

## THE CORPORATE COLLECTIVE INVESTMENT VEHICLE FRAMEWORK TO HIT THE ROAD ON 1 JULY 2022

Australia's managed fund industry is currently dominated by the trust-based Managed Investment Scheme (**MIS**). However, the Corporate Collective Investment Vehicle (**CCIV**) is a more internationally recognisable investment product and its introduction to Australia will allow the industry to become more competitive, attract the international market into Australia and allow Australian consumers greater product choice and exposure to new asset classes. After five years of consultations and draft legislation, the Australian government will finally introduce CCIVs into Australia on 1 July 2022, signalling exciting growth potential for the industry.

The *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* (**CCIV Act**) does not replace the well-established MIS but instead offers an alternative product for investors in the Australian market. The CCIV Act amends the *Corporations Act 2001* (Cth) (**Corporations Act**), the *Income Tax Assessment Act 1997* (Cth) and *Taxation Administration Act 1953* (Cth) along with other legislation, to provide for both the CCIV's regulatory framework and its general tax treatment.

The tax framework ensures that CCIVs are taxed on a flow-through basis, aligning with pre-existing tax treatment of Attribution Managed Investment Trusts. However, this legal alert provides a general overview of Chapter 8B of the *Corporations Act 2001* which is introduced by the CCIV Act and outlines the CCIV's regulatory framework.

### **Establishing a CCIV**

A CCIV is a registered company limited by shares. Registrations are to be made with ASIC pursuant to section 117 of the *Corporations Act*. Once registered, the CCIV will not be able to change its company type.

CCIVs are to have a sole corporate director, which must be a public company that holds an Australian financial services licence authorising it to operate the business and affairs of a CCIV. No secretaries are to be appointed and the CCIV is not permitted to have any employees. The only other officers allowed for a CCIV are a receiver, a liquidator of the CCIV's sub-fund, a trustee or such other person administering an arrangement between the CCIV and a third party.

A CCIV acts as an umbrella company to its subsidiary sub-funds, which can act as a whole or part of the CCIV's business. Each CCIV must have at least one sub-fund upon registration which must be registered under section 1222S of the *Corporations Act*. The CCIV, and each sub-fund of the CCIV, must have at least one member. While not synonymous with each other, all members of a CCIV are a member of at least one sub-fund of that CCIV.

CCIVs may be categorised as either retail or wholesale. A CCIV will be deemed a retail CCIV if at least one member of the CCIV who is not associated with its corporate director:

- acquires a security issued by the CCIV as a retail client or as a person who was issued or transferred the security in circumstances that would require a Product Disclosure Statement to be given to them; or
- acquires a security in the CCIV whilst under a custodial arrangement, but would have been considered a retail client if there was an equivalent direct acquisition of the securities by that person; or
- is a member of a sub-fund of the CCIV which is a managed investment scheme that is registered as an Australian passport fund under the Asia Region Funds Passport scheme, and the person became a member after the sub-fund became an Australian passport fund or on the expectation that it will become an Australian passport fund.

If the CCIV does not meet one of these conditions, it will be considered a wholesale CCIV.

Retail CCIVs are subject to stricter regulation compared to wholesale CCIVs. For example, section 1224G(1) of the amended *Corporations Act* prescribes the requirement that at least half of the directors of the corporate director of a retail CCIV must be external directors. This means that the director is not, and has not been, in the previous 2 years:

- an employee or a senior manager of the corporate director or a related body corporate; or
- a member of a partnership who was substantially involved in business dealings or in a professional capacity with the corporate director or a related body corporate; or
- substantially involved in business dealings, or in a professional capacity, with the corporate director or a related body corporate.

More generally, the external director must not themselves have a material interest, or be a relative of a person who has a material interest, in the corporate director or a related body corporate. Failing to comply with any of these requirements for an external director, for a period exceeding 14 days (or a longer period allowed in writing by ASIC), is an offence.

All CCIVs are to be governed by their constitution, which must be provided to ASIC upon registration. The constitution will act as an enforceable statutory contract between the CCIV, the corporate director and each member of the CCIV. Constitutions of wholesale CCIVs only need to include the requirements that must be complied with for the CCIV to modify or repeal and replace its constitution. As the basic content requirement for a constitution of a wholesale CCIV is limited to specifying the requirements that must be complied with for the CCIV to modify its constitution or repeal and replace its constitution with a new one, it begs the question as to what substantive provisions should be included in a wholesale CCIV's constitution.

On the other hand, the constitution of a retail CCIV must satisfy the minimum requirements outlined in the CCIV Act. This requires provisions to be included for the establishment of sub-funds and the classes of shares referable to such sub-fund. If the CCIV is to acquire in respect of any of its sub-

funds, one or more shares that are referable to another of its sub-funds, it must make provision for such acquisitions. Additionally, the constitution must outline the method by which members of a CCIV can make complaints in relation to the CCIV and specify how they are to be dealt with. The constitution must also empower the CCIV to borrow or raise money and include limitations of such powers if necessary. Further requirements are to be met if the retail CCIV has redeemable shares or redeemable preference shares. However, the replaceable rules outlined in the *Corporations Act* are not applicable to a CCIV.

A retail CCIV must also provide a compliance plan with its application for registration. The compliance plan must set out the measures the corporate director is to apply in fulfilling its responsibilities in relation to the CCIV to ensure compliance with the *Corporations Act* and the CCIV's constitution.

Upon registration, the CCIV will have its own legal personality and most of the powers, rights, duties and characteristics of a company. Additional duties are prescribed depending on the type of CCIV, with liability to members who suffer damage and loss as a result of contravening conduct by the CCIV's corporate director.

### **CCIV sub-funds**

Each sub-fund will have its own assets and liabilities and will operate its businesses individually. As sub-funds will not have their own legal personality, sub-funds cannot sue, be sued or enter into contracts. Therefore, assets may be held by the CCIV itself, or alternatively, a custodial or depository service may be engaged to hold the assets on trust. Investors will hence hold shares in the CCIV itself, but the shares will be referable to a specific sub-fund of that CCIV.

That said, cross-investment between a CCIV's sub-funds is permitted. A CCIV may acquire, in respect of one sub-fund, shares that are referable to another sub-fund of the CCIV. This will entitle the CCIV to vote as a member on a resolution at a meeting of the members of the sub-fund, but not vote on resolutions as a member of the CCIV as a whole.

### **Where to from here**

As the Australian government wants to facilitate a smooth transition of migrating MIS members to a CCIV, many of the features of the MIS regime have been incorporated into the CCIV framework. However, stricter requirements are in place for CCIVs. For example, all CCIVs are to be registered under the *Corporations Act*, whereas under the MIS regime, only retail MISs need to be registered. Further, corporate directors of retail CCIVs must have at least half of their directors as external directors in comparison to the MIS regime which does not have this requirement, provided an independent compliance committee is established.

Despite the similarities, there might be some initial confusion in navigating the CCIV framework. In anticipation of the framework coming into effect on 1 July 2022, if you have any questions about the framework or how a CCIV structure might be appropriate for your investment scheme, please do not hesitate to contact our Corporate Team for assistance.

### **Contact details**

For further information, please contact:



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