Decks cleared for variable capital companies in India

The VCC will be incorporated in the form of a company and shall be governed by the Registrar of VCCs akin to Registrar of Companies (in India), with IFSCA playing the role of Registrar.

A VCC shall be able to set up one or more sub-funds, without the prior approval of the Registrar of VCC which shall reduce the launch time of the sub-fund. Singapore has succeeded with the VCC model, with close to 300 VCCs established since January 2020.

"The expert committee has relied heavily on global experience of Irish UCITS, Lux SICAVs and the recently introduced fund regime in Singapore which has been quite successful. The legal framework recommended is broadly in line with the suggestions of Krishnan Committee but with a clear demarcation of regulations relating to incorporation of the entity, suggesting keeping regulations relating to fund management within IFSCA's FME rules," said Sunil Gidwani, partner, Nangia Andersen.

The IFSCA had set up an expert committee under the chairpersonship of KP Krishnan in September 2020 to examine the feasibility of the VCC in India.

"As per FME regulations 2022, the same fund cannot have close-ended and open-ended schemes. However, under a VCC structure, both open- and close-ended sub-funds would be allowed which will save cost for fund managers. The funds may be allowed to convert from open- to close-ended, and vice versa, an option which is not available in the present IFSC fund regime," said Neha Malviya, chief growth officer, SuperNAV, a fund accounting firm.

Another advantage of a VCC would be legal ring-fencing of assets and liabilities of each sub-fund. This would mean that the investors and creditors of a particular sub-fund may claim their returns and fulfil their claims out of the assets of that sub-fund only, and not from the other assets of the VCC or from the assets of any other sub-fund, said Malviya.

"VCC will allow multiple ring-fenced sub-funds under an umbrella fund for open ended or closed funds in line with global practice. There have been several complications and inconsistencies in the context of European funds investing in India regarding treating the umbrella fund as a taxable entity as compared to each sub-fund as a taxable entity. Both the committees' suggestions to treat each sub-fund as a taxable entity would help simplify tax positions and make calculations of NAV at sub-fund level more efficient," said Gidwani.

The expert committee has suggested that tax residency certificates be issued at the sub-fund level to ensure they can take advantage of DTAAs. It is not in favour of extending the IBC to VCCs, which are not notified financial service providers u/s 227 of IBC as it would make a different insolvency resolution regime applicable to VCCs than what is applicable to other fund entities. "An important aspect is the possibility of subsidising the set up and operational costs, as is done by some of the leading IFSCs. The way ahead would be to launch competitive products such as the NSE UDR and listed warrants," said Viraj Kulkarni, founder, Pivot Management Consulting.

Supply chain woes to keep airfares elevated

Sources said that Air India has seven aircraft on ground due to maintenance issues. A senior official at one of the large domestic carriers, pointed out that the supplier lacks adequate capacity to meet the global requirement of engines and

IFSCA TO SUPERVISE OPERATIONS

Decks cleared for variable capital companies in India

To be incorporated in international financial centres

ASHLEY COUTINHO
Mumbai, December 2

A NINE-MEMBER EXPERT committee, headed by MS Sahoo, has drafted a legal framework for allowing Variable Capital Company (VCC) structure in the International Financial Centres (IFSCs).

The committee has proposed a legal framework within the International Financial Services Centres Authority (IFSCA) Act, 2019, which provides for one implementing agency, IFSCA. The agency registers VCCs as body corporates, as well as authorises and supervises their operations.

The committee has said that VCCs be introduced as a vehicle for investment management in IFSCs. The committee has laid down key principles which include ensuring VCCs are low-cost structures which attract lower governance requirements; having a principle-based legislation with flexibility to introduce subordinate legislation and close alignment with the requirements under the fund management entity (FME) regulations that would apply to funds housed within the VCC.

Funds in India pool through limited liability companies are governed under the Companies Act, 2013 or under the Limited Liability Partnership Act or trusts governed under the Indian Trusts Act, 1882. Such structures may not be ideal for fund management activities. Alternative investment funds (AIFs) operate in IFSC under the trust structure. The VCC structure aims at doing away with the limitations of these three structures. VCC structures are globally recognised, finding their presence in Singapore, United Kingdom, Mauritius, Ireland, Luxembourg and Cayman Islands.

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