THE SILCGROUP®

THE CORPORATE COLLECTIVE INVESTMENT VEHICLE

ACCESSING OPPORTUNIITIES IN AUSTRALIA

In a bid at widening global investment capital and access into the Australian funds management landscape, the Australian government passed the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 (Cth) (**CCIV Bill**) in February 2022. From July 2022, the Australian funds management industry is set to see a shakeup when the CCIV Bill becomes operative. This presents an opportune time for fund managers looking to bolster their global wholesale investor outreach to consider providing the Corporate Collective Investment Vehicle (**CCIV**) offering.

The CCIV has been designed to position Australia as a viable hub for international investment capital, as the CCIV fund structure is also a commonly used vehicle in established global fund centres such as Luxembourg and Ireland (both Undertakings for Collective Investment in Transferable Securities directive (**UCITS**) and alternative investment funds structured under European Union laws) as well as more recently, Singapore (Variable Capital Company). Sophisticated and accredited offshore investors looking to invest in Australia may find the CCIV model more familiar and in turn more accessible.

> *"The new CCIV offering has been a long time in the making. The complexity of introducing a vehicle with hybrid managed investment scheme-like and company features into an existing regulatory landscape cannot be understated. Addressing the tax treatment of CCIVs has been challenging. However, for the most part, the new CCIV offering has attempted to address industry's key concerns from earlier iterations and we are looking forward to seeing the first CCIVs in the marketplace from July 2022."*
>
> - Paula McCabe, Legal Director at PMC Legal

OVERVIEW OF THE CCIV

The CCIV is designed as a substitute to a trust-based managed investment scheme (**MIS**), that is a general model for Australian funds but less commonly used outside of Australia. Whereas the MIS has widely been considered as a barrier to investment due to lack of familiarity and perceived risk amongst offshore investors, from a regulatory and tax framework, the CCIV has been structured to provide globally recognised investment products, flow-through tax treatment, commercial viability, and robust investor protections.

Several aspects of the existing MIS regime are expected to be replicated for the CCIV which include:

i. having a sole corporate director (instead of a corporate trustee) that must have the appropriate Australian financial services licensing (**AFSL**) which will be newly introduced;
ii. alignment with the existing attribution management investment trusts (**AMIT**) tax framework enabling investors to benefit from flow-through taxation arrangements; and
iii. being able to cater to retail and wholesale investors, subject to relevant disclosure and regulatory conditions.

A CCIV will be a new type of company limited by shares instead of a trust structure. It will be a single legal entity with a minimum of one sub-fund. Each sub-fund will not have a separate legal personality however, each sub-fund will have segregated assets and liabilities and will be treated as a separate entity for tax purposes. In MIS terms, the CCIV can be regarded as the trustee of each sub-fund and investors who hold the shares in the CCIV sub-fund become the trust beneficiaries. Fund managers should take note that in contrast with the MIS regime, both retail and wholesale CCIVs (including each sub-fund of a CCIV) will require ASIC registration.

"The new concept of segregated sub funds is designed to create limited liability per sub fund, eg each sub fund can be separately wound up and specific assets and specific liabilities can be allocated to particular sub funds. However, care will need to be taken to:

a. *reflect this in the formation documents for a CCIV (particularly in the company constitution); and*
b. *reference this in contractual arrangements for each sub fund."*

- Bill Fuggle, Partner at Baker McKenzie

Key features of the CCIV that can create efficient investment structures and facilitate commercial viability are summarised as follows:

i. in line with international collective investment vehicles, the ability of the CCIV to have cross-investments between sub-funds is permitted, providing more flexible investment structuring options, such as a master-feeder or hedging arrangement
ii. both retail and wholesale CCIVs can opt (but are not required to) to utilise an independent depositary or custodian, consistent with the current MIS requirements
iii. the introduction of Chapter 8B in the Corporations Act 2001 (Cth), outlining the establishment and regulatory requirements of the CCIV allow for greater flexibility as the standard rules under the Corporations Act 2001 (Cth) may not apply to the CCIV such as:
    a. Given its variable capital nature, the standard rules that apply to an ordinary company when it comes to issuing and reducing share capital do not apply to the CCIV, meaning the CCIV can be structured as open- or close-ended, where share capital is fixed or limited.
    b. The redemptions mechanism from the CCIV replicate the requirements for redemptions of company redeemable preference shares, which mirrors the unitholder's right to withdraw from a registered scheme. Additionally, the redemption in a CCIV does not need to be paid out of the profits or proceeds of a new share issue.

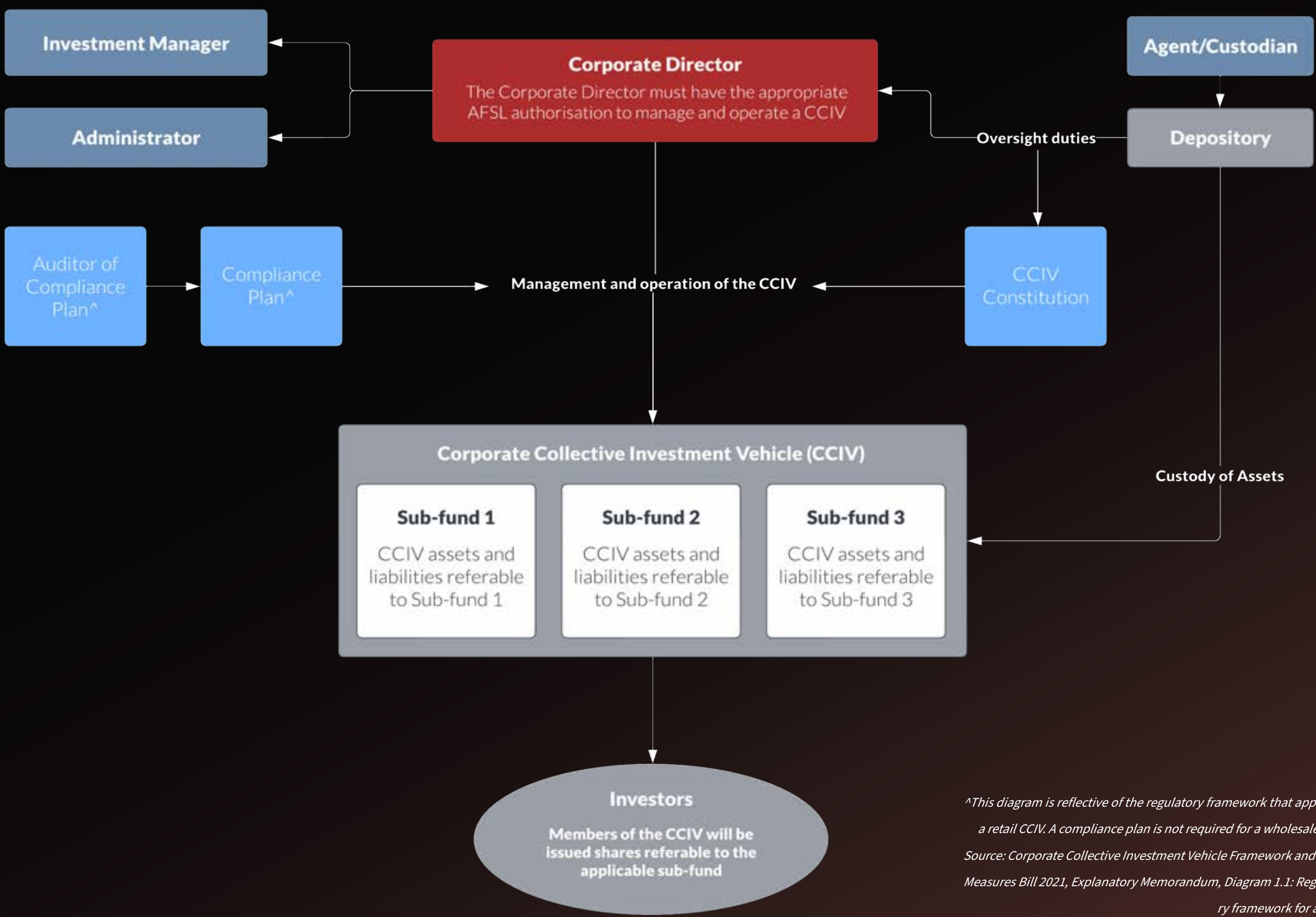
"Under tax law each sub-fund is deemed to be a separate unit trust, such that a CCIV sub-fund that meets the AMIT eligibility criteria will have all the benefits of an Attribution Management Investment Trust, without the legal form requirements to be a trust entity. These benefits include:

- *Amounts attributed to investors will retain the character they had in the hands of the CCIV sub-fund;*
- *CCIV sub-funds are able to use the "unders and "overs" regime to reconcile a variance in income components of particular characters for an income tax year in the year the variance is discovered;*
- *The withholding tax provisions apply to CCIV sub-funds and their members in the same way they apply to AMITS.*

Foreign investors who require a legal form corporate entity structure for investment can now access the benefits of Australia's funds management tax regime (MIS regime and AMIT regime) through a CCIV."

- Himashini Weeraratne, Partner, Financial Services at Grant Thornton

STRUCTURE OF THE CCIV



^This diagram is reflective of the regulatory framework that applies to a retail CCIV. A compliance plan is not required for a wholesale CCIV. Source: Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021, Explanatory Memorandum, Diagram 1.1: Regulatory framework for a CCIV.

"Treasury did not introduce a transitional regime which would allow existing funds tax roll-over relief to restructure into a CCIV. Nor, at this stage, have there been any announced developments by States or Territories in relation to the availability of stamp duty relief. The absence of tax and duty relief is likely to be prohibitive for many existing funds wishing to restructure into a CCIV model"

- Himashini Weeraratne, Partner, Financial Services at Grant Thornton

LOOKING FORWARD

While the introduction of the CCIV may present several unknowns at the onset, Australian fund managers should consider and familiarise themselves with the evolving fund structuring landscape to differentiate themselves and to attract foreign investment capital. Whether or not the CCIV will replace the MIS regime as the preferred investment structure remains to be seen but the CCIV is a step in the right direction to stay competitive in today's increasingly interconnected global investment landscape.

"As a specialised investment funds services provider offering portfolio, digital and capital solutions to investment managers focused on alternative assets, we believe the new CCIV presents an innovative structure for fund managers to offer their investment strategies more broadly to international qualifying and accredited wholesale investors. To participate on the global stage more meaningfully, it is a positive step that the Australian regulators have established the CCIV, particularly given Australia is an attractive destination for foreign capital."

- Koby Jones, Managing Director at The SILC Group

ABOUT THE SILC GROUP

The SILC Group (AFSL No 407100) is a multi-faceted financial solutions provider focussed on the unique needs of discerning wholesale and sophisticated clients. Our experienced team of specialists can provide you with greater access to traditional and alternative investment opportunities.

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