# 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 includes draft provisions relating to external administration and deregistration, financial services and regulation, contraventions of the law by a CCIV (and the corporate director’s liability for these contraventions), and rules relating to the Insolvency Practice Schedule (Corporations). |

| **Issue** | | **Bill ref.** | **Brief explanation** |
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| **External administration and deregistration of a CCIV** | | | The provisions in the Act treat the CCIV in a winding up situation as if it is comprised only of the sub‑fund that is affected by the winding up (the sub-fund in wind up).  This is achieved by applying the following separating assumptions:   * the CCIV’s only business is the business of the sub-fund in wind up; * the only shares issued by the CCIV are the shares referable to the sub-fund in wind up; and * the only property, debts and claims of the CCIV are those allocated to the sub-fund in wind up.   This approach preserves the segregation of assets between sub‑funds.  Applications to the Court for a winding up order do not need to specify the sub-fund. The Court must take into account the separating assumptions when determining whether to give the order sought in the application.  In a statutory demand served on a CCIV, a creditor is not required to specify the sub‑fund. The separating assumptions apply if the CCIV fails to comply with the statutory demand.  In a voluntary wind up situation, the separating assumptions generally apply for the purposes of determining whether the CCIV may resolve, or has resolved, to wind up the CCIV.  A notice or document relating to the winding up must specify the name and ARFN of the sub‑fund in respect of which the CCIV is being wound up and must include the words ‘in liquidation’ after the sub‑fund’s name. |
| Winding up provisions generally apply separately in respect of each sub-fund | 1249A – 1249D | |
| Winding up does not affect allocation or segregation of assets and liabilities | 1249E | |
| Court ordered wind ups of a CCIV in respect of a sub-fund | 1249F; 1249L | |
| Resolution for winding up of a CCIV in respect of a sub-fund | 1249M | |
| Statutory demand | 1249G – 1249K | |
| Powers of the liquidator, corporate director and depositary in a winding up situation | 1249E; 1249P; 1249Q; 1249R; 1249T | |
| Auditor’s duties during winding up | 1249S | |
| Identifying the sub-fund in respect of which the CCIV is being wound up on documents | 1249N | |
| ASIC-initiated winding up | 1249U | |
| Transfer of books relating to the winding up back to the CCIV | 1270; 1270A | |
| Other external administration procedures | N/A | | A liquidator may only exercise a power or perform a function to the extent that it relates to the sub‑fund that is being wound up.  An auditor does not need to undertake any audit activities for the sub‑fund that is affected by the wind up.  Both the corporate director and the liquidator have access to the books relating to the sub-fund in respect of which the CCIV is being wound up.  Provisions for receivership, schemes of arrangement, deregistration in respect of a sub-fund, and deregistration of a CCIV are under development.  Voluntary administration and ASIC-initiated wind up procedures will not apply. |
| Deregistration of sub-funds and CCIVs | N/A | |
| **Takeovers and continuous disclosure** | | | The acquisition of control in a CCIV will not be regulated by the provisions of Chapters 6 to 6C.  This means that a person will not be restricted, or prohibited, from acquiring a certain level of control in a CCIV (through the acquisition of voting power in a CCIV). |
| Takeovers, compulsory acquisitions and buy-outs of a CCIV | N/A | | This will not affect the restrictions on the acquisition of control in other entities under Chapters 6 to 6C. That is, if a CCIV seeks to acquire a certain level of control (or voting power) in another entity (that is regulated by Chapters 6 to 6C), then the CCIV must comply with the relevant requirements.  CCIVs that are disclosing entities are subject to the continuous disclosure requirements for disclosing entities that are set out in Chapter 6CA of the Act.  The provisions to give effect to these positions are under development. |
| Continuous disclosure obligations | N/A | |
| **Financial services and the AFSL regime** | | | The new law modifies Chapter 7 to ensure that the treatment of financial services and the AFSL regime applies appropriately to CCIVs and corporate directors.  For the purposes of Chapter 7 of the Act, any action undertaken by a CCIV relating to a financial service or financial services business is deemed to also be undertaken by its corporate director.  This ensures that a corporate director is required to hold an AFSL for the financial services provided in relation to the CCIV. A CCIV is always exempt from the requirement to hold an AFSL.  A corporate director is required to hold an AFSL that authorises it to provide the financial service of ‘operating the business and conducting the affairs of the CCIV’.  Modifications apply to Part 7.6 (concerning licensing of providers of financial services) so that the AFSL regime applies appropriately in the context of CCIVs. |
| Treatment of financial services provided by the CCIV | 1250; 1250A | |
| A CCIV is not required to hold an AFSL | 1250B | |
| New financial services that relate to the CCIV | 1250C | |
| CCIVs do not make a market or provide custodial or depository services | 1250D – 1250E | |
| How the AFSL regime applies to CCIVs | 1250G – 1250K | |
| Record keeping requirements for the CD as an AFSL holder | 1250M | |
| **Disclosure obligations** | | | Consistent with the disclosure requirements for interests in registered schemes, securities in a CCIV are subject to the Product Disclosure Statement (PDS) regime instead of the disclosure requirements under Chapter 6D. A CCIV is required to provide a PDS to retail clients who acquire a security in the CCIV.  The provisions that relate to the content and other requirements of a PDS are modified to apply appropriately to securities in a CCIV. |
| Financial services disclosure does not apply to operating the business and conducting the affairs of CCIVs | 1250L | |
| Application of the PDS regime to shares in a CCIV | 1250P – 1250X | |
| **Consumer protections and prohibited conduct** | | | Consumer protections available for registered schemes are adapted to deal with the unique structure of CCIVs.  In addition, the insider trading provisions are adapted to apply appropriately to CCIVs. |
| Prohibition on hawking of securities in a CCIV | 1250N | |
| Cooling-off periods | 1250X | |
| Unsolicited offers to purchase securities in CCIVs | 1250Y | |
| Application of the prohibition on insider trading | 1250Z | |
| **Establishing a contravention of the law by a CCIV for a provision outside Chapter 7** | | | The new law contains rules for attributing the physical and fault elements of an offence (for offences generally, and separately for those in Chapter 7) to the CCIV.  In relation to the physical elements of offences outside Chapter 7, the acts or omissions of the corporate director’s employees, agents and officers are attributed directly to the CCIV rather than being attributed to the corporate director. Similarly, when proving the fault elements, the corporate director’s authorisation or permission of the offence is attributed to the CCIV.  Similarly, the new law contains rules for establishing a contravention of a civil penalty provision by a CCIV (for civil penalties generally, and separately for those in Chapter 7). An element of a civil penalty provision is attributed to a CCIV if it is done by an agent or officer of the CCIV, or an employee, agent or officer of the corporate director (with their actual or apparent authority). |
| Application of new principles | 1267 – 1267C | |
| Attributing the physical elements of an offence to the CCIV | 1267D | |
| Attributing fault elements of an offence other than negligence to the CCIV | 1267E | |
| Attributing negligence to the CCIV | 1267F | |
| Application of certain defences under the Criminal Code to CCIVs | 1267G; 1267H | |
| Attributing an element of a contravention of a civil penalty provision to a CCIV | 1267K – 1267M | |
| **Attributing conduct for the purposes of provisions in Chapter 7** | | | A CCIV engages in conduct where:   * an agent of the CCIV; or * a director, employee, or agent of the corporate director   engages in conduct on behalf of the CCIV and within the scope of the person’s actual or apparent authority to act for the CCIV.  A CCIV is taken to have a certain state of mind in relation to its conduct where:   * an agent of the CCIV; or * a director, employee or agent of the corporate director   acting for the CCIV within the person’s actual or apparent authority is shown to have that state of mind in relation to that person’s conduct. |
| When a CCIV is taken to have undertaken conduct for the purposes of provisions in Chapter 7 | 1250F | |
| When a CCIV is taken to have a certain state of mind for the purposes of a proceeding under Chapter 7 | 1250F | |
| **Corporate director’s liability for a contravention of the law by a CCIV** | | | The corporate director of a CCIV is responsible for the consequences of a contravention of Commonwealth law by the CCIV.  The new law re‑routes Commonwealth offences committed by the CCIV, and contraventions of Commonwealth civil penalty provisions, from the CCIV to the corporate director. Accordingly, if the CCIV contravenes the law, the corporate director is liable for the offence and any penalty.  A provision is also under development to require the corporate director to indemnify the CCIV for any loss or damage the CCIV sustains as a result of the CCIV’s contravention of the law. |
| Re-routing of Commonwealth offences and contraventions of civil penalties from the CCIV to the corporate director | 1267C; 1267J; 1267N | |
| Indemnity for other contraventions of the law | N/A | |