

**Comments for draft International Financial Services Centres Authority (Amendment) Bill, 2026 for Variable Capital Companies**

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
	<b>7</b>	<b>13A</b>			
1		(f)	“charge” means an interest or lien created on the property or assets of a variable capital company as security;	“charge” means an interest or lien created on the property or assets of the variable capital company as security <u>and includes a mortgage</u> ;	We suggest including “mortgage” within the definition of “charge” to align the Variable Capital Company framework with global practices. In many jurisdictions, mortgages are expressly recognized as a subset of charges, and this inclusion ensures consistency, clarity and harmonization with international standards on security interests.
2		(za)	Insertion	"Economically Material Variation" means a variation of the rights attached to participating shares of any class or sub-class that falls within the exhaustive list of variations specified by the Authority by regulations made under this Act.	We have suggested insertion of the term in relation to Section 130 (3) and (4). These provisions permit Participating Shareholders holding at least 15% of the total Participating Share Capital in a Sub-Fund to apply to the NCLT for cancellation or variation of rights. However, this mechanism would be operationally unfeasible for a Variable Capital Company to implement in respect of amendments at the Sub-Fund level that are not contributor-specific but rather pertain to overall operational matters such

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
					as changes in the commitment period, fund term, or similar provisions.
3		(zb)	Insertion	"Operational Variation" means any variation of the rights attached to participating shares of any class or sub-class that does not constitute an economically material variation.	Please refer our rationale to point above provided for "Economically Material Variation".
	<b>10</b>	<b>13A</b>			
4			"Variable capital company" means a body corporate referred to in section 13B and incorporated as such under section 13E		
5			Insertion	13 AA) An existing trust or body corporate may get converted into or restructured as the Variable Capital Company (VCC) subject to such conditions and in such manner as may be prescribed by the regulations.	We have proposed insertion of term as an option to an existing trust or body corporate to get converted into a VCC and prescribing the relevant eligibility criteria, conversion timeline, requisite approvals etc., shall provide the existing fund structures an opportunity to avail the benefits of the VCC structure. There may be some amendment required to income tax act where these conversions are tax neutral and does not trigger adverse tax incidence.
6			Insertion	13AB) A foreign incorporated VCC may get redomiciled or relocated into an International Financial Services Centre (IFSC) jurisdiction subject	We have proposed insertion of clause with reference to relocation/redomiciling of foreign incorporated VCC into IFSCA shall

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
				to such conditions and in such manner as may be prescribed.	help the foreign VCC structures get an exposure of the IFSC and will help in the bringing foreign funds into the IFSC.
	<b>11</b>	<b>13B</b>			
7		(d)	VCC may alter participating share capital at any time as per the investment strategy of each sub-fund, wherein such alteration shall not be disadvantageous to the participating shareholders of such sub-fund.	A VCC may alter participating share capital at any time as per the investment strategy of each sub-fund, wherein such alteration shall not be disadvantageous to the participating shareholders of such sub-fund subject to the constitutive documents of sub-fund.	We have included a drafting suggestion from transparency and governance standpoint. The sub-fund may alter share capital in accordance with the process set out in the respective constitutive documents of sub-fund. .
	<b>11</b>	<b>13C</b>			
8		(3)(b)	A variable capital company shall apportion any of its incomes, expenses, assets, or liabilities, that are not attributable to any particular sub-fund, amongst all sub-funds in a manner that it considers fair to the members of the sub-funds, subject to such requirements as may be specified by regulations	A variable capital company shall apportion any of its incomes, expenses, assets, or liabilities, that are not attributable to any particular sub-fund, amongst all sub-funds in a manner that it considers fair to the <del>members</del> <u>participating shareholders</u> of the sub-funds, subject to such requirements as may be specified by regulations	We suggested a drafting edits. We understand the reference to “member” is meant to refer to “participating shareholder”.
	13	<b>13F</b>			
9		(1)(d)	The memorandum of a variable capital company shall state that the liability of its members is limited to	The memorandum of a variable capital company shall state that the liability of members is limited to	We understand that this clause refers to the Management Shares of the Variable Capital Company held by the Management

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
			the amount unpaid, if any, on the shares held by them	the amount unpaid, if any, on the <u>management shares</u> held by them	Shareholders. Clarity is required to confirm that “shares” in this clause means Management Shares, since any ambiguity with Participating Shares could result in the giveback provisions applicable to Investors under a Sub-Fund being overridden.
	15	<b>13K</b>			
10		(4)	A variable capital company may change its registered office from one International Financial Services Centre to another, after the date of incorporation, in accordance with such conditions as may be specified by regulations.	A variable capital company may change its registered office from one International Financial Services Centre to another <u>or within the IFSC</u> after the date of incorporation, in accordance with such conditions as may be specified by regulations.	We have included a drafting edit to cover change of address in GIFT city as well.
	<b>15</b>	<b>13M</b>			
11			Sub-fund of a particular kind may be converted into any other kind of sub-fund, subject to such conditions and in such manner as may be specified by regulations.  Provided that the variable capital company shall provide an exit offer to such members of the sub-fund who dissent to such conversion:	Sub-fund of a particular kind may be converted into any other kind of sub-fund, subject to such conditions and in such manner as may be specified by regulations.  Provided that the variable capital company shall provide an exit offer to such members of the sub-fund who dissent to such conversion, <u>if more than 25% of the Participating Shareholders by value dissent.</u>	We suggest exit offers shall be imposed on the Variable Capital Company only in the event that dissenting shareholder exceed 25% of the total Investors by value. In the case of close-ended Sub-Funds, where underlying capital has already been deployed into illiquid investments, the imposition of a mandatory exit offer without defined thresholds would be operationally challenging.

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
			Provided further that where such conversion results in variation of rights of the members of such sub-fund or any other sub-fund, sub-section (3) of section 13O of this Act shall be applicable:		
	<b>16</b>	<b>130</b>			
12		<b>(1)</b>	Explanation: (a) "management share capital" means that part of the share capital, which is issued by the variable capital company to the management shareholders, in such form and such manner as may be specified by regulations, wherein management shareholders shall,— (i) have the right to vote in general meeting of members in accordance with sub-section (1) of section 13P; (ii) not have the right to receive dividend;	(ii) not have the right to receive <del>dividend</del> <u>profit</u> ;	We suggest including this clarification to avoid confusion.
13		<b>(3)&amp;(4)</b>	(3) Where the share capital of a variable capital company is divided into different classes or sub-classes of participating shares, the rights	<u>(3)</u> Where the share capital of a variable capital company is divided into different classes or sub-classes of participating shares, the rights attached to participating shares of any class or sub-class, as the	The current provision applies a uniform three-fourths consent threshold across all variations of participating share rights, irrespective of their economic significance

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
			<p>attached to participating shares of any class or sub-class, as the case may be, may be varied with the written consent of the members holding not less than three-fourth of the issued participating shares of that class or sub-class and subject to a requirement to provide an exit offer to a dissenting shareholder and such other conditions, as may be specified by regulations:</p> <p>Provided that where the holders of not less than fifteen per cent of the issued participating shares of a class or sub-class do not consent to such variation, then provisions of sub-sections (2), (3) and (4) of section 48 of Companies Act, 2013 shall, mutatis mutandis, apply for the purpose of cancellation of variation of rights of the class or sub-class of participating shareholders:</p>	<p>case may be, may be varied <u>in accordance with the following procedure:</u></p> <p><u>(a) a notice of the proposed variation of rights shall be served upon all holders of participating shares of the relevant class or sub-class in such form and manner as may be specified by regulations;</u></p> <p><u>(b) any member who objects to the proposed variation shall lodge a written objection with the variable capital company within such time limit as may be specified by regulations, failing which such member shall be deemed to have consented to the proposed variation;</u></p> <p><u>(c) the proposed variation shall be deemed to have received the consent of members holding participating shares of the relevant class or sub-class if, upon expiry of the time limit referred to in clause (b)—</u></p> <p><u>_____ (i) where Operational Variation has occurred, written objections have not been received from members holding, in aggregate, more than one-fourth of the issued participating shares of that class or sub-class; or</u></p> <p><u>_____ (ii) where Economically Material Variation has occurred, no written objection has been received from any member holding participating shares of that class or sub-class;</u></p>	<p>to investors. This one-size-fits-all approach inadequately protects shareholders against changes that fundamentally alter their economic entitlements such as modifications to redemption rights, fee structures, etc., while simultaneously imposing disproportionate procedural burdens on routine operational adjustments.</p> <p>We suggest a statutory bifurcation into Economically Material Variations and Operational Variations, with calibrated consent thresholds and exit offer obligations triggered only for the former, ensures that investor protection mechanisms are proportionate and operationally efficient as in close-ended sub-funds, underlying capital is already deployed into illiquid investments, making a mandatory exit offer operationally unfeasible.</p>

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			<p>(4) Participating shares of one class or sub-class may be converted into another class or sub-class of participating shares, subject to such conditions as may be specified by regulations</p> <p>Provided that the variable capital company shall provide exit offer to such members who dissent to such conversion:</p> <p>Provided further that where such conversion results in variation of rights of holders of participating shares of such class or sub-class or any other class or sub-class, sub-section (3) of this section shall apply.</p>	<p><u>Provided that, where objections are received from Participating Shareholders meeting the specified threshold under this clause, the Variable Capital Company shall be obligated to extend an exit offer to all dissenting Shareholders prior to effecting such variation.</u></p> <p><u>Provided that in case of Economically Material variation the participating shareholders of a class or sub-class do not consent to such variation, then provisions of sub-sections (2), (3) and (4) of section 48 of the Companies Act, 2013 shall, mutatis mutandis, apply for the purpose of cancellation of variation of rights of the class or sub-class of participating shareholders.</u></p>	
14		(5)	Shareholders shall have no interest in the property of the variable capital company.	<u>Participating</u> shareholders shall have no interest in the property of the variable capital company.	We suggest including this clarification to avoid confusion arising from the use of multiple nomenclatures.
	<b>19</b>	<b>13Q</b>			
15		(1)	Where any further calls are made on the participating shares of a class or sub-class, such calls shall be made on a uniform basis on all	Where any further calls are made on the participating shares of a class or sub-class, such calls shall be made on a uniform basis on all participating	The fund expenses may not be allocated to the participating shareholders on a uniform basis and may require capital calls on differential basis. We can consider

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			participating shares falling under that class or sub-class:	shares falling under that class or sub-class <u>except as otherwise provided under the regulations:</u>	<p>adding clarification to the regulations stating that capital calls will be made on a uniform basis on all participating shares falling under a class or sub-class for making portfolio investment.</p> <p>Further, the Fund Management Regulations permit co-investment through issuance of separate class of units. The investors may not participate in the co-investment in the same ratio as capital commitment. Therefore, making further calls on uniform basis might not be possible in this case within the same class for the co-investors within that class.</p>
16		(3)	A member of the variable capital company shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (2) until that amount has been called up.	A member of the variable capital company shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (2) until that amount has been called up <u>and any amount so paid shall be temporarily invested as per the regulations and not deployed for portfolio investments until it is called up from the other participating shareholders.</u>	We understand that the existing provision covers situation wherein a participating shareholder may make upfront contribution to their entire capital commitment. However, to ensure parity and safeguard equitable treatment among investors, we suggest that it should be explicitly clarified that such upfront contributions will not be deployed into portfolio companies until all other participating shareholders have also

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
					remitted their corresponding amounts. This approach ensures that no shareholder gains an unintended advantage by virtue of early payment and that portfolio investments are made only when the full class or sub-class of participating shares has contributed.
	<b>20</b>	<b>13T</b>			
17		(1)	The shares and debentures of variable capital company shall be movable property.	The shares and debentures of the variable capital company shall be movable property <u>and transferable in the manner provided by the articles and subject to the regulations.</u>	We suggest explicitly mentioning about the transferability of the shares and debentures in the prescribed manner removes ambiguity and aligns it with global practices.
18			Insertion	<u>(2) The variable capital company shall register a transfer of shares or debentures after delivery of a proper instrument of transfer to the variable capital company:</u> <u>Provided that sub-section (2) does not affect any power of the variable capital company to register as member in the variable capital company or debenture holder any person to whom the right to any shares or debentures of the variable capital company has been transmitted by operation of law.</u>	Mandating that a variable capital company register a transfer of shares or debentures only upon delivery of a proper instrument of transfer ensures procedural integrity and legal certainty in the transfer process. It provides documentary evidence of the transferee's title, prevents fraudulent or unauthorized transfers and safeguards the rights of both transferor and transferee.  Further, we suggest adding a proviso to cover transmission of right to shares or debentures.

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
19			Insertion	<p><u>(3) The variable capital company may refuse to register a transfer of shares under sub-section (2) if</u>            =  <u>(a) there exists a requirement under the applicable law as to the number or value of shares that are to be held by any shareholder of the variable capital company and the transfer would result in either the transferor or transferee holding less than the required minimum or more than permissible maximum limit; or</u>  <u>(b) the transfer is inconsistent with any provision of the constitutive document.</u></p> <p><u>(4) Notwithstanding anything contained in this section, the variable capital company will not be required to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any law.</u></p>	We suggest incorporating detailed provisions governing the transfer of shares will enhance legal clarity and certainty, while limiting the circumstances under which sub-section (2) may be invoked.
20		(2)	If the variable capital company, without sufficient cause, refuses to register the transfer of, or the transmission by operation of law of, the right to any securities or interest of a member in the variable capital company, the	This sub-section should be renumbered to (5)	--

Sr. No.	Page No.	Clause	Sub-clause	Comments/Suggestions/Suggested Modifications	Rationale
			transferee may appeal to the National Company Law Tribunal within such period and in such manner as may be prescribed, and sub-section (5) of section 58 of Companies Act, 2013 shall apply, mutatis mutandis, in respect of order to be made by the National Company Law Tribunal.		
	<b>21</b>	<b>13W</b>			
21		(7)	The compliance officer shall be such officer who shall report to the Board, is capable of understanding financial statements and the requirements for legal and regulatory compliance under this Act, shall have such other qualifications and eligibility criteria, shall be appointed or designated, be removed, or resign in such manner and in accordance with such conditions as may be specified by regulations.	Such compliance officer may be similar to the compliance officer appointed for the fund management entity in accordance with the regulations.	Considering that the fund management activities of the Variable Capital Company will be undertaken by the Fund Management Entity (FME), and that the Fund Management Regulations require the appointment of a Compliance Officer at the FME level, we suggest clarifying that the Compliance Officer of the FME may also be designated as the Compliance Officer of the VCC. This would avoid the duplication of having separate Compliance Officers at both the FME and VCC levels.
	<b>27</b>	<b>13ZC</b>			

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22		(3) (d)	Insertion	<p><u>(d) the variable capital company is of the opinion that a sub-fund be wound up in the interest of the investors of such sub-fund; or</u></p> <p>(e) upon issuance of direction by the Authority to the fund management entity, to wind up the sub-fund in the interest of shareholders and for orderly development of the financial market.</p>	We suggest to include this as one of the circumstances for winding up of a sub-fund. It will cover situations wherein it is not prudent for the VCC to run the sub-fund for example if the cost of operations of the sub-fund is substantially high because of lower corpus, flexibility should be given to the VCC to exercise its discretion and wind up the sub-fund.
23		(5)	Insertion of sub-section (5)	<p><u>Notwithstanding sub-section (1) above, a variable capital company shall not be wound up unless all of its sub-funds have first been wound up in accordance with sub-section (3).</u></p>	We suggest insertion of this clause as it ensures that a VCC is only dissolved after all its sub-funds have been properly wound up so that investors' rights, assets and liabilities are properly settled before the umbrella company itself is dissolved.