



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

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
<b>What is a corporate collective investment vehicle (CCIV)?</b>		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 as a new type of company that is limited by shares	1231	
Basic requirements for a CCIV	1231 – 1231B; 1232B	A CCIV must have at least one sub-fund. The CCIV, and each sub-fund of the CCIV, must have at least one member.
Difference between a retail CCIV and a wholesale CCIV	1232F	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.
Powers of a CCIV	1232	
Requirements for a CCIV’s constitution	1231B – 1232D; 1232G – 1232J	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.
Registering a CCIV	1231B – 1231D	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.

Issue	Bill ref.	Brief explanation
<b>What is a sub-fund of a CCIV?</b>		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.
Meaning of a sub-fund	1233	
Segregated operation of business of sub-funds	1233A	
Minimum of one class of shares per sub-fund	1233B	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.
Membership of a sub-fund	1233C	
Registration of a sub-fund	1233D – 1233F	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.
Assets of sub-funds	1233G – 1233M	
Liabilities of sub-funds	1233N – 1233Q	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.
Names of sub-funds	1233S – 1233X	
Identification of sub-funds on certain documents	1233T	<p>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.</p> <p>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.</p> <p>Refer to Chapter 3 of the explanatory materials for further information.</p>

Issue	Bill ref.	Brief explanation
<b>What is a depositary of a CCIV and what are its obligations?</b>		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.
CCIV must transfer assets to depositary	1234 – 1234A	
Retail CCIV must have a depositary; wholesale CCIV may have a depositary	1234B	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).
Who can be a depositary	1234C	
Independence of depositary	1234D	
Depositary and corporate director to provide each other reasonable assistance	1234F; 1234M	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.
Agents of depositary	1234H	
Depositary to hold assets in of CCIV in a segregated manner and on trust for CCIV	1234J	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.
Depositary to deal with assets of CCIV on instructions	1234K	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.
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	
<b>What is the corporate director of a CCIV and what are its powers and obligations?</b>		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.
Corporate director of the CCIV	1231; 1238E	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.
Appointment and removal of corporate director	1238E – 1238U	
Restriction on engagement of other directors	1238F	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
Restriction on appointment of other officers and employees	1239	

Issue	Bill ref.	Brief explanation
Additional statutory duties of the corporate director of a retail CCIV (and its officers and employees)	1237B – 1237F	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).
Material personal interests of directors of the corporate director	1237G – 1237H	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.
Corporate director’s powers and obligations	1237J	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.
Liability of corporate director for agents	1237K	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.
Restrictions on indemnities, insurance and termination payments	1238 – 1238D	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.
<b>Compliance plan of a retail CCIV</b>		A retail CCIV must have a compliance plan. A wholesale CCIV is not required to have a compliance plan.
Retail CCIV must have a compliance plan	1241 – 1241A	A copy of the compliance plan must be lodged with ASIC (and signed by the directors of the corporate director).
Content of compliance plan	1241B – 1241C	The corporate director must ensure that the CCIV’s compliance plan meets the legislative requirements at all times.
Lodging compliance plan with ASIC	1241A; 1241D	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
Amending the compliance plan	1241F	
Requirement to audit the compliance plan	1241H	
Eligibility to be auditor of compliance plan	1241H	

Issue	Bill ref.	Brief explanation
Conducting audit of compliance plan	1241J	content requirements for a CCIV's compliance plan.
Contraventions by auditor	1241K	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.
Removal and resignation of auditor	1241L – 1241M	The compliance plan must be audited by a registered company auditor.  Refer to Chapter 5 of the explanatory materials for further information.
<b>Related party transactions</b>		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.
Member approval for the giving of a financial benefit to a related party by the CCIV	1242A	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.
Exceptions to requiring member approval for related party transactions	1242B – 1242C	
Procedure for obtaining member approval	1242D – 1242E	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.
Related parties of a CCIV	1242F	Refer to Chapter 6 of the exposure explanatory materials for further information.
<b>Members' rights and remedies</b>		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
Oppressive conduct of affairs	1243	
Proceedings on behalf of a CCIV by members	1243A	

Issue	Bill ref.	Brief explanation
Class rights	1243B – 1243D	<p>CCIV. The grounds for a court order are not exhaustive and include an order to modify or repeal the CCIV’s constitution.</p> <p>A member of a CCIV may bring, or intervene in, legal proceedings on behalf of the CCIV in certain circumstances.</p> <p>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.</p> <p>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.</p> <p>Refer to Chapter 6 of the explanatory materials for further information.</p>
<b>What are requirements for resolutions of the CCIV?</b>		<p>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.</p> <p>The meetings of the whole CCIV, or a sub-fund of the CCIV, may be called by a director or a member.</p> <p>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).</p> <p>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).</p> <p>Refer to Chapter 7 of the explanatory materials for further information.</p>
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	



Issue	Bill ref.	Brief explanation
<b>What are the requirements for securities of a CCIV and transactions affecting share capital?</b>		A CCIV may issue shares and debentures, provided that the security is referable to only one sub-fund.
Issuing shares in a CCIV	1245; 1245A	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.
Issuing debentures in the CCIV	1247	
Conversion of shares	1245B – 1245D	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.
Redemption of redeemable shares	1245E – 1245N	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.
Redemption of redeemable preference shares	1245P	
Circumstances in which a CCIV may pay dividends	1245Q – 1245R	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.
Requirements to notify ASIC about shares	1245S	
Reductions in share capital and share buy-backs	1246A – 1246G	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.
Prohibition on self-acquisition and control of shares	1246H – 1246J	
Restrictions on financial assistance for acquiring shares	1246K – 1246M	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
<b>What are a CCIV's reporting requirements?</b>		
Only retail CCIVs are subject to financial reporting requirements	1248	Financial records to be audited
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	

Issue	Bill ref.	Brief explanation
Members to receive relevant financial reports	1248L – 1248Q	<p>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.</p> <p>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.</p> <p>Refer to Chapter 9 of the exposure explanatory materials for further information.</p>
When an auditor has a conflict of interest with the CCIV	1248S– 1248V	
<b>What are ASIC’s powers?</b>		<p>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.</p> <p>ASIC also has the power to:</p> <ul style="list-style-type: none"> <li>• register a CCIV;</li> <li>• register a sub-fund;</li> <li>• name a sub-fund (and change the sub-fund’s name);</li> <li>• alter the record of registration if there is a change in the CCIV’s corporate director, depositary, or compliance plan auditor;</li> <li>• apply to the Court for orders to appoint a temporary depositary or temporary corporate director;</li> <li>• 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;</li> <li>• apply to the Court for an order relating to consideration for a redemption of shares by a retail CCIV;</li> <li>• consent to the resignation of a CCIV’s compliance plan auditor; and</li> <li>• give directions to a CCIV’s corporate director in</li> </ul>
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	



Issue	Bill ref.	Brief explanation
Direction for corporate director to modify compliance plan	1241F; 1241G	relation to its compliance plan.
Consent to resignation or removal of compliance plan auditor	1241L	Refer to Chapter 10 of the explanatory materials for further information regarding the CCIV rules.
Application to court for an order relating to consideration for a redemption of shares by a retail CCIV	1245H	