**—(1) A reference in this Act to an instrument or a description of instrument that effects a transaction, includes an instrument (called in this Part an instrument with a sub-fund) that effects a transaction between an umbrella VCC and any of its sub-funds that would have been the same transaction had the sub-fund been a separate legal person.

(2) A reference in this Act to an instrument or a description of instrument that is evidence of, or that signifies any matter relating to a transaction, includes an instrument (also called in this Part an instrument with a sub-fund) that is evidence of, or that signifies the same matter relating to a transaction between an umbrella VCC and any of its sub-funds, that would have been the same transaction had the sub-fund been a separate legal person.

(3) In the case of an instrument with a sub-fund, a reference in this Act to —

- (a) a party (however described) to an instrument; or
- (b) a party who executes an instrument,

is to the umbrella VCC or the umbrella VCC in relation to the relevant sub-fund, as the case may be.

(4) Where an umbrella VCC is a party to an instrument, or executes an instrument, for the purpose of a sub-fund —

- (a) any right of that party in subsection (3)(a) or (b) under this Act is a right of the umbrella VCC that is to be exercised for the purpose of the relevant sub-fund; and
- (b) any liability or duty of that party under this Act is considered (for the purpose of section 29 of the VCC Act) a liability or duty of the umbrella VCC that is incurred, and to be discharged, for the purpose of the relevant sub-fund.

(5) To avoid doubt, the time and place of the execution of an instrument with a sub-fund is the time and place at which the umbrella VCC executes the instrument.

(6) Where —

- 5           (a) an umbrella VCC effects a transaction with any of its sub-funds otherwise than by way of an instrument, or that is not evidenced or signified by an instrument; and
- 10          (b) had the transaction been effected, evidenced or signified by an instrument, the instrument would have been chargeable with duty under this Act,

the umbrella VCC must give notice to the Commissioner of the transaction, in such form as the Commissioner may require, within 14 days of the transaction.

15          (7) The notice mentioned in subsection (6) is treated for the purposes of this Act as an instrument mentioned in subsection (6)(b) and chargeable with duty accordingly.

20          (8) To avoid doubt, a reference to an instrument in subsections (6) and (7) includes an electronic instrument as defined in section 59(1).

25          (9) An umbrella VCC that contravenes subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 4 times the amount of duty that is otherwise chargeable on the notice.

## **Modifications to section 22A**

**60K.**—(1) In the application of section 22A to an instrument between sub-funds, the disposal under that instrument of specified immovable property or part of such property is treated as a disposal of the property or part of such property for the purposes of that section.

(2) In the application of section 22A to an instrument with a sub-fund, the disposal under that instrument of specified immovable property or part of such property is treated as a

disposal of the property or part of such property for the purposes of that section.

(3) In the application of section 22A to an instrument (including an instrument between sub-funds or an instrument with a sub-fund) under which an umbrella VCC disposes of any specified immovable property or part of such property that, immediately before such disposal, was held by the VCC for the purpose of any of its sub-funds because of an earlier instrument between sub-funds or an earlier instrument with a sub-fund, the reference in that section to the date or time of acquisition of the property or part of such property is to the date or time the umbrella VCC first holds the property or part for the purpose of the sub-fund as a result of the earlier instrument, and section 22A(12) applies accordingly.

(4) The reference to the voluntary winding up of a private company in section 22A(2)(c) includes the voluntary winding up of a VCC or a sub-fund under the VCC Act.

(5) The reference to the winding up of the owner of the property in section 22A(13) is, where the property is held by an umbrella VCC for the purpose of a sub-fund, to the winding up of the VCC or the sub-fund under the VCC Act.

### **Modifications to sections 23, 23A, 23B, 23C and 23D**

**60L.—**(1) A reference in sections 23, 23A, 23B, 23C and 23D to an entity includes —

- (a) a VCC; and
- (b) a sub-fund of an umbrella VCC.

(2) For the purposes of subsection (1)(a), a reference in sections 23, 23A, 23B and 23C to equity interests in an entity that is a non-umbrella VCC is to its shares.

(3) For the purposes of subsection (1)(b) —

- (a) a reference in those sections to any asset or other property of an entity that is a sub-fund of an umbrella VCC is to such asset or property held by the umbrella

VCC for the purpose of or that is attributable to the  
sub-fund;

- 5 (b) a reference in those sections to an entity beneficially  
owning equity interests in another entity is, if the first  
entity is a sub-fund of an umbrella VCC, to the  
umbrella VCC holding equity interests in the other  
entity for the purpose of the sub-fund;
- 10 (c) a reference in those sections to equity interests in an  
entity that is a sub-fund of an umbrella VCC is to  
shares of the umbrella VCC in respect of that  
sub-fund;
- 15 (d) a reference in those sections to an accounting period  
of an entity that is a sub-fund of an umbrella VCC is  
to the accounting period of the umbrella VCC;
- 20 (e) the following are arrangements to which  
section 23C(1) applies in a case where the entity is  
a sub-fund of an umbrella VCC, and section 23C(1),  
(2), (4) and (5) applies accordingly:
- (i) an acquisition by the umbrella VCC of equity  
interests of the sub-fund;
- (ii) an issue by the umbrella VCC of such equity  
interests;
- (iii) a cancellation or redemption of such equity  
interests;
- 25 (iv) the conversion of —
- (A) such equity interests into instruments that  
are not equity interests;
- (B) instruments that are not equity interests  
into such equity interests; or
- (C) such equity interests from one class to  
another class;

(v) an amalgamation of the sub-fund with another sub-fund, whether or not of the same umbrella VCC;

(vi) any other arrangement that, in the Commissioner's opinion, has as its purpose or one of its purposes the effect mentioned in section 23C(1)(a) in relation to the sub-fund.

(4) The following paragraphs apply when applying sections 23, 23A and 23B in relation to an instrument to which an umbrella VCC is a party in relation to a sub-fund:

(a) the umbrella VCC beneficially owns equity interests in an entity if it holds equity interests in that entity for the purpose of the sub-fund, and section 23(22)(a) is to be read accordingly;

(b) the umbrella VCC ceases to own any equity interest in an entity if it ceases to hold equity interests in that entity for the purpose of the sub-fund;

(c) the umbrella VCC is a significant owner of an entity if it holds, for the purpose of the sub-fund, a percentage of the equity interests in the entity that satisfies section 23(11)(a) or (b);

(d) where the umbrella VCC is the grantor, transferor, assignor or vendor (as the case may be) under the instrument, the reference in section 23(8) to equity interests acquired by such party is to equity interests acquired by the VCC for the purpose of the sub-fund;

(e) section 23(12) applies for the purposes of paragraph (a) as if a reference to an associate of the person mentioned in section 23(12) is to a person that is an associate of the umbrella VCC in relation to the sub-fund in accordance with the section 23 Order;

(f) section 23A(3) applies as if a reference to an associate of the grantor or grantee mentioned in that provision is to a person that is an associate of the umbrella VCC

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in relation to the sub-fund in accordance with the section 23 Order.

5 (5) The determination under section 23(20)(d) of whether an umbrella VCC is an associate of a party to an instrument is to be made in relation to each sub-fund, as if the umbrella VCC has only that one sub-fund.

10 (6) The following paragraphs apply for the purpose of determining the beneficial ownership of equity interests in an entity of an associate of another person, where the associate is an umbrella VCC in relation to any of its sub-funds:

- (a) the umbrella VCC beneficially owns equity interests in that entity if it holds equity interests in that entity for the purpose of that sub-fund;
- (b) the umbrella VCC ceases to own any equity interest in the entity if it ceases to hold equity interests in that entity for the purpose of that sub-fund.

15 (7) In determining, for the purpose of section 23C, whether an arrangement is to be treated as a conveyance of equity interests in an entity to or by an umbrella VCC for the purpose of a sub-fund, only equity interests in the entity that are held by the umbrella VCC for the purpose of or that are attributable to the sub-fund are treated as beneficially owned by the umbrella VCC.

### **Modifications to other provisions**

20 25 **60M.**—(1) A reference in section 21(2) and (6) to a person from whom property was conveyed or transferred is —

- (a) in the case of an instrument between sub-funds, to the sub-fund from which the property was conveyed or transferred; or
- (b) in the case of an instrument with a sub-fund, to the umbrella VCC or the sub-fund from which the property was conveyed or transferred, as the case may be.

(2) The following provision applies in place of section 22(2) in a case where the subsequent instrument is an instrument between sub-funds, and section 22(3) applies accordingly:

“Where —

- (a) the purchaser under the contract or agreement to which subsection (1) applies is an umbrella VCC that acted for the purpose of a sub-fund;
- (b) ad valorem duty has been paid in accordance with subsection (1) on that instrument; and
- (c) before having obtained a conveyance or transfer of the property, the umbrella VCC assigns the equitable estate or interest in that property, or enters into any contract or agreement for the sale of that property, to any of its sub-funds,

the assignment, contract or agreement is chargeable with ad valorem duty in respect of the consideration moving from the sub-fund mentioned in paragraph (c) as if it were an actual conveyance on sale to the sub-purchaser.”.

(3) The following provision applies in place of section 22(2) in a case where the subsequent instrument is an instrument with a sub-fund, and section 22(3) applies accordingly:

“Where —

- (a) the purchaser under the contract or agreement to which subsection (1) applies is an umbrella VCC that acted for itself or for the purpose of a sub-fund;
- (b) ad valorem duty has been paid in accordance with subsection (1) under that instrument; and

(c) before having obtained a conveyance or transfer of the property, the umbrella VCC —

(i) in the case where it entered into the contract or agreement to which subsection (1) applies for itself, assigns the equitable estate or interest in that property, or enters into a contract or an agreement for the sale of that property, to the umbrella VCC for the purpose of a sub-fund; or

(ii) in the case where it entered into the contract or agreement to which subsection (1) applies for the purpose of a sub-fund, assigns the equitable estate or interest in that property, or enters into a contract or an agreement for the sale of that property, to and for itself,

the assignment, contract or agreement is chargeable with ad valorem duty in respect of the consideration moving from the sub-fund or the umbrella VCC (as the case may be) as if it were an actual conveyance on sale to the sub-purchaser.”.

(4) Section 22(4) applies with the necessary modifications in relation to a variation of a contract or an agreement for the sale of any estate or interest in property to an umbrella VCC for the purpose of a sub-fund, where the variation is for the purpose of substituting one sub-fund with another or substituting the sub-fund with the umbrella VCC, as it applies to a direction mentioned in that provision.

(5) Section 22(4) applies with the necessary modifications in relation to a variation of a contract or an agreement for the sale of any estate or interest in property to an umbrella VCC acting for itself, where the variation is for the purpose of substituting the umbrella VCC with one of its sub-funds, as it applies to a direction mentioned in that provision.

(6) Section 33 applies in relation to shares in a VCC as it applies in relation to shares in a company.

(7) Section 70B applies in relation to a VCC and a sub-fund of an umbrella VCC as it applies in relation to a company.

(8) A reference to shares in the First Schedule includes shares of a VCC.

### **Fines on umbrella VCC considered liability of its sub-funds in certain cases**

**60N.** Any fine imposed on an umbrella VCC, and any composition sum that may be paid by it, for an offence under this Act that is committed —

- (a) in respect of any instrument executed for the purpose of a sub-fund; or
- (b) in respect of any information, or other matter relating to a sub-fund,

are considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

### **Rules**

**60O.—(1)** The Minister may make rules to prescribe anything that is authorised to be prescribed under this Part.

(2) For a period of 2 years starting on the date of commencement of section 15 of the Variable Capital Companies (Miscellaneous Amendments) Act 2019, the Minister may make rules to prescribe further modifications to the provisions of this Act in their application in relation to

VCCs, instruments between sub-funds and instruments with a sub-fund.”.

### **Amendment of First Schedule**

**16.** The First Schedule to the Stamp Duties Act is amended —

5       (a) by inserting, immediately after paragraph (h) of Article 3, the following paragraph:

10       “(i) of any property or any interest of property which is distributed in specie to a shareholder of a VCC in connection with a liquidation of the VCC or any of its sub-funds

The same duty as in paragraph (a) or (c), as the case may be”; and

*Exemption:*

15       In a case where the conveyance, assignment or transfer is effected by more than one instrument and one instrument has been duly stamped, each other instrument.

20       (b) by deleting the words “*a trustee for a collective investment scheme when acting in that capacity*” in the definition of “entity” in paragraph (1) of Article 3 and substituting the words “*a VCC (whether or not acting for the purpose of a sub-fund), a trustee for a collective investment scheme (not being one that is a VCC or a sub-fund) when acting in that capacity*”.

**PART 4**  
**AMENDMENTS TO VARIABLE  
CAPITAL COMPANIES ACT 2018**

### **Amendment of section 2**

30       **17.** Section 2 of the Variable Capital Companies Act 2018 (called in this Part the principal Act) is amended —

(a) by deleting the definition of “closed-end fund” in subsection (1);

- (b) by deleting the definition of “creditors’ voluntary winding up” in subsection (1) and substituting the following definition:

““creditors’ voluntary winding up” means a winding up under Division 3 of Part 8 of the IRDA as applied by section 130, but not a members’ voluntary winding up;”;

- (c) by inserting, immediately after the definition of “holding company” in subsection (1), the following definitions:

““IRDA” means the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018);

“licensed insolvency practitioner” means the holder of a licence granted under section 51 of the IRDA;”;

- (d) by deleting the definition of “members’ voluntary winding up” in subsection (1) and substituting the following definition:

““members’ voluntary winding up” means a winding up under Division 3 of Part 8 of the IRDA as applied by section 130, where a declaration has been made and lodged pursuant to section 163 of the IRDA as applied by section 130;”;

- (e) by deleting paragraph (g) of the definition of “officer” in subsection (1) and substituting the following paragraph:

“(g) a judicial manager appointed under Part 7 of the IRDA (if applicable);”;

- (f) by deleting the definition of “Official Receiver” in subsection (1) and substituting the following definitions:

““Official Assignee” means the Official Assignee appointed under section 16(1) of the IRDA, and includes a Deputy Official Assignee, a Senior Assistant Official Assignee and an

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Assistant Official Assignee appointed under section 16(4) of the IRDA;

5           “Official Receiver” means the Official Receiver appointed under section 17(1) of the IRDA, and includes a Deputy Official Receiver, a Senior Assistant Official Receiver and an Assistant Official Receiver appointed under section 17(4) of the IRDA;”;

10           (g) by inserting, immediately after the words “Companies Act” in subsection (2), the words “or the IRDA”;

(h) by inserting, immediately after the words “a provision of the Companies Act” in subsection (4), the words “or the IRDA”; and

15           (i) by inserting, immediately after the words “Companies Act” in subsection (8), the words “or the IRDA”.

### **Amendment of section 3**

**18.** Section 3 of the principal Act is amended —

20           (a) by deleting the words “section 130(13)” in subsection (1)(b) and substituting the words “section 130(12)”;

(b) by deleting the words “section 254(1) of the Companies Act because of section 130(8)” in subsection (1)(c) and substituting the words “section 125(1) of the IRDA because of section 130(6)”;

25           (c) by deleting the words “section 254(1) of the Companies Act” in subsection (2)(c) and substituting the words “section 125(1) of the IRDA”;

(d) by deleting the words “paragraph 14” in subsection (2)(c) and substituting the words “paragraph 18”; and

30           (e) by deleting the words “paragraph 19” in subsection (2)(d) and substituting the words “paragraph 28”.

## **Amendment of section 5**

**19.** Section 5 of the principal Act is amended —

- (a) by inserting, immediately after the words “Companies Act” in subsection (2), the words “and Part 6, Part 8 and Part 9 (as it applies to winding up) of the IRDA,”; 5
- (b) by deleting the words “(called in this section an incorporated provision)” in subsection (3) and substituting the words “(called in this subsection an incorporated provision)”;
- (c) by inserting, immediately after the words “another incorporated provision” in subsection (3)(b), the words “or to a provision of the IRDA incorporated by reference in this Act,”; 10
- (d) by inserting, immediately after subsection (3), the following subsection: 15
  - “(3A) Where a provision of the IRDA (called in this subsection 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 or to a provision of the Companies Act incorporated by reference in this Act, 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; 30
  - (d) a reference in the incorporated provision (being section 124(1)(g) or (2)(c), 125(5),

127(3) or 198 of the IRDA) to the Minister, is to the Minister having charge of this Act;

5 (e) a reference in the incorporated provision to a default penalty is to the default penalty in section 147;

(f) a reference in the incorporated provision to a prescribed matter is to the matter prescribed by regulations made under section 165; and

10 (g) the incorporated provision applies subject to such other modifications as may be prescribed by regulations made under subsection (4).”;

15 (e) by inserting, immediately after the words “an incorporated provision” in subsection (4), the words “mentioned in subsection (3)”;

(f) by inserting, immediately after subsection (4), the following subsection:

20 “(5) The Minister may, for a period of 2 years starting on the date of commencement of section 19 of the Variable Capital Companies (Miscellaneous Amendments) Act 2019, make regulations to prescribe further modifications to an incorporated provision mentioned in subsection (3A) in its application by this Act.”; and

25 (g) by inserting, immediately after the words “Companies Act” in the section heading, the words “and IRDA”.

## **Amendment of section 6**

30 **20.** Section 6 of the principal Act is amended by deleting subsection (3).

## **New section 6A**

**21.** The principal Act is amended by inserting, immediately after section 6, the following section:

### **“Application of IRDA to VCC, etc.**

**6A.—(1)** Where a provision of the IRDA 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 IRDA 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 IRDA) the IRDA provision is disapplied, but only to the extent of such application in this Act.

(2) Where a provision of the IRDA 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 IRDA 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 IRDA) the IRDA provision is disapplied, but only to the extent of such application in the corresponding provision.

(3) Despite anything in the IRDA —

(a) Division 1 of Part 10 of the IRDA does not apply for the purpose of the winding up of a VCC or a sub-fund of an umbrella VCC; and

(b) Part 11 of the IRDA does not apply to any proceedings concerning a VCC or a sub-fund of an umbrella VCC.

(4) Section 268 of the IRDA applies in relation to an offence under any of the following as it applies in relation to an offence under Parts 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the IRDA:

(a) section 401(2A) or 407 of the Companies Act as applied by section 144, insofar as it relates to any act under Part 6, 8 or 9 of the IRDA as applied by this Act;

(b) Part 6 of the IRDA as applied by Part 10;

(c) Part 8 or 9 of the IRDA as applied by section 33(2) or Part 11.”.

## New section 17A

**22.** The principal Act is amended by inserting, immediately after section 17, the following section:

### **“Minimum of one member”**

5           **17A.** A VCC must have at least one member.”.

## Amendment of section 19

**23.** Section 19(1) of the principal Act is amended by deleting the words “a closed-end fund” in paragraph (f) and substituting the words “an arrangement mentioned in paragraph (aa) or (b) of the definition of “closed-end fund” in section 2(1) of the Securities and Futures Act (Cap. 289) under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of the units.”.

## Amendment of section 20

**24.** Section 20 of the principal Act is amended by inserting, immediately after subsection (4), the following subsections:

“(5) The VCC must, within 14 days after the making of any alteration under subsection (2), lodge with the Registrar —

- (a) a copy of the constitution as altered; and
- (b) any documentary evidence of the directors’ decision to make the alteration.

(6) If default is made in complying with subsection (5), 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.”.

## Amendment of section 21

**25.** Section 21(2) of the principal Act is amended —

- (a) by deleting the words “Part X of the Companies Act” in paragraph (a)(i) and substituting the words “Part 8 of the IRDA”; and
- (b) by deleting the words “section 130” in paragraph (a)(ii) and substituting the words “section 130B”.

## **Amendment of section 22**

**26.** Section 22(13) of the principal Act is amended by deleting the words “dispose of or cancel the excess shares, or” in paragraph (c).

## **Amendment of section 24**

**27.** Section 24 of the principal Act is amended — 5

- (a) by inserting the word “or” at the end of subsection (2)(c);
- (b) by deleting paragraph (d) of subsection (2);
- (c) by deleting subsections (3), (4) and (5);
- (d) by deleting subsections (7) and (8); and
- (e) by deleting the words “and cancellation” in the section heading. 10

## **Amendment of section 30**

**28.** Section 30 of the principal Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsection: 15

“(1A) Where an umbrella VCC enters into an agreement or issues a business letter, statement of account, invoice, official notice, publication, bill of exchange, promissory note, indorsement, cheque, order, receipt or letter of credit for the purpose of any of its sub-funds, it must set out in that document the fact that it is acting for the purpose of that sub-fund as well as the matters specified in subsection (1)(a), (b) and (c).”; 20

- (b) by inserting, immediately after paragraph (b) of subsection (2), the following paragraph: 25

“(ba) the fact that the umbrella VCC is acting for the purpose of the sub-fund.”;

- (c) by inserting, immediately after the words “subsection (1)” in subsection (3), “, (1A)”; and 30

(d) by deleting subsection (4) and substituting the following subsection:

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

5 (a) signs or issues, or authorises to be signed or issued, on behalf of the VCC —

(i) any document mentioned in subsection (1) in which the information in subsection (1)(a), (b) or (c) is not set out; or

(ii) any document mentioned in subsection (1A) in which the information in that subsection is not set out; or

15 (b) authorises or enters into any agreement for the purpose of a sub-fund of the VCC without ensuring that the information in subsection (2)(a), (b), (ba) and (c) has been disclosed to the other party to the agreement,

20 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.”.

### **Amendment of section 33**

**29.** Section 33 of the principal Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) Part 8 and Part 9 (as it applies to winding up) of the IRDA 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.”;

(b) by deleting the word “and” at the end of subsection (3)(a);  
and

(c) by deleting the full-stop at the end of paragraph (b) of subsection (3) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(c) the reference in section 129(2)(a) to a members’ voluntary winding up is to a winding up under Division 3 of Part 8 of the IRDA as applied by this section, where a declaration has been made and lodged pursuant to section 163 of the IRDA as applied by this section; and

(d) the reference in section 129(2)(b) to a creditors’ voluntary winding up is to a winding up under Division 3 of Part 8 of the IRDA as applied by this section, but not a members’ voluntary winding up mentioned in paragraph (c).”.

## New sections 33A to 33E

**30.** The principal Act is amended by inserting, immediately after section 33, the following sections:

### “Power of Registrar to dissolve defunct sub-funds

**33A.—(1)** Where the Registrar has reasonable cause to believe that —

(a) an umbrella VCC is not carrying on any business in relation to any of its sub-funds; or

(b) a sub-fund of an umbrella VCC is not in operation,

the Registrar may send to the umbrella VCC and its directors, secretaries and members holding shares issued in respect of the sub-fund, a letter to that effect and stating that, if an answer showing cause to the contrary is not received within 30 days

after the date of the letter, a notice will be published in the *Gazette* with a view to declaring the sub-fund dissolved.

(2) Without limiting subsection (1), in determining whether there is reasonable ground to believe that an umbrella VCC is not carrying on any business in relation to a sub-fund, the Registrar may have regard to such circumstances as may be prescribed.

(3) Unless the Registrar receives an answer within one month starting on the date of the letter to the effect that the umbrella VCC is carrying on any business in relation to the sub-fund or that the sub-fund is in operation, he or she may —

- (a) publish in the *Gazette*; and
- (b) send to the umbrella VCC by registered post,

a notice that at the expiration of a period specified in the notice (being 60 days after the date of that notice), the sub-fund will, unless cause is (in the form and manner specified in section 33D) shown to the contrary, be declared dissolved.

(4) If in any case where a sub-fund is being wound up, the Registrar has reasonable cause to believe that —

- (a) no liquidator is acting;
- (b) the affairs of the sub-fund are fully wound up and for a period of 6 months the liquidator of the sub-fund has been in default in lodging any return required to be made by the liquidator; or
- (c) the affairs of the sub-fund have been fully wound up under Division 2 of Part 8 of the IRDA, as applied by section 33(2), and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the sub-fund,

the Registrar may —

- (d) publish in the *Gazette*; and

(e) send to the umbrella VCC or the liquidator (if any),  
a notice to the same effect as that mentioned in subsection (3).

(5) At the expiration of the time specified in the notice under subsection (3), the Registrar may (unless cause to the contrary is previously shown) declare the sub-fund dissolved, and must publish a notice of this in the *Gazette*.  
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(6) On the publication of the notice in the *Gazette* the sub-fund is considered dissolved, and the Registrar must immediately delete the particulars of the sub-fund from the register in which it is registered under section 27.  
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(7) Despite the dissolution of the sub-fund, the liability (if any) of the following persons continues and may be enforced as if the sub-fund had not been dissolved:  
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- (a) every officer of the umbrella VCC;
- (b) the manager of the umbrella VCC;
- (c) the custodian of the sub-fund;
- (d) every member holding shares issued in respect of the sub-fund.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at the liquidator's last known place of business, and a letter or notice to be sent under this section to an umbrella VCC may be addressed to the umbrella VCC at its registered office or, if no office has been registered, to the care of some officer of the umbrella VCC, or, if there is no officer of the umbrella VCC whose name and address are known to the Registrar, may be sent to each of the persons who subscribed to the constitution of the umbrella VCC addressed to that person at the address mentioned in the constitution.  
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(9) The Registrar must ensure that —

- (a) such particulars as the Registrar may determine of the sub-fund mentioned in subsection (1) are sent to —  
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- (i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act (Cap. 138A); and
- (ii) the Central Provident Fund Board established under the Central Provident Fund Act (Cap. 36); and
- (b) the substance of the notices to be published in the *Gazette* mentioned in subsections (3), (4) and (5) is also published on ACRA's website.

#### **Dissolution of sub-fund on application by umbrella VCC**

**33B.—**(1) The Registrar may, on an application by an umbrella VCC, declare a sub-fund of the VCC dissolved on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) must be made on the umbrella VCC's behalf by its directors or by a majority of them.

(3) Upon receipt of the application, the Registrar must, if satisfied that the grounds and conditions (if any) mentioned in subsection (1) have been satisfied, send to the umbrella VCC and its directors, secretaries and members holding shares issued in relation to the sub-fund, a letter informing them of the application, and stating that if an answer showing cause to the contrary (in the form and manner mentioned in section 33D) is not received within 30 days after the date of the letter, a notice mentioned in subsection (4) will be published in the *Gazette* with a view to declaring the sub-fund dissolved.

(4) The Registrar may not declare the sub-fund dissolved under this section until after the expiration of 60 days after the publication by the Registrar in the *Gazette* of a notice —

- (a) stating that the Registrar intends to exercise the power under this section in relation to the sub-fund; and
- (b) inviting any person to show cause why that should not be done within such period as may be prescribed.

(5) If no person shows cause or sufficient cause within the period mentioned in subsection (4)(b) as to why the sub-fund should not be declared dissolved, the Registrar must declare the sub-fund dissolved and publish a notice in the *Gazette* of this.

(6) On the publication of the notice in the *Gazette* under subsection (5), the sub-fund is dissolved and the Registrar must immediately delete the particulars of the sub-fund from the register in which it is registered under section 27.

(7) Despite the dissolution of the sub-fund, the liability (if any) of every officer of the umbrella VCC, the manager of the umbrella VCC, the custodian of the sub-fund, and every member holding shares issued in respect of the sub-fund continues and may be enforced as if the sub-fund had not been dissolved.

(8) The Registrar must ensure that —

(a) such particulars as the Registrar may determine of the sub-fund and of the application mentioned in subsection (1) are sent to —

(i) the Inland Revenue Authority of Singapore established under the Inland Revenue Authority of Singapore Act; and

(ii) the Central Provident Fund Board established under the Central Provident Fund Act; and

(b) the substance of the notices to be published in the *Gazette* mentioned in subsections (4) and (5) is also published on ACRA's website.

(9) The Registrar may, for the purposes of this section, send notices to the umbrella VCC by ordinary post or in such other prescribed manner.

### **Withdrawal of application**

**33C.—(1)** The applicant may, by written notice to the Registrar, withdraw an application to declare a sub-fund dissolved under section 33B at any time before the sub-fund has been declared dissolved.

(2) Upon receipt of the notice, the Registrar must —

- (a) send to the umbrella VCC by ordinary post a notice that the application to declare a sub-fund dissolved has been withdrawn; and
- 5 (b) publish a notice on ACRA's website that the application to declare a sub-fund dissolved has been withdrawn.

### **Objections to dissolution of sub-fund**

**33D.—(1)** Where a notice is given or published by the Registrar under section 33A(3) or 33B(4) of the Registrar's intention to declare the sub-fund dissolved, any person may deliver, not later than the date specified in the notice, an objection to the declaration of dissolution of the sub-fund on the ground that there is reasonable cause why the sub-fund should not be declared dissolved, including that the sub-fund does not satisfy any of the prescribed grounds for dissolution mentioned in section 33A(1) or 33B(1).

(2) An objection to the declaration of dissolution of the sub-fund must be given to the Registrar by notice in the prescribed form and manner.

(3) Upon receipt of a notice of objection in the prescribed form and manner, and given within the time mentioned in subsection (1), the Registrar —

- 25 (a) must (where applicable) give the umbrella VCC that applies for a declaration of dissolution of the sub-fund, a copy of the notice of objection; and
- (b) must, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

### **Retention of books and papers upon dissolution**

**33E.—(1)** Where a sub-fund has been dissolved under section 33A or 33B, a person who was an officer of the umbrella VCC immediately before the dissolution must ensure

that all books and papers in respect of the sub-fund are retained for a period of at least 5 years after the date of the dissolution.

(2) An officer of an umbrella VCC who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.”.

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### **Amendment of section 39**

**31.** Section 39(2) of the principal Act is amended by deleting the words “, or, where the certificate is issued through a branch office, the address of that branch office” in paragraph (b).

### **Amendment of section 56**

**32.** Section 56 of the principal Act is amended —

(a) by deleting the words “section 291(1) of the Companies Act” in subsection (6)(a)(ii) and substituting the words “section 161(1) of the IRDA”;

(b) by deleting the words “section 254(2) of the Companies Act” in subsection (6)(b) and substituting the words “section 125(2) of the IRDA”; and

(c) by deleting the words “section 259 of the Companies Act” in subsection (9)(c) and substituting the words “section 130(1) of the IRDA”.  
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### **Amendment of section 57**

**33.** Section 57(1) of the principal Act is amended by deleting the words “section 254(1) of the Companies Act because of section 130(8)” and substituting the words “section 125(1) of the IRDA because of section 130(6)”.

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### **Amendment of section 58**

**34.** Section 58(2) of the principal Act is amended —

(a) by deleting the word “or” at the end of paragraph (a); and

(b) by deleting paragraph (b) and substituting the following paragraphs:

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- “(b) any offence under section 157 or 396B of the Companies Act as applied by section 63 or 157, as the case may be; or
- (c) any offence under section 237 of the IRDA as applied by section 130.”.

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### **Amendment of section 60**

**35.** Section 60(1) of the principal Act is amended by deleting the words “section 130” in paragraph (a) and substituting the words “section 130B”.

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### **Amendment of section 61**

**36.** Section 61 of the principal Act is amended by deleting subsections (2) and (3) and substituting the following subsections:

“(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 or disqualification order under section 149, 149A, 154, 155 or 155A 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 or disqualification order.

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(3) A person who is subject to a disqualification or disqualification order under section 149, 154, 155 or 155A 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 or disqualification order, upon giving the Minister not less than 14 days’ notice of his or her intention to apply for such leave.”.

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### **New section 61A**

**37.** The principal Act is amended by inserting, immediately after section 61, the following section:

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### **“Debarment under Companies Act**

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**61A.—(1)** A person who has a debarment order made against him or her under section 155B of the Companies Act must not —

- (a) except in respect of a VCC of which the person is a director immediately before the making of the order, act as director of any VCC; or
- (b) except in respect of a VCC of which the person is a secretary immediately before the making of the order, act as secretary of any VCC.

(2) Subsection (1) applies from (and including) the date that the debarment order is made until such time as the Registrar of Companies cancels or suspends the order under the Companies Act.

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(3) 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.”.

### **Amendment of section 67**

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**38.** Section 67 of the principal Act is amended by deleting the words “the VCC itself if it is registered as its own member, and to” in paragraph (a).

### **Amendment of section 80**

**39.** Section 80(2) of the principal Act is amended by deleting paragraph (b).

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### **Amendment of section 112**

**40.** Section 112(2) of the principal Act is amended by deleting the words “section 328(1)(a) of the Companies Act” in paragraph (a)(ii) and substituting the words “section 203(1)(b) of the IRDA”.

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### **Amendment of section 113**

**41.** Section 113(2) of the principal Act is amended by deleting sub-paragraph (i) of paragraph (a) and substituting the following sub-paragraph:

“(i) not less than 200 members (excluding a subsidiary of the VCC if the subsidiary is registered as a member) or of members holding

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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”.

### **Amendment of section 120**

5       **42.** Section 120(2) of the principal Act is amended by deleting sub-paragraph (i) of paragraph (a) and substituting the following sub-paragraph:

10             “(i) not less than 200 members (excluding a subsidiary of the VCC if the subsidiary is registered as a member); or”.

### **Repeal and re-enactment of section 125**

**43.** Section 125 of the principal Act is repealed and the following section substituted therefor:

#### **“Application of Part 6 of IRDA**

15       **125.—(1)** Part 6 of the IRDA (except section 73) applies in relation to a receiver or manager of the property of a VCC or a sub-fund of an umbrella VCC, as it applies in relation to a receiver or manager of the property of a company, subject to section 5, the modifications set out in this section and sections 126, 127 and 128.

20       **(2)** A reference in a provision of Part 6 of the IRDA to the assets, property, debts, liabilities or creditors of a company is to the assets, property, debts, liabilities or creditors of the VCC or of the sub-fund, as the case may be.

25       **(3)** Except as otherwise stated in this section and sections 126, 127 and 128, a reference in a provision of Part 6 of the IRDA to the company is to the VCC.

30       **(4)** A reference in a provision of Part 6 of the IRDA (including any provision replacing it in this section) to a receiver includes a receiver and manager.

**(5)** In addition to the persons mentioned in section 74(1) of the IRDA, the following persons are also not qualified to be

appointed as a receiver or manager of the property of the VCC or the sub-fund of the VCC, and must not act as such:

- (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.

(6) The reference in section 75(2) of the IRDA to the rights of a receiver against the company is to the rights of a receiver or manager against the VCC or the umbrella VCC in respect of the sub-fund, as the case may be.

(7) A reference in section 76(2) or 83(1)(c) of the IRDA 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 78(1) of the IRDA (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 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 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 79 of the IRDA (which is about the appointment of a company’s liquidator as receiver or manager of the company):

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“Where an application is made to the Court to appoint a receiver or manager on behalf of holders of debentures or other creditors of —

- (a) a VCC; or
- (b) a sub-fund,

which is being wound up by the Court, the Court may appoint the liquidator of the VCC or sub-fund as such receiver or manager.”.

(10) The reference to regulations in section 80(3) of the IRDA is to regulations made under section 165.

(11) A reference in sections 83(1) and 84 of the IRDA to 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.

(12) The reference in section 83(3) of the IRDA to the winding up of the company is to the winding up of the VCC or the sub-fund, as the case may be.

(13) The reference in section 84(3)(a) of the IRDA to an officer of the company is to —

(a) where the statement in that section 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); and

(b) where the statement in that section 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.

(14) The reference in section 84(3)(b) of the IRDA to a person who has taken part in the formation of the company is to a person who has taken part in the formation of the VCC or the sub-fund, as the case may be.

(15) The reference in section 84(3)(c) of the IRDA 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 any fund administration service.

(16) An application under section 85(2) of the IRDA 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. 5

(17) An application under section 85(2) of the IRDA for 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. 10

(18) A reference in section 85(4) of the IRDA to a request of the company or a creditor is to a request of the VCC, 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.”. 15

## **Repeal and re-enactment of section 126**

**44.** Section 126 of the principal Act is repealed and the following section substituted therefor:

### **“Statement that receiver or manager is appointed**

**126.—(1)** This section applies in place of section 82 of the IRDA. 20

(2) Where a receiver or manager of the property of a VCC has been appointed —

(a) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of — 25

- (i) the VCC or any of its sub-funds (if applicable);
- (ii) the receiver or manager of the property of the VCC or any of its sub-funds (if applicable); or 30

- (iii) the liquidator of the VCC or any of its sub-funds (if applicable),

being a document on or in which the name of the VCC or any of its sub-funds appears; and

- 5 (b) every Internet website of the VCC or any of its sub-funds (if applicable) on 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 10 in respect of the property of the VCC.

(3) Where a receiver or manager of the property of a sub-fund of an umbrella VCC has been appointed —

- 15 (a) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of —

(i) the umbrella VCC for the sub-fund;

(ii) the receiver or manager of the property of the sub-fund; or

20 (iii) the liquidator of the sub-fund,

being a document on or in which the name of the sub-fund appears; and

- (b) every Internet website of the umbrella VCC or the sub-fund on which the name of the sub-fund appears,

25 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.

30 (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.

(5) If subsection (2) or (3) is contravened, the VCC and each of the following shall be guilty of an offence:

- (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 the liquidator 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 the receiver or manager knowingly and wilfully authorises or permits the default.”.

### **Amendment of section 127**

**45.** Section 127 of the principal Act is amended —

- (a) by deleting the words “section 226 of the Companies Act” in subsection (1) and substituting the words “section 86 of the IRDA”;
- (b) by inserting, immediately after the word “receiver” in subsection (2)(a), the words “or manager”;
- (c) by deleting the words “section 328(4) or (6) of the Companies Act” in subsection (2)(d) and substituting the words “section 203(5) or (7) of the IRDA”;
- (d) by inserting, immediately after the word “receiver” in subsections (2)(e) and (3)(e), the words “or manager”;
- (e) by deleting the words “section 328 of the Companies Act” in subsection (2)(f) and substituting the words “section 203 of the IRDA”;
- (f) by inserting, immediately after the word “receiver” in subsection (3)(a), the words “or manager”;
- (g) by deleting the words “section 328(4) or (6) of the Companies Act” in subsection (3)(d) and substituting the words “section 203(5) or (7) of the IRDA”;

(h) by deleting the words “section 328 of the Companies Act” in subsection (3)(f) and substituting the words “section 203 of the IRDA”; and

5 (i) by deleting paragraph (b) of subsection (4) and substituting the following paragraph:

10 “(b) a reference in section 203(1)(e), (f), (g), (h) and (i) of the IRDA (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 manager or of the possession being taken as described in subsection (2) or (3), as the case may be.”.

### **Amendment of section 128**

15 **46.** Section 128(1) of the principal Act is amended by deleting the words “section 227 of the Companies Act” and substituting the words “section 87 of the IRDA”.

### **Amendment of section 129**

20 **47.** Section 129 of the principal Act is amended —

(a) by deleting the words “an approved liquidator” in subsection (1)(a) and substituting the words “a licensed insolvency practitioner”; and

(b) by deleting subsection (6) and substituting the following subsection:

25 “(6) In this section, a person is indebted to a sub-fund if the debt is incurred in relation to the sub-fund.”.

### **Repeal and re-enactment of section 130 and new sections 130A and 130B**

30 **48.** Section 130 of the principal Act is repealed and the following sections substituted therefor:

## “Application of Parts 8 and 9 of IRDA

**130.**—(1) Part 8 and Part 9 (as it applies to winding up) of the IRDA 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. 5

(2) Sections 121(1)(f), (2) and (3), 124(2)(c), 128(3), 139(10), 158, 205(2) and 241(7) of the IRDA are omitted.

(3) A reference to an officer of a company in the following:

- (a) Division 2 of Part 8 of the IRDA;
- (b) Division 5 of Part 9 of the IRDA (other than section 237(1)); 10
- (c) sections 186(3), 188(5), 209(10)(b), 210(10)(b) and 243(2)(a) of the IRDA,

is a reference to —

- (d) an officer of the VCC; 15
- (e) the manager of the VCC; or
- (f) the custodian of the VCC (being a non-umbrella VCC).

(4) A reference in section 244(1) of the IRDA to an officer of the company is to — 20

- (a) an officer of the VCC;
- (b) an officer of the manager of the VCC; or
- (c) an officer of the custodian of the VCC (being a non-umbrella VCC).

(5) The following provision applies in place of section 124(1) of the IRDA (which sets out who may apply to the Court for the winding up of a company): 25

“A 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 VCC;
- (b) any director of the VCC;
- (c) any creditor, including a contingent or prospective creditor, of the VCC;
- <sup>5</sup> (d) a contributory of the VCC, or any person who is the personal representative of a deceased contributory of the VCC or the Official Assignee of the estate of a bankrupt contributory of the VCC;
- <sup>10</sup> (e) the liquidator;
- (f) the Minister pursuant to section 119(1);
- <sup>15</sup> (g) the Minister on a ground specified in paragraph (c), (j), (l), (m) or (n) of the provision that replaced section 125(1) of the IRDA under subsection (6);
- (h) MAS on a ground specified in paragraph (o) of the provision that replaced section 125(1) of the IRDA under subsection (6).".

<sup>20</sup> (6) The following provision applies in place of section 125(1) of the IRDA (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 —

- <sup>25</sup> (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 after the date of its incorporation or suspends its business for a whole year;
- <sup>30</sup> (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 5 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; 10
- (g) an inspector appointed under Part 9 has reported that he or she is of the opinion — 15
  - (i) that the VCC cannot pay its debts and should be wound up; or
  - (ii) that it is in the interests of the public, the shareholders or the creditors that the VCC should be wound up; 20
- (h) the period (if any) fixed for the duration of the VCC by the constitution of the VCC expires or, where the constitution of the VCC provides that the VCC is to be dissolved on the occurrence of an event, that event happens; 25
- (i) the Court is of the opinion that it is just and equitable that the VCC be wound up; 30
- (j) the VCC has carried on multi-level marketing or pyramid selling in contravention of the Multi-Level

Marketing and Pyramid Selling (Prohibition) Act (Cap. 190);

(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;

(m) the VCC has conducted business outside the scope of its sole object in section 15;

(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

(ii) contravened section 84(3), or any regulation made under section 83(1) or 84(1).".

(7) A reference in a provision of the IRDA as applied by this section in the first column of the following table, to a paragraph of section 125(1) of the IRDA in the second column of the table, is to the paragraph of the provision that replaces section 125(1) of the IRDA in subsection (6) and is opposite the firstmentioned paragraph in the third column of the table:

Provision of IRDA that is applied by this section	Paragraph of section 125(1) of IRDA	Paragraph of provision in subsection (6)
Section 124(2)(b)	Paragraph (a)	Paragraph (a)
	Paragraph (b)	—
	Paragraph (c)	Paragraph (b)
	Paragraph (e)	Paragraph (d)
	Paragraph (i)	Paragraph (i)
Sections 125(4) and (5), 134(d), 135(4) and 198	Paragraph (n)	Paragraph (k)

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(8) In section 125(5) of the IRDA —

(a) the reference to employees of a company is to employees of the VCC, and includes any person engaged by the VCC to provide any fund administration service; and

(b) the reference to a chief executive officer is omitted.

(9) The reference in section 139(5) of the IRDA to treasury shares is to shares held by a subsidiary of the VCC under section 22(6) or (11), if any.

(10) A reference to Part 8, 9, 10 or 11 of the IRDA in sections 145 and 202 of that Act is to Part 8 or 9 (as the case may be) of the IRDA as applied by this section.

(11) The following provision applies in place of section 153(1) of the IRDA (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 of the VCC on the list of contributories of the VCC 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.”.

5 (12) A reference in section 157 of the IRDA to the affairs of the company is to the affairs of the VCC.

(13) The reference in section 157 of the IRDA to a contributory, director or former director of a company is to —

10 (a) a contributory, director or former director of a VCC;  
or

(b) a director or former director of the manager or the custodian of the VCC (being a non-umbrella VCC).

15 (14) Rules of Court 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 Parts 8 and 9 of the IRDA (as applied by this section) in respect of —

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories of the VCC;

20 (b) the settling of lists of contributories of the VCC, 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;

25 (d) the making of calls and the adjusting of the rights of contributories of the VCC; and

(e) the fixing of a time within which debts and claims must be proved,

30 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 must not, except with the special leave of the Court, rectify the register of members, and must not make any call except with the

special leave of the Court or the sanction of the committee of inspection.

(15) A reference in section 159(1) or 177 of the IRDA 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 or the IRDA applied by this Act). 5

(16) A reference in section 138(1), 141(4), 144(1), 146(1), 161(2), 169(3) or 220 of the IRDA to regulations is to regulations made under section 165. 10

(17) The reference in section 188(5) of the IRDA 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.

(18) The following provision applies in place of section 194 of the IRDA: 15

“(1) Where a VCC is being wound up —

(a) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of — 20

(i) the VCC;

(ii) the receiver or manager of the property of the VCC; or

(iii) the liquidator of the VCC, 25

being a document on or in which the name of the VCC appears; and

(b) every Internet website of the VCC on which the name of the VCC appears,

must have the words “in liquidation” added after the name of the VCC where it first appears in that document or Internet website. 30

(2) A provisional liquidator appointed over a VCC must comply with subsection (1), except that the words “in provisional liquidation” must be added after the name of the VCC instead of the words “in liquidation”.

(3) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty:

(a) the VCC;

(b) each of the following persons who knowingly and wilfully authorises or permits the default:

(i) an officer of the VCC;

(ii) a liquidator of the VCC;

(iii) a provisional liquidator of the VCC;

(iv) a receiver or manager of the property of the VCC.”.

(19) The reference in section 197 of the IRDA to the Companies Liquidation Account is to a VCC Liquidation Account.

(20) The reference in section 203(9) of the IRDA to 29 December 1967 is to the date of commencement of this Act.

(21) The reference in section 203(10)(a) of the IRDA to the 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) Section 214(1)(b) and (c) of the IRDA is omitted.

(23) The reference in section 215 of the IRDA to the operation of a previous written law corresponding to Subdivision (3) of Division 4 of Part 8 of the IRDA is omitted.

(24) In Part 9 of the IRDA as applied by this section, a person is connected with a VCC if —

- (a) the person is a director of the VCC or an associate of such director;
- (b) the person is the manager of the VCC or an associate of such manager; or
- (c) the person is an associate of the VCC.

(25) In subsection (24), “associate” has the meaning given by section 217 of the IRDA, except that —

- (a) an umbrella VCC that is a beneficiary or one of the beneficiaries of a trust, or for whose benefit a power under a trust may be exercised, is an associate of a person under section 217(7) of the IRDA only if it is an associate of the person on account of the sub-fund (within the meaning of section 130A) in relation to which it is such beneficiary, or in relation to which the power may be exercised for its benefit; and
- (b) section 130A(4) and (5) applies for the purpose of determining whether an umbrella VCC controls a corporation under section 217(8) or (9) of the IRDA.

(26) Where —

- (a) the unfair preference mentioned in section 225(5) or 226(1)(b) of the IRDA is given by the VCC to an umbrella VCC for the purpose of a sub-fund of the umbrella VCC;
- (b) the transaction mentioned in section 226(3) of the IRDA is entered into by the VCC with an umbrella VCC for the purpose of a sub-fund of the umbrella VCC;
- (c) the interest mentioned in section 227(4) of the IRDA is acquired by an umbrella VCC for the purpose of a sub-fund of the umbrella VCC;
- (d) the benefit or unfair preference mentioned in section 227(4) of the IRDA is received by an

umbrella VCC for the purpose of a sub-fund of the umbrella VCC; or

- (e) the floating charge mentioned in section 229 of the IRDA is created by the VCC in favour of an umbrella VCC for the purpose of a sub-fund of the umbrella VCC,

then, for the purpose of that provision of the IRDA, the umbrella VCC is connected with —

- (f) the VCC; or
  - (g) in the case of paragraph (c) or (d), the person with whom the VCC entered into the transaction or to whom the VCC gave the unfair preference, as the case may be,

only if the umbrella VCC is an associate of the following (whichever is applicable) on account of the sub-fund of the umbrella VCC as defined in section 130A:

- (h) the VCC or the manager or any director of the VCC;
  - (i) the person mentioned in paragraph (g), as the case may be.

(27) The reference in section 237(1) of the IRDA to an investigation under the IRDA is to an investigation under this Act.

(28) The following provision applies in place of section 237(3) of the IRDA (which sets out when proper books of account are considered not to have been kept by a company under section 237(1) of that Act):

“For the purposes of section 237(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 in goods, statements of the annual stocktakeings 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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(29) The reference in section 241(7) of the IRDA 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

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(c) any person engaged by the VCC to provide any fund administration service.

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### **Associate on account of sub-fund**

**130A.**—(1) For the purpose of section 130(25) and this section, an umbrella VCC (*B*) is an associate of a person (*A*) on account of a sub-fund of *B* (*B1*) if —

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(a) *A* is in partnership with *B*, either in relation to *B1* only or 2 or more of *B*'s sub-funds that include *B1*;

(b) *A* is a spouse or relative of any individual who is in partnership with *B*, either in relation to *B1* only or 2 or more of *B*'s sub-funds that include *B1*;

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(c) *A* or *A*'s associates is or are employed by *B* for the purpose of *B1* only, or 2 or more of *B*'s sub-funds that include *B1*;

5 (d) *A* is a trustee of a trust the beneficiary or one of the beneficiaries of which is *B* in relation to *B1* only or 2 or more of *B*'s sub-funds that include *B1*, or a person to whom *B* is an associate on account of *B1* (as defined by this section);

10 (e) *A* is a trustee of a trust the terms of which confer a power that may be exercised for the benefit of *B* in relation to *B1* only or 2 or more of *B*'s sub-funds that include *B1*, or a person to whom *B* is an associate on account of *B1* (as defined by this section);

(f) *A* is a corporation and —

15 (i) the same person has control of *A* and *B1*;

(ii) a person has control of one of them and persons who are that person's associates, or that person and that person's associates, have control of the other; or

20 (iii) a group of 2 or more persons has control of each of them, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom the member is an associate;

25 (g) *A* (either alone or together with *A*'s associates) has control of *B1*; or

(h) *A* is a corporation and *B*, either through *B1* or together with a person to whom *B* is an associate on account of *B1* (as defined by this section), has control of *A*.

30 (2) Where *B* has one or more sub-funds besides *B1*, then, by reason of subsection (5), *B* is considered an associate of *B* on account of *B1* in relation to any of those other sub-funds.

(3) For the purpose of subsection (1)(d) and (e), where the person to whom *B* is an associate on account of *B1* is also an umbrella VCC, then *B* is an associate of *A* on account of *B1* by reason of that provision if, and only if —

- (a) the person's sub-fund on account of which the person is an associate of *B* on account of *B1*; and
- (b) any of the person's sub-funds in relation to which the person is the beneficiary or one of the beneficiaries, or in relation to which the trust power mentioned in that provision may be exercised for the person's benefit, as the case may be,

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is the same sub-fund.

(4) The following apply for the purpose of subsection (1)(f), (g) and (h):

- (a) a person that is not an umbrella VCC (*C*) has control of a corporation (*D*) if —

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- (i) the directors of *D* or of another corporation which has control of *D* (or any of those directors) are accustomed to act in accordance with *C*'s directions or instructions; or

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- (ii) *C* is entitled to exercise, or control the exercise of one-third or more of the voting rights at any general meeting of *D* or another corporation which has control of *D*;

- (b) *C* has control of a sub-fund (*E1*) of an umbrella VCC (*E*) if —

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- (i) the directors of *E* or of another corporation who has control of *E1* (or any of those directors) are accustomed to act in accordance with *C*'s directions or instructions; or

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- (ii) *C* is entitled to exercise, or control the exercise of one-third or more of the total voting rights of all persons holding shares of *E* issued in respect of *E1* at any general meeting of *E*, or of the

voting rights at any general meeting of another corporation which has control of  $E1$ ;

- (c) a person that is an umbrella VCC ( $F$ ) has control of a corporation ( $G$ ) if, by reason of shares of  $G$  or another corporation that has control of  $G$  that are held by  $F$  as property of one of  $F$ 's sub-funds ( $F1$ ),  $F$  is entitled to exercise, or control the exercise of, one-third or more of the voting rights at any general meeting of  $G$  or that other corporation;
- (d)  $F$  has control of a sub-fund ( $H1$ ) of another umbrella VCC ( $H$ ) if, by reason of shares of  $H$  issued in respect of  $H1$  or shares of another corporation that has control of  $H1$  that are held by  $F$  as property of one of  $F$ 's sub-funds ( $F1$ ),  $F$  is entitled to exercise, or control the exercise of, one-third or more of the total voting rights of all persons holding shares issued in respect of  $H1$ , at any general meeting of  $H$  or of the voting rights at a general meeting of that other corporation;
- (e) another person ( $I$ ) is an associate of  $F$  only if  $F$  is an associate of  $I$  on account of  $F1$ ;
- (f) where  $I$  is itself an umbrella VCC,  $I$  controls  $G$  or  $H1$  only if —
  - (i) the sub-fund through whose property  $I$  controls  $G$  or  $H1$ ; and
  - (ii) the sub-fund of  $I$  on account of which  $I$  is an associate of  $F$  on account of  $F1$ ,
 is the same sub-fund;
- (g) where 2 or more persons together satisfy paragraph (a)(i) or (ii), (b)(i) or (ii), (c) or (d), they are taken as having control of  $D$ ,  $E1$ ,  $G$  or  $H1$ , as the case may be.

(5) For the purpose of this section —

- (a) an umbrella VCC in relation to one sub-fund is treated as a separate person from the same umbrella VCC in relation to a different sub-fund; and
- (b) whether an umbrella VCC has control of another person or sub-fund is to be determined in relation to shares it held for a single sub-fund as if the umbrella VCC has only that one sub-fund.

(6) In subsection (1)(c), (f) and (g), “associate” (except in the expression “associate on account of a sub-fund”) has the meaning given by section 217 of the IRDA, except that —

- (a) an umbrella VCC that is a beneficiary or one of the beneficiaries of a trust, or for whose benefit a power under a trust may be exercised, is an associate of a person under section 217(7) of the IRDA only if it is an associate of the person on account of the sub-fund (within the meaning of this section) in relation to which it is such beneficiary, or in relation to which the power may be exercised for its benefit; and
- (b) subsections (4) and (5) apply for the purpose of determining whether an umbrella VCC controls a corporation under section 217(8) or (9) of the IRDA.

## **Application of Part X of Companies Act**

**130B.**—(1) Part X of the Companies Act applies in relation to the dissolution of a VCC as it applies in relation to the dissolution of a company, subject to section 5 and the modifications in this section.

(2) A reference to an officer of a company in sections 344(4)(a) and 344A(7)(a) of the Companies Act is to —

- (a) an officer of the VCC;
- (b) the manager of the VCC; or
- (c) the custodian of the VCC (being a non-umbrella VCC).”.

### **Amendment of section 136**

**49.** Section 136(2) of the principal Act is amended by deleting the words “is a” in paragraph (b) and substituting the words “is either a director or”.

5      **Amendment of section 142**

**50.** Section 142 of the principal Act is amended by deleting the words “that Act” in paragraph (c) and substituting the words “the IRDA”.

### **Amendment of section 144**

10     **51.** Section 144(1) of the principal Act is amended —

(a) by inserting, immediately after the words “a provision of the Companies Act” wherever they appear, the words “or the IRDA”; and

(b) by deleting the full-stop at the end of paragraph (c) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(d) a reference in section 401(2A) of the Companies Act to the Registrar of Companies is to the Registrar;

(e) the reference in section 407(1)(c) of the Companies Act to any provision of that Act is to any provision of that Act or the IRDA (as applicable) applied by this Act;

(f) a reference in section 409(1) or (8) of the Companies Act to the Registrar of Companies is to —

(i) in the case of section 33 and Parts 10 and 11 other than section 130B — the Registrar or Official Receiver; or

(ii) in the case of other provisions of the Act — the Registrar;

(g) a reference in section 409A(1), (2) or (7) of the Companies Act to the Registrar of Companies is to —

- (i) in the case of section 33 and Parts 10 and 11 other than section 130B — the Official Receiver; or
- (ii) in the case of other provisions of the Act — the Registrar.”.

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### **Amendment of section 147**

**52.** Section 147(3) of the principal Act is amended by inserting, immediately after the words “Companies Act”, the words “or the IRDA”.

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### **Repeal and re-enactment of section 148**

**53.** Section 148 of the principal Act is repealed and the following section substituted therefor:

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#### **“Composition of offences**

**148.—(1)** The Registrar may compound any offence under a provision of this Act (except for an insolvency provision) that is prescribed as a compoundable offence for the purpose of this subsection by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

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- (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

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(2) The Registrar may compound any offence mentioned in subsection (1) (including an offence under a provision mentioned in that subsection that has been repealed) that —

- (a) was compoundable under this Act at the time the offence was committed; but

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(b) has ceased to be so compoundable,

by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- 5 (c) one half of the amount of the maximum fine that is prescribed for the offence;
- (d) \$5,000.

10 (3) The Official Receiver may compound any offence under any insolvency provision of this Act that is prescribed as a compoundable offence for the purpose of this subsection by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- 15 (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

20 (4) The Official Receiver may compound any offence mentioned in subsection (3) (including an offence under a provision mentioned in that subsection 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,

25 by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- (c) one half of the amount of the maximum fine that is prescribed for the offence;
- (d) \$5,000.

30 (5) The Official Receiver may authorise either generally or specifically the Registrar to compound —

- (a) any offence under any insolvency provision of this Act that is prescribed as a compoundable offence for the purposes of subsection (3); and
- (b) any offence mentioned in paragraph (a) (including an offence under a provision mentioned in that paragraph that has been repealed) that —
- (i) was compoundable under this Act at the time the offence was committed; but
  - (ii) has ceased to be so compoundable.
- (6) On payment of the sum of money mentioned in subsection (1), (2), (3) or (4), no further proceedings may be taken against that person in respect of the offence. 10
- (7) The Minister may prescribe the offences which may be compounded.
- (8) All sums collected under this section must be paid into the Consolidated Fund. 15
- (9) In this section —
- (a) “insolvency provision” means —
- (i) section 401(2A) or 407 of the Companies Act as applied by section 144, insofar as it relates to any act under Part 6, 8 or 9 of the IRDA as applied by this Act; 20
  - (ii) Part 6 of the IRDA as applied by Part 10; or
  - (iii) Part 8 or 9 of the IRDA as applied by section 33(2) or Part 11; and 25
- (b) a reference to a provision of this Act includes a provision of the Companies Act or the IRDA as applied by this Act.”.

#### **Amendment of section 150**

54. Section 150 of the principal Act is amended — 30
- (a) by deleting the words “sent or served under this Act or under the constitution of a company” in subsection (1) and

substituting the words “sent or served under the Companies Act or under the constitution of a company”;

- (b) by deleting the words “subsection (5)” in subsection (3) and substituting the words “subsection (4)”;
- 5 (c) by deleting the word “company” in subsection (3)(a) and substituting “VCC”.

### **Amendment of section 152**

**55.** Section 152 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

- 10 (a) “(2) The reference in section 390(3) of the Companies Act to section 197 of the IRDA is to —
  - (a) in the case of shares that relate to a sub-fund of an umbrella VCC — section 197 of the IRDA as applied by section 33; and
  - (b) in the case of any other shares — section 197 of the IRDA as applied by section 130.”.

### **Amendment of section 154**

**56.** Section 154 of the principal Act is amended —

- 20 (a) by inserting, immediately after the words “Subject to”, the words “subsection (2) and”; and
- (b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

25 “(2) A reference in section 392(3) of the Companies Act to the Registrar of Companies is to —

- (a) in the case of section 33 and Parts 10 and 11 other than section 130B — the Registrar or Official Receiver; or
- (b) in the case of other provisions of the Act — the Registrar.

(3) The reference in section 392(4) of the Companies Act to any other provision of that Act is to any other provision of that Act or the IRDA (as applicable) applied by this Act.”.

### **Repeal and re-enactment of section 157**

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**57.** Section 157 of the principal Act is repealed and the following section substituted therefor:

#### **“VCC records**

**157.**—(1) Subject to subsections (2) and (3) and section 5, sections 395, 396, 396A and 396B 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.

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(2) A reference in sections 396A and 396B of the Companies Act to that Act is to this Act.

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(3) Subsection (1) does not apply to records required to be kept by a VCC under Part 7.

(4) The following provision applies in place of section 396B(3) of the Companies Act (which sets out when proper books of account are deemed not to have been kept by a company under section 396B(1) of that Act):

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“For the purposes of section 396B(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 —

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(i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and

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- (ii) where the trade or business involved dealings in goods, statements of the annual stocktakeings 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.”.”.

### **Amendment of section 158**

**58.** Section 158 of the principal Act is amended —

- 15 (a) by inserting, immediately after the word “subsections” in subsection (1), “(1A),”; and
  - (b) by inserting, immediately after subsection (1), the following subsection:
- “(1A) A reference in section 397(1) of the Companies Act to the Registrar of Companies is to —
- (a) in the case of section 33 and Parts 10 and 11 other than section 130B — the Registrar or Official Receiver; or
  - (b) in the case of other provisions of the Act — the Registrar.”.

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### **Repeal and re-enactment of section 163**

**59.** Section 163 of the principal Act is repealed and the following section substituted therefor:

### **“Appeals against act or decision of Registrar or Official Receiver**

**163.**—(1) Subject to subsection (2) and section 5, section 409C of the Companies Act applies in relation to an act or a decision of the Registrar or the Official Receiver 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(1) and (3) of the Companies Act is to this Act (including a provision of the Companies Act or the IRDA applied by this Act).".

### **Amendment of section 164**

**60.** Section 164 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

“(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 of Court mentioned in section 410 of the Companies Act or section 448 of the IRDA or a part of any such Rule of Court, as in force at a particular time or from time to time, which relates to any matter with which the rule deals.”.

### **Amendment of section 165**

**61.** Section 165(3) of the principal Act is amended by inserting, immediately after the words “Companies Act”, the words “or the IRDA”.

### **Deletion and substitution of First Schedule**

**62.** The First Schedule to the principal Act is deleted and the following Schedule substituted therefor:

## “FIRST SCHEDULE

Sections 3(2) and 33(2)

### MODIFICATIONS OF PARTS 8 AND 9 OF IRDA IN THEIR APPLICATION TO WINDING UP OF SUB-FUND OF UMBRELLA VCC

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1. A reference in a provision of Part 8 or 9 of the IRDA (called in this Schedule a Part 8 or 9 provision) to any act, power, right, duty or responsibility of the company is to that of the umbrella VCC of the sub-fund, in relation to the sub-fund.

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2. A reference in a Part 8 or 9 provision to the doing of an act to or in relation to the company is to the doing of that act to or in relation to the umbrella VCC for the purpose of the sub-fund.

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3. A reference in a Part 8 or 9 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.

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4. A reference in a Part 8 or 9 provision to a member or shareholder is to the holder of a share issued in respect of the sub-fund.

5. A reference in a Part 8 or 9 provision to a contributory of the company is to a contributory of the sub-fund.

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6. A reference in a Part 8 or 9 provision to a creditor is to a creditor of the sub-fund.

7. A reference in a Part 8 or 9 provision to a debtor of the company is to a debtor of a debt of the sub-fund.

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8. A reference in a Part 8 or 9 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 —

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(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 the sub-fund who have the right to vote on that resolution.

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9. A reference in a Part 8 or 9 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

- (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 the sub-fund who have the right to vote on that resolution.

10. A reference in a Part 8 or 9 provision to the business of the company is to the business of the sub-fund. 5

11. The reference in a Part 8 or 9 provision to a transaction that has been entered into by the company is to a transaction that has been entered into by the umbrella VCC for the purpose of the sub-fund.

12. The reference in a Part 8 or 9 provision to a transaction entered into by the company in good faith and for the purpose of carrying on its business is to a transaction entered into by the umbrella VCC for the purpose of the sub-fund in good faith and for the purpose of carrying on the sub-fund's business. 10

13. The reference in a Part 8 or 9 provision to a transaction benefiting the company is to a transaction benefiting the sub-fund. 15

14. The appointment of a liquidator or provisional liquidator under a Part 8 or 9 provision is, and the powers, rights, duties and responsibilities of the liquidator or provisional liquidator under a Part 8 or 9 provision are, confined to the sub-fund. 20

15. A reference to an officer of a company in the following:

- (a) Division 2 of Part 8 of the IRDA;
- (b) Division 5 of Part 9 of the IRDA (other than section 237(1));
- (c) sections 186(3), 188(5), 209(10)(b), 210(10)(b) and 243(2)(a) of the IRDA, 25

is a reference to —

- (d) an officer of the umbrella VCC;
- (e) the manager of the umbrella VCC; or
- (f) the custodian of the sub-fund.

16. Sections 121(1)(f), (2) and (3), 124(2)(c), 128(3), 139(10), 158, 205(2) and 241(7) of the IRDA are omitted. 30

17. The following provision applies in place of section 124(1) of the IRDA (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 director of the umbrella VCC;
- (c) any creditor, including a contingent or prospective creditor, of the sub-fund;
- 5 (d) a contributory of the sub-fund, any person who is the personal representative of a deceased contributory of the sub-fund, or the Official Assignee of the estate of a bankrupt contributory of the sub-fund;
- 10 (e) the liquidator of the sub-fund;
- (f) the Minister pursuant to section 119(2);
- (g) the Minister on a ground specified in paragraph (c), (j), (k) or (l) of the provision that replaced section 125(1) of the IRDA under paragraph 18;
- 15 (h) MAS on a ground specified in paragraph (m) of the provision that replaced section 125(1) of the IRDA under paragraph 18.”.

18. The following provision applies in place of section 125(1) of the IRDA (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,

30 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;

- (b) the umbrella VCC does not commence business of the sub-fund within a year after the date of the

- sub-fund's formation or suspends the sub-fund's business for a whole year;
- (c) none of the members of the umbrella VCC holds shares issued in respect of the sub-fund;
  - (d) the umbrella VCC is unable to pay the debts of the sub-fund; 5
  - (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, the members holding shares in respect of the sub-fund or the creditors of the sub-fund that the sub-fund should be wound up; 25
  - (h) the period, if any, fixed for the duration of the sub-fund by the constitution of the VCC expires or, where the constitution of the VCC provides that the sub-fund is to be dissolved on the occurrence of an event, that event happens; 30
  - (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, for the purpose of the sub-fund, carried on multi-level marketing or pyramid selling in contravention of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act (Cap. 190); 35

(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;

5 (l) the umbrella VCC has, for the purpose of the sub-fund, conducted business outside the scope of its sole object in section 15;

10 (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 19. A reference in a Part 8 or 9 provision in the first column of the following table, to a paragraph of section 125(1) of the IRDA in the second column of the table, is to the paragraph of the provision that replaces section 125(1) of the IRDA in paragraph 18, that is opposite the firstmentioned paragraph in the third column of the table:

20	Part 8 or 9 provision	Paragraph of section 125(1) of IRDA	Paragraph of provision in paragraph 18
25	Section 124(2)(b)	Paragraph (a)	Sub-paragraph (a)
		Paragraph (b)	—
		Paragraph (c)	Sub-paragraph (b)
		Paragraph (e)	Sub-paragraph (d)
30		Paragraph (i)	Sub-paragraph (i)
	Sections 125(4) and (5), 134(d), 135(4) and 198	Paragraph (n)	Sub-paragraph (k)

20. In section 125(5) of the IRDA —

(a) the reference to employees of a company is to employees of the umbrella VCC, and includes a person engaged by the umbrella VCC to provide any fund administration service; and

- (b) the reference to a chief executive officer is omitted.
21. A reference in sections 130(1) and 162(3) of the IRDA to shares of the company is to shares issued in respect of the sub-fund. 5
22. The reference in section 139(5) of the IRDA to treasury shares is to shares held by a subsidiary of the umbrella VCC under section 22(6) or (11) that are issued in respect of the sub-fund, if any. 10
23. A reference in sections 138(1), 141(4), 144(1), 146(1), 161(2), 169(3) and 220 of the IRDA to regulations is to regulations made under section 165.
24. A reference to Part 8, 9, 10 or 11 of the IRDA in sections 145 and 202 of that Act is to Part 8 or 9 (as the case may be) of the IRDA as applied by this section. 15
25. The reference in section 143(1) of the IRDA to the amount of capital of the company is to the amount of capital of an umbrella VCC in respect of the sub-fund. 20
26. The following provision applies in place of section 153(1) of the IRDA (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): 25
- “The Court may make an order directing any contributory of the sub-fund on the list of contributories of the sub-fund to pay to the umbrella VCC (for the purpose 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 paid in full, any money due on any account whatever to a contributory of the sub-fund from the umbrella VCC (in respect of the sub-fund) may be allowed to the contributory by way of set-off against any subsequent call.”.
27. A reference in sections 154 and 170(1) of the IRDA to the estate of the company is to the estate comprising the property of the sub-fund. 30
28. A reference in section 157 of the IRDA to the affairs of the company is to the affairs of the sub-fund.
29. The reference in section 157 of the IRDA to a contributory, director or former director of a company is to — 35
- (a) a contributory of the sub-fund, or a director or former director (as the case may be) 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, as the case may be.

30. A reference in sections 159(1) and 177 of the IRDA 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 or the IRDA applied by this Act).

5           31. The reference in section 161(1) of the IRDA to the company being unable to continue its business by reason of its liabilities is to the umbrella VCC being unable to continue the business of the sub-fund by reason of the liabilities of the sub-fund.

10          32. Rules of Court 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 8 or 9 provision (as applied by section 33) in respect of —

15          (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories of the sub-fund;

15          (b) the settling of lists of contributories of the sub-fund, the rectifying of the register of members who are holders of shares issued in respect of the sub-fund (where required), and the collecting and applying of the assets;

20          (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 of the sub-fund; and

25          (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 must 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, and must not make any call except with the special leave of the Court or the sanction of the committee of inspection.

30          33. A reference in section 170(1) of the IRDA to the effects of the company is to the effects of the umbrella VCC in relation to the sub-fund.

35          34. The reference in section 170(2) of the IRDA to an action or a proceeding that may be proceeded with or commenced against the company is to an action or a proceeding that may be proceeded with or commenced against the umbrella VCC in respect of the sub-fund.

35          35. The following provision applies in place of section 178 of the IRDA:

**“178.—(1)** Where it is proposed that the whole or part of the business or property of a sub-fund be transferred or sold to a corporation, the liquidator of the sub-fund may, with the sanction of a special resolution of the sub-fund conferring either a general authority on the liquidator or an authority in respect of any particular arrangement —

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(a) receive in compensation or part compensation for the transfer or sale, any shares, debentures, policies or other like interests in the corporation for distribution among the members of the sub-fund; or

(b) enter into any other arrangement under which the members of the sub-fund may, in lieu of or in addition to receiving cash, shares, debentures, policies or other like interests in the corporation, participate in the profits of or receive any other benefit from the corporation.

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(2) Any transfer, sale or arrangement mentioned in subsection (1) is binding on the members of the sub-fund.

(3) If any member of the sub-fund expresses the member’s dissent to the resolution mentioned in subsection (1) in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, the member may require the liquidator either —

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(a) to abstain from carrying the resolution into effect;  
or

(b) to purchase the member’s interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the member’s interest, the purchase money must be paid before the sub-fund is dissolved and be raised by the liquidator in the manner determined by special resolution of the sub-fund.

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(5) A special resolution of the sub-fund is not invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the sub-fund by the Court is made within a year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

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(6) For the purposes of an arbitration under this section, the Arbitration Act (Cap. 10) applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party, and the appointment of an arbitrator may be made under the hand of the liquidator or, if there is more than one liquidator, under the hands of any 2 or more of the liquidators.

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(7) The Court may give any directions necessary for the initiation and conduct of an arbitration under this section, and such direction is binding on the parties.

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(8) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section must not be exercised except with the approval of the Court or the committee of inspection.

(9) In this section —

- (a) “member”, in relation to a sub-fund, means a holder of a share issued in respect of the sub-fund; and
- (b) “special resolution”, in relation to a sub-fund, means a resolution of the sub-fund mentioned in paragraph 9 of the First Schedule.”.

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36. The reference in section 188(5) of the IRDA to an agent of the company is to an agent of the umbrella VCC, and includes a person engaged by the umbrella VCC to provide any fund administration service.

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37. The following provision applies in place of section 194 of the IRDA:

**“194.—(1)** Where a sub-fund is being wound up —

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- (a) every invoice, order for goods, business letter, order form or other correspondence (whether in hard copy, electronic or any other form) issued by or on behalf of —
    - (i) the umbrella VCC for the sub-fund;
    - (ii) the receiver or manager of the property of the sub-fund; or
    - (iii) the liquidator of the sub-fund,
- being a document on or in which the name of the sub-fund appears; and

- (b) every Internet website of the umbrella VCC or sub-fund on which the name of the sub-fund appears,

must have the words “in liquidation” added after the name of the sub-fund where it first appears in that document or Internet website.

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(2) A provisional liquidator appointed over a sub-fund must comply with subsection (1), except that the words “in provisional liquidation” must be added after the name of the sub-fund instead of the words “in liquidation”.

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(3) If there is any default in complying with this section, each of the following shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty:

(a) the umbrella VCC;

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(b) each of the following persons who knowingly and wilfully authorises or permits the default:

(i) an officer of the umbrella VCC;

(ii) a liquidator of the sub-fund;

(iii) a provisional liquidator of the sub-fund;

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(iv) a receiver or manager of the property of the sub-fund.”.

38. The reference in section 197 of the IRDA to the Companies Liquidation Account is to a Sub-fund Liquidation Account.

39. Section 203(1)(d), (e), (f), (g), (h) and (i) of the IRDA 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), or that is treated under any written law as a liability of the sub-fund.

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40. The amount mentioned in section 203(1)(e) of the IRDA is substituted with a reference to an amount due to an employee as a retrenchment benefit or an ex gratia payment under any contract of employment or any award or agreement that regulates conditions of employment, that becomes payable before, on or after the commencement of the winding up of the sub-fund.

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41. The reference in section 203(9) of the IRDA to 29 December 1967 is to the date of commencement of this Act.

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42. The reference in section 203(10)(a) of the IRDA to the 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 company or VCC.

5           43. Section 214(1)(b) and (c) of the IRDA is omitted.

10           44. The reference in section 215 of the IRDA to the operation of a previous written law corresponding with Subdivision (3) of Division 4 of Part 8 of the IRDA is omitted.

15           45. In Part 9 of the IRDA, a person is connected with a sub-fund if —

- (a) the person is a director of the umbrella VCC of the sub-fund or an associate of such director;
- (b) the person is a manager of the umbrella VCC or an associate of such manager; or
- (c) the umbrella VCC is an associate of the person on account of the sub-fund as defined in section 130A.

20           46. Where —

- (a) the unfair preference mentioned in section 225(5) or 226(1)(b) of the IRDA is given by the umbrella VCC (called *A*) of the sub-fund being wound up (called *A1*) for the purpose of *A1*, to another umbrella VCC (called *B*) for the purpose of a sub-fund of that other umbrella VCC (called *B1*);
- (b) the transaction mentioned in section 226(3) of the IRDA is entered into by *A* for the purpose of *A1* with another umbrella VCC (called *B*) for the purpose of a sub-fund of that other umbrella VCC (called *B1*);
- (c) the interest mentioned in section 227(4) of the IRDA is acquired by another umbrella VCC (called *B*) for the purpose of a sub-fund of that other umbrella VCC (called *B1*), being an interest that arose from an unfair preference or transaction given or entered into by *A* for the purpose of *A1*;
- (d) the benefit from a transaction or unfair preference mentioned in section 227(4) of the IRDA is received by another umbrella VCC (called *B*) for the purpose of a sub-fund of that other umbrella VCC (called *B1*), being a transaction or unfair preference entered into or given by *A* for the purpose of *A1*; or

- (e) the floating charge mentioned in section 229 of the IRDA is created by *A* for the purpose of *A1*, in favour of another umbrella VCC (called *B*) for the purpose of a sub-fund of that other umbrella VCC (called *B1*),

then, for the purpose of that provision of the IRDA, *B* is connected with —

- (f) *A1*; or

- (g) in the case of paragraph (c) or (d), the person with whom *A* entered into the transaction for the purpose of *A1* or to whom *A* gave the unfair preference (as the case may be) for the purpose of *A1*,

only if —

- (h) either —

- (i) *B* is an associate of *A* on account of *B1*, and *A* is an associate of *B* on account of *A1*; or

- (ii) *B* is an associate of the manager or any director of *A* on account of *B1*; or

- (i) *B* is an associate of the person mentioned in sub-paragraph (g) on account of *B1*,

as the case may be.

47. Whether *B* is an associate of the manager or director of *A* on account of *B1* under paragraph 46(h)(ii), and whether *B* is an associate of a person mentioned in paragraph 46(g) on account of *B1* under paragraph 46(i), are each determined by section 130A.

48. For the purpose of paragraph 46(h), *B* is an associate of *A* on account of *B1*, and *A* is an associate of *B* on account of *A1*, if —

- (a) *A* and *B* are in partnership in relation to both *A1* and *B1* or in relation to 2 or more of their sub-funds that include *A1* and *B1*;

- (b) the same person has control of *A1* and *B1*;

- (c) a person has control of *A1* or *B1* and persons who are that person's associates, or that person and that person's associates, have control of the other;

- (d) a group of 2 or more persons has control of *A1* and a group of 2 or more persons has control of *B1*, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom the member is an associate;

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(e) *B*, either through *B1* or together with a person to whom *B* is an associate on account of *B1* (as defined in section 130A), has control of *A1*; or

5 (f) *A*, either through *A1* or together with a person to whom *A* is an associate on account of *A1* (as defined in section 130A), has control of *B1*.

49. Section 130A(4)(b), (d), (e), (f) and (g) applies for the purpose of determining if a person has control of *A1* or *B1* under paragraph 48.

10 50. In paragraphs 45 and 48(c) and (d), “associate” (except in the expression “associate on account of a sub-fund”) has the meaning given by section 217 of the IRDA, except that —

15 (a) an umbrella VCC that is a beneficiary or one of the beneficiaries of a trust, or for whose benefit a power under a trust may be exercised, is an associate of a person under section 217(7) of the IRDA only if it is an associate of the person on account of the sub-fund (within the meaning of section 130A) in relation to which it is such beneficiary, or in relation to which the power may be exercised for its benefit; and

20 (b) section 130A(4) and (5) applies for the purpose of determining whether an umbrella VCC controls a corporation under section 217(8) or (9) of the IRDA.

51. The reference in section 221 of the IRDA to a contract that has been made with a company is to a contract that has been made with an umbrella VCC for the purpose of a sub-fund.

25 52. The reference in section 233(1) of the IRDA to a person claiming under the company as sub-lessee or mortgagee is to a person claiming under the umbrella VCC (by way of the sub-fund) as sub-lessee or mortgagee.

53. The reference in section 237(1) of the IRDA to the incorporation of a company is to the formation of a sub-fund.

30 54. The reference in section 237(1) of the IRDA to an investigation under the IRDA is to an investigation under this Act.

55. The following provision applies in place of section 237(3) of the IRDA (which sets out when proper books of account are deemed not to have been kept by a company under section 237(1) of that Act):

35 “In subsection (1), proper books of account are considered not to have been kept in respect of a sub-fund 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 sub-fund, 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 stocktakeings 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 umbrella VCC has appointed an auditor.”.

56. The reference in section 241(6) of the IRDA to an agent of a company is to an agent of the umbrella VCC, and includes —

(a) a banker or solicitor of the VCC;

(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.

57. A reference in section 244(1) of the IRDA 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.”.

## Miscellaneous amendments

**63.** The principal Act is amended —

(a) by deleting the words “on behalf of” in the following provisions and substituting in each case the words “for the purpose of”:

Sections 2(3)(a) and (c), 3(2)(e) and (g)(i) and (iv), 29(3)(a), 30(2) and 118(2);

(b) by inserting, immediately after the words “this Act” in section 12(1)(a), the words “(including the Companies Act or the IRDA as applied by this Act)”;

- (c) by inserting, immediately after the words “this Act” in section 16(5)(c), the words “(including the Companies Act as applied by this Act)”;
- 5 (d) by inserting, immediately after the words “this Act” in section 20(1), the words “(including the Companies Act as applied by this Act)”; and
- 10 (e) by inserting, immediately after the words “this Act” in section 141(c), the words “(including, to avoid doubt, the provisions of the Companies Act and IRDA as applied by this Act)”.

### **Consequential and related amendments to other Acts**

**64.**—(1) Section 2(2) of the Accounting and Corporate Regulatory Authority Act (Cap. 2A, 2005 Ed.) as amended by the Variable Capital Companies Act 2018, is amended by inserting, after the words “Second Schedule”, the words “or Fifth Schedule”.

(2) The Companies Act (Cap. 50, 2006 Ed.) as amended by the Variable Capital Companies Act 2018, is amended —

- (a) by deleting the words “section 130” in section 27(1A)(f)(ii) and substituting the words “section 130B”;
- 20 (b) by deleting the words “disqualification, disqualification order or debarment order” wherever they appear in section 155D(1) and (3) and substituting in each case the words “disqualification or disqualification order”;
- (c) by inserting, immediately after section 155D, the following section:

#### **“Debarment under VCC Act**

**155E.**—(1) A person who has a debarment order made against him under section 59 of the VCC Act must not —

- 30 (a) except in respect of a company of which the person is a director immediately before the order was made, act as director of any company; or

(b) except in respect of a company of which the person is a secretary immediately before the order was made, act as secretary of any company.

(2) Subsection (1) applies from the date that the debarment order is made until such time as the Registrar cancels or suspends the order. 5

(3) 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.”; and 10

(d) by deleting the words “section 130” in section 378(2)(f)(ii) and substituting the words “section 130B”. 15

## PART 5

### SAVING AND TRANSITIONAL PROVISIONS

#### **Saving and transitional provisions relating to Part 4**

**65.**—(1) Before the appointed day, a reference in the VCC Act to a provision of the Companies Act that is repealed by the IRDA, is to that provision as in force immediately before it is repealed. 20

(2) Sections 17(b) to (i), 18 to 21, 29, 30, 43 to 48, 50 to 53, 56, 58, 59 and 62 do not apply to or in relation to the following, and old sections 2, 3, 5, 6, 33, 125 to 130, 142, 144, 147, 148, 154, 158 and 163 of, and the old First Schedule to, the VCC Act continue to apply to or in relation to the following: 25

(a) an order, made before the appointed day, for the winding up of a VCC under section 216(2)(f) of the Companies Act as applied by the old section 142 of the VCC Act;

(b) an appointment made before the appointed day of a receiver or manager of the property of a VCC or of a sub-fund of an umbrella VCC; 30

- (c) an application made before the appointed day for the winding up of a VCC or a sub-fund of an umbrella VCC, under section 253 of the Companies Act as applied by the old section 33 or 130 (as the case may be) of the VCC Act;
- 5 (d) a voluntary winding up that commences (within the meaning of section 291(6) of the Companies Act as applied by the old section 33 or 130 of the VCC Act) before the appointed day.

(3) For the purposes of subsection (1) —

- 10 (a) a person who, immediately before the appointed day, was an approved liquidator within the meaning of the old section 129 of the VCC Act, continues as an approved liquidator for the purposes of sections 33 and 130 of the VCC Act despite sections 29 and 47 and section 9 of the Companies Act continues to apply to such person; and
- 15 (b) any reference in the VCC Act (including a provision of the Companies Act applied by the VCC Act), as in force immediately before the appointed day, to “Official Receiver” is a reference to the Official Receiver as defined in the old section 2(1) of the VCC Act.

(4) Section 237 of the IRDA (as applied by section 33 or 130 of the VCC Act) does not apply to any default in the keeping of proper books of account by a VCC where any part of the period mentioned in that section, for which proper books of account are not kept by the VCC, falls before the appointed day, and section 339 of the Companies Act as applied by the old section 33 or 130 (as the case may be) of the VCC Act, continues to apply to and in relation to such default.

(5) A VCC Liquidation Account mentioned in the old section 130(19) of the VCC Act continues and is deemed to be a VCC Liquidation Account mentioned in section 130(19) of the VCC Act.

(6) A Sub-fund Liquidation Account mentioned in the old paragraph 25 of the First Schedule to the VCC Act, continues and

is deemed to be a Sub-fund Liquidation Account mentioned in paragraph 38 of the First Schedule to the VCC Act.

(7) An application made before the appointed day for an order under section 343 of the Companies Act as applied by the old section 33 or 130 of the VCC Act, is deemed to be an application made under section 208 of the IRDA as applied by section 33 or 130 (as the case may be) of the VCC Act. 5

(8) Any outstanding property of a VCC or sub-fund that is dissolved that, before the appointed day, is vested in the Official Receiver under section 346 of the Companies Act as applied by the old section 33 or 130 (as the case may be) of the VCC Act, is deemed to be vested in the Official Receiver under section 213 of the IRDA as applied by section 33 or 130 (as the case may be) of the VCC Act. 10

(9) In this section and section 66 —

- (a) “appointed day” means the date of commencement of sections 17(b) to (i), 18 to 21, 29, 30, 43 to 48, 50 to 53, 56, 58, 59 and 62; 15
- (b) “IRDA” means the Insolvency, Restructuring and Dissolution Act 2018;
- (c) “VCC Act” means the Variable Capital Companies Act 2018; 20
- (d) a reference to an old provision of or an old Schedule to the VCC Act is to that provision of or that Schedule to the VCC Act that is in force immediately before the appointed day; and 25
- (e) a reference to a provision of the Companies Act is, if that provision is repealed by the IRDA, to that provision before it is repealed.

### **Other saving and transitional provisions**

**66.**—(1) Despite section 43, a person who is qualified, in accordance with the old section 125 of the VCC Act, to be appointed and to act as a receiver of the property of a VCC or sub-fund, may be appointed and may act as such receiver for the period mentioned in subsection (3). 30

- 5                   (2) Despite section 47, a person who is qualified, in accordance with the old section 33(3) or 129 of the VCC Act, to be appointed and to act as a liquidator of a sub-fund of an umbrella VCC or of a VCC (as the case may be), may be appointed and may act as such for the period mentioned in subsection (3).
- 10                  (3) The period in subsection (1) or (2) is —
- (a) 6 months after the appointed day; and
  - (b) if, within the period of 6 months, the person applies for a licence under section 51 of the IRDA, until the earlier of the following:
- (i) the date on which the licence is granted to the person;
  - (ii) the date on which the application is finally refused or withdrawn.
- 15                  (4) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.
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## EXPLANATORY STATEMENT

This Bill seeks to amend the Goods and Services Tax Act (Cap. 117A), the Income Tax Act (Cap. 134) and the Stamp Duties Act (Cap. 312), so as to introduce a tax framework for variable capital companies, which are incorporated under the Variable Capital Companies Act 2018 (Act 44 of 2018) (called the VCC Act). It also seeks to make amendments to the VCC Act that are necessitated by the transfer of corporate insolvency provisions from the Companies Act (Cap. 50) to the Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018), and to make various miscellaneous amendments to the VCC Act.

This Bill also makes consequential and related amendments to the Accounting and Corporate Regulatory Authority Act (Cap. 2A) and the Companies Act arising from the amendments to the VCC Act.

Clause 1 relates to the short title and commencement.

## PART 1

### AMENDMENTS TO GOODS AND SERVICES TAX ACT

Part 1 seeks to modify the Goods and Services Tax Act (GST Act) in its application to variable capital companies (VCC) and their sub-funds.

Clause 2 amends section 2 (Interpretation) to insert definitions for various terms used in the amendments. The clause also clarifies that the term “company” (which carries its dictionary meaning) includes a VCC.

Clause 3 amends section 32 (Business carried on in divisions or by unincorporated bodies, personal representatives, etc.) to provide that the registration of an umbrella VCC making taxable supplies for the purpose of one of its sub-funds must be in the name of that umbrella VCC in respect of that sub-fund, or in the name of that sub-fund.

Clause 4 inserts a new section 33AA to provide for the following:

- (a) that an umbrella VCC making or receiving a supply for the purpose of one of its sub-funds is taken to be a separate person from the same VCC making or receiving a supply for the purpose of another of its sub-funds. Therefore, each is taken to be a separate taxable or registered person;
- (b) that any liability of an umbrella VCC for tax in relation to a supply made by it for the purpose of a sub-fund, as well as any penalty or other amounts payable in relation to the supply, is considered (for the purpose of section 29 of the VCC Act) liability of the umbrella VCC incurred for the purpose of the sub-fund. Section 29 of the VCC Act provides that any such liability of an umbrella VCC is to be discharged solely out of the assets of the sub-fund;
- (c) that any fine, penalty or composition sum for an offence committed in relation to a sub-fund is likewise considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund;
- (d) to amend various provisions in their application to an umbrella VCC making or receiving a supply for the purpose of a sub-fund.

Clause 5 amends section 86 (Orders and regulations) to include a new subsection (5) allowing the Minister, for a period of 2 years starting on the date of commencement of Part 1 of the Bill, to make regulations to prescribe further modifications of the GST Act in its application to VCCs, umbrella VCCs and sub-funds.

Clause 6 amends the First Schedule (Registration) to provide that if 2 sub-funds *A* and *B* merge, resulting in *B* surviving the merger, and only the umbrella VCC of *A* was a taxable person in relation to *A* immediately before the

merger, then the umbrella VCC of *B* is liable to be registered in relation to *B* at the time of the merger in certain circumstances. If *A* and *B* merge and a new sub-fund *C* is formed, and either the umbrella VCC of *A* was a taxable person in relation to *A* or the umbrella VCC of *B* was a taxable person in relation to *B*, immediately before the merger, or both, then the umbrella VCC of *C* is liable to be registered in relation to *C* at the time of the merger in the same circumstances.

Clause 7 amends the Third Schedule (Valuation — Special Cases) to modify the application of paragraph 4 of that Schedule in relation to a company that is an umbrella VCC making or receiving a supply for a sub-fund. Paragraph 4 sets out the rules for determining when a person has control over a company. This is for the purpose of determining whether a person making or receiving a supply to or from another is connected with each other, which is one of the preconditions for the Comptroller of the Goods and Services Tax to make a direction that the value of the supply is taken to be its open market value.

Clause 8 amends Part III of the Fourth Schedule (Interpretation and application) to clarify that the issue, allotment or transfer of ownership of the shares of a VCC, and the renewal or variation of such shares, are exempt supplies.

## PART 2

### AMENDMENTS TO INCOME TAX ACT

Part 2 amends the Income Tax Act for the following main purposes:

- (a) to apply to VCCs the tax treatment applied to companies;
- (b) to provide that the chargeable income or exempt income of an umbrella VCC is the total of the chargeable income or exempt income of each of its sub-funds, to be determined in accordance with the provisions of the Income Tax Act as if each sub-fund were a VCC.

Clause 9 amends section 2 (Interpretation) to introduce definitions for the term “VCC Act”, as well as other terms that are used in the amendments in this Part, by incorporating their definitions in the VCC Act.

Clause 10 amends section 13 (Exempt income) for the following purposes:

- (a) for the purpose of determining (under subsection (2D) of that section) whether certain income from qualifying project debt securities are exempt from tax, an umbrella VCC holding securities for one sub-fund is treated as a separate person from the same umbrella VCC holding securities for another sub-fund;
- (b) for the purpose of determining whether debt securities are qualifying debt securities or qualifying project debt securities under various exemptions in that section, an umbrella VCC to which securities are issued during their primary launch for one sub-fund is treated as a

separate person from the same umbrella VCC to which securities are so issued for another sub-fund. Debt securities are qualifying debt securities or qualifying project debt securities only if (among other requirements) they are issued to at least 4 persons;

- (c) where the issuer or recipient of debt securities is an umbrella VCC and it does so for the purpose of a sub-fund, a reference to a related party of the issuer of the debt securities is to a person related to the sub-fund in such manner as may be provided in rules. The exemptions in relation to income from qualifying debt securities do not apply if 50% or more of those securities that are outstanding during the life of the issue are beneficially held or funded by related parties of the issuer and the income is derived by a related party of the issuer or by any person who used funds provided by such related party to acquire the securities.

Clause 11 inserts a new section 107.

Subsection (1) provides that a reference to a company in the Income Tax Act and the subsidiary legislation made under it includes a VCC. This is for the purpose of applying the tax treatment applicable to a company to a VCC, and to provide that any reference to a company in the predicate of a provision includes a VCC. An example of the latter is a reference to the investee company in section 13Z.

Subsection (2) clarifies that because a reference to a company includes a VCC, the term “body of persons” (which is defined in section 2(1) to exclude a company) also excludes a VCC.

Subsection (3) provides that the chargeable income or exempt income of an umbrella VCC is the total of the chargeable income or exempt income of each of its sub-funds.

Subsection (4) provides that for the purpose of working out the chargeable income or exempt income of a sub-fund, the Income Tax Act and the subsidiary legislation made under it apply as if the sub-fund were a VCC. It modifies various references in the Income Tax Act and subsidiary legislation for this purpose.

The application of subsections (3) and (4) is illustrated by the following example.

Under subsection (2)(c) of section 14ZA (Further or double deduction for qualifying expenditure on issue of debentures and making available debentures for secondary trading), the maximum amount of qualifying expenditure that may be allowed a deduction to a person is \$1,000,000.

An umbrella VCC comprising 5 sub-funds is allowed a maximum amount of deduction of \$5,000,000 (\$1,000,000 for each sub-fund) for qualifying expenditure under that subsection.

Subsection (5) disapplies subsection (4) to a provision of the Income Tax Act that is replaced by another provision in this section, e.g. sections 13Z and 34G of the Act.

Subsection (6) clarifies that —

- (a) an umbrella VCC is not entitled to a further deduction for any expense, capital expenditure, loss or donation taken into account in determining the chargeable income or exempt income of any of its sub-funds; and
- (b) any expense, capital expenditure, loss or donation of a sub-fund cannot be deducted against the income of another sub-fund or any other income of the umbrella VCC.

Subsection (7) provides that each part of the chargeable income of an umbrella VCC that is chargeable income of a sub-fund is subject to tax at the rate at which that part would be subject had the sub-fund been a VCC.

Subsections (8), (9) and (10) provide for the treatment of certain sums payable or paid under the Income Tax Act for the purposes of section 29 of the VCC Act. Section 29 of the VCC Act provides for the rule that the assets and liabilities of one sub-fund are to be segregated from those of another.

Subsection (8) provides that tax payable by an umbrella VCC (along with any penalty or interest relating to it) that is attributable to the chargeable income of a sub-fund is considered a liability incurred by the umbrella VCC for the purpose of the sub-fund.

Subsection (9) provides that a fine or penalty imposed on, or composition sum that may be paid by, the umbrella VCC for an offence committed under the Income Tax Act in respect of any matter that concerns a sub-fund is considered a liability incurred by the umbrella VCC for the purpose of the sub-fund.

Subsection (10) provides that in a case where subsection (9) does not apply, the fine, penalty or composition sum concerned is considered a liability incurred by the umbrella VCC for the purpose of all the sub-funds.

Subsection (11) provides that a VCC is not allowed a deduction for expenses under certain sections of the Income Tax Act.

Subsection (12) disapplies section 37C (Group relief for Singapore companies) of the Income Tax Act to a VCC.

Subsection (13) provides that section 13R (Exemption of income of company incorporated and resident in Singapore arising from funds managed by fund manager in Singapore) of the Income Tax Act applies for the purpose of determining the exempt income of a sub-fund as if it is an approved company under the section if its umbrella VCC is approved by the Minister or a person appointed by the Minister for the purpose of that section.

Subsection (14) provides that where the relevant owner mentioned in section 13R(3) is an umbrella VCC, the amount of any financial penalty under that provision that it is liable for is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of its sub-funds. The amount of such liability in relation to each sub-fund is to be computed in accordance with a specified formula.

Where an umbrella VCC is the approved company under section 13R, and its income is exempt from tax by virtue of the operation of section 107(3), then, in determining whether a financial penalty is payable by a person (as the relevant owner) under section 13R(3), the person's beneficial ownership of all of the securities of the umbrella VCC (irrespective of the sub-fund) will be aggregated.

Subsection (15) provides that section 13X (Exemption of income arising from funds managed by fund manager in Singapore) of the Income Tax Act applies for the purpose of determining the exempt income of a sub-fund as if it were an approved person, approved master fund or approved feeder fund under the section, if its umbrella VCC is approved as such by the Minister or a person appointed by the Minister for the purpose of that section.

Subsection (16) provides that the amount of any tax recoverable from an umbrella VCC under the regulations made under section 13X, that is attributable to any income of its sub-fund, is considered liability incurred by the umbrella VCC for the purpose of the sub-fund for the purpose of section 29 of the VCC Act.

Subsection (17), read with Part 1 of the new Third Schedule, sets out a new provision in place of section 13Z (Exemption of gains or profits from disposal of ordinary shares) of the Income Tax Act in its application to the determination of exempt income of a sub-fund from the disposal of ordinary shares in a company or of ordinary shares in a VCC.

Subsection (18) provides for further modifications to the new provision set out as section 13Z in Part 1 of the new Third Schedule in its application to the determination of exempt income of a sub-fund where the shares disposed of are the ordinary shares in an umbrella VCC in respect of a sub-fund. In determining the share of the legal and beneficial ownership in that umbrella VCC, regard is to be had only to the legal and beneficial ownership in respect of that sub-fund.

Subsection (19) provides for modifications to section 13Z in its application to the determination of exempt income of a company (including a non-umbrella VCC but excluding an umbrella VCC) from the disposal of ordinary shares in an umbrella VCC in respect of a sub-fund.

Subsection (20) introduces a definition of "ordinary share" in relation to a VCC for the purposes of subsections (17), (18) and (19).

Subsection (21) provides for modifications to sections 34D (Transactions not at arm's length) and 34E (Surcharge on transfer pricing adjustments) of the Income

Tax Act in their application to the determination of the chargeable income or exempt income of a sub-fund and the recovery of any surcharge resulting from adjustments made by the Comptroller of Income Tax.

Subsection (22) provides that any surcharge under section 34E as applied by subsection (21) is recoverable from the umbrella VCC and is taken as a liability incurred by the umbrella VCC for the purpose of the sub-fund for the purpose of section 29 of the VCC Act.

Subsection (23) applies with modifications section 34F (Transfer pricing documentation) of the Income Tax Act to an umbrella VCC.

Subsection (24) applies with modifications sections 34G (Modification of provisions for companies redomiciled in Singapore) and 34H (Tax credits for approved redomiciled companies) of the Income Tax Act to a body corporate redomiciled in Singapore as a non-umbrella VCC as those sections apply to a company redomiciled in Singapore.

Subsection (25), read with section 34G in Part 2 of the new Third Schedule, sets out a new provision that applies in place of section 34G for the purpose of determining the income of a sub-fund of a body corporate redomiciled in Singapore as an umbrella VCC.

Subsection (26), read with section 34H in Part 2 of the new Third Schedule, sets out a new provision that applies in place of section 34H, for the purpose of providing tax credits to a body corporate redomiciled in Singapore as an umbrella VCC. Any tax credit determined under the new provision is to be applied against the amount of tax that is attributable to the sub-fund's chargeable income. In other words, the tax credit under that provision will be determined at the sub-fund level and an umbrella VCC may have multiple tax credits applied to the chargeable incomes of its sub-funds.

Subsection (27) provides that where an umbrella VCC withholds tax in respect of any amount incurred for the purpose of a sub-fund, any resulting debt incurred by, any penalty or fine imposed on, or any composition sum that may be paid by, the umbrella VCC is considered a liability incurred for the purpose of the sub-fund for the purpose of section 29 of the VCC Act.

Subsection (28), read with Part 3 of the new Third Schedule, sets out new provisions in place of sections 50 (Tax credits), 50A (Unilateral tax credits) and 50C (Pooling of credits) of the Income Tax Act when the taxpayer in question is an umbrella VCC. Essentially, tax credits under sections 50 and 50A are determined at the sub-fund level and applied against the tax attributable to the income of each sub-fund, and an umbrella VCC may elect for a tax credit to be disallowed for any of its sub-funds.

Subsection (29) provides that rules that prescribe how a person is related to a sub-fund for the purposes of various provisions of the Income Tax Act, may make different provisions for different circumstances.

Subsection (30) allows the Minister to make further modifications to the Income Tax Act by rules in their application to a VCC, an umbrella VCC or a sub-fund of an umbrella VCC.

Clause 12 inserts a new Third Schedule for the purposes of the new section 107(17), (18), (25), (26) and (28).

### PART 3

#### AMENDMENTS TO STAMP DUTIES ACT

Part 3 amends the Stamp Duties Act, for the following main purposes:

- (a) to impose duty on an instrument that effects or that evidences a transaction between sub-funds of an umbrella VCC, or between an umbrella VCC and its sub-fund, being an instrument that would have been chargeable with duty if the sub-fund or sub-funds were a person or persons;
- (b) to apply certain provisions currently applicable to or in relation to a company, to or in relation to a VCC.

Clause 13 amends section 2 (Interpretation) to expand the meaning of “stock” to include shares in the capital stock or funded debt of a VCC. It also introduces definitions for the term “Variable Capital Companies Act 2018” or “VCC Act”, as well as other terms that are used in the amendments in this Part by incorporating their definitions in the VCC Act.

Clause 14 amends section 60A (Electronic instruments treated as instruments) to clarify that that section, which provides that a reference to an instrument effecting or evidencing a transaction includes an electronic record effecting or evidencing the transaction, also applies to an instrument between sub-funds and an instrument with a sub-fund mentioned in the new sections 60I and 60J respectively.

Clause 15 inserts a new Part VIIIB, comprising the new sections 60I to 60O.

The new section 60I provides that —

- (a) a reference in the Stamp Duties Act to an instrument or a description of instrument that effects or evidences a transaction includes an instrument that effects or evidences a transaction between sub-funds that would have been the same transaction had the sub-funds been legal persons (called an instrument between sub-funds);

- (b) a reference to a party to an instrument or who executes an instrument is to the umbrella VCC in relation to the relevant sub-fund;
- (c) any right of that party is considered a right of the umbrella VCC to be exercised for the purpose of the relevant sub-fund;
- (d) any liability or duty of that party is considered for the purpose of section 29 of the VCC Act, a liability or duty of the umbrella VCC that is incurred, and to be discharged for the purpose of the relevant sub-fund. Section 29 of the VCC Act provides that any such liability of an umbrella VCC is to be discharged solely out of the assets of the sub-fund; and
- (e) where a transaction between sub-funds is not effected or evidenced by an instrument, and had the transaction been effected or evidenced by an instrument, that instrument would have been chargeable to tax, the umbrella VCC must notify the Commissioner of Stamp Duties of this. The notice is treated as an instrument chargeable with duty for the purposes of the Stamp Duties Act.

The new section 60J provides that a reference in the Stamp Duties Act to an instrument or a description of instrument that effects or evidences a transaction includes an instrument that effects or evidences a transaction between an umbrella VCC and any of its sub-funds that would have been the same transaction had the sub-fund been a separate legal person (called an instrument with a sub-fund).

The new section 60J also makes provisions corresponding to the new section 60I as described in paragraphs (b), (c), (d) and (e) above as regards an instrument with a sub-fund and a transaction with a sub-fund not effected or evidenced by an instrument.

The new section 60K modifies section 22A (Additional duty on instruments for disposal of immovable property within specified holding period) for the following purposes:

- (a) in determining if immovable property is disposed of within the specified holding period in that section, a disposal under an instrument between sub-funds or an instrument with a sub-fund is treated as such disposal;
- (b) in determining the total period in which immovable property is held by an umbrella VCC for the purpose of a sub-fund in a case where the property is so held because of an instrument between sub-funds or an instrument with a sub-fund, the date on which the property is first held by the VCC for the purpose of the sub-fund as a result of that instrument is treated as the date of acquisition of the property;

- (c) to apply the section to an instrument under which immovable property is transferred by way of distribution in specie upon the voluntary winding up of a VCC or a sub-fund;
- (d) to provide that in a case where the owner of the property in question is an umbrella VCC in relation to a sub-fund, a reference to disposal of such property in that section excludes a disposal as a result of the winding up of the VCC or its sub-fund.

The new section 60L modifies sections 23, 23A, 23B, 23C and 23D in their application to VCCs and sub-funds. Those sections provide for ad valorem duties payable on conveyances of equity interests in a property-holding entity (called a PHE) or in an entity with ownership interests in a PHE. The amendments are made for the following purposes:

- (a) to expand the definition of “entity” to include a VCC and a sub-fund, so that both of these may be PHEs, and to make other consequential amendments for this purpose (subsections (1), (2) and (3));
- (b) to make modifications to those sections in their application to a case where an umbrella VCC is a party to an instrument in relation to a sub-fund (subsections (4) and (7)). In particular, rules will be separately made for the purposes of determining who is an associate of the umbrella VCC in such a case (subsection (4)(e) and (f));
- (c) to make provisions for determining when an umbrella VCC is an associate of a party to an instrument, and the beneficial ownership of such associate of equity interests in an entity (subsections (5) and (6)). Whether an umbrella VCC is an associate of a party to an instrument is determined in relation to one sub-fund at a time as if it only has that sub-fund. The extent of beneficial ownership of equity interests in an entity of an umbrella VCC that is an associate in relation to one sub-fund, is determined by the equity interests which it holds for the purpose of that sub-fund only. The reason for these provisions is the principle of segregation of assets and liabilities between sub-funds of a VCC.

The new section 60M modifies other provisions of the Stamp Duties Act in their application to a VCC and its sub-funds, as follows:

- (a) it modifies section 21 (Conveyances and transfers in contemplation of sale) in its application to an instrument between sub-funds and an instrument with a sub-fund. The reference to the person from whom property was conveyed or transferred is to the sub-fund or umbrella VCC (as the case may be) from which the property was conveyed or transferred;

- (b) it modifies section 22(2) (which charges duty on an assignment, etc., of interest in property by a purchaser of that property under an earlier agreement for sale who has paid duty on that agreement) in its application to an instrument between sub-funds and an instrument with a sub-fund;
- (c) it applies subsection (4) (which charges duty on a conveyance direction for property that follows an agreement for sale of the same, as if it were an agreement for sale) to a variation of a contract or agreement for sale of property that substitutes a “sub-fund” purchaser with another sub-fund or with its umbrella VCC, or an umbrella VCC purchaser with one of its sub-funds;
- (d) it applies section 33 (which treats a disposal of shares that is effected by the cancellation of shares or the issue of new shares, as a transfer of shares in certain circumstances) to a disposal of shares in a VCC;
- (e) it applies section 70B (which prohibits the liquidator of a company from distributing its assets to its shareholders without making provision for paying any duty or penalty payable by the company) in relation to the winding up of a VCC or a sub-fund of an umbrella VCC;
- (f) it amends all references to shares in the First Schedule to include shares in a VCC. This means (among other effects) that a transfer on sale of shares in a VCC, and a mortgage or settlement of such shares, are each chargeable with duty.

The new section 60N provides that any fine imposed on an umbrella VCC, or a composition sum which may be paid by it, for an offence committed under the Stamp Duties Act relating to an instrument executed for the purpose of a sub-fund, or any information or other matter relating to a sub-fund, is considered (for the purpose of section 29 of the VCC Act) liability incurred by the umbrella VCC for the purpose of the sub-fund.

The new section 60O allows the Minister to make rules for the purposes of the new Part VIIIB. In particular, the Minister may, for a period of 2 years starting on the date of commencement of the Bill, make rules to prescribe further modifications of the Stamp Duties Act in its application to VCCs, instruments between sub-funds and instruments with a sub-fund.

Clause 16 amends the First Schedule (Instruments chargeable with stamp duty) —

- (a) to include, as an instrument that is chargeable with duty, a conveyance, assignment or transfer of any property or interest in property that is distributed in specie to a shareholder of a VCC in connection with the liquidation of the VCC or any of its sub-funds; and

- (b) by expanding the word “entity” in paragraph (1) of Article 3 to include a VCC whether or not acting for the purpose of a sub-fund, so as to apply the rate of additional buyer stamp duty under Article 3(bf) currently applicable to an entity that is not a housing developer, to a VCC.

## PART 4

### AMENDMENTS TO VARIABLE CAPITAL COMPANIES ACT 2018

Part 4 seeks to amend the VCC Act in connection with the deletion from the Companies Act of provisions dealing with corporate insolvency, and the enactment of the Insolvency, Restructuring and Dissolution Act 2018 (called the IRDA) which sets out the new corporate insolvency regime. It also makes various miscellaneous amendments to the VCC Act.

Clause 17 amends section 2 (General interpretation) —

- (a) to insert definitions for various terms used in the amendments introduced or amended by the IRDA, for example, “licensed insolvency practitioner” and “Official Assignee” and “Official Receiver”;
- (b) to provide that, in some of the interpretive provisions, a reference to a provision of the VCC Act includes not just a provision of the Companies Act applied by the VCC Act but a provision of the IRDA that is so applied;
- (c) to delete the definition of “closed-end fund” as it is no longer needed in light of the amendment to section 19(1); and
- (d) to amend the definitions of “creditors’ voluntary winding up” and “members’ voluntary winding up” to replace the references to the Companies Act provisions to the corresponding IRDA provisions.

Clause 18 makes consequential amendments to section 3 (Affairs of corporation or sub-fund) following the repeal of section 254 of the Companies Act by the IRDA and the enactment of a corresponding provision in the IRDA. The clause also amends section 3 to reflect changes to paragraph numbers in the First Schedule to the VCC Act.

Clause 19 amends section 5 (Purpose of Act and application of Companies Act provisions in this Act) to provide that the purpose of the VCC Act is to apply the provisions of the IRDA (in addition to the Companies Act) with modifications. The clause sets out the modifications to all the IRDA provisions that are incorporated by reference in the VCC Act. It also allows the Minister to make

further modifications to the incorporated IRDA provisions within a period of 2 years starting on the date of commencement of clause 19 of the Bill.

Clause 20 amends section 6 (Application of Companies Act to VCC, etc.) to make a consequential amendment following the repeal of Divisions 5 and 6 of Part X of the Companies Act by the IRDA. The corresponding provisions in the IRDA (namely Division 1 of Part 10, and Part 11, of the IRDA) are dealt with in the new section 6A(3).

Clause 21 inserts a new section 6A to disapply provisions of the IRDA that are either incorporated by reference or replicated in the VCC Act, to the extent of such application. This is intended to deal with overlapping provisions in the VCC Act and the IRDA. Such overlap arises because a VCC is also a corporation. The new section 6A is similar to the existing section 6 of the VCC Act, which deals with Companies Act provisions that are incorporated by reference or replicated in the VCC Act.

The new section 6A(3) sets out provisions of the IRDA that do not apply in relation to a VCC or a sub-fund. These are Division 1 of Part 10, and Part 11, of the IRDA, which deal with the winding up of unregistered companies and cross-border insolvency.

The new section 6A(4) applies section 268 of the IRDA to offences under certain provisions of the VCC Act. Section 268 empowers the Official Receiver or an officer appointed by the Official Receiver to investigate offences under the IRDA.

Clause 22 inserts a new section 17A which provides that a VCC must have a minimum of one member.

Clause 23 amends section 19 (Constitution of VCC) to replace the expression “closed-end fund” with certain descriptions of arrangements whose units are exclusively or primarily non-redeemable at the election of the holders of the units. Under section 19(1), a provision is to be implied in the constitution of a VCC that shares of the VCC that are related to certain arrangements and are listed for quotation on a securities exchange, are to be issued, redeemed or repurchased in accordance with the listing requirements of the securities exchange.

Clause 24 amends section 20 (Alteration of constitution) to require a VCC to lodge certain documents with the Registrar of VCCs where an alteration to its constitution as described in subsection (2) takes place.

Clause 25 makes consequential amendments to section 21 (Name of VCC) following the enactment of Part 8 of the IRDA, and the new section 130B that deals with the dissolution of a VCC.

Clause 26 amends section 22 (Membership of holding company) to delete the reference in subsection (13)(c) to a VCC disposing of or cancelling the excess shares of its subsidiary, as a VCC cannot do this.

Clause 27 amends section 24 (Disposal and cancellation of shares in section 22(6) and (11)) —

- (a) to remove provisions relating to the cancellation of shares in a VCC by its subsidiary, as a subsidiary cannot do this; and
- (b) to remove subsections (3), (4), (5), (7) and (8) as they are unnecessary.

Clause 28 amends section 30 (Disclosure of sub-fund details) to provide that where an umbrella VCC enters into an agreement or issues a business letter, statement of account, invoice, official notice, publication, bill of exchange, promissory note, indorsement, cheque, order, receipt or letter of credit, on behalf of any of its sub-funds, it must set out in that document the fact that it is acting on behalf of that sub-fund.

An officer of the umbrella VCC (or a person acting on his or her behalf) who signs, issues or authorises to be signed or issued any document in contravention of that requirement, 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 29 amends section 33 (Winding up of sub-fund) in light of the repeal of insolvency provisions in the Companies Act and the enactment of corresponding provisions in the IRDA.

Clause 30 inserts the new sections 33A, 33B, 33C, 33D and 33E to provide for the dissolution of a sub-fund. The new sections are based substantially on sections 344, 344A, 344B, 344C and 344H of the Companies Act.

The new section 33A enables the Registrar to dissolve a sub-fund in relation to which no business is carried on or which is not in operation. The new section also enables the Registrar to dissolve a sub-fund that is being wound up under certain circumstances.

The new section 33B enables the Registrar to dissolve a sub-fund on the application of its umbrella VCC.

The new section 33C provides for the right of an applicant under the new section 33B to withdraw its application to dissolve a sub-fund.

The new section 33D provides for any person to give a notice objecting to the dissolution of a sub-fund under the new section 33A or 33B.

The new section 33E requires an officer of an umbrella VCC whose sub-fund is dissolved, to retain all books and papers in respect of the sub-fund for 5 years after it is dissolved.

Clause 31 amends section 39 (Certificate is evidence of title) so that a share certificate under the common seal of a VCC need not state the address of its branch office through which the certificate is issued.

Clause 32 makes consequential amendments to section 56 (Disqualification of unfit director of insolvent VCC) following the repeal of sections 291(1), 254(2) and 259 of the Companies Act by the IRDA, and the enactment of corresponding provisions in the IRDA.

Clause 33 makes a consequential amendment to section 57 (Disqualification of director of VCC wound up on grounds of national security or interest) following the repeal of section 254(1) of the Companies Act by the IRDA, and the enactment of a corresponding provision in the IRDA.

Clause 34 makes consequential amendments to section 58 (Disqualification of director on conviction of certain offences, etc.) following the repeal of section 339 of the Companies Act by the IRDA, and the enactment of a corresponding provision in the Companies Act and the IRDA.

Clause 35 amends section 60 (Disqualification for being director of not less than 3 VCCs that were struck off within 5-year period) as the striking of a VCC's name off the register is now dealt with under the new section 130B.

Clause 36 amends section 61 (Disqualification under Limited Liability Partnerships Act and Companies Act) so that the prohibition in that section against a person from acting as a director of a VCC except with the leave of court, does not apply to a person who is subject to a debarment order under section 155B of the Companies Act.

Clause 37 inserts a new section 61A to provide that a person against whom a debarment order is made under section 155B of the Companies Act must not, except certain circumstances, act as a director or secretary of any VCC.

Clause 38 amends section 67 (Disclosure of director's emoluments and general duty to make disclosure) to remove the reference to a VCC being registered as its own member as it is not possible for a VCC to be its own member, except in the case of a cross sub-fund investment.

Clause 39 amends section 80 (Other provisions as to meetings and resolutions) for a similar reason to the amendment made to section 67.

Clause 40 makes a consequential amendment to section 112 (Appointment and powers of inspector) following the repeal of section 328(1)(a) of the Companies Act and the enactment of a corresponding provision in the IRDA.

Clause 41 amends section 113 (Investigation of affairs of VCC by inspectors at direction of Minister) to remove the reference to a VCC being its own member as it is not possible for a VCC to be its own member, except in the case of a cross sub-fund investment.

Clause 42 amends section 120 (Appointment and powers of inspectors to investigate ownership of VCC) for a similar reason to the amendment to section 113.

Clause 43 repeals and re-enacts section 125 (Application of Part VIII of Companies Act) in view of the repeal of Part VIII of the Companies Act and the enactment of corresponding provisions in Part 6 of the IRDA. The re-enacted section 125 is substantially the same as the old provision.

Clause 44 repeals and re-enacts section 126 (Statement that receiver appointed) which requires that the business documents of a VCC or sub-fund in receivership include a statement to that effect. The re-enacted section 126 extends the requirement to an Internet website of the VCC or any of its sub-funds on which the name of VCC or any of its sub-funds appears (in the case of a VCC in receivership) or an Internet website of the umbrella VCC or the sub-fund on which the name of the sub-fund appears (in the case of a sub-fund in receivership).

Clause 45 makes consequential amendments to section 127 (Payment of certain debts out of assets subject to floating charge in priority to claims under charge) following the repeal of sections 226 and 328 of the Companies Act by the IRDA and the enactment of corresponding provisions in the IRDA. It also replaces various references to “receiver” in that section to “receiver or manager”.

Clause 46 makes a consequential amendment to section 128 (Enforcement of duty of receiver, etc., to make returns) following the repeal of section 227 of the Companies Act by the IRDA and the enactment of a corresponding provision in the IRDA.

Clause 47 amends section 129 (Disqualification of liquidators) to substitute references to “approved liquidator” with “licensed insolvency practitioner”. Similar to companies, only an insolvency practitioner licensed under the IRDA may be a liquidator of a VCC or a sub-fund.

Clause 48 repeals and re-enacts section 130 (Application of Part X of Companies Act) in view of the repeal of the relevant provisions of Part X of the Companies Act and the enactment of corresponding provisions in Parts 8 and 9 of the IRDA. The re-enacted section 130 is substantially the same as the old provision, except that it makes the following additional modifications to the incorporated provisions of Parts 8 and 9:

- (a) modifying the references to “officer” in sections 186, 188, 209, 210 and 243 of the IRDA to read as an officer, the manager or the custodian of a VCC;
- (b) modifying section 194 of the IRDA (which requires business documents of a company in liquidation to include a statement to that effect) in its application to a VCC in liquidation;

(c) defining when a person is connected with a VCC. This is for the purpose of determining, under provisions of the IRDA that are applied by section 130, whether a VCC being wound up has given unfair preference to or has entered into an undervalued transaction with a particular person, among other matters. Where the person in question is an umbrella VCC and the preference is given or the transaction is entered into for the purpose of a sub-fund, then the umbrella VCC is connected with the VCC being wound up only if the umbrella VCC is an associate of the VCC or its director or manager “on account of its sub-fund”. The latter concept is defined in the new section 130A.

Clause 48 also inserts new sections 130A and 130B.

The new section 130A defines what is meant by an umbrella VCC being an associate of a person “on account of its sub-fund”. For this purpose, an umbrella VCC in relation to one sub-fund is considered a separate person from the same umbrella VCC in relation to another sub-fund.

Section 130A(1)(f) is explained by the following examples which illustrate the operation of section 130A(1)(a) and (f):

*Example 1*

VCC *A* is in partnership with an umbrella VCC *B* in relation to a specific sub-fund of *B* (*B1*). *B* is an associate of *A* on account of *B1*. A transaction that *B* enters into with *A* for the purpose of *B1* is a transaction between *A* and a person connected with *A*. This is not so if *B* enters into the transaction with *A* for the purpose of another of *B*'s sub-funds (*B2*), as the association is between *A* and *B* on account of *B1* and not *B2*.

*Example 2*

A person *X* has control of a VCC *A* and a sub-fund (*B1*) of an umbrella VCC *B*. A transaction that *B* enters into with *A* for the purpose of *B1* will be a transaction between *A* and a person connected with *A*. This is the case even though *X* may not have control of *B*. However, a transaction that *B* enters into with *A* for the purpose of another of *B*'s sub-funds (*B2*) is not (by reason of such control) a transaction between *A* and a person connected with *A*.

The new section 130B applies with modifications Part X of the Companies Act (which deals with the dissolution of companies) to a VCC.

Clause 49 amends section 136 (When registration must be refused) to provide that the Registrar must refuse to register a foreign corporate entity as a VCC if the Registrar is satisfied that (among other prohibitions) none of the directors of the proposed VCC is either a director or qualified representative of the manager of the entity.

Clause 50 amends section 142 (Personal remedies in cases of oppression or injustice, and derivative or representative action) to replace a reference to the Companies Act with the IRDA as corporate insolvency provisions are now set out in the IRDA.

Clause 51 amends section 144 (Application of provisions of Division 2 of Part XII of Companies Act, etc.) to provide that sections 401 (False and misleading statement), 407 (General penalty provisions), 409 (Proceedings how and when taken) and 409A (Injunctions) of the Companies Act apply also to provisions of the IRDA applied in the VCC Act. These sections of the Companies Act are substantially similar to sections 262, 266, 269 and 270 of the IRDA which apply to the same provisions of the IRDA applied in the VCC Act.

Clause 52 amends section 147 (Default penalties) to provide that a reference to a provision of the VCC Act that provides for a default penalty includes a provision of the IRDA applied in the VCC Act, in addition to a provision of the Companies Act that is so applied.

Clause 53 repeals and re-enacts section 148 (Composition of offences) to make separate provision for composition of offences under an “insolvency provision”. An offence under an insolvency provision may be compounded by the Official Receiver instead of the Registrar of VCCs, though the Official Receiver may authorise the Registrar to do so.

Clause 54 amends section 150 (Electronic transmission of documents) to correct certain errors.

Clause 55 makes a consequential amendment to section 152 (Disposal of shares of shareholder whose whereabouts are unknown) following the repeal of section 322 of the Companies Act by the IRDA and the enactment of a corresponding provision in the IRDA.

Clause 56 amends section 154 (Irregularities) to make modifications to the application of section 392 of the Companies Act to the VCC Act.

Clause 57 repeals and re-enacts section 157 (VCC records) because of the insertion of the new section 396B in the Companies Act by the IRDA. The re-enacted section 157 applies with modifications the new section 396B to the VCC Act.

Clause 58 amends section 158 (Translations of instruments, etc.) to make a further modification to the application of section 397 of the Companies Act to the VCC Act.

Clause 59 repeals and re-enacts section 163 (Appeals against act or decision of Registrar) so that it also applies to an act or decision of the Official Receiver. Section 163 provides (via an 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.

Clause 60 amends section 164 (Rules of Court) to enable Rules of Court to be made by applying, adopting or incorporating by reference any rule mentioned in section 448 of the IRDA.

Clause 61 amends section 165 (Regulations) to enable regulations to be made by applying, adopting or incorporating by reference any regulation made under the IRDA.

Clause 62 deletes and substitutes the First Schedule to the VCC Act, which modifies provisions of the IRDA in their application to the winding up of a sub-fund. The new First Schedule is substantially similar to the old First Schedule, except that it makes additional modifications similar to those in the new section 130, as well as other modifications in view of the fact that a sub-fund is not a legal person.

Clause 63 makes various miscellaneous amendments to various provisions of the VCC Act, to replace the expression “on behalf of a sub-fund” with “for the purpose of a sub-fund” as a sub-fund is not a legal person but a part of an umbrella VCC, and to clarify that a reference to a provision of the VCC Act in those provisions includes a reference to a provision of the Companies Act or the IRDA as applied by the VCC Act.

Clause 64 amends the Accounting and Corporate Regulatory Authority Act concerning the VCC Act to enable consequential amendments to be made to the Fifth Schedule to that Act, following the deletion of the insolvency provisions of the Companies Act and the enactment of these provisions in the IRDA.

Clause 64 also amends the Companies Act for the following purposes:

- (a) section 155D of the Companies Act inserted by section 167(2)(e) of the VCC Act, is amended so that the prohibition in that section against a person from acting as a director of a company except with the leave of court, does not apply to a person who is subject to a debarment order under section 59 of the VCC Act;
- (b) a new section 155E is inserted in the Companies Act to provide that a person against whom a debarment order is made under section 59 of the VCC Act must not, except in certain circumstances, act as a director or secretary of a company;
- (c) references to section 130 of the VCC Act in various provisions are amended as the provisions as to dissolution are now dealt with in section 130B.

Clauses 65 and 66 contain saving and transitional provisions in relation to the following:

- (a) to provide that, in the period between the coming into force of the IRDA and the coming into force of the amendments to the VCC Act

relating to the IRDA, a reference to a provision of the Companies Act is, where that provision is repealed by the IRDA, to that provision before such repeal;

- (b) matters that commenced before the commencement of the amendments related to the enactment of IRDA.

Clause 66 also enables other saving and transitional provisions to be made for the purposes of Part 4 of the Bill.

#### EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

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