# Corporate Collective Investment Vehicles Exposure draft law and associated explanatory materials

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| To assist in identifying relevant issues, this table sets out the key elements of the corporate collective investment vehicle (CCIV) regime and shows the relevant sections and references.  This exposure draft does not include draft provisions relating to external administration, takeovers, compulsory buy-outs and acquisitions, disclosure, financial services and licencing or the penalty framework for CCIVs. These draft provisions will be exposed for public consultation as part of a second tranche of draft legislation. |

| **Issue** | **Bill ref.** | **Brief explanation** |
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| **What is a corporate collective investment vehicle (CCIV)?** | | A CCIV is a new type of company that is limited by shares and has as its director a public company with an AFSL authorising it to operate the business and conduct the affairs of the CCIV (the corporate director).  A CCIV must have at least one sub-fund. The CCIV, and each sub-fund of the CCIV, must have at least one member.  A CCIV may either be retail or wholesale, with retail CCIVs subject to a comprehensive regulatory framework that encompasses protections that are necessary for retail investors.  A CCIV will be wholesale unless an offer for securities in the CCIV to a client required giving the client a PDS under Division 2 of Part 7.9 of the Corporations Act.  All CCIVs must have a constitution. The constitution of a CCIV is enforceable as a statutory contract between the following parties: the CCIV, the corporate director, and each member. The constitution of a retail CCIV must make adequate provision for certain matters (such as rights of the corporate director to be paid fees and indemnities in relation to the performance of its duties).  Refer to Chapter 2 of the explanatory materials for further information. |
| A CCIV as a new type of company that is limited by shares | 1231 |
| Basic requirements for a CCIV | 1231 – 1231B; 1232B |
| Difference between a retail CCIV and a wholesale CCIV | 1232F |
| Powers of a CCIV | 1232 |
| Requirements for a CCIV’s constitution | 1231B – 1232D; 1232G – 1232J |
| Registering a CCIV | 1231B – 1231D |
| **What is a sub-fund of a CCIV?** | | The business of a CCIV must be conducted through one or more sub-funds (that is, a CCIV must have at least one sub-fund). Each part of the CCIV’s business must relate to one (and only one) sub-fund and the business of all of the CCIV’s sub-funds must, together, constitute the entire business of the CCIV.  A sub-fund is established on registration by ASIC and is identifiable by its unique name and ARFN. A sub-fund does not have legal personality.  Each security that is issued by a CCIV must be referable to one (and only one) sub-fund. The members of a CCIV who hold one or more shares that are referable to the same sub-fund form a class of shareholders. Shares that are referable to a sub-fund may be further divided into classes.  Consistent with the requirement for strict segregation of the business of each sub-fund of a CCIV, each asset and liability of a CCIV must be allocated to a sub-fund.  Assets of a CCIV that relate solely to the business of a single sub-fund are automatically allocated to that sub-fund. Assets of a CCIV that are not automatically allocated are allocated to each sub-fund of the CCIV in a proportion that is fair and reasonable in the circumstances. The corporate director of the CCIV must determine the proportion of the asset to be allocated to each sub-fund on this basis. Assets that are not automatically allocated and which are not fungible assets must be converted into money, or two or more fungible assets, before they become assets of a sub-fund according to the proportion determined for the sub-fund.  Liabilities of a CCIV that relate solely to the business of a single sub-fund are liabilities of that sub-fund. A liability of a CCIV that relates to the business of more than one sub-fund is allocated to each sub-fund of the CCIV in a proportion that is fair and reasonable in the circumstances. The corporate director of the CCIV must determine the proportion of the liability to be allocated to each sub-fund on this basis.  Refer to Chapter 3 of the explanatory materials for further information. |
| Meaning of a sub-fund | 1233 |
| Segregated operation of business of sub-funds | 1233A |
| Minimum of one class of shares per sub-fund | 1233B |
| Membership of a sub-fund | 1233C |
| Registration of a sub-fund | 1233D – 1233F |
| Assets of sub-funds | 1233G – 1233M |
| Liabilities of sub-funds | 1233N – 1233Q |
| Names of sub-funds | 1233S – 1233X |
| Identification of sub-funds on certain documents | 1233T |
| **What is a depositary of a CCIV and what are its obligations?** | | A retail CCIV must have a depositary. A wholesale CCIV may choose to have a depositary. If it so chooses, the wholesale CCIV is subject to the full regulatory requirements for depositaries.  The depositary must be a public company or a registered foreign company that holds an AFSL authorising it to act as a depositary for the CCIV. The depositary of a CCIV (and any entities performing depositary functions) must also meet independence requirements (see the explanatory materials for a description of the proposed depositary independence requirements).  The depositary must hold the assets of the CCIV in a segregated manner and on trust for the CCIV. It must execute lawful instructions in relation to the assets of a CCIV. It also supervises certain aspects of the operations of the CCIV.  If a CCIV acquires an asset that is required to be held by the depositary, it must transfer that asset to the depositary immediately after it is acquired.  The depositary cannot retire or be replaced by the CCIV’s members unless a new depositary is appointed.  Refer to Chapter 4 of the explanatory materials for further information. |
| CCIV must transfer assets to depositary | 1234 – 1234A |
| Retail CCIV must have a depositary; wholesale CCIV may have a depositary | 1234B |
| Who can be a depositary | 1234C |
| Independence of depositary | 1234D |
| Depositary and corporate director to provide each other reasonable assistance | 1234F; 1234M |
| Agents of depositary | 1234H |
| Depositary to hold assets in of CCIV in a segregated manner and on trust for CCIV | 1234J |
| Depositary to deal with assets of CCIV on instructions | 1234K |
| Depositary to have supervisory responsibility for certain activities carried out in relation to the CCIV | 1234L |
| Duties of a depositary | 1234N |
| Replacing the depositary | 1235 – 1235N |
| **What is the corporate director of a CCIV and what are its powers and obligations?** | | The CCIV must have, as its sole director, a public company that holds an AFSL authorising it to operate the business and conduct the affairs of the CCIV.  The CCIV does not have any other officers or employees other than the corporate director. The primary exception to this is any liquidator, administrator or receiver appointed to the CCIV.  The corporate director of a CCIV has an obligation to operate the business and conduct the affairs of the CCIV. The corporate director must also perform the functions conferred on it by the CCIV’s constitution and the Act, as well as ensure the CCIV complies with its constitution and the Act.  The corporate director of a CCIV may exercise all of the powers of the CCIV other than any power that must be exercised in a meeting of the members of the CCIV (or a sub-fund of the CCIV).  The corporate director of a CCIV also owes statutory duties to the CCIV under Part 2D.1 of Chapter 2D of the Act in its capacity as an officer of the CCIV.  The corporate director of a retail CCIV, and the officers and employees of the corporate director, owe additional statutory duties to the members of the CCIV. These are based on the statutory duties a responsible entity and its officers and employees owe to the members of a registered scheme.  The corporate director of a CCIV is liable for the acts of its agents and the agents of the CCIV, even if those acts are fraudulent or outside the scope of its authority.  There are restrictions on the CCIV granting an indemnity or insuring an officer or an auditor of the CCIV, or an officer or auditor of the corporate director, from liability to the CCIV.  Refer to Chapter 5 of the explanatory materials for further detail. |
| Corporate director of the CCIV | 1231; 1238E |
| Appointment and removal of corporate director | 1238E –1238U |
| Restriction on engagement of other directors | 1238F |
| Restriction on appointment of other officers and employees | 1239 |
| Additional statutory duties of the corporate director of a retail CCIV (and its officers and employees) | 1237B –1237F |
| Material personal interests of directors of the corporate director | 1237G –1237H |
| Corporate director’s powers and obligations | 1237J |
| Liability of corporate director for agents | 1237K |
| Restrictions on indemnities, insurance and termination payments | 1238 –1238D |
| **Compliance plan of a retail CCIV** | | A retail CCIV must have a compliance plan. A wholesale CCIV is not required to have a compliance plan.  A copy of the compliance plan must be lodged with ASIC (and signed by the directors of the corporate director).  The corporate director must ensure that the CCIV’s compliance plan meets the legislative requirements at all times.  The corporate director’s responsibilities in relation to the compliance plan are similar to those of responsible entities of registered schemes. However, unlike for registered schemes, there are no prescribed content requirements for a CCIV’s compliance plan.  The corporate director may amend the CCIV’s compliance plan or repeal and replace it. ASIC may also direct the corporate director to modify the CCIV’s compliance plan. This amended compliance plan must also be lodged with ASIC.  The compliance plan must be audited by a registered company auditor.  Refer to Chapter 5 of the explanatory materials for further information. |
| Retail CCIV must have a compliance plan | 1241 –1241A |
| Content of compliance plan | 1241B –1241C |
| Lodging compliance plan with ASIC | 1241A; 1241D |
| Amending the compliance plan | 1241F |
| Requirement to audit the compliance plan | 1241H |
| Eligibility to be auditor of compliance plan | 1241H |
| Conducting audit of compliance plan | 1241J |
| Contraventions by auditor | 1241K |
| Removal and resignation of auditor | 1241L – 1241M |
| **Related party transactions** | | A CCIV must obtain the approval of the members of each affected sub-fund if the CCIV wishes to give a financial benefit to a related party.  The key exception to this is for fees or indemnities payable to the corporate director of the CCIV for the proper performance of its duties to the CCIV. A retail CCIV is required to specify these benefits in its constitution.  The related parties of a CCIV include entities that control the corporate director, an agent of the corporate director, and the directors of the corporate director (and their relatives), among others.  Refer to Chapter 6 of the exposure explanatory materials for further information. |
| Member approval for the giving of a financial benefit to a related party by the CCIV | 1242A |
| Exceptions to requiring member approval for related party transactions | 1242B – 1242C |
| Procedure for obtaining member approval | 1242D – 1242E |
| Related parties of a CCIV | 1242F |
| **Members’ rights and remedies** | | Similar to other companies, members of a CCIV are able to seek remedy against a CCIV if its affairs are being conducted in a manner that is contrary to the interests of the members of the CCIV (as a whole) or is oppressive to a member, or class of members, of the CCIV. The grounds for a court order are not exhaustive and include an order to modify or repeal the CCIV’s constitution.  A member of a CCIV may bring, or intervene in, legal proceedings on behalf of the CCIV in certain circumstances.  The CCIV must comply with the relevant procedures for varying and cancelling class rights in the same way that other companies are required to do so.  Certain actions are taken to vary rights attached to shares of a CCIV in the same way that certain actions are taken to vary the rights attached to shares of other companies.  Refer to Chapter 6 of the explanatory materials for further information. |
| Oppressive conduct of affairs | 1243 |
| Proceedings on behalf of a CCIV by members | 1243A |
| Class rights | 1243B –1243D |
| **What are requirements for resolutions of the CCIV?** | | The corporate director (being a company with its own board of directors) may pass a resolution on behalf of the CCIV if the directors of the corporate director pass a resolution that expressly states it is on behalf of the corporate director and the CCIV to which the resolution applies.  The meetings of the whole CCIV, or a sub-fund of the CCIV, may be called by a director or a member.  The requirements for meetings of members of CCIVs are based on the requirements that apply to registered schemes (given similarities between a CCIV and a registered scheme).  Some modifications are made to account for a CCIV’s corporate status. In particular, a member’s voting power at a meeting (of either the CCIV or a sub-fund) is referable to its shares in the CCIV (unless otherwise provided for in the CCIV’s constitution).  Refer to Chapter 7 of the explanatory materials for further information. |
| Corporate director may pass a resolution on behalf of the CCIV (as its director) | 1244 |
| Meetings of members of CCIV | 1244A |
| Meetings of members of a sub-fund | 1244B |
| Members’ resolutions | 1244E |
| Voting at a meeting of the members | 1244F |
| Voting by associates of the CCIV, corporate director and corporate director’s associates at a meeting of the members | 1244G |
| **What are the requirements for securities of a CCIV and transactions affecting share capital?** | | A CCIV may issue shares and debentures, provided that the security is referable to only one sub-fund.  The CCIV may also issue ordinary shares which are liable to be redeemed (‘redeemable shares’). These shares can be redeemed if the redemption does not result in the sub-fund to which the shares are referable becoming insolvent and certain other conditions are satisfied.  CCIVs may pay dividends, redeem redeemable preference shares and reduce their share capital in a similar way to other companies. Some modifications have been made to these rules to apply them at the sub-fund level.  A CCIV is generally prohibited from acquiring shares (or units of shares) in itself. One implication of this rule against self-acquisition is that a sub-fund of a CCIV cannot acquire shares that are referable to another sub-fund of the CCIV, except under a court order. This prevents one sub-fund from ‘cross‑investing’ in another sub-fund, thereby minimising the risk of contagion between the sub-funds.  A CCIV may only financially assist a person to acquire shares (or units of shares) in a sub-fund in specified circumstances.  Refer to Chapter 8 of the explanatory materials for further information. |
| Issuing shares in a CCIV | 1245; 1245A |
| Issuing debentures in the CCIV | 1247 |
| Conversion of shares | 1245B – 1245D |
| Redemption of redeemable shares | 1245E – 1245N |
| Redemption of redeemable preference shares | 1245P |
| Circumstances in which a CCIV may pay dividends | 1245Q – 1245R |
| Requirements to notify ASIC about shares | 1245S |
| Reductions in share capital and share buy-backs | 1246A –1246G |
| Prohibition on self-acquisition and control of shares | 1246H – 1246J |
| Restrictions on financial assistance for acquiring shares | 1246K – 1246M |
| **What are a CCIV’s reporting requirements?** | | The financial reporting and record-keeping requirements for companies in the Act apply to retail CCIVs. A wholesale is not subject to the reporting and audit requirements in the same way that these requirements do not extend to unregistered (or wholesale) MISs.  Some reporting provisions are adapted to accommodate specific features of a CCIV. Importantly, a CCIV must keep records and make financial reports at the sub‑fund level, rather than just across the whole of the CCIV. This ensures that members have appropriate information about the sub‑fund to which their interest relates  The financial records that a CCIV must keep, both for itself and for its sub-funds are subject to similar requirements regarding auditing, financial reporting and reporting to members as those of a registered scheme. These records are to be audited by an auditor that does not have a conflict of interest with the CCIV.  A CCIV’s annual directors’ report requirements are adapted so that it must include specific details about the corporate director and its directors, such as any benefits or interests of a director of the corporate director in the CCIV.  Refer to Chapter 9 of the exposure explanatory materials for further information. |
| Only retail CCIVs are subject to financial reporting requirements | 1248 |
| CCIV to keep financial records for each sub-fund | 1248A |
| Directors of corporate director to have access to financial records | 1248B |
| Financial reporting, including half-yearly reports | 1248C – 1248G |
| Financial records to be audited | 1248H –1248K |
| Members to receive relevant financial reports | 1248L –1248Q |
| When an auditor has a conflict of interest with the CCIV | 1248S–1248V |
| **What are ASIC’s powers?** | | ASIC may make CCIV rules by legislative instrument that prescribe matters that are required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to Chapter 8B.  ASIC also has the power to:   * register a CCIV; * register a sub-fund; * name a sub-fund (and change the sub-fund’s name); * alter the record of registration if there is a change in the CCIV’s corporate director, depositary, or compliance plan auditor; * apply to the Court for orders to appoint a temporary depositary or temporary corporate director; * apply to the Court for an order to wind up the CCIV in the event that no permanent depositary or new corporate director is appointed; * apply to the Court for an order relating to consideration for a redemption of shares by a retail CCIV; * consent to the resignation of a CCIV’s compliance plan auditor; and * give directions to a CCIV’s corporate director in relation to its compliance plan.   Refer to Chapter 10 of the explanatory materials for further information regarding the CCIV rules. |
| Power to make CCIV rules | 1269 – 1269C |
| Registration of the CCIV | 1231D |
| Registration of a sub-fund | 1231D; 1233D |
| Name of a sub-fund | 1233D; 1233V; 1233W |
| Alteration of record of registration to reflect change in corporate director, depositary, or compliance plan auditor | 1235; 1238K; 1238Q; 1241M |
| Application to court for appointment of a temporary depositary | 1235E; 1235F |
| Application to court to wind up a CCIV if a permanent depositary is not appointed | 1235J |
| Application to court for appointment of a temporary corporate director | 1238P; 1238Q |
| Application to court to wind up a CCIV if no corporate director is chosen | 1238R |
| Direction for corporate director to modify compliance plan | 1241F; 1241G |
| Consent to resignation or removal of compliance plan auditor | 1241L |
| Application to court for an order relating to consideration for a redemption of shares by a retail CCIV | 1245H |