



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

To assist in identifying relevant issues, this table sets out further consequential amendments of the Corporations Act and other Acts for the corporate collective investment vehicle (CCIV) regime and shows the relevant sections and references.

This exposure draft includes draft provisions relating to depositary independence, external administration, takeovers, compulsory buy-outs and acquisitions, disclosure and fundraising, the Asia Region Funds Passport (ARFP), and other miscellaneous amendments (such as amendments to the *Australian Securities and Investments Commission Act 2001* (ASIC Act)).

Issue	Bill ref.	Brief explanation
<b>Depositary independence</b>		
Who do the requirements apply to?	1234D	The depositary of a CCIV, any other entity performing depositary functions and any related bodies corporate of these entities must meet the independence requirement in relation to entities that direct investment decisions for the CCIV (in particular, the corporate director).
Structural independence test	1234DA	
Voting/control test	1234DB	
Independent director test	1234DC	The independence requirement consists of three tests:
Functional independence requirements	1234QA	<ul style="list-style-type: none"><li>• a structural independence test;</li><li>• a voting/control test; and</li><li>• an independent director test.</li></ul> <p>If the depositary, any other entity performing depositary functions or any of their related bodies corporate fail any of the above three tests, then the depositary itself fails the independence requirement.</p> <p>If the depositary of a CCIV or any other entity performing depositary functions performs any other functions for the CCIV, then it must also comply with any functional independence requirements prescribed in the regulations.</p> <p>See Chapter 2 of the explanatory materials for further</p>

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		information.
<b>External administration</b>		
General approach	12-000; 12-015; 12-035; 12-060; 12-095 – 12-110; 12-260; 12-275; 12-290	<p>External administration applies on a sub-fund-by-sub-fund basis, rather than at the CCIV-level. This is achieved by applying five translation rules to the existing external administration provisions in Chapter 5.</p> <p>The first translation rule replaces a reference in the provisions to the company undergoing external administration (the relevant company) with a reference to the sub-fund.</p> <p>The second translation rule replaces a reference to the ‘directors’ of the relevant company with a reference to the corporate director.</p> <p>The third translation rule replaces a reference to the ‘officers’ of the relevant company with a reference to the corporate director, a shadow director or an external administrator of a sub-fund.</p> <p>The fourth and fifth translation rules replace a reference to the ‘shares’ or ‘debentures’ of the relevant company with a reference to the shares or debentures referable to the sub-fund.</p> <p>See Chapter 3 of the explanatory materials for further information.</p>
Arrangements and reconstructions	12-005 – 12-030	<p>Sub-funds may be rearranged within a CCIV or transferred between CCIVs. The new law also grants the Court additional powers to make orders in the CCIV context. This includes the power to make orders in relation to the assets and liabilities of a sub-fund.</p> <p>See Chapter 3 of the explanatory materials for further information.</p>
Receivership	Division 3 of Part 8B.12	<p>Receivers are taken to be appointed for each sub-fund separately where the asset has been allocated to more than one sub-fund.</p> <p>Receivers have special powers to instruct the depositary and challenge allocation determinations before the Court.</p> <p>See Chapter 3 of the explanatory materials for further information.</p>

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Winding up	Division 4 of Part 8B.12	<p>Only a sub-fund (not a CCIV) may be wound up.</p> <p>A liquidator is appointed to a sub-fund. A liquidator may only exercise a power or perform a function to the extent that it relates solely to the carrying on of the sub-fund that is being wound up.</p> <p>The corporate director remains in office but must not exercise a function or power that relates solely to the sub-fund that is being wound up.</p> <p>A creditor must specify the sub-fund in a statutory demand or an application for the Court to order winding up. The creditor may seek information about the identity of the sub-fund from the CCIV.</p> <p>See Chapter 3 of the explanatory materials for further information.</p>
Insolvent trading	Divisions 5 to 7 of Part 8B.12	<p>Special translation rules apply to the insolvent trading provisions in Part 5.7B. These rules depart from the second and third translation rules and ensure that the natural person directors (rather than the corporate director) owe the duty to prevent insolvent trading.</p> <p>Bespoke amendments are made to apply some provisions in Parts 5.8 and 5.9 to the natural person directors. This includes the offence for fraud by officers (existing section 596) and the Court’s power to summons a person for mandatory examination (existing section 596A).</p> <p>See Chapter 3 of the explanatory materials for further information.</p>
<b>Deregistration</b>		
Deregistration of a sub-fund	13-000 – 13-030	<p>A sub-fund may be voluntarily deregistered if the CCIV is not a party to any legal proceedings that relate to the sub-fund and the sub-fund has no remaining assets or liabilities.</p>
Deregistration of a CCIV	13-050 – 13-060	
Reinstatement	13-035 – 13-045	<p>ASIC may also initiate the deregistration of a sub-fund or the Court may order that a sub-fund be deregistered following the conclusion of an external administration procedure.</p> <p>A CCIV must be deregistered if it does not have any registered sub-funds.</p> <p>On deregistration, the CCIV ceases to exist.</p>

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		<p>A deregistered sub-fund may be reinstated. If the CCIV has been deregistered, the CCIV must also be reinstated.</p> <p>See Chapter 4 of the explanatory materials for further information.</p>
<b>Takeovers, compulsory acquisitions and buy-outs</b>		
Acquisition of a relevant interest in a CCIV not subject to requirements in the Act	14-005	The takeovers, compulsory acquisitions and buy-outs rules set out in Chapter 6 of the Act do not apply to the acquisition of a relevant interest in a CCIV.
Compulsory acquisitions and buy-outs	14-015	In the event of a takeover of a CCIV, the rules in Chapter 6A that require the bidder to compulsorily acquire or buy-out certain securities in the target company also do not apply to a target CCIV, nor do any related rules in Chapter 6B (regarding rights and liabilities in relation to Chapter 6 and 6A matters).
Exemption from Takeovers Panel's jurisdiction	14-010	<p>The Takeovers Panel does not have jurisdiction to declare circumstances in relation to the affairs of a CCIV to be unacceptable circumstances.</p> <p>The rules in Chapter 6C (regarding the production of information about ownership in listed companies and managed investment schemes) do not apply to CCIVs because a CCIV will be prohibited from being listed on a prescribed financial market.</p> <p>CCIVs are not exempt from the takeovers, compulsory acquisitions and buy-outs rules when they are proposing to acquire or hold, an interest in any entity that is the subject of these rules (for example, when a CCIV is the bidder in a takeover process).</p> <p>See Chapter 5 of the explanatory materials for further information.</p>
<b>Disclosure and fundraising</b>		
Continuous disclosure	15-000	CCIVs that are disclosing entities are subject to the continuous disclosure requirements in Chapter 6CA.
Fundraising	16-000	The disclosure and fundraising rules in Chapter 6D do not apply to offers of securities in a CCIV. Instead, the offer, or issue, of securities in a CCIV is subject to the PDS disclosure regime under Chapter 7.
Prohibition on offering securities in a CCIV that does not exist, or a sub-fund that is not established	16-005	<p>A person is prohibited from offering securities in a CCIV that does not exist, or a sub-fund that is not established, even if it is proposed to incorporate the</p>

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		<p>CCIV or register the sub-fund. Some related provisions in Chapter 6D apply to this prohibition.</p> <p>See Chapter 5 of the explanatory materials for further information.</p>
<b>Asia Region Funds Passport</b>		
<p>Sub-fund of a retail CCIV may become an Australian passport fund</p>	<p>Schedule 6, items 1, 3 – 15</p>	<p>A sub-fund of a retail CCIV may become an Australian passport fund, subject to meeting the requirements for Australian passport funds contained in Part 8A of the Act.</p> <p>The corporate director of the CCIV is the operator of the fund.</p> <p>See Chapter 6 of the explanatory materials for further information.</p>
<b>Amendments to the ASIC Act</b>		
<p>Who is an ‘eligible person’ in relation to a CCIV?</p>	<p>Schedule 7, items 1 – 3</p>	<p>Provisions relating to ASIC’s powers and jurisdiction are amended to apply appropriately to CCIVs and corporate directors.</p>
<p>Meaning of ‘financial service’ and ‘custodial or depository service’</p>	<p>Schedule 7, items 5 and 7</p>	<p>The definition of ‘eligible person’ extends to the corporate director of a CCIV or liquidator of a sub-fund, as well as the officers of the corporate director or liquidator.</p>
<p>Attribution of conduct to a CCIV</p>	<p>Schedule 7, items 8 and 9</p>	<p>The definition of ‘financial services’ and ‘custodial or depository services’ for the purposes of provisions of the ASIC Act that deal with unconscionable conduct in relation to financial services are aligned with the definitions of these terms in Chapter 7 of the Corporations Act. Elsewhere in the ASIC Act the Chapter 7 definitions apply automatically.</p>
<p>Defence for a contravention by a CCIV</p>	<p>Schedule 7, items 10 and 11</p>	<p>For the purposes of Division 2 of Part 2 of the ASIC Act conduct is attributed to a CCIV in the same manner as in Chapter 7 of the Corporations Act. The standard liability framework for CCIVs applies for the rest of the ASIC Act.</p>
<p>Representation of a CCIV</p>	<p>Schedule 7, item 12</p>	<p>For the purposes of Subdivision D of Division 2 of Part 2 of the ASIC Act, a CCIV cannot rely on information or conduct by an agent or corporate director of the CCIV, or an employee, director or agent of the corporate director of the CCIV, as a defence for a contravention.</p>
<p>ASIC’s powers in relation to persons connected to a CCIV</p>	<p>Schedule 7, item 13</p>	<p>If ASIC makes a requirement of a CCIV, it can make</p>
<p>Enforceable undertaking by the corporate director of a CCIV</p>	<p>Schedule 7, items 14 and 15</p>	<p>For the purposes of Subdivision D of Division 2 of Part 2 of the ASIC Act, a CCIV cannot rely on information or conduct by an agent or corporate director of the CCIV, or an employee, director or agent of the corporate director of the CCIV, as a defence for a contravention.</p>
<p>Corporate director of a CCIV is treated as providing most financial services of the CCIV</p>	<p>Schedule 7, items 4 and 16</p>	<p>If ASIC makes a requirement of a CCIV, it can make</p>

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		<p>that same requirement of an officer of the CCIV or an officer or employee of the corporate director.</p> <p>A corporate director of a CCIV may give an enforceable undertaking in relation to conduct concerning the CCIV.</p> <p>Where the CCIV is providing financial services, the corporate director is treated as also providing those financial services. However, this is not the case where the CCIV is issuing a security, participating in a clearing and settlement facility or participating in a financial market.</p> <p>See Chapter 7 of the explanatory materials for further information.</p>
<b>Other miscellaneous amendments</b>		
Availability of reports about breaches by depositary	20-000	It is an offence for any current or former officer or employee of the corporate director, or current or former member or officer of the CCIV to falsify or destroy securities of a CCIV, or the books of the CCIV.
CCIV's books available for inspection	20-005	A CCIV may not rely on information provided to it by an officer or agent of the CCIV, or an officer, employee, or agent of the corporate director as a defence to an offence relating to false or misleading statements made by the CCIV.
Offence to falsify or destroy securities or books of a CCIV	20-010	If a CCIV is a defendant in a prosecution, or upcoming prosecution, ASIC may compel assistance from a current or former officer or agent of the CCIV, or a current or former officer, employee or agent of the corporate director.
False or misleading statements by a CCIV	20-015	A court has the same powers in relation to an irregularity or defect in a meeting of a sub-fund or a joint meeting of creditors and members of a sub-fund of a CCIV as it has in relation to an irregularity or defect in a meeting of members or members and creditors of a corporation.
ASIC may compel assistance	20-015	See Chapter 7 of the explanatory materials for further information.
No AAT merits review for change of CCIV rules	20-020	
Court's powers in relation to meeting of members and creditors	20-025	