

EXPOSURE DRAFT

EXPOSURE DRAFT

Inserts for **Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018: Regulatory framework**

Contents

Schedule 1—Main amendments	15
<i>Corporations Act 2001</i>	<i>15</i>
Chapter 8B—Corporate collective investment vehicles	15
Part 8B.1—Preliminary	15
1221 Objects of this Chapter	15
Part 8B.2—Registration of CCIVs	16
Division 1—Registering a CCIV	16
Subdivision A—Requirements for registration as a CCIV	16
1222 Requirements for registration as a CCIV	16
Subdivision B—How a CCIV is registered	17
1222A Applying for registration	17
1222B No other way to register a CCIV	18
1222C Registration of a CCIV	18
1222D Members, corporate director and depository of a CCIV	18
Subdivision C—Names of CCIVs	19
1222E Special requirements for naming of CCIVs	19
1222F Special requirements for acceptable abbreviations of CCIV names	19
1222G Carrying on business using “CCIV” in name	19
1222H Change of name not allowed while sub-fund in liquidation	19
Subdivision D—Retail CCIVs and wholesale CCIVs	19
1222J Meaning of <i>retail CCIV</i> and <i>wholesale CCIV</i>	19
1222K Retail CCIV test	20
1222L Notifying ASIC of status as a retail CCIV or wholesale CCIV	21
1222M Table of provisions that apply only to retail CCIVs	23

EXPOSURE DRAFT

1	Subdivision E—Listing not permitted	24
2	1222N A CCIV must not be listed.....	24
3	Subdivision F—Changing company type not permitted	24
4	1222P Part 2B.7 does not apply to a CCIV	24
5	Division 2—Registering a sub-fund of a CCIV	25
6	Subdivision A—What is a sub-fund of a CCIV	25
7	1222Q What is a <i>sub-fund</i> of a CCIV	25
8	Subdivision B—How a sub-fund of a CCIV is registered	25
9	1222R Initial sub-funds to be registered when the CCIV is registered	25
10	1222S Registration of a sub-fund	25
11	1222T Sub-fund is established on registration.....	26
12	1222U Application to register further sub-funds	26
13	Subdivision C—Names of sub-funds	27
14	1222V A sub-fund’s name.....	27
15	1222W Using sub-fund name and ARFN on documents.....	27
16	1222X Acceptable abbreviations of sub-fund names	28
17	1222Y Sub-fund changing its name	28
18	1222Z ASIC’s power to direct CCIV to change a sub-fund’s name.....	29
19	1222ZA Effect of name change.....	29
20	Division 3—Registers	30
21	1222ZB Registers relating to CCIVs.....	30
22	Part 8B.3—Corporate governance of CCIVs	31
23	Division 1—Governance rules	31
24	Subdivision A—How a CCIV exercises company powers	31
25	1223 Execution of documents (including deeds) by the CCIV itself.....	31
26	Subdivision B—Constitution	32
27	1223A Replaceable rules do not apply to a CCIV	32
28	1223B Requirement for a CCIV to have a constitution	32
29	1223C Retail CCIV—ASIC may direct CCIV to modify its	
30	constitution	32
31	1223D Adoption, modification and repeal of constitution.....	33
32	1223E Effect of constitution.....	34
33	Subdivision C—Minimum content requirements for the	
34	constitution of a CCIV	34
35	1223F Wholesale CCIV—Basic content requirement	34
36	1223G Retail CCIV—Basic content requirements	34
37	1223H Retail CCIV—Additional content requirement for redemption	
38	of shares.....	34
39	Division 2—Officers and employees of the CCIV	35
40	Subdivision A—Officers and employees generally	35

EXPOSURE DRAFT

1	1224 A CCIV has a single corporate director.....	35
2	1224A A CCIV has no secretary and no employees.....	36
3	1224B Meaning of <i>officer</i> of a CCIV	36
4	1224C General duties owed by officers.....	36
5	1224D Retail CCIV—duties owed by director.....	37
6	1224E Certain provisions in Chapter 2D do not apply to CCIVs	39
7	Subdivision B—The corporate director of a CCIV	39
8	1224F Who can be the director of a CCIV	39
9	1224G Retail CCIV—additional rules about who can be the director	39
10	1224H Effectiveness of acts by corporate director	40
11	1224J Corporate director must operate the CCIV	41
12	1224K Corporate director to provide depositary with reasonable	
13	assistance	41
14	1224L Corporate director not required to disclose material personal	
15	interest	42
16	1224M Corporate director may appoint an agent or engage a person.....	42
17	1224N Retail CCIV—responsibility of corporate director for certain	
18	acts of agents	42
19	1224P Retail CCIV—limitation on right of corporate director to fees	
20	and indemnities.....	43
21	1224Q Exercise of powers while sub-fund is in liquidation	43
22	Subdivision C—Replacing the corporate director	45
23	1224R Changes only take effect when ASIC alters record of	
24	registration.....	45
25	1224S CCIV does not have an eligible corporate director.....	45
26	1224T Retirement of corporate director	45
27	1224U Replacement of corporate director by members	46
28	1224V Appointment of temporary corporate director by Court	47
29	1224W Temporary corporate director to initiate appointment of	
30	permanent corporate director	48
31	1224X Temporary corporate director fails to initiate appointment of	
32	permanent corporate director.....	49
33	1224Y Members fail to appoint permanent corporate director.....	49
34	1224Z Former corporate director to hand over books and provide	
35	reasonable assistance	50
36	1224ZA Rights, obligations and liabilities of former corporate	
37	director	50
38	1224ZB Effect of change of corporate director on documents etc. to	
39	which former corporate director is party	51
40	Subdivision D—Termination payments	51
41	1224ZC Member approval not needed for benefit specified in	
42	constitution	51
43	1224ZD Modified member approval for CCIVs	52
44	1224ZE Benefits paid to corporate director not covered by	
45	exemptions	52

EXPOSURE DRAFT

1	Division 3—Officers, employees and auditors of the corporate	
2	director	52
3	Subdivision A—Officers and auditors of the corporate director	52
4	1225 Retail CCIV—duties owed by officers of corporate director.....	52
5	1225A Responsibility of secretary of corporate director for certain	
6	contraventions by CCIV	54
7	1225B Responsibility of secretary of corporate director for certain	
8	contraventions by corporate director	54
9	1225C Extended obligation of directors of corporate director.....	55
10	1225D Right of access to CCIV books.....	56
11	1225E Extended operation of section 199A (about indemnification	
12	and exemption of officer or auditor).....	56
13	1225F Extended operation of section 199B (about insurance	
14	premiums for certain liabilities).....	56
15	Subdivision B—Employees of the corporate director	57
16	1225G Retail CCIV—duties owed by employees of corporate director.....	57
17	Division 4—The depositary of a CCIV	58
18	Subdivision A—The depositary of a CCIV	58
19	1226 Depositary compulsory for retail CCIVs, optional for wholesale	
20	CCIVs.....	58
21	1226A Who can be a depositary	58
22	1226B Independence requirement	59
23	1226C How a depositary of a CCIV is appointed.....	60
24	1226D When the corporate director may appoint a depositary.....	60
25	Subdivision B—Duties and powers	60
26	1226E Functions of depositary	60
27	1226F Appointing an agent or engaging a person	60
28	1226G Depositary to have supervisory responsibility	61
29	1226H Depositary must report breaches to ASIC.....	61
30	1226J Depositary to provide officers of CCIV with reasonable	
31	assistance.....	62
32	1226K Duties owed by depositary.....	62
33	1226L Dealing with conflicting duties	63
34	1226M Powers and functions while sub-fund in liquidation or	
35	receivership	63
36	1226N Regulations may prescribe functional independence	
37	requirements	64
38	Subdivision C—Changing the depositary	65
39	1226P Depositary becomes ineligible	65
40	1226Q Retirement of depositary.....	66
41	1226R Replacement of depositary by corporate director.....	66
42	1226S Replacement by members.....	67
43	1226T Wholesale CCIV—removal of depositary.....	68

EXPOSURE DRAFT

1	1226U Appointment of temporary depositary by Court	69
2	1226V Corporate director to initiate appointment of permanent	
3	depositary	69
4	1226W Application to Court if permanent depositary not appointed	70
5	Subdivision D—Consequences of changing the depositary	71
6	1226X Former depositary to hand over books and provide reasonable	
7	assistance	71
8	1226Y Rights, obligations and liabilities of former depositary	71
9	1226Z Effect of change of depositary on documents etc. to which	
10	former depositary is party	71
11	1226ZA Officers of depositary have qualified privilege in certain	
12	cases	72
13	Division 5—Compliance plan for retail CCIVs	72
14	Subdivision A—Documenting the compliance plan	72
15	1227 Requirement for compliance plan	72
16	1227A Contents of the compliance plan	73
17	1227B Compliance plan may incorporate provisions from another	
18	CCIV's plan	73
19	1227C ASIC may require further information about compliance plan	73
20	1227D Changing the compliance plan	73
21	1227E ASIC may require consolidation of compliance plan to be	
22	lodged	74
23	Subdivision B—Auditing the compliance plan	75
24	1227F Engaging auditor	75
25	1227G Audit and audit report	75
26	1227H Contraventions by auditor	77
27	1227J Removal and resignation of auditors	80
28	1227K Action on change of auditor of compliance plan	81
29	Division 6—Member protection	81
30	Subdivision A—Related party transactions by retail CCIVs to be	
31	approved at sub-fund level	81
32	1228 Application of Chapter 2E to retail CCIVs	81
33	1228A Need for member approval for financial benefit	81
34	1228B Exceptions not available for a retail CCIV	82
35	1228C Requirements for explanatory statement to members	83
36	1228D Modified references	83
37	1228E Related parties of a CCIV	83
38	Subdivision B—Rights and remedies of members of a CCIV	85
39	1228F Grounds for Court order	85
40	1228G Orders the Court can make	85
41	1228H Applying for and granting leave	86
42	1228J Varying and cancelling class rights	86
43	1228K Certain actions taken to vary rights etc.	86

EXPOSURE DRAFT

1	1228L Company must lodge documents and resolutions with ASIC	86
2	Subdivision C—Civil liability of corporate director to members	87
3	1228M Civil liability of corporate director to members	87
4	Division 7—Meetings	87
5	Subdivision A—Directors’ meetings	87
6	1229 Resolutions of CCIVs	87
7	Subdivision B—Meetings of members of CCIVs or sub-funds	88
8	1229A Meetings of members of CCIVs	88
9	1229B Meetings of members of sub-funds	88
10	1229C Auditors of scheme compliance plans	89
11	1229D Copy of the register of members—sub-funds	89
12	1229E Members’ resolutions	90
13	1229F Voting at meetings of members	90
14	1229G Corporate director and associates cannot vote if interested in	
15	resolution	91
16	1229H How to work out the value of a share	91
17	Division 8—Corporate contraventions	93
18	Subdivision A—General provisions relating to establishing civil	
19	and criminal liability under Commonwealth laws	93
20	1230 Application of this Subdivision	93
21	1230A Other rules for corporate contraventions do not apply	93
22	1230B General rule for attributing conduct and state of mind to a	
23	CCIV	94
24	1230C Exceptions etc. specific to this Act	96
25	Subdivision B—Consequences of contraventions of	
26	Commonwealth laws	96
27	1230D Corporate director generally taken to commit offences	
28	committed by CCIV	96
29	1230E Corporate director generally liable for civil penalties for which	
30	the CCIV would be liable	97
31	Subdivision C—Consequences of contraventions of State and	
32	Territory laws	98
33	1230F Compensation orders—State and Territory laws	98
34	1230G Time limit for application for compensation order	99
35	1230H Civil evidence and procedure rules for compensation orders	99
36	Part 8B.4—Corporate finance and financial reporting for	
37	CCIVs	100
38	Division 1—Shares	100
39	Subdivision A—Issuing and converting shares in a CCIV	100
40	1231 Shares can only be issued in respect of sub-funds	100
41	1231A Minimum of one class of shares per sub-fund	100

EXPOSURE DRAFT

1	1231B Power to issue redeemable shares	101
2	1231C Conversion of shares.....	101
3	Subdivision B—Redemption of shares	102
4	1231D Redemptions to which this Subdivision applies.....	102
5	1231E Redeemed shares to be cancelled	102
6	1231F Requirements for redemptions by all CCIVs.....	103
7	1231G Further requirements for redemptions by retail CCIVs.....	104
8	1231H When a sub-fund is liquid.....	105
9	1231J Redemption offers for non-liquid sub-funds of retail CCIVs.....	105
10	1231K Satisfying redemption requests for non-liquid sub-funds of	
11	retail CCIVs.....	107
12	Subdivision C—Partly-paid shares	107
13	1231L Section 254N does not apply to a CCIV	107
14	Subdivision D—Dividends	107
15	1231M Circumstances in which a dividend may be paid	107
16	1231N Dividend rights	108
17	Subdivision E—Notice requirements	108
18	1231P Part 2H.6 does not apply to a CCIV	108
19	Division 2—Transactions affecting share capital	108
20	Subdivision A—Reductions in share capital and share buy-backs	108
21	1231Q Purpose	108
22	1231R CCIV may make reduction not otherwise authorised.....	108
23	1231S Consequences of making an unauthorised reduction	109
24	1231T A CCIV's power to buy back its own shares.....	109
25	1231U Authorised reductions—share redemptions	110
26	1231V Authorised reductions—CCIV rules	110
27	1231W Authorised reductions—Court orders	110
28	1231X Authorised reductions—return of financial product	110
29	1231Y Other share capital reductions.....	111
30	Subdivision B—Self-acquisition and control of shares	111
31	1231Z Directly acquiring own shares	111
32	1231ZA Taking security over own shares	111
33	Subdivision C—Financial assistance	111
34	1231ZB Part 2J.3 does not apply to a CCIV	111
35	Subdivision D—Interaction with other duties	112
36	1231ZC Other duties still apply.....	112
37	Division 3—Debentures	112
38	1231ZD Debentures can only be issued in respect of sub-funds	112
39	1231ZE Modified operation of section 283AA	112
40	Division 4—Financial reports and audit of CCIVs	112

EXPOSURE DRAFT

1	Subdivision A—Application of Chapter 2M to CCIVs and their	
2	sub-funds	112
3	1232 Application of Chapter 2M to CCIVs.....	112
4	Subdivision B—Financial records (all CCIVs)	113
5	1232A Obligation to keep financial records for sub-funds.....	113
6	1232B Access to financial records of CCIVs and sub-funds.....	113
7	Subdivision C—Financial reporting (retail CCIVs only)	114
8	1232C Annual financial reports by CCIVs.....	114
9	1232D Annual financial reports for sub-funds	114
10	1232E Annual directors' reports for CCIVs	114
11	1232F Half-year financial reports for sub-funds with ED securities on	
12	issue.....	115
13	1232G Half-year directors' reports for CCIVs	116
14	1232H Audit and auditor's report for sub-funds.....	116
15	Subdivision D—Annual financial reporting to members (retail	
16	CCIVs only)	117
17	1232J Annual financial reporting to members of sub-funds	117
18	1232K Deadline for reporting to members of CCIVs or sub-funds	118
19	1232L Member's choices for annual financial information relating to	
20	sub-funds	118
21	1232M Consideration of reports at AGM.....	118
22	1232N Additional reporting by CCIVs that are debenture issuers.....	118
23	Subdivision E—Lodging reports with ASIC (retail CCIVs only)	119
24	1232P Relodgement if financial statements relating to sub-fund	
25	amended after lodgement.....	119
26	Subdivision F—Appointment and removal of auditors (retail	
27	CCIVs only)	119
28	1232Q Conflict of interest situation	119
29	1232R Auditor independence—specific requirements	119
30	1232S People who are regarded as officers of a CCIV	119
31	1232T Appointment, removal and fees of auditors for CCIVs.....	120
32	1232U Effect of winding up of sub-fund on office of auditor	120
33	Subdivision G—Sanctions for contravention of Chapter 2M	121
34	1232V Extended liability of directors of corporate director for	
35	contraventions of Chapter 2M	121
36	Division 5—Updating ASIC information about CCIVs	122
37	1232W Solvency resolutions	122
38	Part 8B.5—Operating a CCIV	122
39	Division 1—Preliminary	122
40	1233 References to property.....	122
41	1233A References to liabilities of a CCIV	122

EXPOSURE DRAFT

1	Division 2—Requirement to operate sub-funds as separate	
2	businesses	123
3	1233B Sub-funds to be operated as separate businesses.....	123
4	Division 3—Requirement for assets and liabilities to be allocated	
5	between sub-funds	123
6	Subdivision A—The CCIV’s allocation register	123
7	1233C Corporate director to keep allocation register	123
8	1233D Requirement to enter assets on the allocation register	124
9	1233E Requirement to enter liabilities on the allocation register	125
10	1233F Liquidator may require corporate director to record debt, claim	
11	or property in allocation register.....	126
12	1233G Requirement to retain records of allocations for 7 years.....	127
13	Subdivision B—What are the assets of a particular sub-fund	127
14	1233H Meaning of <i>assets</i> of a sub-fund	127
15	1233J When an allocation determination is required	129
16	1233K When property must be converted into money etc.....	130
17	Subdivision C—What are the liabilities of a particular sub-fund	131
18	1233L Meaning of <i>liabilities</i> of a sub-fund	131
19	1233M When an allocation determination is required	132
20	1233N Variations of proportional allocation of liabilities	133
21	1233P Creditor may require corporate director to provide information	
22	about allocation	134
23	Subdivision D—Orders the Court can make	135
24	1233Q Orders the Court can make in relation to assets and liabilities	
25	of sub-funds.....	135
26	Division 4—Purposes for which sub-fund assets may be applied	136
27	1233R Unallocated money and property may not be applied for any	
28	purpose	136
29	1233S Requirement for segregated application of assets of sub-funds	136
30	1233T Purposes for which sub-fund assets may be applied	137
31	1233U Property that is required to be converted to be applied only for	
32	that purpose	138
33	1233V Requirement for security interests to be segregated.....	138
34	1233W Court orders	138
35	1233X Consequences of non-compliant application of assets	138
36	Division 5—How CCIV assets must be held	139
37	1233Y When a depositary is required to hold CCIV assets.....	139
38	1233Z When someone other than a depositary may hold the assets of	
39	a CCIV.....	139
40	1233ZA Person other than CCIV holds money or property on trust.....	139
41	1233ZB Requirement to transfer assets to depositary.....	140
42	1233ZC How CCIV money and property must be held.....	140
43	1233ZD CCIV rules may create exceptions	141

EXPOSURE DRAFT

1	Part 8B.6—External administration and deregistration	141
2	Division 1—Preliminary	141
3	1235 Construing terms and expressions affected by substituted	
4	references	141
5	Division 2—Arrangements and reconstructions of sub-funds	143
6	1236 Object of this Division.....	143
7	1236A Compromises etc. not to be made between 2 or more	
8	sub-funds	143
9	1236B Applying arrangements and reconstructions provisions to	
10	sub-funds	143
11	1236C Persons not to be appointed to administer compromise or	
12	arrangement.....	145
13	1236D Provisions for facilitating reconstruction and amalgamation of	
14	sub-funds within a CCIV	145
15	1236E Court may make order in relation to assets and liabilities of	
16	sub-funds	146
17	Division 3—Receivers, and other controllers, of property of	
18	sub-funds	146
19	Subdivision A—Preliminary	146
20	1237 Object of this Division.....	146
21	1237A Definitions	146
22	Subdivision B—Appointment of controllers	147
23	1237B Appointment of a controller of property of a sub-fund of a	
24	CCIV	147
25	1237C Persons not to act as receivers.....	147
26	1237D Notifying the depositary	148
27	Subdivision C—Application of Part 5.2 to control of property of	
28	sub-funds	148
29	1237E Applying Part 5.2 etc. to sub-funds.....	148
30	Subdivision D—Modified duties and powers of receivers etc.	150
31	1237F Liability of controller	150
32	1237G Powers of receiver	150
33	1237H Controller may require reports relating to other sub-funds if	
34	necessary	151
35	1237J Controller may inspect books of CCIV	151
36	Subdivision E—Other modifications	151
37	1237K Application of sub-fund property to meet certain priority	
38	payments.....	151
39	1237L Transfer of books to ASIC etc.....	152
40	Division 4—Winding up of sub-funds	152
41	Subdivision A—Preliminary	152
42	1238 Object of this Division.....	152

EXPOSURE DRAFT

1	1238A No winding up of a CCIV	152
2	Subdivision B—Application of winding up provisions to winding	
3	up of sub-funds	152
4	1238B Applying winding up provisions to sub-funds	152
5	1238C References to debts etc. of a sub-fund.....	155
6	Subdivision C—Winding up of a sub-fund in insolvency	156
7	1238D When a sub-fund is presumed to be insolvent	156
8	1238E Statutory demand—creditor may serve demand on CCIV	156
9	1238F Statutory demand—CCIV may apply to set aside demand.....	156
10	1238G Statutory demand—determining application to set aside where	
11	there is a dispute or offsetting claim.....	157
12	1238H Statutory demand—determining application to set aside where	
13	there is a dispute about the sub-fund	157
14	1238J Substitution of sub-fund where statutory demand not relied on.....	158
15	1238K Declaration of solvency	159
16	Subdivision D—Modified duties and powers of liquidator of a	
17	sub-fund	159
18	1238L Disqualification of liquidator	159
19	1238M Notifying the depositary.....	159
20	1238N Duties and powers of liquidator.....	160
21	1238P Retention and destruction of books	161
22	Subdivision E—Modified duties and powers of officers of	
23	corporate director and CCIV	162
24	1238Q Officers of corporate director to help liquidator	162
25	1238R Corporate director may retain certain books	162
26	1238S Corporate director may access certain books	162
27	1238T Corporate director may direct ASIC not to destroy books	163
28	1238U Mandatory examination.....	163
29	1238V Court may make order imposing liability on unlicensed person	
30	operating CCIV	163
31	Subdivision F—Proof and ranking of claims	164
32	1238W Liquidator must be satisfied debt or claim is a liability of the	
33	sub-fund.....	164
34	1238X Determination of debts and claims that relate to the business	
35	of 2 or more sub-funds and are of uncertain value.....	164
36	1238Y Application of sub-fund property.....	165
37	Subdivision G—Powers of Courts	165
38	1238Z Warrant in relation to books	165
39	Subdivision H—Recovering property	166
40	1238ZA Presumptions to be made in recovery proceedings.....	166
41	1238ZB Directors of the corporate director.....	167
42	1238ZC Vesting of PPSA security interests if collateral not registered	
43	within time.....	167

EXPOSURE DRAFT

1	Division 5—Recovering property of sub-funds	167
2	1239 Duties owed by directors of corporate director of a CCIV	167
3	1239A Applying property recovery provisions to CCIVs	167
4	1239B References to incurring debts.....	169
5	1239C When debts arise in relation to redeemable shares.....	169
6	Division 6—External administration offences	170
7	1240 Applying external administration offences to CCIVs	170
8	1240A Interpretation of ceased to carry on business	171
9	1240B Frauds by officers	172
10	Division 7—Miscellaneous	172
11	1241 Applying external administration miscellaneous provisions to	
12	sub-funds	172
13	Division 8—Deregistration and transfer of registration	174
14	Subdivision A—Deregistration	174
15	1242 Deregistration of a sub-fund—voluntary	174
16	1242A Deregistration of a sub-fund—ASIC initiated	176
17	1242B Process for ASIC initiated deregistration of a sub-fund.....	177
18	1242C Deregistration of a sub-fund—following amalgamation or	
19	winding up	179
20	1242D Effect of deregistration of a sub-fund	179
21	1242E The Commonwealth’s and ASIC’s power to fulfil outstanding	
22	obligations in relation to deregistered sub-fund.....	180
23	1242F Claims against insurers in relation to deregistered sub-fund	180
24	1242G Reinstatement of a sub-fund	180
25	1242H CCIV reinstated following reinstatement of a sub-fund	181
26	1242J Notices relating to reinstatement of a sub-fund.....	182
27	1242K Deregistration of a CCIV	182
28	1242L Books of the CCIV to be kept by former corporate director	183
29	1242M A CCIV may not be reinstated under section 601AH	183
30	Subdivision B—Transfer of registration	184
31	1242N Registration of CCIV cannot be transferred.....	184
32	Part 8B.7—Control, financial services and disclosure	184
33	Division 1—Takeovers, compulsory acquisitions and buy-outs	184
34	1243 Meaning of <i>securities</i>	184
35	1243A Takeovers—no prohibition on acquisitions of shares in a	
36	CCIV	184
37	1243B Takeovers Panel—declaration of unacceptable circumstances	
38	may not be made in relation to a CCIV	184
39	1243C Compulsory acquisition—not available for securities in a	
40	CCIV	185
41	Division 2—Continuous disclosure	185
42	1243D Continuous disclosure—CCIVs.....	185

EXPOSURE DRAFT

1	Division 3—Fundraising	185
2	1243E Fundraising rules do not apply to CCIVs	185
3	1243F Offering securities of a CCIV or sub-fund that does not exist.....	185
4	Division 4—Financial services and markets	186
5	1244 Application of Chapter 7 to CCIVs	186
6	1244A For Chapter 7, treat the corporate director as providing	
7	financial services etc. being provided by the CCIV	186
8	1244B Certain licensing concepts do not apply to CCIVs.....	187
9	1244C Extra kinds of financial services relating to CCIVs	188
10	1244D CCIV buy-back or redemption facility does not make a market	188
11	1244E Certain conduct relating to CCIVs is not providing a custodial	
12	or depository service.....	188
13	1244F Australian financial services licences	189
14	1244G Immediate suspensions or cancellations of licences	189
15	1244H Restriction on use of certain words or expressions	190
16	1244J Agreements with certain unlicensed persons	190
17	1244K Financial services disclosure does not apply to operating the	
18	business and conducting the affairs of CCIVs	191
19	1244L Financial records of the corporate director of a CCIV	191
20	1244M Prohibition on hawking of securities in a CCIV.....	192
21	1244N Part 7.9 applies to the issue or sale of securities in a CCIV	192
22	1244P Product Disclosure Statements—when a security in a CCIV is	
23	of the same kind as another product	193
24	1244Q Product Disclosure Statements—situations when not required	
25	for CCIVs	193
26	1244R Product Disclosure Statements—content requirements	196
27	1244S Product Disclosure Statements—replacement statements	196
28	1244T Product Disclosure Statements—lodging with ASIC.....	196
29	1244U Product Disclosure Statements—use of application forms	196
30	1244V Product Disclosure Statements—if lodged, then security not to	
31	be issued or sold before specified period.....	197
32	1244W Remedies for person acquiring financial product under	
33	defective Product Disclosure Document.....	197
34	1244X Disclosure obligations of issuers of securities in CCIVs	197
35	1244Y Cooling-off periods.....	197
36	1244Z Unsolicited offers to purchase securities in CCIVs off-market	197
37	1244ZA Insider trading—exceptions	198
38	Part 8B.8—Miscellaneous	200
39	1245 Registers.....	200
40	1245A Inspection of books.....	200
41	1245B Falsification of books.....	200
42	1245C Application of Part 9.4.....	200
43	1245D Disclosures qualifying for protection under Part 9.4AAA.....	201

EXPOSURE DRAFT

1	1245E Decisions excluded from review by Administrative Appeals	
2	Tribunal	202
3	1245F Powers of Courts—irregularities	202
4	1245G Fees payable to the Commonwealth	202
5	Part 8B.9—Subordinate legislation relating to CCIVs	203
6	1246 ASIC may make CCIV rules	203
7	1246A Matters to which ASIC has regard when making rules	203
8	1246B ASIC’s power to make exemption and modification orders	204
9	1246C Modification by regulations	206
10	Schedule 2—Other amendments of the Corporations Act 2001	207
11	<i>Corporations Act 2001</i>	207
12	53 Affairs of a body corporate (other than a CCIV)	212
13	53AAA Affairs of a CCIV	212
14	435D Part does not apply to CCIVs	225
15	1212A Registration of Australian passport funds	230
16	Schedule 3—Amendments of other Acts	237
17	<i>Australian Securities and Investments Commission Act 2001</i>	237
18	84 Requirement made of a body corporate	238
19	Part 3A—Enforceable undertakings relating to registered	
20	schemes or CCIVs	239
21	93C Undertakings by corporate director of a CCIV	239
22	243F Treat the corporate director of a CCIV as providing financial	
23	services etc. being provided by the CCIV	240
24	<i>Personal Property Securities Act 2009</i>	241
25		

EXPOSURE DRAFT

Schedule 1—Main amendments

Corporations Act 2001

1 Subsection 112(1) (at the end of the table)

Add:

Corporate collective investment vehicles	Limited by shares
---	-------------------

2 Subsection 112(1) (note)

Omit “Note”, substitute “Note 1”.

3 At the end of subsection 112(1)

Add:

Note 2: For corporate collective investment vehicles, see Chapter 8B.

4 Before Chapter 9

Insert:

Chapter 8B—Corporate collective investment vehicles

Part 8B.1—Preliminary

1221 Objects of this Chapter

The objects of this Chapter are:

- (a) to provide a regulatory framework for corporate collective investment vehicles that is fair, efficient and competitive; and
- (b) together with Chapter 7, to promote confident and informed decision making by consumers of financial products and services related to shares in corporate collective investment vehicles.

EXPOSURE DRAFT

Part 8B.2—Registration of CCIVs

Division 1—Registering a CCIV

Subdivision A—Requirements for registration as a CCIV

1222 Requirements for registration as a CCIV

The requirements for registration of a company as a CCIV are as follows:

- (a) the company is a company limited by shares;
- (b) the company has a constitution;
- (c) the sole proposed director of the company is a public company that holds an Australian financial services licence authorising it to operate the business and conduct the affairs of a CCIV;
- (d) the company will, upon registration, have at least one sub-fund;
- (e) each sub-fund of the company will, upon registration, have at least one member;
- (f) a notice under subsection 1222A(4) (about whether a CCIV is to be a retail CCIV or a wholesale CCIV) has been lodged with the application;
- (g) if the company will, on registration, be a retail CCIV—the company has a compliance plan;
- (h) if the company is to have, or when registered will be required to have, a depositary—the proposed depositary:
 - (i) is a public company or a foreign company registered under Division 2 of Part 5B.2; and
 - (ii) holds an Australian financial services licence authorising it to act as the depositary of a CCIV.

Note 1: CCIV is short for corporate collective investment vehicle, which is a type of company that can be registered under this Act: see section 112.

Note 2: A retail CCIV is required to have a depositary: see section 1226.

EXPOSURE DRAFT

Subdivision B—How a CCIV is registered

1222A Applying for registration

- (1) This section applies in relation to an application for registration made under subsection 117(1) if the type of company that is proposed to be registered under this Act is a CCIV.
 - (2) The application is not required to state the information mentioned in paragraphs 117(2)(d), (e), (f), (ma) and (mb).
 - (3) In addition to the information required by subsection 117(2) as modified by subsection (2) of this section, the application must also state:
 - (a) the name, and the address of the registered office, of the public company that consents in writing to become the director of the CCIV; and
 - (b) the proposed name of each sub-fund the CCIV is to have when it is registered; and
 - (c) for each such proposed sub-fund:
 - (i) which of the members identified under paragraph 117(2)(c) are to be members of the sub-fund; and
 - (ii) which of the shares identified under paragraph 117(2)(k) are to be referable to the sub-fund; and
 - (d) if the CCIV is to have, or when registered will be required to have, a depositary—the name, and address of the registered office, of the public company, or foreign company registered under Division 2 of Part 5B.2, that consents in writing to be the depositary.
- Note: For paragraph (b), see section 1222V.
- (4) A notice stating whether the CCIV is to be a retail CCIV or a wholesale CCIV must be lodged with the application.
 - (5) A copy of the CCIV's constitution must be lodged with the application.
- Note: The requirement for a CCIV to have a constitution is set out in section 1223B.
- (6) If the CCIV is to be a retail CCIV, a copy of the compliance plan signed by all the directors of the proposed corporate director of the CCIV must be lodged with the application.

EXPOSURE DRAFT

Note: The requirement for a retail CCIV to have a compliance plan is set out in section 1227.

- (7) Subsection 117(5) applies as if the consents referred to in subsection (3) of this section were referred to in subsection 117(2).

1222B No other way to register a CCIV

A body may not be taken under section 5H to be registered under this Act as a CCIV.

1222C Registration of a CCIV

If an application to register a company as a CCIV is lodged under section 117, ASIC may take the steps set out in paragraphs 118(1)(a), (b) and (c), if ASIC is of the opinion that the company meets the requirements for registration as a CCIV set out in section 1222.

Note 1: The CCIV comes into existence on registration: see section 119.

Note 2: ASIC must also register at least one sub-fund of the CCIV: see paragraph 1222(d) and section 1222R.

1222D Members, corporate director and depositary of a CCIV

- (1) A public company becomes the director of a CCIV on registration if the public company is specified in the application with its consent as the proposed corporate director of the CCIV.

- (2) A body becomes the depositary of a CCIV on registration if the body is specified in the application with its consent as the proposed depositary of the CCIV.

- (3) A person becomes a member of a CCIV on registration if the person is specified in the application with their consent as a proposed member of the CCIV.

Note: The shares taken to be issued to the member are those specified in the application: see subsection 120(2).

- (4) Subsection 120(1) does not apply in relation to a CCIV.

EXPOSURE DRAFT

Subdivision C—Names of CCIVs

1222E Special requirements for naming of CCIVs

- (1) Subsection 148(1) applies to a CCIV as if the reference to subsections (2) and (3) of section 148 were instead a reference to subsection (2) of this section.
- (2) A CCIV must have the expression “Corporate Collective Investment Vehicle” at the end of its name.

1222F Special requirements for acceptable abbreviations of CCIV names

Section 149 has effect as if the following item were added to the table in subsection (1) of that section:

10	Corporate Collective Investment Vehicle	CCIV
----	--	------

1222G Carrying on business using “CCIV” in name

Section 156 has effect as if paragraph 156(1)(a) included a reference to the words “Corporate Collective Investment Vehicle” (or an abbreviation of those words).

1222H Change of name not allowed while sub-fund in liquidation

No application may be lodged with ASIC under section 157A in relation to a CCIV.

Subdivision D—Retail CCIVs and wholesale CCIVs

1222J Meaning of *retail CCIV* and *wholesale CCIV*

- (1) A CCIV is a *retail CCIV* if:
 - (a) the CCIV satisfies the retail CCIV test in section 1222K; or
 - (b) the CCIV is notified as a retail CCIV (see section 1222L).
- (2) A CCIV that is not a retail CCIV is a *wholesale CCIV*.

EXPOSURE DRAFT

1222K Retail CCIV test

- (1) A CCIV satisfies the retail CCIV test in this section if any of the following apply:
- (a) at least one member of the CCIV is covered by subsection (2) (about protected retail clients);
 - (b) at least one member of the CCIV is covered by subsection (3) (about protected clients under custodial arrangements);
 - (c) at least one member of the CCIV is covered by subsection (4) (about protected members of passport funds).

When a person is a protected retail client of a CCIV

- (2) For the purposes of paragraph (1)(a), a person is covered by this subsection in relation to a CCIV if all of the following apply:
- (a) the person acquires a security (within the meaning of Chapter 7) issued by the CCIV, by way of:
 - (i) an issue of the security to the person (rather than a transfer of the security to the person); or
 - (ii) the transfer of the security to the person in circumstances described in subsection 1012C(5), (6) or (8) (secondary sales that require a Product Disclosure Statement);
 - (b) the person acquired the security as a retail client for the purposes of Chapter 7;
 - (c) the person is not associated (within the meaning of subsection 1244Q(3)) with the CCIV;
 - (d) if the person acquired the security by way of an issue—the issue was not made in a situation, or pursuant to an offer made in a situation, to which section 1012E (about small scale offerings) applies.

Note: Section 1012E applies to financial products that are securities in a CCIV: see subsection 1244Q(6).

When a person is a protected client under a custodial arrangement

- (3) For the purposes of paragraph (1)(b), a person is covered by this subsection in relation to a CCIV if all of the following apply:
- (a) an acquisition of a security (within the meaning of Chapter 7) in the CCIV occurs pursuant to an instruction given by the person under a custodial arrangement (within the meaning of section 1012IA);

EXPOSURE DRAFT

(b) if there were an equivalent direct acquisition (within the meaning of subsection 1012IA(2)) by the person, the person would acquire the security as a retail client for the purposes of Chapter 7;

(c) the person is not associated (within the meaning of subsection 1244Q(3)) with the CCIV.

When a person is a protected passport fund member

(4) For the purposes of paragraph (1)(c), a person is covered by this subsection in relation to a CCIV if:

(a) a sub-fund of the CCIV is an Australian passport fund; and

(b) the person became a member of the sub-fund (whether in this jurisdiction or any host economy for the fund):

(i) on the expectation that the sub-fund would become an Australian passport fund; or

(ii) after the sub-fund became an Australian passport fund; and

(c) the person:

(i) is not, and has not at any time been, the corporate director of the CCIV; and

(ii) is not a related party of an entity that is, or has at any time been, the corporate director of the CCIV.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.

Regulations

(5) The regulations may do either or both of the following:

(a) prescribe additional circumstances in which a person is covered by subsection (2), (3) or (4) in relation to a CCIV;

(b) provide that a particular class of person is not covered by subsection (2), (3) or (4) in relation to a CCIV.

1222L Notifying ASIC of status as a retail CCIV or wholesale CCIV

(1) For the purposes of paragraph 1222J(1)(b), a CCIV is notified as a retail CCIV if:

(a) the most recent notice lodged with ASIC under this section is a notice that the CCIV is, or wishes to be, a retail CCIV; or

(b) both:

EXPOSURE DRAFT

-
- (i) the notice required by subsection 1222A(4) to be lodged with the application to register the CCIV stated that the CCIV was to be a retail CCIV; and
 - (ii) the CCIV has not lodged a notice with ASIC under this section stating that the CCIV is eligible to be, and wishes to be, a wholesale CCIV.

(2) Subject to this section, a CCIV may at any time:

- (a) lodge with ASIC a notice in the prescribed form stating that the CCIV is, or wishes to be, a retail CCIV; or
- (b) lodge with ASIC a notice in the prescribed form stating that the CCIV is eligible to be, and wishes to be, a wholesale CCIV.

Note: A CCIV that lodges a notice under paragraph (2)(b) will be a retail CCIV despite the notice if it is not eligible to be a wholesale CCIV because it passes the retail CCIV test: see section 1222J. Lodging a notice under paragraph (2)(b) in this situation is an offence: see subsection (6).

When a retail CCIV notice must be lodged

- (3) A CCIV must lodge a notice under paragraph (2)(a) if, because of the operation of paragraph 1222J(1)(a) (about the retail CCIV test), the CCIV becomes a retail CCIV.
- (4) A notice required by subsection (3) must be lodged within 2 business days of the CCIV becoming a retail CCIV.
- (5) An offence based on subsection (3) is an offence of strict liability.
- (6) In any proceedings against a person for an offence based on subsection (3), it is a defence if at the relevant time the person did not know, and could not reasonably be expected to have known, that the CCIV satisfied the retail CCIV test.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

When a wholesale CCIV notice must not be lodged

- (7) A CCIV commits an offence if:
 - (a) the CCIV lodges a notice under paragraph (2)(b); and
 - (b) the CCIV satisfies the retail CCIV test.
 - (8) An offence based on subsection (7) is an offence of strict liability.
-

EXPOSURE DRAFT

1222M Table of provisions that apply only to retail CCIVs

The following table sets out the main provisions of this Act that apply only in relation to retail CCIVs. If a provision is not set out in this table, disregard that fact in deciding whether or not the provision applies only to retail CCIVs.

Provisions that apply only to retail CCIVs

Item	Topic	Provision(s)
1	A sub-fund of a retail CCIV may be registered as an Australian passport fund	Part 8A.3
2	ASIC may direct a retail CCIV to modify its constitution	section 1223C
3	Content requirements for the constitution of a retail CCIV	sections 1223G and 1223H
4	Duties owed by a director of a retail CCIV	section 1224D
5	The corporate director of a retail CCIV must have external directors	section 1224G
6	Extended responsibility of corporate director of a retail CCIV for certain acts of agents	section 1224N
7	Limitation on right of the corporate director of a retail CCIV to fees and indemnities	section 1224P
8	Duties owed by the officers of the corporate director of a retail CCIV	section 1225
9	Duties owed by the employees of the corporate director of a retail CCIV	section 1225G
10	A retail CCIV must have a depositary	subsection 1226(1)
11	A retail CCIV must have a compliance plan	Division 5 of Part 8B.3
12	Requirement for member approval for certain related party transactions relating to retail CCIVs (application of Chapter 2E)	Subdivision A of Division 6 of Part 8B.3
13	Further requirements for redemptions of shares by a retail CCIV	sections 1231G to 1231K
14	Part 2M.3 (financial reporting)	section 1232

EXPOSURE DRAFT

1 **Subdivision E—Listing not permitted**

2 **1222N A CCIV must not be listed**

3 (1) A CCIV must not be included in the official list of a prescribed
4 financial market operated in this jurisdiction.

5 (2) A sub-fund of a CCIV must not be included in the official list of a
6 prescribed financial market operated in this jurisdiction.

7 **Subdivision F—Changing company type not permitted**

8 **1222P Part 2B.7 does not apply to a CCIV**

9 Part 2B.7 (about changing company type) does not apply to a
10 CCIV.

EXPOSURE DRAFT

Division 2—Registering a sub-fund of a CCIV

Subdivision A—What is a sub-fund of a CCIV

1222Q What is a *sub-fund* of a CCIV

- (1) A *sub-fund* of a CCIV is all or part of the business of the CCIV that is registered as a sub-fund under section 1222S.

Note: A sub-fund of a CCIV may be registered as a passport fund: see Part 8A.3.

- (2) A sub-fund does not have legal personality.

- (3) A person is a *member* of a sub-fund of a CCIV if the person:
- (a) is a member of the CCIV; and
 - (b) holds one or more shares that are referable to the sub-fund.

Note: For when a share is referable to a sub-fund, see section 1231.

Subdivision B—How a sub-fund of a CCIV is registered

1222R Initial sub-funds to be registered when the CCIV is registered

If ASIC registers a CCIV, ASIC must also register one or more sub-funds of the CCIV.

Note: If ASIC deregisters a sub-fund, and as a result the CCIV has no sub-funds, ASIC must deregister the CCIV: see section 1242K.

1222S Registration of a sub-fund

Registration of initial sub-funds

- (1) ASIC may register a sub-fund of a CCIV if:
- (a) ASIC registers the CCIV; and
 - (b) the proposed name of the sub-fund is specified in the application to register the CCIV.

Registration of further sub-funds

- (2) ASIC may also register a sub-fund of a CCIV if an application to register the sub-fund is lodged under section 1222U.

EXPOSURE DRAFT

ASIC to give sub-fund an ARFN

- (3) If ASIC registers a sub-fund, ASIC must give the sub-fund an ARFN.

ASIC must keep record of registration

- (4) ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

1222T Sub-fund is established on registration

- (1) A sub-fund of a CCIV is established at the beginning of the day on which the sub-fund is registered.
- (2) The sub-fund's name is the name specified in ASIC's record of the registration.

1222U Application to register further sub-funds

- (1) To register a sub-fund of a CCIV, a person may lodge an application with ASIC.

Note: A CCIV must have at least one sub-fund when it is first registered: see section 1222R.

- (2) The application must state:
- (a) the name and ACN of the CCIV; and
 - (b) the proposed name of the sub-fund; and
 - (c) the name and address of each person who consents to become a member of the sub-fund; and
 - (d) the following:
 - (i) the number and class of shares each member agrees in writing to take up;
 - (ii) the amount (if any) each member agrees in writing to pay for each share;
 - (iii) whether the shares each member agrees in writing to take up will be fully paid on registration;
 - (iv) if that amount is not to be paid in full on registration—the amount (if any) each member agrees in writing to be unpaid on each share;

EXPOSURE DRAFT

(v) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration.

(3) The application must be in the prescribed form.

Subdivision C—Names of sub-funds

1222V A sub-fund's name

CCIV using ACN

(1) If a CCIV has as its name the expression “Australian Company Number” followed by the CCIV’s ACN, a sub-fund of the CCIV may have as its name the expression “Australian Registered Fund Number” followed by the sub-fund’s ARFN.

CCIV using available name

- (2) If a CCIV has as its name an available name, a sub-fund of the CCIV may have as its name an expression comprising the following 3 elements, in the following order:
- (a) first element—the CCIV’s name (without the words “Corporate Collective Investment Vehicle” at the end of the name);
 - (b) second element—a name that meets the requirements in subsection (3);
 - (c) third element—the expression “Sub-fund”.
- (3) A name meets the requirements in this subsection unless the name is:
- (a) identical to a name that is used as the second element of the name of another sub-fund of the same CCIV; or
 - (b) identical to a name that is reserved by ASIC in respect of another person who is not the person applying to have the name; or
 - (c) unacceptable for registration under the regulations.

1222W Using sub-fund name and ARFN on documents

(1) A CCIV must set out a sub-fund’s name and ARFN on all its public documents and negotiable instruments that relate to the sub-fund.

EXPOSURE DRAFT

(2) An offence based on subsection (1) is an offence of strict liability.

1222X Acceptable abbreviations of sub-fund names

- (1) The abbreviations set out in the following table may be used:
- (a) instead of words that this Act requires to be part of a sub-fund's name or to be included in a document or negotiable instrument; and
 - (b) instead of words that are part of a sub-fund's name; and
 - (c) with or without full stops.

Acceptable abbreviations		
	Word	Abbreviation
1	Sub-fund	SF
2	Australian Registered Fund Number	ARFN
3	Australian	Aust
4	Number	No
5	and	&

- (2) If a sub-fund's name includes any of these abbreviations, the word or words corresponding to the abbreviation may be used instead.

1222Y Sub-fund changing its name

- (1) The members of a sub-fund of a CCIV may pass a special resolution adopting a new name for the sub-fund.
- (2) If they do so, the CCIV must, within 14 days after the resolution is passed:
- (a) lodge a copy of the special resolution with ASIC; and
 - (b) lodge an application to change the sub-fund's name in the prescribed form with ASIC.
- (3) However, no application may be lodged with ASIC under paragraph (2)(b) while the sub-fund is in liquidation.
- (4) An offence based on subsection (2) is an offence of strict liability.

EXPOSURE DRAFT

-
- (5) If the proposed name meets the requirements of section 1222V, ASIC must change the sub-fund's name by altering ASIC's record of the sub-fund's registration to reflect the change. The change of name takes effect when ASIC alters ASIC's record of the sub-fund's registration.

1222Z ASIC's power to direct CCIV to change a sub-fund's name

- (1) ASIC may direct a CCIV in writing to change the name of a sub-fund of the CCIV within 2 months if:
- (a) the name should not have been registered; or
 - (b) ASIC has directed the CCIV to change its name under section 158.
- (2) Despite section 1222Y, the corporate director may lodge an application to change the sub-fund's name under paragraph 1222Y(2)(b) without the members of the sub-fund having passed a special resolution adopting the new name.
- (3) The CCIV must comply with the direction within 2 months after being given it.
- (4) An offence based on subsection (3) is an offence of strict liability.
- (5) If the CCIV does not comply with subsection (3), ASIC may change the sub-fund's name to the expression "Australian Registered Fund Number" followed by the sub-fund's ARFN. ASIC does this by altering ASIC's record of the sub-fund's registration to reflect the change.
- Note: For ASIC's record of the registration of a sub-fund, see subsection 1222S(4).
- (6) A change of name under subsection (5) takes effect when ASIC alters ASIC's record of the sub-fund's registration.

1222ZA Effect of name change

- A change of the name of a sub-fund of a CCIV does not:
- (a) create a legal entity; or
 - (b) affect the sub-fund's existing property, rights or obligations; or
 - (c) render defective any legal proceedings by or against the CCIV and relating to the sub-fund.

EXPOSURE DRAFT

Division 3—Registers

1222ZB Registers relating to CCIVs

- (1) The register of members kept in accordance with section 169 must also show, in addition to the information mentioned in subsection 169(3), the sub-fund to which each share is referable.
- (2) The register of option holders kept in accordance with section 170 must also show, as part of the description of a share mentioned in paragraph 170(1)(d), the sub-fund to which the share is referable.
- (3) The register of debenture holders kept in accordance with section 171 must also contain information about the sub-fund to which the debenture is referable.

Part 8B.3—Corporate governance of CCIVs

Division 1—Governance rules

Subdivision A—How a CCIV exercises company powers

1223 Execution of documents (including deeds) by the CCIV itself

- (1) A document is taken to have been signed in accordance with subsection 127(1) if the document is signed by:
- (a) 2 directors of the corporate director of the CCIV; or
 - (b) a director and a company secretary of the corporate director of the CCIV.

Note: If a document is signed in this way, a person will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the CCIV.

- (2) A CCIV's common seal (if any) is taken to have been fixed to a document in accordance with subsection 127(2) if:
- (a) the CCIV's common seal is fixed to the document; and
 - (b) the fixing of the seal is witnessed by:
 - (i) 2 directors of the corporate director of the CCIV; or
 - (ii) a director and a company secretary of the corporate director of the CCIV.

Note: If a CCIV executes a document in this way, a person will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the CCIV.

- (3) A CCIV may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection 127(1) or (2), as affected by this section.
- (4) This section does not limit the ways in which a CCIV may execute a document (including a deed).
- (5) This section does not limit Part 2B.1, as it applies to a CCIV subject to the modifications set out in this Chapter.

Note 1: A CCIV may appoint an agent: see section 126.

Note 2: Some provisions of this Chapter modify section 124, for example sections 1231 and 1231ZD.

EXPOSURE DRAFT

Subdivision B—Constitution

1223A Replaceable rules do not apply to a CCIV

- (1) A section or subsection whose heading contains the words *replaceable rule* does not apply as a replaceable rule to a CCIV.
- (2) Subsection (1) applies despite paragraph 135(1)(a).

1223B Requirement for a CCIV to have a constitution

- (1) A CCIV must have a constitution. A CCIV may not repeal its constitution unless it replaces the constitution with a new constitution.

Minimum content requirements for the constitution

- (2) The constitution of a CCIV must comply with the requirements applicable to the CCIV under Subdivision C.

Strict liability offence

- (3) A CCIV commits an offence of strict liability if it fails to ensure it has a constitution that complies with the requirements applicable to the CCIV under Subdivision C.

1223C Retail CCIV—ASIC may direct CCIV to modify its constitution

- (1) ASIC may direct a retail CCIV to modify its constitution, as set out in the direction, to ensure that the CCIV's constitution complies with the content requirements applicable to the CCIV under Subdivision C. The direction is to be given by notice in writing to the CCIV.
- (2) ASIC may also direct a retail CCIV to modify its constitution, as set out in the direction, to ensure that the CCIV's constitution deals in adequate detail with:
 - (a) the matters required to be included in the constitution under Subdivision C; and
 - (b) the specification (if any) of any rights of the corporate director to be paid fees out of assets of a sub-fund of the CCIV, as mentioned in section 1224P.

EXPOSURE DRAFT

-
- 1 (3) Despite section 1223D, the corporate director may modify the
2 constitution to comply with the direction.
- 3 (4) The CCIV must comply with the direction within 14 days after
4 being given it.
- 5 (5) The CCIV must lodge with ASIC a copy of the modified
6 constitution within 14 days after the modification.
- 7 (6) An offence based on subsection (4) or (5) is an offence of strict
8 liability.

9 **1223D Adoption, modification and repeal of constitution**

- 10 (1) A CCIV adopts on registration the constitution lodged with the
11 application to register the CCIV.
- 12 (2) The constitution of a CCIV may be modified, or repealed and
13 replaced with a new constitution:
- 14 (a) if the CCIV is a retail CCIV:
- 15 (i) by special resolution of the members of the CCIV; or
- 16 (ii) by the corporate director if the corporate director
17 reasonably considers the change will not adversely
18 affect members' rights; or
- 19 (b) if the CCIV is a wholesale CCIV—by complying with the
20 requirements set out in the constitution for the modification
21 or repeal.
- 22 (3) If the constitution of a CCIV is modified, or repealed and replaced
23 with a new constitution, the CCIV must lodge with ASIC a copy of
24 the modification, or the new constitution, within 14 days after the
25 modification or replacement.
- 26 Note: The constitution may be modified or repealed by court order: see
27 section 233.
- 28 (4) An offence based on subsection (3) is an offence of strict liability.
- 29 (5) If section 137 does not set the date on which the modification or
30 repeal and replacement of a CCIV's constitution takes effect, it
31 takes effect on the latest of the following:
- 32 (a) the date on which the modification or the new constitution is
33 lodged with ASIC;

EXPOSURE DRAFT

(b) if the CCIV is a retail CCIV, and the corporate director determines a later date for the change to take effect—that later date;

(c) if the CCIV is a wholesale CCIV, and a later date is determined in accordance with any requirements in the constitution of the CCIV—that later date.

(6) Section 136 does not apply to a CCIV.

1223E Effect of constitution

In addition to the effect mentioned in subsection 140(1), a CCIV's constitution also has effect as a contract between the corporate director and each member of the CCIV.

Subdivision C—Minimum content requirements for the constitution of a CCIV

1223F Wholesale CCIV—Basic content requirement

A wholesale CCIV's constitution must specify the requirements that must be complied with for the CCIV to modify its constitution, or repeal its constitution and replace it with a new one.

1223G Retail CCIV—Basic content requirements

A retail CCIV's constitution must do the following:

- (a) make provision for the establishment of sub-funds, and classes of shares referable to sub-funds;
- (b) make provision for the method by which complaints made by members in relation to the CCIV are to be dealt with;
- (c) state that the CCIV has power to borrow or raise money;
- (d) if there are to be any limits on the CCIV's exercise of the power to borrow or raise money—sets out those limits.

1223H Retail CCIV—Additional content requirement for redemption of shares

(1) This section applies if all or some of the shares in a retail CCIV are redeemable shares or redeemable preference shares.

(2) The CCIV's constitution must make provision for the shares to be redeemed. The provision must:

EXPOSURE DRAFT

-
- (a) specify a period within which a redemption must be satisfied while section 1231H (about when a sub-fund is liquid) applies to the sub-fund to which the share is referable; and
- (b) be fair and reasonable to the members of each sub-fund of the CCIV; and
- (c) be consistent with Subdivision B of Division 1 of Part 8B.4.

Division 2—Officers and employees of the CCIV

Subdivision A—Officers and employees generally

1224 A CCIV has a single corporate director

A CCIV may only have one director

- (1) A CCIV must not appoint more than one director.

Note: For who can be the director of a CCIV, see sections 1224F and 1224G.

Position of director is the position of corporate director

- (2) The position of director of a CCIV is the position of corporate director.
- (3) **Corporate director** of a CCIV means the company named in ASIC's record of the CCIV's registration as the corporate director or temporary corporate director of the CCIV.

Note: The corporate director is first appointed through the registration process for the CCIV: see sections 1222A and 1222D.

No alternate directors

- (4) There is no position of alternate director of a CCIV.
- (5) The corporate director of a CCIV commits an offence if the corporate director appoints an alternate director.

Note: For the corporate director's power to appoint an agent, see section 1224M.

*Definition of **director** not limited*

- (6) This section does not limit the operation of paragraph (b) of the definition of **director** in section 9 in relation to a CCIV.

EXPOSURE DRAFT

1224A A CCIV has no secretary and no employees

- (1) A CCIV must not appoint a secretary.

Note: The secretary of the corporate director is responsible for certain corporate contraventions by the CCIV: see Division 3 of this Part.

- (2) A CCIV must not have any employees.

Note: However, a CCIV may appoint an agent: see section 126.

1224B Meaning of *officer* of a CCIV

In this Act:

officer of a corporation that is a CCIV means:

- (a) a director of the CCIV; or
- (b) a receiver, or receiver and manager, of the property of a sub-fund of the CCIV; or
- (c) a liquidator of a sub-fund of the CCIV; or
- (d) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Note: Part 8B.6 is about external administration of sub-funds.

1224C General duties owed by officers

- (1) Division 1 of Part 2D.1 (about general duties) applies to a CCIV with the modifications set out in this section.

- (2) In applying Division 1 of Part 2D.1 (about general duties) in relation to an officer (other than a director) of a CCIV:

- (a) treat references to the best interests of the corporation as instead being references to the best interests of the sub-fund referred to in subsection (3); and
- (b) treat references to causing detriment to the corporation as instead being references to causing detriment to the sub-fund referred to in subsection (3); and
- (c) treat references to the business operations of the corporation as instead being references to the business operations of the sub-fund referred to in subsection (3).

- (3) The sub-fund is:

- (a) for a receiver, or receiver and manager, of the property of a sub-fund of the CCIV—the sub-fund; or

EXPOSURE DRAFT

-
- (b) for a liquidator of a sub-fund of the CCIV—the sub-fund; or
 - (c) for a trustee or other person administering a compromise or arrangement made between the CCIV and someone else—the sub-fund on whose members or creditors the compromise or arrangement is binding.

1224D Retail CCIV—duties owed by director

- (1) A director of a retail CCIV must, in exercising its powers and carrying out its duties:
 - (a) act honestly; and
 - (b) exercise the degree of care and diligence that a reasonable person would exercise in the director's position; and
 - (c) act in the best interests of the members of the CCIV and, if there is a conflict between the interests of those members and its own interests, give priority to the members' interests; and
 - (d) treat members of the CCIV who hold shares of the same class equally; and
 - (e) treat members of the CCIV who hold shares of different classes fairly; and
 - (f) treat members of different sub-funds of the CCIV fairly; and
 - (g) not make use of information acquired through being a director of the CCIV in order to:
 - (i) gain an improper advantage for the director or another person; or
 - (ii) cause detriment to the members of the CCIV; and
 - (h) ensure that the CCIV's constitution meets the requirements of this Act; and
 - (i) ensure that the CCIV's compliance plan meets the requirements of section 1227A; and
 - (j) comply with the CCIV's compliance plan; and
 - (k) ensure that:
 - (i) assets and liabilities of the sub-funds of the CCIV are clearly identified; and
 - (ii) any property of the CCIV to which section 1233K (about property that has to be converted) applies is clearly identified; and
 - (iii) any liabilities of the CCIV to which section 1233M (about liabilities allocated to 2 or more sub-funds) applies is clearly identified; and

EXPOSURE DRAFT

-
- 1 (l) ensure that assets of a sub-fund of the CCIV that are not
2 required to be held by a depositary of the CCIV are held in
3 the manner required by section 1233ZC; and
4 (m) ensure that the assets of a sub-fund of the CCIV are valued at
5 regular intervals appropriate to the nature of the assets; and
6 (n) ensure that all payments out of the assets of the CCIV are
7 made in accordance with the CCIV's constitution and this
8 Act; and
9 (o) report to ASIC any breach of this Act that:
10 (i) relates to the CCIV; and
11 (ii) has had, or is likely to have, a materially adverse effect
12 on the interests of members of the CCIV;
13 as soon as practicable after it becomes aware of the breach;
14 and
15 (p) carry out or comply with any other duty, not inconsistent
16 with this Act, that is conferred on the director by the CCIV's
17 constitution.

18 Note: This provision is a civil penalty provision (see section 1317E).

19 *Duties under this section prevail in case of conflict*

- 20 (2) If there is a conflict between a duty owed by a director of a retail
21 CCIV under this section and a duty owed by the director under
22 Part 2D.1, the duty owed under this section prevails.

23 *Interaction with other laws etc.*

- 24 (3) Subsection (1):
25 (a) has effect in addition to, and not in derogation of, any rule of
26 law relating to the duty or liability of a person because of
27 their office or employment in relation to a corporation; and
28 (b) does not prevent the commencement of civil proceedings for
29 a breach of a duty or in respect of a liability referred to in
30 paragraph (a).

31 *Interaction with section 199B*

- 32 (4) Section 199B applies to a retail CCIV as if paragraph 199B(1)(b)
33 included a reference to this section.

34 Note: There are additional modifications of section 199B, relevant to
35 officers and auditors of the corporate director, in section 1225F.

EXPOSURE DRAFT

1224E Certain provisions in Chapter 2D do not apply to CCIVs

The following do not apply to a CCIV:

- (a) Part 2D.3 (about appointment, remuneration and cessation of appointment of directors);
- (b) Part 2D.4 (about appointment of secretaries);
- (c) Part 2D.5 (about public information about directors and secretaries);
- (d) Part 2D.6 (about disqualification from managing corporations);
- (e) Part 2D.7 (about ban on hedging remuneration of key management personnel);
- (f) Part 2D.8 (about remuneration recommendations in relation to key management personnel for disclosing entities).

Subdivision B—The corporate director of a CCIV

1224F Who can be the director of a CCIV

Only a public company that holds an Australian financial services licence authorising it to operate the business and conduct the affairs of a CCIV may be appointed as the director of the CCIV.

1224G Retail CCIV—additional rules about who can be the director

- (1) At least half of the directors of the corporate director of a retail CCIV must be external directors.
- (2) A director of the corporate director is an external director if the director:
 - (a) is not, and has not been in the previous 2 years, an employee of the corporate director or a related body corporate; and
 - (b) is not, and has not been in the previous 2 years, a senior manager of the corporate director or a related body corporate; and
 - (c) is not, and has not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the corporate director or a related body corporate; and
 - (d) is not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the corporate director or a related body corporate; and

EXPOSURE DRAFT

-
- 1 (e) does not have a material interest in the corporate director or a
2 related body corporate; and
3 (f) is not a relative of a person who has a material interest in the
4 corporate director or a related body corporate.
- 5 (3) The corporate director of a retail CCIV must not fail to comply
6 with subsection (1) for a period exceeding 14 days (or a longer
7 period allowed in writing by ASIC).
- 8 *Fault-based offence*
- 9 (4) A person commits an offence if the person intentionally or
10 recklessly fails to comply with subsection (3).
- 11 *Strict liability offence*
- 12 (5) A person commits an offence of strict liability if the person fails to
13 comply with subsection (3).
- 14 (6) In agreeing to a longer period under subsection (3), ASIC may
15 impose conditions to be complied with and the corporate director
16 must comply with them.
- 17 (7) An offence based on subsection (6) is an offence of strict liability.

1224H Effectiveness of acts by corporate director

- 19 (1) An act done by the company named in ASIC's record of a CCIV's
20 registration as the corporate director or temporary corporate
21 director of the CCIV is effective even if:
22 (a) the company's appointment as corporate director or
23 temporary corporate director did not comply with the CCIV's
24 constitution or any provision of this Act; or
25 (b) the continuance of the company's appointment as corporate
26 director or temporary corporate director does not comply
27 with the CCIV's constitution or any provision of this Act.
- 28 (2) Subsection (1) does not deal with the question whether an effective
29 act by a corporate director:
30 (a) binds the CCIV in its dealings with other people; or
31 (b) makes the CCIV liable to another person.

32 Note: The kinds of acts that this section validates are those that are only
33 legally effective if the person doing them is a director (for example,
34 calling a meeting of the company's members). Sections 128 to 130

EXPOSURE DRAFT

1 contain rules about the assumptions people are entitled to make when
2 dealing with a company and its officers.

3 **1224J Corporate director must operate the CCIV**

- 4 (1) The corporate director of a CCIV is to:
5 (a) operate the business and conduct the affairs of the CCIV; and
6 (b) perform the functions conferred on the corporate director by
7 the CCIV's constitution and this Act.

8 Note 1: If a CCIV commits an offence or contravenes a civil penalty
9 provision, the corporate director is generally responsible: see
10 Division 8 of this Part.

11 Note 2: Section 1224Q is about the exercise of powers by the corporate
12 director while a sub-fund is in liquidation.

- 13 (2) The corporate director of a CCIV may exercise all the powers of
14 the CCIV except any powers that this Act or the CCIV's
15 constitution requires:
16 (a) the CCIV to exercise in general meeting; or
17 (b) the members of a sub-fund of the CCIV to exercise in a
18 meeting of members of the sub-fund.

19 **1224K Corporate director to provide depositary with reasonable** 20 **assistance**

- 21 (1) The corporate director of a CCIV that has a depositary must give
22 the depositary of the CCIV:
23 (a) any information in the corporate director's possession or
24 control that the depositary reasonably requires for the
25 purpose of fulfilling the depositary's responsibilities in
26 relation to the CCIV; and
27 (b) any other assistance the depositary reasonably requires for
28 the purpose of fulfilling those responsibilities.

29 Note: The depositary has a similar obligation to the corporate director: see
30 section 1226J.

- 31 (2) The depositary may give the corporate director a written request to
32 give information covered by paragraph (1)(a).
33 (3) A corporate director that is requested under subsection (2) to give
34 information must give the information within a reasonable period.

EXPOSURE DRAFT

1224L Corporate director not required to disclose material personal interest

Subject to section 1225C (about the directors of the corporate director), section 191 does not require a director of a CCIV to give notice of an interest.

Note: Section 1225C is about the obligations of the directors of the corporate director to disclose material personal interests relating to the affairs of the CCIV.

1224M Corporate director may appoint an agent or engage a person

Agents appointed by corporate director

- (1) The corporate director has power to appoint an agent, or otherwise engage a person, to do anything that the corporate director is authorised to do in connection with the CCIV.

Note: A CCIV may also have an agent: see section 126.

Agents appointed by CCIV and sub-agents

- (2) An agent appointed, or a person otherwise engaged, by:
- (a) an agent or person referred to in subsection (1); or
 - (b) the CCIV; or
 - (c) a person who is taken under this subsection to be an agent of the corporate director;
- to do anything that the corporate director is authorised to do in connection with the CCIV is taken to be an agent appointed by the corporate director to do that thing for the purposes of this section.

Delegation

- (3) Section 198D does not apply to a CCIV.

1224N Retail CCIV—responsibility of corporate director for certain acts of agents

- (1) Subsection (2) applies in relation to a retail CCIV for the purpose of determining whether:
- (a) there is a liability to the CCIV or the CCIV's members; or
 - (b) the corporate director has properly performed its duties for the purposes of section 1224P.

EXPOSURE DRAFT

Note: A CCIV's constitution may provide for the corporate director to be indemnified for liabilities—see section 1224P.

Extended liability for acts of agents

(2) If:

- (a) the corporate director appoints an agent, or otherwise engages a person, under section 1224M; or
- (b) an agent or person is taken under subsection 1224M(2) (about sub-agents) to be an agent of the corporate director; the corporate director is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if the person or agent was acting fraudulently or outside the scope of the authority or engagement.

Note: This subsection does not apply to receivers: see section 1237F.

1224P Retail CCIV—limitation on right of corporate director to fees and indemnities

If the corporate director of a retail CCIV is to have any rights to be paid fees out of assets of a sub-fund of the CCIV, or to be indemnified out of assets of a sub-fund of the CCIV for liabilities or expenses incurred in relation to the performance of its duties, those rights:

- (a) must be specified in the CCIV's constitution; and
- (b) must be available only in relation to the proper performance of those duties;

and any other agreement or arrangement has no effect to the extent that it purports to confer such a right.

Note 1: ASIC may direct the CCIV to modify its constitution to ensure such rights are dealt with in adequate detail: see subsection 1223C(2).

Note 2: Sections 199A to 199C may prohibit giving an indemnity for the corporate director of a CCIV. Those sections have extended operation in relation to a CCIV: see sections 1225E and 1225F.

1224Q Exercise of powers while sub-fund is in liquidation

Powers of corporate director while sub-fund in liquidation

- (1) The corporate director of a CCIV contravenes this subsection if:

EXPOSURE DRAFT

-
- 1 (a) a sub-fund of the CCIV is being wound up, or a provisional
2 liquidator of a sub-fund of the CCIV is acting; and
3 (b) the corporate director purports to do any of the following:
4 (i) carry on the business of the sub-fund;
5 (ii) enter into a transaction or dealing on behalf of the CCIV
6 affecting the property of the sub-fund.
- 7 (2) However, subsection (1) does not apply to the extent that the
8 corporate director is acting:
9 (a) with the written approval of the liquidator of the sub-fund or
10 the Court; or
11 (b) in circumstances in which, despite the fact that the sub-fund
12 is being wound up, the corporate director is permitted by this
13 Act to act.
- 14 (3) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution
15 for an offence based on subsection (1) of this section, a defendant
16 does not bear an evidential burden in relation to the matter in
17 paragraph (2)(b).
- 18 *Fault-based offence*
- 19 (4) A person commits an offence if the person contravenes
20 subsection (1).
- 21 *Strict liability offence*
- 22 (5) A person commits an offence of strict liability if the person
23 contravenes subsection (1).
- 24 *Functions and powers of liquidator prevail in case of conflict*
- 25 (6) If subsection (2) applies and there is a conflict between a function
26 or power of the liquidator of the sub-fund and a function or power
27 of the corporate director in relation to the CCIV, the liquidator's
28 function or power prevails.
- 29 *Effect of section*
- 30 (7) This section does not remove the corporate director of a CCIV
31 from office.
- 32 (8) Nothing in this section affects a secured creditor's right to realise
33 or otherwise deal with the security interest.
-

EXPOSURE DRAFT

(9) Section 198G does not apply to a CCIV.

(10) A provision of this Act that applies despite section 198G also applies despite this section.

Definitions

(11) In this section:

liquidator includes a provisional liquidator.

Subdivision C—Replacing the corporate director

1224R Changes only take effect when ASIC alters record of registration

Despite anything in this Subdivision, the company named in ASIC's record of registration as the corporate director or temporary corporate director of a CCIV remains the CCIV's corporate director until the record is altered to name another company as the CCIV's corporate director or temporary corporate director.

1224S CCIV does not have an eligible corporate director

If a CCIV does not have a corporate director that meets the requirements of section 1224F, an application to the Court for the appointment of a temporary corporate director of the CCIV under section 1224V may be made by any of the following:

- (a) ASIC;
- (b) a member, or group of members, of the CCIV;
- (c) if the CCIV has a depositary—the depositary of the CCIV.

1224T Retirement of corporate director

(1) If the corporate director of a CCIV wants to retire as corporate director, it must call a members' meeting to explain its reason for wanting to retire and to enable the members to vote on a resolution to choose a company to be the new corporate director. The resolution must be a special resolution.

(2) The notice of meeting of the CCIV's members must:

EXPOSURE DRAFT

-
- 1 (a) set out the corporate director's reason for wanting to retire;
2 and
3 (b) nominate as the new corporate director a company that:
4 (i) meets the requirements of section 1224F; and
5 (ii) has consented in writing to being chosen as the new
6 corporate director of the CCIV.
- 7 (3) If the members choose a company to be the new corporate director,
8 as soon as practicable and in any event within 2 business days after
9 the day of the meeting, the current corporate director must lodge a
10 notice with ASIC asking it to alter the record of the CCIV's
11 registration to name the company as the corporate director of the
12 CCIV.
- 13 (4) If the current corporate director does not lodge the notice required
14 by subsection (3), the company chosen by the members to be the
15 new corporate director may lodge that notice.
- 16 (5) An offence based on subsection (3) is an offence of strict liability.
- 17 (6) If the members do not choose a company to be the new corporate
18 director, an application to the Court for appointment of a
19 temporary corporate director under section 1224V may be made by
20 any of the following:
21 (a) the current corporate director of the CCIV;
22 (b) if the CCIV has a depositary—the depositary of the CCIV.

23 **1224U Replacement of corporate director by members**

- 24 (1) If members of a CCIV want to replace the corporate director, the
25 members may take action under Part 2G.4 (as that Part applies to
26 the CCIV under section 1229A) for the calling of a meeting of the
27 CCIV's members to consider and vote on:
28 (a) a special resolution that the current corporate director should
29 be removed; and
30 (b) a special resolution choosing a company to be the new
31 corporate director.
- 32 (2) The notice of meeting of the CCIV's members must:
33 (a) set out the intention to remove the current corporate director;
34 and
35 (b) nominate, as the new corporate director of the CCIV, a
36 company that:
-

EXPOSURE DRAFT

-
- 1 (i) meets the requirements of section 1224F; and
2 (ii) has consented in writing to being appointed as the new
3 corporate director of the CCIV.
- 4 (3) If both resolutions are passed, the CCIV is taken, on the day of the
5 meeting, to have appointed the company nominated in the notice as
6 the new corporate director of the CCIV.
- 7 (4) The current corporate director must, as soon as practicable and in
8 any event within 2 business days after the appointment, lodge a
9 notice with ASIC asking it to alter the record of the CCIV's
10 registration to name the company as the corporate director of the
11 CCIV.
- 12 (5) If the current corporate director does not lodge the notice required
13 by subsection (4), the company chosen by the members to be the
14 new corporate director may lodge that notice.
- 15 (6) An offence based on subsection (4) is an offence of strict liability.

1224V Appointment of temporary corporate director by Court

- 17 (1) On application under section 1224S or subsection 1224T(6) or
18 1224X(2), the Court may, by order:
19 (a) if the CCIV has a current corporate director—remove the
20 current corporate director; and
21 (b) appoint a company as the temporary corporate director of the
22 CCIV.
- 23 (2) The Court must not make an order under subsection (1) unless:
24 (a) the Court is satisfied that:
25 (i) the appointment is in the interests of the members of the
26 CCIV; and
27 (ii) the company meets the requirements of section 1224F;
28 and
29 (b) the company consents in writing to becoming the CCIV's
30 temporary corporate director.
- 31 (3) The Court may make any further orders that it considers
32 appropriate.
- 33 (4) The person who made the application for the order must, as soon as
34 practicable and in any event within 2 days after the Court's order

EXPOSURE DRAFT

appointing the temporary corporate director, lodge a notice with ASIC informing ASIC of the appointment made by the Court.

(5) If the person referred to in subsection (4) does not lodge the notice required by that subsection, the company appointed by the Court as the temporary corporate director may lodge that notice.

(5) An offence based on subsection (4) is an offence of strict liability.

1224W Temporary corporate director to initiate appointment of permanent corporate director

(1) This section applies if the Court appoints a temporary corporate director of a CCIV under section 1224V.

(2) The temporary corporate director must, within the period applicable under subsection (3), call a members' meeting for the purpose of the members, by special resolution, choosing a company to be the new permanent corporate director.

(3) The temporary corporate director must call the meeting within:

- (a) unless paragraph (b) applies—3 months of the appointment; or
- (b) if the Court has extended the period under subsection (4)—the extended period.

(4) The Court may, on application by the corporate director, grant an extension of the period referred to in paragraph (3)(a).

(5) The temporary corporate director may, within the period applicable under subsection (3), call further meetings of the CCIV's members to consider and vote on a special resolution choosing a company to be the permanent corporate director.

(6) For the purposes of subsections (2) and (5), the written notice of the meeting must nominate as the permanent corporate director a company (which may be the temporary corporate director) that:

- (a) meets the requirements of section 1224F; and
- (b) has consented in writing to being appointed as the permanent corporate director of the CCIV.

(7) If the resolution is passed, the CCIV is taken, on the day of the meeting, to have appointed the company nominated in the notice as the permanent corporate director of the CCIV.

EXPOSURE DRAFT

(8) The current corporate director must, as soon as practicable and in any event within 2 business days after the appointment, lodge a notice with ASIC asking it to alter the record of the CCIV's registration to name the company as the corporate director of the CCIV.

(9) If the current corporate director does not lodge the notice required by subsection (8), the company chosen by the members to be the new corporate director may lodge that notice.

(10) An offence based on subsection (2) or (8) is an offence of strict liability.

1224X Temporary corporate director fails to initiate appointment of permanent corporate director

(1) This section applies if:

- (a) a temporary corporate director is appointed by the Court under section 1224V; and
- (b) the temporary corporate director fails to call a members' meeting to consider and vote on a special resolution choosing a company to be the permanent corporate director within the period applicable under subsection 1224W(3).

(2) An application to the Court for the appointment of a temporary corporate director of the CCIV under section 1224V may be made by any of the following:

- (a) ASIC;
- (b) a member, or group of members, of the CCIV;
- (c) if the CCIV has a depositary—the depositary of the CCIV.

1224Y Members fail to appoint permanent corporate director

(1) This section applies if:

- (a) a temporary corporate director is appointed by the Court under section 1224V; and
- (b) within the period applicable under subsection 1224W(3), the temporary corporate director calls one or more members' meetings to consider and vote on a special resolution choosing a company to be the permanent corporate director; and

EXPOSURE DRAFT

-
- 1 (c) the CCIV's members do not pass a special resolution
2 choosing a permanent corporate director.
- 3 (2) An application to the Court for a winding up of all the sub-funds of
4 the CCIV must be made by the corporate director of the CCIV.
- 5 Note: For provisions about winding up a sub-fund of a CCIV, see Division 4
6 of Part 8B.6.
- 7 (3) An application to the Court for a winding up of all the sub-funds of
8 the CCIV may be made by any of the following, if the corporate
9 director does not do so:
10 (a) ASIC;
11 (b) a member, or group of members, of the CCIV.
- 12 (4) On an application under this section, the Court may order the
13 winding up of all the sub-funds of the CCIV.

1224Z Former corporate director to hand over books and provide reasonable assistance

- 14
15
- 16 (1) If the corporate director of a CCIV changes, the former corporate
17 director must:
18 (a) as soon as practicable give the new corporate director any
19 books in the former corporate director's possession or control
20 that this Act requires to be kept in relation to the CCIV; and
21 (b) give other reasonable assistance to the new corporate director
22 to facilitate the change of corporate director.
- 23 (2) An offence based on subsection (1) is an offence of strict liability.

1224ZA Rights, obligations and liabilities of former corporate director

- 24
25
- 26 (1) If the corporate director of a CCIV changes, the rights, obligations
27 and liabilities of the former corporate director in relation to the
28 CCIV become rights, obligations and liabilities of the new
29 corporate director.
- 30 (2) Despite subsection (1), the following rights and liabilities remain
31 rights and liabilities of the former corporate director:
32 (a) any right of the former corporate director to be paid fees for
33 the performance of its functions before it ceased to be the
34 corporate director;
-

EXPOSURE DRAFT

-
- 1 (b) any right of the former corporate director to be indemnified
2 for expenses it incurred before it ceased to be the corporate
3 director;
4 (c) any right, obligation or liability that the former corporate
5 director had as a member of the CCIV;
6 (d) any liability for which the former corporate director could not
7 have been indemnified out of the assets of the CCIV if it had
8 remained the CCIV's corporate director;
9 (e) any liability arising out of a contravention by the former
10 corporate director of a provision of this Act.

11 **1224ZB Effect of change of corporate director on documents etc. to**
12 **which former corporate director is party**

- 13 (1) If the corporate director of a CCIV changes, a document relating to
14 the CCIV:
15 (a) to which the former corporate director is a party, in which a
16 reference is made to the former corporate director, or under
17 which the former corporate director has acquired or incurred
18 a right, obligation or liability, or might have acquired or
19 incurred a right, obligation or liability if it had remained the
20 corporate director; and
21 (b) that is capable of having effect after the change;
22 has effect as if the new corporate director (and not the former
23 corporate director) were a party to it, were referred to in it or had
24 or might have acquired or incurred the right, obligation or liability
25 under it.
26 (2) Subsection (1) does not apply to a right, obligation or liability that
27 remains a right, obligation or liability of the former corporate
28 director because of subsection 1224ZA(2).

29 **Subdivision D—Termination payments**

30 **1224ZC Member approval not needed for benefit specified in**
31 **constitution**

- 32 Despite subsection 200AB(1), for the purposes of Division 2 of
33 Part 2D.2, a *benefit* does not include a payment made by the CCIV
34 to its corporate director if:
35 (a) the corporate director is entitled to the payment under
36 provisions of the constitution; and
-

EXPOSURE DRAFT

(b) for a retail CCIV—the provisions comply with section 1224P.

1224ZD Modified member approval for CCIVs

(1) Sections 200B and 200C apply in relation to a benefit given by a CCIV as if:

- (a) the members whose approval is required under those provisions were the members of the sub-fund of the CCIV that would be affected by the giving of the benefit; and
- (b) the member approval mentioned in paragraph (a) were required to be given under section 200E as modified by subsection (3) of this section.

Note: If the CCIV is a retail CCIV, there are additional restrictions on giving benefits: see section 1224P.

(2) If the giving of the benefit would affect 2 or more sub-funds of the CCIV, then the approval of each affected sub-fund must be obtained in the way mentioned in subsection (1).

Member approval

(3) Section 200E applies in relation to a CCIV as if a reference to a general meeting were instead a reference to a meeting of the members of the affected sub-fund.

1224ZE Benefits paid to corporate director not covered by exemptions

To avoid doubt, a benefit that is a payment to the corporate director of a CCIV is not a benefit to which paragraph 200F(1)(a), subsection 200F(2), or section 200G applies.

Division 3—Officers, employees and auditors of the corporate director

Subdivision A—Officers and auditors of the corporate director

1225 Retail CCIV—duties owed by officers of corporate director

(1) An officer of the corporate director of a retail CCIV must, in performing functions and exercising powers relating to the CCIV:

EXPOSURE DRAFT

-
- 1 (a) act honestly; and
2 (b) exercise the degree of care and diligence that a reasonable
3 person would exercise in the officer's position; and
4 (c) act in the best interests of the members of the CCIV and, if
5 there is a conflict between the interests of those members and
6 the interests of the corporate director, give priority to the
7 members' interests; and
8 (d) not make use of information acquired through being an
9 officer of the corporate director in order to:
10 (i) gain an improper advantage for the officer or another
11 person; or
12 (ii) cause detriment to the members of the CCIV; and
13 (e) not make improper use of their position as an officer to gain,
14 directly or indirectly, an advantage for themselves or for any
15 other person or to cause detriment to the members of the
16 CCIV; and
17 (f) take all steps that a reasonable person would take, in the
18 officer's position, to ensure that the corporate director
19 complies with:
20 (i) this Act; and
21 (ii) any conditions imposed on the corporate director's
22 Australian financial services licence; and
23 (iii) the CCIV's constitution; and
24 (iv) the CCIV's compliance plan.

25 Note: This provision is a civil penalty provision (see section 1317E).

- 26 (2) A person must not intentionally or recklessly contravene, or be
27 involved in a contravention of, subsection (1).

28 *Duties under this section prevail in case of conflict*

- 29 (3) If there is a conflict between a duty owed by an officer of the
30 corporate director of a retail CCIV under this section and a duty
31 owed by the officer under Part 2D.1, the duty owed under this
32 section prevails.

33 *Interaction with other laws etc.*

- 34 (4) Subsection (1):

EXPOSURE DRAFT

- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
- (b) does not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

1225A Responsibility of secretary of corporate director for certain contraventions by CCIV

A secretary of the corporate director of a CCIV contravenes subsection 188(1) if the CCIV contravenes a corporate responsibility provision.

Note: Subsection 188(1) is a civil penalty provision (see section 1317E).

1225B Responsibility of secretary of corporate director for certain contraventions by corporate director

For the purposes of subsection 188(1) as it applies to the secretary of the corporate director, the provisions identified in column 1 of the following table, in addition to the provisions mentioned in subsection 188(1), are taken to be corporate responsibility provisions:

Provisions that are taken to be *corporate responsibility provisions*

Item	Column 1 Provision(s)	Column 2 Topic
1	(a) subsection 1224T(3); (b) subsection 1224U(4); (c) subsection 1224W(8)	lodgement of notices about the corporate director of a CCIV
2	(a) subsection 1226P(2); (b) subsection 1226Q(2); (c) subsection 1226S(7); (d) subsection 1226T(3); (e) subsection 1226V(2)	lodgement of notices about the depositary of a CCIV
3	(a) subsection 1227(3); (b) subsection 1227D(4); (c) subsection 1227E(3)	lodgement of compliance plans etc. (retail CCIV only)
4	subsection 1227G(4)	lodgement of report of auditor of

EXPOSURE DRAFT

Provisions that are taken to be *corporate responsibility provisions*

Item	Column 1 Provision(s)	Column 2 Topic
		compliance plan (retail CCIV only)
5	subsection 1227K(1)	notifying ASIC when auditor of compliance plan changes (retail CCIV only)

1

2 **1225C Extended obligation of directors of corporate director**

3 (1) For the purposes of Division 2 of Part 2D.1, a material personal
4 interest in a matter that relates to the affairs of a CCIV is treated as
5 being a material personal interest in a matter that relates to the
6 affairs of the corporate director of the CCIV.

7 Note: The effect of this subsection is that Division 2 of Part 2D.1 applies to
8 directors of the corporate director of a CCIV in relation to material
9 personal interests those directors have in matters relating to the affairs
10 of the CCIV.

11 (2) Subsection (1) does not affect the operation of Division 2 of
12 Part 2D.1 in relation to an interest that, apart from that subsection,
13 is a material personal interest in a matter that relates to the affairs
14 of the corporate director.

15 (3) For an offence based on subsection 191(1), as it applies to the
16 director of a corporate director as a result of subsection (1) of this
17 section, strict liability applies to the circumstance, that the director
18 of the corporate director has a material personal interest in a matter
19 that relates to the affairs of the CCIV.

20 (4) For the purposes of determining under subsection 191(2) whether
21 the director does not need to give notice of the interest, references
22 in that subsection to the company are taken to be references to the
23 CCIV, unless the reference is to the director's position as director,
24 or officer, of the company.

25 (5) Nothing in this section limits:

- 26 (a) the effect sections 191 and 192 have in relation to the director
27 of the corporate director apart from this Subdivision; or
28 (b) the effect section 193 has in relation to sections 191 and 192
29 as those sections apply as a result of this section.

55

18/12/2018 2:36 PM

EXPOSURE DRAFT

EXPOSURE DRAFT

Note: Section 193 is about the interaction of sections 191 and 192 with other laws etc.

1225D Right of access to CCIV books

- (1) Section 198F applies in relation to a director of a corporate director of a CCIV as if the person were a director of the CCIV.
- (2) For the purposes of subsection (1), a person is taken to cease being a director of the CCIV if either of the following occurs:
 - (a) the person ceases to be a director of the corporate director;
 - (b) the company of which the person is a director ceases to be the corporate director of the CCIV.

1225E Extended operation of section 199A (about indemnification and exemption of officer or auditor)

- (1) Section 199A applies to a CCIV and a related body corporate of a CCIV as if:
 - (a) each of the following were an officer of the CCIV:
 - (i) an officer of the CCIV;
 - (ii) an officer of the corporate director of the CCIV; and
 - (b) each of the following were an auditor of the CCIV:
 - (i) an auditor of the CCIV;
 - (ii) an auditor of the corporate director of the CCIV.

Note: If the CCIV is a retail CCIV, there are additional restrictions: see section 1224P.

- (2) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of doubt.

1225F Extended operation of section 199B (about insurance premiums for certain liabilities)

- (1) Subsection 199B(1) applies to a CCIV and a related body corporate of a CCIV as if:
 - (a) each of the following were an officer of the CCIV:
 - (i) an officer of the CCIV;
 - (ii) an officer of the corporate director of the CCIV; and
 - (b) each of the following were an auditor of the CCIV:
 - (i) an auditor of the CCIV;

EXPOSURE DRAFT

(ii) an auditor of the corporate director of the CCIV.

(2) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of doubt.

(3) For the purposes of subsection (1), section 199B applies to a retail CCIV as if paragraph 199B(1)(b) included a reference to section 1225.

Note: For the duties relevant to the actual officers and auditor of the CCIV, see subsection 1224D(4).

Subdivision B—Employees of the corporate director

1225G Retail CCIV—duties owed by employees of corporate director

(1) An employee of the corporate director of a retail CCIV must not, in performing functions and exercising powers relating to the CCIV:

(a) make use of information acquired through being an employee of the corporate director in order to:

(i) gain an improper advantage for the employee or another person; or

(ii) cause detriment to members of the CCIV; or

(b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the CCIV.

Note: This provision is a civil penalty provision (see section 1317E).

(2) A person must not intentionally or recklessly contravene, or be involved in a contravention of, subsection (1).

Duties under this section prevail in case of conflict

(3) If there is a conflict between a duty owed by an employee of the corporate director of a retail CCIV under this section and a duty owed by the employee under Part 2D.1, the duty owed under this section prevails.

Interaction with other laws etc.

(4) Subsection (1):

EXPOSURE DRAFT

-
- (a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
 - (b) does not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

Division 4—The depositary of a CCIV

Subdivision A—The depositary of a CCIV

1226 Depositary compulsory for retail CCIVs, optional for wholesale CCIVs

- (1) A retail CCIV must have a depositary.
- (2) A wholesale CCIV may have a depositary.
- (3) A CCIV must not have more than one depositary.
- (4) **Depositary**, of a CCIV, means the body named in ASIC's record of the CCIV's registration as the depositary or temporary depositary of the CCIV.

Note: Changes in the depositary take effect only when ASIC alters the record of registration: see section 1226C.

1226A Who can be a depositary

- (1) Only a body that meets the requirements in subsection (2) is eligible to be the depositary of a CCIV.
- (2) The requirements are that the body:
 - (a) is a public company, or a foreign company registered under Division 2 of Part 5B.2; and
 - (b) holds an Australian financial services licence authorising it to act as depositary of a CCIV; and
 - (c) meets the independence requirement set out in section 1226B in relation to the CCIV.
- (3) If the depositary of a CCIV ceases to meet the requirements in subsection (2), the depositary must notify the corporate director in writing of that fact within 2 days after so ceasing.

EXPOSURE DRAFT

Note: The corporate director must apply to the Court under section 1226P for the appointment of a temporary depositary.

- (4) An offence based on subsection (3) is an offence of strict liability.

1226B Independence requirement

- (1) A body that is not yet the depositary of a CCIV meets the independence requirement in this section in relation to the CCIV unless the body is an entity covered by subsection (3) (about entities that direct investment decisions for the CCIV) in relation to the CCIV.

- (2) A body that is the depositary of a CCIV meets the independence requirement in this section in relation to the CCIV unless:

(a) the body; or

(b) an agent appointed, or a person otherwise engaged, by the body under section 1226F, or an agent or person taken under subsection 1226F(2) (about sub-agents) to be an agent of the body;

is an entity covered by subsection (3) of this section (about entities that direct investment decisions for the CCIV) in relation to the CCIV.

Entities that direct investment decisions for the CCIV

- (3) Each of the following is covered by this subsection in relation to a CCIV:

(a) the corporate director;

(b) an agent appointed, or a person otherwise engaged, by the corporate director under section 1224M, or an agent or person taken under subsection 1224M(2) (about sub-agents) to be an agent of the corporate director, if the agent or person is authorised to perform any of the following functions in relation to the CCIV:

(i) portfolio management functions;

(ii) investment risk management functions.

- (4) An entity is not covered by paragraph (3)(b) merely because the entity performs, or is authorised to perform, the following functions:

(a) managing foreign currency;

(b) managing bank deposits.

EXPOSURE DRAFT

1226C How a depositary of a CCIV is appointed

- (1) The appointment under a provision of this Division of a body as the depositary or temporary depositary of a CCIV is of no effect until the record of the CCIV's registration is updated to name the body as the depositary or temporary depositary of the CCIV.
- (2) A body may not be appointed or removed as the depositary or temporary depositary of a CCIV except in accordance with a provision of this Division.

Note 1: However, a body may become the depositary of a CCIV through the registration process for the CCIV (see sections 1222A and 1222D).

Note 2: Depending on the circumstances, the appointment may be made by the corporate director, the CCIV, or the Court.

1226D When the corporate director may appoint a depositary

If a CCIV does not have a depositary, the corporate director may appoint a body as depositary by lodging a notice with ASIC:

- (a) nominating as the depositary of the CCIV a body that:
- (i) meets the requirements in subsection 1226A(2); and
 - (ii) has consented in writing to being appointed as the depositary of the CCIV; and
- (b) asking ASIC to alter the record of the CCIV's registration to name the body as the CCIV's depositary.

Subdivision B—Duties and powers

1226E Functions of depositary

The depositary of a CCIV is to:

- (a) hold assets of the CCIV, that are transferred to the depositary, in the manner required by this Act; and
- (b) perform the functions conferred on it by this Act.

Note: Division 5 of Part 8B.5 is about how CCIV assets must be held.

1226F Appointing an agent or engaging a person

- (1) The depositary has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the CCIV (other than its functions under

EXPOSURE DRAFT

subsection 1226G(1)) (about the depositary's supervisory responsibility).

Note: In determining whether a depositary meets the independence requirement set out in section 1226B in relation to the corporate director, agents, sub-agents and persons otherwise engaged by the depositary (and their related bodies corporate) are taken into account: see subsection 1226B(2).

Sub-agents

- (2) An agent appointed, or a person otherwise engaged, by:
- (a) the agent or person referred to in subsection (1); or
 - (b) a person who is taken under this subsection to be an agent of the depositary;
- to do anything that the depositary is authorised to do in connection with the CCIV (other than its functions under subsection 1226G(1)) is taken to be an agent appointed by the depositary to do that thing for the purposes of this section.

1226G Depositary to have supervisory responsibility

- (1) The depositary of a CCIV must take reasonable care to verify that the activities covered by subsection (2) are carried out in a manner that complies with:
- (a) the CCIV's constitution; and
 - (b) the provisions of this Act.
- (2) This subsection covers the following:
- (a) issuing, redeeming and cancelling shares in the CCIV;
 - (b) valuing shares in the CCIV;
 - (c) allocating assets and liabilities of the CCIV to sub-funds of the CCIV;
 - (d) allocating and distributing income of the CCIV.
- (3) The depositary may not appoint an agent, or otherwise engage a person, to carry out its functions under subsection (1).

1226H Depositary must report breaches to ASIC

- (1) A person must comply with subsection (2) if:
- (a) the person is the depositary, or a former depositary, of a CCIV; and
 - (b) the person:
-

EXPOSURE DRAFT

-
- 1 (i) becomes aware that a breach of this Act has occurred; or
2 (ii) reasonably suspects that a breach of this Act has
3 occurred; and
4 (c) the breach or suspected breach:
5 (i) relates to the CCIV; and
6 (ii) arises in relation to the activities covered by
7 subsection 1226G(2); and
8 (iii) is, or would be, in the opinion of the person, a material
9 breach of this Act.

- 10 (2) The person must, as soon as practicable and in any case within 10
11 business days after becoming aware of, or reasonably suspecting,
12 the breach, lodge a written report on the matter with ASIC.

13 Note: This provision is a civil penalty provision (see section 1317E).

14 **1226J Depositary to provide officers of CCIV with reasonable** 15 **assistance**

- 16 (1) The depositary of a CCIV must give an officer of the CCIV:
17 (a) any information in the depositary's possession or control that
18 the officer reasonably requires for the purpose of fulfilling
19 the officer's responsibilities in relation to the CCIV; and
20 (b) any other assistance the officer reasonably requires for the
21 purpose of fulfilling those responsibilities.

22 Note: The corporate director has a similar obligation to the depositary: see
23 section 1224K.

- 24 (2) The officer may give the depositary a written request to give
25 information covered by paragraph (1)(a).
26 (3) A depositary that is requested under subsection (2) to give
27 information must give the information within a reasonable period.

28 **1226K Duties owed by depositary**

- 29 (1) In exercising its powers and carrying out its duties in relation to the
30 CCIV, the depositary of a CCIV must:
31 (a) act honestly; and
32 (b) exercise the degree of care and diligence that a reasonable
33 person would exercise in the depositary's position; and

EXPOSURE DRAFT

-
- (c) act in the best interests of the CCIV and, if there is a conflict between the CCIV's interests and its own interests, give priority to the CCIV's interests; and
 - (d) not make use of information acquired through being the depositary in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the members of the CCIV.

Note: This provision is a civil penalty provision (see section 1317E).

Territorial application of subsection (1)

- (2) Subsection (1) does not apply to an act or omission by a foreign company unless the act or omission occurred in connection with:
 - (a) the foreign company carrying on business in this jurisdiction; or
 - (b) an act that the foreign company does, or proposes to do, in this jurisdiction; or
 - (c) a decision by the foreign company whether or not to do, or refrain from doing, an act in this jurisdiction.

1226L Dealing with conflicting duties

If the depositary of a CCIV is a corporation, an obligation placed on the depositary by this Subdivision overrides any conflicting duty an officer or employee of the depositary has under Part 2D.1.

1226M Powers and functions while sub-fund in liquidation or receivership

- (1) If there is a conflict between a function or power of a liquidator of a sub-fund of a CCIV, or a receiver of property of a sub-fund of a CCIV, and a function or power of the depositary, the function or power of the liquidator or receiver prevails.

Note: A depositary may be instructed in relation to dealing with assets of a sub-fund by a receiver (see section 1237G) or liquidator (see section 1238N).

- (2) This section does not remove the depositary of a CCIV from office.
- (3) Nothing in this section affects a secured creditor's right to realise or otherwise deal with the security interest.

EXPOSURE DRAFT

Definitions

(4) In this section:

liquidator includes a provisional liquidator.

1226N Regulations may prescribe functional independence requirements

(1) The regulations may prescribe requirements relating to the doing of anything that a depositary is authorised to do in connection with a CCIV, to be complied with by persons covered by subsection (3) or (4) in relation to a CCIV. The regulations may prescribe:

- (a) different requirements for different circumstances; and
- (b) different requirements for different classes of entity; and
- (c) different requirements for different functions.

(2) An entity must comply with any requirements applicable to the entity under regulations made for the purposes of subsection (1).

Entities that perform both depositary functions and other functions (not involving investment decisions) for the CCIV

(3) An entity is covered by this subsection in relation to a CCIV if the entity is both:

- (a) either of the following:
 - (i) the depositary of the CCIV;
 - (ii) an agent appointed, or a person otherwise engaged, by the depositary under section 1226F, or an agent or person taken under subsection 1226F(2) (about sub-agents) to be an agent of the depositary; and
- (b) an agent appointed, or a person otherwise engaged, by the corporate director of the CCIV under section 1224M, or an agent or person taken under subsection 1224M(2) (about sub-agents) to be an agent of the corporate director.

Note: The kinds of functions the person would be authorised to perform would not include portfolio management functions or investment risk management functions. Authorising the depositary or an agent of the depositary to perform those kinds of functions would result in the depositary failing to meet the independence requirement: see section 1226B.

EXPOSURE DRAFT

Entities that perform depositary functions and are also related bodies corporate of entities that direct investment decisions for the CCIV

- (4) An entity is covered by this subsection in relation to a CCIV if the entity is both:
- (a) a body corporate that is either of the following:
 - (i) the depositary of the CCIV;
 - (ii) an agent appointed, or a person otherwise engaged, by the depositary under section 1226F, or an agent or person taken under subsection 1226F(2) (about sub-agents) to be an agent of the depositary; and
 - (b) a related body corporate of an entity covered by subsection 1226B(3) in relation to the CCIV.

Strict liability offence

- (5) An offence based on subsection (2) is an offence of strict liability.

Subdivision C—Changing the depositary

1226P Depositary becomes ineligible

- (1) This section applies if the depositary of a CCIV does not meet the requirements in subsection 1226A(2).
- Note: The depositary must notify the corporate director in writing if this happens: see subsection 1226A(3).
- (2) Within 21 days (or a longer period allowed in writing by ASIC) of the depositary no longer meeting the requirements in subsection 1226A(2), the corporate director must lodge a notice with ASIC:
- (a) nominating as the new depositary of the CCIV a body that:
 - (i) meets the requirements in subsection 1226A(2); and
 - (ii) has consented in writing to being appointed as the depositary of the CCIV; and
 - (b) asking ASIC to alter the record of the CCIV's registration to name the body as the CCIV's depositary.
- (3) If the corporate director fails to appoint a new depositary within the period mentioned in subsection (2), an application to the Court for appointment of a temporary depositary under section 1226U may be made by either of the following:

EXPOSURE DRAFT

-
- 1 (a) ASIC;
2 (b) a member, or group of members, of the CCIV.
3 (4) An offence based on subsection (2) is an offence of strict liability.

4 **1226Q Retirement of depositary**

- 5 (1) If the depositary of a CCIV wants to retire as depositary, it must
6 notify the corporate director of the CCIV of its intention to retire
7 and explain its reason for wanting to retire.
- 8 (2) Within 21 days of receiving from the depositary a notice of
9 intention to retire, the corporate director must lodge a notice with
10 ASIC:
11 (a) nominating as the new depositary of the CCIV a body that:
12 (i) meets the requirements in subsection 1226A(2); and
13 (ii) has consented in writing to being appointed as the
14 depositary of the CCIV; and
15 (b) asking ASIC to alter the record of the CCIV's registration to
16 name the body as the CCIV's depositary.
- 17 (3) If the corporate director fails to appoint a new depositary within
18 the period mentioned in subsection (2), an application to the Court
19 for appointment of a temporary depositary under section 1226U
20 may be made by the depositary of the CCIV.
- 21 (4) An offence based on subsection (2) is an offence of strict liability.

22 **1226R Replacement of depositary by corporate director**

- 23 (1) If the corporate director of a CCIV wants to replace the depositary
24 of the CCIV, it may lodge a notice with ASIC:
25 (a) nominating as the new depositary of the CCIV a body that:
26 (i) meets the requirements in subsection 1226A(2); and
27 (ii) has consented in writing to being appointed as the
28 depositary of the CCIV; and
29 (b) asking ASIC to alter the record of the CCIV's registration to
30 name the body as the CCIV's depositary.
- 31 (2) The corporate director must notify the members of the CCIV in
32 writing within 7 days after lodging the notice with ASIC.
- 33 (3) The written notice must:
-

EXPOSURE DRAFT

-
- 1 (a) set out the corporate director's reasons for replacing the
2 depositary; and
3 (b) identify the body nominated by the corporate director as the
4 new depositary of the CCIV.
- 5 (4) The notice is to be given in the same manner as a notice is given
6 under section 252G (as that section applies under section 1229B).
- 7 (5) An offence based on subsection (2) is an offence of strict liability.

8 **1226S Replacement by members**

- 9 (1) If the members of a CCIV want to replace the depositary, the
10 members may take action under Part 2G.4 (as that Part applies to
11 the CCIV under section 1229A) for the calling of a meeting of the
12 CCIV's members to consider and vote on:
13 (a) a special resolution that the current depositary should be
14 removed (the *first resolution*); and
15 (b) a special resolution choosing a body to be the new depositary
16 (the *second resolution*).
- 17 (2) The notice of meeting of the CCIV's members must:
18 (a) set out the intention to remove the current depositary; and
19 (b) nominate, as the new depositary of the CCIV, a body that:
20 (i) meets the requirements in subsection 1226A(2); and
21 (ii) has consented in writing to being appointed as the new
22 depositary of the CCIV.
- 23 *First resolution is not passed*
- 24 (3) If the first resolution is not passed, the CCIV is taken not to have
25 removed the depositary and not to have appointed a new
26 depositary.
- 27 *First resolution only is passed*
- 28 (4) If the first resolution is passed, but the second is not, the CCIV is
29 taken not to have removed the depositary and not to have
30 appointed a new depositary.
- 31 (5) If subsection (4) applies, an application to the Court for
32 appointment of a temporary depositary under section 1226U may
33 be made by either of the following:

EXPOSURE DRAFT

-
- (a) the corporate director of the CCIV;
 - (b) the depositary of the CCIV.

Resolutions are passed—appointment of depositary

- (6) If both the first resolution and the second resolution are passed, the CCIV is taken, on the day of the meeting, to have appointed the body nominated in the notice mentioned in subsection (2) as the new depositary.
- (7) The corporate director must, as soon as practicable and in any event within 2 business days after the appointment, lodge a notice with ASIC asking it to alter the record of the CCIV's registration to name the body as the depositary of the CCIV.
- (8) An offence based on subsection (7) is an offence of strict liability.

1226T Wholesale CCIV—removal of depositary

Removal initiated by corporate director

- (1) If the corporate director of a wholesale CCIV wants to remove the depositary of the CCIV without replacing the depositary with a new depositary, it must call a members' meeting to enable the members to vote on a special resolution to remove the depositary of the CCIV.

Removal initiated by members

- (2) If the members of a wholesale CCIV want to remove the depositary without replacing the depositary with a new depositary, the members may take action under Part 2G.4 (as that Part applies to the CCIV under section 1229A) for the calling of a meeting of the CCIV's members to consider and vote on a special resolution to remove the depositary of the CCIV.

Removal of depositary

- (3) If the special resolution to remove the depositary is passed, the CCIV is taken to have removed the depositary of the CCIV. The corporate director must, as soon as practicable and in any event within 2 business days after the resolution is passed, lodge a notice with ASIC asking it to alter the record of the CCIV's registration to remove the depositary.

EXPOSURE DRAFT

(4) An offence based on subsection (3) is an offence of strict liability.

1226U Appointment of temporary depositary by Court

- (1) On application under subsection 1226P(3), 1226Q(3) or 1226S(5), the Court may, by order:
- (a) if the CCIV has a current depositary—remove the current depositary; and
 - (b) appoint a body as the temporary depositary of the CCIV.
- (2) The Court must not make an order under subsection (1) unless:
- (a) the Court is satisfied that:
 - (i) the order is in the interests of the members of the CCIV; and
 - (ii) the body meets the requirements in subsection 1226A(2); and
 - (b) the body has consented in writing to being appointed as the CCIV's temporary depositary.
- (3) The Court may make any further orders that it considers appropriate.
- (4) The person who made the application for the order must, as soon as practicable and in any event within 2 business days after the Court's order appointing the temporary depositary, lodge a notice with ASIC asking it to alter the record of the CCIV's registration to name the body appointed by the Court as the temporary depositary of the CCIV.
- (5) An offence based on subsection (4) is an offence of strict liability.

1226V Corporate director to initiate appointment of permanent depositary

- (1) This section applies if the Court appoints a temporary depositary of a CCIV under section 1226U.
- (2) The corporate director must, within the period applicable under subsection (3), lodge a notice with ASIC:
- (a) nominating as the permanent depositary of the CCIV a body (which may be the temporary depositary) that:
 - (i) meets the requirements in subsection 1226A(2); and

EXPOSURE DRAFT

-
- 1 (ii) has consented in writing to being appointed as the
2 depositary of the CCIV; and
3 (b) asking ASIC to alter the record of the CCIV's registration to
4 name the body as the CCIV's depositary.
- 5 (3) The notice must be lodged within:
6 (a) unless paragraph (b) applies—3 months of the appointment;
7 or
8 (b) if the Court has extended the period under subsection (4)—
9 the extended period.
- 10 (4) The Court may, on application by the corporate director, grant an
11 extension of the period referred to in paragraph (3)(a).
- 12 (5) An offence based on subsection (2) is an offence of strict liability.

1226W Application to Court if permanent depositary not appointed

- 14 (1) This section applies if:
15 (a) a temporary depositary is appointed by the Court under
16 section 1226U; and
17 (b) the corporate director fails to lodge a notice with ASIC
18 nominating a permanent depositary within the period
19 applicable under subsection 1226V(3).
- 20 (2) An application to the Court for a winding up of all the sub-funds of
21 the CCIV must be made by the corporate director of the CCIV.
- 22 Note: For provisions about winding up a sub-fund of a CCIV, see Division 4
23 of Part 8B.6.
- 24 (3) An application to the Court for a winding up of all the sub-funds of
25 the CCIV may be made by any of the following, if the corporate
26 director does not do so:
27 (a) ASIC;
28 (b) a member, or group of members, of the CCIV.
- 29 (4) On an application under this section, the Court may order the
30 winding up of all the sub-funds of the CCIV.

EXPOSURE DRAFT

Subdivision D—Consequences of changing the depositary

1226X Former depositary to hand over books and provide reasonable assistance

- (1) If the depositary of a CCIV changes, the former depositary must:
 - (a) as soon as practicable, and in any event within 5 business days, after ceasing to be the depositary, give the new depositary any books in the former depositary's possession or control that this Act requires to be kept in relation to the CCIV; and
 - (b) give other reasonable assistance to the new depositary to facilitate the change of depositary.
- (2) An offence based on subsection (1) is an offence of strict liability.

1226Y Rights, obligations and liabilities of former depositary

- (1) If the depositary of a CCIV changes, the rights, obligations and liabilities of the former depositary in relation to the CCIV become rights, obligations and liabilities of the new depositary.
- (2) Despite subsection (1), the following rights and liabilities remain rights and liabilities of the former depositary:
 - (a) any right of the former depositary to be paid fees for the performance of its functions before it ceased to be the depositary;
 - (b) any right of the former depositary to be indemnified for expenses it incurred before it ceased to be the depositary;
 - (c) any right, obligation or liability that the former depositary had as a member of the CCIV;
 - (d) any liability for which the former depositary could not have been indemnified out of the assets of the CCIV if it had remained the CCIV's depositary;
 - (e) any liability arising out of a contravention by the former depositary of a provision of this Act.

1226Z Effect of change of depositary on documents etc. to which former depositary is party

- (1) If the depositary of a CCIV changes, a document relating to the CCIV:

EXPOSURE DRAFT

-
- 1 (a) to which the former depositary is a party, in which a
2 reference is made to the former depositary, or under which
3 the former depositary has acquired or incurred a right,
4 obligation or liability, or might have acquired or incurred a
5 right, obligation or liability if it had remained the depositary;
6 and
7 (b) that is capable of having effect after the change;
8 has effect as if the new depositary (and not the former depositary)
9 were a party to it, were referred to in it or had or might have
10 acquired or incurred the right, obligation or liability under it.
- 11 (2) Subsection (1) does not apply to a right, obligation or liability that
12 remains a right, obligation or liability of the former depositary
13 because of subsection 1226Y(2).

14 **1226ZA Officers of depositary have qualified privilege in certain** 15 **cases**

16 The following have qualified privilege in proceedings for
17 defamation in respect of a statement to ASIC in connection with
18 this Subdivision or Subdivision C:

- 19 (a) officers and employees of a depositary or former depositary;
20 (b) former officers and former employees of a depositary or
21 former depositary.

22 **Division 5—Compliance plan for retail CCIVs**

23 **Subdivision A—Documenting the compliance plan**

24 **1227 Requirement for compliance plan**

- 25 (1) A retail CCIV must have a compliance plan.
- 26 Note: A copy of the compliance plan must be lodged with ASIC with the
27 application to register a CCIV that is to be a retail CCIV: see
28 subsection 1222A(6).
- 29 (2) A wholesale CCIV is not required to have a compliance plan.
- 30 (3) A CCIV must lodge a copy of its compliance plan with ASIC
31 within 14 days of becoming a retail CCIV. The copy must be
32 signed by all the directors of the corporate director.
- 33 Note: Section 1222J defines *retail CCIV*.
-

EXPOSURE DRAFT

1 (4) An offence based on subsection (3) is an offence of strict liability.

2 **1227A Contents of the compliance plan**

3 The compliance plan of a retail CCIV must set out adequate
4 measures that the corporate director is to apply in fulfilling its
5 responsibilities in relation to the CCIV to ensure compliance with
6 this Act and the CCIV's constitution.

7 **1227B Compliance plan may incorporate provisions from another** 8 **CCIV's plan**

- 9 (1) The compliance plan of a retail CCIV may be expressed to
10 incorporate specified provisions of a compliance plan of another
11 CCIV, provided both CCIVs have the same corporate director. The
12 provisions may be incorporated as in force at a specified time, or as
13 in force from time to time.
- 14 (2) The specified provisions, as in force at the specified time, or as in
15 force from time to time (as the case requires) are taken to be
16 included in the plan.

17 **1227C ASIC may require further information about compliance** 18 **plan**

- 19 (1) ASIC may give the corporate director of a retail CCIV a direction,
20 in writing, to give ASIC information about the arrangements
21 contained in the compliance plan. The direction must specify the
22 period (which must be at least 14 days after the direction is given)
23 within which the corporate director must give the information.
- 24 (2) The corporate director must comply with the direction within the
25 period specified.
- 26 (3) An offence based on subsection (2) is an offence of strict liability.

27 **1227D Changing the compliance plan**

28 *Corporate director's powers*

- 29 (1) The corporate director of a CCIV may modify the CCIV's
30 compliance plan or repeal it and replace it with a new compliance
31 plan.

EXPOSURE DRAFT

ASIC may require modifications

- (2) ASIC may give the corporate director of a retail CCIV a direction, in writing, to modify the CCIV's compliance plan, as set out in the direction, to ensure that the plan is consistent with section 1227A. The direction must specify the period (which must be at least 14 days after the direction is given) within which the corporate director must make the modification.
- (3) The corporate director must comply with the direction within the period specified.

Lodgement of modification or new plan

- (4) The corporate director must lodge with ASIC a copy of a modification of the CCIV's compliance plan or of a new compliance plan within 14 days after the modification is made or the old plan is repealed. The copy must be signed by all the directors of the corporate director.
- (5) An offence based on subsection (3) or (4) is an offence of strict liability.

1227E ASIC may require consolidation of compliance plan to be lodged

- (1) ASIC may give the corporate director of a retail CCIV a direction, in writing, to lodge a consolidated copy of the CCIV's compliance plan with ASIC. The direction must specify the period (which must be at least 14 days after the direction is given) within which the corporate director must lodge the consolidation.
- (2) The consolidation must set out:
- (a) the plan as modified to the time of lodgement; and
 - (b) if required by ASIC's direction—the full text of provisions taken to be included in the plan by subsection 1227B(2).
- (3) The corporate director must comply with the direction within the period specified in the notice.
- (4) An offence based on subsection (3) is an offence of strict liability.

EXPOSURE DRAFT

Subdivision B—Auditing the compliance plan

1227F Engaging auditor

- (1) The corporate director of a retail CCIV must ensure that at all times a registered company auditor, an audit firm or an authorised audit company is engaged to audit compliance with the CCIV's compliance plan in accordance with this section. This auditor, firm or company is referred to as the *auditor of the compliance plan*.
- (2) An offence based on subsection (1) is an offence of strict liability.
- (3) A person is not eligible to act as the individual auditor, lead auditor or review auditor of the compliance plan if the person is:
 - (a) the corporate director; or
 - (b) an associate of the corporate director; or
 - (c) the depositary; or
 - (d) an associate of the depositary; or
 - (e) an agent holding assets of the CCIV on behalf of the depositary or an associate of an agent of that kind; or
 - (f) the auditor of the corporate director's financial statements.
- (4) However:
 - (a) the auditor of the compliance plan and the auditor of the corporate director's financial statements may work for the same firm of auditors or audit company; and
 - (b) the lead auditor or review auditor of the compliance plan (on the one hand) and the lead auditor or review auditor of the corporate director's financial statements (on the other hand) may work for the same firm of auditors or audit company.
- (5) This Subdivision does not prevent the corporate director from arranging for the auditor of the compliance plan to carry out audits in addition to those required by this Subdivision.

1227G Audit and audit report

- (1) Within 3 months after the end of a financial year of the retail CCIV, the auditor of the compliance plan must:
 - (a) examine the CCIV's compliance plan; and
 - (b) carry out:

EXPOSURE DRAFT

-
- 1 (i) if the CCIV has only had one corporate director during
2 the financial year—an audit of the corporate director’s
3 compliance with the compliance plan during the
4 financial year; or
5 (ii) if the CCIV has had more than one corporate director
6 during the financial year—an audit of each corporate
7 director’s compliance with the compliance plan during
8 that part of the financial year when it was the CCIV’s
9 corporate director; and
10 (c) give to the CCIV’s current corporate director a report that
11 states whether, in the auditor’s opinion:
12 (i) the corporate director, or each corporate director,
13 complied with the CCIV’s compliance plan during the
14 financial year or that part of the financial year when it
15 was the CCIV’s corporate director; and
16 (ii) the plan continues to meet the requirements of this
17 Division.
- 18 (2) The auditor of the compliance plan:
19 (a) has a right of access at all reasonable times to the books of
20 the CCIV; and
21 (b) may require an officer of the corporate director to give the
22 auditor information and explanations for the purposes of the
23 audit.
- 24 (3) An officer of the corporate director must:
25 (a) allow the auditor of the compliance plan to have access to the
26 books of the CCIV; and
27 (b) give the auditor information or an explanation required under
28 subsection (2); and
29 (c) otherwise assist the conduct of the audit.
- 30 (4) The corporate director must lodge the auditor’s report under
31 subsection (1) with ASIC at the same time as the financial
32 statements and reports in respect of the CCIV are to be lodged with
33 ASIC (see sections 292, 319 and 1232C).
- 34 (5) The auditor of the compliance plan has qualified privilege in
35 respect of:
36 (a) a statement made in a report under subsection (1); or
37 (b) a notification to ASIC under any of the following:
38 (i) paragraph 1227H(1)(c);
-

EXPOSURE DRAFT

(ii) paragraph 1227H(2)(c);

(iii) paragraph 1227H(3)(d).

(6) An offence based on subsection (1), (3) or (4) is an offence of strict liability.

1227H Contraventions by auditor

Contravention by individual auditor

(1) An individual auditor conducting an audit of a compliance plan contravenes this subsection if:

(a) the auditor is aware of circumstances that:

(i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (7)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and

(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 7 days, after the auditor becomes aware of those circumstances.

Contravention by audit company

(2) An audit company conducting an audit of a compliance plan contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that:

(i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or

EXPOSURE DRAFT

-
- 1 mislead a person involved in the conduct of the audit
2 (see subsection (7)); or
3 (iii) amount to an attempt, by any person, to otherwise
4 interfere with the proper conduct of the audit; and
5 (b) if subparagraph (a)(i) applies:
6 (i) the contravention is a significant one; or
7 (ii) the contravention is not a significant one and the lead
8 auditor believes that the contravention has not been or
9 will not be adequately dealt with by commenting on it in
10 the auditor's report or bringing it to the attention of the
11 directors; and
12 (c) the lead auditor does not notify ASIC in writing of those
13 circumstances as soon as practicable, and in any case within
14 7 days, after the lead auditor becomes aware of those
15 circumstances.

16 *Contravention by lead auditor*

- 17 (3) A person contravenes this subsection if:
18 (a) the person is the lead auditor for an audit of a compliance
19 plan; and
20 (b) the person is aware of circumstances that:
21 (i) the person has reasonable grounds to suspect amount to
22 a contravention of this Act; or
23 (ii) amount to an attempt, in relation to the audit, by any
24 person to unduly influence, coerce, manipulate or
25 mislead a person involved in the conduct of the audit
26 (see subsection (7)); or
27 (iii) amount to an attempt, by any person, to otherwise
28 interfere with the proper conduct of the audit; and
29 (c) if subparagraph (b)(i) applies:
30 (i) the contravention is a significant one; or
31 (ii) the contravention is not a significant one and the person
32 believes that the contravention has not been or will not
33 be adequately dealt with by commenting on it in the
34 auditor's report or bringing it to the attention of the
35 directors; and
36 (d) the person does not notify ASIC in writing of those
37 circumstances as soon as practicable, and in any case within
38 7 days, after the person becomes aware of those
39 circumstances.
-

EXPOSURE DRAFT

Significant contraventions

- (4) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:
- (a) the level of penalty provided for in relation to the contravention; and
 - (b) the effect that the contravention has, or may have, on:
 - (i) the overall financial position of a sub-fund of the CCIV; or
 - (ii) the adequacy of the information available about the overall financial position of a sub-fund of the CCIV; and
 - (c) any other relevant matter.
- (5) Without limiting paragraph (4)(a), a penalty provided for in relation to a contravention of a provision of Part 2M.2 or 2M.3 includes a penalty for failing to take reasonable steps to comply with, or to secure compliance with, that provision imposed on each of the following:
- (a) the corporate director, because of the operation of sections 344 and 1232V;
 - (b) a director of the corporate director, because of the operation of sections 344 and 1232V.

Fault-based offence

- (6) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Person involved in audit

- (7) In this section:

person involved in the conduct of an audit means:

- (a) the auditor; or
- (b) the lead auditor for the audit; or
- (c) the review auditor for the audit; or
- (d) a professional member of the audit team for the audit; or
- (e) any other person involved in the conduct of the audit.

EXPOSURE DRAFT

1227J Removal and resignation of auditors

Removal of auditor by corporate director

- (1) The corporate director of a retail CCIV:
 - (a) must remove the auditor of the compliance plan if the auditor becomes ineligible under subsection 1227F(3) to act as auditor of the compliance plan; and
 - (b) may, with ASIC's written consent, remove the auditor of the compliance plan.
- (2) An offence based on paragraph (1)(a) is an offence of strict liability.

Resignation of auditor

- (3) The auditor of the compliance plan may resign by written notice to the corporate director if:
 - (a) the auditor:
 - (i) applies to ASIC in writing for its consent to the resignation; and
 - (ii) gives the corporate director written notice of the application at or about the same time as applying to ASIC; and
 - (b) ASIC consents to the resignation.
- (4) As soon as practicable after receiving the application, ASIC must notify the auditor and the corporate director whether it consents to the resignation.
- (5) A statement by the auditor in the application or in answer to an inquiry by ASIC relating to the reasons for the application:
 - (a) is not admissible in evidence in any civil or criminal proceedings against the auditor (other than proceedings for a contravention of section 1308); and
 - (b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor.

A certificate by ASIC that the statement was made in the application, or in answer to an inquiry by ASIC, is conclusive evidence that the statement was so made.

- (6) The auditor's resignation takes effect on the later of:

EXPOSURE DRAFT

-
- (a) the day (if any) specified in the notice of resignation; or
 - (b) the day ASIC consents to the resignation; or
 - (c) the day (if any) fixed by ASIC for the purpose.

1227K Action on change of auditor of compliance plan

- (1) If the auditor of the compliance plan of a retail CCIV changes, the corporate director must, within 7 days and in the prescribed form, ask ASIC to alter the record of the CCIV's registration to show the name of the new auditor as the auditor of the CCIV's compliance plan. ASIC must comply with the request if the change complies with this Act.
- (2) An offence based on subsection (1) is an offence of strict liability.

Division 6—Member protection

Subdivision A—Related party transactions by retail CCIVs to be approved at sub-fund level

1228 Application of Chapter 2E to retail CCIVs

- (1) Subject to this Part, Chapter 2E applies:
 - (a) to a retail CCIV in the same way as it applies to a public company; and
 - (b) to an entity a retail CCIV controls in the same way as it applies to an entity a public company controls.
- (2) In its application in relation to a retail CCIV, the members whose interests the rules in Chapter 2E are designed to protect are:
 - (a) if one sub-fund would be affected by the giving of the relevant financial benefit to the related party—the members, as a whole, of that sub-fund; or
 - (b) if 2 or more sub-funds would be affected by the giving of the relevant financial benefit to the related party—the members, as a whole, of each such sub-fund.
- (3) Chapter 2E does not apply to a wholesale CCIV.

1228A Need for member approval for financial benefit

- (1) Section 208 applies in relation to a retail CCIV as if:

EXPOSURE DRAFT

-
- (a) the members whose approval is required to be obtained under subparagraph 208(1)(a)(i) were the members of the sub-fund of the CCIV that would be affected by the giving of the financial benefit; and
- (b) the member approval mentioned in paragraph (a) were required to be given in the way set out in sections 217 to 227 (as modified by this Part).

Note 1: For the civil and criminal liability of a person involved in a contravention of section 208 as it applies to a retail CCIV under this section, see section 209.

Note 2: For provisions about meetings of members of sub-funds, see section 1229A.

Note 3: Some kinds of financial benefits are prohibited by sections 199A to 199C. For CCIVs, those sections have an extended application: see sections 1225E and 1225F.

- (2) If the giving of a financial benefit would affect 2 or more sub-funds of the CCIV, paragraph 208(1)(a) applies as if it required the CCIV or entity to:
- (a) obtain the approval of each affected sub-fund in the way mentioned in subsection (1) of this section; and
- (b) give the benefit within 15 months after the first such approval is given.

Exception for certain fees and indemnities payable to corporate director

- (3) Subsection 208(1) does not apply in relation to a financial benefit if:
- (a) the financial benefit is fees, or an indemnity, to be given to the corporate director by the CCIV; and
- (b) the corporate director is entitled to the fees, or the indemnity, under provisions of the constitution; and
- (c) the provisions comply with section 1224P (about fees and indemnities must be available only in relation to the proper performance of duties).

1228B Exceptions not available for a retail CCIV

- (1) The following provisions of Division 2 of Part 2E.1 do not apply where the financial benefit is, or is to be, given by a retail CCIV:

EXPOSURE DRAFT

-
- 1 (a) section 211 (which deals with remuneration and
2 reimbursement for an officer or employee);
3 (b) section 213 (which deals with small amounts given to a
4 related party);
5 (c) section 214 (which deals with financial benefits given to a
6 closely held subsidiary).
- 7 (2) Subsection (1) does not affect the application of those provisions
8 where the financial benefit is, or is to be, given by an entity the
9 retail CCIV controls.

10 **1228C Requirements for explanatory statement to members**

- 11 (1) Section 219 applies to a retail CCIV as if:
12 (a) the requirements in paragraphs 219(1)(c) and (d) applied in
13 relation to:
14 (i) the corporate director of the CCIV; and
15 (ii) each director of the corporate director of the CCIV; and
16 (b) the requirement in paragraph 219(1)(e) were a requirement to
17 set out all other information that:
18 (i) is reasonably required by members in order to decide
19 whether or not it is in the sub-fund's interests to pass the
20 proposed resolution; and
21 (ii) is known to the corporate director of the CCIV or to any
22 of the directors of the corporate director of the CCIV.
- 23 (2) An example of the kind of information referred to in
24 paragraph (1)(b) is the kind of information mentioned in
25 subsection 219(2).

26 **1228D Modified references**

- 27 Division 3 of Part 2E.1 of Chapter 2E applies in relation to a retail
28 CCIV as if:
29 (a) a reference to a general meeting were instead a reference to a
30 meeting of the members of the affected sub-fund; and
31 (b) a reference to section 250D were instead a reference to
32 section 253B.

33 **1228E Related parties of a CCIV**

- 34 (1) Section 228 does not apply in relation to a CCIV.
-

EXPOSURE DRAFT

Corporate director etc

- (2) The following are related parties of a CCIV:
- (a) the corporate director of the CCIV;
 - (b) an entity that controls the corporate director of the CCIV;
 - (c) an agent of, or person engaged by, the corporate director.

Directors and their spouses

- (3) The following persons are related parties of a CCIV:
- (a) directors of the corporate director of the CCIV;
 - (b) directors (if any) of an entity that controls the corporate director of the CCIV;
 - (c) if the corporate director of the CCIV is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;
 - (d) spouses of the persons referred to in paragraphs (a), (b) and (c).

Relatives of directors and spouses

- (4) The following relatives of persons referred to in subsection (3) are related parties of the CCIV:
- (a) parents;
 - (b) children.

Entities controlled by other related parties

- (5) An entity controlled by a related party referred to in subsection (2), (3) or (4) is a related party of the CCIV unless the entity is also controlled by the CCIV.

Related party in previous 6 months

- (6) An entity is a related party of a CCIV at a particular time if the entity was a related party of the CCIV of a kind referred to in subsection (2), (3), (4) or (5) at any time within the previous 6 months.

EXPOSURE DRAFT

Entity has reasonable grounds to believe it will become related party in future

- (7) An entity is a related party of a CCIV at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the CCIV of a kind referred to in subsection (2), (3), (4) or (5) at any time in the future.

Acting in concert with related party

- (8) An entity is a related party of a CCIV if the entity acts in concert with a related party of the CCIV on the understanding that the related party will receive a financial benefit if the CCIV gives the entity a financial benefit.

Subdivision B—Rights and remedies of members of a CCIV

1228F Grounds for Court order

In addition to the grounds in section 232, the Court may also make an order under section 233, in respect of a CCIV, if a matter listed in paragraph 232(a), (b) or (c) is contrary to the interests of the members as a whole of one or more sub-funds of the CCIV.

1228G Orders the Court can make

Court may appoint receiver etc. of any or all of a sub-fund's property

- (1) Paragraph 233(1)(h) has effect in relation to a CCIV as if the reference in that paragraph to the company's property were instead a reference to the property of a sub-fund of the CCIV.

Note: A receiver may only be appointed in relation to property of a particular sub-fund of a CCIV: see section 1237B.

Order altering constitution

- (2) Subsection 233(3) applies to a CCIV as if the reference to section 136 were a reference to:
- (a) if the CCIV is a retail CCIV—section 1223D; or
 - (b) if the CCIV is a wholesale CCIV—the CCIV's constitution.

EXPOSURE DRAFT

1228H Applying for and granting leave

(1) For the purposes of subsection 237(3), a person is a third party if the company is a CCIV and the person is not a related party of the CCIV.

(2) Paragraph 237(4)(a) does not apply to a CCIV.

Note: *Related party*, in relation to a CCIV, is defined in section 1228E.

1228J Varying and cancelling class rights

In its application to a CCIV whose constitution does not set out the procedure for varying or cancelling rights attached to shares in a class of shares, subsection 246B(2) is taken to require a special resolution of the members of the sub-fund of the CCIV to which the shares are referable, instead of a special resolution of the CCIV.

Note: Paragraphs 246B(2)(c) and (d) will also require either a special resolution of members of the affected class or the written consent of members with at least 75% of the votes in the class.

1228K Certain actions taken to vary rights etc.

If:

- (a) a CCIV has a sub-fund to which only one class of shares is referable (the *existing shares*); and
- (b) the CCIV issues new shares that are also referable to that sub-fund; and
- (c) the rights attaching to the new shares are not the same as the rights attached to the existing shares; and
- (d) the rights attaching to the new shares are not provided for in:
 - (i) the CCIV's constitution; or
 - (ii) a notice, document or resolution that is lodged with ASIC;

the issue is taken to vary the rights attached to the existing shares.

1228L Company must lodge documents and resolutions with ASIC

Subsection 246F(3) applies to a CCIV in the same way as it applies to a public company.

Note: Failure to comply with subsection 246F(3) is an offence: see subsection 1311(1) and Schedule 3.

EXPOSURE DRAFT

Subdivision C—Civil liability of corporate director to members

1228M Civil liability of corporate director to members

- (1) A member of a CCIV who suffers loss or damage because of conduct of the CCIV's corporate director that contravenes a provision of this Chapter may recover the amount of the loss or damage by action against the corporate director whether or not the corporate director has been convicted of an offence, or has had a civil penalty order made against it, in respect of the contravention.
- (2) An action under subsection (1) must be begun within 6 years after the cause of action arises.
- (3) This section does not affect any liability that a person has under other provisions of this Act or under other laws.

Division 7—Meetings

Subdivision A—Directors' meetings

1229 Resolutions of CCIVs

- (1) The corporate director of a CCIV may pass a resolution by the directors of the corporate director passing a resolution that:
 - (a) expressly states that the resolution is passed on behalf of the corporate director in its capacity as corporate director; and
 - (b) if the corporate director is the corporate director of more than one CCIV—expressly states the CCIV on behalf of which the resolution is passed.
- (2) Part 2G.1 (about directors' meetings) does not apply to a CCIV.
- (3) To avoid doubt, subsection (2) does not affect:
 - (a) the application of Part 2G.1 to a resolution of, or a meeting of, the directors of the corporate director of a CCIV; or
 - (b) the application of Part 2G.3 (about minutes and members' access to minutes) to a resolution passed under subsection (1).

EXPOSURE DRAFT

Subdivision B—Meetings of members of CCIVs or sub-funds

1229A Meetings of members of CCIVs

- (1) Parts 2G.2 (about meetings of members of companies) and 2G.3 (about minutes and members' access to minutes) do not apply to a CCIV or its members.
- (2) Subject to the modifications set out in this Subdivision, Part 2G.4 (about meetings of members of registered managed investment schemes) applies in relation to a CCIV and its members as if:
 - (a) the CCIV were a registered scheme; and
 - (b) the members of the CCIV were the members of that scheme; and
 - (c) the corporate director of the CCIV were the responsible entity of that scheme; and
 - (d) the CCIV's compliance plan were the compliance plan of that scheme.
- (3) Any power to prescribe, for the purposes of a provision of Part 2G.4, a number of members of a particular registered scheme or class of scheme includes a power to prescribe, for the purposes of that provision as it applies under this section, a number of members of:
 - (a) a particular CCIV; or
 - (b) a particular class of CCIV.

Note: Subsections 252B(1A), 252L(1A) and 252N(2A) provide for the prescribing of numbers of members.

1229B Meetings of members of sub-funds

- (1) Subject to the modifications set out in this Subdivision, Part 2G.4 (about meetings of members of registered managed investment schemes) applies in relation to a sub-fund of a CCIV and the members of the sub-fund as if:
 - (a) the sub-fund were a registered scheme; and
 - (b) the members of the sub-fund were the members of that scheme; and
 - (c) the corporate director of the CCIV were the responsible entity of that scheme; and
 - (d) the CCIV's compliance plan were the compliance plan of that scheme.

EXPOSURE DRAFT

(2) Any power to prescribe, for the purposes of a provision of Part 2G.4, a number of members of a particular registered scheme or class of scheme includes a power to prescribe, for the purposes of that provision as it applies under this section, a number of members of:

- (a) a particular sub-fund of a CCIV; or
- (b) a particular class of sub-funds of one or more CCIVs.

Note: Subsections 252B(1A), 252L(1A) and 252N(2A) provide for the prescribing of numbers of members.

1229C Auditors of scheme compliance plans

In applying a provision of Part 2G.4 in relation to a wholesale CCIV, or a sub-fund of a wholesale CCIV, disregard any application of the provision in relation to the auditor of the scheme compliance plan.

Note: Provisions that apply in relation to the auditor of the scheme compliance plan are subsections 252G(1), 252H(1) and 252T(1).

1229D Copy of the register of members—sub-funds

- (1) Subsection 252C(3) does not apply in relation to a CCIV or a sub-fund of a CCIV.
- (2) To call a meeting of the members of a CCIV, the members requesting the meeting may ask the CCIV under section 173 for a copy of the register of members.
- (3) To call a meeting of the members of a sub-fund of a CCIV, the members requesting the meeting may ask the CCIV under section 173 for a copy of so much of the register of members as relates to membership of the sub-fund.
- (4) Despite paragraph 173(3)(b), the CCIV must, without charge, give the members requesting the meeting:
 - (a) if subsection (2) of this section applies—the copy of the register; or
 - (b) if subsection (3) of this section applies—so much of the register of members as relates to membership of the sub-fund.
- (5) An offence based on subsection (4) is an offence of strict liability.

EXPOSURE DRAFT

1229E Members' resolutions

- (1) Subsection 252L(1B) applies in relation to a CCIV as if:
 - (a) the requirement in paragraph 252L(1B)(c) that the registered scheme be listed did not apply; and
 - (b) the resolution is subject to a further requirement that it must not treat members of any sub-fund of the CCIV differently from members of any other sub-fund of the CCIV.
- (2) Subsection 252L(1B) applies in relation to one or more sub-funds of a CCIV as if:
 - (a) paragraph 252L(1B)(c) did not apply; and
 - (b) the resolution is subject to a further requirement that it must not affect the interests of any member of any other sub-fund of the CCIV.

1229F Voting at meetings of members

- (1) Sections 253C and 253D do not apply in relation to a CCIV or a sub-fund of a CCIV.
- (2) At a meeting of members of a CCIV:
 - (a) on a show of hands, each member has 1 vote; and
 - (b) on a poll, each member has 1 vote for each dollar of the value of the total shares in the CCIV that the member holds; and
 - (c) the chair has a casting vote, and also, if the chair is a member, any vote the chair has in the chair's capacity as a member; and
 - (d) if a share is held jointly and more than one member votes in respect of that share—only the vote of the member whose name appears first in the register of members counts.
- (3) At a meeting of members of a sub-fund of a CCIV:
 - (a) on a show of hands, each member has 1 vote; and
 - (b) on a poll, each member has 1 vote for each dollar of the value of the total shares in the CCIV that:
 - (i) are held by the member; and
 - (ii) are referable to the sub-fund; and
 - (c) the chair has a casting vote, and also, if the chair is a member, any vote the chair has in the chair's capacity as a member; and

EXPOSURE DRAFT

-
- (d) if a share that is referable to the sub-fund is held jointly and more than one member votes in respect of that share—only the vote of the member whose name appears first in the register of members counts.

1229G Corporate director and associates cannot vote if interested in resolution

- (1) Section 253E applies in relation to a CCIV as if the associates of the corporate director of the CCIV were also the CCIV's associates.
- (2) Section 253E applies in relation to a sub-fund of a CCIV as if the associates of the corporate director of the CCIV, and the CCIV's associates, were also the sub-fund's associates.

1229H How to work out the value of a share

- (1) For the purposes of section 1229F, the value of a share in a CCIV is the amount worked out under this section.
- (2) The value of a share in a CCIV (other than a share to which subsection (3) or (4) applies) is the amount that the corporate director of the CCIV determines in writing to be the price that a willing but not anxious buyer would pay for the share if it was sold on the business day immediately before the day on which the poll is taken.
- (3) The value of a share in a retail CCIV that is:
- (a) redeemable; and
 - (b) referable to a sub-fund to which section 1231H applies (about when a sub-fund is liquid);
- is the amount that, under the constitution of the CCIV and consistent with the requirements in Subdivision B of Division 1 of Part 8B.4, would be paid to redeem the share on the business day immediately before the day on which the poll is taken.
- (4) The value of a share in a wholesale CCIV where:
- (a) the share is redeemable; and
 - (b) the share is referable to a sub-fund to which section 1231H applies (about when a sub-fund is liquid); and
 - (c) the CCIV has a provision in its constitution as to the amount to be paid for redeeming the share;

EXPOSURE DRAFT

1 is the amount that, under the provision and consistent with the
2 requirements in Subdivision B of Division 1 of Part 8B.4, would be
3 paid to redeem the share on the business day immediately before
4 the day on which the poll is taken.

5 (5) Section 253F does not apply in relation to a CCIV or a sub-fund of
6 a CCIV.

EXPOSURE DRAFT

Division 8—Corporate contraventions

Subdivision A—General provisions relating to establishing civil and criminal liability under Commonwealth laws

1230 Application of this Subdivision

This Subdivision applies to a CCIV in relation to all laws of the Commonwealth.

1230A Other rules for corporate contraventions do not apply

Part 2.5 of Criminal Code does not apply

- (1) Part 2.5 of the *Criminal Code* does not apply in determining whether a body corporate that is a CCIV has committed an offence.

Note: Section 1230B applies instead.

Other rules for corporate contraventions do not apply

- (2) A provision of a law of the Commonwealth (other than this Subdivision) does not apply in relation to a CCIV to the extent the provision would, apart from this subsection:

- (a) treat conduct (however described) engaged in by a person other than a CCIV as having been engaged in by the CCIV; or
- (b) treat conduct (however described) engaged in by a person in relation to another person other than a CCIV as having been engaged in by the person in relation to the CCIV; or
- (c) treat a state of mind (however described) held by a person other than a CCIV as being sufficient to show that the CCIV had the state of mind; or
- (d) require an element of:
 - (i) an offence; or
 - (ii) a provision in relation to a contravention of which a civil penalty may be imposed; done by a person other than a CCIV to be attributed to the CCIV.

Note 1: Section 1230B applies instead.

Note 2: For paragraph (a), an example is subsection 769B(1).

EXPOSURE DRAFT

Note 3: For paragraph (b), an example is subsection 769B(2).

Note 4: For paragraph (c), an example is subsection 769B(3).

Note 5: For paragraph (d), an example is section 1317QE.

1230B General rule for attributing conduct and state of mind to a CCIV

Attributing conduct to a CCIV

- (1) Conduct engaged in by a person (other than a CCIV) is taken to have been engaged in also by a CCIV if:
 - (a) the person is specified in column 1 of an item of the table in subsection (4) in relation to the CCIV; and
 - (b) the conduct was engaged in on behalf of the CCIV; and
 - (c) in engaging in the conduct, the person met any conditions specified in column 2 of that item of the table.

Attributing conduct to a person in relation to a CCIV

- (2) Conduct engaged in by a person in relation to another person (other than a CCIV) (the **counterparty**) is taken to have also been engaged in in relation to a CCIV if:
 - (a) the counterparty is specified in column 1 of an item of the table in subsection (4) in relation to the CCIV; and
 - (b) the counterparty was acting on behalf of the CCIV; and
 - (c) in acting on behalf of the CCIV, the counterparty met any conditions specified in column 2 of that item of the table.

Note: For example, money given to a person specified in column 1 of an item of the table in relation to a CCIV is taken to have been given to the CCIV, if the person was acting on behalf of the CCIV when they received the money.

Attributing state of mind to a CCIV

- (3) If, for the purposes of a provision of a law of the Commonwealth, it is necessary to establish a CCIV's state of mind in relation to particular conduct, it is sufficient to show that:
 - (a) a person specified in column 1 of an item of the table in subsection (4) in relation to the CCIV engaged in the conduct on behalf of the CCIV; and
 - (b) in engaging in the conduct, the person met any conditions specified in column 2 of that item of the table; and

EXPOSURE DRAFT

(c) the person had that state of mind.

Specified persons and applicable conditions

(4) For the purposes of subsections (1), (2) and (3), the table is as follows:

Persons whose conduct and state of mind may be attributed to a CCIV		
Item	Column 1 Person specified for a CCIV:	Column 2 Condition:
1	An agent of the CCIV (other than an agent covered by subsection (5))	the agent was acting within the scope of that agent's actual or apparent authority in relation to the CCIV.
2	A director of the CCIV	no specified conditions.
3	An employee, director or agent (an <i>official</i>) of the corporate director of the CCIV	the official was acting within the scope of the official's actual or apparent authority in relation to the corporate director.
4	Any other person acting at the direction, or with the consent or agreement (whether express or implied) of, a person (the <i>first person</i>) specified in another item of this table in relation to the CCIV	in giving the direction, consent or agreement, the first person meets any conditions specified in this column of the applicable table item.

(5) For the purposes of item 1 of the table in subsection (4), this subsection covers the following:

- (a) an agent who is, or is appointed by, a receiver, or receiver and manager, of property of a sub-fund of the CCIV;
- (b) an agent who is, or is appointed by, a liquidator or provisional liquidator of a sub-fund of the CCIV;
- (c) an agent who is, or is appointed by, a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Interpretation

(6) In this section:

conduct has the same meaning as it has in section 769B.

state of mind has the same meaning as it has in section 769B.

EXPOSURE DRAFT

1230C Exceptions etc. specific to this Act

Nothing in this Subdivision excludes or limits the operation of section 1224N.

Subdivision B—Consequences of contraventions of Commonwealth laws

1230D Corporate director generally taken to commit offences committed by CCIV

(1) This section applies if:

- (a) a CCIV commits an offence against a law of the Commonwealth; and
- (b) the conduct constituting the offence was not engaged in by the CCIV solely as a result of an exercise of powers by:
 - (i) a liquidator or provisional liquidator of a sub-fund of the CCIV; or
 - (ii) a receiver, or receiver and manager, of the property of a sub-fund of the CCIV; or
 - (iii) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Corporate director taken to also commit the offence

- (2) The person who was the corporate director of the CCIV at the time of the commission of the offence is taken to also commit the offence.
- (3) To avoid doubt, despite subsection 13.3(3) of the *Criminal Code*, a person referred to in subsection (2) does not bear an evidential burden in relation to any matter in subsection (1) of this section.

CCIV not liable for any penalty

- (4) The CCIV is not liable for any penalty in respect of the offence.

Infringement notices

- (5) If, as a result of the operation of subsection (2), an infringement notice (however described) may be given under a law of the Commonwealth to a person who was the corporate director of a CCIV for an alleged commission of an offence by the person:

EXPOSURE DRAFT

-
- (a) the person may be given the infringement notice; and
 - (b) the CCIV may not be given an infringement notice for the alleged commission of the offence.

1230E Corporate director generally liable for civil penalties for which the CCIV would be liable

(1) This section applies if:

- (a) a CCIV contravenes a provision covered by subsection (2); and
- (b) the conduct constituting the contravention was not engaged in by the CCIV solely as a result of an exercise of powers by:
 - (i) a liquidator or provisional liquidator of a sub-fund of the CCIV; or
 - (ii) a receiver, or receiver and manager, of the property of a sub-fund of the CCIV; or
 - (iii) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Commonwealth civil penalty provisions

(2) This subsection covers a provision (a ***Commonwealth civil penalty provision***) that is:

- (a) a civil penalty provision (within the meaning of this Act); or
- (b) a provision of a law of the Commonwealth (other than this Act), if a civil penalty may be imposed in relation to a contravention of the provision.

Corporate director taken to also contravene the provision

(3) The person who was the corporate director of the CCIV at the time of the contravention is taken to also contravene the provision.

Note: This subsection applies whether or not a declaration of contravention by the CCIV has been made by a court.

CCIV not liable

(4) The CCIV is not liable for any penalty in respect of the contravention.

EXPOSURE DRAFT

Infringement notices

- (5) If, as a result of the operation of subsection (3), an infringement notice (however described) may be given under a law of the Commonwealth to a person who was the corporate director of a CCIV for an alleged contravention by the person of a Commonwealth civil penalty provision:
- (a) the person may be given the infringement notice; and
 - (b) the CCIV may not be given an infringement notice for the alleged contravention.

Subdivision C—Consequences of contraventions of State and Territory laws

1230F Compensation orders—State and Territory laws

Compensation for penalties incurred etc.

- (1) A Court may on application under subsection (5) order a person to compensate a CCIV for loss or damage suffered by the CCIV if:
- (a) the CCIV contravened, or allegedly contravened, a provision covered by subsection (2); and
 - (b) the loss or damage is:
 - (i) a pecuniary penalty to which the CCIV is liable in respect of the contravention or alleged contravention; or
 - (ii) an amount paid by the CCIV in settlement of proceedings in respect of the contravention or alleged contravention; and
 - (c) the person was the corporate director of the CCIV at the time of the contravention or alleged contravention; and
 - (d) the exception in subsection (3) does not apply.
- The order must specify the amount of the compensation.

State and Territory offences and civil penalty provisions

- (2) A provision of a law of a State or Territory is covered by this subsection if a contravention of the provision is an offence, or subject to a civil penalty.

EXPOSURE DRAFT

Exception where liquidator etc. acting

- (3) Subsection (1) does not apply if the conduct constituting the contravention or alleged contravention was engaged in solely as a result of an exercise of powers by:
- (a) a liquidator or provisional liquidator of a sub-fund of the CCIV; or
 - (b) a receiver, or receiver and manager, of the property of a sub-fund of the CCIV; or
 - (c) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Recovery of damage

- (4) A compensation order may be enforced as if it were a judgment of the Court.

Who may apply

- (5) An application for a compensation order under this section may be made by any of the following:
- (a) ASIC;
 - (b) a member of the CCIV;
 - (c) the CCIV.

Other laws not affected

- (6) This section does not affect any liability that a person has under any other law.

1230G Time limit for application for compensation order

Proceedings for a compensation order may be started not later than:

- (a) for a proven contravention—6 years after the contravention was proved; or
- (b) for an unproven contravention—6 years after the contravention or alleged contravention.

1230H Civil evidence and procedure rules for compensation orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a compensation order.

EXPOSURE DRAFT

Part 8B.4—Corporate finance and financial reporting for CCIVs

Division 1—Shares

Subdivision A—Issuing and converting shares in a CCIV

1231 Shares can only be issued in respect of sub-funds

(1) A CCIV can issue a share only if the rights attaching to the share, so far as the rights are in respect of the assets of the CCIV, are restricted to rights in respect of the assets of one (and only one) sub-fund of the CCIV. This is the sub-fund to which the share is *referable*.

(2) Subsection (1) limits paragraph 124(1)(a) and section 254A in relation to a CCIV.

Note: Subsection (1) effectively also limits some other paragraphs of subsection 124(1), such as paragraph (c) (about granting options over unissued shares in a company).

(3) A court must not make an order under section 254E that is inconsistent with subsection (1) of this section, unless the court considers that the interests of justice require otherwise.

1231A Minimum of one class of shares per sub-fund

(1) The shares in a CCIV that are referable to the same sub-fund of the CCIV, if not divided into 2 or more classes, constitute a class.

Note: A CCIV can issue shares only if the rights attaching to the shares are referable to one (and only one) sub-fund of the CCIV: see section 1231.

(2) A class of shares is *referable* to a sub-fund of a CCIV if the shares in the class are referable to the sub-fund.

Part 2F.2 does not permit variation contrary to this section

(3) Nothing in Part 2F.2 permits rights attached to shares in a class of shares to be varied or cancelled in a manner that results in a contravention of this section.

EXPOSURE DRAFT

1231B Power to issue redeemable shares

(1) Subject to section 1231, a CCIV's power under section 124 to issue shares includes the power to issue redeemable shares.

(2) All, some, or none of the shares in a CCIV may be redeemable shares.

Note: Subsections (1) and (2) reflect the fact that CCIVs may be open-ended investment vehicles.

(3) This section operates concurrently with section 254A.

(4) A **redeemable share**, in a CCIV, is a share (other than a preference share) in a CCIV that is liable to be redeemed at the option of one or more of the following:

- (a) the CCIV;
- (b) the member.

Option to redeem is not a preference

(5) In determining whether a share in a CCIV is a preference share, any rights attaching to shares in the CCIV with respect to redemption are to be disregarded.

Note: As a result, a CCIV may have ordinary shares that are redeemable as well as ordinary shares that are not redeemable. Preferences relating to redemption (including preferences relating to who has the option to redeem) are ignored in determining whether a share is a preference share.

1231C Conversion of shares

(1) A CCIV may convert a share of any kind into a share of a kind mentioned in an item in column 1 of the following table if the requirements (if any) specified in column 2 of the item are met.

Conversion of shares		
Item	Column 1 To convert a share into a share of this kind:	Column 2 These requirements must be met:
1	An ordinary share (other than a redeemable share)	No specified requirements (but see Note 1)
2	A redeemable share	The conversion has been approved by a special resolution of the sub-fund of the CCIV

EXPOSURE DRAFT

Conversion of shares

Item	Column 1 To convert a share into a share of this kind:	Column 2 These requirements must be met:
		to which the share is referable (see also Notes 1 and 2)
3	A preference share (other than a redeemable preference share)	The holders' rights with respect to the matters mentioned in subsection 254G(2) are set out in the CCIV's constitution (if any) or have been otherwise approved by special resolution of the sub-fund of the CCIV to which the share is referable (see also Note 1)

Note 1: The variation of class rights provisions (sections 246B to 246G) will apply to the conversion.

Note 2: For a director's duty to prevent insolvent trading on converting shares into redeemable shares, see sections 588G and 1239C.

(2) A CCIV may not convert a share into a redeemable preference share.

(3) A CCIV may convert all or any of its shares into a larger or smaller number. Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

(4) This section replaces sections 254G and 254H for a CCIV.

Subdivision B—Redemption of shares

1231D Redemptions to which this Subdivision applies

(1) This Subdivision applies to both of the following:

- (a) a redemption by a CCIV of a redeemable share;
- (b) a redemption by a CCIV of a redeemable preference share.

Note: A CCIV may reduce its share capital if the reduction results from a redemption permitted by this Subdivision: see section 1231U.

(2) Part 2H.2 does not apply to the redemption of redeemable preference shares in a CCIV.

1231E Redeemed shares to be cancelled

On redemption by a CCIV, a share is cancelled.

EXPOSURE DRAFT

1231F Requirements for redemptions by all CCIVs

Redemption must be in accordance with terms of issue

- (1) A CCIV must not redeem shares if the redemption is not on the terms on which the shares are on issue.

Sub-fund must be solvent

- (2) A CCIV must not redeem shares if, immediately before the redemption:
- (a) the sub-fund to which the shares are referable is insolvent; or
 - (b) there are reasonable grounds for suspecting that the sub-fund to which the shares are referable is insolvent, or would become insolvent immediately after the redemption.

Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see section 1231R.

Note 2: The directors of the corporate director have a duty to prevent insolvent trading by sub-funds: see section 588G (as modified by Division 5 of Part 8B.6).

Consequences of contravention

- (3) If a CCIV redeems shares in contravention of subsection (1) or (2):
- (a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and
 - (b) the CCIV does not commit an offence.

Fault-based offence

- (4) A person commits an offence if the person is involved in a CCIV's contravention of subsection (1) or (2) and the involvement is dishonest.

Civil liability

- (5) A person who is involved in a CCIV's contravention of subsection (1) or (2) contravenes this subsection.

Note: This provision is a civil penalty provision (see section 1317E).

EXPOSURE DRAFT

1231G Further requirements for redemptions by retail CCIVs

Redemption must be permitted by constitution

- (1) A retail CCIV must not redeem shares if the redemption is not permitted by the CCIV's constitution.

Redemption price must be based on net asset value if sub-fund is liquid

- (2) A retail CCIV must not redeem shares if:
- (a) at the time of the redemption, section 1231H (about when a sub-fund is liquid) applies to the sub-fund to which the shares are referable; and
 - (b) the redemption price is not based on the net asset value, at the time of the redemption, of the sub-fund.

Redemption must comply with sections 1231J and 1231K if sub-fund is not liquid

- (3) A retail CCIV must not redeem shares if:
- (a) at the time of the redemption, section 1231H (about when a sub-fund is liquid) does not apply to the sub-fund to which the shares are referable; and
 - (b) any of the following apply:
 - (i) the CCIV has not offered members an opportunity to redeem shares under section 1231J;
 - (ii) the redemption is not made in satisfaction of a redemption request made in response to the offer;
 - (iii) the redemption does not comply with section 1231K.

Strict liability offence

- (4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

Consequences of contravention

- (5) If a CCIV redeems shares in contravention of this section, the contravention does not affect the validity of the redemption or of any contract or transaction connected with it.

EXPOSURE DRAFT

Court orders

- (6) If the Court is satisfied, on application under subsection (7), that the consideration for a redemption of shares by a retail CCIV is not in accordance with this section, the Court may make any orders the Court considers appropriate.
- (7) An application to the Court for an order under subsection (6) may be made by any of the following:
- (a) ASIC;
 - (b) the corporate director of the CCIV;
 - (c) the depositary of the CCIV;
 - (d) a member, or group of members, of the CCIV.

1231H When a sub-fund is liquid

- (1) This section applies to a sub-fund of a CCIV at a time if liquid assets account for at least 80% of the value of the assets of the sub-fund at that time.
- (2) For the purposes of subsection (1):
- (a) the following are liquid assets unless it is proved that the CCIV cannot reasonably expect to realise them within the period specified in the constitution for satisfying redemptions while the sub-fund is liquid:
 - (i) money in an account or on deposit with a bank;
 - (ii) bank accepted bills;
 - (iii) marketable securities (as defined in section 9);
 - (iv) property of a kind specified in CCIV rules made for the purposes of this subparagraph; and
 - (b) any other property is a liquid asset if the corporate director reasonably expects that the property can be realised for its market value within the period specified in the constitution for satisfying redemptions while the sub-fund is liquid.

1231J Redemption offers for non-liquid sub-funds of retail CCIVs

- (1) A retail CCIV may offer members an opportunity to redeem shares in the CCIV if:
- (a) section 1231H (about when a sub-fund is liquid) does not apply to the sub-fund to which the shares are referable; and

EXPOSURE DRAFT

-
- 1 (b) the offer is made to the extent that particular assets of the
2 sub-fund are available and able to be converted to money in
3 time to satisfy redemption requests that members may make
4 in response to the offer; and
5 (c) no other redemption offer is open in relation to the sub-fund.
- 6 (2) The redemption offer must:
- 7 (a) be in writing; and
8 (b) if the constitution of the CCIV specifies procedures for
9 making redemption offers under this section while
10 section 1231H does not apply to the sub-fund—be made in
11 accordance with those procedures.
- 12 (3) The redemption offer must specify:
- 13 (a) the period during which the offer will remain open (this
14 period must last for at least 21 days after the offer is made);
15 and
16 (b) the assets that will be used to satisfy redemption requests;
17 and
18 (c) the amount of money that is expected to be available when
19 those assets are converted to money; and
20 (d) the method for dealing with redemption requests if the money
21 available is insufficient to satisfy all requests.
22 The method specified under paragraph (d) must comply with
23 section 1231K.
- 24 (4) For joint members, a copy of the redemption offer need only be
25 given to the joint member named first in the register of members.
- 26 (5) As soon as practicable after making the redemption offer, the
27 CCIV must lodge a copy of the offer with ASIC.
- 28 (6) A CCIV that makes a redemption offer under this section:
- 29 (a) may cancel a redemption offer before it closes if the offer
30 contains a material error; and
31 (b) must cancel a redemption offer before it closes if it is in the
32 best interests of the members of the sub-fund as a whole to
33 do so.
- 34 (7) If the constitution of the CCIV specifies procedures for cancelling
35 redemption offers under subsection (6), the cancellation must be
36 made in accordance with those procedures.
-

EXPOSURE DRAFT

-
- (8) As soon as practicable, and in any event within 2 business days, after the cancellation, the CCIV must lodge written notice of the cancellation with ASIC.

Strict liability offence

- (9) An offence based on subsection (5) or (8) is an offence of strict liability.

1231K Satisfying redemption requests for non-liquid sub-funds of retail CCIVs

- (1) A retail CCIV that makes a redemption offer under section 1231J must ensure that redemption requests made in response to the offer are satisfied within 21 days after the offer closes.
- (2) No request made under the redemption offer may be satisfied while the offer is still open.
- (3) If an insufficient amount of money is available from the assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula:

$$\frac{\text{Amount of money available}}{\text{Total of all amounts shareholders request to redeem}} \times \frac{\text{Amount shareholder requested to redeem}}{\text{Total of all amounts shareholders request to redeem}}$$

Subdivision C—Partly-paid shares

1231L Section 254N does not apply to a CCIV

Section 254N does not apply to a CCIV.

Subdivision D—Dividends

1231M Circumstances in which a dividend may be paid

- (1) A CCIV must not pay a dividend on a share if, immediately before the dividend is paid:
- (a) the sub-fund to which the share is referable is insolvent; or
 - (b) there are reasonable grounds for suspecting that the sub-fund to which the share is referable is insolvent, or would become insolvent immediately after the dividend is paid.

EXPOSURE DRAFT

Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see section 1231R.

Note 2: The directors of the corporate director have a duty to prevent insolvent trading by sub-funds: see section 588G (as modified by Division 5 of Part 8B.6).

(2) Section 254T does not apply to a CCIV.

1231N Dividend rights

Each share in a class of shares in a CCIV has the same dividend rights unless:

- (a) the CCIV's constitution provides for the shares to have different dividend rights; or
- (b) different dividend rights are provided for by special resolution of the sub-fund to which the shares are referable.

Subdivision E—Notice requirements

1231P Part 2H.6 does not apply to a CCIV

Part 2H.6 does not apply to a CCIV.

Division 2—Transactions affecting share capital

Subdivision A—Reductions in share capital and share buy-backs

1231Q Purpose

Section 256A does not apply in relation to a CCIV.

1231R CCIV may make reduction not otherwise authorised

- (1) A CCIV may reduce its share capital in a way that is not otherwise authorised by law if:
 - (a) the reduction is permitted by the CCIV's constitution; and
 - (b) immediately before the reduction:
 - (i) each sub-fund that the reduction affects is solvent; and
 - (ii) there are no reasonable grounds for suspecting that any sub-fund that the reduction affects would become insolvent immediately after the reduction.

EXPOSURE DRAFT

Note: This Subdivision also deals with some other situations (such as share redemptions) in which reductions of share capital are authorised.

When a sub-fund is solvent and insolvent

- (2) A sub-fund is **solvent** if, and only if, the CCIV is able to pay all the debts that are liabilities of the sub-fund, as and when they become due and payable.

Note: The liabilities of a sub-fund can only be met from assets of the sub-fund: see section 1233S.

- (3) A sub-fund that is not solvent is **insolvent**.

- (4) Division 1 of Part 2J.1 does not apply to a CCIV.

1231S Consequences of making an unauthorised reduction

- (1) A CCIV must not make a reduction in share capital if the reduction:

- (a) does not comply with subsection 1231R(1); and
- (b) is not otherwise authorised by law.

- (2) If a CCIV contravenes subsection (1):

- (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
- (b) the CCIV does not commit an offence.

Fault-based offence

- (3) A person commits an offence if the person is involved in a CCIV's contravention of subsection (1) and the involvement is dishonest.

Civil liability

- (4) A person who is involved in a CCIV's contravention of subsection (1) contravenes this subsection.

Note 1: Subsection (4) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines **involved**.

1231T A CCIV's power to buy back its own shares

- (1) A CCIV may buy back its own shares, unless:

- (a) the CCIV is a retail CCIV; and

EXPOSURE DRAFT

-
- 1 (b) the shares are redeemable shares or redeemable preference
2 shares.
- 3 Note: A retail CCIV may redeem redeemable shares and redeemable
4 preference shares, subject to the requirements in sections 1231F and
5 1231G.
- 6 (2) However, if the buy-back involves a reduction of share capital, the
7 reduction must be authorised by law.
- 8 (3) If a CCIV has entered into an agreement to buy back shares, all
9 rights attaching to the shares are suspended. The suspension is
10 lifted if the agreement is terminated.
- 11 (4) A CCIV must not dispose of shares it buys back. An agreement
12 entered into in contravention of this subsection is void.
- 13 (5) Immediately after the registration of the transfer to the CCIV of the
14 shares bought back, the shares are cancelled.
- 15 (6) Division 2 of Part 2J.1 does not apply to a CCIV.

16 **1231U Authorised reductions—share redemptions**

- 17 A CCIV may reduce its share capital if:
- 18 (a) the reduction is involved in the redemption of a redeemable
19 share or a redeemable preference share; and
- 20 (b) the redemption complies with section 1231F; and
- 21 (c) for a retail CCIV—the redemption also complies with
22 section 1231G.

23 **1231V Authorised reductions—CCIV rules**

- 24 A CCIV may reduce its share capital in circumstances set out in
25 CCIV rules made for the purposes of this section.

26 **1231W Authorised reductions—Court orders**

- 27 A CCIV may reduce its share capital under a Court order.

28 **1231X Authorised reductions—return of financial product**

- 29 A CCIV may cancel shares returned to it under Division 5 of
30 Part 7.9 (as that Division applies to the CCIV under

EXPOSURE DRAFT

section 1244Y) and any reduction in the CCIV's share capital that is involved is authorised by this section.

1231Y Other share capital reductions

- (1) Division 3 of Part 2J.1 applies to a CCIV subject to the modifications set out in this section.
- (2) Section 258D applies in relation to a CCIV as if a reference to a general meeting were instead a reference to a meeting of the members of each sub-fund of the CCIV to which the shares are referable.
- (3) Sections 258E and 258F do not apply to a CCIV.

Subdivision B—Self-acquisition and control of shares

1231Z Directly acquiring own shares

In applying section 259A to a CCIV:

- (a) the reference in paragraph 259A(a) to section 257A is taken to be a reference to section 1231T; and
- (b) paragraph 259A(d) is to be disregarded.

Note: The consequences of contravening section 259A are set out in section 259F.

1231ZA Taking security over own shares

Subsection 259B(3) (about special exemptions for financial institutions) does not apply to a CCIV.

Note: The consequences of contravening subsection 259B(1) are set out in section 259F.

Subdivision C—Financial assistance

1231ZB Part 2J.3 does not apply to a CCIV

Part 2J.3 does not apply to a CCIV.

EXPOSURE DRAFT

Subdivision D—Interaction with other duties

1231ZC Other duties still apply

To avoid doubt, for the purposes of section 260E, the duties of a director under this Act include the duties of a corporate director under this Act, including under a provision of this Chapter.

Division 3—Debentures

1231ZD Debentures can only be issued in respect of sub-funds

- (1) A CCIV can issue a debenture only if the debenture holder's rights in respect of assets of the CCIV are restricted to rights in respect of the assets of one (and only one) sub-fund of the CCIV. This is the sub-fund to which the debenture is *referable*.
- (2) Subsection (1) limits paragraph 124(1)(b) in relation to a CCIV.
- (3) If a security interest is included in or created by a debenture or the trust deed required by section 283AB, the security interest must not be over property of the CCIV that forms part of the assets of a different sub-fund of the CCIV.

1231ZE Modified operation of section 283AA

Paragraph 283AA(1)(a) has effect in relation to a CCIV as if an offer of debentures was an offer of the kind referred to in that paragraph if the offer gave rise to an obligation to give a Product Disclosure Statement under Chapter 7 (as that Chapter applies to securities in the CCIV under Division 4 of Part 8B.7).

Division 4—Financial reports and audit of CCIVs

Subdivision A—Application of Chapter 2M to CCIVs and their sub-funds

1232 Application of Chapter 2M to CCIVs

Application of Chapter 2M to retail CCIVs

- (1) Subject to the modifications set out in this Division, Chapter 2M (about financial reports and audit) applies to a retail CCIV as if:

EXPOSURE DRAFT

(a) references in that Chapter to the directors of, or a director of, the company were references to the corporate director of the CCIV; and

(b) references in that Chapter to a resolution of the directors of the company were references to a resolution of the corporate director, passed as director of the CCIV.

Note: Section 1229 deals with directors' resolutions for CCIVs.

Application of Part 2M.2 to wholesale CCIVs

- (2) Subject to the modifications set out in Subdivision B of this Division, Part 2M.2 (about financial records) applies to a wholesale CCIV as if references in that Part to the directors of, or a director of, the company were references to the corporate director of the CCIV.

Subdivision B—Financial records (all CCIVs)

1232A Obligation to keep financial records for sub-funds

- (1) Without limiting the application of subsection 286(1) to the retail or wholesale CCIV, the CCIV must also, for each sub-fund of the CCIV, keep written financial records that:
- (a) correctly record and explain the transactions relating to the sub-fund and the financial position and performance of the sub-fund; and
 - (b) would enable true and fair financial statements to be prepared and audited for the sub-fund.

The obligation to keep financial records of transactions relating to the sub-fund extends to transactions undertaken as trustee.

Note: Section 9 defines *financial records*.

- (2) The remaining provisions of Part 2M.2 apply in relation to the financial records for the sub-fund as if the sub-fund were the CCIV.
- (3) This section does not apply if the CCIV has only one sub-fund.

1232B Access to financial records of CCIVs and sub-funds

Without limiting the application of subsection 290(1) or section 1232A, a director of the corporate director of the retail or wholesale CCIV has the same rights as a director of the CCIV:

EXPOSURE DRAFT

-
- (a) under subsection 290(1) to access the financial records of the CCIV; and
 - (b) under that subsection, as applied by section 1232A, to access the financial records of a sub-fund of the CCIV; and
 - (c) under subsection 290(2) to apply to the Court for an order.

Subdivision C—Financial reporting (retail CCIVs only)

1232C Annual financial reports by CCIVs

Division 1 of Part 2M.3 applies to a retail CCIV as if subsection 292(1) required all CCIVs to prepare a financial report and a directors' report for each financial year.

1232D Annual financial reports for sub-funds

- (1) Without limiting the application of subsection 292(1) to the retail CCIV, the CCIV must also, for each sub-fund of the CCIV, prepare a financial report for the sub-fund for each financial year.
 - (2) The remaining provisions of Division 1 of Part 2M.3 apply in relation to the following documents relating to the sub-fund:
 - (a) a financial report prepared under subsection (1) of this section;
 - (b) the documents of which the report consists under subsection 295(1);as if the sub-fund were the CCIV.
- Note: The combined effect of subsection 1232(1) and this subsection is that references in the remaining provisions of Division 1 of Part 2M.3 to the company are, where appropriate, to be read as also referring to the sub-fund.
- (3) Despite subsection (2) of this section, paragraph 295(4)(c) applies to a directors' declaration relating to the sub-fund as if the debts mentioned in that paragraph were only the debts referable to the sub-fund.

1232E Annual directors' reports for CCIVs

- (1) Subsection 300(1) applies to the retail CCIV as if:
 - (a) each of the following were an officer of a CCIV:
 - (i) an officer of the CCIV;
 - (ii) an officer of the corporate director of the CCIV; and
-

EXPOSURE DRAFT

-
- 1 (b) each of the following were a director of a CCIV:
- 2 (i) the corporate director of the CCIV;
- 3 (ii) a director of the corporate director of the CCIV.
- 4 (2) Subsection 300(13) applies to the retail CCIV as if:
- 5 (a) the CCIV were a registered scheme; and
- 6 (b) the corporate director of the CCIV were the responsible
- 7 entity for the scheme; and
- 8 (c) references in that subsection to interests in the scheme were
- 9 references to shares in the CCIV; and
- 10 (d) references in that subsection to scheme property were
- 11 references to the property of the CCIV.
- 12 (3) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of
- 13 doubt.

14 **1232F Half-year financial reports for sub-funds with ED securities**

15 **on issue**

- 16 (1) Section 302 does not apply to a CCIV that is a disclosing entity
- 17 except as set out in this section.
- 18 (2) If any securities referable to a sub-fund of a retail CCIV are ED
- 19 securities, section 302 applies to the CCIV as if the requirement in
- 20 paragraph 302(a) required the CCIV to prepare a financial report
- 21 for each half-year for the sub-fund.
- 22 Note: For ED securities in a CCIV, see subsection 111AF(3), and
- 23 section 111AI as affected by section 1231ZE.
- 24 (3) For the purposes of subsection (2), ED securities that are units of
- 25 shares in a CCIV are referable to the sub-fund of the CCIV to
- 26 which the share is referable.
- 27 (4) The remaining provisions of Division 2 of Part 2M.3 apply in
- 28 relation to the following documents relating to the sub-fund:
- 29 (a) a financial report prepared under paragraph 302(a) as applied
- 30 by subsection (2) of this section;
- 31 (b) the documents of which the report consists under
- 32 subsection 303(1);
- 33 as if the sub-fund were the CCIV.
- 34 Note: The combined effect of subsection 1232(1) and this subsection is that
- 35 references in the remaining provisions of Division 2 of Part 2M.3 to

EXPOSURE DRAFT

the disclosing entity are, where appropriate, to be read as also referring to the sub-fund.

- (5) Despite subsection (4) of this section, paragraph 303(4)(c) applies to a directors' declaration relating to the sub-fund as if the debts mentioned in that paragraph were only the debts referable to the sub-fund.

1232G Half-year directors' reports for CCIVs

Subsection 306(1) applies to the retail CCIV as if the requirements in paragraph 306(1)(b) do not apply, and as if that paragraph instead requires the directors' report for a half-year for the CCIV to include details of:

- (a) the name of each corporate director of the CCIV at any time during or since the end of the half-year, and the period for which each was the corporate director; and
- (b) the name of each director of the corporate director of the CCIV at any time during or since the end of the half-year, and the period for which each was a director of the corporate director.

1232H Audit and auditor's report for sub-funds

- (1) Subject to the modifications set out in this section, Division 3 of Part 2M.3 applies in relation to the sub-fund, and in relation to the following documents relating to a sub-fund of the retail CCIV:
- (a) a financial report prepared under subsection 1232D(1);
 - (b) a financial report prepared under paragraph 302(a) as applied by section 1232F;
- as if the sub-fund were the CCIV.

Note: The combined effect of subsection 1232(1) and this subsection is that references in the remaining provisions of Division 3 of Part 2M.3 to the company are, where appropriate, to be read as also referring to the sub-fund.

- (2) Without limiting subsection (1), that Division so applies as if:
- (a) references in that Division to members (other than references to members of an audit firm) were references to members of the sub-fund; and
 - (b) references in that Division to an officer included references to an officer of the corporate director of the CCIV.

EXPOSURE DRAFT

Audit

- (3) Section 307 applies in relation to the sub-fund as if the requirements in paragraphs 307(c) and (d) do not apply, and as if those paragraphs instead require the auditor to form an opinion about whether the CCIV has kept:
- (a) financial records, relating to the sub-fund, sufficient to enable a financial report, relating to the sub-fund, to be prepared and audited; and
 - (b) other records and registers, relating to the sub-fund, as required by this Act.

Reporting to ASIC

- (4) Section 311 applies in relation to the sub-fund as if the requirement in paragraph 311(4)(b) were a requirement to have regard to the effect that the contravention has, or may have, on:
- (a) the overall financial position of either the CCIV or the sub-fund, or both; or
 - (b) the adequacy of the information available about the overall financial position of either the CCIV or the sub-fund, or both.

Subdivision D—Annual financial reporting to members (retail CCIVs only)

1232J Annual financial reporting to members of sub-funds

- (1) Section 314 applies to the retail CCIV, in relation to each sub-fund of the CCIV, as if the requirement in subsection 314(1) included a requirement to report to members of the sub-fund for the year by providing either of the following in accordance with subsection 314(1AA), (1AE) or (1AF):
- (a) both of the following reports:
 - (i) the financial report relating to the sub-fund for the year;
 - (ii) the auditor's report on the financial report;
 - (b) a concise report relating to the sub-fund for the year that complies with subsection 314(2) (other than paragraph 314(2)(b)).
- (2) Division 4 of Part 2M.3 applies in relation to a report relating to the sub-fund as if references in that Division to members were references to members of the sub-fund.

EXPOSURE DRAFT

1232K Deadline for reporting to members of CCIVs or sub-funds

Section 315 applies to the retail CCIV, including in relation to each sub-fund of the CCIV, as if the CCIV were a registered scheme.

1232L Member's choices for annual financial information relating to sub-funds

Section 316 applies to each sub-fund of the retail CCIV as if:

- (a) the reference in paragraph 316(1)(b) to the directors' report were omitted; and
- (b) the reference in subsection 316(3) to a directors' report were omitted.

1232M Consideration of reports at AGM

Section 317 does not apply in relation to the retail CCIV.

1232N Additional reporting by CCIVs that are debenture issuers

If the retail CCIV was a borrower in relation to debentures at the end of a financial year, section 318 applies to the CCIV, in relation to each sub-fund of the CCIV, as if:

- (a) the requirement in subsection 318(1) included a requirement to give to the trustee for debenture holders, by the deadline for the financial year set by section 315 as applied by section 1232K, a copy of each of the reports mentioned in paragraph 1232J(1)(a); and
- (b) the rights of a debenture holder under paragraph 318(2)(a) included the right to ask the CCIV for copies of the last reports provided to members under subsection 1232J(1); and
- (c) the rights of a debenture holder under paragraph 318(2)(b) included the right to ask the CCIV for copies of:
 - (i) the full financial report prepared under subsection 1232D(1) for the last financial year; and
 - (ii) the auditor's report relating to the sub-fund for the last financial year; and
- (d) the requirement in subsection 318(4) included a requirement to give to the trustee for debenture holders a copy of the half-year financial report, prepared for the sub-fund under section 302 as applied by section 1232F, within 75 days after the end of the half-year.

EXPOSURE DRAFT

Subdivision E—Lodging reports with ASIC (retail CCIVs only)

1232P Relodgement if financial statements relating to sub-fund amended after lodgement

Section 322 applies in relation to a financial report relating to a sub-fund of the retail CCIV as if references in that section to a member were references to a member of the sub-fund.

Subdivision F—Appointment and removal of auditors (retail CCIVs only)

1232Q Conflict of interest situation

- (1) Subsection 324CD(2), has effect as if the following item were added to the table in that subsection:

4	a retail CCIV	the corporate director or a former corporate director of the CCIV; or a current or former director of the corporate director; or a person currently or formerly involved in the management of the CCIV; or a person currently or formerly involved in the management of the corporate director.
---	---------------	--

- (2) Subsection 1232(1) does not apply for the purposes of subsection 324CD(2).

1232R Auditor independence—specific requirements

Subdivision B of Division 3 of Part 2M.4 applies in relation to the retail CCIV as if references in the table in subsection 324CH(1) to the audited body included references to the corporate director of the CCIV.

1232S People who are regarded as officers of a CCIV

Section 324CL applies in relation to the retail CCIV as if references in paragraph 324CL(1)(a) or (b) or

EXPOSURE DRAFT

subsection 324CL(2), (3) or (4) to the company included references to the corporate director of the CCIV.

1232T Appointment, removal and fees of auditors for CCIVs

- (1) Division 6 of Part 2M.4 (about appointment, removal and fees of auditors for companies) does not apply to a CCIV.
- (2) Division 7 of Part 2M.4 (about appointment, removal and fees of auditors for registered schemes) applies to a retail CCIV as if:
- (a) the CCIV were a registered scheme; and
 - (b) the corporate director of the CCIV were the responsible entity of that scheme.

1232U Effect of winding up of sub-fund on office of auditor

Audit and auditor's report not required to cover a sub-fund in respect of which a CCIV is being wound up

- (1) An auditor of a CCIV is not required by Division 3 of Part 2M.3, as it applies under subsection 1232H(1), to do a thing in relation to a sub-fund at a time if the sub-fund is being wound up at that time.

Auditor ceases to hold office if CCIV is being wound up in respect of all of its sub-funds

- (2) An auditor of a CCIV ceases to hold office if an event mentioned in subsection (3) has occurred in relation to each sub-fund of the CCIV.
- (3) The events are as follows:
- (a) a special resolution is passed for the voluntary winding up of a sub-fund of the CCIV;
 - (b) an order is made by the Court for the winding up of a sub-fund of the CCIV.
- (4) Section 330 does not apply to a CCIV.

EXPOSURE DRAFT

Subdivision G—Sanctions for contravention of Chapter 2M

1232V Extended liability of directors of corporate director for contraventions of Chapter 2M

(1) Section 344 applies as if each of the following were a director of a CCIV:

(a) the corporate director of the CCIV;

(b) a director of the corporate director of the CCIV.

Note: Section 344 creates civil and criminal liability for contraventions of certain provisions in Chapter 2M.

(2) Paragraph (1)(a) is included for the avoidance of doubt.

Division 5—Updating ASIC information about CCIVs

1232W Solvency resolutions

- (1) Part 2N.3 (about solvency resolutions) does not apply in relation to a CCIV.
- (2) Section 348C (about ASIC requiring a solvency resolution and statement) does not apply in relation to a CCIV.

Part 8B.5—Operating a CCIV

Division 1—Preliminary

1233 References to property

In this Part:

property of a CCIV includes PPSA retention of title property, if the security interest in the property is vested in the CCIV because of the operation of any of the following provisions:

- (a) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);
- (b) section 588FL of this Act (collateral not registered within time).

Note: See sections 9 (definition of **property**) and 51F (PPSA retention of title property).

1233A References to liabilities of a CCIV

- (1) A reference in this Act to the liabilities of a CCIV includes a reference to:
 - (a) debts of the CCIV (including contingent and prospective debts); and
 - (b) expenses of the CCIV; and
 - (c) anything not covered by paragraphs (a) and (b) that might give rise to a debt of the CCIV, or a claim against the CCIV (present or future, certain or contingent, ascertained or sounding only in damages).

EXPOSURE DRAFT

-
- (2) For the purposes of this Part, a liability of a CCIV arises when the circumstances giving rise to the debt, expense or claim occur.

Division 2—Requirement to operate sub-funds as separate businesses

1233B Sub-funds to be operated as separate businesses

- (1) A part of the business of a CCIV must not be operated if it is not registered as a sub-fund.
- (2) A part of the business of a CCIV that is registered as a sub-fund must be operated as a separate business from the business of any other sub-fund of the CCIV.

Requirement for corporate director to operate sub-funds as separate businesses

- (3) The corporate director of a CCIV contravenes this subsection if:
- (a) the corporate director operates a part of the business of the CCIV; and
 - (b) the operation contravenes subsection (1) or (2).

Fault-based offence

- (4) A person commits an offence if the person contravenes subsection (3).

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (3).

Division 3—Requirement for assets and liabilities to be allocated between sub-funds

Subdivision A—The CCIV's allocation register

1233C Corporate director to keep allocation register

- (1) The corporate director of a CCIV must set up and maintain a register of the assets and liabilities of the sub-funds of the CCIV. The register is the CCIV's allocation register.

EXPOSURE DRAFT

Note: The register may be kept on computer (see section 1306).

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Corporate director must maintain allocation register during liquidation

- (3) For the purposes of section 1224Q (about exercise of powers while sub-fund in liquidation), the maintenance of the allocation register is a function the corporate director is required by this section to perform even when one or more, or all, of the sub-funds of the CCIV are being wound up.

Note: However, the corporate director may not make allocation determinations in relation to assets and liabilities while all the sub-funds are being wound up: see subsections 1233J(7) and 1233M(7).

1233D Requirement to enter assets on the allocation register

- (1) The assets of a sub-fund of a CCIV must be clearly identified in the allocation register as assets of the sub-fund.
- (2) If section 1233K (about property that has to be converted into money etc.) applies to an item of property of a CCIV:
- (a) the item of property must be clearly identified in the allocation register as an item of property to which that section applies; and
 - (b) the proportion of the property applicable to each sub-fund under subsection 1233H(3) must be clearly identified in the allocation register as the proportion applicable to the sub-fund.
- (3) The corporate director must make entries in the allocation register as required in order to ensure the allocation register makes the identifications required by subsections (1) and (2).
- (4) An entry required by subsection (3) must be made within:
- (a) for a case where money or property is acquired by the CCIV:
 - (i) 5 business days after the money or property is acquired, unless subparagraph (ii) applies; or

EXPOSURE DRAFT

-
- (ii) if an allocation determination is required to be made in relation to the money or property under section 1233J—5 business days after the determination is made; or
- (b) for a case where money or property is disposed of, or otherwise ceases to be money or property of the CCIV—5 business days after the disposal or cessation.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
- (b) the person fails to comply with the requirement.

Strict liability offence

- (6) A person commits an offence of strict liability if the person contravenes subsection (3).

1233E Requirement to enter liabilities on the allocation register

- (1) The liabilities of a sub-fund of a CCIV must be clearly identified in the allocation register as liabilities of the sub-fund.
- (2) If section 1233M (about liabilities allocated to 2 or more sub-funds) applies to a liability of a CCIV:
- (a) the liability must be clearly identified in the allocation register as a liability to which that section applies; and
- (b) the proportion of the liability applicable to each sub-fund under subsection 1233L(2) must be clearly identified in the allocation register as the proportion applicable to the sub-fund.
- (3) The corporate director must make entries in the allocation register as required in order to ensure the allocation register makes the identifications required by subsections (1) and (2).
- (4) An entry required by subsection (3) must be made within:
- (a) for a case where a liability arises—5 business days after the liability arises; or
- (b) for a case where a liability is discharged, or otherwise ceases to be a liability of the sub-fund—5 business days after the discharge or cessation.

EXPOSURE DRAFT

Note: For the liabilities of a CCIV, and when they arise, see section 1233A.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Strict liability offence

- (6) A person commits an offence of strict liability if the person contravenes subsection (3).

1233F Liquidator may require corporate director to record debt, claim or property in allocation register

- (1) This section applies if:
- (a) a debt payable by, or claim against, a CCIV (present or future, certain or contingent, ascertained or sounding only in damages) is not entered as a liability of any sub-fund of the CCIV in the allocation register of the CCIV; or
 - (b) property of the CCIV is not entered as an asset of any sub-fund of the CCIV in the allocation register of the CCIV.
- (2) A liquidator of a sub-fund of the CCIV may, by notice in writing given to the corporate director of the CCIV, require the corporate director to make entries in the allocation register within the period (which must be at least one business day after the notice is given) specified in the notice.

Note: See also section 1233Q (about Court orders the liquidator can apply for).

- (3) The notice must include sufficient information to enable the corporate director to identify the debt, claim or property.

Note 1: Only liabilities of a sub-fund of a CCIV are provable in a winding up of the sub-fund: see section 1238W.

Note 2: If the asset or liability has to be allocated between sub-funds, the corporate director will have to determine the allocation in order to update the records: see sections 1233J and 1233M.

- (4) The corporate director must comply with the notice within the period specified.

EXPOSURE DRAFT

(5) An offence based on subsection (4) is an offence of strict liability.

1233G Requirement to retain records of allocations for 7 years

- (1) The corporate director must retain a record of:
- (a) entries made in the allocation register in relation to assets and liabilities of the CCIV; and
 - (b) determinations made under Subdivision B or C in relation to assets and liabilities of the CCIV (including variations made under section 1233N).
- (2) The records must be retained for 7 years after the end of the year in which:
- (a) for money or property—the money or property is disposed of or otherwise ceases to be money or property of the CCIV; and
 - (b) for a liability—the liability is discharged or otherwise ceases to be a liability of the CCIV.

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Subdivision B—What are the assets of a particular sub-fund

1233H Meaning of *assets* of a sub-fund

- (1) Money or property forms part of the *assets* of a sub-fund to the extent the money or property was obtained by the application of assets of the sub-fund.

Note: Division 4 of this Part requires assets of a sub-fund to be applied only for purposes relating to the sub-fund.

- (2) Subject to subsection (1), the *assets* of a sub-fund of a CCIV at a particular time are the following:
- (a) amounts paid up in consideration for the issue of shares that are referable to the sub-fund;

EXPOSURE DRAFT

-
- (b) money deposited with or lent to the CCIV under debentures that are referable to the sub-fund;
 - (c) money or property of the CCIV not covered by paragraph (a) or (b), to the extent the money or property, at the time it is acquired, relates solely to the business of the sub-fund;
 - (d) if there is money or property of the CCIV not covered by paragraph (a), (b) or (c) at the time it is acquired—the proportion (which may be nil) of the money or property that it is fair and reasonable, in the circumstances, to allocate to the sub-fund at that time.

Effect of an allocation determination

- (3) Despite subsections (1) and (2), if:
 - (a) the corporate director of a CCIV determines under section 1233J that a particular proportion of certain money or property of a CCIV is allocated to a sub-fund of the CCIV; and
 - (b) the determination is operative (see subsection 1233J(4));that proportion of the money or property is taken to form part of the **assets** of the sub-fund, and to have been part of the **assets** of the sub-fund from the time the money or property was acquired.

Note: If there is a single item of property that forms part of the assets of 2 or more sub-funds, it may not be held by the CCIV as an investment but must instead be converted into money or other fungible assets (see section 1233K).

Effect of a Court order about an arrangement or reconstruction

- (4) Despite subsections (1), (2) and (3), the **assets** of a sub-fund of a CCIV:
 - (a) include assets that, in accordance with a Court order made under section 1236E (about arrangements and reconstructions of sub-funds), are to be assets of the sub-fund; and
 - (b) do not include assets that, in accordance with an order made under that section, are no longer to be assets of the sub-fund.

Note: Subsection (1) of this section applies to money or property obtained by the application of these assets of a sub-fund.

EXPOSURE DRAFT

Regulations

- (5) The regulations may provide for and in relation to matters to be considered in determining the extent to which money or property of a CCIV forms part of the assets of a sub-fund of the CCIV.

1233J When an allocation determination is required

- (1) This section applies if money or property acquired by a CCIV in a single transaction does not become wholly part of the assets of a single sub-fund of the CCIV under section 1233H.
- (2) The corporate director must determine (whether in the CCIV's allocation register or otherwise in writing) the proportion (including nil) of the money or property that is to be allocated to each sub-fund of the CCIV.

Requirements for determination

- (3) The determination:
- (a) must be fair and reasonable in the circumstances and having regard to section 1233H; and
 - (b) must result in the money or property being wholly allocated; and
 - (c) must be made as soon as practicable after the money or property is acquired.

When the determination is operative

- (4) If the determination is one that a reasonable person in the corporate director's position could make, the determination is operative from the time the money or property is acquired, which may be earlier than the time at which the determination is made.
- (5) A determination under this section is irrevocable.

Fault-based offence

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person fails to comply with the requirement.

EXPOSURE DRAFT

Determinations during winding up and controllership

- (7) Subsection (2) does not apply if all of the CCIV's sub-funds are being wound up.
- (8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence based on subsection (6) of this section, a defendant does not bear an evidential burden in relation to the matter in subsection (7).
- (9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a sub-fund of a CCIV, may not make a determination under this section.

Note: A liquidator may apply to the Court for an order under section 1233Q.

1233K When property must be converted into money etc.

- (1) This section applies if, as a result of the operation of section 1233H, a single item of property of a CCIV forms part of the assets of 2 or more sub-funds of the CCIV.
- (2) For the purposes of subsection (1), treat an item of property as a single item if the item would generally be applied or dealt with as an indivisible item in the ordinary course of commercial dealing.

Note: An example of a single item of property is a share or unit in a unit trust.

- (3) The corporate director of the CCIV must apply the item of property to obtain other money or fungible property, so as to achieve the result that, when subsection 1233H(1) is applied to the other money or property to determine the extent to which it forms part of the assets of the sub-funds, no single item of property forms part of the assets of 2 or more sub-funds.

Note: This conversion is intended to ensure that the assets of a sub-fund can be kept separate and distinct from the assets of other sub-funds.

- (4) The conversion required by subsection (3) must be completed as soon as practicable after the item of property is acquired.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person fails to comply with the requirement.

EXPOSURE DRAFT

Subdivision C—What are the liabilities of a particular sub-fund

1233L Meaning of *liabilities* of a sub-fund

- (1) The *liabilities* of a sub-fund of a CCIV at a particular time are the following:
- (a) liabilities of the CCIV that relate solely to the business of the sub-fund;
 - (b) liabilities of the CCIV not covered by paragraph (a), to the extent that it is fair and reasonable in the circumstances to allocate the liability to the sub-fund at the time having regard to the following matters:
 - (i) the extent to which the liability, when it arose, related to the business of the sub-fund;
 - (ii) the extent to which assets of the sub-fund, and assets of other sub-funds, of the CCIV have been applied to meet the liability;
 - (iii) the regulations (if any) made for the purposes of subsection (4).

Note: Section 1233A is about references to the liabilities of a CCIV.

Effect of an allocation determination

- (2) Despite subsection (1), if:
- (a) a particular proportion of a liability of a CCIV is allocated to a sub-fund of the CCIV at a time under a determination made under section 1233M (including a determination as varied under section 1233N); and
 - (b) the determination is operative at the time (see subsection 1233M(4));
- that proportion of the liability is taken to form part of the *liabilities* of the sub-fund at that time.

Effect of a Court order about an arrangement or reconstruction

- (3) Despite subsections (1) and (2), the *liabilities* of a sub-fund of a CCIV:
- (a) include liabilities that, in accordance with a Court order made under section 1236E (about arrangements and reconstructions of sub-funds), are to be liabilities of the sub-fund; and

EXPOSURE DRAFT

-
- (b) do not include liabilities that, in accordance with an order made under that section, are no longer to be liabilities of the sub-fund.

Regulations

- (4) The regulations may provide for and in relation to matters to be considered in determining the extent to which a liability of a CCIV forms part of the liabilities of a sub-fund of the CCIV.

1233M When an allocation determination is required

- (1) This section applies if a liability of a CCIV does not relate solely to the business of one sub-fund of the CCIV.
- (2) The corporate director must determine (whether in the CCIV's allocation register or otherwise in writing) the proportion (including nil) of the liability that is to be allocated to each sub-fund of the CCIV.

Requirements for determination

- (3) The determination:
- (a) must be fair and reasonable in the circumstances and having regard to the matters referred to in paragraph 1233L(1)(b); and
 - (b) must result in the liability being wholly allocated; and
 - (c) must be made as soon as practicable after the liability arises; and
 - (d) must be expressed to apply from the time the liability arises (which may be earlier than the time at which the determination is made).

When the determination is operative

- (4) A determination under this section (including a determination as varied under section 1233N) is operative at a time if:
- (a) the determination applies at that time; and
 - (b) the determination is one that a reasonable person in the corporate director's position could make.
- (5) A determination under this section is irrevocable, however it may be varied under section 1233N even if it has become inoperative.

EXPOSURE DRAFT

Fault-based offence

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person fails to comply with the requirement.

Determinations during winding up and controllership

- (7) Subsection (1) does not apply if all of the CCIV's sub-funds are being wound up.
- (8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence based on subsection (6) of this section, a defendant does not bear an evidential burden in relation to the matter in subsection (7).
- (9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a sub-fund of a CCIV, may not make a determination under this section.

Note: A liquidator may apply to the Court for an order under section 1233Q.

1233N Variations of proportional allocation of liabilities

- (1) The corporate director may vary a determination made under section 1233M if it is necessary to do so to ensure that the determination remains operative for the purposes of subsection 1233M(4).
- (2) If, as a result of a change in circumstances, a determination has or will become inoperative, the corporate director must vary the determination as soon as is practicable.

Note: The variation may take effect retrospectively to make operative a determination that has become inoperative: see paragraph (3)(b) of this section.

- (3) The variation:
- (a) must be fair and reasonable in the circumstances and having regard to:
 - (i) the matters referred to in paragraph 1233L(1)(b); and
 - (ii) the time at which it starts to apply; and
 - (b) must specify the time at which it starts to apply, which may be earlier or later than the time at which the variation is made; and

EXPOSURE DRAFT

-
- (c) must result in the liability being wholly allocated; and
 - (d) must be made in writing.

Effect of variation

- (4) The variation takes effect from the time at which it starts to apply.

Fault-based offences

- (5) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

1233P Creditor may require corporate director to provide information about allocation

- (1) A creditor of a CCIV may, by notice in writing given to the corporate director of the CCIV, require the corporate director to provide the creditor with the following information about the debt owing to the creditor:
 - (a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;
 - (b) if the debt is a liability of 2 or more sub-funds of the CCIV—the proportion of the debt allocated to each sub-fund;within the period (which must be at least 14 days after the notice is given), and in the manner, specified in the notice.
- (2) The notice must include sufficient information to enable the corporate director to identify the debt.

Strict liability offence

- (3) A person commits an offence of strict liability if the person fails to comply with a notice given to the person in accordance with subsection (1).

EXPOSURE DRAFT

Subdivision D—Orders the Court can make

1233Q Orders the Court can make in relation to assets and liabilities of sub-funds

- (1) The Court may, on an application under subsection (3), make any orders, and give any directions, that the Court considers appropriate in relation to the assets and liabilities of the sub-funds of a CCIV, including any of the following:
 - (a) an order requiring the corporate director to update or correct the CCIV's allocation register;
 - (b) an order declaring that money or property of a CCIV forms part of the assets of a particular sub-fund of the CCIV;
 - (c) an order declaring that a determination made by the corporate director under section 1233J is not operative;
 - (d) an order requiring the corporate director to make one or more determinations under section 1233J;
 - (e) an order declaring the extent to which the money or property forms part of the assets of each sub-fund of the CCIV;
 - (f) an order declaring that a liability of a CCIV forms part of the liabilities of a particular sub-fund of the CCIV;
 - (g) an order declaring that a determination made by the corporate director under section 1233M (including a determination as varied under section 1233N), is not operative;
 - (h) an order requiring the corporate director to make one or more determinations under section 1233M, or to vary a determination under section 1233N;
 - (i) an order declaring the extent to which a liability forms part of the liabilities of each sub-fund of the CCIV at a time.
- (2) The Court may make an order or give directions under subsection (1) if any of the following applies:
 - (a) the Court is satisfied a determination made by the corporate director under section 1233J or 1233M (including a determination varied under section 1233N) is not operative;
 - (b) the Court is satisfied that the CCIV's allocation register is otherwise incorrect or deficient;
 - (c) all of the CCIV's sub-funds are being wound up.
- (3) An application for an order or directions under subsection (1) may be made by any of the following:

EXPOSURE DRAFT

-
- 1 (a) the corporate director of the CCIV;
2 (b) a liquidator of a sub-fund of the CCIV;
3 (c) a controller of property of a sub-fund of the CCIV.
- 4 (4) If the Court makes an order under paragraph (1)(b), (e) or (i), the
5 corporate director does not have the power under section 1233J,
6 1233M or 1233N (as the case requires) to make a determination
7 that is inconsistent with the order unless:
8 (a) the order states that the corporate director does have the
9 power to make an inconsistent determination; or
10 (b) the corporate director first obtains the leave of the Court.

11 **Division 4—Purposes for which sub-fund assets may be** 12 **applied**

13 **1233R Unallocated money and property may not be applied for any** 14 **purpose**

15 Money or property of a CCIV that has not been clearly identified in
16 the CCIV's allocation register as forming part of the assets of a
17 sub-fund or sub-funds of the CCIV may not be applied, or dealt
18 with, whether directly or indirectly, for any purpose.

19 **1233S Requirement for segregated application of assets of sub-funds**

- 20 (1) The assets of a sub-fund of a CCIV must not be applied, or dealt
21 with, whether directly or indirectly:
22 (a) subject to paragraph (b), for any purpose other than a purpose
23 covered by section 1233T; or
24 (b) for a purpose specified in the CCIV rules made for the
25 purposes of this paragraph.

26 Note: For the consequences of a contravention of this requirement, see
27 section 1233X.

- 28 (2) Subsection (1) does not apply to:
29 (a) money or property to which section 1233R applies; or
30 (b) assets of a sub-fund of the CCIV, to the extent the assets
31 consist of property to which section 1233K (about property
32 that has to be converted into money etc.) applies.

33 Note: For paragraph (b), see instead section 1233U.

EXPOSURE DRAFT

-
- (3) The assets of 2 or more sub-funds of a CCIV must not be applied jointly to acquire a single item of property of the CCIV.

Note: A single item of property that forms part of the assets of 2 or more sub-funds must be converted into money or other fungible property: see section 1233K.

Liquidators

- (4) However, a liquidator or provisional liquidator of a sub-fund of a CCIV may:
- (a) make a disposition of assets of the sub-fund that is an exempt disposition for the purposes of subsection 468(2), as that subsection applies to the sub-fund under Division 4 of Part 8B.6; or
 - (b) disclaim property of a sub-fund under Division 7A of Part 5.6, as that Division applies to the sub-fund under Division 4 of Part 8B.6.

1233T Purposes for which sub-fund assets may be applied

This section covers the following purposes:

- (a) meeting liabilities of the sub-fund;
- (b) carrying on the business of the sub-fund;
- (c) paying a dividend to members of the sub-fund;
- (d) providing consideration to a member of the sub-fund in respect of a reduction of share capital affecting the sub-fund;
- (e) redeeming redeemable shares or redeemable preference shares that are referable to the sub-fund;
- (f) making a payment covered by section 1238Y (about winding up);
- (g) making a payment covered by section 1237K (about certain priority payments by a receiver);
- (h) complying with a compromise or arrangement relating to the sub-fund and approved by the Court under paragraph 411(4)(b), or an order made under section 413 in relation to such a compromise or arrangement;
- (i) making any other distribution to members of the sub-fund that the CCIV is permitted by this Act and its constitution to make;
- (j) a purpose specified in the CCIV rules for the purposes of this paragraph.

EXPOSURE DRAFT

Note: The assets may also be applied in accordance with a court order: see subsection 1233W(2).

1233U Property that is required to be converted to be applied only for that purpose

An item of property of a CCIV to which section 1233K applies may not be applied for any purpose, except for the purpose of the conversion required by that section.

Note: For the consequences of a contravention of this requirement, see section 1233X.

1233V Requirement for security interests to be segregated

A CCIV must not grant a security interest in personal property of the CCIV if the personal property comprises assets of 2 or more sub-funds of the CCIV.

Note: For the consequences of a contravention of this requirement, see section 1233X.

1233W Court orders

(1) In a proceeding to which a CCIV is a party, a court must not make an order that is inconsistent with section 1233R, 1233S, 1233U or 1233V, unless the court considers that the interests of justice require it to do so.

(2) If a court makes an order that is inconsistent with section 1233R, 1233S, 1233U or 1233V, the assets of a sub-fund must be applied for the purpose of complying with the court order, in priority to any other permitted application of the assets.

1233X Consequences of non-compliant application of assets

(1) If money or property of a CCIV is applied or dealt with in contravention of section 1233R, 1233S, 1233U or 1233V, the contravention does not affect the validity of any contract or transaction connected with the application or dealing.

Note: A Court may order an injunction to stop the CCIV applying or dealing with the asset (see section 1324).

(2) A CCIV contravenes this subsection if:

EXPOSURE DRAFT

-
- (a) the CCIV applies or deals with money or property of the CCIV; and
- (b) the application or dealing contravenes section 1233R, 1233S, 1233U or 1233V.

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (2).

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (2).

Division 5—How CCIV assets must be held

1233Y When a depositary is required to hold CCIV assets

- (1) If a CCIV has a depositary, then the money and property of the CCIV must be held by the depositary.

Note 1: A depositary is compulsory for retail CCIVs and optional for wholesale CCIVs: see section 1226.

Note 2: For the manner in which the depositary is required to hold the assets, see section 1233ZC.

- (2) Subsection (1) is subject to the following:
- (a) the CCIV rules;
- (b) any other law of the Commonwealth.

1233Z When someone other than a depositary may hold the assets of a CCIV

- (1) If a CCIV does not have, and is not required to have, a depositary, then the money and property of the CCIV may be held by the CCIV or another person.
- (2) Subsection (1) is subject to the CCIV rules.

1233ZA Person other than CCIV holds money or property on trust

- (1) A person other than the CCIV who holds money or property of the CCIV is taken to hold the money or property on trust for the CCIV.

EXPOSURE DRAFT

-
- (2) To avoid doubt, nothing in this Chapter is intended to have the effect of making a CCIV or its corporate director a trustee or trustees of the money or property of the CCIV.

1233ZB Requirement to transfer assets to depositary

- (1) Money or property that is required to be held by a depositary of a CCIV must be transferred to the depositary:
- (a) on the day the money or property is acquired, or the next business day (unless paragraph (b) applies); or
 - (b) if the CCIV does not have a depositary on the day the money or property is acquired—within 1 business day of the record of the CCIV's registration being updated to name a body as the depositary or temporary depositary of the CCIV.
- (2) A person contravenes this subsection if:
- (a) the person holds money or property of a CCIV; and
 - (b) the money or property is required to be held by the depositary of the CCIV; and
 - (c) the person fails to comply with subsection (1).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (2).

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (2).

1233ZC How CCIV money and property must be held

- (1) A person who holds assets of a sub-fund of a CCIV that have been clearly identified as such in the CCIV's allocation register must hold the assets separately from any other property (including from assets of any other sub-fund of the CCIV).

Note: This subsection is a civil penalty provision (see section 1317E).

- (2) A person who holds money or property of a CCIV that has not yet been clearly identified in the CCIV's allocation register as forming part of the assets of a sub-fund or sub-funds of the CCIV must hold that money or property separately from any other property.

EXPOSURE DRAFT

Note: This subsection is a civil penalty provision (see section 1317E).

- (3) Despite subsection (1), a person who holds an item of property of a CCIV to which section 1233K (about property that has to be converted into money etc.) applies must hold that item of property separately from any other property.

Note: This subsection is a civil penalty provision (see section 1317E).

- (4) Subsections (1), (2) and (3) are subject to the CCIV rules.

Strict liability offence

- (5) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

1233ZD CCIV rules may create exceptions

- (1) The CCIV rules may provide that specified classes of assets:
- (a) are assets to which the provisions of this Division do not apply; or
 - (b) are assets to which specified provisions of this Division do not apply.
- (2) The CCIV rules may make provision in relation to the holding of assets of a sub-fund of a CCIV that are in a class of assets specified by the CCIV rules for the purposes of subsection (1).

Part 8B.6—External administration and deregistration

Division 1—Preliminary

1235 Construing terms and expressions affected by substituted references

Terms or expressions that have a particular meaning in relation to a sub-fund

- (1) To avoid doubt, if:
- (a) a term or expression has a particular meaning in this Act in relation to a sub-fund of a CCIV; and

EXPOSURE DRAFT

(b) the term or expression occurs in a provision, in relation to a reference (including an implied reference) that is required by this Part to be substituted with a reference to a sub-fund; then the meaning the term or expression has in relation to the sub-fund in the provision is the meaning referred to in paragraph (a).

Note: Examples of terms or expressions that have a particular meaning in relation to a sub-fund of a CCIV include the following:

- (a) contributory (see section 9);
- (b) creditor and secured creditor (see section 9);
- (c) deregister (see Division 8 of this Part);
- (d) extraordinary resolution (see section 9);
- (e) member (see section 1222Q);
- (f) property (see subsection 51F(3));
- (g) solvent and insolvent (see section 1231R);
- (h) special resolution (see section 9).

Terms or expressions that do not have a particular meaning in relation to a sub-fund

(2) If:

- (a) a term or expression has a particular meaning in this Act or in a provision of this Act in relation to a company, corporation or body corporate; and
- (b) because of a reference (including an implied reference) that is required by this Part to be substituted with a reference to a sub-fund, it is necessary to determine the meaning of the term or expression in relation to a sub-fund of a CCIV; and
- (c) the term or expression does not have a particular meaning in relation to a sub-fund of a CCIV;

then the meaning the term or expression has in relation to the sub-fund is the meaning the term or expression would have in relation to the CCIV if the CCIV had no other sub-funds.

Note: For example, the term **related entity** is defined in section 9 in relation to a body corporate, and is not defined in relation to a sub-fund of a CCIV. To determine whether a person is a related entity of a sub-fund:

- (a) first, assume that the CCIV has no other sub-funds (this includes disregarding any shares held by the CCIV that are assets of other sub-funds of the CCIV); and
- (b) then, apply the definition of **related entity** in section 9 to the CCIV based on that assumption.

As a result, a member of the CCIV (paragraph (d) of the definition of **related entity**) will only be a related entity of a sub-fund of the CCIV if the person is a member of the sub-fund.

EXPOSURE DRAFT

Division 2—Arrangements and reconstructions of sub-funds

1236 Object of this Division

The object of this Division is to provide for arrangements and reconstructions of sub-funds of CCIVs to occur in the same way that arrangements and reconstructions of Part 5.1 bodies occur.

1236A Compromises etc. not to be made between 2 or more sub-funds

The Court may not approve a compromise or arrangement between a CCIV and:

- (a) the creditors of 2 or more sub-funds of a CCIV; or
- (b) the members of 2 or more sub-funds of a CCIV.

Note: However, the Court may approve a further compromise or arrangement between the CCIV and another sub-fund. If this is done as part of a scheme for the amalgamation or reconstruction of a sub-fund or sub-funds, the Court may make appropriate orders: see section 1236D.

1236B Applying arrangements and reconstructions provisions to sub-funds

- (1) If a compromise or arrangement is proposed between a CCIV and the creditors of a sub-fund or any class of them, or between a CCIV and the members of a sub-fund or any class of them, the arrangements and reconstructions provisions referred to in subsection (2) apply to the proposed compromise or arrangement subject to:
 - (a) such modifications as are set out in this Division; and
 - (b) such other modifications as are made necessary by the fact that the CCIV is proposing to enter into a compromise or arrangement relating to only one sub-fund of the CCIV.

Arrangements and reconstructions provisions

- (2) The provisions (the *arrangements and reconstructions provisions*) are as follows:
 - (a) Part 5.1 (other than a provision excluded by subsection (3));

EXPOSURE DRAFT

(b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

- (3) For the purposes of subsection (2), the provisions excluded from the arrangements and reconstructions provisions are as follows:
- (a) section 410;
 - (b) subsections 411(1A), (1B) and (1C);
 - (c) paragraph 411(17)(a);
 - (d) a provision specified in regulations made for the purposes of this paragraph.

Translation rules

- (4) In the application of the arrangements and reconstructions provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the Part 5.1 body (the <i>relevant body</i>) (whether the reference is express or implied, and (if the reference is express) whether the Part 5.1 body is referred to as a Part 5.1 body, a company, a body corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	the sub-fund (but see subsections (5) and (6))
2	refers to the directors, or a director, of the relevant body	each of the following: (a) the corporate director; (b) a director of the corporate director
3	refers to an officer of the relevant body	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of <i>officer</i> of a CCIV in section 1224B in relation to the

EXPOSURE DRAFT

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ... sub-fund
4	refers to shares in the relevant body	shares referable to the sub-fund
5	refers to debentures of the relevant body	debentures referable to the sub-fund

Note: For item 2—for example, the draft explanatory statement provided for in subsection 411(2) must state any material interests of the corporate director and of the directors of the corporate director.

- (5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

Note 1: For example, references to the Part 5.1 body, in the context of the body as a party to a compromise or arrangement, are references to the CCIV, because the CCIV is the legal person that is a party to, and that is bound by, the compromise or arrangement.

Note 2: For example, references to the Part 5.1 body, in the context of identifying a liquidator, are references to the sub-fund, because winding up of a CCIV takes place at the sub-fund level.

- (6) If a reference in a provision to the relevant body is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1236C Persons not to be appointed to administer compromise or arrangement

Subsection 411(7) has effect in relation to a CCIV as if the persons referred to in that subsection included the depositary of the CCIV.

1236D Provisions for facilitating reconstruction and amalgamation of sub-funds within a CCIV

- (1) If:

- (a) a compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of a sub-fund or sub-funds or the amalgamation of 2 or more sub-funds; and

EXPOSURE DRAFT

(b) under the scheme, the whole or any part of the undertaking or of the property of a sub-fund concerned in the scheme (the *transferor sub-fund*) is to become a part of the undertaking or of the property of another sub-fund of the same CCIV; the Court may by order provide for any of the matters referred to in subsection 413(1) as if the other sub-fund were the transferee company referred to in that subsection.

- (2) Nothing in this section limits the orders a Court may make under section 413 if it approves a compromise or arrangement relating to a sub-fund of a CCIV.

1236E Court may make order in relation to assets and liabilities of sub-funds

If a Court approves a compromise or arrangement between a CCIV and the creditors of a sub-fund or any class of them, or between a CCIV and the members of a sub-fund or any class of them, the Court may also make any order it considers appropriate in relation to the assets and liabilities of the sub-fund.

Division 3—Receivers, and other controllers, of property of sub-funds

Subdivision A—Preliminary

1237 Object of this Division

The object of this Division is to preserve the segregated application of assets of sub-funds by requiring appointments of controllers to be made separately in respect of the property of each sub-fund of the CCIV.

1237A Definitions

In this Division:

property, in relation to a sub-fund of a CCIV, means property in Australia or outside Australia.

receiver, in relation to property of a sub-fund of a CCIV, includes a receiver and manager.

EXPOSURE DRAFT

Subdivision B—Appointment of controllers

1237B Appointment of a controller of property of a sub-fund of a CCIV

- (1) An appointment covered by subsection (2):
- (a) may not be made in relation to all the property of a CCIV; and
 - (b) may be made only in relation to property of a CCIV that is property of a particular sub-fund of the CCIV.
- (2) The appointments covered by this subsection are appointments, whether made under a power contained in an instrument, or by a Court, of a person to act as a:
- (a) receiver; or
 - (b) receiver and manager; or
 - (c) controller;
- of property of the CCIV.

Note: A Court may appoint a receiver under section 233, 283HB, 1101B or 1323.

1237C Persons not to act as receivers

- (1) A person is not qualified to be appointed, and must not act, as receiver of property of a sub-fund of a CCIV if the person:
- (a) is a secured party in relation to any property (including PPSA retention of title property) of the sub-fund; or
 - (b) is the corporate director of the CCIV; or
 - (c) is the depositary of the CCIV; or
 - (d) is an auditor of the CCIV or the sub-fund; or
 - (e) is a director, secretary, senior manager or employee of a body corporate that is a secured party in relation to any property (including PPSA retention of title property) of the sub-fund; or
 - (f) is not a registered liquidator; or
 - (g) is a director, secretary, senior manager or employee of:
 - (i) the corporate director; or
 - (ii) a body corporate related to the corporate director; or
 - (iii) a body corporate related to the CCIV; or

EXPOSURE DRAFT

-
- 1 (h) unless ASIC directs in writing that this paragraph does not
2 apply in relation to the person in relation to the sub-fund of
3 the CCIV—has at any time within the last 12 months been:
4 (i) a corporate director or promoter of the CCIV; or
5 (ii) a director, secretary, senior manager, employee or
6 promoter of the corporate director or a related body
7 corporate of the CCIV or the corporate director.
- 8 (2) Paragraph (1)(f) does not apply in relation to a body corporate
9 authorised by or under a law of the Commonwealth, of a State or of
10 a Territory to act as receiver of property of the sub-fund concerned.
- 11 (3) Section 418 does not apply to a CCIV.
- 12 (4) In this section:
- 13 *senior manager* does not include a receiver and manager.

1237D Notifying the depositary

- 15 (1) A controller of property of a sub-fund of a CCIV that has a
16 depositary must, as soon as practicable, and in any event within 3
17 business days after the controller's appointment, notify the
18 depositary in writing of the controller's appointment.
- 19 (2) A person who ceases to be a controller of property of a sub-fund of
20 a CCIV that has a depositary must, within 7 business days after so
21 ceasing, notify the depositary in writing that the person has so
22 ceased.

Subdivision C—Application of Part 5.2 to control of property of sub-funds

1237E Applying Part 5.2 etc. to sub-funds

- 26 (1) The controller provisions referred to in subsection (2) apply to a
27 CCIV with:
28 (a) the modifications set out in this Division; and
29 (b) such other modifications as are made necessary by the fact
30 that the provisions are applying to a sub-fund instead of to a
31 corporation.

EXPOSURE DRAFT

Controller provisions

(2) The provisions (the ***controller provisions***) are as follows:

(a) Part 5.2 and Division 2B of Part 5.7B (other than a provision excluded by subsection (3));

(b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

(3) For the purposes of subsection (2), the provisions excluded from the controller provisions are as follows:

(a) section 416;

(b) section 418;

(c) a provision specified in regulations made for the purposes of this paragraph.

Note: Section 1237C applies instead of section 418.

Translation rules

(4) In the application of the controller provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the corporation (the <i>relevant corporation</i>) in relation to whose property a controller has been, or is to be appointed (whether the reference is express or implied, and (if the reference is express) whether the corporation is referred to as a corporation, a company, a body corporate, or in some other way), and the reference is not covered by another item of this table	the sub-fund (but see subsections (5) and (6))
2	refers to the directors, or a director, or the board of the relevant corporation	the corporate director of the CCIV

EXPOSURE DRAFT

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
3	refers to an officer of the relevant corporation	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of <i>officer</i> of a CCIV in section 1224B in relation to the sub-fund
4	refers to shares in the relevant corporation	shares referable to the sub-fund
5	refers to debentures of the relevant corporation	debentures referable to the sub-fund

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

(6) If a reference in a provision to the relevant corporation is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

Subdivision D—Modified duties and powers of receivers etc.

1237F Liability of controller

(1) Section 1224N (about extended liability for acts of agents) does not apply to a person who, as agent for the CCIV, enters into possession or assumes control of any property of a sub-fund of the CCIV for the purposes of enforcing any security interest.

(2) Subsection (1) does not affect the application of section 419.

1237G Powers of receiver

If the CCIV has a depositary, the powers conferred on a receiver of property of a sub-fund under section 420 are taken to include the power to instruct the depositary in relation to dealing with assets of the sub-fund.

EXPOSURE DRAFT

Note: See also section 1226M.

1237H Controller may require reports relating to other sub-funds if necessary

The affairs of a CCIV about which a controller of property of a sub-fund of the CCIV may require a report under section 430 include:

- (a) the affairs of the sub-fund; and
- (b) the affairs of any other sub-fund, to the extent the information about those affairs is required by the controller for the purpose of attaining the objectives for which the controller was appointed.

1237J Controller may inspect books of CCIV

The books of a CCIV that a controller of property of a sub-fund of the CCIV is entitled under section 431 to inspect at any reasonable time include:

- (a) the allocation register kept by the corporate director under section 1233C (about the allocation of assets and liabilities to sub-funds); and
- (b) any books of the CCIV, to the extent the inspection of those books is necessary for the purpose of attaining the objectives for which the controller was appointed.

Note: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

Subdivision E—Other modifications

1237K Application of sub-fund property to meet certain priority payments

If a receiver is appointed in respect of property of a sub-fund of a CCIV, the assets of the sub-fund may be applied for the purposes of paying debts or amounts that, under section 433, must be paid in priority to any claim for principal or interest in respect of the debentures referred to in that section.

EXPOSURE DRAFT

1237L Transfer of books to ASIC etc.

- (1) Before ASIC destroys, in accordance with subsection 422D(9), books relating to the control of property of a sub-fund of a CCIV, ASIC must notify the CCIV that it intends to do so.
- (2) Despite subsection 422D(9), if:
- (a) ASIC retains books under subsection 422D(8) in relation to the control of property of a sub-fund of a CCIV; and
 - (b) the retention period mentioned in that subsection ends; and
 - (c) the CCIV, by resolution of the corporate director, directs ASIC not to destroy the books;
- ASIC must, as soon as practicable, transfer possession or control of those books to the CCIV.

Division 4—Winding up of sub-funds

Subdivision A—Preliminary

1238 Object of this Division

The object of this Division is to preserve the segregated application of assets of sub-funds by requiring a separate winding up procedure for each sub-fund.

1238A No winding up of a CCIV

A CCIV cannot be wound up, or placed in liquidation.

Note: If a CCIV has no sub-funds, ASIC must deregister the CCIV: see section 1242K.

Subdivision B—Application of winding up provisions to winding up of sub-funds

1238B Applying winding up provisions to sub-funds

- (1) An application to wind up a sub-fund of a CCIV, and the winding up of a sub-fund of a CCIV, are regulated:
- (a) by the provisions of this Division; and
 - (b) by the winding up provisions referred to in subsection (2), applying, so far as they are capable of so doing, subject to:
 - (i) such modifications as are set out in this Division; and

EXPOSURE DRAFT

- (ii) such other modifications as are made necessary by the fact that the provisions are applying to a sub-fund instead of to a company.

Winding up provisions

- (2) The provisions (the **winding up provisions**) are as follows:

- (a) sections 53 and 91, paragraph 233(1)(a), Parts 5.4, 5.4A, 5.4B, 5.5 and 5.6, Divisions 2 and 2A of Part 5.7B and Schedule 2 (other than a provision excluded by subsection (3));
- (b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

Note 1: Parts 5.8 and 5.9 also apply to CCIVs with modifications: see Divisions 7 and 8 of this Part.

Note 2: Part 5.4C does not apply to CCIVs or sub-funds of CCIVs.

- (3) For the purposes of subsection (2), the provisions excluded from the winding up provisions are as follows:

- (a) section 459T;
- (b) Division 8 of Part 5.6 (about pooling);
- (c) a provision specified in regulations made for the purposes of this paragraph.

Translation rules

- (4) In the application of the winding up provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the company (the relevant company) that is being, is to be, or has been wound up, or is the subject of an application for a winding up order (whether the reference is express or implied, and (if the reference is express) whether the	the sub-fund (but see subsections (5) and (6))

EXPOSURE DRAFT

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
	company is referred to as a company, a body corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	
2	refers to the directors, or a director, or the board of the relevant company	the corporate director of the CCIV
3	refers to an officer of the relevant company	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of <i>officer</i> of a CCIV in section 1224B in relation to the sub-fund
4	refers to shares in the relevant company	shares referable to the sub-fund
5	refers to debentures of the relevant company	debentures referable to the sub-fund
6	refers to a general meeting, in relation to the relevant company (other than a reference to the company in general meeting)	a members' meeting of the sub-fund (see section 1229B)
7	refers to the relevant company in general meeting	the members of the sub-fund at a members' meeting of the sub-fund
8	refers to the incorporation of the relevant company	the registration of the sub-fund

- 1 Note 1: Item 1—for example, in paragraph 459P(1)(b) there is an implied
2 reference to “of the company” after “a creditor”, and in
3 paragraph 459P(1)(c) there is an implied reference to “of the
4 company” after “a contributory”. For a CCIV, both these implied
5 references would be substituted with implied references to “of the
6 sub-fund”.
- 7 Note 2: Item 4—for example, if the winding up of a sub-fund of a CCIV
8 commences, section 468A will operate to void a transfer of shares in
9 the CCIV only if the shares are referable to the sub-fund.
- 10 Note 3: Item 7—for example, subsection 495(1) requires the members of the
11 sub-fund to appoint a liquidator or liquidators.

EXPOSURE DRAFT

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

Note 1: For example, the references in paragraphs 459P(1)(a) and 462(2)(a) to “the company” are taken to be references to “the CCIV” because an application to the Court would be made by the legal person that is the CCIV.

Note 2: For example, the reference in subsection 461(2) to “A company must lodge” is taken to be a reference to “The CCIV must lodge” because the lodging of documents with ASIC would be done by the legal person that is the CCIV.

Note 3: For example, the reference in section 493 to the “corporate state and corporate powers of the company” is a reference to the “corporate state and corporate powers of the CCIV”.

(6) If a reference in a provision to the relevant company is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

Note: For example, the first reference in paragraph 471B(a) to “the company” is a reference to the CCIV, because only a legal person can be a party to a proceeding in a court. However, the operation of section 471B to prevent proceedings against the CCIV is confined to proceedings that relate to the sub-fund.

1238C References to debts etc. of a sub-fund

For the purposes of the application of the winding up provisions, as those provisions apply subject to item 1 of the table in subsection 1238B(4):

- (a) a debt of the CCIV is taken to be a debt of a sub-fund to the extent (if any) that the debt is a liability of the sub-fund; and
- (b) a claim against the CCIV is taken to be a claim against a sub-fund of the CCIV to the extent (if any) that the claim is a liability of the sub-fund.

Note: A reference to a liability of a sub-fund of a CCIV includes debts and claims: see section 1233A.

EXPOSURE DRAFT

Subdivision C—Winding up of a sub-fund in insolvency

1238D When a sub-fund is presumed to be insolvent

Paragraph 459C(2)(a) is taken to be satisfied in relation to a sub-fund of a CCIV if:

- (a) the CCIV failed (as defined by section 459F) to comply with a statutory demand; and
- (b) the failure affects the sub-fund (see subsection 1238E(3)).

1238E Statutory demand—creditor may serve demand on CCIV

- (1) A person may serve a statutory demand on a CCIV under section 459E.
- (2) However, subsection 459E(2) applies to a statutory demand served on a CCIV as if it also required the demand to specify, in relation to each debt to which the demand relates:
 - (a) the sub-fund or sub-funds of the CCIV of which the debt is a liability; and
 - (b) if the debt is a liability of 2 or more sub-funds of the CCIV—the proportion of the debt allocated to each sub-fund at the time the demand is served.
- (3) Whether a CCIV has failed to comply with a statutory demand is determined under section 459F. If the CCIV has failed to comply with a statutory demand, the failure affects each sub-fund specified in the demand.

Note: The sub-funds specified may be affected by a variation made by the Court under subsection 1238H(3).

1238F Statutory demand—CCIV may apply to set aside demand

- (1) A CCIV may apply to the Court under section 459G for an order setting aside a statutory demand served on the CCIV.
- (2) Division 3 of Part 5.4 applies in relation to the application subject to the modifications set out in sections 1238G to 1238J.

EXPOSURE DRAFT

1238G Statutory demand—determining application to set aside where there is a dispute or offsetting claim

- (1) Paragraph 459H(1)(b) applies in relation to a debt to which a demand relates only if the CCIV has an offsetting claim that is an asset of the sub-fund of which the debt or a proportion of the debt (as the case requires) is a liability.
- (2) Subsection 459H(2) has effect as if it required the Court to calculate a separate substantiated amount in relation to each sub-fund specified in the statutory demand.
- (3) For the purposes of the calculation:
 - (a) the amount of the debt is to be determined having regard only to a debt or a proportion of a debt (as the case requires) that is a liability of the sub-fund; and
 - (b) the amount of an offsetting claim is to be determined having regard only to so much of an offsetting claim as is an asset of the sub-fund.

1238H Statutory demand—determining application to set aside where there is a dispute about the sub-fund

- (1) This section applies if:
 - (a) a CCIV applies under section 459G for an order setting aside a statutory demand served on the CCIV; and
 - (b) within the 21 days referred to in subsection 459G(3):
 - (i) a notice complying with subsection (6) is filed with the Court; and
 - (ii) a copy of the notice is served on the person who served the demand on the CCIV; and
 - (c) the information specified in the notice about a debt is not the same as the information specified in the demand about the debt; and
 - (d) section 459H does not apply.
- (2) The Court must determine the following information for the debt:
 - (a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;
 - (b) if the debt is a liability of 2 or more sub-funds of the CCIV—the proportion of the debt allocated to each sub-fund.

EXPOSURE DRAFT

-
- 1 (3) If the information determined by the Court under subsection (2) is
2 different from the information specified in the demand, the Court
3 may make an order:
4 (a) varying the demand as specified in the order; and
5 (b) declaring the demand to have had effect, as so varied, as from
6 when the demand was served on the CCIV.
7 The order may be made subject to conditions.
- 8 (4) This section has effect subject to section 459J.
- 9 (5) Section 459L has effect as if the orders referred to in that section
10 included an order under this section.
- 11 (6) A notice complies with this subsection in relation to a statutory
12 demand if the notice specifies the following information for each
13 debt to which the demand relates:
14 (a) the sub-fund or sub-funds of the CCIV of which the debt is a
15 liability;
16 (b) if the debt is a liability of 2 or more sub-funds of the CCIV—
17 the amount of the debt allocated to each sub-fund.

18 **1238J Substitution of sub-fund where statutory demand not relied** 19 **on**

- 20 (1) This section applies if:
21 (a) a creditor applies under section 459P for a sub-fund of the
22 CCIV to be wound up in insolvency; and
23 (b) the application does not rely on a failure by the CCIV to
24 comply with a statutory demand.
- 25 (2) The Court may by order substitute, in an application under
26 section 459P, the sub-fund or sub-funds of the CCIV in respect of
27 which the application is made.
- 28 (3) The Court may only make an order if:
29 (a) a notice complying with subsection (5) is filed with the
30 Court; and
31 (b) the Court thinks it is appropriate to do so.
- 32 (4) After the order is made, the application has effect, and may be
33 proceeded with, as if the substituted sub-fund or sub-funds had
34 been the original sub-fund or sub-funds.

EXPOSURE DRAFT

-
- (5) A notice complies with this subsection in relation to a creditor if the notice specifies the following information for each of the creditor's debts:
- (a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;
 - (b) if the debt is a liability of 2 or more sub-funds of the CCIV—the amount of the debt allocated to each sub-fund.

1238K Declaration of solvency

A written declaration under section 494 about the affairs of a sub-fund may be made by the corporate director of the CCIV.

Subdivision D—Modified duties and powers of liquidator of a sub-fund

1238L Disqualification of liquidator

Paragraph 532(2)(c) has effect in relation to a sub-fund of a CCIV as if the persons referred to in that paragraph included the following:

- (a) a director of the corporate director of the CCIV;
- (b) the depositary of the CCIV.

1238M Notifying the depositary

- (1) A liquidator of a sub-fund of a CCIV that has a depositary must, as soon as practicable, and in any event within 3 business days after the liquidator's appointment, notify the depositary in writing of the liquidator's appointment.
- (2) If a liquidator of a sub-fund of a CCIV that has a depositary resigns or is removed from office, the liquidator must, as soon as practicable, and in any event within 3 business days after the resignation or removal, notify the depositary in writing of that fact.
- (3) In this section:
liquidator includes a provisional liquidator.

EXPOSURE DRAFT

1238N Duties and powers of liquidator

Liquidator's powers relate only to the sub-fund

- (1) The functions and powers of a liquidator of a sub-fund of a CCIV:
- (a) include functions and powers conferred on the liquidator of a sub-fund of a CCIV by a provision of this Chapter; and
 - (b) to the extent those functions and powers are conferred on the liquidator by the winding up provisions referred to in subsection 1238B(2), as those provisions apply under this Division, extend only to matters that relate solely to the carrying on of the business of the sub-fund.
- (2) However, the books of a CCIV that a liquidator of a sub-fund is entitled under subsection 477(3) to inspect at any reasonable time include:
- (a) the allocation register kept by the corporate director under section 1233C (about the allocation of assets and liabilities to sub-funds); and
 - (b) any other books of the CCIV, to the extent the inspection of those books is necessary for the liquidator to perform or exercise the functions or powers of that office.

Note 1: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

Note 2: A provisional liquidator also has the power under subsection 477(3): see paragraph 472(4)(b).

Liquidator may instruct depositary

- (3) If the CCIV has a depositary, the powers conferred on a liquidator of a sub-fund are taken to include the power to instruct the depositary in relation to dealing with assets of the sub-fund.

Note: See also section 1226M.

Liquidator may inspect certain books of the depositary

- (4) If the CCIV has a depositary, the liquidator is entitled to inspect at any reasonable time books of the depositary relating to the CCIV, to the extent the inspection of those books is necessary for the liquidator to perform or exercise the functions or powers of that office.

Note: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

EXPOSURE DRAFT

Definitions

(5) In this section:

liquidator includes a provisional liquidator.

1238P Retention and destruction of books

(1) The following provisions do not apply in relation to a winding up of a sub-fund:

- (a) subsection 70-35(3) of Schedule 2 (about when an external administrator is not required to retain books);
- (b) subsection 70-35(4) of Schedule 2 (about when an external administrator may destroy books).

Liquidator must transfer books to CCIV

(2) If:

- (a) books are retained under section 70-35 of Schedule 2 by a liquidator of a sub-fund in relation to a winding up of the sub-fund; and
- (b) the retention period mentioned in subsection 70-35(1) of that Schedule ends; and
- (c) before the end of the retention period, the CCIV requests the liquidator by notice in writing to transfer possession or control of the books to the CCIV;

the liquidator must, as soon as practicable after the end of the retention period, transfer possession or control of those books to the CCIV.

(3) Otherwise, the books may be destroyed at the end of the retention period.

Offence

(4) A person commits an offence if:

- (a) the person is subject to a requirement under subsection (2); and
- (b) the person intentionally or recklessly fails to comply with the requirement.

EXPOSURE DRAFT

Subdivision E—Modified duties and powers of officers of corporate director and CCIV

1238Q Officers of corporate director to help liquidator

(1) Section 530A applies as if each of the following were an officer of a CCIV:

- (a) an officer of the CCIV;
- (b) an officer of the corporate director of the CCIV;
- (c) an officer of a former corporate director of the CCIV.

(2) Paragraph (1)(a) is included for the avoidance of doubt.

(3) In this section:

officer includes former officer.

1238R Corporate director may retain certain books

(1) The corporate director of a CCIV is entitled, as against a liquidator of a sub-fund of the CCIV, to retain possession of books of the CCIV that relate to:

- (a) the business or affairs of the CCIV as a whole; or
- (b) the business or affairs of other sub-funds of the CCIV.

Note: Books that the corporate director is not entitled to retain must be delivered to the liquidator: see section 530A.

(2) Subsection (1) applies despite subsection 530B(1).

(3) In this section:

liquidator includes a provisional liquidator.

1238S Corporate director may access certain books

The corporate director of a CCIV is entitled to inspect at any reasonable time books relating to the winding up of a sub-fund of the CCIV, to the extent the inspection of those books is necessary for the corporate director to perform or exercise the functions or powers of that office.

Note: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

EXPOSURE DRAFT

1238T Corporate director may direct ASIC not to destroy books

- (1) Before ASIC destroys, in accordance with subsection 70-31(9) of Schedule 2, books relating to the winding up of a sub-fund of a CCIV, ASIC must notify the CCIV that it intends to do so.
- (2) Despite subsection 70-31(9) of Schedule 2, if:
- (a) ASIC retains books under subsection 70-31(8) of Schedule 2 in relation to the winding up of a sub-fund of a CCIV; and
 - (b) the retention period mentioned in that subsection ends; and
 - (c) the CCIV, by resolution of the corporate director, directs ASIC not to destroy the books;
- ASIC must, as soon as practicable, transfer possession or control of those books to the CCIV.

1238U Mandatory examination

- (1) Section 596A applies in relation to a CCIV as if the following were officers of the CCIV:
- (a) a natural person who is an officer of the CCIV;
 - (b) a natural person who is a director of the corporate director of the CCIV.
- (2) Paragraph (1)(a) is included for the avoidance of doubt.

1238V Court may make order imposing liability on unlicensed person operating CCIV

Where:

- (a) a sub-fund of a CCIV is being wound up; and
 - (b) within the period of 4 years ending before the relation-back day, a person not meeting the requirements in subsection 1224F(1) for the director of a CCIV operated the business and conducted the affairs of the CCIV;
- the Court may, on the application of the sub-fund's liquidator, order that the person is personally liable for so much of the sub-fund's debts and liabilities as does not exceed an amount specified in the order.

EXPOSURE DRAFT

Subdivision F—Proof and ranking of claims

1238W Liquidator must be satisfied debt or claim is a liability of the sub-fund

- (1) The liquidator of a sub-fund must determine that the whole or a part of a debt of the CCIV is not admissible to proof against the sub-fund if the liquidator is satisfied that the debt or the part of the debt (as the case requires) is not a liability of the sub-fund.
- (2) Such a determination does not have the effect of extinguishing the debt or the part of the debt.

1238X Determination of debts and claims that relate to the business of 2 or more sub-funds and are of uncertain value

- (1) This section applies if, in the winding up of a sub-fund, the liquidator admits a debt or claim that:
 - (a) is a liability of the CCIV that does not relate solely to the business of the sub-fund; and
 - (b) as at the relevant date, did not bear a certain value.

Note: If the liability relates solely to the business of the sub-fund but is of uncertain value, the liquidator must estimate the value of the debt or claim (paragraph 554A(2)(a)) or refer the question of the value of the debt or claim to the Court (paragraph 554A(2)(b)).

- (2) Section 554A applies in relation to the debt or claim as if the value of the debt or claim that is to be estimated as at the relevant date were the value of the whole of the debt or claim (not just the proportion that is applicable to the sub-fund under subsection 1233L(2)).
- (3) However, despite subsection 554A(8), for the purposes of Division 6 of Part 5.6, the amount of the debt or claim that is admissible to proof is the product of:
 - (a) the value as estimated or worked out under section 554A (as modified by this section); and
 - (b) the proportion of the liability applicable to the sub-fund under subsection 1233L(2).

EXPOSURE DRAFT

1238Y Application of sub-fund property

If a sub-fund of a CCIV is being wound up, the assets of the sub-fund may be applied for the purposes of paying debts and claims that, under section 556 as it applies in relation to the winding up of the sub-fund, must be paid in priority to all other unsecured debts and claims.

Subdivision G—Powers of Courts

1238Z Warrant in relation to books

- (1) This section applies in relation to a warrant issued by a Court under subsection 530C(2) on application by the liquidator or provisional liquidator of a sub-fund of a CCIV.
- (2) The books of a CCIV that may be searched for under the warrant are any books of the CCIV.
- (3) The books of the CCIV that may be seized under the warrant are books of the CCIV that relate to the sub-fund.

Specified person to be in possession of warrant

- (4) When executing the warrant, the specified person must be in possession of the warrant or a copy of the warrant.

Notification of entry

- (5) Subsections (6) and (7) apply if:
 - (a) the warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (6) Before entering the premises under the warrant, the specified person must:
 - (a) announce that the person is authorised to enter the premises; and
 - (b) show the occupier or other person evidence of the person's identity that:
 - (i) includes a photograph of the person; and
 - (ii) has not expired.
- (7) The specified person must, as soon as practicable:

EXPOSURE DRAFT

-
- (a) make a copy of the warrant available to the occupier or other person; and
- (b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under this section and section 530C.

Books to be used only for purpose of liquidation

- (8) A book of the CCIV seized under the warrant may be used only for the purpose for which it was seized.

Return of seized things

- (9) Despite subsection 530C(4), and subject to any contrary order of the Court, a person who has custody of property or a book because of the execution of the warrant must take reasonable steps to return the property or book to the CCIV when the property or book is no longer required to be retained for the purpose for which it was seized.

Receipts

- (10) If property or a book is seized under the warrant, the specified person must provide a receipt for the property or book.
- (11) If 2 or more books or items of property are seized, they may be covered by the one receipt.

Subdivision H—Recovering property

1238ZA Presumptions to be made in recovery proceedings

A reference in section 588E to financial records a company is required by subsection 286(1) to keep is taken, in relation to a winding up of a sub-fund of a CCIV, to be a reference to both of the following:

- (a) financial records that the CCIV is required to keep and retain for the sub-fund under subsection 286(1), as that subsection applies in relation to the sub-fund under section 1232A;
- (b) financial records that the CCIV is required to keep and retain for itself under subsection 286(1), as that subsection applies to the CCIV under section 1232.

EXPOSURE DRAFT

1238ZB Directors of the corporate director

- (1) Sections 588FDA and 588FGA apply in relation to a sub-fund of a CCIV as if each of the following were a director of a CCIV:
- (a) a director of the CCIV;
 - (b) a director of the corporate director of the CCIV.
- (2) Paragraph (1)(a) is included for the avoidance of doubt.

1238ZC Vesting of PPSA security interests if collateral not registered within time

- Section 588FL applies in relation to a PPSA security interest granted by a CCIV if:
- (a) an order is made, or a resolution is passed, for the winding up of a sub-fund of the CCIV; and
 - (b) the PPSA security interest is in collateral that is an asset of the sub-fund of the CCIV.

Division 5—Recovering property of sub-funds

1239 Duties owed by directors of corporate director of a CCIV

The object of this Division is to ensure that the officers of the corporate director of a CCIV, instead of the corporate director itself, owe the duties in Divisions 3, 4, 5 and 6 of Part 5.7B.

1239A Applying property recovery provisions to CCIVs

- (1) The property recovery provisions referred to in subsection (2) apply to a CCIV subject to:
- (a) such modifications as are set out in this Division; and
 - (b) such other modifications as are made necessary by the facts that:
 - (i) for a CCIV, solvency and insolvency are determined at the level of a sub-fund, instead of at the level of the CCIV; and
 - (ii) the officers to whom the provisions are directed are the officers of the corporate director, instead of the officers of the CCIV.

EXPOSURE DRAFT

Property recovery provisions

- (2) The provisions (the ***property recovery provisions***) are as follows:
- (a) Divisions 3, 4, 5 and 6 of Part 5.7B (other than a provision excluded by subsection (3));
 - (b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).
- (3) For the purposes of subsection (2), the regulations may specify provisions that are excluded from the property recovery provisions.

Translation rules

- (4) In the application of the property recovery provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the company (the <i>relevant company</i>) in relation to which the provision applies (whether the reference is express or implied, and (if the reference is express) whether the company is referred to as a company, a body corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	the sub-fund (but see subsections (5) and (6))
2	refers to the directors, or a director, or the board of the relevant company	the directors, or a director, or the board of the corporate director of the CCIV
3	refers to an officer of the relevant company	an officer of the corporate director
4	refers to shares in the relevant company	shares referable to the sub-fund

EXPOSURE DRAFT

- (5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).
- (6) If a reference in a provision to the relevant company is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1239B References to incurring debts

For the purposes of the application of the property recovery provisions, as those provisions apply subject to item 1 of the table in subsection 1239A(4), a sub-fund is taken to incur a debt if:

- (a) the CCIV incurs the debt; and
- (b) the debt is, to any extent, a liability of the sub-fund.

The sub-fund incurs the debt at the time the CCIV incurs the debt.

1239C When debts arise in relation to redeemable shares

- (1) For the purposes of section 588G, if a CCIV takes action set out in column 1 of an item of the following table, it incurs a debt at the time set out in column 2 of the item.

When debts are incurred

Item	Column 1 Action of company	Column 2 When debt is incurred
1	redeeming redeemable shares that are redeemable only at its option	when the company exercises the option
2	issuing redeemable shares that are issued on terms that they are liable to be redeemed otherwise than only at its option	when the shares are issued
3	converting under section 1231C a share that is not a redeemable share into a share that is liable to be redeemed otherwise than only at its option	when the shares are converted

- (2) This section has effect in relation to a CCIV in addition to the table set out in subsection 588G(1A).

Division 6—External administration offences

1240 Applying external administration offences to CCIVs

- (1) The external administration offences provisions referred to in subsection (3) apply to a CCIV.
- (2) In addition to the application referred to in subsection (1), the external administration offences provisions apply to a CCIV subject to:
- (a) such modifications as are set out in this Division; and
 - (b) such other modifications as are necessary.

External administration offences provisions

- (3) The provisions (the *external administration offences provisions*) are as follows:
- (a) Part 5.8 (other than a provision excluded by subsection (4));
 - (b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (4)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).
- (4) For the purposes of subsection (3), the regulations may specify provisions that are excluded from the property recovery provisions.

Translation rules

- (5) In the application of the external administration offences provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the company (the <i>relevant company</i>) in relation to which the provision applies (whether the	the sub-fund (but see subsections (6) and (7))

EXPOSURE DRAFT

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
	reference is express or implied, and (if the reference is express) whether the company is referred to as a company, a body corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	
2	refers to the directors, or a director, or the board of the relevant company	the corporate director of the CCIV
3	refers to an officer of the relevant company	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of <i>officer</i> of a CCIV in section 1224B in relation to the sub-fund
4	refers to shares in the relevant company	shares referable to the sub-fund

- (6) Despite item 1 of the table in subsection (5), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).
- (7) If a reference in a provision to the relevant company is, as a result of subsection (6), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1240A Interpretation of ceased to carry on business

- (1) For the purposes of Part 5.8, a sub-fund is taken to have ceased to carry on business only if:
- (a) 2 months have passed since a notice under subsection 1242(5) (about voluntary deregistration of a sub-fund) relating to the sub-fund was published and ASIC

EXPOSURE DRAFT

has not been informed that the part of the business of the CCIV that is registered as the sub-fund is being carried on; or
(b) ASIC has published a notice under subsection 1242B(1) (about ASIC initiated deregistration of a sub-fund) relating to the sub-fund.

- (2) Subsection 589(3) does not apply to determine when a sub-fund of a CCIV is taken to have ceased to carry on business.

1240B Frauds by officers

- (1) Section 596 applies in relation to a CCIV as if the following were officers of the CCIV:
- (a) a natural person who is an officer of the CCIV;
 - (b) a natural person who is a director of the corporate director of the CCIV.
- (2) Paragraph (1)(a) is included for the avoidance of doubt.

Division 7—Miscellaneous

1241 Applying external administration miscellaneous provisions to sub-funds

- (1) The external administration miscellaneous provisions referred to in subsection (2) apply to a CCIV subject to:
- (a) such modifications as are set out in this Division; and
 - (b) such other modifications as are necessary.

External administration miscellaneous provisions

- (2) The provisions (the *external administration miscellaneous provisions*) are as follows:
- (a) Part 5.9 (other than a provision excluded by subsection (3));
 - (b) the other provisions of this Act and the ASIC Act (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).
- (3) For the purposes of subsection (2), the regulations may specify provisions that are excluded from the external administration miscellaneous provisions.

EXPOSURE DRAFT

Translation rules

- (4) In the application of the external administration miscellaneous provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
1	refers to the corporation (the relevant corporation) in relation to which the provision applies (whether the reference is express or implied, and (if the reference is express) whether the corporation is referred to as a company, a body corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	the sub-fund (but see subsections (5) and (6))
2	refers to an officer of the relevant corporation	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of officer of a CCIV in section 1224B in relation to the sub-fund
3	refers to shares in the relevant corporation	shares referable to the sub-fund

- (5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).
- (6) If a reference in a provision to the relevant corporation is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

EXPOSURE DRAFT

Division 8—Deregistration and transfer of registration

Subdivision A—Deregistration

1242 Deregistration of a sub-fund—voluntary

Who may apply for deregistration

- (1) An application to deregister a sub-fund of a CCIV may be lodged with ASIC by:

- (a) the CCIV; or
- (b) the corporate director of the CCIV; or
- (c) a liquidator of the sub-fund.

If the CCIV lodges the application, it must nominate a person to be given notice of the deregistration.

Circumstances in which application can be made

- (2) A person may apply only if:
- (a) the sub-fund has no assets or liabilities; and
 - (b) the CCIV is not a party to any legal proceedings that relate to the sub-fund.
- (3) The application must be in the prescribed form.

ASIC may ask for information about officers

- (4) The applicant must give ASIC any information that ASIC requests about the following officers:
- (a) the current and former officers of the CCIV;
 - (b) the current and former officers of the corporate director of the CCIV.

Deregistration procedure

- (5) If:
- (a) ASIC decides to deregister the sub-fund under this section; and
 - (b) ASIC is not aware of any failure to comply with subsections (1) to (4);

ASIC must:

EXPOSURE DRAFT

-
- 1 (c) give notice of the proposed deregistration on ASIC database;
2 and
3 (d) publish notice of the proposed deregistration in the
4 prescribed manner.

5 (6) When 2 months have passed since the publication of the notice
6 under paragraph (5)(d), ASIC may deregister the sub-fund.

- 7 (7) ASIC must give notice of the deregistration to:
8 (a) the applicant; or
9 (b) the person nominated in the application to be given the
10 notice.

11 *Notices taken to have been given under section 601AA*

- 12 (8) For the purposes of the provisions of this Act (other than a
13 provision of this Chapter):
14 (a) a notice given under paragraph (5)(c) is taken to have been
15 given under paragraph 601AA(4)(c); and
16 (b) a notice published under paragraph (5)(d) is taken to have
17 been published under subsection 601AA(4)(d).

18 *ASIC must not deregister a sub-fund that is an Australian passport*
19 *fund if the fund has certain members*

- 20 (9) However, ASIC must not decide, under this section, to deregister a
21 sub-fund that is an Australian passport fund if:
22 (a) there are members of the fund who became members
23 (whether in this jurisdiction or any host economy for the
24 fund) after the fund became an Australian passport fund; or
25 (b) there are members of the fund who became members
26 (whether in this jurisdiction or any host economy for the
27 fund) on the expectation that the fund would become an
28 Australian passport fund.

- 29 (10) For the purposes of subsection (9), ignore any member of the fund
30 that:
31 (a) is, or has at any time been, the operator of the fund; or
32 (b) is a related party of an entity that is, or has at any time been,
33 the operator of the fund.

34 Note: See section 1216B for the circumstances in which a person becomes a
35 member of a fund on the expectation that it would become an
36 Australian passport fund.

EXPOSURE DRAFT

1242A Deregistration of a sub-fund—ASIC initiated

Circumstances in which ASIC may deregister

- (1) ASIC may decide to deregister a sub-fund of a CCIV if:
 - (a) the CCIV has not lodged any documents that relate to the sub-fund under this Act in the last 18 months; and
 - (b) ASIC has no reason to believe that the part of the business of the CCIV that is registered as the sub-fund is being carried on.
- (2) ASIC may also decide to deregister a sub-fund of a CCIV if:
 - (a) the CCIV's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment; and
 - (b) the review fee is to any extent a liability of the sub-fund.
- (3) ASIC may also decide to deregister a sub-fund of a CCIV if the sub-fund is being wound up and ASIC has reason to believe that:
 - (a) the liquidator of the sub-fund is no longer acting; or
 - (b) the sub-fund's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or
 - (c) the sub-fund's affairs have been fully wound up under Part 5.4 (as modified by this Part) and the assets of the sub-fund are not enough to cover the costs of obtaining a Court order for the sub-fund's deregistration.
- (4) However, ASIC must not decide, under this section, to deregister a sub-fund that is an Australian passport fund if ASIC is of the opinion that to do so would not be in the interests of:
 - (a) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and
 - (b) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.
- (5) For the purposes of subsection (4), ignore any member of the fund that:
 - (a) is, or has at any time been, the operator of the fund; or

EXPOSURE DRAFT

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.

Show cause notice

(6) Before deciding to deregister a sub-fund, ASIC must give the CCIV a written notice that requires the CCIV to show cause, at a hearing before a specified person, why the sub-fund should not be deregistered.

(7) The notice must specify:

(a) the grounds on which it is proposed to deregister the sub-fund; and

(b) a reasonable time and place at which the hearing is to be held.

However, if the CCIV consents, the person conducting the hearing may fix a different time or place.

(8) The person conducting the hearing must:

(a) give the CCIV an opportunity to be heard at the hearing; and

(b) give ASIC:

(i) a report about the hearing; and

(ii) a recommendation about the grounds in the notice on which it is proposed to deregister the sub-fund.

(9) After considering the report and recommendation, ASIC may decide to:

(a) take no further action in relation to the matter and give written advice of that decision to the CCIV; or

(b) deregister the sub-fund.

(10) Neither of the following is a legislative instrument:

(a) a notice under subsection (6);

(b) a report under subsection (8) (if it is in writing).

1242B Process for ASIC initiated deregistration of a sub-fund

(1) If ASIC decides under section 1242A to deregister a sub-fund of a CCIV, it must:

EXPOSURE DRAFT

-
- 1 (a) give notice setting out the date on which ASIC proposes to
2 deregister the sub-fund:
3 (i) to the CCIV; and
4 (ii) to the liquidator of the sub-fund (if any); and
5 (iii) to the corporate director; and
6 (iv) on ASIC database; and
7 (b) publish notice of the date on which ASIC proposes to
8 deregister the sub-fund in the prescribed manner.
- 9 (2) A notice under paragraph (1)(a) must be given at least 5 business
10 days before the sub-fund is deregistered.
- 11 (3) ASIC may deregister the sub-fund if:
12 (a) 5 business days have passed since the publication of the
13 notice under paragraph (1)(b); and
14 (b) at the time ASIC deregisters the sub-fund, ASIC has reason
15 to believe that there is no property of the CCIV to which
16 section 1233K (about property that has to be converted)
17 applies.
- 18 (4) ASIC does not have to give a person notice under paragraph (1)(a)
19 if ASIC does not have the necessary information about the person's
20 identity or address.
- 21 (5) If ASIC deregisters a sub-fund of a CCIV under this section, ASIC
22 must give notice that the fund has been deregistered, and the date
23 on which it has been deregistered, to everyone who was notified of
24 the proposed deregistration under subparagraph (1)(a)(ii) or (iii).
- 25 (6) The notice must be given within 5 business days after the sub-fund
26 is deregistered.
- 27 *Notices taken to have been given under section 601AB*
- 28 (7) For the purposes of the provisions of this Act (other than a
29 provision of this Chapter):
30 (a) a notice given under paragraph (1)(a) is taken to have been
31 given under paragraph 601AB(3)(a); and
32 (b) a notice published under paragraph (1)(b) is taken to have
33 been published under subsection 601AB(3)(b).
-

EXPOSURE DRAFT

1242C Deregistration of a sub-fund—following amalgamation or winding up

ASIC must deregister a sub-fund of a CCIV if the Court orders the deregistration of the sub-fund under:

- (a) paragraph 413(1)(d) (reconstruction and amalgamation of Part 5.1 bodies); or
- (b) paragraph 481(5)(b) (release of liquidator); or
- (c) subsection 509(2) (deregistration after end of administration return is lodged).

Note: These provisions apply to a sub-fund of a CCIV with modifications: see Divisions 1 to 7 of this Part.

1242D Effect of deregistration of a sub-fund

Effect on assets of the CCIV

- (1) Subsections 601AD(1A) to (4) and section 601AE apply in relation to the deregistration of a sub-fund of a CCIV.

Note: Subsection 601AD(1) does not apply in relation to the deregistration of a sub-fund of a CCIV. The CCIV will continue to exist until the CCIV itself is deregistered.

- (2) Those provisions apply as if a reference to property were instead a reference to property of the sub-fund.

Note: For references to property of a sub-fund, see subsection 51F(3).

Books

- (3) If a sub-fund of a CCIV is deregistered, the CCIV must keep the CCIV's books that relate to the sub-fund (other than books that a liquidator has to keep under subsection 70-35(1) of Schedule 2) for 3 years after the deregistration.

Note: If the CCIV itself is deregistered, the corporate director of the CCIV immediately before it is deregistered is required to retain all books of the CCIV including these books: see section 1242L.

- (4) An offence based on subsection (3) is an offence of strict liability.

Consequences of deregistration on status as an Australian passport fund

- (5) If:

-
- 1 (a) a sub-fund of a CCIV is deregistered; and
2 (b) the sub-fund was an Australian passport fund;
3 ASIC must annotate the Register of Passport Funds to indicate that
4 the sub-fund is no longer an Australian passport fund, or cause that
5 annotation to be made on the Register.

6 **1242E The Commonwealth's and ASIC's power to fulfil outstanding**
7 **obligations in relation to deregistered sub-fund**

8 The Commonwealth or ASIC may do an act on behalf of the CCIV
9 of a deregistered sub-fund or the liquidator of the sub-fund if the
10 Commonwealth or ASIC is satisfied that the CCIV or liquidator
11 would be bound to do the act if the sub-fund had not been
12 deregistered.

13 Note: This power is a general one and is not limited to acts in relation to
14 property vested in the Commonwealth under subsection 601AD(1A),
15 or ASIC under subsection 601AD(2). The Commonwealth or ASIC
16 has all the powers that automatically flow from the vesting of property
17 under that subsection (see subsections 601AD(3A) and (4)) and may
18 exercise those powers whether or not the CCIV was bound to do so.

19 **1242F Claims against insurers in relation to deregistered sub-fund**

20 A person may recover from the insurer of a CCIV an amount that
21 was payable to the CCIV under the insurance contract if:

- 22 (a) a sub-fund of the CCIV is deregistered; and
23 (b) the CCIV has a liability to the person that was a liability of
24 the sub-fund; and
25 (c) the insurance contract covered that liability immediately
26 before the sub-fund was deregistered.

27 **1242G Reinstatement of a sub-fund**

- 28 (1) The registration of a sub-fund of a CCIV may be reinstated under
29 section 601AH as if the sub-fund were a company.

30 Note: Notice of the reinstatement must be given: see section 1242J.

- 31 (2) If the registration of a sub-fund of a CCIV is reinstated under
32 section 601AH, the sub-fund is taken to have been registered
33 throughout the period it was deregistered.

- 34 (3) The Court's power to make an order under subsection 601AH(3)
35 includes the power to make an order in relation to the following:
-

EXPOSURE DRAFT

-
- 1 (a) the assets or liabilities of a sub-fund of a CCIV whose
2 registration is reinstated;
3 (b) the assets or liabilities of any other sub-fund of the CCIV
4 which is affected by the reinstatement.
- 5 (4) If the registration of a sub-fund of a CCIV is reinstated under
6 section 601AH, any property of the CCIV that was property of the
7 sub-fund that is still vested in the Commonwealth or ASIC reverts
8 in the CCIV. If the CCIV held particular property subject to a
9 security or other interest or claim, the CCIV takes the property
10 subject to that interest or claim.
- 11 Note: The CCIV must allocate the property to the sub-fund in accordance
12 with Subdivision B of Division 3 of Part 8B.5.
- 13 (5) Subsections 601AH(1A), (4), (4A) and (5) do not apply in relation
14 to the reinstatement of the registration of a sub-fund of a CCIV.
- 15 *Registration as an Australian passport fund not reinstated*
- 16 (6) The reinstatement of the registration of a sub-fund of a CCIV does
17 not result in the sub-fund's registration as a passport fund under
18 Part 8A.3 being reinstated, even if the sub-fund was an Australian
19 passport fund immediately before its deregistration.

1242H CCIV reinstated following reinstatement of a sub-fund

- 20
- 21 (1) If a CCIV is deregistered and:
22 (a) ASIC reinstates the registration of a sub-fund of the CCIV
23 under subsection 601AH(1); or
24 (b) the Court makes an order that ASIC reinstate the registration
25 of the sub-fund under subsection 601AH(2);
26 ASIC must also reinstate the registration of the CCIV.
- 27 Note: Notice of the reinstatement of the registration of the CCIV must be
28 given: see section 1242J.
- 29 *Effect of reinstatement*
- 30 (2) If the registration of a CCIV is reinstated the CCIV is taken to have
31 continued in existence as if it had not been deregistered.
- 32 Note: Any property of the CCIV that comprised assets of the sub-fund that is
33 still vested in the Commonwealth or ASIC reverts in the CCIV: see
34 subsection 1242G(4).

EXPOSURE DRAFT

-
- (3) To avoid doubt, the reinstatement of the registration of the CCIV also has the effect of reinstating, at the time the registration is reinstated, ASIC's record, kept as part of the registration, of:
- (a) the company that is the corporate director or temporary corporate director of the CCIV; and
 - (b) if the CCIV had a depositary—the body that is the depositary or temporary depositary of the CCIV.

Note 1: The company named in the record as the corporate director or temporary corporate director of the CCIV is the corporate director of the CCIV (see subsection 1224(3)). See section 1224S for what happens if the corporate director does not meet the requirements of section 1224F.

Note 2: If the CCIV had a depositary, the body named in the record as the depositary or temporary depositary of the CCIV is the depositary of the CCIV (see subsection 1226(4)). See section 1226P for what happens if the depositary does not meet the requirements of section 1226A.

1242J Notices relating to reinstatement of a sub-fund

- (1) If the registration of a sub-fund of a CCIV is reinstated under section 601AH, ASIC must publish notice in the Gazette and give notice to the persons in subsection (2) of the following:
- (a) the reinstatement of the registration of the sub-fund;
 - (b) if as a result of reinstating the sub-fund the registration of the CCIV is also reinstated under section 1242H—the reinstatement of the registration of the CCIV.
- (2) The following persons must be given notice under subsection (1):
- (a) the corporate director;
 - (b) if the CCIV has a depositary at the time of giving the notice—the depositary.

1242K Deregistration of a CCIV

CCIV must be deregistered if it has no registered sub-funds

- (1) If, as the result of ASIC deregistering a sub-fund of a CCIV, the CCIV has no registered sub-funds, ASIC must deregister the CCIV.

Note: Subject to this Subdivision, sections 601AD to 601AG apply in relation to the deregistration of the CCIV.

EXPOSURE DRAFT

(2) ASIC must give the corporate director of the CCIV written notice that the CCIV has been deregistered and the date on which it has been deregistered.

(3) The notice must be given within 5 business days after the date the CCIV has been deregistered.

CCIV may not be deregistered under section 601AA, 601AB or 601AC

(4) ASIC may not deregister a CCIV under section 601AA, 601AB or 601AC.

1242L Books of the CCIV to be kept by former corporate director

(1) If a CCIV is deregistered, the corporate director of the CCIV immediately before the deregistration must keep the CCIV's books (other than books that a liquidator has to keep under subsection 70-35(1) of Schedule 2) for 3 years after the deregistration.

(2) An offence based on subsection (1) is an offence of strict liability.

(3) Books that the corporate director of the CCIV is required to keep under subsection (1) are taken to be books of the corporate director for the purposes of subsections 601AD(5) to (7) as those sections apply in relation to deregistration of the corporate director.

Note: If the corporate director is deregistered, the directors of the corporate director immediately before deregistration must keep the corporate director's books for 3 years after the deregistration: see subsection 601AD(5).

(4) Subsections 601AD(5) to (7) do not apply in relation to the deregistration of a CCIV.

1242M A CCIV may not be reinstated under section 601AH

The registration of a CCIV may not be reinstated under section 601AH.

Note: If a CCIV has been deregistered and the registration of a sub-fund is reinstated under section 601AH, ASIC must reinstate the registration of the CCIV: see section 1242H.

EXPOSURE DRAFT

Subdivision B—Transfer of registration

1242N Registration of CCIV cannot be transferred

Part 5A.2 does not apply to a CCIV.

Part 8B.7—Control, financial services and disclosure

Division 1—Takeovers, compulsory acquisitions and buy-outs

1243 Meaning of *securities*

The term *securities* has the same meaning in this Part as it has in Chapters 6 to 6CA (see subsection 92(3)).

1243A Takeovers—no prohibition on acquisitions of shares in a CCIV

(1) The prohibitions in subsections 606(1) and (2) do not apply to an acquisition of a relevant interest in issued voting shares in a CCIV (including an acquisition resulting from an acquisition of a legal or equitable interest in securities).

(2) Nothing in subsection (1) prevents an offer for securities in a CCIV from constituting an off-market bid.

Note: In certain circumstances, securities issued under an off-market bid are *ED securities*: see section 111AG.

(3) However, Chapter 6B does not apply in relation to an off-market bid for securities in a CCIV.

1243B Takeovers Panel—declaration of unacceptable circumstances may not be made in relation to a CCIV

The Panel may not declare under section 657A circumstances in relation to the affairs of a CCIV to be unacceptable circumstances.

EXPOSURE DRAFT

1243C Compulsory acquisition—not available for securities in a CCIV

Securities in a CCIV may not be compulsorily acquired or bought out under Chapter 6A.

Division 2—Continuous disclosure

1243D Continuous disclosure—CCIVs

Paragraph 675(2)(c) applies in relation to securities in a CCIV in the same way the paragraph applies in relation to securities that are managed investment products.

Division 3—Fundraising

1243E Fundraising rules do not apply to CCIVs

Subject to subsection 1243F(6), in Chapter 6D, *securities* does not include a security in a CCIV.

1243F Offering securities of a CCIV or sub-fund that does not exist

- (1) A person must not offer securities of a CCIV that does not exist if the offer would give rise to an obligation to give a Product Disclosure Statement under Chapter 7 (as that Chapter applies to securities in a CCIV under Division 4 of Part 8B.7) if the CCIV did exist.
- (2) A person must not offer securities of a CCIV that are referable to a sub-fund of the CCIV that has not been established if the offer would give rise to an obligation to give a Product Disclosure Statement under Chapter 7 (as that Chapter applies to securities in a CCIV under Division 4 of Part 8B.7) if the sub-fund were established.

Note 1: For when a sub-fund is established, see section 1222T.

Note 2: For when shares and debentures are referable to a sub-fund of a CCIV, see sections 1231 (for shares) and 1231ZD (for debentures).
- (3) Subsections (1) and (2) apply even if it is proposed to incorporate the CCIV or register the sub-fund.

EXPOSURE DRAFT

(4) In this section, *securities* has the same meaning as it has in Chapter 6D (apart from section 1243E).

(5) For the purposes of subsection (2), a security referred to in paragraph (c) or (d) of the definition of *security* in section 761A is taken to be referable to the sub-fund of the CCIV to which the relevant security covered by paragraph (a) or (b) of that definition is, or would be, referable.

Note: For example, an option to acquire by way of issue a share in a CCIV (paragraph (d) of the definition) is referable to the sub-fund of the CCIV to which the share (paragraph (a) of the definition) is referable.

(6) The following provisions apply in relation to this section in the same way the provisions apply in relation to Chapter 6D:

(a) subsections 700(2), (3) and (4);

(b) sections 702, 703 and 703A.

Division 4—Financial services and markets

1244 Application of Chapter 7 to CCIVs

Chapter 7 applies to a CCIV subject to the modifications set out in this Division.

1244A For Chapter 7, treat the corporate director as providing financial services etc. being provided by the CCIV

(1) This section applies to a provision of Chapter 7 that applies in relation to:

(a) a financial services licensee; or

(b) a financial service or a financial services business; or

(c) a matter prescribed by the regulations for the purposes of this paragraph.

General rule

(2) For the purposes of that provision of Chapter 7:

(a) treat any conduct engaged in by, or on behalf of, a CCIV as also being engaged in by, or on behalf of, the corporate director of the CCIV; and

(b) treat any conduct relating to the CCIV that is engaged in by a person (other than the corporate director of the CCIV) as also

EXPOSURE DRAFT

being engaged in by that person in relation to the corporate director of the CCIV.

- (3) In subsection (2), **conduct** means an act, an omission to perform an act or a state of affairs.

Exceptions

- (4) If the CCIV issues a security in the CCIV, then subsection (2) does not treat the corporate director of the CCIV as also being the issuer of the security.

- (5) If the CCIV is a participant (within the meaning of Chapter 7) in:
- (a) a clearing and settlement facility; or
 - (b) a financial market;
- subsection (2) does not treat the corporate director of the CCIV as also being a participant (within the meaning of Chapter 7) in relation to the facility or market.

- (6) Subsection (2) does not apply in any circumstances prescribed by the regulations for the purposes of this subsection.

1244B Certain licensing concepts do not apply to CCIVs

- (1) Subsection 911A(1) (about the requirement to be licensed to carry on a financial services business) does not apply to a CCIV.

Note: That subsection will instead apply to the corporate director of the CCIV in relation to any financial services business carried on by the CCIV (see subsection 1244A(2)).

- (2) Subsection 911B(1) (about requirements for providing financial services on behalf of another person) does not apply to a CCIV.

Note: This subsection confirms that the CCIV is not subject to extra requirements if it is viewed as providing financial services on behalf of its corporate director.

- (3) For the purposes of Chapter 7, treat a CCIV as not being a representative (within the meaning of Part 7.6) of the corporate director of the CCIV.

Note: Activities of the CCIV relating to a financial service etc. are instead treated as activities of the corporate director (see subsection 1244A(2)).

EXPOSURE DRAFT

-
- (4) For the purposes of Chapter 7, a CCIV cannot be authorised under Division 5 (about authorised representatives of licensees) of Part 7.6.

Note: Activities of the CCIV relating to a financial service etc. are instead treated as activities of the corporate director (see subsection 1244A(2)).

1244C Extra kinds of financial services relating to CCIVs

- (1) Subject to paragraph 766A(2)(b), treat subsection 766A(1) as also providing that:

- (a) a person provides a *financial service* if they operate the business and conduct the affairs of a CCIV, and the person is the corporate director of the CCIV; and
- (b) a person provides a *financial service* if they act as the depositary of a CCIV.

Note: Paragraph (a) means persons other than the corporate director will not be treated as providing that financial service if they operate the business and conduct the affairs of the CCIV while:

- (a) acting as an agent of the CCIV, or as an agent or employee of the corporate director; or
- (b) taking steps to wind up the CCIV.

- (2) For the purposes of Chapter 7, each of the members of a CCIV covered by paragraph (1)(a) is a client for the financial service covered by that paragraph.

1244D CCIV buy-back or redemption facility does not make a market

Subsection 766D(1) does not apply to a CCIV, nor to the corporate director of a CCIV, for:

- (a) a proposed buy-back by the CCIV; or
- (b) the proposed issuing or redeeming by the CCIV of:
 - (i) redeemable shares in the CCIV; or
 - (ii) redeemable preference shares in the CCIV.

1244E Certain conduct relating to CCIVs is not providing a custodial or depository service

Treat subsection 766E(3) as also providing that none of the following conduct constitutes providing a *custodial or depository service*:

EXPOSURE DRAFT

-
- (a) operating as a CCIV;
 - (b) operating the business and conducting the affairs of a CCIV;
 - (c) acting as the depositary of a CCIV.

1244F Australian financial services licences

- (1) For the purposes of Chapter 7, a single Australian financial services licence can cover operating the business and conducting the affairs of more than one CCIV.

Note: This confirms that a corporate director of several CCIVs could be granted a single licence to operate the business and conduct the affairs of those CCIVs.

- (2) Treat subsection 911A(4) as also providing for the following:
 - (a) that a person is not exempt under any paragraph of subsection 911A(2) for a financial service they provide if:
 - (i) the service is operating the business and conducting the affairs of a CCIV; and
 - (ii) the person is the corporate director of the CCIV;
 - (b) that a person is not exempt under any paragraph of subsection 911A(2) for a financial service they provide if the service is acting as the depositary of a CCIV.
- (3) Despite paragraph 912A(4)(b), paragraph 912A(1)(d) also applies to an RSE licensee that is the corporate director of a CCIV.
- (4) Despite subsection 912A(5), paragraph 912A(1)(h) also applies to an RSE licensee that is the corporate director of a CCIV, except to the extent that the risk relates solely to the operation of a regulated superannuation fund by the RSE licensee.
- (5) In this section:

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

RSE licensee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

1244G Immediate suspensions or cancellations of licences

Subsection 915B(3) also applies as if each of the following paragraphs were a paragraph of that subsection:

- (a) is the corporate director of a CCIV, and:
-

EXPOSURE DRAFT

-
- 1 (i) the CCIV; or
2 (ii) the members of the CCIV;
3 have suffered, or are likely to suffer, loss or damage because
4 the corporate director or the CCIV has breached this Act;
5 (b) is acting as a depositary (the *depositary*) of a CCIV in
6 accordance with Division 4 of Part 8B.3, and:
7 (i) the CCIV; or
8 (ii) the members of the CCIV;
9 have suffered, or are likely to suffer, loss or damage because
10 the depositary has breached this Act.

11 **1244H Restriction on use of certain words or expressions**

12 Treat subsection 923A(1) as also providing that a CCIV
13 contravenes that subsection if the CCIV assumes or uses, in this
14 jurisdiction, a restricted word or expression in relation to a
15 financial services business or financial service.

16 **1244J Agreements with certain unlicensed persons**

- 17 (1) Subdivision B of Division 11 of Part 7.6 also applies to an
18 agreement entered into by:
19 (a) a CCIV (in that Subdivision called the *non-licensee*); and
20 (b) another person (in that Subdivision called the *client*) who is
21 not a financial services licensee;
22 that constitutes, or relates to, the provision of a financial service by
23 the corporate director of the CCIV (in that Subdivision called the
24 *corporate director*) if:
25 (c) the agreement is entered into in the course of a financial
26 services business carried on by the corporate director; and
27 (d) the corporate director does not hold an Australian financial
28 services licence covering the provision of the financial
29 service; and
30 (e) the corporate director is not exempt from the requirement to
31 hold such a licence.

32 Note 1: A CCIV does not need to be licensed to provide a financial service,
33 instead the CCIV's corporate director needs to be (see
34 subsection 1244B(1)). This means section 924A will only work
35 appropriately if the agreement mentioned in that section is between
36 the corporate director and the client.

EXPOSURE DRAFT

Note 2: This section works similarly to section 924A to ensure that the appropriate result happens if the agreement mentioned in section 924A is instead between the CCIV and the client.

Note 3: This section applies whether the financial service is provided to the client as a wholesale client or as a retail client.

(2) Subdivision B of Division 11 of Part 7.6 applies to the agreement whether or not anyone else is a party to the agreement.

(3) That Subdivision applies to the agreement as if subsections 925A(4) and (5) were replaced by the following:

“(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that the corporate director did not hold an Australian financial services licence.

(5) If, at a time when an Australian financial services licence held by the corporate director was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the corporate director did not hold the licence.”.

1244K Financial services disclosure does not apply to operating the business and conducting the affairs of CCIVs

Part 7.7 does not apply to a financial service if:

- (a) the financial service consists only of operating the business and conducting the affairs of a CCIV; and
- (b) the financial service is provided by the corporate director of the CCIV.

1244L Financial records of the corporate director of a CCIV

When section 988E applies to a licensee because the licensee is the corporate director of a CCIV, treat that section as requiring the particulars of the matters in paragraphs 988E(a) to (g) to be shown so that they are clearly identifiable for each sub-fund of the CCIV.

Note: Section 988E is about the categories of information to be shown in the licensee's financial records.

EXPOSURE DRAFT

1244M Prohibition on hawking of securities in a CCIV

(1) Treat subsection 992A(2) as also providing that subsection 992A(1) does not apply to the offering of securities in a CCIV, hawking of which is prohibited by section 992AA (as extended by this section).

(2) Subsection 992AA(1) also applies as if the reference in that subsection to interests in managed investment schemes included a reference to securities in a CCIV.

Note: Failure to comply with subsection 992AA(1) is an offence (see subsection 1311(1)).

(3) Subsection 992AA(1), as it applies because of subsection (2) of this section, does not apply to an offer of securities in a CCIV if:

- (a) the offer is not to a retail client; or
- (b) the offer is made to a client by a financial services licensee through whom the client has acquired or disposed of a security in a CCIV in the previous 12 months.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

(4) For the purposes of subsection 992AA(1), as it applies because of subsection (2) of this section:

- (a) a reference to offering securities in a CCIV for issue includes a reference to inviting an application for the issue of securities in the CCIV; and
- (b) a reference to offering securities in a CCIV for sale includes a reference to inviting an offer to purchase securities in the CCIV.

(5) Subsection 736(1) (about prohibiting the hawking of securities) does not apply to securities in a CCIV.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

1244N Part 7.9 applies to the issue or sale of securities in a CCIV

(1) Despite subsection 1010A(1), Part 7.9 applies to securities in a CCIV.

(2) Despite subsection 1010B(1), Part 7.9 applies in relation to the issue of any security in a CCIV.

EXPOSURE DRAFT

(3) If the corporate director of a CCIV is, apart from this subsection, a regulated person (within the meaning of Division 2 of Part 7.9) because it is the seller of a security in the CCIV, treat the CCIV as being the regulated person for the purposes of that Part instead of the corporate director.

Note 1: The corporate director of the CCIV will continue to be a regulated person for any other case.

Note 2: The CCIV will also be the regulated person for an issue of securities in the CCIV (see subsection 1244A(4) and section 1011B).

(4) If a reference in Part 7.9 to a seller of a financial product applies to the corporate director of a CCIV as the seller of a security in the CCIV, treat the reference as referring to the CCIV.

(5) Subsections (3) and (4) apply despite subsection 1244A(2).

Note: This subsection confirms that the general rule in subsection 1244A(2) does not affect subsections (3) and (4).

1244P Product Disclosure Statements—when a security in a CCIV is of the same kind as another product

For the purposes of sections 1012C and 1012D (as affected by this Part), a security in a CCIV that is referable to a sub-fund of the CCIV is of the same kind as another product only if the other product:

- (a) is also a security in the CCIV; and
- (b) is also referable to that sub-fund of the CCIV; and
- (c) is issued on the same terms and conditions (other than price) as the first-mentioned security.

1244Q Product Disclosure Statements—situations when not required for CCIVs

No consideration to be provided

(1) Paragraph 1012D(5)(b) also applies to the case where the financial product is not an option and is a security in a CCIV.

Client is associated with the CCIV

(2) Treat section 1012D as also providing that, in a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

EXPOSURE DRAFT

-
- 1 (a) the financial product is a security in a CCIV; and
2 (b) the client is associated (within the meaning of subsection (3)
3 of this section) with the CCIV.
- 4 (3) For the purposes of subsection (2), the client is associated with the
5 CCIV if the client is:
6 (a) the corporate director of the CCIV; or
7 (b) a director or secretary of that corporate director; or
8 (c) a senior manager of the corporate director or of a related
9 body corporate of that corporate director; or
10 (d) a spouse, parent, child, brother or sister of a person who is a
11 director or senior manager of:
12 (i) that corporate director; or
13 (ii) a related body corporate of that corporate director; or
14 (e) a body corporate controlled by a person referred to in
15 paragraph (a), (b), (c) or (d).

16 *Dividend reinvestment plan or bonus share plan*

- 17 (4) Treat section 1012D as also providing that, in a recommendation
18 situation or issue situation, the regulated person does not have to
19 give the client a Product Disclosure Statement for a fully-paid
20 share in a CCIV if:
21 (a) the client already holds a share, of the same kind, in the
22 CCIV; and
23 (b) either:
24 (i) in a recommendation situation—the advice that
25 constitutes the relevant conduct relates to an offer made
26 under a dividend reinvestment plan or bonus share plan;
27 or
28 (ii) in an issue situation—the offer or issue that constitutes
29 the relevant conduct is made under a dividend
30 reinvestment plan or bonus share plan.

31 Note: For when such a share is of the same kind, see section 1244P.

32 *Compromise or arrangement under Part 5.1*

- 33 (5) Treat section 1012D as also providing that, in an issue situation or
34 a sale situation, the regulated person does not have to give the
35 client a Product Disclosure Statement if the issue situation or sale
36 situation is an offer:

EXPOSURE DRAFT

-
- (a) of securities in a CCIV; and
 - (b) made under a compromise or arrangement under Part 5.1 approved at a meeting held as a result of an order under subsection 411(1) or (1A).

Rights issues

- (6) Subsection 1012DAA(3) also applies to contraventions of the following provisions:
 - (a) if the relevant product is a security in a CCIV—the provisions of Chapter 2M (as affected by Division 4 of Part 8.4B), or the provisions of that Division, as they:
 - (i) apply to the CCIV; or
 - (ii) apply for a sub-fund of the CCIV;
 - (b) if the relevant product is a security in a CCIV—section 675 as it applies to the CCIV.
- (7) Treat subsection 1012DAA(7) as:
 - (a) providing that paragraph 1012DAA(7)(d) only applies if the relevant product is an interest in a registered scheme; and
 - (b) including the following extra paragraph:
 - “(da) if the relevant product is a security in a CCIV—states that, as at the date of the notice, the CCIV has complied with the provisions of Chapter 2M (as affected by Division 4 of Part 8.4B), and the provisions of that Division, as they:
 - (i) apply to the CCIV; and
 - (ii) apply for each sub-fund of the CCIV; and”.

Small scale offerings

- (8) Section 1012E also applies to financial products that are securities in a CCIV. For the purposes of that section, to the extent that those securities are referable to a sub-fund of the CCIV, treat the:
 - (a) 20 purchasers ceiling (subsections 1012E(6) and (7)); and
 - (b) \$2 million ceiling (subsections 1012E(6) and (7));as applying only to financial products that are securities referable to that sub-fund of the CCIV.

EXPOSURE DRAFT

1244R Product Disclosure Statements—content requirements

Main requirements

- (1) Treat subsection 1013D(2A) as also including securities in a CCIV.

Extra requirements for ED securities in a CCIV

- (2) Section 1013I also applies as if:
- (a) references in that section to managed investment products included references to securities in a CCIV; and
 - (b) references in that section to a scheme included references to the CCIV.

1244S Product Disclosure Statements—replacement statements

Section 1014G also applies as if the reference in paragraph 1014G(a) to an interest in a managed investment scheme included a reference to an interest that is a security in a CCIV.

1244T Product Disclosure Statements—lodging with ASIC

- (1) Section 1015B also applies as if:
- (a) a reference in that section to a managed investment product included a reference to a security in a CCIV; and
 - (b) paragraph 1015B(1)(ba) were not enacted; and
 - (c) an extra paragraph of subsection 1015B(1) provided that the financial product is a security that:
 - (i) is in a CCIV; and
 - (ii) is referable to a sub-fund of the CCIV that is an Australian passport fund.
- (2) When section 1015B so applies, treat subsection 1015B(2) as instead providing that the lodgement with ASIC of a Statement in relation to a security in the CCIV requires the consent of every director of the corporate director of the CCIV.

Note: This is the case whether the Statement is an issue Statement or a sale Statement.

1244U Product Disclosure Statements—use of application forms

Treat the definition of *relevant financial product* in subsection 1016A(1) as also meaning a security in a CCIV.

EXPOSURE DRAFT

1244V Product Disclosure Statements—if lodged, then security not to be issued or sold before specified period

Section 1016B does not apply in relation to a financial product to which a Product Disclosure Statement relates if the financial product is a security that:

- (a) is in a CCIV; and
- (b) is referable to a sub-fund of the CCIV that is an Australian passport fund.

Note: This section does not prevent section 1016B from applying in relation to a security in the CCIV referable to any other kind of sub-fund of the CCIV.

1244W Remedies for person acquiring financial product under defective Product Disclosure Document

If, for the purposes of subsection 1016F(2), the responsible person is a CCIV, treat the reference in that subsection to the directors of the responsible person as if it were a reference to the directors of the corporate director of the CCIV.

1244X Disclosure obligations of issuers of securities in CCIVs

- (1) Subsection 1017B(2) also applies in relation to a financial product that is an ED security in a CCIV.

Note: A defendant bears an evidential burden in relation to the matter in subsection 1017B(2): see subsection 13.3(3) of the *Criminal Code*.

- (2) Paragraph 1017D(1)(b) also applies as if it referred to a product that is a security in a CCIV.

1244Y Cooling-off periods

Division 5 of Part 7.9 also applies as if securities in a CCIV were another class of financial product covered by paragraph 1019A(1)(a).

1244Z Unsolicited offers to purchase securities in CCIVs off-market

For financial products that are securities in a CCIV, treat paragraph 1019D(1)(d) as also providing that the offer is not made to the corporate director of the CCIV.

EXPOSURE DRAFT

1244ZA Insider trading—exceptions

Buy-back of shares in a CCIV

- (1) Treat section 1043B as also providing that subsection 1043A(1) does not apply in respect of the acquisition of shares as part of a buy-back by a CCIV if the amount paid to each affected member of the CCIV for the buy-back is calculated (so far as is reasonably practicable) by reference to:
- (a) the underlying value of the assets of the sub-fund to which the shares are referable; less
 - (b) any reasonable charge for the buy-back.

Redemption of shares in a CCIV

- (2) Treat section 1043B as also providing that subsection 1043A(1) does not apply in respect of the redemption of shares in a CCIV if the amount paid to each affected member on redemption is calculated (so far as is reasonably practicable) by reference to:
- (a) the underlying value of the assets of the sub-fund to which the shares are referable; less
 - (b) any reasonable charge for that redemption.

Officer or employee is aware of certain transactions

- (3) Subsections 1043I(2) and (3) apply to a body corporate that is a CCIV as if the reference in subsection 1043I(2) to an officer or employee of the body corporate were a reference to:
- (a) the corporate director of the CCIV acting on behalf of the CCIV; or
 - (b) an officer or employee (an *official*) of the corporate director of the CCIV acting:
 - (i) on behalf of the CCIV; and
 - (ii) within the scope of the official's actual or apparent authority in relation to the corporate director;
- and as if subsection 1043I(3) were not enacted, and the reference to that subsection in subsection 1043I(2) were omitted.
- (4) If the second person for the purposes of section 1043J is a CCIV, that section applies as if the reference in subsection 1043J(1) to the first person were a reference to:
- (a) an agent of the CCIV acting:

EXPOSURE DRAFT

-
- 1 (i) on behalf of the CCIV; and
2 (ii) within the scope of the agent's actual or apparent
3 authority in relation to the CCIV; or
4 (b) the corporate director of the CCIV acting on behalf of the
5 CCIV; or
6 (c) an officer or employee (an *official*) of the corporate director
7 of the CCIV acting:
8 (i) on behalf of the CCIV; and
9 (ii) within the scope of the official's actual or apparent
10 authority in relation to the corporate director;
11 and as if subsection 1043J(2) were not enacted, and the reference
12 to that subsection in subsection 1043J(1) were omitted.

EXPOSURE DRAFT

Part 8B.8—Miscellaneous

1245 Registers

Paragraph 1274(2)(a) has effect as if it included the following subparagraphs:

- (vi) the constitution of a wholesale CCIV; or
- (vii) a written report lodged with ASIC under section 1226H (about breaches that must be reported by depository); or

1245A Inspection of books

Section 1300 applies to a CCIV as if the CCIV were a proprietary company.

1245B Falsification of books

(1) Subsection 1307(1) applies as if:

(a) each of the following were an officer of a CCIV:

- (i) an officer of the CCIV;
- (ii) an officer of the corporate director of the CCIV; and

(b) each of the following were a former officer of a CCIV:

- (i) a former officer of the CCIV;
 - (ii) a former officer of the corporate director of the CCIV;
- and

(c) an employee of the corporate director of a CCIV were an employee of the CCIV; and

(d) a former employee of the corporate director of a CCIV were a former employee of the CCIV.

(2) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of doubt.

1245C Application of Part 9.4

(1) Sections 1308, 1309 and 1317 apply as if:

(a) each of the following were a director of a CCIV:

- (i) the corporate director of the CCIV;
- (ii) a director of the corporate director of the CCIV; and

EXPOSURE DRAFT

-
- 1 (b) each of the following were an officer of a CCIV:
2 (i) an officer of the CCIV;
3 (ii) an officer of the corporate director of the CCIV; and
4 (c) an employee of the corporate director of a CCIV were an
5 employee of the CCIV; and
6 (d) each of the following were an agent of a CCIV:
7 (i) an agent of the CCIV;
8 (ii) an agent of the corporate director of the CCIV.
9 (2) Subparagraphs (1)(a)(i), (b)(i) and (d)(i) are included for the
10 avoidance of doubt.

11 **1245D Disclosures qualifying for protection under Part 9.4AAA**

- 12 (1) Section 1317AA has effect as if:
13 (a) each of the following were an officer of a CCIV:
14 (i) an officer of the CCIV;
15 (ii) except in paragraph 1317AA(1)(d)—an officer of the
16 corporate director of the CCIV; and
17 (b) except in paragraph 1317AA(1)(d)—an employee of the
18 corporate director of a CCIV were an employee of the CCIV;
19 and
20 (c) each of the following were a contract for the supply of
21 services or goods to a CCIV:
22 (i) a contract for the supply of services or goods to the
23 CCIV;
24 (ii) a contract for the supply of services or goods to the
25 corporate director of the CCIV; and
26 (d) each of the following were an auditor of a CCIV:
27 (i) the CCIV's auditor;
28 (ii) the auditor of the corporate director; and
29 (e) each of the following were a member of an audit team
30 conducting an audit of a CCIV:
31 (i) a member of an audit team conducting an audit of the
32 CCIV;
33 (ii) a member of an audit team conducting an audit of the
34 corporate director; and
35 (f) each of the following were a director, secretary or senior
36 manager of a CCIV:
37 (i) the corporate director of the CCIV;
-

EXPOSURE DRAFT

-
- 1 (ii) a director, secretary or senior manager of the corporate
2 director of the CCIV; and
3 (g) a person authorised by the corporate director of a CCIV to
4 receive disclosures of a kind were also authorised by the
5 CCIV to receive disclosures of that kind.
- 6 (2) Subparagraphs (1)(a)(i), (c)(i), (d)(i), (e)(i) and (f)(i) are included
7 for the avoidance of doubt.
- 8 (3) Paragraphs (1)(a) to (g) also have effect for the purposes of
9 section 1317AE (except for the purposes of
10 paragraph 1317AE(1)(b)).
- 11 (4) However, a disclosure of information by the corporate director of a
12 CCIV does not qualify for protection under Part 9.4AAA.

1245E Decisions excluded from review by Administrative Appeals Tribunal

- 13 Section 1317C has effect as if it included the following paragraph:
14
15 (gg) a decision by ASIC to make CCIV rules under section 1246,
16 or to vary or revoke such rules; or
17

1245F Powers of Courts—irregularities

- 18 Subparagraph 1322(1)(b)(i) applies to:
19
20 (a) a meeting of the members of a sub-fund of the CCIV in the
21 same way as it applies in relation to a meeting of a
22 corporation; and
23 (b) a joint meeting of creditors and members of a sub-fund of a
24 CCIV in the same way as it applies in relation to a joint
25 meeting of creditors and members of a corporation.

1245G Fees payable to the Commonwealth

- 26 Subsection 1351(4) has effect in relation to a fee imposed under
27 the *Corporations (Review Fees) Act 2003* payable to the
28 Commonwealth by a CCIV in relation to a review date in a year as
29 if the following paragraph were substituted for
30 paragraph 1351(4)(a):
31 (a) all of the following apply:
32 (i) ASIC has given notice of the proposed deregistration of
33 a sub-fund of the CCIV in accordance with
34
-

EXPOSURE DRAFT

paragraph 1242(5)(c), and published notice of the proposed deregistration of the sub-fund in accordance with paragraph 1242(5)(d);

(ii) as a result of ASIC deregistering the sub-fund, ASIC will be required to deregister the CCIV under section 1242K;

(iii) the review date for that year falls in the 2 month period before or after the publication of the notice published in accordance with paragraph 1242(5)(d); or

Part 8B.9—Subordinate legislation relating to CCIVs

1246 ASIC may make CCIV rules

(1) ASIC may, by legislative instrument, make rules (*CCIV rules*) prescribing matters:

(a) required or permitted by this Act to be prescribed by the CCIV rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Chapter.

(2) To avoid doubt, the CCIV rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(3) CCIV rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but CCIV rules are taken to be consistent with the regulations to the extent that CCIV rules are capable of operating concurrently with the regulations.

1246A Matters to which ASIC has regard when making rules

In considering whether to make a CCIV rule, ASIC:

EXPOSURE DRAFT

-
- (a) must have regard to:
- (i) the objects of this Chapter; and
 - (ii) the likely regulatory impact of the proposed rule; and
- (b) may have regard to any other matters that ASIC considers relevant.

Note: Matters that ASIC may have regard to under paragraph (b) may, for example, include any relevant international standards and international commitments.

1246B ASIC's power to make exemption and modification orders

- (1) This section applies in relation to the following (the **CCIV provisions**):

- (a) this Act;
- (b) the CCIV rules.

- (2) ASIC may do either or both of the following:

- (a) exempt from all or specified provisions of the CCIV provisions:
 - (i) a specified CCIV, a specified class of CCIVs or all CCIVs; or
 - (ii) a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs; or
 - (iii) a specified entity, a specified class of entities or all entities, in relation to a specified CCIV, a specified class of CCIVs or all CCIVs; or
 - (iv) a specified entity, a specified class of entities or all entities, in relation to a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs;
- (b) declare that the CCIV provisions apply in relation to:
 - (i) a specified CCIV, a specified class of CCIVs or all CCIVs; or
 - (ii) a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs; or
 - (iii) a specified entity, a specified class of entities or all entities, in relation to a specified CCIV, a specified class of CCIVs or all CCIVs; or

EXPOSURE DRAFT

(iv) a specified entity, a specified class of entities or all entities, in relation to a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs;
as if specified provisions were omitted, modified or varied as specified in the declaration.

- (3) The exemption or declaration may:
- (a) relate to a specified security, a specified class of securities or all securities; and
 - (b) relate to any other matter generally or as specified.

Exemptions and declarations relating to all or a class of persons

- (4) An exemption or declaration must be made by legislative instrument if it relates to:
- (a) all CCIVs, a specified class of CCIVs, or 2 or more specified CCIVs; or
 - (b) all sub-funds of all CCIVs, all sub-funds of a specified class of CCIVs, or a specified class of sub-funds of CCIVs, or
 - (c) all entities, a specified class of entities, or 2 or more specified entities.

Exemptions and declarations relating to specified persons

- (5) Subject to subsection (4), an exemption or declaration must be made by notifiable instrument if it relates to a specified CCIV or specified entity.
- (6) An exemption or declaration that relates to a specified CCIV may apply to the CCIV in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of the CCIV.
- (7) An exemption or declaration that relates to a specified entity may apply to the entity in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of a specified CCIV.
- (8) ASIC must also give a copy of an exemption or declaration that relates to a specified CCIV or a specified entity to the CCIV or entity. ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

EXPOSURE DRAFT

1246C Modification by regulations

- (1) The regulations may modify the operation of this Chapter or any other provisions of this Act in relation to:
 - (a) a specified CCIV; or
 - (b) a specified class of CCIVs; or
 - (c) all CCIVs; or
 - (d) a specified class of sub-funds of CCIVs; or
 - (e) all sub-funds of a specified class of CCIVs; or
 - (f) all sub-funds of all CCIVs.
- (2) Regulations made for the purposes of subsection (1) in relation to a specified CCIV may apply to the CCIV in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of the CCIV.

EXPOSURE DRAFT

Schedule 2—Other amendments of the Corporations Act 2001

Corporations Act 2001

1 Section 9 (definition of *affairs*)

Repeal the definition, substitute:

affairs:

- (a) in relation to a body corporate (other than a CCIV)—has, in the provisions referred to in section 53, a meaning affected by that section; and
- (b) in relation to a body corporate that is a CCIV—has, in the provisions referred to in section 53AAA, a meaning affected by that section.

2 Section 9

Insert:

ARFN (short for “Australian Registered Fund Number”) is the number given by ASIC to a sub-fund of a CCIV on registration of the sub-fund (see subsection 1222S(3)).

3 Section 9 (definition of *assets*)

Repeal the definition, substitute:

assets:

- (a) in relation to a financial services licensee—means all the licensee’s assets (whether or not used in connection with the licensee’s Australian financial services licence); and
- (b) in relation to a sub-fund of a CCIV—has the meaning given by section 1233H.

4 Section 9 (definition of *Australian passport fund*)

Repeal the definition, substitute:

Australian passport fund means:

- (a) a registered scheme that is registered as a passport fund under Part 8A.3; or

EXPOSURE DRAFT

(b) a sub-fund of a retail CCIV that is registered as a passport fund under Part 8A.3.

5 Section 9

Insert:

CCIV: see *corporate collective investment vehicle*.

CCIV rule means a rule made by ASIC under section 1246.

6 Section 9 (after paragraph (a) of the definition of *Chapter 5 body corporate*)

Insert:

(aa) that is a CCIV of which one or more sub-funds is being wound up; or

7 Section 9 (definition of *class*)

Repeal the definition, substitute:

class has:

- (a) in relation to shares in a CCIV—a meaning affected by sections 57 and 1231A; and
- (b) in relation to shares (other than shares in a CCIV) or interests in a managed investment scheme—a meaning affected by section 57; and
- (c) when used in relation to securities for the purposes of Chapter 6, 6A or 6C—a meaning affected by subsection 605(2).

8 Section 9 (at the end of the definition of *contributory*)

Add:

; and (d) in relation to a sub-fund of a CCIV—a person who is a contributory of the CCIV under paragraph (a), if the person is liable as mentioned in subparagraph (a)(i) as a member or past member of the sub-fund, or is a holder of shares referable to the sub-fund.

9 Section 9

Insert:

EXPOSURE DRAFT

corporate collective investment vehicle or *CCIV* means a company that is registered as a corporate collective investment vehicle under this Act.

corporate director of a CCIV has the meaning given by subsection 1224(3).

10 Section 9

Insert:

creditor of a sub-fund of a CCIV means a creditor of the CCIV, if the debt or claim is, to any extent, a liability of the sub-fund.

11 Section 9

Insert:

depository, of a CCIV, has the meaning given by subsection 1226(4).

12 Section 9 (definition of *entity*)

Omit “and 8A”, substitute “, 8A and 8B,”.

13 Section 9 (paragraph (a) of the definition of *expectation*)

After “managed investment scheme”, insert “or a sub-fund of a CCIV”.

14 Section 9 (definition of *extraordinary resolution*)

After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

15 Section 9 (definition of *financial benefit*)

Omit “Chapter 2E”, substitute “Chapters 2E and 8B”.

16 Section 9 (definition of *insolvent*)

Repeal the definition, substitute:

insolvent:

- (a) in relation to a person—has the meaning given by subsection 95A(2); and
- (b) in relation to a sub-fund of a CCIV—has the meaning given by section 1231R.

EXPOSURE DRAFT

17 Section 9

Insert:

liabilities, in relation to a sub-fund of a CCIV, has the meaning given by section 1233L.

18 Section 9 (after paragraph (a) of the definition of *member*)

Insert:

(b) in relation to a sub-fund of a CCIV—means a person who is a member under subsection 1222Q(3); or

19 Section 9 (definition of *officer* of a corporation)

After “of a corporation”, insert “(other than a CCIV)”.

20 Section 9

Insert:

officer of a corporation that is a CCIV has the meaning given by section 1224B.

21 Section 9 (definition of *public company*)

After “a proprietary company”, insert “or a CCIV”.

22 Section 9

Insert:

redeemable share, in a CCIV, has the meaning given by section 1231B.

23 Section 9

Insert:

referable:

- (a) in relation to a sub-fund, and a share in a CCIV—has the meaning given by section 1231; and
- (b) in relation to a sub-fund, and a class of shares in a CCIV—has the meaning given by section 1231A; and
- (c) in relation to a sub-fund, and a debenture issued by a CCIV—has the meaning given by section 1231ZD.

EXPOSURE DRAFT

24 Section 9 (definition of *registered office*)

Omit “in relation to a body corporate, means the body’s registered office”, substitute “in relation to a company or registered body, means the registered office of the company or body”.

25 Section 9 (paragraph (a) of the definition of *related party*)

Repeal the paragraph, substitute:

- (a) when used in Chapter 2E (other than in relation to a CCIV) has the meaning given by section 228; and
- (aa) when used in Chapters 2E and 8B, in relation to a CCIV, has the meaning given by section 1228E; and

26 Section 9

Insert:

retail CCIV has the meaning given by section 1222J.

27 Section 9 (definition of *solvent*)

Repeal the definition, substitute:

solvent:

- (a) in relation to a person—has the meaning given by subsection 95A(1); and
- (b) in relation to a sub-fund of a CCIV—has the meaning given by section 1231R.

28 Section 9 (paragraph (b) of the definition of *special resolution*)

After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

29 Section 9

Insert:

sub-fund, of a CCIV, has the meaning given by subsection 1222Q(1).

30 Section 9

Insert:

wholesale CCIV has the meaning given by section 1222J.

EXPOSURE DRAFT

31 Section 51E (definition of *secured creditor*)

Repeal the definition, substitute:

secured creditor:

- (a) of a corporation means a creditor of the corporation, if the debt owing to the creditor is secured by a security interest; and
- (b) of a sub-fund of a CCIV means a secured creditor of the CCIV, if the debt owing to the creditor is, to any extent, a liability of the sub-fund.

32 At the end of section 51F

Add:

References to property of a sub-fund of a CCIV

- (3) A reference in a provision of this Act to property of a sub-fund of a CCIV (including a substituted reference provided for by Part 8B.6) is a reference to something that is:
 - (a) property of the CCIV (within the meaning of the provision); and
 - (b) an asset of the sub-fund of the CCIV.

Note: For assets of a sub-fund of a CCIV, see section 1233H.

33 Section 53 (heading)

Repeal the heading, substitute:

53 Affairs of a body corporate (other than a CCIV)

34 Section 53

After “body corporate” (first occurring), insert “(other than a CCIV)”.

35 After section 53

Insert:

53AAA Affairs of a CCIV

- (1) For the purposes of the provisions referred to in subsection (3), the affairs of a body corporate that is a CCIV include anything that would be included in the affairs of a body corporate under section 53.

EXPOSURE DRAFT

(2) In applying paragraph 53(d) to the CCIV:

- (a) disregard subparagraphs (ii) and (ia); and
- (b) treat the reference in subparagraph (iv) to the body as instead being a reference to a sub-fund of the CCIV; and
- (c) treat the reference to a liquidator or provisional liquidator of the body as instead being a reference to a liquidator or provisional liquidator of a sub-fund of the CCIV.

(3) The provisions for subsection (1) are the following:

- (a) a provision referred to in section 53;
- (b) a provision prescribed for the purposes of section 53;
- (c) section 1222 (about requirements for registration as a CCIV);
- (d) section 1224F (about who can be the director of a CCIV);
- (e) section 1224J (about corporate director must operate the CCIV);
- (f) section 1238V (about court order imposing liability on unlicensed person operating CCIV);
- (g) section 1244C (about extra kinds of financial services relating to CCIVs);
- (h) section 1244E (about when conduct constitutes providing a custodial or depository service in relation to a CCIV);
- (i) section 1244F (about Australian financial services licences to conduct the affairs of a CCIV);
- (j) section 1244K (about financial services disclosure does not apply to conducting the affairs of CCIVs);
- (k) a provision of this Act prescribed by the regulations for the purposes of this paragraph.

36 Paragraph 53AA(b)

After “53”, insert “or 53AAA”.

37 At the end of subsection 57(1)

Add:

Note: A CCIV must have a minimum of 1 class of shares per sub-fund: see section 1231A.

38 Section 64A

Omit “Chapter 2E”, substitute “Chapters 2E, 8A and 8B”.

EXPOSURE DRAFT

39 At the end of subsection 92(4)

Add:

Note: However, in Chapter 6D, *securities* does not include securities in a CCIV: see section 1243E.

40 At the end of section 111AF

Add:

(3) Securities (except debentures) in a class of securities of a CCIV are *ED securities* if 100 or more people hold securities in that class as a result of offers that gave rise to obligations to give Product Disclosure Statements (whether or not all in the same terms) under Chapter 7 (as that Chapter applies to those securities under Division 4 of Part 8B.7).

41 At the end of subsection 111AR(1)

Add:

; (e) Division 4 of Part 8B.4 as it applies to disclosing entities.

42 At the end of subsection 117(2)

Add:

Note 5: For modifications applicable to applications to register a CCIV, see section 1222A.

43 Subsection 118(1) (note)

Omit “Note”, substitute “Note 1”.

44 At the end of subsection 118(1)

Add:

Note 2: For modifications applicable to applications to register a CCIV, see section 1222C.

45 At the end of subsection 120(1)

Add:

Note: For the equivalent provision for a CCIV, see section 1222D.

46 Subsection 124(1) (note)

Omit “Note”, substitute “Note 1”.

EXPOSURE DRAFT

47 At the end of subsection 124(1)

Add:

Note 2: A CCIV's power to issue shares is affected by sections 1231 and 1231B.

48 Subsection 127(1) (note)

Omit "Note", substitute "Note 1".

49 At the end of subsection 127(1)

Add:

Note 2: Because a CCIV has no natural person directors and no company secretary, it executes documents through the directors and company secretary of its corporate director: see section 1223.

50 Subsection 127(2) (note)

Omit "Note", substitute "Note 1".

51 At the end of subsection 127(2)

Add:

Note 2: Because a CCIV has no natural person directors and no company secretary, it executes documents through the directors and company secretary of its corporate director: see section 1223.

52 At the end of subsection 135(1)

Add:

Note 3: There are modifications for CCIVs: see section 1223A.

53 Subsection 136(1) (note)

Omit "Note", substitute "Note 1".

54 At the end of subsection 136(1)

Add:

Note 2: Section 1223B applies instead of this section in relation to the constitution of a CCIV.

55 At the end of subsection 169(3)

Add:

Note 3: A CCIV's register must also show the sub-fund to which each share is referable: see section 1222ZB.

EXPOSURE DRAFT

56 At the end of subsection 170(1)

Add:

Note: A CCIV's register must also show the sub-fund to which each share is referable: see section 1222ZB.

57 Subsection 171(1) (note)

Omit "Note", substitute "Note 1".

58 At the end of subsection 171(1)

Add:

Note 2: A CCIV's register must also show the sub-fund to which each debenture is referable: see section 1222ZB.

59 At the end of subsection 179(1)

Add:

Note: For a retail CCIV, there are additional duties: see Divisions 2 and 3 of Part 8B.3.

60 Division 1 of Part 2D.1 (after the heading)

Insert:

Note: This Division applies in relation to CCIVs in a modified form: see sections 1224C.

61 At the end of subsection 188(1)

Add:

Note 3: This section has an extended operation in relation to the secretary of a corporate director of a CCIV: see sections 1225A and 1225B.

62 Division 2 of Part 2D.1 (after the heading)

Insert:

Note: This Division applies in relation to CCIVs in a modified form: see sections 1225C and 1224L.

63 Subsection 198D(1) (note)

Omit "Note", substitute "Note 1".

64 At the end of subsection 198D(1)

Add:

Note 2: If the company is a CCIV, section 1224M applies instead of this section.

EXPOSURE DRAFT

65 Subsection 198F(1) (note)

Omit “Note”, substitute “Note 1”.

66 At the end of subsection 198F(1)

Add:

Note 2: This section also applies to a director of a corporate director of a CCIV: see section 1225D.

67 At the end of subsection 198G(1)

Add:

Note: For a CCIV, section 1224Q applies instead of this section.

68 At the end of subsection 199A(1)

Add:

Note: This section has an extended operation in relation to officers and auditors of the corporate director of a CCIV: see section 1225E.

69 At the end of subsection 199B(1)

Add:

Note: This section has an extended operation in relation to officers and auditors of the corporate director of a CCIV: see section 1225F.

70 At the end of subsection 200B(1)

Add:

Note 4: This section has a modified operation in relation to CCIVs: see section 1224ZD.

71 At the end of subsection 200C(1)

Add:

Note: This section has a modified operation in relation to CCIVs: see section 1224ZD.

72 Chapter 2E (after the heading)

Insert:

Note: This Chapter applies to a CCIV with modifications: see Division 6 of Part 8B.3.

73 At the end of subsection 208(1)

Add:

Note 3: This section applies to a CCIV in a modified form: see section 1228A.

EXPOSURE DRAFT

74 At the end of subsection 209(2)

Add:

Note 3: This section has an extended operation in relation to a retail CCIV: see section 1228A.

75 Section 232 (note)

Repeal the note, substitute:

Note 1: For *affairs*, see sections 53 and 53AAA.

Note 2: The effect of paragraph (d) is extended in relation to a sub-fund of a CCIV: see section 1228F.

76 At the end of subsection 233(1)

Add:

Note: If the company is a CCIV there are modifications for paragraphs (1)(a) and (h) (see section 1228G and Part 8B.6).

77 Subsection 237(4) (note)

Omit “Note”, substitute “Note 1”.

78 At the end of subsection 237(4)

Add:

Note 2: For who is a third party of a CCIV, see section 1228H.

79 At the end of subsection 246B(1)

Add:

Note: A CCIV must have a minimum of 1 class of shares per sub-fund: see section 1231A.

80 At the end of subsection 246B(2)

Add:

Note: This subsection applies to a CCIV in a modified form: see section 1228J.

81 At the end of subsection 246F(3)

Add:

Note: This subsection also applies to a CCIV: see section 1228L.

82 Part 2G.1 (after the heading)

Insert:

EXPOSURE DRAFT

1 Note: Section 1229 applies instead of this Part in relation to a CCIV.

2 **83 Part 2G.2 (after the heading)**

3 Insert:

4 Note: This Part does not apply to a CCIV. Instead, section 1229A applies a modified version
5 of Part 2G.4.

6 **84 Part 2G.3 (after the heading)**

7 Insert:

8 Note: This Part does not apply to a CCIV. Instead, section 1229A applies a modified version
9 of Part 2G.4.

10 **85 Part 2G.4 (after the heading)**

11 Insert:

12 Note: Section 1229A applies a modified version of this Part in relation to a CCIV.
13 Section 1229B applies a modified version of this Part in relation to a sub-fund of a
14 CCIV.

15 **86 At the end of subsection 254B(1)**

16 Add:

17 Note 5: A CCIV may issue a share only if the share is referable to a sub-fund
18 of the CCIV (see section 1231).

19 **87 Subsection 254G(1) (note)**

20 Omit “Note”, substitute “Note 1”.

21 **88 At the end of subsection 254G(1)**

22 Add:

23 Note 2: Section 1231C applies to a CCIV instead of this section.

24 **89 Subsection 254H(1) (note)**

25 Omit “Note”, substitute “Note 1”.

26 **90 At the end of subsection 254H(1)**

27 Add:

28 Note 2: Section 1231C applies to a CCIV instead of this section.

29 **91 Part 2H.2 (after the heading)**

30 Insert:

31 Note: This Part does not apply to a CCIV: see section 1231D.

219

18/12/2018 2:36 PM

EXPOSURE DRAFT

EXPOSURE DRAFT

92 At the end of subsection 254N(1)

Add:

Note: This section does not apply to a CCIV: see section 1231L.

93 At the end of subsection 254T(1)

Add:

Note 3: Section 1231M applies to a CCIV instead of this section.

94 At the end of subsection 254W(1)

Add:

Note: Section 1231N is about dividend rights in a CCIV.

95 Part 2H.6 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1231P.

96 Chapter 2J (after the heading)

Insert:

Note: This Chapter is modified for CCIVs: see Division 2 of Part 8B.4.

97 Division 1 of Part 2J.1 (after the heading)

Insert:

Note: This Division does not apply to a CCIV: see subsection 1231R(4).

98 Division 2 of Part 2J.1 (after the heading)

Insert:

Note: This Division does not apply to a CCIV: see subsection 1231T(6).

99 Division 3 of Part 2J.1 (after the heading)

Insert:

Note: This Division applies to a CCIV with modifications: see section 1231Y.

100 Part 2J.2 (after the heading)

Insert:

Note: This Part applies to a CCIV with modifications: see sections 1231Z and 1231ZA.

EXPOSURE DRAFT

101 Subsection 259B(1) (note)

Omit “Note”, substitute “Note 1”.

102 At the end of subsection 259B(1)

Add:

Note 2: Subsection (3) does not apply to a CCIV: see section 1231ZA.

103 Part 2J.3 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1231ZB.

104 At the end of section 285

Add:

Note: Section 1232 applies a modified version of this Chapter to CCIVs.

105 Subsection 286(1) (note)

Repeal the note, substitute:

Note 1: Section 9 defines *financial records*.

Note 2: Section 1232A extends this section to keeping financial records for sub-funds of retail and wholesale CCIVs, and applies this Part accordingly.

106 At the end of subsection 290(1)

Add:

Note: Section 1232B extends this section to the directors of the corporate director of a retail or wholesale CCIV.

107 Division 1 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to retail CCIVs: see section 1232C.

108 Subsection 292(1) (note)

Repeal the note, substitute:

Note 1: This Chapter only applies to disclosing entities incorporated or formed in Australia (see subsection 285(2)).

Note 2: Section 1232D extends this section to preparing annual financial reports for sub-funds of retail CCIVs, and applies this Division accordingly.

EXPOSURE DRAFT

109 At the end of subsection 295(5)

Add:

Note: Section 1229 deals with directors' resolutions for CCIVs.

110 At the end of subsection 298(2)

Add:

Note: Section 1229 deals with directors' resolutions for CCIVs.

111 At the end of subsection 300(1)

Add:

Note: This subsection applies to retail CCIVs in a modified form: see section 1232E.

112 At the end of subsection 300(13)

Add:

Note: This subsection applies to retail CCIVs in a modified form: see section 1232E.

113 Section 302 (after note 3)

Insert:

Note 4: Section 1232F extends this section to preparing half-year financial reports for sub-funds of retail CCIVs (if there are ED securities referable to the sub-fund), and applies this Division accordingly.

114 At the end of subsection 303(5)

Add:

Note: Section 1229 deals with directors' resolutions for CCIVs.

115 At the end of subsection 306(1)

Add:

Note: Section 1232G replaces the requirements of paragraph (1)(b) for retail CCIVs.

116 At the end of subsection 306(3)

Add:

Note: Section 1229 deals with directors' resolutions for CCIVs.

117 Division 3 of Part 2M.3 (after the heading)

Insert:

EXPOSURE DRAFT

Note: This Division applies to sub-funds of retail CCIVs in a modified form: see section 1232H.

118 At the end of section 307

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232H.

119 At the end of subsection 311(4)

Add:

Note: This subsection applies to sub-funds of retail CCIVs in a modified form: see section 1232H.

120 Division 4 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to reports relating to sub-funds of retail CCIVs in a modified form: see section 1232J.

121 At the end of subsection 314(1)

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232J.

122 At the end of subsection 315(3)

Add:

Note: Section 1232K applies this subsection to retail CCIVs (and their sub-funds).

123 At the end of subsection 316(1)

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232L.

124 Subsection 317(1) (after note 3)

Insert:

Note 4: This section does not apply to retail CCIVs: see section 1232M.

125 At the end of subsection 318(1)

Add:

EXPOSURE DRAFT

1 Note: This section applies to sub-funds of retail CCIVs in a modified form:
2 see section 1232N.

3 **126 At the end of subsection 322(1)**

4 Add:

5 Note: This section applies to sub-funds of retail CCIVs in a modified form:
6 see section 1232P.

7 **127 At the end of subsection 324CD(2) (after the table)**

8 Add:

9 Note: This subsection applies in relation to retail CCIVs in a modified form:
10 see section 1232Q.

11 **128 Subdivision B of Division 3 of Part 2M.4 (after the**
12 **heading)**

13 Insert:

14 Note: This Division applies in relation to retail CCIVs in a modified form: see section 1232R.

15 **129 At the end of subsection 324CL(1)**

16 Add:

17 Note: This section applies in relation to retail CCIVs in a modified form: see
18 section 1232S.

19 **130 Division 6 of Part 2M.4 (after the heading)**

20 Insert:

21 Note: This Division does not apply in relation to a CCIV. Instead, section 1232T applies a
22 modified version of Division 7 to a retail CCIV.

23 **131 Division 7 of Part 2M.4 (after the heading)**

24 Insert:

25 Note: Section 1232T applies a modified version of this Division in relation to a retail CCIV.

26 **132 Subsection 344(1) (note)**

27 Omit “Note”, substitute “Note 1”.

28 **133 At the end of subsection 344(1)**

29 Add:

30 Note 2: This subsection has an extended operation in relation to a retail CCIV:
31 see section 1232V.

EXPOSURE DRAFT

134 At the end of subsection 344(2)

Add:

Note: This section has an extended operation in relation to a retail CCIV: see section 1232V.

135 Part 2N.3 (after the heading)

Insert:

Note: This Part does not apply to CCIVs: see subsection 1232W(1).

136 At the end of subsection 348C(1)

Add:

Note: This section does not apply to CCIVs: see subsection 1232W(2).

137 Part 5.1 (after the heading)

Insert:

Note: This Part applies to CCIVs with modifications: see Division 2 of Part 8B.6.

138 Part 5.2 (after the heading)

Insert:

Note: This Part applies to CCIVs with modifications: see Division 3 of Part 8B.6.

139 At the end of Division 1 of Part 5.3A

Add:

435D Part does not apply to CCIVs

This Part does not apply to a CCIV or a sub-fund of a CCIV.

140 Part 5.4 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of Part 8B.6.

141 Part 5.4A (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of Part 8B.6.

EXPOSURE DRAFT

142 Part 5.4B (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of Part 8B.6.

143 Part 5.4C (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Division 4 of Part 8B.6.

144 Part 5.5 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of Part 8B.6.

145 Part 5.6 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of Part 8B.6.

146 At the end of subsection 530C(1)

Add:

Note: This section applies to a CCIV in a modified form: see section 1238Z.

147 Part 5.7B (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 3 of Part 8B.6 (for provisions relating to Division 2B), Division 4 of Part 8B.6 (for provisions relating to Divisions 2 and 2A) and Division 5 of Part 8B.6 (for provisions relating to Divisions 3, 4, 5 and 6).

148 Part 5.8 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 6 of Part 8B.6.

149 At the end of subsection 596(1)

Add:

Note: This section applies to a CCIV in a modified form: see section 1240B.

EXPOSURE DRAFT

150 Part 5.9 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 7 of Part 8B.6.

151 At the end of section 596A

Add:

Note: This section applies to a CCIV in a modified form: see section 1238U.

152 Part 5A.1 (after the heading)

Insert:

Note 1: This Part applies to the deregistration of CCIVs with modifications: see Subdivision A of Division 8 of Part 8B.6.

Note 2: For the deregistration of sub-funds of CCIVs, see Subdivision A of Division 8 of Part 8B.6.

153 Part 5A.2 (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Subdivision B of Division 8 of Part 8B.6.

154 Chapter 6 (after the heading)

Insert:

Note: This Chapter does not apply to acquisitions of interests in a CCIV: see Division 1 of Part 8B.7.

155 Subsection 616(1) (note)

Omit “Note”, substitute “Note 1”.

156 At the end of subsection 616(1)

Add:

Note 2: Although the prohibition in section 606 does not apply to acquiring relevant interests in voting shares in a CCIV, a takeover bid may be made for securities in a CCIV: see subsection 1243A(2).

157 Section 660A (note)

Omit “Note”, substitute “Note 1”.

158 At the end of section 660A

Add:

EXPOSURE DRAFT

Note 2: This Chapter does not apply to the acquisition of securities in a CCIV: see section 1243C.

159 Chapter 6B (after the heading)

Insert:

Note: This Chapter does not apply in relation to an off-market bid for securities in a CCIV: see subsection 1243A(3).

160 Section 671A (note)

Omit “Note”, substitute “Note 1”.

161 At the end of section 671A

Add:

Note 2: This Chapter does not affect CCIVs because a CCIV cannot be listed: see section 1222N.

162 At the end of subsection 675(2)

Add:

Note 5: Subsection (2) has a modified operation in relation to securities in a CCIV: see section 1243D.

163 At the end of subsection 700(1)

Add:

Note: In this Chapter, *securities* also does not include a security in a CCIV: see section 1243E.

164 Chapter 7 (after the heading)

Insert:

Note: This Chapter applies to a CCIV in a modified form: see Division 4 of Part 8B.7.

165 Section 760B (after table item 10)

Insert:

10A	7.10A	authorisation and regulation of an external dispute resolution scheme for financial complaints
		additional provisions relating to superannuation complaints

166 Section 761A (paragraph (a) of the definition of *financial services law*)

Omit “or 8A”, substitute “, 8A or 8B”.

EXPOSURE DRAFT

167 After paragraph 766A(1)(d)

Insert:

(da) operate a CCIV; or

168 Paragraph 766C(4)(c)

After “body corporate”, insert “(other than a CCIV)”.

169 After paragraph 766C(4)(c)

Insert:

(ca) a CCIV;

170 Subsection 1212(1)

Repeal the subsection, substitute:

- (1) A person may lodge an application with ASIC to have a scheme or sub-fund in an item in column 1 of the following table (a *collective investment fund*) registered as a passport fund if the person is the entity mentioned in the corresponding item in column 2 of the table (the *proposed operator* of the fund).

Who may apply to be a passport fund

Item	Column 1 Collective investment fund	Column 2 Proposed operator
1	a managed investment scheme that is a registered scheme	the responsible entity of the scheme
2	a managed investment scheme in respect of which an application for registration under section 601EB has been made	the proposed responsible entity of the scheme
3	a sub-fund of a retail CCIV	the corporate director of the CCIV

171 Paragraph 1212(2)(b)

Omit “responsible entity for the scheme”, substitute “proposed operator of the collective investment fund”.

172 Subparagraph 1212(2)(b)(i)

Omit “responsible entity”, substitute “proposed operator”.

EXPOSURE DRAFT

173 Subparagraph 1212(2)(b)(ii)

Omit “scheme”, substitute “fund”.

174 Subsection 1212(3)

Omit “scheme is registered as an Australian”, substitute “fund is registered as a”.

175 Section 1212A (heading)

Repeal the heading, substitute:

1212A Registration of Australian passport funds

176 Subsection 1212A(1)

Omit “a registered scheme”, substitute “a collective investment fund that is a registered scheme or a sub-fund of a retail CCIV”.

177 Paragraph 1212A(1)(a)

Omit “responsible entity for the scheme”, substitute “proposed operator of the fund”.

178 Paragraph 1212A(1)(b)

Omit “scheme”, substitute “fund”.

179 Subsection 1212A(2)

Omit “registered scheme”, substitute “a collective investment fund”.

180 Section 1212B

Omit “registered scheme”, substitute “collective investment fund”.

181 Section 1212B

Omit “scheme’s”, substitute “fund’s”.

182 Subsection 1213B(3)

After “managed investment schemes”, insert “, or CCIVs,”.

183 At the end of subsection 1274(2)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1245.

EXPOSURE DRAFT

184 At the end of subsection 1300(2A)

Add:

Note: This section applies to a CCIV as if the CCIV were a proprietary company: see section 1245A.

185 At the end of subsection 1307(1)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1245B.

186 At the end of subsections 1308(12) and (13)

Add:

Note: This subsection applies in relation to information given to CCIVs with modifications: see section 1245C.

187 At the end of subsections 1309(1) and (2)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1245C.

188 At the end of subsections 1309(9) and (10)

Add:

Note: This subsection applies in relation to information given to CCIVs with modifications: see section 1245C.

189 Before paragraph 1311(1A)(e)

Insert:

(de) Chapter 8B;

190 At the end of subsection 1317(1)

Add:

Note: This section applies in relation to a defendant who is a CCIV with modifications: see section 1245C.

191 Subsection 1317AA(1) (note)

Omit “Note”, substitute “Note 1”.

192 At the end of subsection 1317AA(1)

Add:

EXPOSURE DRAFT

Note 2: This section applies in relation to CCIVs with modifications: see section 1245D.

193 At the end of subsection 1317AE(1)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1245D.

194 Section 1317DA (paragraph (b) of the definition of *corporation/scheme civil penalty provision*)

Omit “item 46”, substitute “items 45B to 46”.

195 Subsection 1317E(1) (after table item 45A)

Insert:

45B	subsection 1224D(1)	duties owed by director of a retail CCIV
45C	subsection 1225(1)	duties owed by officers of corporate director of retail CCIV
45D	subsection 1225G(1)	duties owed by employees of corporate director of retail CCIV
45E	subsection 1226H(2)	breach reporting by a depositary of a CCIV
45F	subsection 1226K(1)	duties owed by depositary of a CCIV
45G	subsection 1231F(5)	share capital transactions for CCIVs
45H	subsection 1231S(4)	unauthorised reduction of share capital by a CCIV
45J	subsections 1233ZC(1), (2) and (3)	holding of sub-fund assets of a CCIV

196 At the end of subsection 1322(1)

Add:

Note: This section applies in relation to CCIVs with modifications: see section 1245F.

197 Sections 1324A and 1324B

Omit “or Part 7.10”, substitute “, Part 7.10 or Chapter 8B”.

198 Subsection 1325(7) (at the end of the definition of *section 1325 order provision*)

Add:

EXPOSURE DRAFT

; and (j) a provision of Chapter 8B.

199 At the end of section 1351

Add:

Note: Subsection (4) applies in relation to CCIVs with modifications: see section 1245G.

200 At the end of subsection 70-35(3) of Schedule 2

Add:

Note: There is a modification for a winding up of a sub-fund of a CCIV: see section 1238P.

201 At the end of subsection 70-35(4) of Schedule 2

Add:

Note: There is a modification for a winding up of a sub-fund of a CCIV: see section 1238P.

202 Schedule 3 (after table item 328D)

Insert:

329	Subsection 1222L(3)	20 penalty units.
329A	Subsection 1222L(7)	20 penalty units.
329AA	Subsection 1222W(1)	30 penalty units.
329AB	Subsection 1222Y(2)	20 penalty units.
329AC	Subsection 1222Z(3)	120 penalty units.
329B	Subsection 1223B(3)	20 penalty units.
329BA	Subsection 1223C(4)	20 penalty units.
329BC	Subsection 1223C(5)	20 penalty units.
329BD	Subsection 1223D(3)	20 penalty units.
329C	Subsection 1224(1)	2 years imprisonment.
329CA	Subsection 1224(5)	2 years imprisonment.
329CB	Subsection 1224A(1)	2 years imprisonment.
329CC	Subsection 1224A(2)	2 years imprisonment.
329CD	Subsection 1224G(4)	2 years imprisonment.
329CE	Subsection 1224G(5)	20 penalty units.
329CF	Subsection 1224G(6)	60 penalty units.
329CG	Subsection 1224K(3)	6 months imprisonment.
329CH	Subsection 1224Q(4)	30 penalty units.

EXPOSURE DRAFT

329CI	Subsection 1224Q(5)	20 penalty units.
329CJ	Subsection 1224T(3)	20 penalty units.
329CK	Subsection 1224U(4)	20 penalty units.
329CL	Subsection 1224V(4)	20 penalty units.
329CM	Subsection 1224W(2)	20 penalty units.
329CN	Subsection 1224W(8)	20 penalty units.
329CO	Subsection 1224Z(1)	20 penalty units.
329D	Subsection 1225(2)	5 years imprisonment.
329DA	Subsection 1225G(2)	5 years imprisonment.
329E	Subsection 1226(1)	2 years imprisonment.
329EA	Subsection 1226A(3)	20 penalty units.
329EB	Subsection 1226G(1)	2 years imprisonment.
329EC	Subsection 1226H(2)	2 years imprisonment.
329ED	Subsection 1226J(3)	6 months imprisonment.
329EE	Subsection 1226N(2)	60 penalty units.
329EF	Subsection 1226P(2)	20 penalty units.
329EG	Subsection 1226Q(2)	20 penalty units.
329EH	Subsection 1226R(2)	20 penalty units.
329EI	Subsection 1226S(7)	20 penalty units.
329EJ	Subsection 1226T(3)	20 penalty units.
329EK	Subsection 1226U(4)	20 penalty units.
329EL	Subsection 1226V(2)	20 penalty units.
329EM	Subsection 1226X(1)	20 penalty units.
329F	Subsection 1227(3)	20 penalty units.
329FA	Subsection 1227C(2)	60 penalty units.
329FB	Subsection 1227D(3)	20 penalty units.
329FC	Subsection 1227D(4)	20 penalty units.
329FD	Subsection 1227E(3)	20 penalty units.
329FE	Subsection 1227F(1)	20 penalty units.
329FF	Subsection 1227G(1)	20 penalty units.
329FG	Subsection 1227G(3)	60 penalty units.
329FH	Subsection 1227G(4)	20 penalty units.
329FI	Subsection 1227H(6)	1 year imprisonment.
329FJ	Paragraph 1227J(1)(a)	20 penalty units.
329FK	Subsection 1227K(1)	20 penalty units.

EXPOSURE DRAFT

329G	Subsection 1229D(4)	20 penalty units.
329H	Subsection 1231F(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units.
329HA	Subsection 1231G(1)	20 penalty units.
329HB	Subsection 1231G(2)	20 penalty units.
329HC	Subsection 1231G(4)	20 penalty units.
329HD	Subsection 1231J(5)	20 penalty units.
329HE	Subsection 1231J(8)	20 penalty units.
329HF	Subsection 1231M(1)	2 years imprisonment.
329HG	Subsection 1231S(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units.
329J	Subsection 1233B(4)	2 years imprisonment.
329JA	Subsection 1233B(5)	60 penalty units.
329JB	Subsection 1233C(2)	60 penalty units.
329JC	Subsection 1233D(5)	2 years imprisonment.
329JD	Subsection 1233D(6)	60 penalty units.
329JE	Subsection 1233E(5)	2 years imprisonment.
329JF	Subsection 1233E(6)	60 penalty units.
329JG	Subsection 1233F(4)	20 penalty units.
329JH	Subsection 1233G(3)	2 years imprisonment.
329JI	Subsection 1233G(4)	60 penalty units.
329JJ	Subsection 1233J(6)	2 years imprisonment.
329JK	Subsection 1233K(5)	2 years imprisonment.
329JL	Subsection 1233M(6)	2 years imprisonment.
329JM	Subsection 1233N(5)	2 years imprisonment.
329JN	Subsection 1233P(3)	20 penalty units.
329JO	Subsection 1233X(3)	2 years imprisonment.
329JP	Subsection 1233X(4)	60 penalty units.
329JR	Subsection 1233ZB(3)	2 years imprisonment.
329JS	Subsection 1233ZB(4)	60 penalty units.
329JT	Subsections 1233ZC(1),	60 penalty units.

EXPOSURE DRAFT

(2) and (3)		
329K	Subsection 1238P(4)	50 penalty units.
329KA	Subsection 1242D(3)	20 penalty units.
329KB	Subsection 1242L(1)	20 penalty units.
329L	Subsection 1243F(1)	5 years imprisonment.
329LA	Subsection 1243F(2)	5 years imprisonment.

EXPOSURE DRAFT

Schedule 3—Amendments of other Acts

Australian Securities and Investments Commission Act 2001

1 Subsection 5(1) (paragraph (a) of the definition of *eligible person*)

After “body corporate”, insert “(other than a CCIV)”.

2 Subsection 5(1) (after paragraph (a) of the definition of *eligible person*)

Insert:

(aa) if the first-mentioned person is a CCIV—is or has been:

(i) an officer of the CCIV; or

(ii) an officer of an officer of the CCIV; or

3 Subsection 5(1) (at the end of the definition of *eligible person*)

Add:

Note: For paragraph (aa), *officer* is defined in this subsection.

4 Subsection 5(1) (at the end of the definition of *financial service*)

Add:

Note: Some provisions of Chapter 7 of that Act have a modified meaning when applying to CCIVs (see Part 8B.17 of that Act).

5 After paragraph 12BAB(1)(g)

Insert:

(ga) operate the business and conduct the affairs of a CCIV, and the person is the corporate director of the CCIV; or

(gb) act as the depositary of a CCIV; or

6 At the end of subsection 12BAB(1)

Add:

Note: Paragraph (ga) means persons other than the corporate director will not be treated as providing that financial service if they operate the business and conduct the affairs of the CCIV while:

EXPOSURE DRAFT

-
- (a) acting as an agent of the CCIV, or as an agent or employee of the corporate director; or
 - (b) taking steps to wind up the CCIV.

7 After paragraph 12BAB(14)(d)

Insert:

- (da) operating as a CCIV;
- (db) operating the business and conducting the affairs of a CCIV;
- (dc) acting as the depositary of a CCIV;

8 Paragraph 12GI(2)(b)

After “body corporate”, insert “(other than a CCIV)”.

9 After paragraph 12GI(2)(b)

Insert:

or (c) in the case of a defendant being a CCIV:

- (i) an agent, or the corporate director, of the defendant; or
- (ii) a director, employee or agent of the corporate director of the defendant;

10 Subsection 59(6)

Repeal the subsection, substitute:

(6) A body corporate may be represented at a hearing by:

- (a) unless paragraph (b) applies—an officer or employee of the body corporate approved by ASIC; or
- (b) if the body corporate is a CCIV—any of the following persons approved by ASIC:
 - (i) an officer of the CCIV (other than the corporate director of the CCIV);
 - (ii) an officer or employee of the corporate director of the CCIV.

11 Section 84

Repeal the section, substitute:

84 Requirement made of a body corporate

If a provision of this Part empowers a person to make a requirement of a body corporate, the provision also empowers the person to make that requirement of a person who is or has been:

EXPOSURE DRAFT

-
- (a) unless paragraph (b) applies—an officer or employee of the body corporate; or
 - (b) if the body corporate is a CCIV:
 - (i) an officer of the CCIV; or
 - (ii) an officer or employee of the corporate director of the CCIV.

12 Part 3A (heading)

Repeal the heading, substitute:

Part 3A—Enforceable undertakings relating to registered schemes or CCIVs

13 At the end of Part 3A

Add:

93C Undertakings by corporate director of a CCIV

- (1) ASIC may accept a written undertaking given by the corporate director of a CCIV in connection with a matter:
 - (a) concerning the CCIV; and
 - (b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).
- (2) The corporate director may withdraw or vary the undertaking at any time, but only with ASIC's consent.
- (3) If ASIC considers that the corporate director has breached any of the terms of the undertaking, ASIC may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the corporate director has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the corporate director to comply with that term of the undertaking;
 - (b) an order directing the corporate director to transfer to the CCIV an amount up to the amount of any financial benefit that the corporate director has obtained directly or indirectly and that is reasonably attributable to the breach;

EXPOSURE DRAFT

-
- (c) any order that the Court considers appropriate directing the corporate director to compensate any person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

(5) ASIC must keep a record of the full text of the undertaking.

(6) ASIC must make available to a person who asks for it a copy of the text of the undertaking, but ASIC must delete from the copy information:

- (a) that the corporate director has asked it not to release; and
- (b) that ASIC is satisfied:
 - (i) is commercial in confidence; or
 - (ii) should not be disclosed because it would be against the public interest to do so; or
 - (iii) consists of personal details of an individual.

(7) If ASIC makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

14 After section 243E

Insert:

243F Treat the corporate director of a CCIV as providing financial services etc. being provided by the CCIV

- (1) This section applies to a provision of this Act that applies in relation to:
- (a) a service, or matter, that is a financial service for the purposes of that provision; or
 - (b) a financial services business; or
 - (c) a matter that is prescribed by the regulations for the purposes of this paragraph.

General rule

- (2) For the purposes of that provision of this Act:
- (a) treat any conduct engaged in by, or on behalf of, a CCIV as also being engaged in by, or on behalf of, the corporate director of the CCIV; and

EXPOSURE DRAFT

(b) treat any conduct relating to the CCIV that is engaged in by a person (other than the corporate director of the CCIV) as also being engaged in by that person in relation to the corporate director of the CCIV.

(3) In subsection (2), **conduct** means an act, an omission to perform an act or a state of affairs.

Exceptions

(4) If the CCIV issues a security in the CCIV, then subsection (2) does not treat the corporate director of the CCIV as also being the issuer of the security.

(5) If the CCIV is a participant (within the meaning of Chapter 7 of the Corporations Act) in:

(a) a clearing and settlement facility; or

(b) a financial market;

subsection (2) does not treat the corporate director of the CCIV as also being a participant (within the meaning of Chapter 7 of the Corporations Act) in relation to the facility or market.

(6) Subsection (2) does not apply in any circumstances prescribed by the regulations for the purposes of this subsection.

Personal Property Securities Act 2009

15 At the end of section 267

Add:

Effect of winding up of a sub-fund of a CCIV

(4) Paragraph (1)(a) applies in relation to a grantor if:

(a) the grantor is a CCIV (within the meaning of the *Corporations Act 2001*); and

(b) the security interest is in personal property that is an asset of a sub-fund of the CCIV (within the meaning of that Act); and

(c) an order is made, or a resolution is passed, for the winding up of the sub-fund.