



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 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
External administration and deregistration of a CCIV		<p>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).</p> <p>This is achieved by applying the following separating assumptions:</p> <ul style="list-style-type: none">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; andthe only property, debts and claims of the CCIV are those allocated to the sub-fund in wind up. <p>This approach preserves the segregation of assets between sub-funds.</p> <p>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.</p> <p>In a statutory demand served on a CCIV, a</p>
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	

Issue	Bill ref.	Brief explanation
Transfer of books relating to the winding up back to the CCIV	1270; 1270A	<p>creditor is not required to specify the sub-fund. The separating assumptions apply if the CCIV fails to comply with the statutory demand.</p> <p>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.</p> <p>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.</p>
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.
Deregistration of sub-funds and CCIVs	N/A	<p>An auditor does not need to undertake any audit activities for the sub-fund that is affected by the wind up.</p> <p>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.</p> <p>Provisions for receivership, schemes of arrangement, deregistration in respect of a sub-fund, and deregistration of a CCIV are under development.</p> <p>Voluntary administration and ASIC-initiated wind up procedures will not apply.</p>
Takeovers and continuous disclosure		<p>The acquisition of control in a CCIV will not be regulated by the provisions of Chapters 6 to 6C.</p> <p>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).</p>

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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.
Continuous disclosure obligations	N/A	<p>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.</p> <p>The provisions to give effect to these positions are under development.</p>
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.
Treatment of financial services provided by the CCIV	1250; 1250A	
A CCIV is not required to hold an AFSL	1250B	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.
New financial services that relate to the CCIV	1250C	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.
CCIVs do not make a market or provide custodial or depository services	1250D – 1250E	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’.
How the AFSL regime applies to CCIVs	1250G – 1250K	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.
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
Financial services disclosure does not apply to operating the business and conducting the affairs of CCIVs	1250L	

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Application of the PDS regime to shares in a CCIV	1250P – 1250X	<p>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.</p> <p>The provisions that relate to the content and other requirements of a PDS are modified to apply appropriately to securities in a CCIV.</p>
Consumer protections and prohibited conduct		<p>Consumer protections available for registered schemes are adapted to deal with the unique structure of CCIVs.</p> <p>In addition, the insider trading provisions are adapted to apply appropriately to CCIVs.</p>
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		<p>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.</p> <p>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.</p> <p>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</p>
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	

Issue	Bill ref.	Brief explanation
Attributing an element of a contravention of a civil penalty provision to a CCIV	1267K – 1267M	corporate director (with their actual or apparent authority).
Attributing conduct for the purposes of provisions in Chapter 7		<p>A CCIV engages in conduct where:</p> <ul style="list-style-type: none"> • an agent of the CCIV; or • a director, employee, or agent of the corporate director <p>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.</p> <p>A CCIV is taken to have a certain state of mind in relation to its conduct where:</p> <ul style="list-style-type: none"> • an agent of the CCIV; or • a director, employee or agent of the corporate director <p>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.</p>
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		<p>The corporate director of a CCIV is responsible for the consequences of a contravention of Commonwealth law by the CCIV.</p> <p>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.</p> <p>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.</p>
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	