



VARIABLE CAPITAL COMPANY REGULATIONS

In force on [xx.xx.2025]

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The Board of Directors of DIFCA, in the exercise of the powers conferred on them by Article 132 and Article 151 of the Companies Law, make these regulations.

1. INTRODUCTION

1.1 Application and interpretation

1.1.1 These Regulations may be cited as the “Variable Capital Company Regulations 2025”.

1.1.2 These Regulations apply to:

- (a) every person who falls within the definition of a Variable Capital Company (including each Segregated Cell and each Incorporated Cell thereof); and
- (b) every person applying for the incorporation or continuation of a Variable Capital Company in the DIFC; and
- (c) the Registrar.

1.1.3 The Relevant Laws apply to a Variable Capital Company (including each Segregated Cell and each Incorporated Cell thereof) unless specified otherwise in these Regulations.

1.1.4 Defined terms are identified throughout these Regulations by the capitalisation of the initial letter of a word or phrase. Capitalised terms not defined herein are used in accordance with their definition in the applicable Relevant Laws. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

1.1.5 The Rules of interpretation in the Companies Law apply to these Regulations.

1.1.6 Any reference to enacted law or regulations is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended, applied or otherwise amended by or under another enactment.

1.1.7 The following defined terms have the meaning given below:

| Defined Term | Definition |
|-------------------------|---|
| Affiliate | in relation to a Variable Capital Company, a legal entity that is under the same Control as that Variable Capital Company. |
| AML Requirements | any requirements under applicable DIFC Law or Federal Law in relation to anti-money-laundering, counter-terrorist financing and sanctions applicable to Registered Persons in the DIFC. |
| Applicable Law | any law or regulations applicable to an application, registration, conduct of business, providing financial services or in respect of any AML Requirements by a person to whom these Regulations apply, including (without limitation) the Relevant Laws. |
| Articles of Association | the articles of association of a Variable Capital Company or an Incorporated Cell (as the case may be) as filed with the Registrar. |

| Defined Term | Definition |
|----------------------------|--|
| Authorised Firm | a person who holds a licence from the DFSA or a Recognised Financial Services Regulator to carry on one (1) or more Financial Services, excluding a Representative Office. |
| Aviation Structure | a structure of one (1) or more persons having the sole purpose of facilitating the owning, financing, securing, leasing or operating an interest in one (1) or more aircraft(s) or any part(s) thereof. |
| Cell | a cell created by a Variable Capital Company, either as an Incorporated Cell or a Segregated Cell. |
| Cell Share Capital | comprises the proceeds of the issue of Cell Shares. |
| Cell Share | a Share issued by a Variable Capital Company in respect of a Cell. |
| Cell Share Certificate | documentary evidence of title to any relevant number of Cell Shares. |
| Cellular Asset | an asset of a Variable Capital Company attributable to a Cell thereof. |
| Cellular Distribution | a Distribution payable by a Variable Capital Company in respect of Shares of a specific Cell. |
| Collective Investment Law | the Collective Investment Law, DIFC Law No. 2 of 2010. |
| Companies Law | the Companies Law, DIFC Law No. 5 of 2018. |
| Companies Regulations | the DIFC Companies Regulations 2018. |
| Confirmation Statement | has the meaning given to the term in the Operating Law. |
| Control | <p>in relation to a Variable Capital Company or any other person, the power to secure:</p> <ul style="list-style-type: none"> (a) by means of the holding of shares or the possession of voting power, directly or indirectly; or (b) as a result of any powers conferred by the Articles of Association or other document regulating the Variable Capital Company or such other person, <p>that the affairs of the Variable Capital Company or such other person are conducted in accordance with such person's wishes; and</p> <p>"Controlled" and "Controller" have corresponding meanings.</p> |
| Corporate Service Provider | a person registered with the DFSA as an Authorised Firm or a Designated Non- Financial Business or Profession licensed to undertake corporate services business in the DIFC. |

| Defined Term | Definition |
|----------------------------|---|
| Court Application Period | means fifteen (15) days from the date the relevant application was submitted to the Registrar. |
| Crowdfunding Operator | a person authorised under a licence issued by the DFSA to operate a Crowdfunding Platform. |
| Crowdfunding Platform | has the meaning given to the term in the Glossary Module of the DFSA Rulebook operated by a Crowdfunding Operator. |
| Crowdfunding Structure | a structure of one (1) or more persons established for the purpose of holding the asset(s) invested into through a Crowdfunding Platform. |
| Decision Making Procedures | has the meaning given to the term in the Operating Law. |
| Director | has the meaning given to the term in the Companies Law. |
| Distribution | has the meaning given to the term in the Companies Law and, where applicable, includes reference to a Cellular Distribution. |
| Employee | has the meaning given to the term in the Employment Law, DIFC Law No. 2 of 2019. |
| Financial Service | has the meaning it has under Article 41 of the Regulatory Law. |
| GCC Member State | each of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE. |
| GCC Registrable Asset | <p>an asset or property interest that must be registered with a GCC Authority to establish legal ownership, secure rights, or encumbrances against it, and to provide public notice of such interests, including:</p> <ul style="list-style-type: none"> (a) land and real property; (b) shares in companies; (c) partnership interests; (d) intellectual property; and (e) aircraft and Maritime Vessels. |
| GCC Authority | a government, ministry, department, body, authority, designated agency or a securities exchange regulated by a financial services regulator of a GCC Member State, with statutory authority to maintain a registry for recording legal ownership of assets or interests therein in a GCC Member State. |
| GCC Person | <p>each of:</p> <ul style="list-style-type: none"> (a) a natural person who is a citizen of a GCC Member State; (b) a body corporate or body unincorporate, including a company, partnership, or unincorporated association, that is Controlled by one (1) or more natural persons who is a citizen of a GCC Member State; (c) a body corporate that has any class of its securities listed on a securities |

| Defined Term | Definition |
|---------------------------------|--|
| | exchange in the GCC; or (d) a Government Entity. |
| Holding Company | the Licence description given to entities established for the purpose of acting as a holding company in the DIFC in the Non-Retail Activities Guide published on the website of the DIFC. |
| Incorporated Cell | has the meaning given to it in Regulation 2.2.2. |
| Insolvency Law | the Insolvency Law, DIFC Law No. 1 of 2019. |
| Insolvency Regulations | the DIFC Insolvency Regulations 2019. |
| Intellectual Property Structure | a structure of one (1) or more persons established for the sole purpose of holding intellectual property for commercial purposes. |
| Licence | has the meaning given to the term in the Operating Law. |
| Net Asset Value | in relation to a Variable Capital Company, means its total assets less its total liabilities, as determined in accordance with applicable accounting standards. |
| Non-Cellular Assets | any assets of a Variable Capital Company which are not Cellular Assets. |
| Maritime Unit | a fixed or floating marine structure which is designed for supporting vessels, exploiting natural resources, coastal protection or any other lawful marine operation, including (without limitation) rigs, wharves, docks, barges, piers, jetties, mooring structures, or buoys. |
| Maritime Vessel | a watercraft normally operating, or made for the purpose of operating, and used, or that is capable of being used, as a means of navigation on water, without regard to its power or tonnage. |
| Maritime Structure | a structure of one (1) or more persons having the sole purpose of facilitating the owning, financing, securing, chartering, managing or operating of an interest in one (1) or more Maritime Vessel(s), Maritime Unit(s) or any part(s) thereof. |
| Qualifying Purpose | any of the following: (a) an Aviation Structure; (b) a Crowdfunding Structure; (c) an Intellectual Property Structure; (d) a Maritime Structure; (e) a Structured Financing; or (f) a Secondaries Structure. |
| Recognised Jurisdiction | the UAE, a Zone 1 Country or a jurisdiction recognised by the DFSA under Article 55 of the Collective Investment Law. |
| Register Keeper | has the meaning given to it in Regulation 6.5.4. |

| Defined Term | Definition |
|---------------------------|--|
| Registered Person | has the meaning given to the term in the Operating Law, excluding a Prescribed Company or a Non-Profit Incorporated Organisation incorporated or continued pursuant to the Non-Profit Incorporated Organisations Law, DIFC Law No. 6 of 2012. |
| Registrar | the Registrar appointed under the Operating Law. |
| Regulatory Law | the Regulatory Law, DIFC Law No. 1 of 2004. |
| Relevant Laws | the Companies Law, the Insolvency Law, the Operating Law and the regulations issued pursuant to these laws. |
| Secondaries Structure | a corporate structure established for the purpose of facilitating the transfer of investment assets, partnership interests or Securities from primary investors to secondary investors or for any subsequent transfer. |
| Segregated Cell | has the meaning given to it in Regulation 2.2.1. |
| Shareholder | as the context requires, a holder of a Share or of a Cell Share. |
| Special Purpose Vehicle | a Special Purpose Vehicle as defined in the Glossary Module of the DFSA Rulebook. |
| Structured Financing | <p>a structure of one (1) or more persons having the sole purpose of holding assets to leverage and/or manage risk in one (1) or more financial transactions, inclusive of the following:</p> <ul style="list-style-type: none"> (a) complex lending or security arrangements; (b) derivative transactions; (c) hybrid securities; (d) issuing of Securities to facilitate bond or sukuk issuances; (e) securitisations; or (f) collateralised debt instruments, <p>whether done in an Islamic or a conventional manner.</p> |
| Transfer Agreement | has the meaning given to it in Regulation 10.3.1(a). |
| UAE | United Arab Emirates. |
| UBO Regulations | the Ultimate Beneficial Ownership Regulations 2018. |
| Ultimate Beneficial Owner | has the meaning given to the term in the UBO Regulations. |
| Variable Capital Company | a Variable Capital Company within the meaning of Regulation 2.1. |

| Defined Term | Definition |
|----------------|---|
| Zone 1 Country | Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom and the United States of America. |

1.2 References

- 1.2.1 References in these Articles to “writing”, in relation to any document, instrument, certificate, notice, register or communication means a legible form of the information that is capable of being reproduced in tangible form, in any medium (including electronic means). For the avoidance of doubt, a Variable Capital Company may communicate with Shareholders by electronic means.
- 1.2.2 Regulation 1.2.1 does not affect any other legal requirements which may apply in relation to the form or manner of executing a document or agreement.

2. STATUS

2.1 Status of Variable Capital Companies

2.1.1 A Variable Capital Company is a Private Company that is:

- (a) incorporated as a Variable Capital Company in the DIFC;
 - (b) a Private Company previously incorporated in the DIFC, and converted into a Variable Capital Company; or
 - (c) continued in the DIFC as a Variable Capital Company,
- pursuant to the provisions of Article 132 of the Companies Law and these Regulations.

2.1.2 A Variable Capital Company may create Segregated Cells or Incorporated Cells but may not have both.

2.1.3 Except as otherwise provided in these Regulations, the provisions of the Relevant Laws apply to a Variable Capital Company, including each Segregated Cell and each Incorporated Cell thereof, as if it were a Private Company.

2.1.4 The provisions of Article 27(1)(b), Article 27(3) and Chapters 6, 7 and 8 of Part 7 of the Companies Law do not apply to a Variable Capital Company unless otherwise specified under these Regulations.

2.2 Variable Capital Companies as a type of Company

2.2.1 A “Segregated Cell” of a Variable Capital Company is a legally distinct cell within that Variable Capital Company, created in accordance with the Articles of Association of the Variable Capital Company for the purpose of holding and managing assets and incurring liabilities that are separate and distinct from those of the Variable Capital Company’s other Segregated Cells and from the Variable Capital Company as a whole. A Variable Capital Company with Segregated Cells is a single legal person and the creation of a Segregated Cell does not create, in respect of that Cell, a separate legal person.

2.2.2 An “Incorporated Cell” of a Variable Capital Company is a legally distinct entity created under the framework of that Variable Capital Company, formed in accordance with the Articles of Association of the Variable Capital Company for the purpose of holding and managing assets and incurring liabilities that are separate and distinct from those of the Variable Capital Company and any other Incorporated Cells. An Incorporated Cell of a Variable Capital Company is deemed a separate Private Company incorporated under

Article 132(1) of the Law and the relevant requirements of the Relevant Laws apply thereto, unless otherwise specified in these Regulations.

2.2.3 A Variable Capital Company shall not hold any Cell Shares in respect of its Cells.

2.2.4 Separate Incorporated Cells in a Variable Capital Company do not have a subsidiary or parent relationship with the Variable Capital Company itself or to other Incorporated Cells of that Variable Capital Company.

3. ESTABLISHMENT

3.1 Qualifying requirements

3.1.1 An applicant wishing to incorporate or continue a Variable Capital Company in the DIFC, or convert an existing Company in the DIFC to a Variable Capital Company, must satisfy the Registrar that it (including any Segregated Cells or Incorporated Cells thereof) meets one (1) of the criteria set out at Regulation 3.1.2.

3.1.2 The proposed Variable Capital Company (including any Segregated Cells or Incorporated Cells thereof):

(a) is Controlled by any one (1) or more:

(i) GCC Persons;

(ii) Registered Persons; or

(iii) Authorised Firms;

(b) is established or continued in the DIFC for the purposes of holding legal title to, or Controlling, one (1) or more GCC Registrable Assets;

(c) is established or continued in the DIFC for a Qualifying Purpose; or

(d) established or continued in the DIFC has a Director that is an Employee of a Corporate Service Provider and that Corporate Service Provider has an arrangement with the Registrar pursuant to Regulation 11.6.

3.2 Financial Services and Public Offers of Securities

3.1.2 A Variable Capital Company (including any Segregated Cells or Incorporated Cells thereof) shall not at any time be involved or used in the provision of a Financial Service, unless expressly permitted to do so by the DFSA or a regulator in a Recognised Jurisdiction.

3.1.3 Nothing in this Regulation is to be construed as exempting a Variable Capital Company (including any Segregated Cells or Incorporated Cells thereof) from the general prohibition of public offers of its Securities under Chapter 4 of the Companies Law or the financial promotion restrictions or requirements in respect thereof imposed by applicable markets or securities laws and related regulations.

4. APPLICATION TO INCORPORATE OR CONTINUE

4.1 Application to incorporate, continue or convert

4.1.1 An application to incorporate, continue or convert a Variable Capital Company in the DIFC, or to continue a Variable Capital Company in a jurisdiction outside the DIFC, shall be made to the Registrar in accordance with the requirements set out in these Regulations in the prescribed form and shall be accompanied by the documentation required by the Registrar to be lodged in respect thereof.

4.1.2 The Licence of a Variable Capital Company (or any of its Incorporated Cells) established for:

(a) a Qualifying Purpose shall be restricted to the activities specific to the Qualifying Purpose stated in its application to incorporate or continue the Variable Capital Company (or any its Incorporated Cells) in the DIFC; or

- (b) any other permitted purpose under these Regulations shall be restricted to the activity of Holding Company.
- 4.1.3 Each Incorporated Cell of a Variable Capital Company shall have the same registered office as the Variable Capital Company.
- 4.1.4 A Variable Capital Company may have any number of Segregated Cells or Incorporated Cells, or none, in each case as provided for in its Articles of Association.
- 4.2 **Name requirements**
- 4.2.1 The name of a Variable Capital Company shall end with “VCC Limited” or “VCC Ltd.”
- 4.2.2 Each Segregated Cell of a Variable Capital Company shall have its own distinct name that ends with the words ‘VCC Segregated Cell’ or ‘VCC SC’, which shall be identified and used in all communications and dealings of that Segregated Cell with the relevant Shareholders, debenture holders, creditors and contracting parties.
- 4.2.3 Each Incorporated Cell of a Variable Capital Company shall have its own distinct name that ends with the words ‘VCC Incorporated Cell’ or ‘VCC IC’, which shall be identified and used in all communications and dealings of that Incorporated Cell with the relevant Shareholders, debenture holders, creditors and contracting parties.
- 4.3 **Articles of Association of a Variable Capital Company**
- 4.3.1 The Articles of Association of a Variable Capital Company having Cells shall state that its Cells are either Segregated Cells or Incorporated Cells (as applicable).
- 4.3.2 The Articles of Association of a Variable Capital Company, or Incorporated Cell (as applicable), serving a Qualifying Purpose, shall limit its objects and activities to its Qualifying Purpose and activities ancillary to such purpose.
- 4.3.3 The Articles of Association of a Variable Capital Company shall contain provisions:
 - (a) to the effect that the actual value of the paid-up share capital of the Variable Capital Company is at all times equal to the Net Asset Value of the Variable Capital Company;
 - (b) specify that the property of the Variable Capital Company must be measured on a fair value basis; and
 - (c) setting the extent to which its Shareholders are entitled to have Shares or Cell Shares issued, redeemed or repurchased by the Variable Capital Company (subject, in each case, to these Regulations).
- 4.3.4 Notwithstanding anything to the contrary in the Articles of Association of a Variable Capital Company, the value of any Shares or Cell Shares shall be calculated based on the Net Asset Value of the relevant Non-Cellular Assets or Cellular Assets (as applicable).
- 4.4 **Articles of Association of an Incorporated Cell**
- 4.4.1 Each Incorporated Cell shall have its own Articles of Association, and shall comply with Regulation 4.3.2 if applicable.
- 4.4.2 The Articles of Association of an Incorporated Cell may provide for it to be wound up on:
 - (a) the occurrence of a specified event; or
 - (b) the expiration of a specified period.

4.4.3 An Incorporated Cell may not own Shares:

- (a) in the Variable Capital Company in which it is a Cell; or
- (b) in another Incorporated Cell of that Variable Capital Company,

and its Articles of Association must contain provisions to the same effect.

4.4.4 Subject to the provisions of these Regulations and to other Applicable Law, the Articles of Association of an Incorporated Cell may be amended:

- (a) in the manner specified in the Articles of Association; or
- (b) if not specified in the Articles of Association, by a Special Resolution of the Incorporated Cell.

4.4.5 Subject to the provisions in Regulation 4.4.2 to Regulation 4.4.4, the provisions in the Companies Law and Insolvency Law relating to Articles of Association of a Private Company shall apply to the Articles of Association of an Incorporated Cell.

4.5 Permission to Incorporate

4.5.1 Upon deciding to grant permission to incorporate, continue or convert a Variable Capital Company, or to incorporate an Incorporated Cell, the Registrar shall without undue delay inform the applicant in writing of:

- (a) such decision;
- (b) the date on which it shall take effect; and
- (c) any conditions or restrictions applicable thereto.

4.5.2 The application for incorporation, continuation or conversion shall be accompanied by the applicable fee prescribed in Regulation 13 and set out in Appendix 1.

4.5.3 A Variable Capital Company may apply to the Registrar to vary its Licence in accordance with the requirements of, and payment of the fees as may be specified by, the Registrar.

4.5.4 Upon deciding to refuse to grant permission to incorporate, continue or convert a Variable Capital Company, or to incorporate an Incorporated Cell, or to renew the Licence thereof, the Registrar shall without undue delay inform the applicant in writing of such refusal.

5. CELLULAR ASSETS AND NON-CELLULAR ASSETS

5.1 The assets of a Variable Capital Company shall be either Cellular Assets or Non-Cellular Assets.

5.2 The Cellular Assets of a Variable Capital Company consist of the assets of the Variable Capital Company attributable to each of its Cells, which shall comprise:

- (a) the assets represented by the proceeds of Cell Share Capital and reserves, including (without limitation) retained earnings, capital reserves and Share premium, attributable to a Cell; and
- (b) all other assets attributable to a Cell.

5.3 The Non-Cellular Assets of a Variable Capital Company consist of all assets of a Variable Capital Company that do not fall under Regulation 5.2.

6. SHARE CAPITAL AND CELLULAR DISTRIBUTIONS

6.1 Share Capital

For the purposes of application of the Relevant Laws to a Variable Capital Company, a reference to a Share is taken to include a reference to a Cell Share.

6.2 Issue, redemption and buy back of Shares

6.2.1 A Variable Capital Company may create and issue:

- (a) Shares in respect of itself at an issue price equal to the proportion of the Net Asset Value of its Non-Cellular Assets represented by those Shares; or
- (b) Cell Shares in respect of any of its Cells, at an issue price equal to the proportion of the Net Asset Value of the Cellular Assets of the Cell in question by those Cell Shares.

6.2.2 A Variable Capital Company may redeem or buy back:

- (a) Shares in itself, at a price equal to the proportion of the Net Asset Value of its Non-Cellular Assets represented by those Shares.
- (b) Cell Shares at a price equal to the proportion of the Net Asset Value of the Cellular Assets of the relevant Cell represented by those Shares.

6.2.3 Shares of a Variable Capital Company or a Cell which have been repurchased or redeemed by the Variable Capital Company must be cancelled and the amount of the issued share capital of the Variable Capital Company must be reduced by the amount of the consideration paid by the Variable Capital Company for the repurchase or redemption.

6.2.4 A Variable Capital Company or a Cell may not repurchase or redeem Shares or Cell Shares (as applicable) to the extent that this would result in it no longer having any Shares or Cell Shares (as applicable) in issue.

6.2.5 A Variable Capital Company or a Cell that fails to comply with the requirements in this Regulation 6.2 is liable to a fine, not exceeding the amount set out in Appendix 2.

6.3 Distributions

6.3.1 A Distribution by a Variable Capital Company may be made in respect of Shares or Cell Shares by reference only to the Net Asset Value of the Variable Capital Company or the relevant Cell, as applicable.

6.3.2 A Variable Capital Company or Cell thereof may make Distributions in respect of the Shares or Cell Shares (as applicable) only to the extent that it has a positive Net Asset Value and the effect of such Distribution would not be to reduce its Net Asset Value to below zero.

6.3.3 Cellular Distributions may be made in respect of Cell Shares by reference only to the Cellular Assets and liabilities. When determining whether or not an amount is available for the purpose of paying a Cellular Distribution, no account shall be taken of:

- (a) the profits and losses, or the assets and liabilities, attributable to any other Cell of the Variable Capital Company; or
- (b) profits and losses, or assets and liabilities attributable to Non-Cellular Assets.

6.3.4 Where a Distribution, or part of a Distribution, made by a Variable Capital Company, or any of its Cells, to any of its Shareholders is made in contravention of this Regulation 6.3 and, at the time of the Distribution, a Shareholder knows or has reasonable grounds for believing that it is so made, the Shareholder is liable to repay it, or that part of it, to the Variable Capital Company or Cell, an amount equal to the value of the Distribution, or that part, at that time.

6.3.5 A Variable Capital Company or a Cell that makes a Distribution in contravention of this Regulation 6.3 is liable to a fine, as set out in Appendix 2.

6.4 Reduction of share capital

6.4.1 A Variable Capital Company may reduce its share capital or the share capital of a Cell if authorised by Special Resolution and its Articles of Association.

6.4.2 Any reduction of share capital by a Variable Capital Company, or that of a Cell, that would result in the Net Asset Value of the Variable Capital Company or the Cell (as applicable) falling below zero or that shall cause the Variable Capital Company or the Cell (as applicable) to be balance sheet insolvent shall be carried out in accordance with the requirements, duties and concomitant consequences under the Relevant Laws.

6.5 Registers and records of Shareholders and debenture holders

6.5.1 The provisions of Chapter 5 of Part 7 of the Companies Law apply to a Variable Capital Company, provided that:

- (a) reference to a “Share” and to a “Shareholder” therein shall include reference to a Cell Share and Cell Shareholder;
- (b) reference to a “debenture” and to a “debenture holder” therein shall include reference to a debenture issued in respect of a Cell and a holder thereof; and
- (c) in Article 50(3) of the Companies Law the reference to a fourteen (14) day period shall be deemed to be a reference to such period specified in the Articles of Association or, in the absence of such period, fourteen (14) days.

6.5.2 The registers of Shareholders and debenture holders of a Variable Capital Company shall be readily searchable by reference to an account of a Shareholder or debenture holder in which the interests of a Shareholder or a debenture holder can be separately identified, either in respect of the Variable Capital Company, or in respect of a Cell.

6.5.3 The records and accounts of a Variable Capital Company shall ensure that the assets and liabilities relating to the Variable Capital Company, or that of a Cell, are segregated from other Cells and that the Net Asset Value thereof is reflected proportionally to the interests held by each Shareholder or debenture holder of the Variable Capital Company or the relevant Cell:

- (a) in the account of each Shareholder or debenture holder of the Variable Capital Company or that Cell (as applicable); or
- (b) in such other similar means of separately identifying the interests of that Shareholder or debenture holder in respect of that Cell.

6.5.4 A Variable Capital Company may appoint:

- (a) a Corporate Service Provider; or
- (b) a person approved by the Registrar as suitably experienced and regulated to administer the requirements of Applicable Law, inclusive of the AML Requirements, on behalf of the Variable Company or any of its Cells (each a “Register Keeper”).

6.5.5 In circumstances where a Register Keeper is appointed to keep a register of Shareholders or debenture holders for a Variable Capital Company or any of its Cells:

- (a) the name of the Register Keeper, or its permitted delegate, may be reflected in the register of Shareholders or debenture holders of the Variable Capital Company, acting as nominee of the Shareholders or debenture holders;
- (b) the Register Keeper may keep a sub-register of Shareholders or debenture holders in a manner provided for in the relevant Articles of Association;

- (c) the provisions of Article 50(1) and Article 50(3), as well as Companies Regulation 3.2(b) shall not apply to the extent that the relevant Articles of Association provide otherwise for the registration or transfer of Shares or debentures or any interests relating thereto; and
 - (d) the Variable Capital Company, or (if applicable) an Incorporated Cell thereof, shall ensure that the provisions of Regulation 6.5.1 to 6.5.3 and the applicable provisions of the Relevant Laws are adhered to by the Register Keeper to the extent that they are applicable within the scope of their appointment.
- 6.5.6 Nothing in this Regulation 6.5 shall be taken to remove the Variable Capital Company's obligations, or (if applicable) an Incorporated Cell's obligations, to identify, obtain and maintain information relating to ultimate beneficial owners or Controllers of its Shareholders and Cell Shareholders, and the Registrar's powers to obtain such information, pursuant to Article 61 of the Operating Law or the UBO Regulations.
- 6.6 Cell Share certificates**
- 6.6.1 Except as provided in Regulation 6.6.4, a Variable Capital Company must prepare a Cell Share Certificate as follows:
- (a) in respect of any new Cell Shares issued by it;
 - (b) where a Shareholder has ceased to hold some of its shares in the Variable Capital Company, in respect of the remainder of that holding;
 - (c) where a Variable Capital Company has registered a transfer of Cell Shares made to a person other than the Variable Capital Company:
 - (i) in respect of the Cell Shares transferred to the transferee; and
 - (ii) in respect of any Cell Shares retained by the transferor which were evidenced by any certificates sent to the Company for the purposes of registering the transfer; and
 - (d) in respect of any Cell Shares for which the certificate has already been issued but where it appears to the Company that the certificate needs to be replaced as a result of being lost, stolen or destroyed, or having become damaged or worn out.
- 6.6.2 Cell Share Certificates need only be prepared in the circumstances referred to in Regulation 6.6.1(d) if the Company has received:
- (a) a request for a new Cell Share Certificate;
 - (b) the old Cell Share Certificate, if there is one;
 - (c) such indemnity as the Company may require; and
 - (d) such reasonable sum as the Company may require in respect of the expenses incurred by it in complying with the request.
- 6.6.3 Each Cell Share Certificate must state:
- (a) the Cell to which the Cell Shares relate;
 - (b) the number of Cell Shares, the title to which is evidenced by the Cell Share Certificate;
 - (c) where the Company has more than one class of Cell Shares, the class of Cell Shares, the title to which is evidenced by the Cell Share Certificate; and
 - (d) the name of the holder.

- 6.6.4 Nothing in these Regulations require a Variable Capital Company to prepare a Cell Share Certificate in the following circumstances:
- (a) where the Articles of Association permit issuing Share certification in dematerialised form;
 - (b) where a Shareholder has indicated to the Variable Capital Company in writing that such Shareholder does not wish to receive a Cell Share Certificate;
 - (c) where the circumstances in Regulation 6.6.2 apply; or
 - (d) where legislation applicable in the DIFC provides otherwise for evidencing an entitlement to Shares.

7. DUTIES AND LIABILITIES OF OFFICERS

7.1 In this Regulation 7, an ‘Officer’ means an Officer as defined in the Companies Law, as if references to a “Company” in such definition was to a Variable Capital Company and a Cell thereof (as the context requires).

7.2 Each Officer of a Variable Capital Company shall ensure:

- (a) Cellular Assets are kept separate and separately identifiable from Non-Cellular Assets; and
- (b) Cellular Assets are attributable to the relevant Cell and are separately identifiable from Cellular Assets attributable to other Cells.

7.3 The duty imposed by Regulation 7.2 is not breached by reason only that:

- (a) an Officer of a Variable Capital Company causes or permits Cellular Assets and Non-Cellular Assets to be held:
 - (i) by or through a nominee; or
 - (ii) by a company, the Shares and capital interests of which may be Cellular Assets or Non-Cellular Assets, or a combination of both; or
- (b) an Officer of a Variable Capital Company causes or permits Cellular Assets or Non-Cellular Assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable.

7.4 Subject to Regulation 7.7, in the event an Officer knowingly, recklessly or negligently contravenes Regulation 7.2, each such Officer:

- (a) shall incur personal liability for any loss or damage suffered by the Variable Capital Company as a consequence of the contravention; and
- (b) shall severally have a right of indemnity against the Non-Cellular Assets of the Variable Capital Company, unless that person was fraudulent, reckless or negligent, or acted in bad faith.

7.5 A Variable Capital Company transacting through a Cell shall, for purposes of such transaction, identify or specify to the relevant counterparty(ies) the Cell in respect of which it is transacting, unless that transaction is not a transaction in respect of a particular Cell.

7.6 Subject to Regulation 7.7 if, in contravention of Regulation 7.5, a Variable Capital Company:

- (a) fails to inform a person that they are transacting with a Variable Capital Company, or a Cell thereof, and that person is otherwise unaware that, and has no reasonable grounds to believe that, they are transacting with a Variable Capital Company or a Cell thereof;

- (b) fails to identify or specify the Cell in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which Cell they are transacting with; or
- (c) fails to inform a person that the Cellular Assets of that Cell, and only those assets, are available to pay the obligations and liabilities of that Cell;

then, in any such case each Officer of the Variable Capital Company, or a Cell thereof, in default shall:

- (i) incur personal liability to that person in respect of the transaction; and
- (ii) severally have a right of indemnity against the Non-Cellular Assets of the Variable Capital Company, or a Cell thereof, unless such Officer was fraudulent, or acted in bad faith.

7.7 The Court may relieve an Officer of all or part of such Officer's personal liability thereunder if the Court is satisfied that such Officer ought fairly to be so relieved, because the Officer:

- (a) was not aware of the circumstances giving rise to the personal liability and, in being not so aware, was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) expressly objected and exercised such rights as he had as an Officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to such personal liability.

7.8 Where, pursuant to Regulation 7.7, the Court relieves a person of all or part of his personal liability under Regulation 7.4 or 7.6, the Court may order that the liability in question shall instead be met from such of the:

- (a) assets of the relevant Cell in respect of which the person was dealing or transacting; or
- (b) Non-Cellular Assets of the Variable Capital Company,

as may be specified in the order.

7.9 Any provision in the Articles of Association of a Variable Capital Company, or that of a Cell thereof, or any other contractual provision under which the Variable Capital Company, or a Cell thereof, may be liable, which purports to:

- (a) avoid the incurring of personal liability by an Officer in the circumstances described in Regulations 7.4 or 7.6; or
- (b) indemnify such Officer in respect of conduct which would otherwise disentitle such Officer to an indemnity against Non-Cellular Assets by virtue of Regulations 7.4 or 7.6,

shall be void.

8. RIGHTS OF CREDITORS AND IMPLIED TERMS

8.1 The rights of creditors of a Variable Capital Company, or a Cell thereof, shall correspond with the liabilities provided for in Regulation 8.8.

8.2 In respect of any transaction entered into by or on behalf of a Variable Capital Company, or a Cell thereof:

- (a) no party shall be entitled, whether in any proceedings or by any other means, to use or apply any Cellular Assets attributable to any Cell of the Variable Capital Company to satisfy a liability not attributable to that Cell;

- (b) without prejudice to Regulation 8.2(a), if any party shall succeed by any means in using or applying any Cellular Assets attributable to any Cell of the Variable Capital Company to satisfy a liability not attributable to that Cell, that party shall be liable to the Variable Capital Company to pay a sum equal to the value of the benefit thereby obtained by that party; and
- (c) without prejudice to Regulation 8.2(a), if any party shall succeed in seizing, attaching or otherwise levying execution against any Cellular Assets attributable to any Cell of a Variable Capital Company to satisfy a liability not attributable to that Cell, that party shall:
 - (i) hold those assets and their proceeds in a fiduciary capacity for the Variable Capital Company;
 - (ii) promptly pay or deliver them over (as the case may be) to the Variable Capital Company; and
 - (iii) keep those assets or proceeds separate and identifiable for that purpose,

and each contract to which a Variable Capital Company (or any Cell thereof) is a party shall also have implied in its terms the provisions of this Regulation 8.2.

- 8.3 All sums recovered by a Variable Capital Company, or a Cell thereof, as a result of any such obligation as is described in Regulation 8.2(c) shall be credited against any concurrent liability imposed under Regulation 8.2(b).
- 8.4 Any asset or sum recovered by a Variable Capital Company, or a Cell (in the case of an Incorporated Cell), pursuant to Regulations 8.2(b) or 8.2(c) by any other means in the events referred to in these Regulations shall, after the deduction or payment of any costs of recovery, be applied by the Variable Capital Company, or the Cell (in the case of an Incorporated Cell), so as to compensate the Cell affected.
- 8.5 In the event of any Cellular Assets attributable to a Segregated Cell of a Variable Capital Company being seized, attached, levied or otherwise taken in execution in respect of a liability not attributable to that Segregated Cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the Segregated Cell affected, the Variable Capital Company shall:
 - (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the Segregated Cell affected; and
 - (b) transfer or pay to the Segregated Cell affected, from the Cellular or Non-Cellular Assets to which the liability was attributable, assets or sums sufficient to restore to the Cell affected the value of the assets lost.
- 8.6 Where under Regulation 8.5(b) a Variable Capital Company is obliged to make a transfer or payment from Cellular Assets attributable to a Segregated Cell of the Variable Capital Company, and those assets are insufficient, the Variable Capital Company shall, so far as possible, make up the deficiency from its Non-Cellular Assets.
- 8.7 Without prejudice to the other provisions of this Regulation:
 - (a) Cellular Assets attributable to a particular Cell of a Variable Capital Company:
 - (i) are available only to the creditors of the Variable Capital Company who are creditors in respect of that Cell and who are thereby entitled to have recourse to the Cellular Assets attributable to that Cell; and
 - (ii) shall be absolutely protected from the Shareholders or creditors of the Variable Capital Company who are not Shareholders or creditors in respect of that Cell and who accordingly are not entitled to have recourse to the Cellular Assets attributable to that Cell; and

- (b) Cellular Assets not attributable to a particular Cell of a Variable Capital Company shall not, in such capacity, be used to satisfy any liability attributable to that Cell.
- 8.8 Where any liability arises which is attributable to a particular Cell of a Variable Capital Company:
- (a) only the Cellular Assets attributable to that Cell shall be used to satisfy the liability; and
 - (b) a creditor in respect of that Cell only shall not, in such capacity, be entitled to have recourse against the Cellular Assets of any other Cell or the Non-Cellular Assets of the Variable Capital Company.
- 8.9 Where any liability arises which is not attributable to a particular Cell of a Variable Capital Company:
- (a) the liability shall be satisfied solely from the Variable Capital Company's Non-Cellular Assets; and
 - (b) a creditor in respect of that liability shall not be entitled to have recourse to the Cellular Assets of any Cell of the Variable Capital Company.
- 8.10 The Court, on the application of a Variable Capital Company, a creditor or a Shareholder in dispute with the Variable Capital Company, and without prejudice to any other right or remedy of any person, may issue a declaration in the matter of any dispute relating to any one or more of the following:
- (a) whether any right is or is not in respect of a particular Cell;
 - (b) whether any creditor is or is not a creditor in respect of a particular Cell;
 - (c) whether any liability is or is not attributable to a particular Cell; or
 - (d) the amount to which any liability is limited.
- 8.11 If a Variable Capital Company converts into a Company which is not a Variable Capital Company:
- (a) the foregoing provisions shall not apply to the Company;
 - (b) any Incorporated Cells, to the extent they have not at the relevant time been registered as an independent Company pursuant to Regulation 10.2.1, shall cease to be incorporated; and
 - (c) all of the assets of the Company (including (i) the assets of any Segregated Cells and (ii) the assets of any formerly Incorporated Cells which have ceased to be incorporated pursuant to Regulation 8.11(b)), shall be Non-Cellular Assets which are available for the satisfaction of any liability of the Company.

9. MERGER OR CONSOLIDATION OF CELLS AND TRANSFER OF CELLULAR ASSETS

9.1 A Variable Capital Company shall not:

- (a) transfer a Cellular Asset attributable to a Segregated Cell of the Variable Capital Company to another Segregated Cell of the Variable Capital Company; or
- (b) merge or consolidate a Segregated Cell of the Variable Capital Company with, or into, one or more other Segregated Cells of the Variable Capital Company,

except after:

- (i) giving thirty (30) days' written notice of its intention to apply to the Registrar to register such transfer, or merger or consolidation (as applicable) to each of its creditors and

persons with whom it has an outstanding contract; and

- (ii) publishing a notice in an Appointed Publication of its intention to transfer, or merge or consolidate (as applicable) at a date at least thirty (30) days but not more than forty-five (45) days prior to applying to the Registrar for such transfer, or merger or consolidation (as applicable).

9.2 An application to:

- (a) transfer a Cellular Asset attributable to a Segregated Cell of the Variable Capital Company to another Segregated Cell of the Variable Capital Company; or
- (b) merge or consolidate a Segregated Cell of the Variable Capital Company with, or into, one or more other Segregated Cells of the Variable Capital Company,

shall, in each case, be made by the Variable Capital Company to the Registrar in the prescribed form and accompanied by the documents prescribed by the Registrar, including:

- (i) a Special Resolution:
 - (A) of the shareholders of the transferor and transferee Segregated Cells in the case of a transfer under Regulation 9.1(a) approving such transfer; or
 - (B) each of the merging Segregated Cells in the case of a merger or consolidation under Regulation 9.1(b); and
- (ii) a declaration signed by each Director of the Variable Capital Company confirming that Regulations 9.1(i) and (ii) have been adhered to, and that no objections to the transfer under Regulation 9.1(a) or the merger or consolidation under Regulation 9.1(b) (as applicable) have been raised by any creditor or contracting party of the Variable Capital Company.

9.3 A creditor or contracting party of the Variable Capital Company who objects to the proposed transfer under Regulation 9.1(a) or the merger or consolidation under Regulation 9.1(b) (as applicable), must notify the Variable Capital Company in writing of his, her or its objection within fifteen (15) days from the date on which the notice is published in an Appointed Publication pursuant to Regulation 9.1(ii).

9.4 If a written objection is provided to the Variable Capital Company pursuant to Regulation 9.3, it shall not proceed with the proposed transfer, or merger or consolidation (as applicable) until such objection is withdrawn by the objecting creditor or contracting party, and if such objection is not withdrawn, the objecting creditor or contracting party fails to initiate court proceedings within fifteen (15) days from the date of the written objection.

9.5 If the objecting creditor or contracting party applies to the Court on the grounds that the transfer, or merger or consolidation, or any term of the transfer, or merger or consolidation (as applicable), is or would be unfairly prejudicial to his, her or its interests, the transfer, or merger or consolidation (as applicable) shall remain stayed until the Court renders its final judgement.

9.6 Any such application to the Court under Regulation 9.5 must be made within the period specified in Regulation 9.4 and a copy of the application must be submitted to the Registrar by the creditor or contracting party, without delay and prior to the expiry of the period specified in Regulation 9.4.

9.7 If no written objection is raised by a creditor or a contracting party within the period specified in Regulation 9.3 or such creditor or contracting party fails to initiate court proceedings within the period specified in Regulation 9.4, the proposed transfer, or merger or consolidation (as applicable) shall become effective upon registration by the Registrar.

9.8 The Registrar shall approve the transfer, or merger or consolidation (as applicable) if he is satisfied that the requirements in this Regulation 9 are complied with.

9.9 Any transfer of a Cellular Asset attributable to an Incorporated Cell of a Variable Capital Company to another Incorporated Cell of the Variable Capital Company shall be subject to the statutory duties, approval and disposal requirements between separate legal persons as required by the Relevant Laws and the relevant Articles of Association.

9.10 Any merger or consolidation of Incorporated Cells of a Variable Capital Company shall be subject to the provisions of Part 8 of the Companies Law and the requirements set out in Companies Regulation 5.

10. CONVERSION, CONTINUATION OR TRANSFER OF A VARIABLE CAPITAL COMPANY OR AN INCORPORATED CELL

10.1 Conversion or continuation of a Variable Capital Company

10.1.1 Subject to the provisions of these Regulations and Article 132(1) of the Companies Law:

- (a) an existing Variable Capital Company with Segregated Cells may convert, if so authorised by its Articles of Association and by a Special Resolution, into a Variable Capital Company with Incorporated Cells;
- (b) an existing Variable Capital Company with Incorporated Cells may convert, if so authorised by its Articles of Association and by a Special Resolution, into a Variable Capital Company with Segregated Cells;
- (c) an existing Company may, subject to Regulation 10.1.3, if so authorised by its Articles of Association and by a Special Resolution, convert into a Variable Capital Company with either Segregated Cells or Incorporated Cells after:
 - (i) giving thirty (30) days' notice of its intention to apply to the Registrar for such conversion to each of its creditors and persons with whom it has an outstanding contract; and
 - (ii) publishing a notice in an Appointed Publication of its intention to convert at a date at least thirty (30) days but not more than forty-five (45) days prior to applying to the Registrar for such conversion;
- (d) an existing Variable Capital Company, may, subject to Regulation 10.1.3, and if so authorised by its Articles of Association and by a Special Resolution, convert into a Company which is not a Variable Capital Company after:
 - (i) giving thirty (30) days' notice of its intention to apply to the Registrar for such conversion to each of its creditors and persons with whom it has an outstanding contract; and
 - (ii) publishing a notice in an Appointed Publication of its intention to convert at a date at least thirty (30) days but not more than forty-five (45) days prior to applying to the Registrar for such conversion;
- (e) subject to Article 140 of the Companies Law, a Foreign Company may be continued as a Variable Capital Company with either Segregated Cells or Incorporated Cells inside the DIFC; or
- (f) subject to the laws of the jurisdiction concerned, a Variable Capital Company may be continued as a Foreign Company in a foreign jurisdiction.

10.1.2 An application to convert:

- (a) an existing Company into a Variable Capital Company in the DIFC or a Variable Capital Company into a Company in the DIFC;
- (b) a Variable Capital Company with Segregated Cells into a Variable Capital Company with Incorporated Cells or vice versa; or
- (c) a Foreign Company into a Variable Capital Company in the DIFC,

shall be made to the Registrar in the prescribed form and accompanied by the proposed Articles of Association to be adopted by the existing Company in order to comply with the requirements of Articles of Association applicable to a Variable Capital Company of the applicable type.

10.1.3 If a:

- (a) Company applies under Regulation 10.1.1(c) to be registered as a Variable Capital Company; or
- (b) Variable Capital Company applies under Regulation 10.1.1(c) to be registered as a Company which is not a Variable Capital Company,

a creditor or contracting party of the Company or Variable Capital Company, or a Cell thereof, (as applicable) who objects to the proposed registration, may apply to the Court on the grounds that the registration, or any term of the registration, is or would be unfairly prejudicial to his, her or its interests.

10.1.4 Any such application to the Court under Regulation 10.1.3 must be made within the Court Application Period and a copy of the application must be submitted to the Registrar by the creditor, contracting party or Cell that made the application, without delay and prior to the expiry of the Court Application Period.

10.2 **Conversion or continuation of an Incorporated Cell**

10.2.1 An Incorporated Cell may, and if so required by its Variable Capital Company shall, apply to the Registrar to be registered as a Company independent of the Variable Capital Company of which it is a Cell. Such application shall be made to the Registrar in the prescribed form and accompanied by the documentation required to be lodged in connection with an application for the incorporation or continuation of a Company.

10.2.2 The Incorporated Cell or Variable Capital Company as the case may be, shall approve such registration or requirement by a Special Resolution.

10.2.3 If an Incorporated Cell applies, or is required to apply, under Regulation 10.2.1 to be registered as an independent Company, a Shareholder of the Incorporated Cell or the Incorporated Cell who objects to the proposed registration, may apply to the Court on the grounds that the registration, or any term of the registration, is or would be unfairly prejudicial to his, her or its interests. Any application to the Court must be made within thirty (30) days of the application, or the making of the requirement to apply under Regulation 10.2.1.

10.2.4 If an Incorporated Cell is registered as an independent Company under this Regulation, upon such registration:

- (a) the independent Company shall be permitted to have the same registered office as the Variable Capital Company under which it had been an Incorporated Cell;
- (b) unless otherwise provided by its Articles of Association, the first directors of the independent Company shall be the directors of the Incorporated Cell immediately prior to the time of registration;

- (c) the holders of the Cell Shares in relation to the former Incorporated Cell shall be the Shareholders of the independent Company and the Share capital attributable to those Shares shall be the Share capital of the independent Company;
- (d) all the rights and liabilities of the Incorporated Cell immediately before registration shall continue as rights and liabilities of the independent Company;
- (e) any action or proceeding which was commenced against the Incorporated Cell before registration as an independent Company shall continue against the independent Company; and
- (f) any action or proceeding that was commenced by the Incorporated Cell before registration as an independent Company shall continue as an action or proceeding commenced by the independent Company.

10.3 Transfer of an Incorporated Cell to another Variable Capital Company

10.3.1 An Incorporated Cell may become an Incorporated Cell of another Variable Capital Company if:

- (a) a written agreement has been entered into between the transferor Variable Capital Company and the transferee Variable Capital Company, setting out the terms of the transfer (a "Transfer Agreement");
- (b) the Transfer Agreement is provisionally approved:
 - (i) by the board of Directors of the transferor Variable Capital Company;
 - (ii) subject to any higher threshold specified in the Articles of Association of the transferee Variable Capital Company, by a Special Resolution adopted by the transferee Variable Capital Company; and
 - (iii) subject to any higher threshold specified in the Articles of Association of the transferor Variable Capital Company, by a Special Resolution adopted by the transferor Variable Capital Company; and
- (c) the additional procedures specified in Regulation 10.3.2 and Regulation 10.3.3 are duly completed.

10.3.2 An application to transfer the Incorporated Cell to another Variable Capital Company shall be made by the transferor Variable Capital Company to the Registrar in the prescribed form. In addition, each Director of the transferor Variable Capital Company who approved the Transfer Agreement shall, as soon as possible after the Transfer Agreement has been provisionally approved in accordance with Regulation 10.3.1(b), sign a declaration stating that:

- (a) the Director believes on reasonable grounds that the Incorporated Cell that is to be transferred is able to discharge its liabilities as they fall due;
- (b) the transfer has been provisionally approved in accordance with Regulation 10.3.1(b);
- (c) there are no provisions in the Articles of Association of the Incorporated Cell, transferee Variable Capital Company, or transferor Variable Capital Company, that are inconsistent with the transfer; and
- (d) ensure that a copy of that declaration is delivered to the transferee Variable Capital Company.

10.3.3 The transferee Variable Capital Company shall, within twenty-one (21) days of receiving a copy of the declaration referred to in Regulation 10.3.2, deliver to the Registrar:

- (a) a copy of the signed Transfer Agreement;

- (b) copies of the documents referred to in Regulation 10.3.1(b) as applicable;
 - (c) a copy of the draft Articles of Association of the Incorporated Cell that are to be in force once the transfer is completed; and
 - (d) a copy of the declaration by the Directors of the transferor Incorporated Cell referred to in Regulation 10.3.2;
- 10.3.4 The Registrar shall approve the transfer of the Incorporated Cell if he is satisfied that the requirements in this Regulation 10 are complied with.
- 10.3.5 If the Registrar approves the transfer of the Incorporated Cell, the Registrar shall give effect to the transfer by:
- (a) issuing a certificate of incorporation to the Incorporated Cell;
 - (b) recording it as an Incorporated Cell of the transferee Variable Capital Company; and
 - (c) recording that the Incorporated Cell has ceased to be an Incorporated Cell of the transferor Variable Capital Company.
- 10.3.6 All the rights and liabilities of the Incorporated Cell before the transfer of the Incorporated Cell shall continue to be rights and liabilities of that Incorporated Cell, and any actions or proceedings by or against the Incorporated Cell shall continue to be actions or proceedings by or against that Incorporated Cell.

11. CONDUCT OF BUSINESS

- 11.1.1 A Variable Capital Company's registered office for the purpose of Article 13 of the Operating Law shall either be:
- (a) the registered office in the DIFC of a Registered Person that is, or will be after incorporation, an Affiliate of the Variable Capital Company, provided that such registered office shall not be a premises designated for any retail purposes in the DIFC; or
 - (b) the registered office of a Corporate Service Provider appointed for this purpose by:
 - (i) the person(s) responsible for the incorporation or continuation of the Variable Capital Company, acting on behalf of the Variable Capital Company to be incorporated or continued in the DIFC; or
 - (ii) the Variable Capital Company.
- 11.1.2 A Corporate Service Provider whose registered office is appointed under Regulation 11.1.1(b) shall consent in writing to such appointment in a format prescribed by the Registrar.
- 11.1.3 Where the registered office of a Variable Capital Company is, pursuant to the provisions of Regulation 11.1.1 the same as that of a Registered Person, it or the applicant(s) for its incorporation or continuation shall be required to submit proof to the Registrar that consent to share the premises has been obtained from the Registered Person.
- 11.2 **Operation in the DIFC**
- Article 13(3) of the Operating Law (conducting principal business activity in the DIFC) and Regulation 2.1.4 of the Companies Regulations (establishment of operations in the DIFC) shall not apply to a Variable Capital Company.
- 11.3 **Employees**

A Variable Capital Company shall not be permitted to employ any Employees.

11.4 Accounting Records

11.4.1 A Variable Capital Company shall maintain Accounting Records and prepare accounts as required under the Companies Law.

11.4.2 In the case of a Variable Capital Company with Incorporated Cells, the Variable Capital Company shall maintain Accounting Records and prepare accounts in relation to the Incorporated Cell in accordance with the requirements under the Companies Law.

11.4.3 A Shareholder of an Incorporated Cell shall only be entitled to be provided with accounts that relate to the Incorporated Cell in which it is a Shareholder, unless otherwise provided in the Articles of Association of the Variable Capital Company and the relevant Incorporated Cells.

11.5 Reporting and Disclosure

11.5.1 The Confirmation Statement filed by a Variable Capital Company shall:

- (a) comply with the requirements of the Relevant Laws as they apply to a Private Company;
- (b) confirm that it continues to meet the qualifying requirements set out at Regulation 3.1 (as applicable)
- (c) carry out all compliance, governance and regulatory obligations, filings or other requirements pursuant to any requirements of Applicable Law; and
- (d) in the case of a Variable Capital Company with Incorporated Cells, that the Incorporated Cells comply with the above requirements at Regulation 11.5.1(a) – 11.5.1(c).

11.5.2 Any report, disclosure or confirmation made by a Corporate Service Provider on behalf of a Variable Capital Company pursuant to this Regulation 11.5 shall be done as the Variable Capital Company's agent and the Corporate Service Provider may require self-certification of the content by the members of the Variable Capital Company's board of directors. The Corporate Service Provider shall not be liable to the Registrar in respect of any such report, disclosure or confirmation where it has acted with due care in ensuring their contents are correct and has not omitted any material facts or circumstances of which the Corporate Service Provider is aware of, or ought reasonably be aware of.

11.5.3 Without limiting the generality of the application of Regulation 11.6, the Registrar may revoke any arrangement with a Corporate Service Provider under Regulation 11.6 in circumstances where a Corporate Service Provider has acted in contravention of Regulation 11.5.2.

11.6 Corporate Service Providers

11.6.1 The Registrar may enter into an arrangement with a Corporate Service Provider under which:

- (a) any document, form or fee required by these Regulations or the Relevant Laws to be lodged with or paid to the Registrar for the incorporation or continuation of a Variable Capital Company in the DIFC or the incorporation of an Incorporated Cell, may be lodged with or paid to the Registrar by the Corporate Service Provider; and
- (b) the Corporate Service Provider is required to perform some or all assessments, checks and verifications required under these Regulations or the Relevant Laws to ascertain and confirm whether an applicant:
 - (i) adheres to the Relevant Laws and all AML Requirements, the UBO Regulations and other requirements of the Applicable Laws;
 - (ii) maintains Accounting Records in accordance with Regulation 11.3;

(iii) where relevant, has a Qualifying Purpose; and

(iv) to provide a certification of such matters to the Registrar in an agreed format.

11.6.2 The Registrar in the performance of any function under the Relevant Laws may in good faith rely, without further enquiry, upon the certification of a Corporate Service Provider given under Regulation 11.6.1 provided that a Corporate Service Provider shall not be liable to the Registrar for doing so, unless it has acted in breach of its agreed obligations to the Registrar, in which case (without limiting the generality of its application) Regulation 11.6.3 shall apply.

11.6.3 The Registrar may:

- (a) revoke any arrangement entered into with a Corporate Service Provider under Regulation 11.6.1 if the Registrar is satisfied that the Corporate Service Provider has acted in breach of its agreed obligations to the Registrar;
- (b) inform the DFSA of any facts or circumstances that may amount to a breach of a Corporate Service Provider's regulatory duties under applicable law; and
- (c) inform law enforcement agencies of any alleged or suspected criminal offences on the part of a Corporate Service Provider or its clients.

11.6.4 Where an applicant is represented by a Corporate Service Provider in an application to incorporate or continue a Variable Capital Company, the Registrar shall be permitted to communicate directly with such Corporate Service Provider with no need to directly communicate with the applicant pursuant to these Regulations.

11.7 **Revocation of status**

11.7.1 If a Variable Capital Company fails to comply with these Regulations, the Registrar may, after following the Decision-Making Procedures and in the case of a Variable Capital Company authorised by the DFSA to provide Financial Services, notifying the DFSA, revoke its status as a Variable Capital Company. The notice shall specify the non-compliance, the corrective actions required, and the prescribed period within which the non-compliance must be rectified. If the Variable Capital Company fails to take the necessary corrective actions within the prescribed period, the Registrar may revoke, suspend or vary the terms of any Licence issued to the Variable Capital Company.

11.7.2 If a Variable Capital Company's status is revoked under Regulation 11.7.1, it shall:

- (a) cease to be a Variable Capital Company;
- (b) no longer be entitled to the benefit of any exemption or concession (including as to fees) in these Regulations; and
- (c) be required to adhere to all the requirements of the Relevant Laws.

12. **WINDING UP**

12.1 A Variable Capital Company shall not be wound up until after all of its Incorporated Cells are either transferred out of the Variable Capital Company, converted into another type of company or wound up in accordance with the requirements in the DIFC Insolvency Law and the Insolvency Regulations.

12.2 The DIFC Insolvency Law and the Insolvency Regulations apply with all necessary adaptations to a Variable Capital Company with Segregated Cells. For the purposes of such application, Regulation 9 of the Insolvency Regulations applies as if:

- (a) References to a Protected Cell Company were references to a Variable Capital Company with Segregated Cells; and
- (b) regulations 9.3.1(e) and 9.3.3(d) were omitted.

13. FEES

For the purposes of Article 151(2)(h) of the Companies Law, regulation 9.1 of the Companies Regulations and regulation 2.31 of the Operating Regulations, the fees in respect of matters set out in Appendix 1 of these regulations shall be paid to the Registrar instead of the fees specified in the Relevant Laws.

APPENDIX 1 - FEES

Table of fees

| Upon receipt by the Registrar: | Fee (USD) |
|---|-----------|
| Application for incorporation of a Variable Capital Company | \$100 |
| Application for incorporation of an Incorporated Cell of a Variable Capital Company | \$100 |
| Application for grant or renewal of a Licence of a Variable Capital Company | \$1,000 |
| Application for grant or renewal of a Licence of an Incorporated Cell of a Variable Capital Company | \$1,000 |
| Application for formation of a Segregated Cell (annual fee) | \$300 |
| Lodgement of a Confirmation Statement | \$300 |
| Application to continue incorporation of a Variable Capital Company in the DIFC | \$1,000 |
| Application to transfer incorporation of a Variable Capital Company from the DIFC | \$1,000 |

APPENDIX 2 – ADMINISTRATIVE FINES

| <i>Regulation</i> | <i>Contravention</i> | <i>Maximum Fine (USD)</i> |
|--------------------------|--|----------------------------------|
| 6.2.5 | Variable Capital Company or Cell failing to comply with requirements relating to the issue, redemption or purchase of its own Shares | \$15,000 |
| 6.3.5 | Variable Capital Company or Cell making an unlawful Distribution | \$20,000 |