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NEWS

Are you planning for the new CCIV regime?

We recently reported a passing reference in the most recent Federal Budget that the long-awaited corporate collective investment vehicle (CCIV) regime was back on the agenda with a proposed commencement date of July 2022. Now, the government has released draft legislation with that ambitious date still the target.

Here, partner Langton Clarke recaps the features of the CCIV regime and highlights some of its benefits and drawbacks.

BACKGROUND

It has been almost a decade since the introduction of CCIVs in Australia was first raised. Changes of government and other significant events delayed the introduction of the new regime, but it now seems it will become a reality.

To recap, Australia's funds management industry has over the years become dominated by trust-based structures (think of the amount in superannuation). Whilst they have served the domestic market well, government and industry alike have realised trusts are not familiar to offshore investors, particularly our close investment neighbours and their huge wads of investment capital.

The new CCIV regime will herald in a new investment vehicle designed to increase the competitiveness of Australia's managed funds industry internationally to attract offshore investment and offer flow-through tax treatment.

FUNDAMENTAL FEATURES

As a reminder, the fundamental features of a CCIV are as follows:

- A CCIV is a new type of company limited by shares and has most of the characteristics of other companies governed by the Corporations Act.
- There can be retail and wholesale CCIVs. Each must have a constitution, although the requirements for a retail CCIV constitution are more prescribed. Retail CCIVs must also have a compliance plan setting out how the CCIV will meet the requirements of the constitution and the Corporations Act.
- A CCIV will have as its sole director a public company with an AFSL authorising it to operate the CCIV.
- The CCIV business will be run through sub-funds. Each part of the CCIV's business must relate to one (and only one) sub-fund. Effectively, the assets and liabilities of each sub-fund are quarantined. The CCIV is a separate legal entity, but its sub-funds are not.
- A CCIV may issue shares and debentures, provided each share or debenture relates to only one sub-fund.
- A CCIV can issue ordinary shares that can be redeemed. However, redemptions do not need to be paid out of profit, although the sub-fund to which the shares relate must be solvent. This feature is designed to mirror the current withdrawal

regime for managed investment schemes.

- A new feature is that the CCIV is generally permitted to engage in cross-investment between sub-funds of the CCIV which involves the CCIV acquiring in respect of any of its sub-funds one or more shares relating to another of its sub-funds.

A CCIV is really a hybrid—a company that also has the best (some may say conservative) elements of the managed investment scheme regime which have been in place in Australia for over 20 years.

The table below shows a comparison of the features of retail and wholesale schemes as against the proposed new retail and wholesale CCIVs.

FEATURE/REQUIREMENT	RETAIL CCIV	WHOLESALE CCIV	REGISTERED MIS	UNREGISTERED MIS
Registration with ASIC	Yes	Yes	Yes	No
Separate legal entity	Yes	Yes	No	No
Corporate director	Yes	Yes	No	No
Operator—company type	Public company	Public company	Public company	No requirement
Operator—AFSL requirement	Yes	Yes	Yes	Yes, subject to exemptions
Constitution—prescribed content	Yes	No	Yes	No
Compliance plan and compliance plan auditor	Yes	No	Yes	No

BENEFITS AND DRAWBACKS

The use of a corporate vehicle will have benefits, particularly the familiarity for overseas investors and certainty under the tax rules of a CCIV having flow-through tax treatment. However, in our original submission to Treasury when the previous draft legislation was published, we noted there was an opportunity for even greater flexibility, particularly for wholesale fund managers. Our submission noted the following:

- Wholesale CCIVs do not necessarily need a public company corporate director; instead, a proprietary limited entity was sufficient, given it has stood wholesale funds in good stead for many years.
- The new regime did not sufficiently replicate the flexibility and light-touch regulatory philosophy that applies to wholesale funds which means a CCIV may not be an attractive vehicle to wholesale fund managers as it is not a real alternative to the existing regime.
- Giving each sub-fund a separate legal personality would have greatly enhanced the regime, particularly for debt funders. They, along with other external stakeholders, must instead still deal with a trust-like vehicle as with managed investment schemes and the complications that go with it (for example, the corporate director will need to limit its liability under contracts with counterparties to the assets of the relevant sub-fund, like responsible entities and trustees of managed funds).

CONCLUSION

Fund managers need to understand how CCIVs will be used plus the regulatory and policy requirements of the new framework.

Our lawyers can answer your questions about the CCIV regime and help you commence planning. Please contact us if you need assistance with preparing a CCIV product.

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