

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017: (Regulatory Framework)

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Schedule 1—Corporate collective investment vehicles

Part 1—Main amendments

Corporations Act 2001

1 After Chapter 7

Insert:

Chapter 7A—Corporate collective investment vehicles

Part 1—Introduction

1136 Objects of this Chapter

The objects of this Chapter are:

- (a) to provide for the formation of corporate collective investment vehicles; and
- (b) to provide a regulatory framework for corporate collective investment vehicles that is fair, efficient and competitive; and
- (c) together with Chapter 7, to promote confident and informed decision making by consumers of financial products and services related to shares in corporate collective investment vehicles.

1136A Simplified outline of this Chapter

A CCIV is a type of corporation that is limited by shares.

Note: Division 276 of the *Income Tax Assessment Act 1997* provides particular tax arrangements for CCIVs.

Part 2 is about the internal structure and operation of CCIVs. A CCIV must have a single corporate director and at least one sub-fund. There are regimes governing:

- (a) changing the corporate director; and
- (b) how sub-funds are operated; and

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1 (c) share capital.

2 Part 3 is about additional protections generally applicable to retail
3 CCIVs. There are regimes governing:

- 4 (a) powers and duties of the corporate director; and
5 (b) the requirement for a compliance plan; and
6 (c) the requirement for an independent depository.

7 **Part 2—Internal structure and operation of a** 8 **CCIV**

9 **Division 1—Registration requirements**

10 **1137 Basic requirements for registration as a corporate collective** 11 **investment vehicle**

- 12 (1) A company may be registered as a corporate collective investment
13 vehicle only if:
14 (a) the company is a company limited by shares; and
15 (b) the proposed director of the company is a public company
16 that holds an Australian financial services licence authorising
17 it to operate a CCIV.
- 18 (2) A foreign company registered under Division 2 of Part 5B.2 may
19 not be registered as a corporate collective investment vehicle.

20 **1137A A CCIV must have a constitution**

21 A CCIV must have a constitution, and a copy of the constitution
22 must be lodged with ASIC with the application to register the
23 company as a corporate collective investment vehicle.

24 **1137B Restrictions on engagement etc. of persons by a CCIV**

- 25 (1) A CCIV must not have any directors other than the corporate
26 director.

27 Note: A CCIV is required to have a single corporate director: see
28 section 1138.

- 29 (2) A CCIV must not have any officers other than:

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- 1 (a) the corporate director; and
2 (b) officers covered by any of paragraphs (c) to (g) of the
3 definition of *officer* in section 9.
4 (3) A CCIV must not have any employees.

5 **Division 2—Single corporate director**

6 **Subdivision A—Requirement for single corporate director**

7 **1138 Director to be public company and hold Australian financial** 8 **services licence**

- 9 (1) The director of a CCIV must be a public company that holds an
10 Australian financial services licence authorising it to operate a
11 CCIV.
- 12 (2) The public company that is the director of a CCIV is the *corporate*
13 *director* of the CCIV.
- 14 Note: For the duties owed by the corporate director of a retail CCIV, see
15 Division 3 of Part 3 of this Chapter.
- 16 (3) A foreign company registered under Division 2 of Part 5B.2 may
17 not be the corporate director of a CCIV.

18 **1138A Powers of corporate director**

- 19 (1) The corporate director of a CCIV is to operate the CCIV and
20 perform the functions conferred on it by the CCIV's constitution
21 and this Act.
- 22 (2) The corporate director has power to appoint an agent, or otherwise
23 engage a person, to do anything that the corporate director is
24 authorised to do in connection with the CCIV. The agent or person
25 must not be the depositary of the CCIV.
- 26 (3) For the purpose of determining whether:
27 (a) there is a liability to the CCIV; or
28 (b) for a retail CCIV—the corporate director has properly
29 performed its duties for the purposes of subsection 1155(2);
30 the corporate director is taken to have done (or failed to do)
31 anything that the agent or person has done (or failed to do) because
32 of the appointment or engagement, even if the person or agent was

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1 acting fraudulently or outside the scope of the authority or
2 engagement.

3 Note: A CCIV's constitution may provide for the corporate director to be
4 indemnified for liabilities—see subsection 1155(2).

- 5 (4) An agent appointed, or a person otherwise engaged, by:
6 (a) the agent or person referred to in subsection (2); or
7 (b) a person who is taken under this subsection to be an agent of
8 the corporate director;
9 to do anything that the corporate director is authorised to do in
10 connection with the CCIV is taken to be an agent appointed by the
11 corporate director to do that thing for the purposes of
12 subsection (2).

13 **Subdivision B—Replacing the corporate director**

14 **1139 Changes only take effect when ASIC alters record of** 15 **registration**

- 16 (1) Despite anything in this Subdivision, the company named in
17 ASIC's record of registration as the corporate director or
18 temporary corporate director of a CCIV remains the CCIV's
19 corporate director until the record is altered to name another
20 company as the CCIV's corporate director or temporary corporate
21 director.
- 22 (2) A purported change of the CCIV's corporate director is ineffective
23 unless it is in accordance with this Subdivision.

24 **1139A Requirements of section 1138 must be met**

25 A company cannot be chosen or appointed as the corporate director
26 or temporary corporate director of a CCIV unless it meets the
27 requirements of section 1138.

28 **1139B Retirement of corporate director**

- 29 (1) If the corporate director of a CCIV wants to retire, it must call a
30 members' meeting to explain its reason for wanting to retire and to
31 enable the members to vote on a resolution to choose a company to
32 be the new corporate director. The resolution must be an
33 extraordinary resolution if the CCIV is not listed.

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- 1 (2) The notice of meeting of the CCIV's members must:
2 (a) set out the corporate director's reason for wanting to retire;
3 and
4 (b) nominate a company to be the new corporate director of the
5 CCIV.
- 6 (3) If the members choose a company to be the new corporate director
7 and that company has consented, in writing, to becoming the
8 CCIV's corporate director:
9 (a) as soon as practicable and in any event within 2 business
10 days after the resolution is passed, the current corporate
11 director must lodge a notice with ASIC asking it to alter the
12 record of the CCIV's registration to name the chosen
13 company as the CCIV's corporate director; and
14 (b) if the current corporate director does not lodge the notice
15 required by paragraph (a), the company chosen by the
16 members to be the new corporate director may lodge that
17 notice; and
18 (c) ASIC must comply with the notice when it is lodged.
- 19 (4) If the members do not choose a company to be the new corporate
20 director, or the company they choose does not consent to becoming
21 the CCIV's corporate director, an application to the Court for
22 appointment of a temporary corporate director under section 1139E
23 may be made by any of the following:
24 (a) the current corporate director of the CCIV;
25 (b) if the CCIV has a depositary—the depositary of the CCIV.
- 26 (5) A person must not lodge a notice under subsection (3) unless the
27 consent referred to in that subsection has been given before the
28 notice is lodged.

29 **1139C Removal of corporate director by members**

- 30 (1) If members of a CCIV want to remove the corporate director, they
31 may take action under Division 2 of Part 2G.2 for the calling of a
32 members' meeting to consider and vote on a resolution that the
33 current corporate director should be removed and a resolution
34 choosing a company to be the new corporate director. The
35 resolutions must be extraordinary resolutions if the CCIV is not
36 listed.

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- 1 (2) If the members vote to remove the corporate director and, at the
2 same meeting, choose a company to be the new corporate director
3 that consents, in writing, to becoming the CCIV's corporate
4 director:
- 5 (a) as soon as practicable and in any event within 2 business
6 days after the resolution is passed, the current corporate
7 director must lodge a notice with ASIC asking it to alter the
8 record of the CCIV's registration to name the chosen
9 company as the CCIV's corporate director; and
- 10 (b) if the current corporate director does not lodge the notice
11 required by paragraph (a), the company chosen by the
12 members to be the new corporate director may lodge that
13 notice; and
- 14 (c) ASIC must comply with the notice when it is lodged.
- 15 (3) A person must not lodge a notice under subsection (2) unless the
16 consent referred to in that subsection has been given before the
17 notice is lodged.

18 **1139D Applying to Court for appointment of temporary corporate** 19 **director**

20 If a CCIV does not have a corporate director that meets the
21 requirements of section 1138, an application to the Court for the
22 appointment of a temporary corporate director of the CCIV under
23 section 1139E may be made by any of the following:

- 24 (a) ASIC;
- 25 (b) a member of the CCIV;
- 26 (c) if the CCIV has a depositary—the depositary of the CCIV.

27 **1139E Appointment of temporary corporate director by Court**

- 28 (1) On application under section 1139B or 1139D, the Court may, by
29 order, appoint a company as the temporary corporate director of a
30 CCIV if:
- 31 (a) the Court is satisfied that the appointment is in the interest of
32 the members; and
- 33 (b) the company consents in writing to becoming the CCIV's
34 temporary corporate director.
- 35 (2) The Court may make any further orders that it considers
36 appropriate.
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- 1 (3) If the application was made by the current corporate director, it
2 must, as soon as practicable after the Court's order appointing the
3 temporary corporate director, lodge a notice with ASIC informing
4 ASIC of the appointment made by the Court.
- 5 (4) As soon as practicable after the appointment, ASIC must alter the
6 record of the CCIV's registration to name the appointed company
7 as the CCIV's temporary corporate director.

8 **1139F Temporary corporate director to take steps for appointment** 9 **of new corporate director**

- 10 (1) The temporary corporate director of a CCIV must call a members'
11 meeting for the purpose of the members, by resolution, choosing a
12 company to be the new corporate director. The resolution must be
13 an extraordinary resolution if the CCIV is not listed. The
14 temporary corporate director must call the meeting as soon as
15 practicable and, in any event, within 3 months of becoming the
16 temporary corporate director.
- 17 (2) Within that 3 months, the temporary corporate director may call
18 further members' meetings for the purpose of choosing a company
19 to be the new corporate director. Before the end of the 3 months, it
20 may apply to the Court for an extension of that period. If the Court
21 grants the extension, the temporary corporate director may, within
22 the extended period, call further members' meetings for the
23 purpose of choosing a company to be the new corporate director.
- 24 (3) Provided it still meets the requirements in section 1138, nothing
25 prevents the company that is the temporary corporate director from
26 being chosen as the new corporate director.
- 27 (4) If the members choose a company to be the new corporate director
28 and that company has consented, in writing, to becoming the
29 CCIV's corporate director, the temporary corporate director must,
30 as soon as practicable, lodge a notice with ASIC asking it to alter
31 the record of the CCIV's registration to name the chosen company
32 as the CCIV's corporate director. ASIC must comply with the
33 notice when it is lodged.
- 34 (5) The temporary corporate director must apply to the Court for an
35 order directing it to wind up the CCIV, and the Court may make
36 the order, if:

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- 1 (a) no meeting is called within the 3 months or extended period
2 for the purpose of choosing a new company to be the
3 corporate director; or
4 (b) the meeting or meetings called within that period for that
5 purpose have not resulted in the members choosing a
6 company to be the new corporate director that consents to
7 becoming the CCIV's corporate director.
8 ASIC or a member of the CCIV may apply for the order if the
9 temporary corporate director does not do so.
- 10 (6) The temporary corporate director must not lodge a notice under
11 subsection (4) unless the consent referred to in that subsection has
12 been given before the notice is lodged.

13 **Subdivision C—Consequences of changing the corporate** 14 **director**

15 **1140 Former corporate director to hand over books and provide** 16 **reasonable assistance**

17 If the corporate director of a CCIV changes, the former corporate
18 director must:

- 19 (a) as soon as practicable give the new corporate director any
20 books in the former corporate director's possession or control
21 that this Act requires to be kept in relation to the CCIV; and
22 (b) give other reasonable assistance to the new corporate director
23 to facilitate the change of corporate director.

24 **1140A Rights, obligations and liabilities of former corporate** 25 **director**

- 26 (1) If the corporate director of a CCIV changes, the rights, obligations
27 and liabilities of the former corporate director in relation to the
28 CCIV become rights, obligations and liabilities of the new
29 corporate director.
- 30 (2) Despite subsection (1), the following rights and liabilities remain
31 rights and liabilities of the former corporate director:
32 (a) any right of the former corporate director to be paid fees for
33 the performance of its functions before it ceased to be the
34 corporate director;

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- 1 (b) any right of the former corporate director to be indemnified
2 for expenses it incurred before it ceased to be the corporate
3 director;
4 (c) any right, obligation or liability that the former corporate
5 director had as a member of the CCIV;
6 (d) any liability for which the former corporate director could not
7 have been indemnified out of the assets of the CCIV if it had
8 remained the CCIV's corporate director.

9 **1140B Effect of change of corporate director on documents etc. to**
10 **which former corporate director is party**

- 11 (1) If the corporate director of a CCIV changes, a document:
12 (a) to which the former corporate director is a party, in which a
13 reference is made to the former corporate director, or under
14 which the former corporate director has acquired or incurred
15 a right, obligation or liability, or might have acquired or
16 incurred a right, obligation or liability if it had remained the
17 corporate director; and
18 (b) that is capable of having effect after the change;
19 has effect as if the new corporate director (and not the former
20 corporate director) were a party to it, were referred to in it or had
21 or might have acquired or incurred the right, obligation or liability
22 under it.
23 (2) Subsection (1) does not apply to a right, obligation or liability that
24 remains a right, obligation or liability of the former corporate
25 director because of subsection 1140A(2).

26 **Division 3—Sub-funds**

27 **Subdivision A—Requirement for sub-funds**

28 **1141 Meaning of sub-fund**

- 29 (1) A *sub-fund* of a CCIV is a fund that:
30 (a) is established in the records of the CCIV; and
31 (b) either:
32 (i) relates to the entire business of the CCIV (in the case
33 where there is one sub-fund); or

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- 1 (ii) relates solely to a particular part of the business of the
2 CCIV (in the case where there are 2 or more sub-funds).
- 3 (2) A record establishing a sub-fund must:
4 (a) assign a unique name to the sub-fund; and
5 (b) identify the class or classes of shares in the CCIV that are to
6 be referable to the sub-fund.
- 7 Note: If the CCIV has one sub-fund, all classes of shares in the CCIV must
8 be referable to that sub-fund: see section 1141B.
- 9 (3) A sub-fund does not have legal personality.

10 **1141A A CCIV must have at least one sub-fund**

- 11 (1) A CCIV must at all times have at least one sub-fund in respect of
12 its business.
- 13 (2) A CCIV may have more than one sub-fund in respect of its
14 business, however, if it does so:
15 (a) the CCIV must have a sub-fund in respect of each particular
16 part of its business; and
17 (b) as a result, the businesses of each of the sub-funds taken
18 together must constitute the entire business of the CCIV.
- 19 Note: Each sub-fund must relate solely to a particular part of the business:
20 see subparagraph 1141(1)(b)(ii).

21 **1141B Requirement for unique class of shares**

- 22 (1) Each share in a CCIV must be referable to one (and only one)
23 sub-fund of the CCIV.
- 24 (2) A share is *referable* to a sub-fund of a CCIV if the share is in a
25 class of shares that is referable to the sub-fund.
- 26 (3) A class of shares is *referable* to a sub-fund of a CCIV if the rights
27 attached to every share in the class, so far as the rights are in
28 respect of assets of the CCIV, are restricted to rights in respect of
29 the assets of the sub-fund.
- 30 (4) More than one class of shares may be *referable* to a sub-fund of a
31 CCIV.

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Part 2F.2 does not permit variation contrary to this section

- 1
2 (5) Nothing in Part 2F.2 permits rights attached to shares in a class of
3 shares to be varied or cancelled in a manner that results in a
4 contravention of this section.

1141C Membership of a sub-fund

6 A person is a *member* of a sub-fund of a CCIV if the person:

- 7 (a) is a member of the CCIV; and
8 (b) holds one or more shares that are referable to the sub-fund.

1141D Notifying ASIC when sub-funds are established

- 9
10 (1) If a sub-fund of a CCIV is established, the corporate director must
11 give ASIC written notice of:
12 (a) the establishment of the sub-fund; and
13 (b) the day on which the sub-fund was established; and
14 (c) such other matters as are specified in CCIV rules made for
15 the purposes of this paragraph.
16 (2) The notice must be in the approved form and must be given at least
17 14 days before the day the CCIV offers shares referable to the
18 sub-fund.

19 Subdivision B—Segregation of assets and liabilities

20 1142 All assets to be allocated

21 All assets of a CCIV must be allocated to a sub-fund in accordance
22 with section 1142E.

23 1142A Assets of a CCIV to be held by CCIV or on trust

- 24 (1) Assets of a retail CCIV must not be held on trust, except by a
25 depositary appointed in accordance with Division 6 of Part 3.
26 (2) If assets of a wholesale CCIV (other than a wholesale CCIV that
27 has appointed a depositary in accordance with Division 6 of Part 3)
28 are held by a person other than the CCIV, they must be held by the
29 person on trust for the CCIV.

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-
- 1 (3) Subsection (2) does not apply to an asset that is in a class of assets
2 determined by the CCIV rules.

3 **1142B Segregated holding of assets of sub-funds**

- 4 (1) A CCIV must ensure that assets of a sub-fund of the CCIV are:
5 (a) clearly identified as assets of the sub-fund; and
6 (b) held separately from property of the corporate director and
7 assets of any other sub-fund of the CCIV.
- 8 (2) A separate account with an ADI must be maintained for each
9 sub-fund.

10 *Part does not have effect of making CCIV a trustee of assets of a*
11 *sub-fund*

- 12 (3) To avoid doubt, nothing in this Division is intended to have the
13 effect of making a CCIV or its corporate director a trustee or
14 trustees of the assets of the sub-fund of the CCIV.

15 **1142C Segregated application of assets of sub-funds**

16 *Assets of sub-fund not to be applied or dealt with except in*
17 *accordance with this section*

- 18 (1) A CCIV must not apply or deal with assets of a sub-fund, whether
19 directly or indirectly, except in accordance with this section.

20 *Application of assets: general rules*

- 21 (2) The assets of a sub-fund must not be applied:
22 (a) for any purpose other than:
23 (i) meeting liabilities of the sub-fund, or expenses incurred
24 for the purposes of the business of the sub-fund; or
25 (ii) making investments in the course of the business of the
26 sub-fund; or
27 (iii) paying a dividend to members of the sub-fund; or
28 (iv) providing consideration to a member of the sub-fund in
29 respect of a reduction of share capital affecting the
30 sub-fund; or
31 (v) redeeming redeemable shares in the sub-fund; or
32 (vi) a purpose specified in the CCIV rules for the purposes
33 of this subparagraph; or
-

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(b) for a purpose specified in the CCIV rules made for the purposes of this paragraph.

Court orders

(3) In a proceeding to which a CCIV is a party, a court must not make an order that is inconsistent with subsection (2), unless the court considers that the interests of justice require otherwise.

1142D What are the assets of a sub-fund?

(1) The *assets* of a sub-fund of a CCIV at a particular time are the assets of the CCIV (including money, assets and investments), to the extent the assets:

- (a) are allocated by the corporate director to the sub-fund in accordance with section 1142E; or
- (b) are to be assets of the sub-fund under a restructure, arrangement or court order.

(2) The *assets* of a sub-fund do not include assets that, in accordance with a restructure, arrangement or court order, are no longer to be assets of the sub-fund.

1142E Allocating assets to sub-funds

(1) The corporate director of a CCIV must allocate all the assets of the CCIV to the sub-funds of the CCIV as soon as practicable and in accordance with this section.

(2) The corporate director must allocate to a sub-fund of the CCIV:

- (a) any amounts paid up in consideration for the issue of a class of shares that is referable to the sub-fund; and
- (b) any assets obtained by the CCIV as a result of the application of assets of the sub-fund in carrying on the business of the sub-fund.

(3) If any assets of the CCIV are not allocated under subsection (2), the corporate director must allocate those assets to the sub-funds of the CCIV in a manner that is fair and reasonable in the circumstances.

EXPOSURE DRAFT

No joint investments

- 1
- 2 (4) The corporate director must not allocate an asset to more than one
3 sub-fund.

4 *No cross-allocation*

- 5 (5) The corporate director must not allocate an asset to a particular
6 sub-fund of the CCIV if the asset was obtained as a result of
7 expenditure or application of assets allocated to another sub-fund
8 of the CCIV.

9 *Regulations*

- 10 (6) The regulations may make provision for or in relation to the
11 allocation of assets to the sub-funds of CCIVs.

12 **1142F All liabilities to be allocated**

13 All liabilities of a CCIV must be allocated to a sub-fund in
14 accordance with section 1142J.

15 **1142G Liabilities of sub-funds to be kept separate**

16 A CCIV must ensure that liabilities of a sub-fund of the CCIV are
17 clearly identified as liabilities of the sub-fund (as distinct from
18 liabilities of the corporate director and liabilities of any other
19 sub-fund of the CCIV).

20 **1142H What are the liabilities of a sub-fund?**

- 21 (1) The *liabilities* of a sub-fund of a CCIV at a particular time are the
22 liabilities of the CCIV, to the extent the liabilities:
23 (a) are allocated by the corporate director to the sub-fund in
24 accordance with section 1142J; or
25 (b) are to be liabilities of the sub-fund under a restructure,
26 arrangement or court order.
- 27 (2) The *liabilities* of a sub-fund do not include liabilities that, in
28 accordance with a restructure, arrangement or court order, are no
29 longer to be liabilities of the sub-fund.

EXPOSURE DRAFT

1142J Allocating liabilities to sub-funds

- 1
- 2 (1) The corporate director of a CCIV must allocate all the liabilities of
3 the CCIV to the sub-funds of the CCIV as soon as practicable and
4 in accordance with this section.
- 5 (2) The corporate director must allocate to a sub-fund of the CCIV
6 each liability of the CCIV that relates solely to the business of the
7 sub-fund.
- 8 (3) If any liabilities of the CCIV are not allocated under subsection (2),
9 the corporate director must allocate those liabilities to the
10 sub-funds of the CCIV in a manner that is fair and reasonable in
11 the circumstances.

No joint liabilities

- 12
- 13 (4) The corporate director must not allocate a liability to more than
14 one sub-fund.

Regulations

- 15
- 16 (5) The regulations may make provision for or in relation to the
17 allocation of liabilities to the sub-funds of a CCIV.

1142K Documenting the allocation of assets and liabilities to sub-funds

- 18
- 19
- 20 (1) The corporate director must keep records that show:
21 (a) details of any un-allocated assets or liabilities of the CCIV;
22 and
23 (b) for each allocated asset of the CCIV, the sub-fund to which
24 the asset has been allocated; and
25 (c) for each allocated liability of the CCIV, the sub-fund to
26 which the liability has been allocated.
- 27 (2) A record may be kept and retained in written or electronic form.

Period for which records must be retained

- 28
- 29 (3) The records must be retained for 7 years after the year to which the
30 records relate.

EXPOSURE DRAFT

1 Division 4—Shares

2 Subdivision A—Issuing and converting redeemable shares

3 1143 Share capital may be redeemable

- 4 (1) A CCIV's power under section 124 to issue shares includes the
5 power to issue redeemable shares that are liable to be redeemed at
6 the member's option.
- 7 (2) All, or some, of the shares in a CCIV may be redeemable shares
8 that are liable to be redeemed at the member's option.

9 1143A Conversion of shares

- 10 (1) A CCIV may do one or more of the following:
- 11 (a) convert a share that is not liable to be redeemed into a share
12 that is liable to be redeemed at the member's option;
- 13 (b) convert a share that is liable to be redeemed at the member's
14 option into a share that is not liable to be redeemed.

15 Note: The variation of class rights provisions (sections 246B-246G) will
16 apply to the conversion.

- 17 (2) A CCIV may convert a share as referred to in subsection (1) only if
18 this is approved by a special resolution of the sub-fund of the
19 CCIV to which the share is referable.

20 Subdivision B—Redemption of redeemable shares

21 1144 Part 2H.2 does not apply to CCIVs

22 Part 2H.2 does not apply to CCIVs.

23 1144A General requirements for redemption of redeemable shares

- 24 (1) A CCIV may only redeem redeemable shares if:
- 25 (a) the shares are fully paid-up; and
- 26 (b) the shares are redeemed at the option of a member of the
27 CCIV; and
- 28 (c) each sub-fund to which the shares are referable:
- 29 (i) is solvent immediately before the redemption; and
- 30 (ii) will not be insolvent immediately after the redemption.

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1 Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see
2 section 1146A.

3 Note 2: For retail CCIVs there are additional requirements in section 1160.

4 (2) On redemption, the shares are cancelled.

5 **Division 5—Transactions affecting share capital**

6 **Subdivision A—Provisions relating to Chapter 2J**

7 **1145 Chapter 2J does not apply to CCIVs**

8 Chapter 2J does not apply to CCIVs.

9 **Subdivision B—Share capital reductions**

10 **1146 When a CCIV may reduce its share capital**

11 A CCIV may reduce its share capital if, and only if, the reduction
12 is permitted by this Subdivision.

13 **1146A Permitted reductions—general requirements**

- 14 (1) A CCIV may reduce its share capital if:
- 15 (a) the reduction is permitted by the CCIV’s constitution; and
 - 16 (b) the reduction is fair and reasonable to the members of each
17 affected sub-fund; and
 - 18 (c) each sub-fund that the reduction affects:
 - 19 (i) is solvent immediately before the reduction; and
 - 20 (ii) will not be insolvent immediately after the reduction;
21 and
 - 22 (d) the reduction is approved by a resolution passed at a general
23 meeting of members of the affected sub-fund.
- 24 (2) The reduction affects a sub-fund of the CCIV if it relates to shares
25 that are referable to that sub-fund.

26 *When a sub-fund is solvent and insolvent*

- 27 (3) A sub-fund is *solvent* if, and only if, the CCIV is able to pay all the
28 debts that are liabilities of the sub-fund, as and when they become
29 due and payable.

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1 Note: Generally, the liabilities of a sub-fund can only be met from assets of
2 the sub-fund: see subsection 1142C(2).

3 (4) A sub-fund that is not solvent is *insolvent*.

4 **1146B Permitted reductions—redemptions of redeemable shares**

5 A CCIV may reduce its share capital if:

- 6 (a) the reduction is involved in the redemption, at the option of a
7 member of the CCIV, of a redeemable share; and
8 (b) the reduction complies with section 1144A; and
9 (c) for a retail CCIV—the reduction also complies with
10 section 1160.

11 **1146C Permitted reductions—court orders**

12 A CCIV may reduce its share capital under a court order.

13 **1146D Permitted reductions—CCIV rules**

14 A CCIV may reduce its share capital in circumstances set out in
15 CCIV rules made for the purposes of this section.

16 **Subdivision C—Self-acquisition and control of shares**

17 **1147 Rule against self-acquisition**

18 A CCIV must not acquire shares (or units of shares) in itself
19 except:

- 20 (a) in buying back shares for the purposes of a reduction of share
21 capital that is permitted by Subdivision B; or
22 (b) under a court order.

23 Note: As a result, a sub-fund of a CCIV must not acquire shares that are
24 referable to another sub-fund of the CCIV, except under a court order.

25 **1147A Rule against taking security over own shares**

26 A CCIV must not take security over shares (or units of shares) in
27 itself, or in a company that controls it.

EXPOSURE DRAFT

1 Subdivision D—Financial assistance

2 1148 Rule against financial assistance

- 3 (1) A CCIV must not financially assist a person to acquire shares (or
4 units of shares) in the CCIV.
- 5 (2) Without limiting subsection (1), financial assistance covered by
6 that subsection includes:
- 7 (a) financial assistance given before or after the acquisition of
8 shares (or units of shares); and
 - 9 (b) financial assistance that takes the form of paying a dividend;
10 and
 - 11 (c) financial assistance that takes the form of a reduction of share
12 capital.
- 13 (3) Subsections (1) and (2) extend to the acquisition of shares (or units
14 of shares) by the following:
- 15 (a) issue;
 - 16 (b) transfer;
 - 17 (c) any other means.

18 Division 6—CCIV rules

19 1149 ASIC may make CCIV rules

- 20 (1) ASIC may, by legislative instrument, make rules (*CCIV rules*)
21 prescribing matters:
- 22 (a) required or permitted by this Act to be prescribed by the
23 CCIV rules; or
 - 24 (b) necessary or convenient to be prescribed for carrying out or
25 giving effect to this Chapter.
- 26 (2) To avoid doubt, the CCIV rules may not do the following:
- 27 (a) create an offence or civil penalty;
 - 28 (b) provide powers of:
 - 29 (i) arrest or detention; or
 - 30 (ii) entry, search or seizure;
 - 31 (c) impose a tax;
 - 32 (d) set an amount to be appropriated from the Consolidated
33 Revenue Fund under an appropriation in this Act;

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1 (e) directly amend the text of this Act.

2 (3) CCIV rules that are inconsistent with the regulations have no effect
3 to the extent of the inconsistency, but CCIV rules are taken to be
4 consistent with the regulations to the extent that CCIV rules are
5 capable of operating concurrently with the regulations.

6 **1149A Matters to which ASIC has regard when making rules**

7 In considering whether to make a CCIV rule, ASIC:

- 8 (a) must have regard to:
9 (i) the objects of this Chapter; and
10 (ii) the likely regulatory impact of the proposed rule; and
11 (b) may have regard to any other matters that ASIC considers
12 relevant.

13 Note: Matters that ASIC may have regard to under paragraph (b) may, for
14 example, include any relevant international standards and international
15 commitments.

16 **1149B ASIC's power to make exemption and modification orders**

17 (1) ASIC may:

- 18 (a) exempt a person from a provision of this Chapter; or
19 (b) declare that this Chapter applies to a person as if specified
20 provisions were omitted, modified or varied as specified in
21 the declaration.

22 (2) The exemption or declaration may:

- 23 (a) apply to all or specified provisions of this Chapter; and
24 (b) apply to all persons, specified persons, or a specified class of
25 persons; and
26 (c) relate to all securities, specified securities or a specified class
27 of securities; and
28 (d) relate to any other matter generally or as specified.

29 *Imposition of conditions on exemption*

30 (3) An exemption may apply unconditionally or subject to specified
31 conditions.

32 (4) A person to whom a condition specified in an exemption applies
33 must comply with the condition.

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1 (5) The Court may order the person to comply with the condition in a
2 specified way. Only ASIC may apply to the Court for the order.

3 *Exemptions and declarations relating to all or a class of persons*

4 (6) An exemption or declaration that relates to all persons or a
5 specified class of persons must be made by legislative instrument.

6 *Exemptions and declarations relating to specified persons*

7 (7) An exemption or declaration that relates to a specified person must
8 be made by notifiable instrument.

9 (8) ASIC must also give a copy of an exemption or declaration that
10 relates to a specified person to the person. ASIC must do so as
11 soon as is reasonably practicable after the exemption or declaration
12 is made.

13 *Definitions*

14 (9) In this section:

15 *provisions of this Chapter* include:

- 16 (a) regulations made for the purposes of this Chapter; and
17 (b) definitions in this Act or the regulations as they apply to
18 references in:
19 (i) this Chapter; or
20 (ii) regulations made for the purposes of this Chapter.

21 **1149C Modification by regulations**

22 The regulations may modify the operation of this Chapter or any
23 other provisions of this Act in relation to:

- 24 (a) a CCIV; or
25 (b) all CCIVs of a specified class; or
26 (c) all CCIVs.

EXPOSURE DRAFT

1 **Part 3—Additional protections generally applicable** 2 **to retail CCIVs**

3 **Division 1—Introduction**

4 **1154 Part generally does not apply to wholesale CCIVs**

5 The provisions in this Part do not apply in relation to wholesale
6 CCIVs, except as expressly provided in this Part.

7 **1154A Meaning of retail CCIV and wholesale CCIV**

8 (1) A CCIV is a *wholesale CCIV* if it is not a retail CCIV.

9 (2) A CCIV is a *retail CCIV* if:

- 10 (a) a member in the CCIV is covered by subsection (3); or
11 (b) the CCIV was promoted by a person, or an associate of a
12 person, who was, when the CCIV was promoted, in the
13 business of promoting CCIVs to persons who are, or would
14 be, retail clients (within the meaning of Chapter 7).

15 *Retail clients and indirect retail clients*

16 (3) A member in a company is covered by this subsection if:

- 17 (a) the member acquired one or more shares in the company as a
18 retail client (within the meaning of Chapter 7); or
19 (b) both of the following apply:
20 (i) the acquisition by the member of one or more shares in
21 the company occurred under a custodial arrangement
22 (within the meaning of section 1012IA);
23 (ii) this Act required the provider in relation to the custodial
24 arrangement to give the member a Product Disclosure
25 Statement before the acquisition occurred.

26 **Division 2—Constitution**

27 **1155 Contents of the constitution**

28 (1) The constitution of a CCIV must make adequate provision for the
29 following:

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-
- 1 (a) the consideration that is to be paid to acquire a share in the
2 CCIV;
- 3 (b) the powers of the corporate director in relation to making
4 investments of, or otherwise dealing with, assets of the
5 CCIV;
- 6 (c) the establishment of sub-funds, and classes of shares
7 referable to sub-funds.
- 8 (2) If the corporate director is to have any rights to be paid fees out of
9 assets of a sub-fund of the CCIV, or to be indemnified out of assets
10 of a sub-fund of the CCIV for liabilities or expenses incurred in
11 relation to the performance of its duties, those rights:
- 12 (a) must be specified in the CCIV's constitution; and
13 (b) must be available only in relation to the proper performance
14 of those duties;
- 15 and any other agreement or arrangement has no effect to the extent
16 that it purports to confer such a right.
- 17 (3) If the corporate director is to have any powers to borrow or raise
18 money for the purposes of the CCIV:
- 19 (a) those powers must be specified in the CCIV's constitution;
20 and
21 (b) any other agreement or arrangement has no effect to the
22 extent that it purports to confer such a power.

23 **1155A Changing the constitution**

- 24 (1) The constitution of a CCIV may be modified, or repealed and
25 replaced with a new constitution:
- 26 (a) by special resolution of the members of the CCIV; or
27 (b) by the corporate director if the corporate director reasonably
28 considers the change will not adversely affect members'
29 rights.
- 30 (2) The corporate director must lodge with ASIC a copy of the
31 modification or the new constitution. The modification, or repeal
32 and replacement, cannot take effect until the copy has been lodged.

EXPOSURE DRAFT

1 **Division 3—Single corporate director**

2 **Subdivision A—Powers, duties and other requirements for** 3 **corporate director**

4 **1156 Duties owed by corporate director**

5 In exercising its powers and carrying out its duties, the corporate
6 director of a CCIV must:

- 7 (a) act honestly; and
8 (b) exercise the degree of care and diligence that a reasonable
9 person would exercise in the corporate director's position;
10 and
11 (c) act in the best interests of the members and, if there is a
12 conflict between the members' interests and its own interests,
13 give priority to the members' interests; and
14 (d) treat:
15 (i) members who hold shares of the same class equally; and
16 (ii) members who hold shares of different classes fairly; and
17 (iii) members of different sub-funds fairly; and
18 (e) not make use of information acquired through being the
19 corporate director in order to:
20 (i) gain an improper advantage for itself or another person;
21 or
22 (ii) cause detriment to the members of the CCIV; and
23 (f) ensure that the CCIV's constitution meets the requirements
24 of Part 2B.4 and Division 2 of this Part; and
25 (g) ensure that the CCIV's compliance plan meets the
26 requirements of section 1161A; and
27 (h) comply with the CCIV's compliance plan; and
28 (i) ensure that assets of a sub-fund of the CCIV are:
29 (i) clearly identified as assets of the sub-fund; and
30 (ii) held separately from property of the corporate director
31 and assets of any other sub-fund; and
32 (j) ensure that the assets of a sub-fund of the CCIV are valued at
33 regular intervals appropriate to the nature of the assets; and
34 (k) ensure that all payments out of the assets of the CCIV are
35 made in accordance with the CCIV's constitution and this
36 Act; and

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-
- 1 (l) report to ASIC any breach of this Act that:
2 (i) relates to the CCIV; and
3 (ii) has had, or is likely to have, a materially adverse effect
4 on the interests of members;
5 as soon as practicable after it becomes aware of the breach;
6 and
7 (m) carry out or comply with any other duty, not inconsistent
8 with this Act, that is conferred on the corporate director by
9 the CCIV's constitution.

10 **1156A Dealing with conflicting duties**

11 A duty of the corporate director under section 1156 overrides any
12 conflicting duty an officer or employee of the corporate director
13 has under Part 2D.1.

14 **1156B Requirement for external directors of corporate director**

- 15 (1) At least half of the directors of the corporate director of a CCIV
16 must be external directors.
- 17 (2) A director of the corporate director is an external director if the
18 director:
19 (a) is not, and has not been in the previous 2 years, an employee
20 of the corporate director or a related body corporate; and
21 (b) is not, and has not been in the previous 2 years, a senior
22 manager of a related body corporate; and
23 (c) is not, and has not been in the previous 2 years, substantially
24 involved in business dealings, or in a professional capacity,
25 with the corporate director or a related body corporate; and
26 (d) is not a member of a partnership that is, or has been in the
27 previous 2 years, substantially involved in business dealings,
28 or in a professional capacity, with the corporate director or a
29 related body corporate; and
30 (e) does not have a material interest in the corporate director or a
31 related body corporate; and
32 (f) is not a relative of a person who has a material interest in the
33 corporate director or a related body corporate.
- 34 (3) The public company that is the corporate director of a CCIV must
35 ensure that it complies with subsection (1) within 14 days (or a

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1 longer period allowed in writing by ASIC) of the company
2 becoming the corporate director of the CCIV.

- 3 (4) If the corporate director stops complying with subsection (1) on a
4 later day, it must ensure it complies with subsection (1) within 14
5 days (or a longer period allowed in writing by ASIC) of that day.

6 **Subdivision B—Duties owed by officers of corporate director**

7 **1157 Duties owed by officers of corporate director**

8 An officer of the corporate director of a CCIV must:

- 9 (a) act honestly; and
10 (b) exercise the degree of care and diligence that a reasonable
11 person would exercise in the officer's position; and
12 (c) act in the best interests of the members and, if there is a
13 conflict between the members' interests and the interests of
14 the corporate director, give priority to the members' interests;
15 and
16 (d) not make use of information acquired through being an
17 officer of the corporate director in order to:
18 (i) gain an improper advantage for the officer or another
19 person; or
20 (ii) cause detriment to the members of the CCIV; and
21 (e) not make improper use of their position as an officer to gain,
22 directly or indirectly, an advantage for themselves or for any
23 other person or to cause detriment to the members of the
24 CCIV; and
25 (f) take all steps that a reasonable person would take, in the
26 officer's position, to ensure that the corporate director
27 complies with:
28 (i) this Act; and
29 (ii) any conditions imposed on the corporate director's
30 Australian financial services licence; and
31 (iii) the CCIV's constitution; and
32 (iv) the CCIV's compliance plan.

33 **1157A Dealing with conflicting duties**

34 A duty of an officer of the corporate director under section 1157
35 overrides any conflicting duty the officer has under Part 2D.1.

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1 Subdivision C—Duties owed by employees of corporate 2 director

3 1158 Duties owed by employees of corporate director

4 An employee of the corporate director of a CCIV must not:

- 5 (a) make use of information acquired through being an employee
6 of the corporate director in order to:
7 (i) gain an improper advantage for the employee or another
8 person; or
9 (ii) cause detriment to members of the CCIV; or
10 (b) make improper use of their position as an employee to gain,
11 directly or indirectly, an advantage for themselves or for any
12 other person or to cause detriment to the members of the
13 CCIV.

14 1158A Dealing with conflicting duties

15 A duty of an employee of the corporate director under section 1158
16 overrides any conflicting duty the employee has under Part 2D.1.

17 Division 4—Shares

18 Subdivision A—Constitution must provide for redemption

19 1159 Constitution must provide for redemption

- 20 (1) This section applies if all or some of the shares in a CCIV are on
21 issue on the terms that they are liable to be redeemed.
- 22 (2) The constitution of the CCIV must make provision for redeemable
23 shares in the CCIV to be redeemed. The provision must be
24 consistent with Subdivision B.
- 25 (3) The constitution may make different provision in relation to
26 sub-funds that are liquid and sub-funds that are not liquid.

27 1159A When a sub-fund is liquid

- 28 (1) A sub-fund of a CCIV is liquid if liquid assets account for at least
29 80% of the value of the assets of the sub-fund.

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Liquid assets

- 1
- 2 (2) The following are liquid assets unless it is proved that the CCIV
3 cannot reasonably expect to realise them within the period
4 specified in the constitution for satisfying redemptions while the
5 sub-fund is liquid:
- 6 (a) money in an account or on deposit with a bank;
 - 7 (b) bank accepted bills;
 - 8 (c) marketable securities (as defined in section 9);
 - 9 (d) property of a kind specified in CCIV rules made for the
10 purposes of this paragraph.
- 11 (3) Any other property is a liquid asset if the corporate director
12 reasonably expects that the property can be realised for its market
13 value within:
- 14 (a) the period specified in the constitution for satisfying
15 redemptions while the sub-fund is liquid; or
 - 16 (b) if the constitution does not specify a period as mentioned in
17 paragraph (a)—3 months.

Subdivision B—Redemption of redeemable shares

1160 When shares may be redeemed

- 19
- 20 (1) A CCIV may redeem shares in the CCIV only if:
- 21 (a) the redemption is on the terms on which the shares are on
22 issue; and
 - 23 (b) the redemption is permitted by the CCIV's constitution; and
 - 24 (c) the redemption is in accordance with this Subdivision.
- 25 (2) This section applies in addition to section 1144A (about general
26 requirements for a redemption of a redeemable share in a CCIV).

1160A Liquid sub-fund, unlisted CCIV—consideration must be based on net asset value

27 A redeemable share in a CCIV must be redeemable for a price
28 determined by reference to the net asset value of the sub-fund to
29 which the share is referable if:

- 30 (a) the CCIV is unlisted; and
 - 31 (b) the sub-fund is liquid.
- 32
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1160B Liquid sub-fund, listed CCIV—consideration must be based on market price

A redeemable share in a CCIV must be redeemable for a price determined by reference to the market price, just before the redemption, of the share if:

- (a) the CCIV is listed; and
- (b) the sub-fund to which the share is referable is liquid.

1160C Consequences of contravening section 1160A or 1160B

- (1) If a CCIV redeems shares in contravention of section 1160A or 1160B, the contravention does not affect the validity of the redemption or of any contract or transaction connected with it.
- (2) An application to the Court for an order under subsection (3) may be made by any of the following:
 - (a) ASIC;
 - (b) the corporate director of the CCIV;
 - (c) if the CCIV has a depositary—the depositary of the CCIV;
 - (d) a member, or group of members, of the CCIV.
- (3) If the Court is satisfied, on application under subsection (2), that the consideration for a redemption of shares by a CCIV contravenes section 1160A or 1160B, the Court may make an order adjusting the price of the redeemed shares.

1160D Non-liquid sub-funds—redemption offers

- (1) The corporate director of a CCIV may offer members an opportunity to redeem shares in the CCIV if:
 - (a) the sub-fund to which the shares are referable is not liquid; and
 - (b) the offer is made to the extent that particular assets of the sub-fund are available and able to be converted to money in time to satisfy redemption requests that members may make in response to the offer; and
 - (c) no other redemption offer is open in relation to the particular sub-fund.
- (2) The redemption offer must be in writing and be made:

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- (a) if the constitution specifies procedures for making the offer—in accordance with those procedures; or
 - (b) otherwise—by giving a copy of the offer to all members of the CCIV who hold shares referable to the sub-fund.

- (3) The redemption offer must specify:
 - (a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made); and
 - (b) the assets that will be used to satisfy redemption requests; and
 - (c) the amount of money that is expected to be available when those assets are converted to money; and
 - (d) the method for dealing with redemption requests if the money available is insufficient to satisfy all requests.The method specified under paragraph (d) must comply with section 1160E.
- (4) For joint members, a copy of the redemption offer need only be given to the joint member named first in the register of members.
- (5) As soon as practicable after making the redemption offer, the corporate director must lodge a copy of the offer with ASIC.

1160E Non-liquid sub-funds—satisfying redemption requests

- (1) A corporate director that makes a redemption offer under section 1160D must ensure that redemption requests made in response to the offer are satisfied within 21 days after the offer closes.
- (2) No request made under the redemption offer may be satisfied while the offer is still open.
- (3) If an insufficient amount of money is available from the assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula:

$$\text{Amount of money available} \times \frac{\text{Amount shareholder requested to redeem}}{\text{Total of all amounts shareholders request to redeem}}$$

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1160F Non-liquid sub-funds—cancellation of redemption offer

- 1 (1) A corporate director that makes a redemption offer under
2 section 1160D:
 - 3 (a) may cancel a redemption offer before it closes if the offer
4 contains a material error; and
 - 5 (b) must cancel a redemption offer before it closes if it is in the
6 best interests of members to do so.
- 7 (2) The cancellation must be made:
 - 8 (a) if the constitution specifies procedures for cancelling the
9 redemption offer—in accordance with those procedures; or
 - 10 (b) otherwise—by notice in writing to the members to whom the
11 redemption offer was made.
- 12 (3) The corporate director must lodge written notice of the cancellation
13 with ASIC.
14

15 Division 5—Compliance plan

16 Subdivision A—Documenting the compliance plan

17 1161 Requirement for compliance plan

18 A CCIV must have a compliance plan, and a copy of the
19 compliance plan must be lodged with ASIC with the application to
20 register the company as a corporate collective investment vehicle.

21 1161A Contents of the compliance plan

22 The compliance plan of a CCIV must set out adequate measures
23 that the corporate director is to apply in operating the CCIV to
24 ensure compliance with this Act and the CCIV's constitution.

25 1161B Compliance plan may incorporate provisions from another 26 CCIV's plan

- 27 (1) The corporate director of a CCIV may lodge with ASIC a
28 compliance plan for the CCIV that is expressed to incorporate
29 specified provisions, as in force at a specified time, of a
30 compliance plan of another CCIV of which it is also the corporate
31 director.

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- 1 (2) The specified provisions, as in force at the specified time, are taken
2 to be included in the plan.

3 **1161C Directors must sign lodged copy of compliance plan**

4 The copy of a CCIV's compliance plan that is lodged with ASIC
5 must be signed by all the directors of the corporate director.

6 **1161D ASIC may require further information about compliance 7 plan**

8 ASIC may direct the corporate director of a CCIV to give it
9 information about the arrangements contained in the compliance
10 plan. The direction is to be given by notice in writing to the
11 corporate director.

12 **1161E Changing the compliance plan**

13 *Corporate director's powers*

- 14 (1) The corporate director of a CCIV may modify the CCIV's
15 compliance plan or repeal it and replace it with a new compliance
16 plan.

17 *ASIC may require modifications*

- 18 (2) ASIC may direct the corporate director of a CCIV to modify the
19 CCIV's compliance plan, as set out in the direction, to ensure that
20 the plan is consistent with section 1161A. The direction is to be
21 given by notice in writing to the corporate director.

22 *Lodgement of modification or new plan*

- 23 (3) The corporate director must lodge with ASIC a copy of a
24 modification of the CCIV's compliance plan or of a new
25 compliance plan within 14 days after the modification is made or
26 the old plan is repealed. The copy must be signed by all the
27 directors of the corporate director.

28 **1161F ASIC may require consolidation of compliance plan to be 29 lodged**

- 30 (1) ASIC may direct the corporate director of a CCIV to lodge a
31 consolidated copy of the CCIV's compliance plan.
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- 1 (2) The consolidation must set out:
2 (a) the plan as modified to the time of lodgement; and
3 (b) if required by ASIC's direction—the full text of provisions
4 taken to be included in the plan by subsection 1161B(2).

5 **Subdivision B—Auditing the compliance plan**

6 **1162 Engaging auditor**

- 7 (1) The corporate director of a CCIV must ensure that at all times a
8 registered company auditor, an audit firm or an authorised audit
9 company is engaged to audit compliance with the CCIV's
10 compliance plan in accordance with this section. This auditor, firm
11 or company is referred to as the *auditor of the compliance plan*.
- 12 (2) A person is not eligible to act as the individual auditor, lead auditor
13 or review auditor of the compliance plan if the person is:
14 (a) the corporate director; or
15 (b) an associate of the corporate director; or
16 (c) the depositary; or
17 (d) an associate of the depositary; or
18 (e) an agent holding assets of the CCIV on behalf of the
19 depositary or an associate of an agent of that kind; or
20 (f) the auditor of the corporate director's financial statements.
- 21 (3) However:
22 (a) the auditor of the compliance plan and the auditor of the
23 corporate director's financial statements may work for the
24 same firm of auditors or audit company; and
25 (b) the lead auditor or review auditor of the compliance plan (on
26 the one hand) and the lead auditor or review auditor of the
27 corporate director's financial statements (on the other hand)
28 may work for the same firm of auditors or audit company.
- 29 (4) This Subdivision does not prevent the corporate director from
30 arranging for the auditor of the compliance plan to carry out audits
31 in addition to those required by this Subdivision.

32 **1162A Audit and audit report**

- 33 (1) Within 3 months after the end of a financial year of the CCIV, the
34 auditor of the compliance plan must:
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- 1 (a) examine the CCIV's compliance plan; and
2 (b) carry out:
3 (i) if the CCIV has only had one corporate director during
4 the financial year—an audit of the corporate director's
5 compliance with the compliance plan during the
6 financial year; or
7 (ii) if the CCIV has had more than one corporate director
8 during the financial year—an audit of each corporate
9 director's compliance with the compliance plan during
10 that part of the financial year when it was the CCIV's
11 corporate director; and
12 (c) give to the CCIV's current corporate director a report that
13 states whether, in the auditor's opinion:
14 (i) the corporate director, or each corporate director,
15 complied with the CCIV's compliance plan during the
16 financial year or that part of the financial year when it
17 was the CCIV's corporate director; and
18 (ii) the plan continues to meet the requirements of this
19 Division.
- 20 (2) The auditor of the compliance plan:
21 (a) has a right of access at all reasonable times to the books of
22 the CCIV; and
23 (b) may require an officer of the corporate director to give the
24 auditor information and explanations for the purposes of the
25 audit.
- 26 (3) An officer of the corporate director must:
27 (a) allow the auditor of the compliance plan to have access to the
28 books of the CCIV; and
29 (b) give the auditor information or an explanation required under
30 subsection (2); and
31 (c) otherwise assist the conduct of the audit.
- 32 (4) The corporate director must lodge the auditor's report under
33 subsection (1) with ASIC at the same time as the financial
34 statements and reports in respect of the CCIV are to be lodged with
35 ASIC (see sections 292 and 319).
- 36 (5) The auditor of the compliance plan has qualified privilege in
37 respect of a statement made in a report under subsection (1).
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1162B Removal and resignation of auditors

Removal of auditor by corporate director

- (1) The corporate director:
 - (a) must remove the auditor of the compliance plan if the auditor becomes ineligible under subsection 1162(2) to act as auditor of the compliance plan; and
 - (b) may, with ASIC's consent, remove the auditor of the compliance plan.

Resignation of auditor

- (2) The auditor of the compliance plan may resign by written notice to the corporate director if:
 - (a) the auditor:
 - (i) applies to ASIC in writing for its consent to the resignation; and
 - (ii) gives the corporate director written notice of the application at or about the same time as applying to ASIC; and
 - (b) ASIC consents to the resignation.
- (3) As soon as practicable after receiving the application, ASIC must notify the auditor and the corporate director whether it consents to the resignation.
- (4) A statement by the auditor in the application or in answer to an inquiry by ASIC relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings against the auditor (other than proceedings for a contravention of section 1308); and
 - (b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor.

A certificate by ASIC that the statement was made in the application, or in answer to an inquiry by ASIC, is conclusive evidence that the statement was so made.

- (5) The auditor's resignation takes effect on the later of:
 - (a) the day (if any) specified in the notice of resignation; or
 - (b) the day ASIC consents to the resignation; or

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(c) the day (if any) fixed by ASIC for the purpose.

1162C Action on change of auditor of compliance plan

If the auditor of the compliance plan of a CCIV changes, the corporate director must, within 7 days and in writing, ask ASIC to alter the record of the CCIV's registration to show the name of the new auditor as the auditor of the CCIV's compliance plan. ASIC must comply with the request if the change complies with this Act.

Division 6—Depositary

Subdivision A—Requirement for depositary

1163 Depositary to be public company and hold Australian financial services licence

- (1) A retail CCIV must have a depositary.
- (2) The depositary of a CCIV:
 - (a) must be:
 - (i) a public company; or
 - (ii) a foreign company registered under Division 2 of Part 5B.2; and
 - (b) must hold an Australian financial services licence authorising it to act as a depositary; and
 - (c) must meet the independence requirement set out in section 1163C.

1163A Option for wholesale CCIV to appoint depositary

A wholesale CCIV may have a depositary. This Division applies to a wholesale CCIV that:

- (a) has appointed a depositary; and
- (b) has given ASIC the notice referred to in section 1163B.

1163B Notifying ASIC when a depositary is appointed

If a depositary is appointed, the corporate director must give ASIC written notice of the name, and the address of the registered office, of the depositary.

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1163C Independence requirement for depositary

- 1
2 (1) A person (the *test depositary*) who:
3 (a) is, or is to be appointed as, the depositary of a CCIV; or
4 (b) is, or is to be, appointed as an agent, or otherwise engaged,
5 by the depositary of a CCIV under subsection 1164(3);
6 meets the independence requirement in relation to the CCIV unless
7 this section provides otherwise.

8 *Conflict of interest*

- 9 (2) A test depositary does not meet the independence requirement if a
10 director or officer of the corporate director, or any associate of a
11 director of the corporate director:
12 (a) is a director, officer or employee of the test depositary; or
13 (b) is in a position to cast, or to control (whether directly or
14 indirectly) the casting of, more than 0.5% of the maximum
15 number of votes that would be able to be cast at a general
16 meeting of the test depositary, if the only shares in the test
17 depositary were shares of a particular class; or
18 (c) has any other relationship with the test depositary which
19 might reasonably be expected to give rise to a potential
20 conflict of interest.

21 *20% voting power*

- 22 (3) A test depositary does not meet the independence requirement if
23 the corporate director's voting power in the test depositary exceeds
24 20%.
25 (4) A test depositary does not meet the independence requirement if
26 the test depositary's voting power in any of the following exceeds
27 20%:
28 (a) the CCIV;
29 (b) the corporate director;
30 (c) a class or classes of shares in the corporate director (see
31 section 1163D).

32 *Control*

- 33 (5) A test depositary does not meet the independence requirement if
34 the corporate director controls the test depositary.

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- 1 (6) A test depositary does not meet the independence requirement if
2 the test depositary controls the corporate director.

3 **1163D Voting power in a class of shares**

- 4 (1) A person's *voting power* in a class of shares is:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes}} \times 100$$

5
6 where:

7 *person's and associates' votes* is the total number of votes attached
8 to all the voting shares in the class of shares that the person or an
9 associate of the person has a relevant interest in.

10 *total votes* is the total number of votes attached to all voting shares
11 in the class.

- 12 (2) For the purposes of this section, the number of votes attached to a
13 voting share in a class of shares is to be determined in the same
14 way that the number of votes attached to a voting share in a
15 designated body is determined under subsection 610(2).
- 16 (3) A person's *voting power* in 2 or more classes of shares is worked
17 out under subsection (1) as if all the shares were of the same class.

18 **1163E Corporate director to provide depositary with reasonable** 19 **assistance**

- 20 (1) The corporate director of a CCIV must give the depositary of the
21 CCIV:
- 22 (a) any information in the corporate director's possession or
23 control the depositary reasonably requires for the purpose of
24 fulfilling the depositary's responsibilities in relation to the
25 CCIV; and
- 26 (b) any other assistance the depositary reasonably requires for
27 the purpose of fulfilling those responsibilities.

28 Note: The depositary has a similar obligation to the corporate director: see
29 section 1164C.

- 30 (2) The depositary may give the corporate director a written request to
31 give information covered by paragraph (1)(a).

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- 1 (3) A corporate director that is required under subsection (2) to give
2 information must give the information within a reasonable period.

3 **Subdivision B—Duties and powers**

4 **1164 Depositary to hold CCIV assets on trust**

- 5 (1) The depositary of a CCIV must hold the assets of the CCIV on
6 trust for the CCIV.
- 7 (2) The depositary of a CCIV is not required by subsection (1) to hold
8 an asset that is in a class of assets determined by the CCIV rules.
- 9 (3) The depositary has power to appoint an agent, or otherwise engage
10 a person, to do anything that it is authorised to do in connection
11 with the CCIV (other than its functions under
12 subsection 1164B(1)). The agent or person:
13 (a) must not be the corporate director of the CCIV; and
14 (b) must meet the independence requirement set out in
15 section 1163C.
- 16 (4) For the purpose of determining whether there is a liability to the
17 CCIV, the depositary is taken to have done (or failed to do)
18 anything that the agent or person has done (or failed to do) because
19 of the appointment or engagement, even if the person or agent was
20 acting fraudulently or outside the scope of the authority or
21 engagement.
- 22 (5) An agent appointed, or a person otherwise engaged, by:
23 (a) the agent or person referred to in subsection (3); or
24 (b) a person who is taken under this subsection to be an agent of
25 the depositary;
26 to do anything that the depositary is authorised to do in connection
27 with the CCIV is taken to be an agent appointed by the depositary
28 to do that thing for the purposes of subsection (4).

29 **1164A Depositary to deal on instructions**

30 The depositary of a CCIV may deal with assets the depositary
31 holds only on instructions from the corporate director that:

- 32 (a) are lawful; and
33 (b) comply with the CCIV's constitution.

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1164B Depository to have supervisory responsibility

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- 2 (1) The depository of a CCIV must take reasonable care to ensure that
- 3 the corporate director conducts the activities covered by
- 4 subsection (2) in a manner that complies with:
- 5 (a) the CCIV's constitution; and
- 6 (b) the provisions of this Act.
- 7 (2) This subsection covers the following activities of the CCIV:
- 8 (a) issuing, redeeming and cancelling shares in the CCIV;
- 9 (b) valuing shares in the CCIV;
- 10 (c) allocating assets and liabilities of the CCIV to sub-funds of
- 11 the CCIV;
- 12 (d) allocating and distributing income of the CCIV.
- 13 (3) The depository may not appoint an agent, or otherwise engage a
- 14 person, to carry out its functions under subsection (1).

15 1164C Depository to provide corporate director with reasonable

16 assistance

- 17 (1) The depository of a CCIV must give the corporate director of the
- 18 CCIV:
- 19 (a) any information in the depository's possession or control the
- 20 corporate director reasonably requires for the purpose of
- 21 fulfilling the corporate director's responsibilities in operating
- 22 the CCIV; and
- 23 (b) any other assistance the corporate director reasonably
- 24 requires for the purpose of fulfilling those responsibilities.

25 Note: The corporate director has a similar obligation to the depository: see

26 section 1163E.

- 27 (2) The corporate director may give the depository a written request to
- 28 give information covered by paragraph (1)(a).
- 29 (3) A depository that is required under subsection (2) to give
- 30 information must give the information within a reasonable period.

31 1164D Duties owed by depository

32 In exercising its powers and carrying out its duties, the depository

33 of a CCIV must:

- 34 (a) act honestly; and
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- 1 (b) exercise the degree of care and diligence that a reasonable
2 person would exercise in the depositary's position; and
3 (c) act in the best interests of the CCIV and, if there is a conflict
4 between the CCIV's interests and its own interests, give
5 priority to the CCIV's interests; and
6 (d) treat:
7 (i) members of the CCIV who hold shares of the same class
8 equally; and
9 (ii) members of the CCIV who hold shares of different
10 classes fairly; and
11 (iii) members of the CCIV who are members of different
12 sub-funds fairly.

13 **1164E Depositary to report breaches to ASIC**

- 14 (1) The depositary of a CCIV must comply with subsection (2) if:
15 (a) the depositary:
16 (i) becomes aware that a breach of this Act has occurred; or
17 (ii) reasonably suspects that a breach of this Act has
18 occurred; and
19 (b) the breach or suspected breach:
20 (i) relates to the CCIV; and
21 (ii) arises in relation to the conduct by the corporate director
22 of activities covered by subsection 1164B(2); and
23 (iii) is, or would be, in the opinion of the depositary, a
24 serious breach of this Act.
- 25 (2) The depositary must, as soon as practicable and in any case within
26 10 business days after becoming aware of, or reasonably
27 suspecting, the breach, lodge a written report on the matter with
28 ASIC.

29 **1164F Dealing with conflicting duties**

- 30 An obligation placed on the depositary of a CCIV by this
31 Subdivision overrides any conflicting duty an officer or employee
32 of the depositary has under Part 2D.1.

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1 Subdivision C—Replacing the depositary

2 1165 Changes only take effect when ASIC alters record of 3 registration

- 4 (1) Despite anything in this Subdivision, the company named in
5 ASIC's record of registration as the depositary or temporary
6 depositary of a CCIV remains the CCIV's depositary until the
7 record is altered to name another company as the CCIV's
8 depositary or temporary depositary.
- 9 (2) A purported change of the CCIV's depositary is ineffective unless
10 it is in accordance with this Subdivision.
- 11 (3) If a new depositary, or temporary depositary, is chosen, or
12 appointed by the Court, the corporate director must, as soon as
13 practicable, lodge a notice with ASIC informing ASIC of the
14 choice or appointment.

15 1165A Requirements of section 1163 must be met

16 A company cannot be chosen or appointed as the depositary or
17 temporary depositary of a CCIV unless it meets the requirements
18 of section 1163.

19 1165B Initiating removal or retirement of depositary

20 *Retirement of depositary*

- 21 (1) If the depositary of a CCIV wants to retire, it must notify the
22 corporate director of the CCIV of its intention to retire and explain
23 its reason for wanting to retire.
- 24 (2) Within 21 days of receiving from the CCIV's depositary a notice
25 of intention to retire, the corporate director must call a members'
26 meeting to enable the members to vote on a special resolution to
27 choose a company to be the new depositary.
- 28 (3) The notice of meeting of the CCIV's members must:
29 (a) set out the depositary's reason for wanting to retire; and
30 (b) set a day for the meeting that is no later than 2 months after
31 the depositary gave notice of its intention to retire; and
32 (c) nominate a company to be the new depositary of the CCIV.

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- 1 (4) If the corporate director fails to call a members' meeting within the
2 period of 21 days referred to in subsection (2), the depositary may
3 call the meeting.

4 *Removal initiated by corporate director*

- 5 (5) If the corporate director of a CCIV wants to remove the depositary,
6 the corporate director may call a meeting of the CCIV's members
7 to consider and vote on:
8 (a) a special resolution that the current depositary should be
9 removed; and
10 (b) a special resolution choosing a company to be the new
11 depositary.

12 *Removal initiated by members*

- 13 (6) If the members of a CCIV want to remove the depositary, the
14 members may take action under Part 2G.2 for the calling of a
15 meeting of the CCIV's members to consider and vote on:
16 (a) a special resolution that the current depositary should be
17 removed; and
18 (b) a special resolution choosing a company to be the new
19 depositary.

20 *Requirements for notice*

- 21 (7) To initiate the removal of the depositary under subsection (5) or
22 (6), the notice of meeting of the CCIV's members must:
23 (a) set out the intention to remove the depositary; and
24 (b) nominate, as the new depositary of the CCIV, a company
25 that:
26 (i) meets the requirements of section 1163; and
27 (ii) consents to be chosen as the new depositary.

28 *Effect of section*

- 29 (8) This section has effect despite anything to the contrary in:
30 (a) the CCIV's constitution; or
31 (b) any contract entered into by the depositary, the CCIV, the
32 corporate director or the members of the CCIV.

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1165C Requirement to choose new depositary

2 The depositary of a CCIV may not retire, or be removed by a
3 special resolution passed at a meeting of the members of the CCIV,
4 unless a new depositary is chosen.

1165D How a new depositary is chosen

- 6 (1) A new depositary is chosen only if:
- 7 (a) a meeting of the members of the CCIV passes a special
8 resolution appointing a company to be the new depositary of
9 the CCIV; and
 - 10 (b) that company has consented, in writing, to become the new
11 depositary of the CCIV.
- 12 (2) Provided it still meets the requirements in subsection 1163(2),
13 nothing prevents a company that is the temporary depositary from
14 being chosen as the new depositary.

1165E Application to Court if new depositary not chosen

- 16 (1) This section applies if:
- 17 (a) the retirement or removal of the depositary of a CCIV is
18 initiated under subsection 1165B(1), (5) or (6); and
 - 19 (b) the retirement or removal of the depositary is prevented by
20 section 1165C.
- 21 (2) However, this section does not apply if:
- 22 (a) the removal of the depositary was initiated under
23 subsection 1165B(5) or (6); and
 - 24 (b) the meeting of the members of the CCIV failed to pass a
25 special resolution that the current depositary should be
26 removed.
- 27 (3) An application to the Court for appointment of a temporary
28 depositary under section 1165G must be made by the corporate
29 director of the CCIV.
- 30 (4) An application to the Court for appointment of a temporary
31 depositary under section 1165G may be made by any of the
32 following:
- 33 (a) ASIC;
 - 34 (b) the depositary;

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(c) a member, or group of members, of the CCIV.

1165F Application to Court if depositary loses AFSL

(1) This section applies if the depositary of a CCIV stops holding an Australian financial services licence authorising it to act as a depositary.

Note: It is a requirement that the depositary hold an Australian financial services licence: see paragraph 1163(2)(b).

(2) An application to the Court for appointment of a temporary depositary of the CCIV must be made by the corporate director of the CCIV.

(3) An application to the Court for appointment of a temporary depositary of the CCIV may be made by any of the following:

- (a) ASIC;
- (b) a member, or group of members, of the CCIV.

1165G Appointment of temporary depositary by Court

(1) On application under section 1165E or 1165F, the Court may, by order, remove the current depositary of a CCIV and appoint a company as the temporary depositary of the CCIV.

(2) The Court must not make an order under subsection (1) unless:

- (a) the Court is satisfied that the order is in the interest of the members of the CCIV; and
- (b) the company consents in writing to becoming the CCIV's temporary depositary.

(3) The Court may make any further orders that it considers appropriate.

1165H Corporate director to initiate appointment of permanent depositary

(1) Within 3 months of the appointment of a temporary depositary by the Court under section 1165G, the corporate director of a CCIV must call a meeting of the CCIV's members to consider and vote on a special resolution choosing a company to be the new depositary.

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- 1 (2) Before the end of the 3 months, the corporate director may apply to
2 the Court for an extension of that period. If the Court grants the
3 extension, the corporate director must call the meeting within the
4 extended period.

5 *Requirements for notice*

- 6 (3) The notice of meeting of the CCIV's members must nominate, as
7 the new depositary of the CCIV, a company that:
8 (a) meets the requirements of section 1163; and
9 (b) consents to be chosen as the new depositary.

10 **1165J Application to Court for winding up if permanent depositary**
11 **not appointed**

- 12 (1) This section applies if:
13 (a) a temporary depositary is appointed by the Court under
14 section 1165G; and
15 (b) either:
16 (i) the corporate director fails to call a meeting within the
17 period required by section 1165H; or
18 (ii) the corporate director calls a meeting within the period
19 required by section 1165H, but a new depositary is not
20 chosen.

21 Note: For when a new depositary is chosen, see section 1165D.

- 22 (2) An application to the Court for a winding up of the CCIV must be
23 made by the corporate director of the CCIV.
- 24 (3) An application to the Court for a winding up of the CCIV may be
25 made by any of the following, if the corporate director does not do
26 so:
27 (a) ASIC;
28 (b) a member, or group of members, of the CCIV.

29 **Subdivision D—Consequences of changing the depositary**

30 **1166 Former depositary to hand over books and provide reasonable**
31 **assistance**

32 If the depositary of a CCIV changes, the former depositary must:

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-
- 1 (a) as soon as practicable give the new depositary any books in
2 the former depositary's possession or control that this Act
3 requires to be kept in relation to the CCIV; and
4 (b) give other reasonable assistance to the new depositary to
5 facilitate the change of depositary.

6 **1166A Rights, obligations and liabilities of former depositary**

- 7 (1) If the depositary of a CCIV changes, the rights, obligations and
8 liabilities of the former depositary in relation to the CCIV become
9 rights, obligations and liabilities of the new depositary.
- 10 (2) Despite subsection (1), the following rights and liabilities remain
11 rights and liabilities of the former depositary:
- 12 (a) any right of the former depositary to be paid fees for the
13 performance of its functions before it ceased to be the
14 depositary;
- 15 (b) any right of the former depositary to be indemnified for
16 expenses it incurred before it ceased to be the depositary;
- 17 (c) any right, obligation or liability that the former depositary
18 had as a member of the CCIV;
- 19 (d) any liability for which the former depositary could not have
20 been indemnified out of the assets of the CCIV if it had
21 remained the CCIV's depositary.

22 **1166B Effect of change of depositary on documents etc. to which** 23 **former depositary is party**

- 24 (1) If the depositary of a CCIV changes, a document:
- 25 (a) to which the former depositary is a party, in which a
26 reference is made to the former depositary, or under which
27 the former depositary has acquired or incurred a right,
28 obligation or liability, or might have acquired or incurred a
29 right, obligation or liability if it had remained the depositary;
30 and
- 31 (b) that is capable of having effect after the change;
32 has effect as if the new depositary (and not the former depositary)
33 were a party to it, were referred to in it or had or might have
34 acquired or incurred the right, obligation or liability under it.

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1 (2) Subsection (1) does not apply to a right, obligation or liability that
2 remains a right, obligation or liability of the former depository
3 because of subsection 1166A(2).

4 **1166C Officers of depository have qualified privilege in certain cases**

5 The following have qualified privilege in proceedings for
6 defamation in respect of a statement to ASIC in connection with
7 this Subdivision or Subdivision C:

- 8 (a) officers and employees of a depository or former depository;
9 (b) former officers and former employees of a depository or
10 former depository.

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1 Part 2—Consequential amendments

2 *Corporations Act 2001*

3 **2 Section 9 (definition of assets)**

4 Repeal the definition, substitute:

5 ***assets:***

- 6 (a) in relation to a financial services licensee—means all the
7 licensee’s assets (whether or not used in connection with the
8 licensee’s Australian financial services licence); and
9 (b) in relation to a sub-fund of a CCIV—has the meaning given
10 by section 1142D.

11 **3 Section 9**

12 Insert:

13 ***CCIV:*** see *corporate collective investment vehicle*.

14 ***CCIV rule*** means a rule made by ASIC under section 1149.

15 ***corporate collective investment vehicle*** or ***CCIV*** means a company
16 that is registered as a corporate collective investment vehicle under
17 this Act.

18 ***corporate director*** of a CCIV means the company named in
19 ASIC’s record of the CCIV’s registration as the corporate director
20 or temporary corporate director of the CCIV.

21 Note: Operating a CCIV is a financial service for the purpose of Chapter 7:
22 see subsection 766A(1).

23 ***depository*** of a CCIV means the company named in ASIC’s record
24 of the CCIV’s registration as the depository or temporary
25 depository of the CCIV.

26 **4 Section 9 (definition of extraordinary resolution)**

27 Repeal the definition, substitute:

28 ***extraordinary resolution:***

- 29 (a) in relation to a registered scheme—means a resolution:
-

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-
- 1 (i) of which notice as set out in paragraph 252J(c) has been
2 given; and
3 (ii) that has been passed by at least 50% of the total votes
4 that may be cast by members entitled to vote on the
5 resolution (including members who are not present in
6 person or by proxy); and
7 (b) in relation to a CCIV—means a resolution:
8 (i) of which notice as set out in subsection 249L(1) has
9 been given; and
10 (ii) that has been passed by at least 50% of the total votes
11 that may be cast by members entitled to vote on the
12 resolution (including members who are not present in
13 person or by proxy); and
14 (c) in relation to a sub-fund of a CCIV—means a resolution that
15 has been passed by at least 50% of the total votes that may be
16 cast by members entitled to vote on the resolution (including
17 members who are not present in person or by proxy).

18 5 Section 9 (definition of *insolvent*)

19 Repeal the definition, substitute:

20 *insolvent*:

- 21 (a) in relation to a person—has the meaning given by
22 subsection 95A(2); and
23 (b) in relation to a sub-fund of a CCIV—has the meaning given
24 by subsection 1146A(4).

25 6 Section 9

26 Insert:

27 *liabilities*, in relation to a sub-fund of a CCIV, has the meaning
28 given by section 1142H.

29 7 Section 9 (after paragraph (a) of the definition of *member*)

30 Insert:

- 31 (b) in relation to a sub-fund of a CCIV—means a person who is
32 a member under section 1141C; or

33 8 Section 9

34 Insert:

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1 *referable*: see section 1141B.

2 *retail CCIV* has the meaning given by section 1154A.

3 **9 Section 9 (definition of *solvent*)**

4 Repeal the definition, substitute:

5 *solvent*:

- 6 (a) in relation to a person—has the meaning given by
7 subsection 95A(1); and
8 (b) in relation to a sub-fund of a CCIV—has the meaning given
9 by subsection 1146A(3).

10 **10 Section 9 (definition of *special resolution*)**

11 Repeal the definition, substitute:

12 *special resolution*, when used in a provision outside Schedule 2
13 means:

- 14 (a) in relation to a company—a resolution:
15 (i) of which notice as set out in paragraph 249L(1)(c) has
16 been given; and
17 (ii) that has been passed by at least 75% of the votes cast by
18 members entitled to vote on the resolution; or
19 (b) in relation to a registered scheme—a resolution:
20 (i) of which notice as set out in paragraph 252J(c) has been
21 given; and
22 (ii) that has been passed by at least 75% of the votes cast by
23 members entitled to vote on the resolution; or
24 (c) in relation to a sub-fund of a CCIV—a resolution that has
25 been passed by at least 75% of the votes cast by members
26 entitled to vote on the resolution.

27 **11 Section 9**

28 Insert

29 *sub-fund*, of a CCIV, has the meaning given by
30 subsection 1141(1).

31 **12 Section 9 (definition of *voting power*)**

32 Repeal the definition, substitute:

33 *voting power*:

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-
- 1 (a) in a body or managed investment scheme—has the meaning
2 given by section 610; and
3 (b) in a class of shares—has the meaning given by
4 section 1163D.

5 **13 Section 9**

6 Insert:

7 *wholesale CCIV* has the meaning given by section 1154A.

8 **14 Subsection 112(1) (at the end of the table)**

9 Add:

10

Corporate collective investment vehicles	Limited by shares
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11 **15 Subsection 112(1) (note)**

12 Omit “Note”, substitute “Note 1”.

13 **16 At the end of subsection 112(1)**

14 Add:

15 Note 2: For corporate collective investment vehicles, see Chapter 7A.

16 **17 Subparagraph 135(1)(a)(i)**

17 After “each company”, insert “(other than a CCIV)”.

18 **18 Before section 254J**

19 Insert:

20 Note: This Part does not apply to CCIVs: see section 1144.

21 **19 At the end of section 256A**

22 Add:

23 Note: This Chapter does not apply to CCIVs: see section 1145.

24 **20 After paragraph 766A(1)(d)**

25 Insert:

26 (da) operate a CCIV; or

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1 **21 Paragraph 766C(4)(c)**

2 After “body corporate”, insert “(other than a CCIV)”.

3 **22 After paragraph 766C(4)(c)**

4 Insert:

5 (ca) a CCIV;

6