

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2021:
Regulatory framework**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedules 1, 2 and 3	1 July 2022.	1 July 2022

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6		

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
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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

1 **Part 8B.2—Registration of CCIVs**

2 **Division 1—Registering a CCIV**

3 **Subdivision A—Requirements for registration as a CCIV**

4 **1222 Requirements for registration as a CCIV**

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

- 7 (a) the company is a company limited by shares;
- 8 (b) the company has a constitution;
- 9 (c) the sole proposed director of the company is a public
10 company that holds an Australian financial services licence
11 authorising it to operate the business and conduct the affairs
12 of a CCIV;
- 13 (d) the company will, upon registration, have at least one
14 sub-fund;
- 15 (e) each sub-fund of the company will, upon registration, have at
16 least one member;
- 17 (f) a notice under subsection 1222A(4) (about whether a CCIV
18 is to be a retail CCIV or a wholesale CCIV) has been lodged
19 with the application;
- 20 (g) if the company will, on registration, be a retail CCIV—the
21 company has a compliance plan.

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

24 **Subdivision B—How a CCIV is registered**

25 **1222A Applying for registration**

- 26 (1) This section applies in relation to an application for registration
27 made under subsection 117(1) if the type of company that is
28 proposed to be registered under this Act is a CCIV.
- 29 (2) The application is not required to state the information mentioned
30 in paragraphs 117(2)(d), (e), (f), (ma) and (mb).
- 31 (3) In addition to the information required by subsection 117(2) as
32 modified by subsection (2) of this section, the application must
33 also state:

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-
- 1 (a) the name, and the address of the registered office, of the
2 public company that consents in writing to become the
3 director of the CCIV; and
4 (b) the proposed name of each sub-fund the CCIV is to have
5 when it is registered; and
6 (c) for each such proposed sub-fund:
7 (i) which of the members identified under
8 paragraph 117(2)(c) are to be members of the sub-fund;
9 and
10 (ii) which of the shares identified under
11 paragraph 117(2)(k) are to be referable to the sub-fund.

12 Note: For paragraph (b), see section 1222V.

13 (4) A notice stating whether the CCIV is to be a retail CCIV or a
14 wholesale CCIV must be lodged with the application.

15 (5) A copy of the CCIV's constitution must be lodged with the
16 application.

17 Note: The requirement for a CCIV to have a constitution is set out in section
18 1223B.

19 (6) If the CCIV is to be a retail CCIV, a copy of the compliance plan
20 signed by all the directors of the proposed corporate director of the
21 CCIV must be lodged with the application.

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

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

26 **1222B No other way to register a CCIV**

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

29 **1222C Registration of a CCIV**

30 If:

- 31 (a) an application to register a company as a CCIV is lodged
32 under section 117; and
33 (b) the company meets the requirements for registration as a
34 CCIV set out in section 1222;

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1 ASIC may take the steps set out in paragraphs 118(1)(a), (b) and
2 (c) for the company.

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

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

6 **1222D Corporate director and members of a CCIV**

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

10 (2) A person becomes a member of a CCIV on registration if the
11 person is specified in the application with their consent as a
12 proposed member of the CCIV.

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

15 (3) Subsection 120(1) does not apply in relation to a CCIV.

16 **Subdivision C—Names of CCIVs**

17 **1222E Special requirements for naming of CCIVs**

18 (1) Subsection 148(1) applies to a CCIV as if the reference to
19 subsections (2) and (3) of section 148 were instead a reference to
20 subsection (2) of this section.

21 (2) A CCIV must have the expression “Corporate Collective
22 Investment Vehicle” at the end of its name.

23 **1222F Special requirements for acceptable abbreviations of CCIV** 24 **names**

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

27
28

10	Corporate Collective Investment Vehicle	CCIV
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EXPOSURE DRAFT

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*.

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) a 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);

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-
- 1 (b) the person acquired the security as a retail client for the
2 purposes of Chapter 7;
3 (c) the person is not associated (within the meaning of
4 subsection 1244Q(3)) with the CCIV;
5 (d) if the person acquired the security by way of an issue—the
6 issue was not made in a situation, or pursuant to an offer
7 made in a situation, to which section 1012E (about small
8 scale offerings) applies.

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

11 *When a person is a protected client under a custodial arrangement*

- 12 (3) For the purposes of paragraph (1)(b), a person is covered by this
13 subsection in relation to a CCIV if all of the following apply:
14 (a) an acquisition of a security (within the meaning of Chapter 7)
15 in the CCIV occurs pursuant to an instruction given by the
16 person under a custodial arrangement (within the meaning of
17 section 1012IA);
18 (b) if there were an equivalent direct acquisition (within the
19 meaning of subsection 1012IA(2)) by the person, the person
20 would acquire the security as a retail client for the purposes
21 of Chapter 7;
22 (c) the person is not associated (within the meaning of
23 subsection 1244Q(3)) with the CCIV.

24 *When a person is a protected passport fund member*

- 25 (4) For the purposes of paragraph (1)(c), a person is covered by this
26 subsection in relation to a CCIV if:
27 (a) a sub-fund of the CCIV is an Australian passport fund; and
28 (b) the person became a member of the sub-fund (whether in this
29 jurisdiction or any host economy for the fund):
30 (i) on the expectation that the sub-fund would become an
31 Australian passport fund; or
32 (ii) after the sub-fund became an Australian passport fund;
33 and
34 (c) the person:
35 (i) is not, and has not at any time been, the corporate
36 director of the CCIV; and
37 (ii) is not a related party of an entity that is, or has at any
38 time been, the corporate director of the CCIV.

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

4 *Regulations*

- 5 (5) The regulations may do either or both of the following:
6 (a) prescribe additional circumstances in which a person is
7 covered by subsection (2), (3) or (4) in relation to a CCIV;
8 (b) provide that a particular class of person is not covered by
9 subsection (2), (3) or (4) in relation to a CCIV.

10 **1222L Notifying ASIC of status as a retail CCIV or wholesale CCIV**

- 11 (1) For the purposes of paragraph 1222J(1)(b), a CCIV is notified as a
12 retail CCIV if:
13 (a) the most recent notice lodged with ASIC under this section is
14 a notice that the CCIV is, or wishes to be, a retail CCIV; or
15 (b) both:
16 (i) the notice required by subsection 1222A(4) to be lodged
17 with the application to register the CCIV stated that the
18 CCIV was to be a retail CCIV; and
19 (ii) the CCIV has not lodged a notice with ASIC under this
20 section stating that the CCIV is eligible to be, and
21 wishes to be, a wholesale CCIV.
- 22 (2) Subject to this section, a CCIV may at any time:
23 (a) lodge with ASIC a notice in the prescribed form stating that
24 the CCIV is, or wishes to be, a retail CCIV; or
25 (b) lodge with ASIC a notice in the prescribed form stating that
26 the CCIV is eligible to be, and wishes to be, a wholesale
27 CCIV.

28 Note: A CCIV that lodges a notice under paragraph (2)(b) will be a retail
29 CCIV despite the notice if it is not eligible to be a wholesale CCIV
30 because it passes the retail CCIV test: see section 1222J. Lodging a
31 notice under paragraph (2)(b) in this situation is an offence: see
32 subsection (7).

33 *When a retail CCIV notice must be lodged*

- 34 (3) A CCIV must lodge a notice under paragraph (2)(a) if, because of
35 the operation of paragraph 1222J(1)(a) (about the retail CCIV test),
36 the CCIV becomes a retail CCIV.

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(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 this subsection: 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.

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	subsection 1224D(2)
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

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Provisions that apply only to retail CCIVs

Item	Topic	Provision(s)
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	Requirement for a retail CCIV to have a compliance plan	Division 5 of Part 8B.3
11	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
12	Further requirements for redemptions of shares by a retail CCIV	sections 1231G to 1231K
13	Part 2M.3 (financial reporting)	section 1232

1 **Subdivision E—Listing not permitted for certain CCIVs**

2 **1222N Certain CCIVs must not be listed**

3 The following must not be included in the official list of a
4 prescribed financial market operated in this jurisdiction:

- 5 (a) a wholesale CCIV;
6 (b) a retail CCIV that has more than one sub-fund;
7 (c) a sub-fund of a CCIV.

8 Note: This section does not prohibit a retail CCIV that has only one
9 sub-fund from being included in the official list of a prescribed
10 financial market operated in this jurisdiction.

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

12 **1222P Part 2B.7 does not apply to a CCIV**

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

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1 Division 2—Registering a sub-fund of a CCIV

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

3 1222Q What is a *sub-fund* of a CCIV

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

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

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

- 9 (3) A person is a *member* of a sub-fund of a CCIV if the person:

10 (a) is a member of the CCIV; and

11 (b) holds one or more shares that are referable to the sub-fund.

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

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

14 1222R Initial sub-funds to be registered when the CCIV is registered

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

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

19 1222S Registration of a sub-fund

20 *Registration of initial sub-funds*

- 21 (1) ASIC may register a sub-fund of a CCIV if:

22 (a) ASIC registers the CCIV; and

23 (b) the proposed name of the sub-fund is specified in the
24 application to register the CCIV.

25 *Registration of further sub-funds*

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

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1 *ASIC to give sub-fund an ARFN*

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

4 *ASIC must keep record of registration*

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

8 **1222T Sub-fund is established on registration**

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

13 **1222U Application to register further sub-funds**

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

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

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

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

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

5 **Subdivision C—Names of sub-funds**

6 **1222V A sub-fund’s name**

7 *CCIV using ACN*

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

12 *CCIV using available name*

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

30 **1222W Using sub-fund name and ARFN on documents**

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

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

2 **1222X Acceptable abbreviations of sub-fund names**

- 3 (1) The abbreviations set out in the following table may be used:
- 4 (a) instead of words that this Act requires to be part of a
- 5 sub-fund's name or to be included in a document or
- 6 negotiable instrument; and
- 7 (b) instead of words that are part of a sub-fund's name; and
- 8 (c) with or without full stops.
- 9

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

10

11 (2) If a sub-fund's name includes any of these abbreviations, the word

12 or words corresponding to the abbreviation may be used instead.

13 **1222Y Sub-fund changing its name**

- 14 (1) The members of a sub-fund of a CCIV may pass a special
- 15 resolution adopting a new name for the sub-fund.
- 16 (2) If they do so, the CCIV must, within 14 days after the resolution is
- 17 passed:
- 18 (a) lodge a copy of the special resolution with ASIC; and
- 19 (b) lodge an application to change the sub-fund's name in the
- 20 prescribed form with ASIC.
- 21 (3) However, no application may be lodged with ASIC under
- 22 paragraph (2)(b) while the sub-fund is in liquidation.
- 23 (4) An offence based on subsection (2) is an offence of strict liability.
- 24 (5) If the proposed name meets the requirements of section 1222V,
- 25 ASIC must change the sub-fund's name by altering ASIC's record
- 26 of the sub-fund's registration to reflect the change. The change of

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1 name takes effect when ASIC alters ASIC's record of the
2 sub-fund's registration.

3 **1222Z ASIC's power to direct CCIV to change a sub-fund's name**

- 4 (1) ASIC may direct a CCIV in writing to change the name of a
5 sub-fund of the CCIV within 2 months if:
6 (a) the name should not have been registered; or
7 (b) ASIC has directed the CCIV to change its name under
8 section 158.
- 9 (2) Despite section 1222Y, the corporate director may lodge an
10 application to change the sub-fund's name under paragraph
11 1222Y(2)(b) without the members of the sub-fund having passed a
12 special resolution adopting the new name.
- 13 (3) The CCIV must comply with the direction within 2 months after
14 being given it.
- 15 (4) An offence based on subsection (3) is an offence of strict liability.
- 16 (5) If the CCIV does not comply with subsection (3), ASIC may
17 change the sub-fund's name to the expression "Australian
18 Registered Fund Number" followed by the sub-fund's ARFN.
19 ASIC does this by altering ASIC's record of the sub-fund's
20 registration to reflect the change.

21 Note: For ASIC's record of the registration of a sub-fund, see subsection
22 1222S(4).

- 23 (6) A change of name under subsection (5) takes effect when ASIC
24 alters ASIC's record of the sub-fund's registration.

25 **1222ZA Effect of name change**

26 A change of the name of a sub-fund of a CCIV does not:

- 27 (a) create a legal entity; or
28 (b) affect the sub-fund's existing property, rights or obligations;
29 or
30 (c) render defective any legal proceedings by or against the
31 CCIV and relating to the sub-fund.

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1 Division 3—Registers

2 1222ZB Registers relating to CCIVs

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

12 Part 8B.3—Corporate governance of CCIVs

13 Division 1—Governance rules

14 Subdivision A—How a CCIV exercises company powers

15 1223 Execution of documents (including deeds) by the CCIV itself

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

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

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

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

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1 (3) A CCIV may execute a document as a deed if the document is
2 expressed to be executed as a deed and is executed in accordance
3 with subsection 127(1) or (2), as affected by this section.

4 (4) This section does not limit the ways in which a CCIV may execute
5 a document (including a deed).

6 (5) This section does not limit Part 2B.1, as it applies to a CCIV
7 subject to the modifications set out in this Chapter.

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

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

11 **Subdivision B—Constitution**

12 **1223A Replaceable rules do not apply to a CCIV**

13 (1) A section or subsection whose heading contains the words
14 *replaceable rule* does not apply as a replaceable rule to a CCIV.

15 (2) Subsection (1) applies despite paragraph 135(1)(a).

16 **1223B Requirement for a CCIV to have a constitution**

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

20 *Minimum content requirements for the constitution*

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

23 *Strict liability offence*

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

27 **1223C Retail CCIV—ASIC may direct CCIV to modify its 28 constitution**

29 (1) ASIC may direct a retail CCIV to modify its constitution, as set out
30 in the direction, to ensure that the CCIV's constitution complies
31 with the content requirements applicable to the CCIV under

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-
- 1 Subdivision C. The direction is to be given by notice in writing to
2 the CCIV.
- 3 (2) ASIC may also direct a retail CCIV to modify its constitution, as
4 set out in the direction, to ensure that the CCIV's constitution deals
5 in adequate detail with:
- 6 (a) the matters required to be included in the constitution under
7 Subdivision C; and
- 8 (b) the specification (if any) of any rights of the corporate
9 director to be paid fees out of assets of a sub-fund of the
10 CCIV, as mentioned in section 1224P.
- 11 (3) Despite section 1223D, the corporate director may modify the
12 constitution to comply with the direction.
- 13 (4) The CCIV must comply with the direction within 14 days after
14 being given it.
- 15 (5) The CCIV must lodge with ASIC a copy of the modified
16 constitution within 14 days after the modification.
- 17 (6) An offence based on subsection (4) or (5) is an offence of strict
18 liability.

19 **1223D Adoption, modification and repeal of constitution**

- 20 (1) A CCIV adopts on registration the constitution lodged with the
21 application to register the CCIV.
- 22 (2) The constitution of a CCIV may be modified, or repealed and
23 replaced with a new constitution:
- 24 (a) if the CCIV is a retail CCIV:
- 25 (i) by special resolution of the members of the CCIV; or
- 26 (ii) by the corporate director if the corporate director
27 reasonably considers the change will not adversely
28 affect members' rights; or
- 29 (b) if the CCIV is a wholesale CCIV—by complying with the
30 requirements set out in the constitution for the modification
31 or repeal.
- 32 (3) If the constitution of a CCIV is modified, or repealed and replaced
33 with a new constitution, the CCIV must lodge with ASIC:
- 34 (a) a copy of the modification, or the new constitution; and

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1 (b) if the corporate director of the CCIV determines a later date
2 mentioned in paragraph (5)(b) or (c) for the modification or
3 replacement to take effect—notice of the later date;
4 within 14 days after the modification or replacement.

5 Note: The constitution may be modified or repealed by court order: see
6 section 233.

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

8 (5) If section 137 does not set the date on which the modification or
9 repeal and replacement of a CCIV's constitution takes effect, it
10 takes effect on the latest of the following:

11 (a) the date on which the modification or the new constitution is
12 lodged with ASIC;

13 (b) if the CCIV is a retail CCIV, and the corporate director
14 determines a later date for the modification or replacement to
15 take effect—that later date;

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

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

20 **1223E Effect of constitution**

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

24 **Subdivision C—Minimum content requirements for the 25 constitution of a CCIV**

26 **1223F Wholesale CCIV—Basic content requirement**

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

30 **1223G Retail CCIV—Basic content requirements**

31 A retail CCIV's constitution must do the following:

32 (a) make provision for the establishment of sub-funds, and
33 classes of shares referable to sub-funds;

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-
- 1 (b) make provision for the method by which complaints made by
2 members in relation to the CCIV are to be dealt with;
3 (c) state that the CCIV has the power to borrow or raise money;
4 (d) if there are to be any limits on the CCIV's exercise of the
5 power to borrow or raise money—sets out those limits;
6 (e) if the CCIV is to acquire in respect of any of its sub-funds,
7 one or more shares that are referable to another of its
8 sub-funds—make provision for such acquisitions.

9 **1223H Retail CCIV—Additional content requirement for**
10 **redemption of shares**

- 11 (1) This section applies if all or some of the shares in a retail CCIV are
12 redeemable shares or redeemable preference shares.
- 13 (2) The CCIV's constitution must make provision for the shares to be
14 redeemed. The provision must:
- 15 (a) specify a period within which a redemption must be satisfied
16 while section 1231H (about when a sub-fund is liquid)
17 applies to the sub-fund to which the share is referable; and
18 (b) be fair and reasonable to the members of the sub-fund to
19 which the share is referable; and
20 (c) be consistent with Subdivision B of Division 1 of Part 8B.4.

21 **Division 2—Officers and employees of the CCIV**

22 **Subdivision A—Officers and employees generally**

23 **1224 A CCIV has a single corporate director**

24 *A CCIV may only have one director*

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

26 Note: For who can be the director of a CCIV, see sections 1224F and
27 1224G.

28 *Position of director is the position of corporate director*

- 29 (2) The position of director of a CCIV is the position of corporate
30 director.

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

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

6 *No alternate directors*

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

10 Note: For the corporate director's power to appoint an agent, see section
11 1224M.

12 *Definition of director not limited*

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

15 **1224A A CCIV has no secretary and no employees**

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

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

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

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

21 **1224B Meaning of officer of a CCIV**

22 In this Act:

23 **officer** of a corporation that is a CCIV means:

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

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

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1224C General duties owed by officers

- 1
- 2 (1) Division 1 of Part 2D.1 (about general duties) applies to a CCIV
3 with the modifications set out in this section.
- 4 (2) In applying Division 1 of Part 2D.1 (about general duties) in
5 relation to an officer (other than a director) of a CCIV:
- 6 (a) treat references to the best interests of the corporation as
7 instead being references to the best interests of the sub-fund
8 referred to in subsection (3); and
- 9 (b) treat references to causing detriment to the corporation as
10 instead being references to causing detriment to the sub-fund
11 referred to in subsection (3); and
- 12 (c) treat references to the business operations of the corporation
13 as instead being references to the business operations of the
14 sub-fund referred to in subsection (3).
- 15 (3) The sub-fund is:
- 16 (a) for a receiver, or receiver and manager, of the property of a
17 sub-fund of the CCIV—the sub-fund; or
- 18 (b) for a liquidator of a sub-fund of the CCIV—the sub-fund; or
- 19 (c) for a trustee or other person administering a compromise or
20 arrangement made between the CCIV and someone else—the
21 sub-fund on whose members or creditors the compromise or
22 arrangement is binding.

23 1224D Duties owed by director

24 *Duties owed by a director of any CCIV*

- 25 (1) A director of a CCIV must, in exercising its powers and carrying
26 out its duties:
- 27 (a) act honestly; and
- 28 (b) exercise the degree of care and diligence that a reasonable
29 person would exercise in the director's position; and
- 30 (c) act in the best interests of the members of the CCIV and, if
31 there is a conflict between the interests of those members and
32 its own interests, give priority to the members' interests; and
- 33 (d) treat members of the CCIV who hold shares of the same class
34 equally; and
- 35 (e) treat members of the CCIV who hold shares of different
36 classes fairly; and
- 37 (f) treat members of different sub-funds of the CCIV fairly; and
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-
- 1 (g) not make use of information acquired through being a
2 director of the CCIV in order to:
3 (i) gain an improper advantage for the director or another
4 person; or
5 (ii) cause detriment to the members of the CCIV.

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

7 *Additional duties owed by a director of a retail CCIV*

- 8 (2) A director of a retail CCIV must, in exercising its powers and
9 carrying out its duties:
10 (a) ensure that the CCIV's constitution meets the requirements
11 of this Act; and
12 (b) ensure that the CCIV's compliance plan meets the
13 requirements of section 1227A; and
14 (c) comply with the CCIV's compliance plan; and
15 (d) ensure that:
16 (i) assets and liabilities of the sub-funds of the CCIV are
17 clearly identified; and
18 (ii) any property of the CCIV to which section 1233K
19 (about property that has to be converted) applies is
20 clearly identified; and
21 (iii) any liabilities of the CCIV to which section 1233M
22 (about liabilities allocated to 2 or more sub-funds)
23 applies is clearly identified; and
24 (e) ensure that assets of a sub-fund of the CCIV are held in the
25 manner required by section 1233ZC; and
26 (f) ensure that the assets of a sub-fund of the CCIV are valued at
27 regular intervals appropriate to the nature of the assets; and
28 (g) ensure that all payments out of the assets of the CCIV are
29 made in accordance with the CCIV's constitution and this
30 Act; and
31 (h) carry out or comply with any other duty, not inconsistent
32 with this Act, that is conferred on the director by the CCIV's
33 constitution.

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

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

- 36 (3) If there is a conflict between a duty owed by a director of a CCIV
37 under this section and a duty owed by the director under Part 2D.1,
38 the duty owed under this section prevails.

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Interaction with other laws etc.

1
2 (4) Subsection (1) or (2):

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

9 *Interaction with section 199B*

10 (5) Section 199B applies to a CCIV as if paragraph 199B(1)(b)
11 included a reference to this section.

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

14 **1224E Certain provisions in Chapter 2D do not apply to CCIVs**

15 The following do not apply to a CCIV:

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

27 **Subdivision B—The corporate director of a CCIV**

28 **1224F Who can be the director of a CCIV**

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

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

- 1
- 2 (1) At least half of the directors of the corporate director of a retail
3 CCIV must be external directors.
- 4 (2) A director of the corporate director is an external director if the
5 director:
- 6 (a) is not, and has not been in the previous 2 years, an employee
7 of the corporate director or a related body corporate; and
- 8 (b) is not, and has not been in the previous 2 years, a senior
9 manager of the corporate director or a related body corporate;
10 and
- 11 (c) is not, and has not been in the previous 2 years, substantially
12 involved in business dealings, or in a professional capacity,
13 with the corporate director or a related body corporate; and
- 14 (d) is not a member of a partnership that is, or has been in the
15 previous 2 years, substantially involved in business dealings,
16 or in a professional capacity, with the corporate director or a
17 related body corporate; and
- 18 (e) does not have a material interest in the corporate director or a
19 related body corporate; and
- 20 (f) is not a relative of a person who has a material interest in the
21 corporate director or a related body corporate.
- 22 (3) The corporate director of a retail CCIV must not fail to comply
23 with subsection (1) for a period exceeding 14 days (or a longer
24 period allowed in writing by ASIC).

25 *Fault-based offence*

- 26 (4) A person commits an offence if the person intentionally or
27 recklessly fails to comply with subsection (3).

28 *Strict liability offence*

- 29 (5) A person commits an offence of strict liability if the person fails to
30 comply with subsection (3).
- 31 (6) In agreeing to a longer period under subsection (3), ASIC may
32 impose conditions to be complied with and the corporate director
33 must comply with them.
- 34 (7) An offence based on subsection (6) is an offence of strict liability.

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1224H Effectiveness of acts by corporate director

- 1
2 (1) An act done by the company named in ASIC's record of a CCIV's
3 registration as the corporate director or temporary corporate
4 director of the CCIV is effective even if:
5 (a) the company's appointment as corporate director or
6 temporary corporate director did not comply with the CCIV's
7 constitution or any provision of this Act; or
8 (b) the continuance of the company's appointment as corporate
9 director or temporary corporate director does not comply
10 with the CCIV's constitution or any provision of this Act.
- 11 (2) Subsection (1) does not deal with the question whether an effective
12 act by a corporate director:
13 (a) binds the CCIV in its dealings with other people; or
14 (b) makes the CCIV liable to another person.

15 Note: The kinds of acts that this section validates are those that are only
16 legally effective if the person doing them is a director (for example,
17 calling a meeting of the company's members). Sections 128 to 130
18 contain rules about the assumptions people are entitled to make when
19 dealing with a company and its officers.

20 1224J Corporate director must operate the CCIV

- 21 (1) The corporate director of a CCIV is to:
22 (a) operate the business and conduct the affairs of the CCIV; and
23 (b) perform the functions conferred on the corporate director by
24 the CCIV's constitution and this Act.
- 25 Note 1: If a CCIV commits an offence or contravenes a civil penalty
26 provision, the corporate director is generally responsible: see
27 Division 8 of this Part.
- 28 Note 2: Section 1224Q is about the exercise of powers by the corporate
29 director while a sub-fund is in liquidation.
- 30 (2) The corporate director of a CCIV may exercise all the powers of
31 the CCIV except any powers that this Act or the CCIV's
32 constitution requires:
33 (a) the CCIV to exercise in general meeting; or
34 (b) the members of a sub-fund of the CCIV to exercise in a
35 meeting of members of the sub-fund.

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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.

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

3 *Extended liability for acts of agents*

4 (2) If:

5 (a) the corporate director appoints an agent, or otherwise
6 engages a person, under section 1224M; or

7 (b) an agent or person is taken under subsection 1224M(2)
8 (about sub-agents) to be an agent of the corporate director;

9 the corporate director is taken to have done (or failed to do)
10 anything that the agent or person has done (or failed to do) because
11 of the appointment or engagement, even if the person or agent was
12 acting fraudulently or outside the scope of the authority or
13 engagement.

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

15 **1224P Retail CCIV—limitation on right of corporate director to fees**
16 **and indemnities**

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

22 (a) must be specified in the CCIV's constitution; and

23 (b) must be available only in relation to the proper performance
24 of those duties;

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

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

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

32 **1224Q Exercise of powers while sub-fund is in liquidation**

33 *Powers of corporate director while sub-fund in liquidation*

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

35 (a) a sub-fund of the CCIV is being wound up, or a provisional
36 liquidator of a sub-fund of the CCIV is acting; and

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-
- 1 (b) the corporate director purports to do any of the following:
2 (i) carry on the business of the sub-fund;
3 (ii) enter into a transaction or dealing on behalf of the CCIV
4 affecting the property of the sub-fund.
- 5 (2) However, subsection (1) does not apply to the extent that the
6 corporate director is acting:
7 (a) with the written approval of the liquidator of the sub-fund or
8 the Court; or
9 (b) in circumstances in which, despite the fact that the sub-fund
10 is being wound up, the corporate director is permitted by this
11 Act to act.
- 12 (3) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution
13 for an offence based on subsection (1) of this section, a defendant
14 does not bear an evidential burden in relation to the matter in
15 paragraph (2)(b).
- 16 *Fault-based offence*
- 17 (4) A person commits an offence if the person contravenes
18 subsection (1).
- 19 *Strict liability offence*
- 20 (5) A person commits an offence of strict liability if the person
21 contravenes subsection (1).
- 22 *Functions and powers of liquidator prevail in case of conflict*
- 23 (6) If subsection (2) applies and there is a conflict between a function
24 or power of the liquidator of the sub-fund and a function or power
25 of the corporate director in relation to the CCIV, the liquidator's
26 function or power prevails.
- 27 *Effect of section*
- 28 (7) This section does not remove the corporate director of a CCIV
29 from office.
- 30 (8) Nothing in this section affects a secured creditor's right to realise
31 or otherwise deal with the security interest.
- 32 (9) Section 198G does not apply to a CCIV.
-

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

3 *Definitions*

4 (11) In this section:

5 *liquidator* includes a provisional liquidator.

6 **Subdivision C—Replacing the corporate director**

7 **1224R Changes only take effect when ASIC alters record of**
8 **registration**

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

15 **1224S CCIV does not have an eligible corporate director**

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

- 20 (a) ASIC;
21 (b) a member, or group of members, of the CCIV.

22 **1224T Retirement of corporate director**

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

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

- 29 (a) set out the corporate director's reason for wanting to retire;
30 and
31 (b) nominate as the new corporate director a company (the
32 *nominated company*) that:
33 (i) meets the requirements of section 1224F; and

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

20 **1224U Replacement of corporate director by members**

- 21 (1) If members of a CCIV want to replace the corporate director, the
22 members may take action under Part 2G.4 (as that Part applies to
23 the CCIV under section 1229A) for the calling of a meeting of the
24 CCIV's members to consider and vote on:
- 25 (a) a special resolution that the current corporate director should
26 be removed; and
- 27 (b) a special resolution choosing a company to be the new
28 corporate director.
- 29 (2) The notice of meeting of the CCIV's members must:
- 30 (a) set out the intention to remove the current corporate director;
31 and
- 32 (b) nominate, as the new corporate director of the CCIV, a
33 company that:
- 34 (i) meets the requirements of section 1224F; and
35 (ii) has consented in writing to being appointed as the new
36 corporate director of the CCIV.

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1 (3) If both resolutions are passed, the CCIV is taken, on the day of the
2 meeting, to have appointed the company nominated in the notice as
3 the new corporate director of the CCIV.

4 Note: See also section 1224R (when changes take effect).

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

10 (5) If the current corporate director does not lodge the notice required
11 by subsection (4), the company chosen by the members to be the
12 new corporate director may lodge that notice.

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

14 **1224V Appointment of temporary corporate director by Court**

15 (1) On application under section 1224S or subsection 1224T(6) or
16 1224X(2), the Court may:

- 17 (a) if the CCIV has a current corporate director—order the
18 removal of the current corporate director; and
19 (b) order the appointment of a company as the temporary
20 corporate director of the CCIV; and
21 (c) make any further orders that the Court considers appropriate.

22 Note: See also section 1224R (when changes take effect).

23 (2) The Court must not make an order under paragraph (1)(a) or (b)
24 unless:

- 25 (a) the Court is satisfied that:
26 (i) the appointment is in the interests of the members of the
27 CCIV; and
28 (ii) the company meets the requirements of section 1224F;
29 and
30 (b) the company consents in writing to becoming the CCIV's
31 temporary corporate director.

32 (3) The person who made the application for the order must, as soon as
33 practicable and in any event within 2 days after the Court's order
34 appointing the temporary corporate director, lodge a notice with
35 ASIC informing ASIC of the appointment made by the Court.

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1 (4) If the person referred to in subsection (3) does not lodge the notice
2 required by that subsection, the company appointed by the Court as
3 the temporary corporate director may lodge that notice.

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

5 **1224W Temporary corporate director to initiate appointment of** 6 **permanent corporate director**

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

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

13 (3) The temporary corporate director must call the meeting within:
14 (a) unless paragraph (b) applies—3 months of the appointment;
15 or
16 (b) if the Court has extended the period under subsection (4)—
17 the extended period.

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

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

24 (6) For the purposes of subsections (2) and (5), the written notice of
25 the meeting must nominate as the permanent corporate director a
26 company (which may be the temporary corporate director) that:
27 (a) meets the requirements of section 1224F; and
28 (b) has consented in writing to being appointed as the permanent
29 corporate director of the CCIV.

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

33 Note: See also section 1224R (when changes take effect).

34 (8) The current corporate director must, as soon as practicable and in
35 any event within 2 business days after the appointment, lodge a

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1 notice with ASIC asking it to alter the record of the CCIV's
2 registration to name the company as the corporate director of the
3 CCIV.

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

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

9 **1224X Temporary corporate director fails to initiate appointment of** 10 **permanent corporate director**

11 (1) This section applies if:

12 (a) a temporary corporate director is appointed by the Court
13 under section 1224V; and

14 (b) the temporary corporate director fails to call a members'
15 meeting to consider and vote on a special resolution choosing
16 a company to be the permanent corporate director within the
17 period applicable under subsection 1224W(3).

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

21 (a) ASIC;

22 (b) a member, or group of members, of the CCIV.

23 **1224Y Members fail to appoint permanent corporate director**

24 (1) This section applies if:

25 (a) a temporary corporate director is appointed by the Court
26 under section 1224V; and

27 (b) within the period applicable under subsection 1224W(3), the
28 temporary corporate director calls one or more members'
29 meetings to consider and vote on a special resolution
30 choosing a company to be the permanent corporate director;
31 and

32 (c) the CCIV's members do not pass a special resolution
33 choosing a permanent corporate director.

34 (2) An application to the Court for a winding up of all the sub-funds of
35 the CCIV must be made by the corporate director of the CCIV.

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Note: For provisions about winding up a sub-fund of a CCIV, see Division 4 of Part 8B.6.

- 1
2
- 3 (3) An application to the Court for a winding up of all the sub-funds of
4 the CCIV may be made by any of the following, if the corporate
5 director does not do so:
6 (a) ASIC;
7 (b) a member, or group of members, of the CCIV.
- 8 (4) On an application under this section, the Court may:
9 (a) order the winding up of all the sub-funds of the CCIV; and
10 (b) make any further orders that the Court considers appropriate.

11 **1224Z Former corporate director to hand over books and provide**
12 **reasonable assistance**

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

21 **1224ZA Rights, obligations and liabilities of former corporate**
22 **director**

- 23 (1) If the corporate director of a CCIV changes, the rights, obligations
24 and liabilities of the former corporate director in relation to the
25 CCIV become rights, obligations and liabilities of the new
26 corporate director.
- 27 (2) Despite subsection (1), the following rights and liabilities remain
28 rights and liabilities of the former corporate director:
29 (a) any right of the former corporate director to be paid fees for
30 the performance of its functions before it ceased to be the
31 corporate director;
32 (b) any right of the former corporate director to be indemnified
33 for expenses it incurred before it ceased to be the corporate
34 director;
35 (c) any right, obligation or liability that the former corporate
36 director had as a member of the CCIV;
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- 1 (d) any liability for which the former corporate director could
2 not have been indemnified out of the assets of the CCIV if it
3 had remained the CCIV's corporate director;
4 (e) any liability arising out of a contravention by the former
5 corporate director of a provision of this Act.

6 **1224ZB Effect of change of corporate director on documents etc. to**
7 **which former corporate director is party**

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

24 **Subdivision D—Termination payments**

25 **1224ZC Member approval not needed for benefit specified in**
26 **constitution**

- 27 Despite subsection 200AB(1), for the purposes of Division 2 of
28 Part 2D.2, a *benefit* does not include a payment made by the CCIV
29 to its corporate director if:
30 (a) the corporate director is entitled to the payment under
31 provisions of the constitution; and
32 (b) for a retail CCIV—the provisions comply with section
33 1224P.

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1224ZD Modified member approval for CCIVs

- 1
2 (1) Sections 200B and 200C apply in relation to a benefit given by a
3 CCIV as if:
4 (a) the members whose approval is required under those
5 provisions were the members of the sub-fund of the CCIV
6 that would be affected by the giving of the benefit; and
7 (b) the member approval mentioned in paragraph (a) were
8 required to be given under section 200E as modified by
9 subsection (3) of this section.

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

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

15 *Member approval*

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

19 1224ZE Benefits paid to corporate director not covered by 20 exemptions

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

24 Division 3—Officers, employees and auditors of the 25 corporate director

26 Subdivision A—Officers and auditors of the corporate director

27 1225 Retail CCIV—duties owed by officers of corporate director

- 28 (1) An officer of the corporate director of a retail CCIV must, in
29 performing functions and exercising powers relating to the CCIV:
30 (a) act honestly; and
31 (b) exercise the degree of care and diligence that a reasonable
32 person would exercise in the officer's position; and

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

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

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

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

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

30 *Interaction with other laws etc.*

- 31 (4) Subsection (1):
32 (a) has effect in addition to, and not in derogation of, any rule of
33 law relating to the duty or liability of a person because of
34 their office or employment in relation to a corporation; and
35 (b) does not prevent the commencement of civil proceedings for
36 a breach of a duty or in respect of a liability referred to in
37 paragraph (a).

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1 **1225A Responsibility of secretary of corporate director for certain**
2 **contraventions by CCIV**

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

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

7 **1225B Responsibility of secretary of corporate director for certain**
8 **contraventions by corporate director**

9 For the purposes of subsection 188(1) as it applies to the secretary
10 of the corporate director, the provisions identified in column 1 of
11 the following table, in addition to the provisions mentioned in
12 subsection 188(1), are taken to be *corporate responsibility*
13 *provisions*:
14

Provisions that are taken to be *corporate responsibility provisions*

Item	Column 1 Provision(s)	Column 2 Topic
1	(a) subsection 1222L(3); (b) subsection 1222L(7)	notifying ASIC of status as a retail CCIV or wholesale CCIV
2	(a) subsection 1223C(5); (b) subsection 1223D(3)	lodgement of modified or replaced constitution and notifying ASIC when changes takes effect
3	(a) subsection 1224T(3); (b) subsection 1224U(4); (c) subsection 1224W(8)	lodgement of notices about the corporate director of a CCIV
4	(a) subsection 1227(3); (b) subsection 1227D(4); (c) subsection 1227E(3)	lodgement of compliance plans etc. (retail CCIV only)
5	subsection 1227G(4)	lodgement of report of auditor of compliance plan (retail CCIV only)
6	subsection 1227K(1)	notifying ASIC when auditor of compliance plan changes (retail CCIV only)
7	subsection 1231J(5)	lodgement of a redemption offer
8	subsection 1231J(8)	notifying ASIC of the cancellation of a redemption offer

15

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1225C Extended obligation of directors of corporate director

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

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

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

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

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

- 24 (5) Nothing in this section limits:

- 25 (a) the effect sections 191 and 192 have in relation to the
26 director of the corporate director apart from this Subdivision;
27 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.

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

32 1225D Right of access to CCIV books

- 33 (1) Section 198F applies in relation to a director of a corporate director
34 of a CCIV as if the person were a director of the CCIV.

- 35 (2) For the purposes of subsection (1), a person is taken to cease being
36 a director of the CCIV if either of the following occurs:

- 37 (a) the person ceases to be a director of the corporate director;
-

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(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;

(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 CCIV as if paragraph 199B(1)(b) included a reference to section 1225.

Note: For the duties relevant to the actual director of the CCIV, see subsection 1224D(5).

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1 Subdivision B—Employees of the corporate director

2 1225G Retail CCIV—duties owed by employees of corporate 3 director

- 4 (1) An employee of the corporate director of a retail CCIV must not, in
5 performing functions and exercising powers relating to the CCIV:
6 (a) make use of information acquired through being an employee
7 of the corporate director in order to:
8 (i) gain an improper advantage for the employee or another
9 person; or
10 (ii) cause detriment to members of the CCIV; or
11 (b) make improper use of their position as an employee to gain,
12 directly or indirectly, an advantage for themselves or for any
13 other person or to cause detriment to the members of the
14 CCIV.

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

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

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

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

23 *Interaction with other laws etc.*

- 24 (4) 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).

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1 Division 5—Compliance plan for retail CCIVs

2 Subdivision A—Documenting the compliance plan

3 1227 Requirement for compliance plan

- 4 (1) A retail CCIV must have a compliance plan.

5 Note: A copy of the compliance plan must be lodged with ASIC with the
6 application to register a CCIV that is to be a retail CCIV: see
7 subsection 1222A(6).

- 8 (2) A wholesale CCIV is not required to have a compliance plan.

- 9 (3) A CCIV must lodge a copy of its compliance plan with ASIC
10 within 14 days of becoming a retail CCIV. The copy must be
11 signed by all the directors of the corporate director.

12 Note: Section 1222J defines *retail CCIV*.

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

14 1227A Contents of the compliance plan

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

19 1227B Compliance plan may incorporate provisions from another 20 CCIV's plan

- 21 (1) The compliance plan of a retail CCIV may be expressed to
22 incorporate specified provisions of a compliance plan of another
23 CCIV, provided both CCIVs have the same corporate director. The
24 provisions may be incorporated as in force at a specified time, or as
25 in force from time to time.

- 26 (2) The specified provisions, as in force at the specified time, or as in
27 force from time to time (as the case requires) are taken to be
28 included in the plan.

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1227C ASIC may require further information about compliance plan

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

1227D Changing the compliance plan

Corporate director's powers

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

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.

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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.

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 a CCIV's compliance plan if the person is:
 - (a) the corporate director; or
 - (b) an associate of the corporate director; or
 - (c) a person who holds money or property of the CCIV; or
 - (d) an associate of a person covered by paragraph (c); or
 - (e) 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

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- 1 (b) the lead auditor or review auditor of the compliance plan (on
2 the one hand) and the lead auditor or review auditor of the
3 corporate director's financial statements (on the other hand)
4 may work for the same firm of auditors or audit company.
- 5 (5) This Subdivision does not prevent the corporate director from
6 arranging for the auditor of the compliance plan to carry out audits
7 in addition to those required by this Subdivision.

8 **1227G Audit and audit report**

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

17 **1227H Contraventions by auditor**

18 *Contravention by individual auditor*

- 19 (1) An individual auditor conducting an audit of a compliance plan
20 contravenes this subsection if:
21 (a) the auditor is aware of circumstances that:
22 (i) the auditor has reasonable grounds to suspect amount to
23 a contravention of this Act; or
24 (ii) amount to an attempt, in relation to the audit, by any
25 person to unduly influence, coerce, manipulate or
26 mislead a person involved in the conduct of the audit
27 (see subsection (7)); or
28 (iii) amount to an attempt, by any person, to otherwise
29 interfere with the proper conduct of the audit; and
30 (b) if subparagraph (a)(i) applies:
31 (i) the contravention is a significant one; or
32 (ii) the contravention is not a significant one and the auditor
33 believes that the contravention has not been or will not
34 be adequately dealt with by commenting on it in the
35 auditor's report or bringing it to the attention of the
36 directors; and

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- 1 (c) the auditor does not notify ASIC in writing of those
2 circumstances as soon as practicable, and in any case within
3 7 days, after the auditor becomes aware of those
4 circumstances.

5 *Contravention by audit company*

- 6 (2) An audit company conducting an audit of a compliance plan
7 contravenes this subsection if:
- 8 (a) the lead auditor for the audit is aware of circumstances that:
- 9 (i) the lead auditor has reasonable grounds to suspect
10 amount to a contravention of this Act; or
- 11 (ii) amount to an attempt, in relation to the audit, by any
12 person to unduly influence, coerce, manipulate or
13 mislead a person involved in the conduct of the audit
14 (see subsection (7)); or
- 15 (iii) amount to an attempt, by any person, to otherwise
16 interfere with the proper conduct of the audit; and
- 17 (b) if subparagraph (a)(i) applies:
- 18 (i) the contravention is a significant one; or
- 19 (ii) the contravention is not a significant one and the lead
20 auditor believes that the contravention has not been or
21 will not be adequately dealt with by commenting on it in
22 the auditor's report or bringing it to the attention of the
23 directors; and
- 24 (c) the lead auditor does not notify ASIC in writing of those
25 circumstances as soon as practicable, and in any case within
26 7 days, after the lead auditor becomes aware of those
27 circumstances.

28 *Contravention by lead auditor*

- 29 (3) A person contravenes this subsection if:
- 30 (a) the person is the lead auditor for an audit of a compliance
31 plan; and
- 32 (b) the person is aware of circumstances that:
- 33 (i) the person has reasonable grounds to suspect amount to
34 a contravention of this Act; or
- 35 (ii) amount to an attempt, in relation to the audit, by any
36 person to unduly influence, coerce, manipulate or
37 mislead a person involved in the conduct of the audit
38 (see subsection (7)); or

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

14 *Significant contraventions*

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

35 *Fault-based offence*

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

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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.

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:

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- 1 (a) is not admissible in evidence in any civil or criminal
2 proceedings against the auditor (other than proceedings for a
3 contravention of section 1308); and
4 (b) may not be made the ground of a prosecution (other than a
5 prosecution for a contravention of section 1308), action or
6 suit against the auditor.
7 A certificate by ASIC that the statement was made in the
8 application, or in answer to an inquiry by ASIC, is conclusive
9 evidence that the statement was so made.
- 10 (6) The auditor's resignation takes effect on the later of:
11 (a) the day (if any) specified in the notice of resignation; or
12 (b) the day ASIC consents to the resignation; or
13 (c) the day (if any) fixed by ASIC for the purpose.

14 **1227K Action on change of auditor of compliance plan**

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

22 **Division 6—Member protection**

23 **Subdivision A—Related party transactions by retail CCIVs to** 24 **be approved at sub-fund level**

25 **1228 Application of Chapter 2E to retail CCIVs**

- 26 (1) Subject to this Part, Chapter 2E applies:
27 (a) to a retail CCIV in the same way as it applies to a public
28 company; and
29 (b) to an entity a retail CCIV controls in the same way as it
30 applies to an entity a public company controls.
- 31 (2) In its application in relation to a retail CCIV, the members whose
32 interests the rules in Chapter 2E are designed to protect are:

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- 1 (a) if one sub-fund would be affected by the giving of the
2 relevant financial benefit to the related party—the members,
3 as a whole, of that sub-fund; or
4 (b) if 2 or more sub-funds would be affected by the giving of the
5 relevant financial benefit to the related party—the members,
6 as a whole, of each such sub-fund.
- 7 (3) Chapter 2E does not apply to a wholesale CCIV.

8 **1228A Need for member approval for financial benefit**

- 9 (1) Section 208 applies in relation to a retail CCIV as if:
- 10 (a) the members whose approval is required to be obtained under
11 subparagraph 208(1)(a)(i) were the members of the sub-fund
12 of the CCIV that would be affected by the giving of the
13 financial benefit; and
14 (b) the member approval mentioned in paragraph (a) were
15 required to be given in the way set out in sections 217 to 227
16 (as modified by this Part).
- 17 Note 1: For the civil and criminal liability of a person involved in a
18 contravention of section 208 as it applies to a retail CCIV under this
19 section, see section 209.
- 20 Note 2: For provisions about meetings of members of sub-funds, see section
21 1229A.
- 22 Note 3: Some kinds of financial benefits are prohibited by sections 199A to
23 199C. For CCIVs, those sections have an extended application: see
24 sections 1225E and 1225F.
- 25 (2) If the giving of a financial benefit would affect 2 or more
26 sub-funds of the CCIV, paragraph 208(1)(a) applies as if it
27 required the CCIV or entity to:
28 (a) obtain the approval of each affected sub-fund in the way
29 mentioned in subsection (1) of this section; and
30 (b) give the benefit within 15 months after the first such approval
31 is given.

32 *Exception for certain fees and indemnities payable to corporate*
33 *director*

- 34 (3) Subsection 208(1) does not apply in relation to a financial benefit
35 if:
36 (a) the financial benefit is fees, or an indemnity, to be given to
37 the corporate director by the CCIV; and

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- 1 (b) the corporate director is entitled to the fees, or the indemnity,
2 under provisions of the constitution; and
3 (c) the provisions comply with section 1224P (about fees and
4 indemnities must be available only in relation to the proper
5 performance of duties).

6 **1228B Exceptions not available for a retail CCIV**

- 7 (1) The following provisions of Division 2 of Part 2E.1 do not apply
8 where the financial benefit is, or is to be, given by a retail CCIV:
9 (a) section 211 (which deals with remuneration and
10 reimbursement for an officer or employee);
11 (b) section 213 (which deals with small amounts given to a
12 related party);
13 (c) section 214 (which deals with financial benefits given to a
14 closely held subsidiary).
- 15 (2) Subsection (1) does not affect the application of those provisions
16 where the financial benefit is, or is to be, given by an entity the
17 retail CCIV controls.

18 **1228C Requirements for explanatory statement to members**

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

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1228D Modified references

Division 3 of Part 2E.1 of Chapter 2E applies in relation to a retail CCIV as if:

- (a) a reference to a general meeting were instead a reference to a meeting of the members of the affected sub-fund; and
- (b) a reference to section 250D were instead a reference to section 253B.

1228E Related parties of a CCIV

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

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 CCIV;
- (d) an agent of, or person engaged by, the corporate director;
- (e) an agent or person taken under subsection 1224M(2) (about sub-agents) to be an agent of 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.

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Entities controlled by other related parties

- 1
2 (5) An entity controlled by a related party referred to in subsection (2),
3 (3) or (4) is a related party of the CCIV unless the entity is also
4 controlled by the CCIV.

5
Related party in previous 6 months

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

10
11 *Entity has reasonable grounds to believe it will become related
party in future*

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

16
Acting in concert with related party

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

21 **Subdivision B—Rights and remedies of members of a CCIV**

22 **1228F Grounds for Court order**

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

27 **1228G Orders the Court can make**

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

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

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

3 *Order altering constitution*

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

8 **1228H Applying for and granting leave**

- 9 (1) For the purposes of subsection 237(3), a person is a third party if
10 the company is a CCIV and the person is not a related party of the
11 CCIV.
12 (2) Paragraph 237(4)(a) does not apply to a CCIV.

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

14 **1228J Varying and cancelling class rights**

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

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

24 **1228K Certain actions taken to vary rights etc.**

25 If:

- 26 (a) a CCIV has a sub-fund to which only one class of shares is
27 referable (the *existing shares*); and
28 (b) the CCIV issues new shares that are also referable to that
29 sub-fund; and
30 (c) the rights attaching to the new shares are not the same as the
31 rights attached to the existing shares; and
32 (d) the rights attaching to the new shares are not provided for in:
33 (i) the CCIV’s constitution; or

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- 1 (ii) a notice, document or resolution that is lodged with
2 ASIC;
3 the issue is taken to vary the rights attached to the existing shares.

4 **1228L Company must lodge documents and resolutions with ASIC**

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

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

9 **Subdivision C—Civil liability of corporate director to members**

10 **1228M Civil liability of corporate director to members**

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

21 **Division 7—Meetings**

22 **Subdivision A—Directors' meetings**

23 **1229 Resolutions of CCIVs**

- 24 (1) The corporate director of a CCIV may pass a resolution by the
25 directors of the corporate director passing a resolution that:
- 26 (a) expressly states that the resolution is passed on behalf of the
27 corporate director in its capacity as corporate director; and
- 28 (b) if the corporate director is the corporate director of more than
29 one CCIV—expressly states the CCIV on behalf of which the
30 resolution is passed.
- 31 (2) Part 2G.1 (about directors' meetings) does not apply to a CCIV.

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- 1 (3) To avoid doubt, subsection (2) does not affect:
2 (a) the application of Part 2G.1 to a resolution of, or a meeting
3 of, the directors of the corporate director of a CCIV; or
4 (b) the application of Part 2G.3 (about minutes and members'
5 access to minutes) to a resolution passed under
6 subsection (1).

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

8 **1229A Meetings of members of CCIVs**

- 9 (1) Parts 2G.2 (about meetings of members of companies) and 2G.3
10 (about minutes and members' access to minutes) do not apply to a
11 CCIV or its members.
- 12 (2) Subject to the modifications set out in this Subdivision, Part 2G.4
13 (about meetings of members of registered managed investment
14 schemes) applies in relation to a CCIV and its members as if:
15 (a) the CCIV were a registered scheme; and
16 (b) the members of the CCIV were the members of that scheme;
17 and
18 (c) the corporate director of the CCIV were the responsible
19 entity of that scheme; and
20 (d) the CCIV's constitution were the scheme's constitution; and
21 (e) the CCIV's compliance plan were the compliance plan of
22 that scheme.
- 23 (3) Any power to prescribe, for the purposes of a provision of
24 Part 2G.4, a number of members of a particular registered scheme
25 or class of scheme includes a power to prescribe, for the purposes
26 of that provision as it applies under this section, a number of
27 members of:
28 (a) a particular CCIV; or
29 (b) a particular class of CCIV.

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

32 **1229B Meetings of members of sub-funds**

- 33 (1) Subject to the modifications set out in this Subdivision, Part 2G.4
34 (about meetings of members of registered managed investment
35 schemes) applies in relation to a sub-fund of a CCIV and the
36 members of the sub-fund as if:

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-
- 1 (a) the sub-fund were a registered scheme; and
2 (b) the members of the sub-fund were the members of that
3 scheme; and
4 (c) the corporate director of the CCIV were the responsible
5 entity of that scheme; and
6 (d) the CCIV's constitution were the scheme's constitution; and
7 (e) the CCIV's compliance plan were the compliance plan of
8 that scheme.

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

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

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

18 **1229C Auditors of scheme compliance plans**

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

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

25 **1229D Copy of the register of members—sub-funds**

- 26 (1) Subsection 252C(3) does not apply in relation to a CCIV or a
27 sub-fund of a CCIV.
- 28 (2) To call a meeting of the members of a CCIV, the members
29 requesting the meeting may ask the CCIV under section 173 for a
30 copy of the register of members.
- 31 (3) To call a meeting of the members of a sub-fund of a CCIV, the
32 members requesting the meeting may ask the CCIV under
33 section 173 for a copy of so much of the register of members as
34 relates to membership of the sub-fund.
- 35 (4) Despite paragraph 173(3)(b), the CCIV must, without charge, give
36 the members requesting the meeting:

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- 1 (a) if subsection (2) of this section applies—the copy of the
2 register; or
3 (b) if subsection (3) of this section applies—so much of the
4 register of members as relates to membership of the
5 sub-fund.
- 6 (5) An offence based on subsection (4) is an offence of strict liability.

7 **1229E Members' resolutions**

- 8 (1) Subsection 252L(1B) applies in relation to a CCIV as if:
9 (a) the requirement in paragraph 252L(1B)(c) that the registered
10 scheme be listed did not apply; and
11 (b) the resolution is subject to a further requirement that it must
12 not treat members of any sub-fund of the CCIV differently
13 from members of any other sub-fund of the CCIV.
- 14 Note: The effect of paragraph (1)(a) is that subsection 252L(1B) will apply
15 to all CCIVs, including a CCIV that is a listed company.
- 16 (2) Subsection 252L(1B) applies in relation to one or more sub-funds
17 of a CCIV as if:
18 (a) paragraph 252L(1B)(c) did not apply; and
19 (b) the resolution is subject to a further requirement that it must
20 not affect the interests of any member of any other sub-fund
21 of the CCIV.
- 22 Note: A CCIV that is a listed company has only one sub-fund, see
23 section 1222N.

24 **1229F Voting at meetings of members**

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

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- 1 (3) At a meeting of members of a sub-fund of a CCIV:
2 (a) on a show of hands, each member has 1 vote; and
3 (b) on a poll, each member has 1 vote for each dollar of the value
4 of the total shares in the CCIV that:
5 (i) are held by the member; and
6 (ii) are referable to the sub-fund; and
7 (c) the chair has a casting vote, and also, if the chair is a
8 member, any vote the chair has in the chair's capacity as a
9 member; and
10 (d) if a share that is referable to the sub-fund is held jointly and
11 more than one member votes in respect of that share—only
12 the vote of the member whose name appears first in the
13 register of members counts.

14 **1229G Corporate director and associates cannot vote if interested in** 15 **resolution**

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

22 **1229H How to work out the value of a share**

- 23 (1) For the purposes of section 1229F, the value of a share in a CCIV
24 is the amount worked out under this section.
- 25 (2) The value of a share in a CCIV (other than a share to which
26 subsection (3) or (4) applies) is the amount that the corporate
27 director of the CCIV determines in writing to be the price that a
28 willing but not anxious buyer would pay for the share if it was sold
29 on the business day immediately before the day on which the poll
30 is taken.
- 31 (3) The value of a share in a retail CCIV that is:
32 (a) redeemable; and
33 (b) referable to a sub-fund to which section 1231H applies
34 (about when a sub-fund is liquid);
35 is the amount that, under the constitution of the CCIV and
36 consistent with the requirements in Subdivision B of Division 1 of

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1 Part 8B.4, would be paid to redeem the share on the business day
2 immediately before the day on which the poll is taken.

3 (4) The value of a share in a wholesale CCIV where:

4 (a) the share is redeemable; and

5 (b) the share is referable to a sub-fund to which section 1231H
6 applies (about when a sub-fund is liquid); and

7 (c) the CCIV has a provision in its constitution as to the amount
8 to be paid for redeeming the share;

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

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

15 **Division 8—Corporate contraventions**

16 **Subdivision A—General provisions relating to establishing civil** 17 **and criminal liability under Commonwealth laws**

18 **1230 Application of this Subdivision**

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

21 **1230A Other rules for corporate contraventions do not apply**

22 *Part 2.5 of Criminal Code does not apply*

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

25 Note: Section 1230B applies instead.

26 *Other rules for corporate contraventions do not apply*

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

30 (a) treat conduct (however described) engaged in by a person
31 other than a CCIV as having been engaged in by the CCIV;
32 or

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

13 Note 1: Section 1230B applies instead.

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

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

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

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

18 **1230B General rule for attributing conduct and state of mind to a** 19 **CCIV**

20 *Attributing conduct to a CCIV*

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

28 *Attributing conduct to a person in relation to a CCIV*

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

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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
 - (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:

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

8 (5A) For the purposes of this section, treat a person as acting on behalf
9 of a CCIV if the person acted on behalf of the corporate director of
10 the CCIV in its capacity as director of the CCIV.

11 *Interpretation*

12 (6) In this section:

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

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

15 **1230C Exceptions etc. specific to this Act**

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

18 **Subdivision B—Consequences of contraventions of** 19 **Commonwealth laws**

20 **1230D Corporate director generally taken to commit offences** 21 **committed by CCIV**

22 (1) This section applies if:

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

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Corporate director taken to also commit the offence

1
2 (2) The person who was the corporate director of the CCIV at the time
3 of the commission of the offence is taken to also commit the
4 offence.

5 (3) To avoid doubt, despite subsection 13.3(3) of the *Criminal Code*, a
6 person referred to in subsection (2) does not bear an evidential
7 burden in relation to any matter in subsection (1) of this section.

8 *CCIV not liable for any penalty*

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

10 *Infringement notices*

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

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

18 **1230E Corporate director generally liable for civil penalties for**
19 **which the CCIV would be liable**

20 (1) This section applies if:

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

31 *Commonwealth civil penalty provisions*

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

- 34 (a) a civil penalty provision (within the meaning of this Act); or
-

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1 (b) a provision of a law of the Commonwealth (other than this
2 Act), if a civil penalty may be imposed in relation to a
3 contravention of the provision.

4 *Corporate director taken to also contravene the provision*

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

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

9 *CCIV not liable*

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

12 *Infringement notices*

13 (5) If, as a result of the operation of subsection (3), an infringement
14 notice (however described) may be given under a law of the
15 Commonwealth to a person who was the corporate director of a
16 CCIV for an alleged contravention by the person of a
17 Commonwealth civil penalty provision:

18 (a) the person may be given the infringement notice; and

19 (b) the CCIV may not be given an infringement notice for the
20 alleged contravention.

21 **Subdivision C—Consequences of contraventions of State and** 22 **Territory laws**

23 **1230F Compensation orders—State and Territory laws**

24 *Compensation for penalties incurred etc.*

25 (1) A Court may on application under subsection (5) order a person to
26 compensate a CCIV for loss or damage suffered by the CCIV if:

27 (a) the CCIV contravened, or allegedly contravened, a provision
28 covered by subsection (2); and

29 (b) the loss or damage is:

30 (i) a pecuniary penalty to which the CCIV is liable in

31 respect of the contravention or alleged contravention; or

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-
- 1 (ii) an amount paid by the CCIV in settlement of
2 proceedings in respect of the contravention or alleged
3 contravention; and
4 (c) the person was the corporate director of the CCIV at the time
5 of the contravention or alleged contravention; and
6 (d) the exception in subsection (3) does not apply.
7 The order must specify the amount of the compensation.

8 *State and Territory offences and civil penalty provisions*

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

12 *Exception where liquidator etc. acting*

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

22 *Recovery of damage*

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

25 *Who may apply*

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

31 *Other laws not affected*

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

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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.

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) The sub-fund to which the share is referable does not change if, after the share is issued, the CCIV acquires the share in respect of another of its sub-funds.

Note: For cross-investment between sub-funds, see Subdivision F.
- (3) 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).
- (4) 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.

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

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

4 Note: A CCIV can issue shares only if the rights attaching to the shares are

5 referable to one (and only one) sub-fund of the CCIV: see section

6 1231.

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

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

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

13 1231B Power to issue redeemable shares

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

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

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

19 investment vehicles.

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

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

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

26 *Option to redeem is not a preference*

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

30 Note: As a result, a CCIV may have ordinary shares that are redeemable as

31 well as ordinary shares that are not redeemable. Preferences relating to

32 redemption (including preferences relating to who has the option to

33 redeem) are ignored in determining whether a share is a preference

34 share.

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1 **1231C Conversion of shares**

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

5

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 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)

6

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

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

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

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

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

17 **Subdivision B—Redemption of shares**

18 **1231D Redemptions to which this Subdivision applies**

19 (1) This Subdivision applies to both of the following:
20 (a) a redemption by a CCIV of a redeemable share;

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

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

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

6 **1231E Redeemed shares to be cancelled**

7 On redemption by a CCIV, a share is cancelled.

8 **1231F Requirements for redemptions by all CCIVs**

9 *Redemption must be in accordance with terms of issue*

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

12 *Sub-fund must be solvent*

13 (2) A CCIV must not redeem shares if, immediately before the
14 redemption:

15 (a) the sub-fund to which the shares are referable is insolvent; or

16 (b) there are reasonable grounds for suspecting that the sub-fund
17 to which the shares are referable is insolvent, or would
18 become insolvent immediately after the redemption.

19 Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see section
20 1231R.

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

24 *Consequences of contravention*

25 (3) If a CCIV redeems shares in contravention of subsection (1) or (2):

26 (a) the contravention does not affect the validity of the
27 redemption or of any contract or transaction connected with
28 it; and

29 (b) the CCIV does not commit an offence.

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Fault-based offence

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

5 *Civil liability*

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

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

9 **1231G Further requirements for redemptions by retail CCIVs**

10 *Redemption must be permitted by constitution*

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

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

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

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

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

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Strict liability offence

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

Consequences of contravention

- 4
- 5 (5) If a CCIV redeems shares in contravention of this section, the
6 contravention does not affect the validity of the redemption or of
7 any contract or transaction connected with it.

Court orders

- 8
- 9 (6) If the Court is satisfied, on application under subsection (7), that
10 the consideration for a redemption of shares by a retail CCIV is not
11 in accordance with this section, the Court may make any orders the
12 Court considers appropriate.
- 13 (7) An application to the Court for an order under subsection (6) may
14 be made by any of the following:
- 15 (a) ASIC;
- 16 (b) the corporate director of the CCIV;
- 17 (c) a member, or group of members, of the CCIV.

1231H When a sub-fund is liquid

- 18
- 19 (1) This section applies to a sub-fund of a CCIV at a time if liquid
20 assets account for at least 80% of the value of the assets of the
21 sub-fund at that time.
- 22 (2) For the purposes of subsection (1):
- 23 (a) the following are liquid assets unless it is proved that the
24 CCIV cannot reasonably expect to realise them within the
25 period specified in the constitution for satisfying redemptions
26 while the sub-fund is liquid:
- 27 (i) money in an account or on deposit with a bank;
- 28 (ii) bank accepted bills;
- 29 (iii) marketable securities (as defined in section 9);
- 30 (iv) property of a kind prescribed by regulations made for
31 the purposes of this subparagraph; and
- 32 (b) any other property is a liquid asset if the corporate director
33 reasonably expects that the property can be realised for its
34 market value within the period specified in the constitution
35 for satisfying redemptions while the sub-fund is liquid.

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

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

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1 (b) must cancel a redemption offer before it closes if it is in the
2 best interests of the members of the sub-fund as a whole to
3 do so.

4 (7) If the constitution of the CCIV specifies procedures for cancelling
5 redemption offers under subsection (6), the cancellation must be
6 made in accordance with those procedures.

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

10 *Strict liability offence*

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

13 **1231K Satisfying redemption requests for non-liquid sub-funds of** 14 **retail CCIVs**

15 (1) A retail CCIV that makes a redemption offer under section 1231J
16 must ensure that redemption requests made in response to the offer
17 are satisfied within 21 days after the offer closes.

18 (2) No request made under the redemption offer may be satisfied while
19 the offer is still open.

20 (3) If an insufficient amount of money is available from the assets
21 specified in the offer to satisfy all requests, the requests are to be
22 satisfied proportionately in accordance with the formula:

23
$$\frac{\text{Amount of money available}}{\text{Total of all amounts shareholders request to redeem}} \times \frac{\text{Amount shareholder requested to redeem}}{\text{Total of all amounts shareholders request to redeem}}$$

24 **Subdivision C—Partly-paid shares**

25 **1231L Section 254N does not apply to a CCIV**

26 Section 254N does not apply to a CCIV.

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1 Subdivision D—Dividends

2 1231M Circumstances in which a dividend may be paid

3 (1) A CCIV must not pay a dividend on a share if, immediately before
4 the dividend is paid:

- 5 (a) the sub-fund to which the share is referable is insolvent; or
- 6 (b) there are reasonable grounds for suspecting that the sub-fund
7 to which the share is referable is insolvent, or would become
8 insolvent immediately after the dividend is paid.

9 Note 1: For when a sub-fund of a CCIV is *solvent*, or *insolvent*, see section
10 1231R.

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

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

15 1231N Dividend rights

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

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

22 Subdivision E—Notice requirements

23 1231P Part 2H.6 does not apply to a CCIV

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

25 Subdivision F—Cross-investment between sub-funds of a CCIV

26 1231PA Cross-investment between sub-funds is permitted

27 (1) Despite any law, a CCIV may acquire in respect of any of its
28 sub-funds, one or more shares that are referable to another of its
29 sub-funds.

30 Note: Requirements or restrictions may apply, see section 1231PB.

31 (2) To avoid doubt, a law referred to in subsection (1) includes:

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-
- 1 (a) any written law; or
2 (b) any unwritten law such as a principle or rule of common law
3 or equity;
4 that is or has been in force anywhere in Australia or elsewhere.

5 **1231PB Requirements or restrictions for cross-investment**

- 6 (1) Regulations made for the purposes of this subsection may prescribe
7 either or both of the following:
8 (a) one or more requirements for a CCIV to make an acquisition
9 mentioned in subsection 1231PA(1);
10 (b) one or more restrictions on a CCIV making an acquisition
11 mentioned in subsection 1231PA(1).
- 12 (2) Without limiting subsection (1), regulations made for the purposes
13 of that subsection may prescribe requirements or restrictions in
14 relation to one or more of the following:
15 (a) all CCIVs;
16 (b) a specified class of CCIVs;
17 (c) all sub-funds of all CCIVs;
18 (d) a specified class of sub-funds of CCIVs;
19 (e) all sub-funds of a specified class of CCIVs.

20 **1231PC Consequences for failing to comply with requirements or** 21 **restrictions for cross-investment**

- 22 (1) A CCIV to which regulations made for the purposes of subsection
23 1231PB(1) apply in relation to an acquisition must comply with
24 any applicable requirements or restrictions in those regulations.

25 *Consequences for CCIV of contravention*

- 26 (2) If a CCIV contravenes subsection (1):
27 (a) the contravention does not affect the validity of the
28 acquisition or of any contract or transaction connected with
29 it; and
30 (b) the CCIV does not commit an offence.

31 *Fault-based offence*

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

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Civil liability

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

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

5 Note 2: There are other possible consequences for such a contravention,
6 including the suspension or cancellation of an Australian financial
7 services licence held by the CCIV's corporate director (see
8 paragraph 915C(1)(a)).

9 **1231PD Requirements or restrictions on membership rights for**
10 **shares acquired from cross-investment**

11 *Voting at a meeting of the CCIV's members*

- 12 (1) Despite any other provision of this Act, a CCIV is not entitled to
13 vote the CCIV's interest on a resolution at a meeting of the CCIV's
14 members to the extent that the CCIV has that interest as a member.

15 *Voting at a meeting of members of a sub-fund of the CCIV*

- 16 (2) A CCIV is entitled to vote the CCIV's interest on a resolution at a
17 meeting of members of a sub-fund of the CCIV to the extent that
18 the CCIV has that interest as a member.

- 19 (3) A CCIV's entitlement to vote as described in subsection (2)
20 applies:

21 (a) despite any other provision of this Act; but

22 (b) subject to any requirements or restrictions prescribed by
23 regulations made for the purposes of this paragraph.

24 **1231PE Cross-investment between sub-funds is not a share**
25 **buy-back**

26 For the purposes of section 1231T and Division 2 of Part 2J.1, the
27 acquisition by a CCIV of any of its shares is not a buy-back of the
28 share if:

29 (a) the acquisition is in respect of a sub-fund of the CCIV; and

30 (b) the share is referable to another of the CCIV's sub-funds.

31 **1231PF General duties still apply for cross-investment between**
32 **sub-funds**

33 None of the following:

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-
- 1 (a) the corporate director of a CCIV;
2 (b) an officer, or employee, of the corporate director of a CCIV;
3 is relieved from any of their duties under this Act, or their fiduciary
4 duties, in connection with an acquisition merely because the
5 acquisition is permitted by this Subdivision.

6 Note: These duties include those in sections 180, 181, 182, 183 and 184 and
7 in Divisions 2 and 3 of Part 8B.3.

8 **Division 2—Transactions affecting share capital**

9 **Subdivision A—Reductions in share capital and share** 10 **buy-backs**

11 **1231Q Purpose**

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

13 **1231R CCIV may make reduction not otherwise authorised**

14 (1) A CCIV may reduce its share capital in a way that is not otherwise
15 authorised by law if:

- 16 (a) the reduction is permitted by the CCIV's constitution; and
17 (b) immediately before the reduction:
18 (i) each sub-fund that the reduction affects is solvent; and
19 (ii) there are no reasonable grounds for suspecting that any
20 sub-fund that the reduction affects would become
21 insolvent immediately after the reduction.

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

24 *When a sub-fund is solvent and insolvent*

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

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

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

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

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1231S Consequences of making an unauthorised reduction

- 1
2 (1) A CCIV must not make a reduction in share capital if the
3 reduction:
4 (a) does not comply with subsection 1231R(1); and
5 (b) is not otherwise authorised by law.
- 6 (2) If a CCIV contravenes subsection (1):
7 (a) the contravention does not affect the validity of the reduction
8 or of any contract or transaction connected with it; and
9 (b) the CCIV does not commit an offence.

10 *Fault-based offence*

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

13 *Civil liability*

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

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

17 Note 2: Section 79 defines *involved*.

18 1231T A CCIV's power to buy back its own shares

- 19 (1) A CCIV may buy back its own shares, unless:
20 (a) the CCIV is a retail CCIV; and
21 (b) the shares are redeemable shares or redeemable preference
22 shares.

23 Note 1: A retail CCIV may redeem redeemable shares and redeemable
24 preference shares, subject to the requirements in sections 1231F and
25 1231G.

26 Note 2: Cross-investment between sub-funds is not a buy-back (see section
27 1231PE).

- 28 (2) However, if the buy-back involves a reduction of share capital, the
29 reduction must be authorised by law.
- 30 (3) If a CCIV has entered into an agreement to buy back shares, all
31 rights attaching to the shares are suspended. The suspension is
32 lifted if the agreement is terminated.

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1 (4) A CCIV must not dispose of shares it buys back. An agreement
2 entered into in contravention of this subsection is void.

3 (5) Immediately after the registration of the transfer to the CCIV of the
4 shares bought back, the shares are cancelled.

5 (6) Division 2 of Part 2J.1 does not apply to a CCIV.

6 **1231U Authorised reductions—share redemptions**

7 A CCIV may reduce its share capital if:

8 (a) the reduction is involved in the redemption of a redeemable
9 share or a redeemable preference share; and

10 (b) the redemption complies with section 1231F; and

11 (c) for a retail CCIV—the redemption also complies with section
12 1231G.

13 **1231V Authorised reductions—regulations**

14 A CCIV may reduce its share capital in circumstances prescribed
15 by regulations made for the purposes of this section.

16 **1231W Authorised reductions—Court orders**

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

18 **1231X Authorised reductions—return of financial product**

19 A CCIV may cancel shares returned to it under Division 5 of
20 Part 7.9 (as that Division applies to the CCIV under section
21 1244Y) and any reduction in the CCIV's share capital that is
22 involved is authorised by this section.

23 **1231Y Other share capital reductions**

24 (1) Division 3 of Part 2J.1 applies to a CCIV subject to the
25 modifications set out in this section.

26 (2) Section 258D applies in relation to a CCIV as if a reference to a
27 general meeting were instead a reference to a meeting of the
28 members of each sub-fund of the CCIV to which the shares are
29 referable.

30 (3) Sections 258E and 258F do not apply to a CCIV.

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1 Subdivision B—Self-acquisition and control of shares

2 1231Z Directly acquiring own shares

3 In applying section 259A to a CCIV:

4 (a) the reference in paragraph 259A(a) to section 257A is taken
5 to be a reference to section 1231T; and

6 (b) paragraph 259A(d) is to be disregarded.

7 Note 1: The consequences of contravening section 259A are set out in
8 section 259F.

9 Note 2: Section 259A does not prevent a CCIV from acquiring, in respect of
10 any of its sub-funds, shares that are referable to another of its
11 sub-funds (see subsection 1231PA(1)).

12 1231ZA Taking security over own shares

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

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

17 Subdivision C—Financial assistance

18 1231ZB Part 2J.3 does not apply to a CCIV

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

20 Subdivision D—Interaction with other duties

21 1231ZC Other duties still apply

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

25 Division 3—Debentures

26 1231ZD Debentures can only be issued in respect of sub-funds

- 27 (1) A CCIV can issue a debenture only if the debenture holder's rights
28 in respect of assets of the CCIV are restricted to rights in respect of
29 the assets of one (and only one) sub-fund of the CCIV. This is the
30 sub-fund to which the debenture is *referable*.

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-
- 1 (2) Subsection (1) limits paragraph 124(1)(b) in relation to a CCIV.
2 (3) If a security interest is included in or created by a debenture or the
3 trust deed required by section 283AB, the security interest must not
4 be over property of the CCIV that forms part of the assets of a
5 different sub-fund of the CCIV.

6 **1231ZE Modified operation of section 283AA**

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

12 **Division 4—Financial reports and audit of CCIVs**

13 **Subdivision A—Application of Chapter 2M to CCIVs and their** 14 **sub-funds**

15 **1232 Application of Chapter 2M to CCIVs**

16 *Application of Chapter 2M to retail CCIVs*

- 17 (1) Subject to the modifications set out in this Division, Chapter 2M
18 (about financial reports and audit) applies to a retail CCIV as if:
19 (a) references in that Chapter to the directors of, or a director of,
20 the company were references to the corporate director of the
21 CCIV; and
22 (b) references in that Chapter to a resolution of the directors of
23 the company were references to a resolution of the corporate
24 director, passed as director of the CCIV.

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

26 *Application of Part 2M.2 to wholesale CCIVs*

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

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1 Subdivision B—Financial records (all CCIVs)

2 1232A Obligation to keep financial records for sub-funds

3 (1) Without limiting the application of subsection 286(1) to the retail
4 or wholesale CCIV, the CCIV must also, for each sub-fund of the
5 CCIV, keep written financial records that:

6 (a) correctly record and explain the transactions relating to the
7 sub-fund and the financial position and performance of the
8 sub-fund; and

9 (b) would enable true and fair financial statements to be prepared
10 and audited for the sub-fund.

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

13 Note: Section 9 defines *financial records*.

14 (2) The remaining provisions of Part 2M.2 apply in relation to the
15 financial records for the sub-fund as if the sub-fund were the
16 CCIV.

17 (3) This section does not apply if the CCIV has only one sub-fund.

18 1232B Access to financial records of CCIVs and sub-funds

19 Without limiting the application of subsection 290(1) or section
20 1232A, a director of the corporate director of the retail or
21 wholesale CCIV has the same rights as a director of the CCIV:

22 (a) under subsection 290(1) to access the financial records of the
23 CCIV; and

24 (b) under that subsection, as applied by section 1232A, to access
25 the financial records of a sub-fund of the CCIV; and

26 (c) under subsection 290(2) to apply to the Court for an order.

27 Subdivision C—Financial reporting (retail CCIVs only)

28 1232C Annual financial reports by CCIVs

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

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1232D Annual financial reports for sub-funds

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

20 1232E Annual directors' reports for CCIVs

- 21 (1) Subsection 300(1) applies to the retail CCIV as if:
22 (a) each of the following were an officer of a CCIV:
23 (i) an officer of the CCIV;
24 (ii) an officer of the corporate director of the CCIV; and
25 (b) each of the following were a director of a CCIV:
26 (i) the corporate director of the CCIV;
27 (ii) a director of the corporate director of the CCIV.
- 28 (2) If the retail CCIV is a listed company, subsection 300(12) applies
29 to the retail CCIV as if:
30 (a) the CCIV were a registered scheme; and
31 (b) the corporate director of the CCIV were the responsible
32 entity for the scheme; and
33 (c) references in that subsection to interests in the scheme were
34 references to shares in the CCIV.
- 35 (3) Subsection 300(13) applies to the retail CCIV as if:
36 (a) the CCIV were a registered scheme; and
-

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-
- 1 (b) the corporate director of the CCIV were the responsible
2 entity for the scheme; and
3 (c) references in that subsection to interests in the scheme were
4 references to shares in the CCIV; and
5 (d) references in that subsection to scheme property were
6 references to the property of the CCIV.
- 7 (4) If the retail CCIV is a listed company, section 300A does not apply
8 to the retail CCIV.
- 9 (5) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of
10 doubt.

11 **1232F Half-year financial reports for sub-funds with ED securities** 12 **on issue**

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

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1 mentioned in that paragraph were only the debts referable to the
2 sub-fund.

3 **1232G Half-year directors' reports for CCIVs**

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

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

15 **1232H Audit and auditor's report for sub-funds**

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

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

- 27 (2) Without limiting subsection (1), Division 3 of Part 2M.3 so applies
28 as if:
- 29 (a) references in that Division to members (other than references
30 to members of an audit firm) were references to members of
31 the sub-fund; and
 - 32 (b) references in that Division to an officer included references
33 to an officer of the corporate director of the CCIV.

34 *Audit*

- 35 (3) Section 307 applies in relation to the sub-fund as if the
36 requirements in paragraphs 307(c) and (d) do not apply, and as if

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1 those paragraphs instead require the auditor to form an opinion
2 about whether the CCIV has kept:

- 3 (a) financial records, relating to the sub-fund, sufficient to enable
4 a financial report, relating to the sub-fund, to be prepared and
5 audited; and
6 (b) other records and registers, relating to the sub-fund, as
7 required by this Act.

8 *Reporting to ASIC*

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

16 **Subdivision D—Annual financial reporting to members (retail 17 CCIVs only)**

18 **1232J Annual financial reporting to members of sub-funds**

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

33 **1232K Deadline for reporting to members of CCIVs or sub-funds**

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

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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

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

2 1232P Relodgement if financial statements relating to sub-fund 3 amended after lodgement

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

7 Subdivision F—Appointment and removal of auditors (retail 8 CCIVs only)

9 1232Q Conflict of interest situation

10 (1) Subsection 324CD(2), has effect as if the following item were
11 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.
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12 (2) Subsection 1232(1) does not apply for the purposes of
13 subsection 324CD(2).

14 1232R Auditor independence—specific requirements

15 Subdivision B of Division 3 of Part 2M.4 applies in relation to the
16 retail CCIV as if:

- 17 (a) references in the table in subsection 324CH(1) to the audited
18 body included references to the corporate director of the
19 CCIV; and
20 (b) references in subsection 324CH(3) and sections 324CI,
21 324CJ and 324CK to a listed entity do not include references
22 to a CCIV that is a listed company.

EXPOSURE DRAFT

1 **1232S People who are regarded as officers of a CCIV**

2 Section 324CL applies in relation to the retail CCIV as if
3 references in paragraph 324CL(1)(a) or (b) or
4 subsection 324CL(2), (3) or (4) to the company included references
5 to the corporate director of the CCIV.

6 **1232T Appointment, removal and fees of auditors for CCIVs**

7 (1) Division 6 of Part 2M.4 (about appointment, removal and fees of
8 auditors for companies) does not apply to a CCIV.

9 (2) Division 7 of Part 2M.4 (about appointment, removal and fees of
10 auditors for registered schemes) applies to a retail CCIV as if:

11 (a) the CCIV were a registered scheme; and

12 (b) the corporate director of the CCIV were the responsible
13 entity of that scheme.

14 **1232U Effect of winding up of sub-fund on office of auditor**

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

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

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

22 (2) An auditor of a CCIV ceases to hold office if an event mentioned
23 in subsection (3) has occurred in relation to each sub-fund of the
24 CCIV.

25 (3) The events are as follows:

26 (a) a special resolution is passed for the voluntary winding up of
27 a sub-fund of the CCIV;

28 (b) an order is made by the Court for the winding up of a
29 sub-fund of the CCIV.

30 (4) Section 330 does not apply to a CCIV.

EXPOSURE DRAFT

1 Subdivision G—Sanctions for contravention of Chapter 2M

2 1232V Extended liability of directors of the corporate director for 3 contraventions of Chapter 2M

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

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

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

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

11 Division 5—Updating ASIC information about CCIVs

12 1232W Solvency resolutions

13 (1) Part 2N.3 (about solvency resolutions) does not apply in relation to
14 a CCIV.

15 (2) Section 348C (about ASIC requiring a solvency resolution and
16 statement) does not apply in relation to a CCIV.

17 Part 8B.5—Operating a CCIV

18 Division 1—Preliminary

19 1233 References to property

20 In this Part:

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

- 24 (a) section 267 or 267A of the *Personal Property Securities Act*
25 *2009* (property subject to unperfected security interests);
- 26 (b) section 588FL of this Act (collateral not registered within
27 time).

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

EXPOSURE DRAFT

1233A References to liabilities of a CCIV

- 1
- 2 (1) A reference in this Act to the liabilities of a CCIV includes a
3 reference to:
- 4 (a) debts of the CCIV (including contingent and prospective
5 debts); and
6 (b) expenses of the CCIV; and
7 (c) anything not covered by paragraphs (a) and (b) that might
8 give rise to a debt of the CCIV, or a claim against the CCIV
9 (present or future, certain or contingent, ascertained or
10 sounding only in damages).
- 11 (2) For the purposes of this Part, a liability of a CCIV arises when the
12 circumstances giving rise to the debt, expense or claim occur.

13 Division 2—Requirement to operate sub-funds as separate 14 businesses

15 1233B Sub-funds to be operated as separate businesses

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

21 *Requirement for corporate director to operate sub-funds as 22 separate businesses*

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

27 *Fault-based offence*

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

30 *Strict liability offence*

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

EXPOSURE DRAFT

1 Division 3—Requirement for assets and liabilities to be 2 allocated between sub-funds

3 Subdivision A—The CCIV’s allocation register

4 1233C Corporate director to keep allocation register

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

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

9 *Strict liability offence*

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

12 *Corporate director must maintain allocation register during 13 liquidation*

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

19 Note: However, the corporate director may not make allocation
20 determinations in relation to assets and liabilities while all the
21 sub-funds are being wound up: see subsections 1233J(7) and
22 1233M(7).

23 1233D Requirement to enter assets on the allocation register

- 24 (1) The assets of a sub-fund of a CCIV must be clearly identified in
25 the allocation register as assets of the sub-fund.
- 26 (2) If section 1233K (about property that has to be converted into
27 money etc.) applies to an item of property of a CCIV:
- 28 (a) the item of property must be clearly identified in the
29 allocation register as an item of property to which that
30 section applies; and
- 31 (b) the proportion of the property applicable to each sub-fund
32 under subsection 1233H(3) must be clearly identified in the
33 allocation register as the proportion applicable to the
34 sub-fund.

EXPOSURE DRAFT

1 (3) The corporate director must make entries in the allocation register
2 as required in order to ensure the allocation register makes the
3 identifications required by subsections (1) and (2).

- 4 (4) An entry required by subsection (3) must be made within:
- 5 (a) for a case where money or property is acquired by the CCIV:
 - 6 (i) 5 business days after the money or property is acquired,
7 unless subparagraph (ii) applies; or
 - 8 (ii) if an allocation determination is required to be made in
9 relation to the money or property under section 1233J—
10 5 business days after the determination is made; or
 - 11 (b) for a case where money or property is disposed of, or
12 otherwise ceases to be money or property of the CCIV—5
13 business days after the disposal or cessation.

14 *Fault-based offence*

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

19 *Strict liability offence*

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

22 **1233E Requirement to enter liabilities on the allocation register**

- 23 (1) The liabilities of a sub-fund of a CCIV must be clearly identified in
24 the allocation register as liabilities of the sub-fund.
- 25 (2) If section 1233M (about liabilities allocated to 2 or more
26 sub-funds) applies to a liability of a CCIV:
- 27 (a) the liability must be clearly identified in the allocation
28 register as a liability to which that section applies; and
 - 29 (b) the proportion of the liability applicable to each sub-fund
30 under subsection 1233L(2) must be clearly identified in the
31 allocation register as the proportion applicable to the
32 sub-fund.
- 33 (3) The corporate director must make entries in the allocation register
34 as required in order to ensure the allocation register makes the
35 identifications required by subsections (1) and (2).

EXPOSURE DRAFT

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- 1 (4) An entry required by subsection (3) must be made within:
2 (a) for a case where a liability arises—5 business days after the
3 liability arises; or
4 (b) for a case where a liability is discharged, or otherwise ceases
5 to be a liability of the sub-fund—5 business days after the
6 discharge or cessation.

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

8 *Fault-based offence*

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

13 *Strict liability offence*

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

16 **1233F Liquidator may require corporate director to record debt, 17 claim or property in allocation register**

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

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

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

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

EXPOSURE DRAFT

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

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

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

7 **1233G Requirement to retain records of allocations for 7 years**

8 (1) The corporate director must retain a record of:

9 (a) entries made in the allocation register in relation to assets and
10 liabilities of the CCIV; and

11 (b) determinations made under Subdivision B or C in relation to
12 assets and liabilities of the CCIV (including variations made
13 under section 1233N).

14 (2) The records must be retained for 7 years after the end of the year in
15 which:

16 (a) for money or property—the money or property is disposed of
17 or otherwise ceases to be money or property of the CCIV;
18 and

19 (b) for a liability—the liability is discharged or otherwise ceases
20 to be a liability of the CCIV.

21 *Fault-based offence*

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

24 *Strict liability offence*

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

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

28 **1233H Meaning of *assets* of a sub-fund**

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

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

EXPOSURE DRAFT

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- (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;
 - (b) money deposited with or lent to the CCIV under debentures that are referable to the sub-fund;
 - (c) shares acquired by the CCIV in respect of the sub-fund that are shares in the CCIV that are referable to another of the CCIV's sub-funds;
 - (d) money or property of the CCIV not covered by paragraph (a), (b) or (c), to the extent the money or property, at the time it is acquired, relates solely to the business of the sub-fund;
 - (e) if there is money or property of the CCIV not covered by paragraph (a), (b), (c) or (d) 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.

EXPOSURE DRAFT

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

3 *Regulations*

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

7 **1233J When an allocation determination is required**

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

15 *Requirements for determination*

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

23 *When the determination is operative*

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

29 *Fault-based offence*

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

EXPOSURE DRAFT

Determinations during winding up and controllership

- 1
- 2 (7) Subsection (2) does not apply if all of the CCIV's sub-funds are
3 being wound up.
- 4 (8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution
5 for an offence based on subsection (6) of this section, a defendant
6 does not bear an evidential burden in relation to the matter in
7 subsection (7).
- 8 (9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a
9 sub-fund of a CCIV, may not make a determination under this
10 section.

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

1233K When property must be converted into money etc.

- 13 (1) This section applies if, as a result of the operation of section
14 1233H, a single item of property of a CCIV forms part of the assets
15 of 2 or more sub-funds of the CCIV.
- 16 (2) For the purposes of subsection (1), treat an item of property as a
17 single item if the item would generally be applied or dealt with as
18 an indivisible item in the ordinary course of commercial dealing.

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

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

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

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

Fault-based offence

- 31
- 32 (5) A person commits an offence if:
33 (a) the person is subject to a requirement under this section; and
34 (b) the person fails to comply with the requirement.

EXPOSURE DRAFT

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

2 1233L Meaning of *liabilities* of a sub-fund

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

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

19 *Effect of an allocation determination*

- 20 (2) Despite subsection (1), if:
- 21 (a) a particular proportion of a liability of a CCIV is allocated to
22 a sub-fund of the CCIV at a time under a determination made
23 under section 1233M (including a determination as varied
24 under section 1233N); and
 - 25 (b) the determination is operative at the time (see subsection
26 1233M(4));
- 27 that proportion of the liability is taken to form part of the *liabilities*
28 of the sub-fund at that time.

29 *Effect of a Court order about an arrangement or reconstruction*

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

EXPOSURE DRAFT

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

4 *Regulations*

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

8 **1233M When an allocation determination is required**

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

15 *Requirements for determination*

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

26 *When the determination is operative*

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

EXPOSURE DRAFT

Fault-based offence

- 1
- 2 (6) A person commits an offence if:
- 3 (a) the person is subject to a requirement under this section; and
- 4 (b) the person fails to comply with the requirement.

Determinations during winding up and controllership

- 5
- 6 (7) Subsection (1) does not apply if all of the CCIV's sub-funds are
- 7 being wound up.
- 8 (8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution
- 9 for an offence based on subsection (6) of this section, a defendant
- 10 does not bear an evidential burden in relation to the matter in
- 11 subsection (7).
- 12 (9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a
- 13 sub-fund of a CCIV, may not make a determination under this
- 14 section.

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

1233N Variations of proportional allocation of liabilities

- 16
- 17 (1) The corporate director may vary a determination made under
- 18 section 1233M if it is necessary to do so to ensure that the
- 19 determination remains operative for the purposes of subsection
- 20 1233M(4).
- 21 (2) If, as a result of a change in circumstances, a determination has or
- 22 will become inoperative, the corporate director must vary the
- 23 determination as soon as is practicable.

24 Note: The variation may take effect retrospectively to make operative a

25 determination that has become inoperative: see paragraph (3)(b).

- 26 (3) The variation:
- 27 (a) must be fair and reasonable in the circumstances and having
- 28 regard to:
- 29 (i) the matters referred to in paragraph 1233L(1)(b); and
- 30 (ii) the time at which it starts to apply; and
- 31 (b) must specify the time at which it starts to apply, which may
- 32 be earlier or later than the time at which the variation is
- 33 made; and
- 34 (c) must result in the liability being wholly allocated; and
- 35 (d) must be made in writing.
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EXPOSURE DRAFT

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).

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:

EXPOSURE DRAFT

-
- 1 (a) an order requiring the corporate director to update or correct
2 the CCIV's allocation register;
- 3 (b) an order declaring that money or property of a CCIV forms
4 part of the assets of a particular sub-fund of the CCIV;
- 5 (c) an order declaring that a determination made by the corporate
6 director under section 1233J is not operative;
- 7 (d) an order requiring the corporate director to make one or more
8 determinations under section 1233J;
- 9 (e) an order declaring the extent to which the money or property
10 forms part of the assets of each sub-fund of the CCIV;
- 11 (f) an order declaring that a liability of a CCIV forms part of the
12 liabilities of a particular sub-fund of the CCIV;
- 13 (g) an order declaring that a determination made by the corporate
14 director under section 1233M (including a determination as
15 varied under section 1233N), is not operative;
- 16 (h) an order requiring the corporate director to make one or more
17 determinations under section 1233M, or to vary a
18 determination under section 1233N;
- 19 (i) an order declaring the extent to which a liability forms part of
20 the liabilities of each sub-fund of the CCIV at a time.
- 21 (2) The Court may make an order or give directions under
22 subsection (1) if any of the following applies:
- 23 (a) the Court is satisfied a determination made by the corporate
24 director under section 1233J or 1233M (including a
25 determination varied under section 1233N) is not operative;
- 26 (b) the Court is satisfied that the CCIV's allocation register is
27 otherwise incorrect or deficient;
- 28 (c) all of the CCIV's sub-funds are being wound up.
- 29 (3) An application for an order or directions under subsection (1) may
30 be made by any of the following:
- 31 (a) the corporate director of the CCIV;
- 32 (b) a liquidator of a sub-fund of the CCIV;
- 33 (c) a controller of property of a sub-fund of the CCIV.
- 34 (4) If the Court makes an order under paragraph (1)(b), (e) or (i), the
35 corporate director does not have the power under section 1233J,
36 1233M or 1233N (as the case requires) to make a determination
37 that is inconsistent with the order unless:
- 38 (a) the order states that the corporate director does have the
39 power to make an inconsistent determination; or
-

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1 (b) the corporate director first obtains the leave of the Court.

2 **Division 4—Purposes for which sub-fund assets may be**
3 **applied**

4 **1233R Unallocated money and property may not be applied for any**
5 **purpose**

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

10 **1233S Requirement for segregated application of assets of sub-funds**

- 11 (1) The assets of a sub-fund of a CCIV must not be applied, or dealt
12 with, whether directly or indirectly:
13 (a) subject to paragraph (b), for any purpose other than a purpose
14 covered by section 1233T; or
15 (b) for a purpose prescribed by regulations made for the
16 purposes of this paragraph.

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

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

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

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

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

30 *Liquidators*

- 31 (4) However, a liquidator or provisional liquidator of a sub-fund of a
32 CCIV may:
33 (a) make a disposition of assets of the sub-fund that is an exempt
34 disposition for the purposes of subsection 468(2), as that

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1 subsection applies to the sub-fund under Division 4 of
2 Part 8B.6; or

- 3 (b) disclaim property of a sub-fund under Division 7A of
4 Part 5.6, as that Division applies to the sub-fund under
5 Division 4 of Part 8B.6.

6 **1233T Purposes for which sub-fund assets may be applied**

7 This section covers the following purposes:

- 8 (a) meeting liabilities of the sub-fund;
9 (b) carrying on the business of the sub-fund;
10 (c) paying a dividend to members of the sub-fund;
11 (d) providing consideration to a member of the sub-fund in
12 respect of a reduction of share capital affecting the sub-fund;
13 (e) redeeming redeemable shares or redeemable preference
14 shares that are referable to the sub-fund;
15 (f) making a payment covered by section 1238Y (about winding
16 up);
17 (g) making a payment covered by section 1237K (about certain
18 priority payments by a receiver);
19 (h) complying with a compromise or arrangement relating to the
20 sub-fund and approved by the Court under
21 paragraph 411(4)(b), or an order made under section 413 in
22 relation to such a compromise or arrangement;
23 (i) making any other distribution to members of the sub-fund
24 that the CCIV is permitted by this Act and its constitution to
25 make;
26 (j) a purpose prescribed by regulations made for the purposes of
27 this paragraph.

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

30 **1233U Property that is required to be converted to be applied only** 31 **for that purpose**

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

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

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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:

(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).

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1 **Division 5—How CCIV assets must be held**

2 **1233Z Who may hold the assets of a CCIV**

- 3 (1) The money and property of a CCIV may be held by the CCIV or
4 another person.
- 5 (2) Subsection (1) is subject to the regulations made for the purposes
6 of this subsection.

7 **1233ZA Person other than CCIV holds money or property on trust**

- 8 (1) A person other than the CCIV who holds money or property of the
9 CCIV is taken to hold the money or property on trust for the CCIV.
- 10 (2) To avoid doubt, nothing in this Chapter is intended to have the
11 effect of making a CCIV or its corporate director a trustee or
12 trustees of the money or property of the CCIV.

13 **1233ZC How CCIV money and property must be held**

- 14 (1) A person who holds assets of a sub-fund of a CCIV that have been
15 clearly identified as such in the CCIV's allocation register must
16 hold the assets separately from any other property (including from
17 assets of any other sub-fund of the CCIV).

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

- 19 (2) A person who holds money or property of a CCIV that has not yet
20 been clearly identified in the CCIV's allocation register as forming
21 part of the assets of a sub-fund or sub-funds of the CCIV must hold
22 that money or property separately from any other property.

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

- 24 (3) Despite subsection (1), a person who holds an item of property of a
25 CCIV to which section 1233K (about property that has to be
26 converted into money etc.) applies must hold that item of property
27 separately from any other property.

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

- 29 (4) Subsections (1), (2) and (3) are subject to the regulations made for
30 the purposes of this subsection.

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Strict liability offence

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

1233ZD Regulations may create exceptions

- (1) The regulations may provide that prescribed classes of assets:
- (a) are assets to which the provisions of this Division do not apply; or
 - (b) are assets to which prescribed provisions of this Division do not apply.
- (2) The regulations may make provision in relation to the holding of assets of a sub-fund of a CCIV that are in a class of assets prescribed by the regulations 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
 - (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);

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-
- 1 (d) extraordinary resolution (see section 9);
2 (e) member (see section 1222Q);
3 (f) property (see subsection 51F(3));
4 (g) solvent and insolvent (see section 1231R);
5 (h) special resolution (see section 9).

6 *Terms or expressions that do not have a particular meaning in*
7 *relation to a sub-fund*

8 (2) If:

- 9 (a) a term or expression has a particular meaning in this Act or in
10 a provision of this Act in relation to a company, corporation
11 or body corporate; and
12 (b) because of a reference (including an implied reference) that is
13 required by this Part to be substituted with a reference to a
14 sub-fund, it is necessary to determine the meaning of the
15 term or expression in relation to a sub-fund of a CCIV; and
16 (c) the term or expression does not have a particular meaning in
17 relation to a sub-fund of a CCIV;

18 then the meaning the term or expression has in relation to the
19 sub-fund is the meaning the term or expression would have in
20 relation to the CCIV if the CCIV had no other sub-funds.

21 Note: For example, the term *related entity* is defined in section 9 in relation
22 to a body corporate, and is not defined in relation to a sub-fund of a
23 CCIV. To determine whether a person is a related entity of a sub-fund:

- 24 (a) first, assume that the CCIV has no other sub-funds (this includes
25 disregarding any shares held by the CCIV that are assets of other
26 sub-funds of the CCIV); and
27 (b) then, apply the definition of *related entity* in section 9 to the
28 CCIV based on that assumption.

29 As a result, a member of the CCIV (paragraph (d) of the definition of
30 *related entity*) will only be a related entity of a sub-fund of the CCIV
31 if the person is a member of the sub-fund.

32 **Division 2—Arrangements and reconstructions of** 33 **sub-funds**

34 **1236 Object of this Division**

35 The object of this Division is to provide for arrangements and
36 reconstructions of sub-funds of CCIVs to occur in the same way
37 that arrangements and reconstructions of Part 5.1 bodies occur.

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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));
 - (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);

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1 (d) a provision prescribed by regulations made for the purposes
2 of this paragraph.

3 *Translation rules*

4 (4) In the application of the arrangements and reconstructions
5 provisions, those provisions apply as if the substitutions set out in
6 the following table were made.

7

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 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

8 Note: For item 2—for example, the draft explanatory statement provided for
9 in subsection 411(2) must state any material interests of the corporate
10 director and of the directors of the corporate director.

11 (5) Despite item 1 of the table in subsection (4), a reference covered
12 by column 1 of that item is taken to be a reference to the CCIV if

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1 the context of the reference so requires (for example, because the
2 reference requires the legal capacity and powers of a company).

3 Note 1: For example, references to the Part 5.1 body, in the context of the
4 body as a party to a compromise or arrangement, are references to the
5 CCIV, because the CCIV is the legal person that is a party to, and that
6 is bound by, the compromise or arrangement.

7 Note 2: For example, references to the Part 5.1 body, in the context of
8 identifying a liquidator, are references to the sub-fund, because
9 winding up of a CCIV takes place at the sub-fund level.

- 10 (6) If a reference in a provision to the relevant body is, as a result of
11 subsection (5), taken to be a reference to the CCIV, the operation
12 of the provision in relation to the CCIV is confined, to the extent
13 possible, to the sub-fund.

14 **1236C Persons not to be appointed to administer compromise or** 15 **arrangement**

16 Subsection 411(7) has effect in relation to a CCIV as if the persons
17 referred to in that subsection included a person who holds money
18 or property of the CCIV.

19 **1236D Provisions for facilitating reconstruction and amalgamation** 20 **of sub-funds within a CCIV**

- 21 (1) If:

22 (a) a compromise or arrangement is proposed for the purposes
23 of, or in connection with, a scheme for the reconstruction of a
24 sub-fund or sub-funds or the amalgamation of 2 or more
25 sub-funds; and

26 (b) under the scheme, the whole or any part of the undertaking or
27 of the property of a sub-fund concerned in the scheme (the
28 *transferor sub-fund*) is to become a part of the undertaking
29 or of the property of another sub-fund of the same CCIV;

30 the Court may by order provide for any of the matters referred to in
31 subsection 413(1) as if the other sub-fund were the transferee
32 company referred to in that subsection.

- 33 (2) Nothing in this section limits the orders a Court may make under
34 section 413 if it approves a compromise or arrangement relating to
35 a sub-fund of a CCIV.

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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.

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.

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- 1 (2) The appointments covered by this subsection are appointments,
2 whether made under a power contained in an instrument, or by a
3 Court, of a person to act as a:
4 (a) receiver; or
5 (b) receiver and manager; or
6 (c) controller;
7 of property of the CCIV.

8 Note: A Court may appoint a receiver under section 233, 283HB, 1101B or
9 1323.

10 **1237C Persons not to act as receivers**

- 11 (1) A person is not qualified to be appointed, and must not act, as
12 receiver of property of a sub-fund of a CCIV if the person:
13 (a) is a secured party in relation to any property (including PPSA
14 retention of title property) of the sub-fund; or
15 (b) is the corporate director of the CCIV; or
16 (c) is a person who holds money or property of the CCIV; or
17 (d) is an auditor of the CCIV or the sub-fund; or
18 (e) is a director, secretary, senior manager or employee of a body
19 corporate that is a secured party in relation to any property
20 (including PPSA retention of title property) of the sub-fund;
21 or
22 (f) is not a registered liquidator; or
23 (g) is a director, secretary, senior manager or employee of:
24 (i) the corporate director; or
25 (ii) a body corporate related to the corporate director; or
26 (iii) a body corporate related to the CCIV; or
27 (h) unless ASIC directs in writing that this paragraph does not
28 apply in relation to the person in relation to the sub-fund of
29 the CCIV—has at any time within the last 12 months been:
30 (i) a corporate director or promoter of the CCIV; or
31 (ii) a director, secretary, senior manager, employee or
32 promoter of the corporate director or a related body
33 corporate of the CCIV or the corporate director.
- 34 (2) Paragraph (1)(f) does not apply in relation to a body corporate
35 authorised by or under a law of the Commonwealth, of a State or of
36 a Territory to act as receiver of property of the sub-fund concerned.
- 37 (3) Section 418 does not apply to a CCIV.

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1 (4) In this section:

2 *senior manager* does not include a receiver and manager.

3 **1237D Notifying of appointment or cessation of controller**

4 If:

5 (a) a person (the *controller*) is appointed as, or ceases to be, the
6 controller of property of a sub-fund of a CCIV; and

7 (b) one or more persons, other than the CCIV, holds assets of the
8 sub-fund of the CCIV;

9 the controller must, as soon as practicable, and in any event within
10 3 business days after the controller's appointment or cessation,
11 notify each such person in writing of the appointment or cessation.

12 **Subdivision C—Application of Part 5.2 to control of property** 13 **of sub-funds**

14 **1237E Applying Part 5.2 etc. to sub-funds**

15 (1) The controller provisions referred to in subsection (2) apply to a
16 CCIV with:

17 (a) the modifications set out in this Division; and

18 (b) such other modifications as are made necessary by the fact
19 that the provisions are applying to a sub-fund instead of to a
20 corporation.

21 *Controller provisions*

22 (2) The provisions (the *controller provisions*) are as follows:

23 (a) Part 5.2 and Division 2B of Part 5.7B (other than a provision
24 excluded by subsection (3));

25 (b) the other provisions of this Act and the ASIC Act (other than
26 a provision excluded by subsection (3)) to the extent to which
27 they relate to the operation of the provisions referred to in
28 paragraph (a).

29 (3) For the purposes of subsection (2), the provisions excluded from
30 the controller provisions are as follows:

31 (a) section 416;

32 (b) section 418;

33 (c) a provision prescribed by regulations made for the purposes
34 of this paragraph.

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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
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).

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- 1 (6) If a reference in a provision to the relevant corporation is, as a
2 result of subsection (5), taken to be a reference to the CCIV, the
3 operation of the provision in relation to the CCIV is confined, to
4 the extent possible, to the sub-fund.

5 **Subdivision D—Modified duties and powers of receivers etc.**

6 **1237F Liability of controller**

- 7 (1) Section 1224N (about extended liability for acts of agents) does not
8 apply to a person who, as agent for the CCIV, enters into
9 possession or assumes control of any property of a sub-fund of the
10 CCIV for the purposes of enforcing any security interest.

- 11 (2) Subsection (1) does not affect the application of section 419.

12 **1237G Powers of receiver**

13 If:

- 14 (a) a receiver is appointed in respect of property of a sub-fund of
15 a CCIV; and
16 (b) one or more persons, other than the CCIV, holds assets of the
17 sub-fund of the CCIV;

18 the powers conferred under section 420 on the receiver are taken to
19 include the power to instruct each such person in relation to
20 dealing with the assets of the sub-fund.

21 **1237H Controller may require reports relating to other sub-funds if 22 necessary**

23 The affairs of a CCIV about which a controller of property of a
24 sub-fund of the CCIV may require a report under section 430
25 include:

- 26 (a) the affairs of the sub-fund; and
27 (b) the affairs of any other sub-fund, to the extent the
28 information about those affairs is required by the controller
29 for the purpose of attaining the objectives for which the
30 controller was appointed.

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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.

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.

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1 Division 4—Winding up of sub-funds

2 Subdivision A—Preliminary

3 1238 Object of this Division

4 The object of this Division is to preserve the segregated application
5 of assets of sub-funds by requiring a separate winding up
6 procedure for each sub-fund.

7 1238A No winding up of a CCIV

8 A CCIV cannot be wound up, or placed in liquidation.

9 Note: If a CCIV has no sub-funds, ASIC must deregister the CCIV: see
10 section 1242K.

11 Subdivision B—Application of winding up provisions to 12 winding up of sub-funds

13 1238B Applying winding up provisions to sub-funds

- 14 (1) An application to wind up a sub-fund of a CCIV, and the winding
15 up of a sub-fund of a CCIV, are regulated:
16 (a) by the provisions of this Division; and
17 (b) by the winding up provisions referred to in subsection (2),
18 applying, so far as they are capable of so doing, subject to:
19 (i) such modifications as are set out in this Division; and
20 (ii) such other modifications as are made necessary by the
21 fact that the provisions are applying to a sub-fund
22 instead of to a company.

23 *Winding up provisions*

- 24 (2) The provisions (the *winding up provisions*) are as follows:
25 (a) sections 53 and 91, paragraph 233(1)(a), Parts 5.4, 5.4A,
26 5.4B, 5.5 and 5.6, Divisions 2 and 2A of Part 5.7B and
27 Schedule 2 (other than a provision excluded by
28 subsection (3));
29 (b) the other provisions of this Act and the ASIC Act (other than
30 a provision excluded by subsection (3)) to the extent to which
31 they relate to the operation of the provisions referred to in
32 paragraph (a).

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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 prescribed by 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 <i>relevant company</i>) 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 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 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	shares referable to the sub-fund

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1 operation of the provision in relation to the CCIV is confined, to
2 the extent possible, to the sub-fund.

3 Note: For example, the first reference in paragraph 471B(a) to “the
4 company” is a reference to the CCIV, because only a legal person can
5 be a party to a proceeding in a court. However, the operation of
6 section 471B to prevent proceedings against the CCIV is confined to
7 proceedings that relate to the sub-fund.

8 **1238C References to debts etc. of a sub-fund**

9 For the purposes of the application of the winding up provisions, as
10 those provisions apply subject to item 1 of the table in subsection
11 1238B(4):

- 12 (a) a debt of the CCIV is taken to be a debt of a sub-fund to the
13 extent (if any) that the debt is a liability of the sub-fund; and
14 (b) a claim against the CCIV is taken to be a claim against a
15 sub-fund of the CCIV to the extent (if any) that the claim is a
16 liability of the sub-fund.

17 Note: A reference to a liability of a sub-fund of a CCIV includes debts and
18 claims: see section 1233A.

19 **Subdivision C—Winding up of a sub-fund in insolvency**

20 **1238D When a sub-fund is presumed to be insolvent**

21 Paragraph 459C(2)(a) is taken to be satisfied in relation to a
22 sub-fund of a CCIV if:

- 23 (a) the CCIV failed (as defined by section 459F) to comply with
24 a statutory demand; and
25 (b) the failure affects the sub-fund (see subsection 1238E(3)).

26 **1238E Statutory demand—creditor may serve demand on CCIV**

- 27 (1) A person may serve a statutory demand on a CCIV under
28 section 459E.
- 29 (2) However, subsection 459E(2) applies to a statutory demand served
30 on a CCIV as if it also required the demand to specify, in relation
31 to each debt to which the demand relates:
- 32 (a) the sub-fund or sub-funds of the CCIV of which the debt is a
33 liability; and

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1 (b) if the debt is a liability of 2 or more sub-funds of the CCIV—
2 the proportion of the debt allocated to each sub-fund at the
3 time the demand is served.

4 (3) Whether a CCIV has failed to comply with a statutory demand is
5 determined under section 459F. If the CCIV has failed to comply
6 with a statutory demand, the failure affects each sub-fund specified
7 in the demand.

8 Note: The sub-funds specified may be affected by a variation made by the
9 Court under subsection 1238H(3).

10 **1238F Statutory demand—CCIV may apply to set aside demand**

11 (1) A CCIV may apply to the Court under section 459G for an order
12 setting aside a statutory demand served on the CCIV.

13 (2) Division 3 of Part 5.4 applies in relation to the application subject
14 to the modifications set out in sections 1238G to 1238J.

15 **1238G Statutory demand—determining application to set aside** 16 **where there is a dispute or offsetting claim**

17 (1) Paragraph 459H(1)(b) applies in relation to a debt to which a
18 demand relates only if the CCIV has an offsetting claim that is an
19 asset of the sub-fund of which the debt or a proportion of the debt
20 (as the case requires) is a liability.

21 (2) Subsection 459H(2) has effect as if it required the Court to
22 calculate a separate substantiated amount in relation to each
23 sub-fund specified in the statutory demand.

24 (3) For the purposes of the calculation:

25 (a) the amount of the debt is to be determined having regard only
26 to a debt or a proportion of a debt (as the case requires) that
27 is a liability of the sub-fund; and

28 (b) the amount of an offsetting claim is to be determined having
29 regard only to so much of an offsetting claim as is an asset of
30 the sub-fund.

31 **1238H Statutory demand—determining application to set aside** 32 **where there is a dispute about the sub-fund**

33 (1) This section applies if:

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-
- 1 (a) a CCIV applies under section 459G for an order setting aside
2 a statutory demand served on the CCIV; and
3 (b) within the 21 days referred to in subsection 459G(3):
4 (i) a notice complying with subsection (6) is filed with the
5 Court; and
6 (ii) a copy of the notice is served on the person who served
7 the demand on the CCIV; and
8 (c) the information specified in the notice about a debt is not the
9 same as the information specified in the demand about the
10 debt; and
11 (d) section 459H does not apply.
- 12 (2) The Court must determine the following information for the debt:
13 (a) the sub-fund or sub-funds of the CCIV of which the debt is a
14 liability;
15 (b) if the debt is a liability of 2 or more sub-funds of the CCIV—
16 the proportion of the debt allocated to each sub-fund.
- 17 (3) If the information determined by the Court under subsection (2) is
18 different from the information specified in the demand, the Court
19 may make an order:
20 (a) varying the demand as specified in the order; and
21 (b) declaring the demand to have had effect, as so varied, as from
22 when the demand was served on the CCIV.
23 The order may be made subject to conditions.
- 24 (4) This section has effect subject to section 459J.
- 25 (5) Section 459L has effect as if the orders referred to in that section
26 included an order under this section.
- 27 (6) A notice complies with this subsection in relation to a statutory
28 demand if the notice specifies the following information for each
29 debt to which the demand relates:
30 (a) the sub-fund or sub-funds of the CCIV of which the debt is a
31 liability;
32 (b) if the debt is a liability of 2 or more sub-funds of the CCIV—
33 the amount of the debt allocated to each sub-fund.

1238J Substitution of sub-fund where statutory demand not relied on

- 34
35
36 (1) This section applies if:
-

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-
- 1 (a) a creditor applies under section 459P for a sub-fund of the
2 CCIV to be wound up in insolvency; and
3 (b) the application does not rely on a failure by the CCIV to
4 comply with a statutory demand.
- 5 (2) The Court may by order substitute, in an application under
6 section 459P, the sub-fund or sub-funds of the CCIV in respect of
7 which the application is made.
- 8 (3) The Court may only make an order if:
9 (a) a notice complying with subsection (5) is filed with the
10 Court; and
11 (b) the Court thinks it is appropriate to do so.
- 12 (4) After the order is made, the application has effect, and may be
13 proceeded with, as if the substituted sub-fund or sub-funds had
14 been the original sub-fund or sub-funds.
- 15 (5) A notice complies with this subsection in relation to a creditor if
16 the notice specifies the following information for each of the
17 creditor's debts:
18 (a) the sub-fund or sub-funds of the CCIV of which the debt is a
19 liability;
20 (b) if the debt is a liability of 2 or more sub-funds of the CCIV—
21 the amount of the debt allocated to each sub-fund.

22 **1238K Declaration of solvency**

23 A written declaration under section 494 about the affairs of a
24 sub-fund may be made by the corporate director of the CCIV.

25 **Subdivision D—Modified duties and powers of liquidator of a** 26 **sub-fund**

27 **1238L Disqualification of liquidator**

28 Paragraph 532(2)(c) has effect in relation to a sub-fund of a CCIV
29 as if the persons referred to in that paragraph included the
30 following:

- 31 (a) a director of the corporate director of the CCIV;
32 (b) a person (if any), other than the CCIV, who holds assets of
33 the sub-fund.

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1238M Notifying of appointment, resignation or removal of liquidator

- (1) If:
- (a) a liquidator of a sub-fund of a CCIV is appointed, resigns or is removed from office; and
 - (b) one or more persons, other than the CCIV, holds assets of the sub-fund of the CCIV;
- the liquidator must, as soon as practicable, and in any event within 3 business days after the liquidator's appointment, resignation or removal, notify each such person in writing of the appointment, resignation or removal.
- (2) In this section:
- liquidator* includes a provisional liquidator.

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).

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Liquidator may instruct person who holds assets of a sub-fund

- 1
2 (3) If:
3 (a) a liquidator of a sub-fund of a CCIV is appointed; and
4 (b) one or more persons, other than the CCIV, holds assets of the
5 sub-fund of the CCIV;
6 the powers conferred on the liquidator are taken to include the
7 power to instruct each such person in relation to dealing with the
8 assets of the sub-fund.

9 *Liquidator may inspect certain books*

- 10 (4) If:
11 (a) a liquidator of a sub-fund of a CCIV is appointed; and
12 (b) one or more persons, other than the CCIV, holds assets of the
13 sub-fund of the CCIV;
14 the liquidator is entitled to inspect at any reasonable time books of
15 each such person, to the extent the inspection of those books is
16 necessary for the liquidator to perform or exercise the functions or
17 powers of that office.

18 Note: A person entitled to inspect a book may make copies or take extracts:
19 see subsection 1300(3).

20 *Definitions*

- 21 (5) In this section:
22 ***liquidator*** includes a provisional liquidator.

23 **1238P Retention and destruction of books**

- 24 (1) The following provisions do not apply in relation to a winding up
25 of a sub-fund:
26 (a) subsection 70-35(3) of Schedule 2 (about when an external
27 administrator is not required to retain books);
28 (b) subsection 70-35(4) of Schedule 2 (about when an external
29 administrator may destroy books).

30 *Liquidator must transfer books to CCIV*

- 31 (2) If:
32 (a) books are retained under section 70-35 of Schedule 2 by a
33 liquidator of a sub-fund in relation to a winding up of the
34 sub-fund; and

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-
- 1 (b) the retention period mentioned in subsection 70-35(1) of that
2 Schedule ends; and
3 (c) before the end of the retention period, the CCIV requests the
4 liquidator by notice in writing to transfer possession or
5 control of the books to the CCIV;
6 the liquidator must, as soon as practicable after the end of the
7 retention period, transfer possession or control of those books to
8 the CCIV.
- 9 (3) Otherwise, the books may be destroyed at the end of the retention
10 period.

11 *Offence*

- 12 (4) A person commits an offence if:
13 (a) the person is subject to a requirement under subsection (2);
14 and
15 (b) the person intentionally or recklessly fails to comply with the
16 requirement.

17 **Subdivision E—Modified duties and powers of officers of** 18 **corporate director and CCIV**

19 **1238Q Officers of corporate director to help liquidator**

- 20 (1) Section 530A applies as if each of the following were an officer of
21 a CCIV:
22 (a) an officer of the CCIV;
23 (b) an officer of the corporate director of the CCIV;
24 (c) an officer of a former corporate director of the CCIV.
- 25 (2) Paragraph (1)(a) is included for the avoidance of doubt.
- 26 (3) In this section:
27 *officer* includes former officer.

28 **1238R Corporate director may retain certain books**

- 29 (1) The corporate director of a CCIV is entitled, as against a liquidator
30 of a sub-fund of the CCIV, to retain possession of books of the
31 CCIV that relate to:
32 (a) the business or affairs of the CCIV as a whole; or
33 (b) the business or affairs of other sub-funds of the CCIV.
-

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1 Note: Books that the corporate director is not entitled to retain must be
2 delivered to the liquidator: see section 530A.

3 (2) Subsection (1) applies despite subsection 530B(1).

4 (3) In this section:

5 *liquidator* includes a provisional liquidator.

6 **1238S Corporate director may access certain books**

7 The corporate director of a CCIV is entitled to inspect at any
8 reasonable time books relating to the winding up of a sub-fund of
9 the CCIV, to the extent the inspection of those books is necessary
10 for the corporate director to perform or exercise the functions or
11 powers of that office.

12 Note: A person entitled to inspect a book may make copies or take extracts:
13 see subsection 1300(3).

14 **1238T Corporate director may direct ASIC not to destroy books**

15 (1) Before ASIC destroys, in accordance with subsection 70-31(9) of
16 Schedule 2, books relating to the winding up of a sub-fund of a
17 CCIV, ASIC must notify the CCIV that it intends to do so.

18 (2) Despite subsection 70-31(9) of Schedule 2, if:

- 19 (a) ASIC retains books under subsection 70-31(8) of Schedule 2
20 in relation to the winding up of a sub-fund of a CCIV; and
21 (b) the retention period mentioned in that subsection ends; and
22 (c) the CCIV, by resolution of the corporate director, directs
23 ASIC not to destroy the books;

24 ASIC must, as soon as practicable, transfer possession or control of
25 those books to the CCIV.

26 **1238U Mandatory examination**

27 (1) Section 596A applies in relation to a CCIV as if the following were
28 officers of the CCIV:

- 29 (a) a natural person who is an officer of the CCIV;
30 (b) a natural person who is a director of the corporate director of
31 the CCIV.

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

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1 **1238V Court may make order imposing liability on unlicensed**
2 **person operating CCIV**

3 Where:

- 4 (a) a sub-fund of a CCIV is being wound up; and
5 (b) within the period of 4 years ending before the relation-back
6 day, a person not meeting the requirements in subsection
7 1224F(1) for the director of a CCIV operated the business
8 and conducted the affairs of the CCIV;

9 the Court may, on the application of the sub-fund's liquidator,
10 order that the person is personally liable for so much of the
11 sub-fund's debts and liabilities as does not exceed an amount
12 specified in the order.

13 **Subdivision F—Proof and ranking of claims**

14 **1238W Liquidator must be satisfied debt or claim is a liability of the**
15 **sub-fund**

- 16 (1) The liquidator of a sub-fund must determine that the whole or a
17 part of a debt of the CCIV is not admissible to proof against the
18 sub-fund if the liquidator is satisfied that the debt or the part of the
19 debt (as the case requires) is not a liability of the sub-fund.
20 (2) Such a determination does not have the effect of extinguishing the
21 debt or the part of the debt.

22 **1238X Determination of debts and claims that relate to the business**
23 **of 2 or more sub-funds and are of uncertain value**

- 24 (1) This section applies if, in the winding up of a sub-fund, the
25 liquidator admits a debt or claim that:
26 (a) is a liability of the CCIV that does not relate solely to the
27 business of the sub-fund; and
28 (b) as at the relevant date, did not bear a certain value.

29 Note: If the liability relates solely to the business of the sub-fund but is of
30 uncertain value, the liquidator must estimate the value of the debt or
31 claim (paragraph 554A(2)(a)) or refer the question of the value of the
32 debt or claim to the Court (paragraph 554A(2)(b)).

- 33 (2) Section 554A applies in relation to the debt or claim as if the value
34 of the debt or claim that is to be estimated as at the relevant date
35 were the value of the whole of the debt or claim (not just the

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1 proportion that is applicable to the sub-fund under subsection
2 1233L(2)).

- 3 (3) However, despite subsection 554A(8), for the purposes of
4 Division 6 of Part 5.6, the amount of the debt or claim that is
5 admissible to proof is the product of:
6 (a) the value as estimated or worked out under section 554A (as
7 modified by this section); and
8 (b) the proportion of the liability applicable to the sub-fund
9 under subsection 1233L(2).

10 **1238Y Application of sub-fund property**

11 If a sub-fund of a CCIV is being wound up, the assets of the
12 sub-fund may be applied for the purposes of paying debts and
13 claims that, under section 556 as it applies in relation to the
14 winding up of the sub-fund, must be paid in priority to all other
15 unsecured debts and claims.

16 **Subdivision G—Powers of Courts**

17 **1238Z Warrant in relation to books**

- 18 (1) This section applies in relation to a warrant issued by a Court under
19 subsection 530C(2) on application by the liquidator or provisional
20 liquidator of a sub-fund of a CCIV.
21 (2) The books of a CCIV that may be searched for under the warrant
22 are any books of the CCIV.
23 (3) The books of the CCIV that may be seized under the warrant are
24 books of the CCIV that relate to the sub-fund.

25 *Specified person to be in possession of warrant*

- 26 (4) When executing the warrant, the specified person must be in
27 possession of the warrant or a copy of the warrant.

28 *Notification of entry*

- 29 (5) Subsections (6) and (7) apply if:
30 (a) the warrant is being executed in relation to premises; and
31 (b) the occupier of the premises, or another person who
32 apparently represents the occupier, is present at the premises.

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-
- 1 (6) Before entering the premises under the warrant, the specified
2 person must:
3 (a) announce that the person is authorised to enter the premises;
4 and
5 (b) show the occupier or other person evidence of the person's
6 identity that:
7 (i) includes a photograph of the person; and
8 (ii) has not expired.
- 9 (7) The specified person must, as soon as practicable:
10 (a) make a copy of the warrant available to the occupier or other
11 person; and
12 (b) inform the occupier or other person in writing of the rights
13 and responsibilities of the occupier or other person under this
14 section and section 530C.

Books to be used only for purpose of liquidation

- 15
16 (8) A book of the CCIV seized under the warrant may be used only for
17 the purpose for which it was seized.

Return of seized things

- 18
19 (9) Despite subsection 530C(4), and subject to any contrary order of
20 the Court, a person who has custody of property or a book because
21 of the execution of the warrant must take reasonable steps to return
22 the property or book to the CCIV when the property or book is no
23 longer required to be retained for the purpose for which it was
24 seized.

Receipts

- 25
26 (10) If property or a book is seized under the warrant, the specified
27 person must provide a receipt for the property or book.
- 28 (11) If 2 or more books or items of property are seized, they may be
29 covered by the one receipt.

Subdivision H—Recovering property

1238ZA Presumptions to be made in recovery proceedings

- 30
31
32 A reference in section 588E to financial records a company is
33 required by subsection 286(1) to keep is taken, in relation to a

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1 winding up of a sub-fund of a CCIV, to be a reference to both of
2 the following:

- 3 (a) financial records that the CCIV is required to keep and retain
4 for the sub-fund under subsection 286(1), as that subsection
5 applies in relation to the sub-fund under section 1232A;
6 (b) financial records that the CCIV is required to keep and retain
7 for itself under subsection 286(1), as that subsection applies
8 to the CCIV under section 1232.

9 **1238ZB Directors of the corporate director**

- 10 (1) Sections 588FDA and 588FGA apply in relation to a sub-fund of a
11 CCIV as if each of the following were a director of a CCIV:
12 (a) a director of the CCIV;
13 (b) a director of the corporate director of the CCIV.
14 (2) Paragraph (1)(a) is included for the avoidance of doubt.

15 **1238ZC Vesting of PPSA security interests if collateral not**
16 **registered within time**

17 Section 588FL applies in relation to a PPSA security interest
18 granted by a CCIV if:

- 19 (a) an order is made, or a resolution is passed, for the winding up
20 of a sub-fund of the CCIV; and
21 (b) the PPSA security interest is in collateral that is an asset of
22 the sub-fund of the CCIV.

23 **Division 5—Recovering property of sub-funds**

24 **1239 Duties owed by directors of corporate director of a CCIV**

25 The object of this Division is to ensure that the officers of the
26 corporate director of a CCIV, instead of the corporate director
27 itself, owe the duties in Divisions 3, 4, 5 and 6 of Part 5.7B.

28 **1239A Applying property recovery provisions to CCIVs**

- 29 (1) The property recovery provisions referred to in subsection (2)
30 apply to a CCIV subject to:
31 (a) such modifications as are set out in this Division; and
32 (b) such other modifications as are made necessary by the facts
33 that:

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- 1 (i) for a CCIV, solvency and insolvency are determined at
2 the level of a sub-fund, instead of at the level of the
3 CCIV; and
4 (ii) the officers to whom the provisions are directed are the
5 officers of the corporate director, instead of the officers
6 of the CCIV.

7 *Property recovery provisions*

- 8 (2) The provisions (the *property recovery provisions*) are as follows:
9 (a) Divisions 3, 4, 5 and 6 of Part 5.7B (other than a provision
10 excluded by subsection (3));
11 (b) the other provisions of this Act and the ASIC Act (other than
12 a provision excluded by subsection (3)) to the extent to which
13 they relate to the operation of the provisions referred to in
14 paragraph (a).
15 (3) For the purposes of subsection (2), the regulations may specify
16 provisions that are excluded from the property recovery provisions.

17 *Translation rules*

- 18 (4) In the application of the property recovery provisions, those
19 provisions apply as if the substitutions set out in the following
20 table were made.
21

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	an officer of the corporate director

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Substitutions to be made

Item	Column 1 If the provision ...	Column 2 substitute a reference to ...
	company	
4	refers to shares in the relevant company	shares referable to the sub-fund

1

2

3

4

5

(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

7

8

9

(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.

10

1239B References to incurring debts

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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.

17

1239C When debts arise in relation to redeemable shares

18

19

20

21

(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	when the shares are issued

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When debts are incurred

Item	Column 1 Action of company	Column 2 When debt is incurred
	otherwise than only at its option	
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

1

2

- (2) This section has effect in relation to a CCIV in addition to the table set out in subsection 588G(1A).

3

4

Division 6—External administration offences

5

1240 Applying external administration offences to CCIVs

6

- (1) The external administration offences provisions referred to in subsection (3) apply to a CCIV.

7

8

- (2) In addition to the application referred to in subsection (1), the external administration offences provisions apply to a CCIV subject to:

9

10

11

- (a) such modifications as are set out in this Division; and

12

- (b) such other modifications as are necessary.

13

External administration offences provisions

14

- (3) The provisions (the *external administration offences provisions*) are as follows:

15

16

- (a) Part 5.8 (other than a provision excluded by subsection (4));

17

- (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).

18

19

20

21

- (4) For the purposes of subsection (3), the regulations may specify provisions that are excluded from the property recovery provisions.

22

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Translation rules

- 1
2 (5) In the application of the external administration offences
3 provisions, those provisions apply as if the substitutions set out in
4 the following table were made.
5

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 (6) and (7))
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
7 (6) Despite item 1 of the table in subsection (5), a reference covered
8 by column 1 of that item is taken to be a reference to the CCIV if
9 the context of the reference so requires (for example, because the
10 reference requires the legal capacity and powers of a company).

- 11 (7) If a reference in a provision to the relevant company is, as a result
12 of subsection (6), taken to be a reference to the CCIV, the
13 operation of the provision in relation to the CCIV is confined, to
14 the extent possible, to the sub-fund.

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1240A Interpretation of ceased to carry on business

- 1
2 (1) For the purposes of Part 5.8, a sub-fund is taken to have ceased to
3 carry on business only if:
- 4 (a) 2 months have passed since a notice under subsection
5 1242(5) (about voluntary deregistration of a sub-fund)
6 relating to the sub-fund was published and ASIC has not
7 been informed that the part of the business of the CCIV that
8 is registered as the sub-fund is being carried on; or
 - 9 (b) ASIC has published a notice under subsection 1242B(1)
10 (about ASIC initiated deregistration of a sub-fund) relating to
11 the sub-fund.
- 12 (2) Subsection 589(3) does not apply to determine when a sub-fund of
13 a CCIV is taken to have ceased to carry on business.

14 1240B Frauds by officers

- 15 (1) Section 596 applies in relation to a CCIV as if the following were
16 officers of the CCIV:
- 17 (a) a natural person who is an officer of the CCIV;
 - 18 (b) a natural person who is a director of the corporate director of
19 the CCIV.
- 20 (2) Paragraph (1)(a) is included for the avoidance of doubt.

21 Division 7—Miscellaneous

22 1241 Applying external administration miscellaneous provisions to 23 sub-funds

- 24 (1) The external administration miscellaneous provisions referred to in
25 subsection (2) apply to a CCIV subject to:
- 26 (a) such modifications as are set out in this Division; and
 - 27 (b) such other modifications as are necessary.

28 *External administration miscellaneous provisions*

- 29 (2) The provisions (the *external administration miscellaneous*
30 *provisions*) are as follows:
- 31 (a) Part 5.9 (other than a provision excluded by subsection (3));
 - 32 (b) the other provisions of this Act and the ASIC Act (other than
33 a provision excluded by subsection (3)) to the extent to which

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1 they relate to the operation of the provisions referred to in
2 paragraph (a).

3 (3) For the purposes of subsection (2), the regulations may specify
4 provisions that are excluded from the external administration
5 miscellaneous provisions.

6 *Translation rules*

7 (4) In the application of the external administration miscellaneous
8 provisions, those provisions apply as if the substitutions set out in
9 the following table were made.
10

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 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 <i>officer</i> 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

11

12 (5) Despite item 1 of the table in subsection (4), a reference covered
13 by column 1 of that item is taken to be a reference to the CCIV if
14 the context of the reference so requires (for example, because the
15 reference requires the legal capacity and powers of a company).

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-
- 1 (6) If a reference in a provision to the relevant corporation is, as a
2 result of subsection (5), taken to be a reference to the CCIV, the
3 operation of the provision in relation to the CCIV is confined, to
4 the extent possible, to the sub-fund.

5 **Division 8—Deregistration and transfer of registration**

6 **Subdivision A—Deregistration**

7 **1242 Deregistration of a sub-fund—voluntary**

8 *Who may apply for deregistration*

- 9 (1) An application to deregister a sub-fund of a CCIV may be lodged
10 with ASIC by:
11 (a) the CCIV; or
12 (b) the corporate director of the CCIV; or
13 (c) a liquidator of the sub-fund.

14 If the CCIV lodges the application, it must nominate a person to be
15 given notice of the deregistration.

16 *Circumstances in which application can be made*

- 17 (2) A person may apply only if:
18 (a) the sub-fund has no assets or liabilities; and
19 (b) the CCIV is not a party to any legal proceedings that relate to
20 the sub-fund.
- 21 (3) The application must be in the prescribed form.

22 *ASIC may ask for information about officers*

- 23 (4) The applicant must give ASIC any information that ASIC requests
24 about the following officers:
25 (a) the current and former officers of the CCIV;
26 (b) the current and former officers of the corporate director of
27 the CCIV.

28 *Deregistration procedure*

- 29 (5) If:
30 (a) ASIC decides to deregister the sub-fund under this section;
31 and

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-
- 1 (b) ASIC is not aware of any failure to comply with
2 subsections (1) to (4);
3 ASIC must:
4 (c) give notice of the proposed deregistration on ASIC database;
5 and
6 (d) publish notice of the proposed deregistration in the
7 prescribed manner.
- 8 (6) When 2 months have passed since the publication of the notice
9 under paragraph (5)(d), ASIC may deregister the sub-fund.
- 10 (7) ASIC must give notice of the deregistration to:
11 (a) the applicant; or
12 (b) the person nominated in the application to be given the
13 notice.
- 14 *Notices taken to have been given under section 601AA*
- 15 (8) For the purposes of the provisions of this Act (other than a
16 provision of this Chapter):
17 (a) a notice given under paragraph (5)(c) is taken to have been
18 given under paragraph 601AA(4)(c); and
19 (b) a notice published under paragraph (5)(d) is taken to have
20 been published under subsection 601AA(4)(d).
- 21 *ASIC must not deregister a sub-fund that is an Australian passport
22 fund if the fund has certain members*
- 23 (9) However, ASIC must not decide, under this section, to deregister a
24 sub-fund that is an Australian passport fund if:
25 (a) there are members of the fund who became members
26 (whether in this jurisdiction or any host economy for the
27 fund) after the fund became an Australian passport fund; or
28 (b) there are members of the fund who became members
29 (whether in this jurisdiction or any host economy for the
30 fund) on the expectation that the fund would become an
31 Australian passport fund.
- 32 (10) For the purposes of subsection (9), ignore any member of the fund
33 that:
34 (a) is, or has at any time been, the operator of the fund; or
35 (b) is a related party of an entity that is, or has at any time been,
36 the operator of the fund.
-

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

4 **1242A Deregistration of a sub-fund—ASIC initiated**

5 *Circumstances in which ASIC may deregister*

- 6 (1) ASIC may decide to deregister a sub-fund of a CCIV if:
7 (a) the CCIV has not lodged any documents that relate to the
8 sub-fund under this Act in the last 18 months; and
9 (b) ASIC has no reason to believe that the part of the business of
10 the CCIV that is registered as the sub-fund is being carried
11 on.
- 12 (2) ASIC may also decide to deregister a sub-fund of a CCIV if:
13 (a) the CCIV's review fee in respect of a review date has not
14 been paid in full at least 12 months after the due date for
15 payment; and
16 (b) the review fee is to any extent a liability of the sub-fund.
- 17 (3) ASIC may also decide to deregister a sub-fund of a CCIV if the
18 sub-fund is being wound up and ASIC has reason to believe that:
19 (a) the liquidator of the sub-fund is no longer acting; or
20 (b) the sub-fund's affairs have been fully wound up and a return
21 that the liquidator should have lodged is at least 6 months
22 late; or
23 (c) the sub-fund's affairs have been fully wound up under
24 Part 5.4 (as modified by this Part) and the assets of the
25 sub-fund are not enough to cover the costs of obtaining a
26 Court order for the sub-fund's deregistration.
- 27 (4) However, ASIC must not decide, under this section, to deregister a
28 sub-fund that is an Australian passport fund if ASIC is of the
29 opinion that to do so would not be in the interests of:
30 (a) members of the fund who became members (whether in this
31 jurisdiction or any host economy for the fund) after the fund
32 became an Australian passport fund; and
33 (b) members of the fund who became members (whether in this
34 jurisdiction or any host economy for the fund) on the
35 expectation that the fund would become an Australian
36 passport fund.

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-
- 1 (5) For the purposes of subsection (4), ignore any member of the fund
2 that:
3 (a) is, or has at any time been, the operator of the fund; or
4 (b) is a related party of an entity that is, or has at any time been,
5 the operator of the fund.

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

9 *Show cause notice*

- 10 (6) Before deciding to deregister a sub-fund, ASIC must give the
11 CCIV a written notice that requires the CCIV to show cause, at a
12 hearing before a specified person, why the sub-fund should not be
13 deregistered.

- 14 (7) The notice must specify:
15 (a) the grounds on which it is proposed to deregister the
16 sub-fund; and
17 (b) a reasonable time and place at which the hearing is to be
18 held.

19 However, if the CCIV consents, the person conducting the hearing
20 may fix a different time or place.

- 21 (8) The person conducting the hearing must:
22 (a) give the CCIV an opportunity to be heard at the hearing; and
23 (b) give ASIC:
24 (i) a report about the hearing; and
25 (ii) a recommendation about the grounds in the notice on
26 which it is proposed to deregister the sub-fund.

- 27 (9) After considering the report and recommendation, ASIC may
28 decide to:
29 (a) take no further action in relation to the matter and give
30 written advice of that decision to the CCIV; or
31 (b) deregister the sub-fund.

- 32 (10) Neither of the following is a legislative instrument:
33 (a) a notice under subsection (6);
34 (b) a report under subsection (8) (if it is in writing).

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1242B Process for ASIC initiated deregistration of a sub-fund

- 1
2 (1) If ASIC decides under section 1242A to deregister a sub-fund of a
3 CCIV, it must:
4 (a) give notice setting out the date on which ASIC proposes to
5 deregister the sub-fund:
6 (i) to the CCIV; and
7 (ii) to the liquidator of the sub-fund (if any); and
8 (iii) to the corporate director; and
9 (iv) on the ASIC database; and
10 (b) publish notice of the date on which ASIC proposes to
11 deregister the sub-fund in the prescribed manner.
- 12 (2) A notice under paragraph (1)(a) must be given at least 5 business
13 days before the sub-fund is deregistered.
- 14 (3) ASIC may deregister the sub-fund if:
15 (a) 5 business days have passed since the publication of the
16 notice under paragraph (1)(b); and
17 (b) at the time ASIC deregisters the sub-fund, ASIC has reason
18 to believe that there is no property of the CCIV to which
19 section 1233K (about property that has to be converted)
20 applies.
- 21 (4) ASIC does not have to give a person notice under paragraph (1)(a)
22 if ASIC does not have the necessary information about the person's
23 identity or address.
- 24 (5) If ASIC deregisters a sub-fund of a CCIV under this section, ASIC
25 must give notice that the fund has been deregistered, and the date
26 on which it has been deregistered, to everyone who was notified of
27 the proposed deregistration under subparagraph (1)(a)(ii) or (iii).
- 28 (6) The notice must be given within 5 business days after the sub-fund
29 is deregistered.

Notices taken to have been given under section 601AB

- 30
31 (7) For the purposes of the provisions of this Act (other than a
32 provision of this Chapter):
33 (a) a notice given under paragraph (1)(a) is taken to have been
34 given under paragraph 601AB(3)(a); and
35 (b) a notice published under paragraph (1)(b) is taken to have
36 been published under subsection 601AB(3)(b).
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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:
- (a) a sub-fund of a CCIV is deregistered; and

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1 (b) the sub-fund was an Australian passport fund;
2 ASIC must annotate the Register of Passport Funds to indicate that
3 the sub-fund is no longer an Australian passport fund, or cause that
4 annotation to be made on the Register.

5 **1242E The Commonwealth's and ASIC's power to fulfil outstanding**
6 **obligations in relation to deregistered sub-fund**

7 The Commonwealth or ASIC may do an act on behalf of the CCIV
8 of a deregistered sub-fund or the liquidator of the sub-fund if the
9 Commonwealth or ASIC is satisfied that the CCIV or liquidator
10 would be bound to do the act if the sub-fund had not been
11 deregistered.

12 Note: This power is a general one and is not limited to acts in relation to
13 property vested in the Commonwealth under subsection 601AD(1A),
14 or ASIC under subsection 601AD(2). The Commonwealth or ASIC
15 has all the powers that automatically flow from the vesting of property
16 under that subsection (see subsections 601AD(3A) and (4)) and may
17 exercise those powers whether or not the CCIV was bound to do so.

18 **1242F Claims against insurers in relation to deregistered sub-fund**

19 A person may recover from the insurer of a CCIV an amount that
20 was payable to the CCIV under the insurance contract if:

- 21 (a) a sub-fund of the CCIV is deregistered; and
22 (b) the CCIV has a liability to the person that was a liability of
23 the sub-fund; and
24 (c) the insurance contract covered that liability immediately
25 before the sub-fund was deregistered.

26 **1242G Reinstatement of a sub-fund**

27 (1) The registration of a sub-fund of a CCIV may be reinstated under
28 section 601AH as if the sub-fund were a company.

29 Note: Notice of the reinstatement must be given: see section 1242J.

30 (2) If the registration of a sub-fund of a CCIV is reinstated under
31 section 601AH, the sub-fund is taken to have been registered
32 throughout the period it was deregistered.

33 (3) The Court's power to make an order under subsection 601AH(3)
34 includes the power to make an order in relation to the following:

- 35 (a) the assets or liabilities of a sub-fund of a CCIV whose
36 registration is reinstated;

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1 (b) the assets or liabilities of any other sub-fund of the CCIV
2 which is affected by the reinstatement.

3 (4) If the registration of a sub-fund of a CCIV is reinstated under
4 section 601AH, any property of the CCIV that was property of the
5 sub-fund that is still vested in the Commonwealth or ASIC reverts
6 in the CCIV. If the CCIV held particular property subject to a
7 security or other interest or claim, the CCIV takes the property
8 subject to that interest or claim.

9 Note: The CCIV must allocate the property to the sub-fund in accordance
10 with Subdivision B of Division 3 of Part 8B.5.

11 (5) Subsections 601AH(1A), (4), (4A) and (5) do not apply in relation
12 to the reinstatement of the registration of a sub-fund of a CCIV.

13 *Registration as an Australian passport fund not reinstated*

14 (6) The reinstatement of the registration of a sub-fund of a CCIV does
15 not result in the sub-fund's registration as a passport fund under
16 Part 8A.3 being reinstated, even if the sub-fund was an Australian
17 passport fund immediately before its deregistration.

18 **1242H CCIV reinstated following reinstatement of a sub-fund**

19 (1) If a CCIV is deregistered and:

20 (a) ASIC reinstates the registration of a sub-fund of the CCIV
21 under subsection 601AH(1); or

22 (b) the Court makes an order that ASIC reinstate the registration
23 of the sub-fund under subsection 601AH(2);

24 ASIC must also reinstate the registration of the CCIV.

25 Note: Notice of the reinstatement of the registration of the CCIV must be
26 given: see section 1242J.

27 *Effect of reinstatement*

28 (2) If the registration of a CCIV is reinstated the CCIV is taken to have
29 continued in existence as if it had not been deregistered.

30 Note: Any property of the CCIV that comprised assets of the sub-fund that is
31 still vested in the Commonwealth or ASIC reverts in the CCIV: see
32 subsection 1242G(4).

33 (3) To avoid doubt, the reinstatement of the registration of the CCIV
34 also has the effect of reinstating, at the time the registration is
35 reinstated, ASIC's record, kept as part of the registration, of the

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1 company that is the corporate director or temporary corporate
2 director of the CCIV.

3 Note: The company named in the record as the corporate director or
4 temporary corporate director of the CCIV is the corporate director of
5 the CCIV (see subsection 1224(3)). See section 1224S for what
6 happens if the corporate director does not meet the requirements of
7 section 1224F.

8 **1242J Notices relating to reinstatement of a sub-fund**

9 If the registration of a sub-fund of a CCIV is reinstated under
10 section 601AH, ASIC must publish notice in the Gazette and give
11 notice to the corporate director of the CCIV of the following:

- 12 (a) the reinstatement of the registration of the sub-fund;
13 (b) if as a result of reinstating the sub-fund the registration of the
14 CCIV is also reinstated under section 1242H—the
15 reinstatement of the registration of the CCIV.

16 **1242K Deregistration of a CCIV**

17 *CCIV must be deregistered if it has no registered sub-funds*

- 18 (1) If, as the result of ASIC deregistering a sub-fund of a CCIV, the
19 CCIV has no registered sub-funds, ASIC must deregister the
20 CCIV.

21 Note: Subject to this Subdivision, sections 601AD to 601AG apply in
22 relation to the deregistration of the CCIV.

- 23 (2) ASIC must give the corporate director of the CCIV written notice
24 that the CCIV has been deregistered and the date on which it has
25 been deregistered.
26 (3) The notice must be given within 5 business days after the date the
27 CCIV has been deregistered.

28 *CCIV may not be deregistered under section 601AA, 601AB or*
29 *601AC*

- 30 (4) ASIC may not deregister a CCIV under section 601AA, 601AB or
31 601AC.

32 **1242L Books of the CCIV to be kept by former corporate director**

- 33 (1) If a CCIV is deregistered, the corporate director of the CCIV
34 immediately before the deregistration must keep the CCIV's books

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1 (other than books that a liquidator has to keep under
2 subsection 70-35(1) of Schedule 2) for 3 years after the
3 deregistration.

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

5 (3) Books that the corporate director of the CCIV is required to keep
6 under subsection (1) are taken to be books of the corporate director
7 for the purposes of subsections 601AD(5) to (7) as those sections
8 apply in relation to deregistration of the corporate director.

9 Note: If the corporate director is deregistered, the directors of the corporate
10 director immediately before deregistration must keep the corporate
11 director's books for 3 years after the deregistration: see
12 subsection 601AD(5).

13 (4) Subsections 601AD(5) to (7) do not apply in relation to the
14 deregistration of a CCIV.

15 **1242M A CCIV may not be reinstated under section 601AH**

16 The registration of a CCIV may not be reinstated under
17 section 601AH.

18 Note: If a CCIV has been deregistered and the registration of a sub-fund is
19 reinstated under section 601AH, ASIC must reinstate the registration
20 of the CCIV: see section 1242H.

21 **Subdivision B—Transfer of registration**

22 **1242N Registration of CCIV cannot be transferred**

23 Part 5A.2 does not apply to a CCIV.

24 **Part 8B.7—Control, financial services and 25 disclosure**

26 **Division 1—Takeovers, compulsory acquisitions and 27 buy-outs**

28 **1243 Meaning of *securities***

29 The term *securities* has the same meaning in this Part as it has in
30 Chapters 6 to 6CA (see subsection 92(3)).

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1243A Takeovers—prohibition on acquisitions of shares in a listed CCIV

- (1) The prohibitions in subsections 606(1) and (2) only apply to an acquisition of a relevant interest in issued voting shares in a CCIV if the CCIV is a listed company (including an acquisition resulting from an acquisition of a legal or equitable interest in securities).

Note: A retail CCIV that has only one sub-fund may be a listed company, see section 1222N.

- (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 only applies in relation to an off-market bid for securities in a CCIV if the CCIV is a listed company.

1243AA Takeovers—directors of the corporate director of a listed CCIV

- (1) The provisions mentioned in subsection (2) apply as if each of the following were a director of a CCIV that is a listed company:

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

- (2) The provisions are the following:

- (a) subsection 609(9);
- (b) subsection 638(1A);
- (c) subsection 638(3);
- (d) subsection 640(1);
- (e) subsection 642(1);
- (f) subsection 658C(5);
- (g) subsection 670B(1);
- (h) subsection 670D(3).

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

1243AB Takeovers—bidder's statement content

- (1) Subsection 636(1) has effect as if:

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- 1 (a) a reference in paragraph 636(1)(c) to a company or body did
2 not include a reference to a CCIV that is a listed company;
3 and
4 (b) subsection 636(1) also included the following paragraph:
5 “(da) if the target is a CCIV that is a listed company—details of the
6 bidder’s intentions regarding:
7 (i) the continued operation of the CCIV; and
8 (ii) any major changes to be made to the operation of the
9 CCIV, including any redeployment of the property of
10 the CCIV; and
11 (iii) any plans to remove the current corporate director of the
12 CCIV and appoint a new corporate director;”.

13 (2) Subsection 636(1) also has effect as if:

- 14 (a) a reference in paragraph 636(1)(g) to securities did not
15 include a reference to securities in a CCIV that is a listed
16 company; and
17 (b) subsection 636(1) also included the following paragraph:
18 “(gb) if any securities in a CCIV that is a listed company are
19 offered as consideration under the bid and the bidder is:
20 (i) a retail CCIV; or
21 (ii) the corporate director of a retail CCIV; or
22 (iii) a person who controls a retail CCIV or the corporate
23 director of a retail CCIV;
24 all material that would be required by section 1013C to be
25 included in a Product Disclosure Statement given to a person
26 in an issue situation (within the meaning of section 1012B) in
27 relation to those securities;”.

28 **1243B Takeovers Panel—declaration of unacceptable circumstances**
29 **may only be made in relation to a listed CCIV**

30 The Panel may only declare under section 657A circumstances to
31 be unacceptable circumstances in relation to the affairs of a CCIV
32 if the CCIV is a listed company.

33 **1243C Compulsory acquisition—only available for securities in a**
34 **listed CCIV**

- 35 (1) Securities in a CCIV may only be compulsorily acquired or bought
36 out under Chapter 6A if the CCIV is a listed company.

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- 1 (2) If Part 6A.1 applies to a CCIV that is a listed company at the end
2 of the bid period for a takeover, that Part continues to apply to the
3 CCIV in relation to the takeover bid even if the CCIV ceases to be
4 listed.
- 5 (3) If Part 6A.2 applies to a CCIV that is a listed company when a
6 compulsory acquisition notice under section 664C is lodged, that
7 Part (including Division 2 of that Part) continues to apply to the
8 CCIV in relation to the notice even if the CCIV ceases to be listed.
- 9 (4) The regulations may, for the purposes of this subsection, modify
10 the operation of Chapter 6A as it applies in relation to the
11 acquisition of securities in a CCIV that is a listed company.

12 **Division 2—Continuous disclosure**

13 **1243D Continuous disclosure—CCIVs**

14 Paragraph 675(2)(c) applies in relation to securities in a CCIV in
15 the same way the paragraph applies in relation to securities that are
16 managed investment products.

17 **Division 3—Fundraising**

18 **1243E Fundraising rules do not apply to CCIVs**

19 Subject to subsection 1243F(6), in Chapter 6D, *securities* does not
20 include a security in a CCIV.

21 **1243F Offering securities of a CCIV or sub-fund that does not exist**

- 22 (1) A person must not offer securities of a CCIV that does not exist if
23 the offer would give rise to an obligation to give a Product
24 Disclosure Statement under Chapter 7 (as that Chapter applies to
25 securities in a CCIV under Division 4 of Part 8B.7) if the CCIV did
26 exist.
- 27 (2) A person must not offer securities of a CCIV that are referable to a
28 sub-fund of the CCIV that has not been established if the offer
29 would give rise to an obligation to give a Product Disclosure
30 Statement under Chapter 7 (as that Chapter applies to securities in
31 a CCIV under Division 4 of Part 8B.7) if the sub-fund were
32 established.

33 Note 1: For when a sub-fund is established, see section 1222T.

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1 Note 2: For when shares and debentures are referable to a sub-fund of a CCIV,
2 see sections 1231 (for shares) and 1231ZD (for debentures).

3 (3) Subsections (1) and (2) apply even if it is proposed to incorporate
4 the CCIV or register the sub-fund.

5 (4) In this section, *securities* has the same meaning as it has in
6 Chapter 6D (apart from section 1243E).

7 (5) For the purposes of subsection (2), a security referred to in
8 paragraph (c) or (d) of the definition of *security* in section 761A is
9 taken to be referable to the sub-fund of the CCIV to which the
10 relevant security covered by paragraph (a) or (b) of that definition
11 is, or would be, referable.

12 Note: For example, an option to acquire by way of issue a share in a CCIV
13 (paragraph (d) of the definition) is referable to the sub-fund of the
14 CCIV to which the share (paragraph (a) of the definition) is referable.

15 (6) The following provisions apply in relation to this section in the
16 same way the provisions apply in relation to Chapter 6D:

17 (a) subsections 700(2), (3) and (4);

18 (b) sections 702, 703 and 703A.

19 **Division 4—Financial services and markets**

20 **1244 Application of Chapter 7 to CCIVs**

21 Chapter 7 applies to a CCIV subject to the modifications set out in
22 this Division.

23 **1244A For Chapter 7, treat the corporate director as providing** 24 **financial services etc. being provided by the CCIV**

25 (1) This section applies to a provision of Chapter 7 that applies in
26 relation to:

27 (a) a financial services licensee; or

28 (b) a financial service or a financial services business; or

29 (c) a matter prescribed by the regulations for the purposes of this
30 paragraph.

31 *General rule*

32 (2) For the purposes of that provision of Chapter 7:

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- 1 (a) treat any conduct engaged in by, or on behalf of, a CCIV as
2 also being engaged in by, or on behalf of, the corporate
3 director of the CCIV; and
4 (b) treat any conduct relating to the CCIV that is engaged in by a
5 person (other than the corporate director of the CCIV) as also
6 being engaged in by that person in relation to the corporate
7 director of the CCIV.

- 8 (3) In subsection (2), *conduct* means an act, an omission to perform an
9 act or a state of affairs.

10 *Exceptions*

- 11 (4) If the CCIV issues a security in the CCIV, then subsection (2) does
12 not treat the corporate director of the CCIV as also being the issuer
13 of the security.

- 14 (5) If the CCIV is a participant (within the meaning of Chapter 7) in:
15 (a) a clearing and settlement facility; or
16 (b) a financial market;
17 subsection (2) does not treat the corporate director of the CCIV as
18 also being a participant (within the meaning of Chapter 7) in
19 relation to the facility or market.

- 20 (6) Subsection (2) does not apply in any circumstances prescribed by
21 the regulations for the purposes of this subsection.

22 **1244B Certain licensing concepts do not apply to CCIVs**

- 23 (1) Subsection 911A(1) (about the requirement to be licensed to carry
24 on a financial services business) does not apply to a CCIV.

25 Note: That subsection will instead apply to the corporate director of the
26 CCIV in relation to any financial services business carried on by the
27 CCIV (see subsection 1244A(2)).

- 28 (2) Subsection 911B(1) (about requirements for providing financial
29 services on behalf of another person) does not apply to a CCIV.

30 Note: This subsection confirms that the CCIV is not subject to extra
31 requirements if it is viewed as providing financial services on behalf
32 of its corporate director.

- 33 (3) For the purposes of Chapter 7, treat a CCIV as not being a
34 representative (within the meaning of Part 7.6) of the corporate
35 director of the CCIV.

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1 Note: Activities of the CCIV relating to a financial service etc. are instead
2 treated as activities of the corporate director (see subsection
3 1244A(2)).

- 4 (4) For the purposes of Chapter 7, a CCIV cannot be authorised under
5 Division 5 (about authorised representatives of licensees) of
6 Part 7.6.

7 Note: Activities of the CCIV relating to a financial service etc. are instead
8 treated as activities of the corporate director (see subsection
9 1244A(2)).

10 **1244C Extra kinds of financial services relating to CCIVs**

- 11 (1) Subject to paragraph 766A(2)(b), treat subsection 766A(1) as also
12 providing that a person provides a *financial service* if:
13 (a) the person operates the business and conducts the affairs of a
14 CCIV; and
15 (b) the person is the corporate director of the CCIV.

16 Note: Subsection (1) means persons other than the corporate director will
17 not be treated as providing that financial service if they operate the
18 business and conduct the affairs of the CCIV while:
19 (a) acting as an agent of the CCIV, or as an agent or employee of the
20 corporate director; or
21 (b) taking steps to wind up the CCIV.

- 22 (2) For the purposes of Chapter 7, each of the members of a CCIV
23 covered by subsection (1) is a client for the financial service
24 covered by that subsection.

25 **1244D CCIV buy-back or redemption facility does not make a** 26 **market**

27 Subsection 766D(1) does not apply to a CCIV, nor to the corporate
28 director of a CCIV, for:

- 29 (a) a proposed buy-back by the CCIV; or
30 (b) the proposed issuing or redeeming by the CCIV of:
31 (i) redeemable shares in the CCIV; or
32 (ii) redeemable preference shares in the CCIV.

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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*:

- (a) operating as a CCIV;
- (b) operating the business and conducting the affairs of a CCIV;
- (c) holding the money or property of a CCIV.

Note: Holding the assets of a sub-fund of a CCIV is covered by paragraph (c) and does not constitute providing a *custodial or depository service*.

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 that a person is not exempt under any paragraph of subsection 911A(2) for a financial service they provide if:
- (a) the service is operating the business and conducting the affairs of a CCIV; and
 - (b) the person is the corporate director of the 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) Treat subsection 912D(4) as also providing that, for the purposes of section 912D, a breach of a core obligation is taken to be *significant* in the case of a CCIV if the breach results, or is likely to result, in material loss or damage to a member of members of the CCIV.
- (6) In this section:

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1 *regulated superannuation fund* has the same meaning as in the
2 *Superannuation Industry (Supervision) Act 1993*.

3 *RSE licensee* has the same meaning as in the *Superannuation*
4 *Industry (Supervision) Act 1993*.

5 **1244G Immediate suspensions or cancellations of licences**

6 Treat subsection 915B(3) as also providing that ASIC may suspend
7 or cancel an Australian financial services licence held by a body
8 corporate, by giving written notice to the body, if:

- 9 (a) the body is the corporate director of a CCIV; and
10 (b) the CCIV or the members of the CCIV have suffered, or are
11 likely to suffer, loss or damage because the corporate director
12 or the CCIV has breached this Act.

13 **1244H Restriction on use of certain words or expressions**

14 Treat subsection 923A(1) as also providing that a CCIV
15 contravenes that subsection if the CCIV assumes or uses, in this
16 jurisdiction, a restricted word or expression in relation to a
17 financial services business or financial service.

18 **1244J Agreements with certain unlicensed persons**

- 19 (1) Subdivision B of Division 11 of Part 7.6 also applies to an
20 agreement entered into by:

- 21 (a) a CCIV (in that Subdivision called the *non-licensee*); and
22 (b) another person (in that Subdivision called the *client*) who is
23 not a financial services licensee;

24 that constitutes, or relates to, the provision of a financial service by
25 the corporate director of the CCIV (in that Subdivision called the
26 *corporate director*) if:

- 27 (c) the agreement is entered into in the course of a financial
28 services business carried on by the corporate director; and
29 (d) the corporate director does not hold an Australian financial
30 services licence covering the provision of the financial
31 service; and
32 (e) the corporate director is not exempt from the requirement to
33 hold such a licence.

34 Note 1: A CCIV does not need to be licensed to provide a financial service,
35 instead the CCIV's corporate director needs to be (see subsection
36 1244B(1)). This means section 924A will work appropriately only if

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1 the agreement mentioned in that section is between the corporate
2 director and the client.

3 Note 2: This section works similarly to section 924A to ensure that the
4 appropriate result happens if the agreement mentioned in
5 section 924A is instead between the CCIV and the client.

6 Note 3: This section applies whether the financial service is provided to the
7 client as a wholesale client or as a retail client.

8 (2) Subdivision B of Division 11 of Part 7.6 applies to the agreement
9 whether or not anyone else is a party to the agreement.

10 (3) That Subdivision applies to the agreement as if
11 subsections 925A(4) and (5) were replaced by the following:

12 “(4) The client is not entitled to give a notice under this section if,
13 within a reasonable period before the agreement was entered into,
14 the non-licensee informed the client (whether or not in writing) that
15 the corporate director did not hold an Australian financial services
16 licence.

17 (5) If, at a time when an Australian financial services licence held by
18 the corporate director was suspended, the non-licensee informed
19 the client that the licence was suspended, the non-licensee is to be
20 taken for the purposes of subsection (4) to have informed the client
21 at that time that the corporate director did not hold the licence.”

22 **1244K Financial services disclosure does not apply to operating the** 23 **business and conducting the affairs of CCIVs**

24 Part 7.7 does not apply to a financial service if:

- 25 (a) the financial service consists only of operating the business
26 and conducting the affairs of a CCIV; and
27 (b) the financial service is provided by the corporate director of
28 the CCIV.

29 **1244L Financial records of the corporate director of a CCIV**

30 When section 988E applies to a licensee because the licensee is the
31 corporate director of a CCIV, treat that section as requiring the
32 particulars of the matters in paragraphs 988E(a) to (g) to be shown
33 so that they are clearly identifiable for each sub-fund of the CCIV.

34 Note: Section 988E is about the categories of information to be shown in the
35 licensee’s financial records.

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1244M Prohibition on hawking of securities in a CCIV

1
2 (1) Treat subsection 992A(2) as also providing that
3 subsection 992A(1) does not apply to the offering of securities in a
4 CCIV, hawking of which is prohibited by section 992AA (as
5 extended by this section).

6 (2) Subsection 992AA(1) also applies as if the reference in that
7 subsection to interests in managed investment schemes included a
8 reference to securities in a CCIV.

9 Note: Failure to comply with subsection 992AA(1) is an offence (see
10 subsection 1311(1)).

11 (3) Subsection 992AA(1), as it applies because of subsection (2) of
12 this section, does not apply to an offer of securities in a CCIV if:

13 (a) the offer is not to a retail client; or

14 (b) the CCIV is a listed company and the offer is an offer of
15 securities in the CCIV made by telephone by a financial
16 services licensee; or

17 (c) the offer is made to a client by a financial services licensee
18 through whom the client has acquired or disposed of a
19 security in a CCIV in the previous 12 months.

20 Note: A defendant bears an evidential burden in relation to the matters in
21 this subsection (see subsection 13.3(3) of the *Criminal Code*).

22 (4) For the purposes of subsection 992AA(1), as it applies because of
23 subsection (2) of this section:

24 (a) a reference to offering securities in a CCIV for issue includes
25 a reference to inviting an application for the issue of
26 securities in the CCIV; and

27 (b) a reference to offering securities in a CCIV for sale includes
28 a reference to inviting an offer to purchase securities in the
29 CCIV.

30 (5) Subsection 736(1) (about prohibiting the hawking of securities)
31 does not apply to securities in a CCIV.

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

34 1244N Part 7.9 applies to the issue or sale of securities in a CCIV

35 (1) Despite subsection 1010A(1), Part 7.9 applies to securities in a
36 CCIV.

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- 1 (2) Despite subsection 1010B(1), Part 7.9 applies in relation to the
2 issue of any security in a CCIV.
- 3 (3) If the corporate director of a CCIV is, apart from this subsection, a
4 regulated person (within the meaning of Division 2 of Part 7.9)
5 because it is the seller of a security in the CCIV, treat the CCIV as
6 being the regulated person for the purposes of that Part instead of
7 the corporate director.
- 8 Note 1: The corporate director of the CCIV will continue to be a regulated
9 person for any other case.
- 10 Note 2: The CCIV will also be the regulated person for an issue of securities
11 in the CCIV (see subsection 1244A(4) and section 1011B).
- 12 (4) If a reference in Part 7.9 to a seller of a financial product applies to
13 the corporate director of a CCIV as the seller of a security in the
14 CCIV, treat the reference as referring to the CCIV.
- 15 (5) Subsections (3) and (4) apply despite subsection 1244A(2).
- 16 Note: This subsection confirms that the general rule in subsection 1244A(2)
17 does not affect subsections (3) and (4) of this section.

1244P Product Disclosure Statements—when a security in a CCIV is of the same kind as another product

- 18 For the purposes of sections 1012C and 1012D (as affected by this
19 Part), a security in a CCIV that is referable to a sub-fund of the
20 CCIV is of the same kind as another product only if the other
21 product:
22 (a) is also a security in the CCIV; and
23 (b) is also referable to that sub-fund of the CCIV; and
24 (c) is issued on the same terms and conditions (other than price)
25 as the first-mentioned security.
26
27

1244Q Product Disclosure Statements—situations when not required for CCIVs

- 28 *No consideration to be provided*
- 29
- 30
- 31 (1) Paragraph 1012D(5)(b) also applies to the case where the financial
32 product is not an option and is a security in a CCIV.

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Client is associated with the CCIV

- 1
- 2 (2) Treat section 1012D as also providing that, in a recommendation
3 situation, an issue situation or a sale situation, the regulated person
4 does not have to give the client a Product Disclosure Statement if:
5 (a) the financial product is a security in a CCIV; and
6 (b) the client is associated (within the meaning of subsection (3)
7 of this section) with the CCIV.
- 8 (3) For the purposes of subsection (2), the client is associated with the
9 CCIV if the client is:
10 (a) the corporate director of the CCIV; or
11 (b) a director or secretary of that corporate director; or
12 (c) a senior manager of the corporate director or of a related
13 body corporate of that corporate director; or
14 (d) a spouse, parent, child, brother or sister of a person who is a
15 director or senior manager of:
16 (i) that corporate director; or
17 (ii) a related body corporate of that corporate director; or
18 (e) a body corporate controlled by a person referred to in
19 paragraph (a), (b), (c) or (d).

20 *Dividend reinvestment plan or bonus share plan*

- 21 (4) Treat section 1012D as also providing that, in a recommendation
22 situation or issue situation, the regulated person does not have to
23 give the client a Product Disclosure Statement for a fully-paid
24 share in a CCIV if:
25 (a) the client already holds a share, of the same kind, in the
26 CCIV; and
27 (b) either:
28 (i) in a recommendation situation—the advice that
29 constitutes the relevant conduct relates to an offer made
30 under a dividend reinvestment plan or bonus share plan;
31 or
32 (ii) in an issue situation—the offer or issue that constitutes
33 the relevant conduct is made under a dividend
34 reinvestment plan or bonus share plan.

35 Note: For when such a share is of the same kind, see section 1244P.

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Compromise or arrangement under Part 5.1

- 1
- 2 (5) Treat section 1012D as also providing that, in an issue situation or
3 a sale situation, the regulated person does not have to give the
4 client a Product Disclosure Statement if the issue situation or sale
5 situation is an offer:
- 6 (a) of securities in a CCIV; and
7 (b) made under a compromise or arrangement under Part 5.1
8 approved at a meeting held as a result of an order under
9 subsection 411(1) or (1A).

10 *Rights issues*

- 11 (6) Subsection 1012DAA(3) also applies to contraventions of the
12 following provisions:
- 13 (a) if the relevant product is a security in a CCIV—the
14 provisions of Chapter 2M (as affected by Division 4 of
15 Part 8.4B), or the provisions of that Division, as they:
16 (i) apply to the CCIV; or
17 (ii) apply for a sub-fund of the CCIV;
18 (b) if the relevant product is a security in a CCIV—section 675
19 as it applies to the CCIV.
- 20 (7) Treat subsection 1012DAA(7) as:
- 21 (a) providing that paragraph 1012DAA(7)(d) applies only if the
22 relevant product is an interest in a registered scheme; and
23 (b) also including the following paragraph:
24 “(da) if the relevant product is a security in a CCIV—states that, as
25 at the date of the notice, the CCIV has complied with the
26 provisions of Chapter 2M (as affected by Division 4 of
27 Part 8.4B), and the provisions of that Division, as they:
28 (i) apply to the CCIV; and
29 (ii) apply for each sub-fund of the CCIV; and”.

30 *Small scale offerings*

- 31 (8) Section 1012E also applies to financial products that are securities
32 in a CCIV. For the purposes of that section, to the extent that those
33 securities are referable to a sub-fund of the CCIV, treat the:
34 (a) 20 purchasers ceiling (subsections 1012E(6) and (7)); and
35 (b) \$2 million ceiling (subsections 1012E(6) and (7));
36 as applying only to financial products that are securities referable
37 to that sub-fund of the CCIV.
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1244R Product Disclosure Statements—content requirements

Main requirements

- (1) Treat subsection 1013D(1) as also including the following paragraph:
 - “(la) if the product is a share in a CCIV, and the CCIV’s constitution makes provision for acquisitions described in paragraph 1223G(e)—a statement to the effect that the CCIV may acquire, in respect of any of its sub-funds, one or more shares that are referable to another of its sub-funds; and”.
- (2) Treat subsection 1013D(2A) as also including securities in a CCIV.

Extra requirements for ED securities in a CCIV

- (3) 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.

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1 Note: This is the case whether the Statement is an issue Statement or a sale
2 Statement.

3 **1244U Product Disclosure Statements—use of application forms**

4 Treat the definition of *relevant financial product* in
5 subsection 1016A(1) as also meaning a security in a CCIV.

6 **1244V Product Disclosure Statements—if lodged, then security not 7 to be issued or sold before specified period**

8 Section 1016B does not apply in relation to a financial product to
9 which a Product Disclosure Statement relates if the financial
10 product is a security that:

- 11 (a) is in a CCIV; and
12 (b) is referable to a sub-fund of the CCIV that is an Australian
13 passport fund.

14 Note: This section does not prevent section 1016B from applying in relation
15 to a security in the CCIV referable to any other kind of sub-fund of the
16 CCIV.

17 **1244W Remedies for person acquiring financial product under 18 defective Product Disclosure Document**

19 If, for the purposes of subsection 1016F(2), the responsible person
20 is a CCIV, treat the reference in that subsection to the directors of
21 the responsible person as if it were a reference to the directors of
22 the corporate director of the CCIV.

23 **1244X Disclosure obligations of issuers of securities in CCIVs**

- 24 (1) Subsection 1017B(2) also applies in relation to a financial product
25 that is an ED security in a CCIV.

26 Note: A defendant bears an evidential burden in relation to the matter in
27 subsection 1017B(2) (see subsection 13.3(3) of the *Criminal Code*).

- 28 (2) Paragraph 1017D(1)(b) also applies as if it referred to a product
29 that is a security in a CCIV.

30 **1244Y Cooling-off periods**

31 Division 5 of Part 7.9 also applies as if securities in a CCIV were
32 another class of financial product covered by
33 paragraph 1019A(1)(a).

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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.

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.

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- 1 (4) If the second person for the purposes of section 1043J is a CCIV,
2 that section applies as if the reference in subsection 1043J(1) to the
3 first person were a reference to:
4 (a) an agent of the CCIV acting:
5 (i) on behalf of the CCIV; and
6 (ii) within the scope of the agent's actual or apparent
7 authority in relation to the CCIV; or
8 (b) the corporate director of the CCIV acting on behalf of the
9 CCIV; or
10 (c) an officer or employee (an *official*) of the corporate director
11 of the CCIV acting:
12 (i) on behalf of the CCIV; and
13 (ii) within the scope of the official's actual or apparent
14 authority in relation to the corporate director;
15 and as if subsection 1043J(2) were not enacted, and the reference
16 to that subsection in subsection 1043J(1) were omitted.

17 **Part 8B.8—Miscellaneous**

18

19 **1245AA Director identification numbers**

20 Treat subsection 1272B(1) as also providing that an *eligible officer*
21 does not include the corporate director of a CCIV.

22 **1245 Registers**

23 Treat paragraph 1274(2)(a) as also providing that the constitution
24 of a wholesale CCIV that is lodged with ASIC may not be
25 inspected by a person.

26 **1245A Inspection of books**

27 Section 1300 applies to a CCIV as if the CCIV were a proprietary
28 company.

29 **1245B Falsification of books**

- 30 (1) Subsection 1307(1) applies as if:
31 (a) each of the following were an officer of a CCIV:
32 (i) an officer of the CCIV;
33 (ii) an officer of the corporate director of the CCIV; and
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- 1 (b) each of the following were a former officer of a CCIV:
2 (i) a former officer of the CCIV;
3 (ii) a former officer of the corporate director of the CCIV;
4 and
5 (c) an employee of the corporate director of a CCIV were an
6 employee of the CCIV; and
7 (d) a former employee of the corporate director of a CCIV were
8 a former employee of the CCIV.
- 9 (2) Subparagraphs (1)(a)(i) and (b)(i) are included for the avoidance of
10 doubt.

11 **1245C Application of Part 9.4**

- 12 (1) Sections 1309 and 1317 apply as if:
13 (a) each of the following were a director of a CCIV:
14 (i) the corporate director of the CCIV;
15 (ii) a director of the corporate director of the CCIV; and
16 (b) each of the following were an officer of a CCIV:
17 (i) an officer of the CCIV;
18 (ii) an officer of the corporate director of the CCIV; and
19 (c) an employee of the corporate director of a CCIV were an
20 employee of the CCIV; and
21 (d) each of the following were an agent of a CCIV:
22 (i) an agent of the CCIV;
23 (ii) an agent of the corporate director of the CCIV.
- 24 (2) Subparagraphs (1)(a)(i), (b)(i) and (d)(i) are included for the
25 avoidance of doubt.

26 **1245D Disclosures qualifying for protection under Part 9.4AAA**

27 *Eligible whistleblower*

- 28 (1) Treat section 1317AAA as also providing that an individual is an
29 *eligible whistleblower* in relation to a regulated entity that is a
30 CCIV if the individual is, or has been, any of the following:
31 (a) an officer of the corporate director of the CCIV;
32 (b) an employee of the corporate director of the CCIV;
33 (c) a relative of an individual referred to in paragraph (a) or (b);

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- 1 (d) a dependant of an individual referred to in paragraph (a) or
2 (b), or of such an individual's spouse.

3 *Eligible recipient*

- 4 (2) Treat subsection 1317AAC(1) as also providing that each of the
5 following is an *eligible recipient* in relation to a regulated entity
6 that is a CCIV:
7 (a) an officer of the corporate director of the CCIV;
8 (b) a senior manager of the corporate director of the CCIV.

9 *Whistleblower policies*

- 10 (3) Treat subsection 1317AI(5) as also providing that the matters that
11 must be set out in a policy for a corporate director of a CCIV also
12 include the following:
13 (a) information about to whom disclosures in relation to the
14 CCIV that qualify for protection under Part 9.4AAA may be
15 made, and how they may be made;
16 (b) information about how the CCIV will support whistleblowers
17 and protect them from detriment;
18 (c) information about how the CCIV will investigate disclosures
19 that qualify for protection under Part 9.4AAA;
20 (d) information about how the policy is to be made available to
21 officers of the CCIV;
22 (e) any matters prescribed by the regulations for the purposes of
23 this paragraph.

24 **1245F Powers of Courts—irregularities**

25 Subparagraph 1322(1)(b)(i) applies to:

- 26 (a) a meeting of the members of a sub-fund of the CCIV in the
27 same way as it applies in relation to a meeting of a
28 corporation; and
29 (b) a joint meeting of creditors and members of a sub-fund of a
30 CCIV in the same way as it applies in relation to a joint
31 meeting of creditors and members of a corporation.

32 **1245G Fees payable to the Commonwealth**

33 Subsection 1351(4) has effect in relation to a fee imposed under
34 the *Corporations (Review Fees) Act 2003* payable to the

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1 Commonwealth by a CCIV in relation to a review date in a year as
2 if paragraph 1351(4)(a) were substituted with the following:

3 “(a) all of the following apply:

- 4 (i) ASIC has given notice of the proposed deregistration of
5 a sub-fund of the CCIV in accordance with paragraph
6 1242(5)(c), and published notice of the proposed
7 deregistration of the sub-fund in accordance with
8 paragraph 1242(5)(d);
- 9 (ii) as a result of ASIC deregistering the sub-fund, ASIC
10 will be required to deregister the CCIV under section
11 1242K;
- 12 (iii) the review date for that year falls in the 2 month period
13 before or after the publication of the notice published in
14 accordance with paragraph 1242(5)(d); or”.

15 **Part 8B.9—Subordinate legislation relating to** 16 **CCIVs** 17

18 **1246B ASIC’s power to make exemption and modification orders**

19 (1) This section applies in relation to the following (the *CCIV*
20 *provisions*):

- 21 (a) Part 8B.2 (registration of CCIVs);
22 (b) Part 8B.3 (corporate governance of CCIVs);
23 (c) Division 4 of Part 8B.4 (financial reports and audits of
24 CCIVs);
25 (d) Division 8 of Part 8B.6 (deregistration and transfer of
26 registration);
27 (e) Part 8B.7 (control, financial services and disclosure).

28 (2) ASIC may do either or both of the following:

- 29 (a) exempt from all or specified provisions of the CCIV
30 provisions:
31 (i) a specified CCIV, a specified class of CCIVs or all
32 CCIVs; or
33 (ii) a specified class of sub-funds of CCIVs, all sub-funds of
34 a specified class of CCIVs, or all sub-funds of all
35 CCIVs; or

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-
- 1 (iii) a specified entity, a specified class of entities or all
2 entities, in relation to a specified CCIV, a specified
3 class of CCIVs or all CCIVs; or
- 4 (iv) a specified entity, a specified class of entities or all
5 entities, in relation to a specified class of sub-funds of
6 CCIVs, all sub-funds of a specified class of CCIVs, or
7 all sub-funds of all CCIVs;
- 8 (b) declare that the CCIV provisions apply in relation to:
- 9 (i) a specified CCIV, a specified class of CCIVs or all
10 CCIVs; or
- 11 (ii) a specified class of sub-funds of CCIVs, all sub-funds of
12 a specified class of CCIVs, or all sub-funds of all
13 CCIVs; or
- 14 (iii) a specified entity, a specified class of entities or all
15 entities, in relation to a specified CCIV, a specified
16 class of CCIVs or all CCIVs; or
- 17 (iv) a specified entity, a specified class of entities or all
18 entities, in relation to a specified class of sub-funds of
19 CCIVs, all sub-funds of a specified class of CCIVs, or
20 all sub-funds of all CCIVs;
- 21 as if specified provisions were omitted, modified or varied as
22 specified in the declaration.
- 23 (3) The exemption or declaration may:
- 24 (a) relate to a specified security, a specified class of securities or
25 all securities; and
- 26 (b) relate to any other matter generally or as specified.
- 27 (4) An exemption may apply unconditionally or subject to specified
28 conditions. A person to whom a condition specified in an
29 exemption applies must comply with the condition. The Court may
30 order the person to comply with the condition in a specified way.
31 Only ASIC may apply to the Court for the order.
- 32 *Exemptions and declarations relating to all or a class of persons*
- 33 (5) An exemption or declaration must be made by legislative
34 instrument if it relates to:
- 35 (a) all CCIVs, a specified class of CCIVs, or 2 or more specified
36 CCIVs; or
- 37 (b) all sub-funds of all CCIVs, all sub-funds of a specified class
38 of CCIVs, or a specified class of sub-funds of CCIVs; or
-

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-
- 1 (c) all entities, a specified class of entities, or 2 or more specified
2 entities.

3 *Exemptions and declarations relating to specified persons*

- 4 (6) Subject to subsection (5), an exemption or declaration must be
5 made by notifiable instrument if it relates to a specified CCIV or
6 specified entity.
- 7 (7) An exemption or declaration that relates to a specified CCIV may
8 apply to the CCIV in respect of a specified sub-fund, a specified
9 class of sub-funds or all sub-funds of the CCIV.
- 10 (8) An exemption or declaration that relates to a specified entity may
11 apply to the entity in respect of a specified sub-fund, a specified
12 class of sub-funds or all sub-funds of a specified CCIV.
- 13 (9) ASIC must also give a copy of an exemption or declaration that
14 relates to a specified CCIV or a specified entity to the CCIV or
15 entity. ASIC must do so as soon as is reasonably practicable after
16 the exemption or declaration is made.

17 **1246C Modification by regulations**

- 18 (1) The regulations may modify the operation of this Chapter or any
19 other provisions of this Act in relation to:
- 20 (a) a specified CCIV; or
21 (b) a specified class of CCIVs; or
22 (c) all CCIVs; or
23 (d) a specified class of sub-funds of CCIVs; or
24 (e) all sub-funds of a specified class of CCIVs; or
25 (f) all sub-funds of all CCIVs.
- 26 (2) Regulations made for the purposes of subsection (1) in relation to a
27 specified CCIV may apply to the CCIV in respect of a specified
28 sub-fund, a specified class of sub-funds or all sub-funds of the
29 CCIV.

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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
- (b) a sub-fund of a retail CCIV that is registered as a passport fund under Part 8A.3.

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5 Section 9

Insert:

CCIV: see *corporate collective investment vehicle*.

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:

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).

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1 *creditor* of a sub-fund of a CCIV means a creditor of the CCIV, if
2 the debt or claim is, to any extent, a liability of the sub-fund.

3 **10 Section 9 (definition of *entity*)**

4 Omit “and 8A”, substitute “, 8A and 8B,”.

5 **11 Section 9 (paragraph (a) of the definition of *expectation*)**

6 After “managed investment scheme”, insert “or a sub-fund of a CCIV”.

7 **12 Section 9 (definition of *extraordinary resolution*)**

8 After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

9 **13 Section 9 (definition of *financial benefit*)**

10 Omit “Chapter 2E”, substitute “Chapters 2E and 8B”.

11 **14 Section 9 (definition of *insolvent*)**

12 Repeal the definition, substitute:

13 *insolvent*:

14 (a) in relation to a person—has the meaning given by
15 subsection 95A(2); and

16 (b) in relation to a sub-fund of a CCIV—has the meaning given
17 by section 1231R.

18 **15 Section 9**

19 Insert:

20 *liabilities*, in relation to a sub-fund of a CCIV, has the meaning
21 given by section 1233L.

22 **16 Section 9 (after paragraph (a) of the definition of *member*)**

23 Insert:

24 (b) in relation to a sub-fund of a CCIV—means a person who is
25 a member under subsection 1222Q(3); or

26 **17 Section 9 (definition of *officer of a corporation*)**

27 After “of a corporation” (first occurring), insert “(other than a CCIV)”.

28 **18 Section 9**

29 Insert:

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1 *officer* of a corporation that is a CCIV has the meaning given by
2 section 1224B.

3 **19 Section 9 (definition of *public company*)**

4 After “a proprietary company”, insert “or a CCIV”.

5 **20 Section 9**

6 Insert:

7 *redeemable share*, in a CCIV, has the meaning given by section
8 1231B.

9 *referable*:

- 10 (a) in relation to a sub-fund, and a share in a CCIV—has the
11 meaning given by section 1231; and
12 (b) in relation to a sub-fund, and a class of shares in a CCIV—
13 has the meaning given by section 1231A; and
14 (c) in relation to a sub-fund, and a debenture issued by a
15 CCIV—has the meaning given by section 1231ZD.

16 **21 Section 9 (definition of *registered office*)**

17 Omit “in relation to a body corporate, means the body’s registered
18 office”, substitute “in relation to a company or registered body, means
19 the registered office of the company or body”.

20 **22 Section 9 (paragraph (a) of the definition of *related party*)**

21 Repeal the paragraph, substitute:

- 22 (a) when used in Chapter 2E (other than in relation to a CCIV)
23 has the meaning given by section 228; and
24 (aa) when used in Chapters 2E and 8B, in relation to a CCIV, has
25 the meaning given by section 1228E; and

26 **23 Section 9**

27 Insert:

28 *retail CCIV* has the meaning given by section 1222J.

29 **24 Section 9 (definition of *solvent*)**

30 Repeal the definition, substitute:

31 *solvent*:

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-
- 1 (a) in relation to a person—has the meaning given by
2 subsection 95A(1); and
3 (b) in relation to a sub-fund of a CCIV—has the meaning given
4 by section 1231R.

5 **25 Section 9 (paragraph (b) of the definition of *special***
6 ***resolution*)**

7 After “registered scheme”, insert “, a CCIV or a sub-fund of a CCIV”.

8 **26 Section 9**

9 Insert:

10 *sub-fund*, of a CCIV, has the meaning given by subsection
11 1222Q(1).

12 *wholesale CCIV* has the meaning given by section 1222J.

13 **27 Section 51E (definition of *secured creditor*)**

14 Repeal the definition, substitute:

15 *secured creditor*:

- 16 (a) of a corporation means a creditor of the corporation, if the
17 debt owing to the creditor is secured by a security interest;
18 and
19 (b) of a sub-fund of a CCIV means a secured creditor of the
20 CCIV, if the debt owing to the creditor is, to any extent, a
21 liability of the sub-fund.

22 **28 At the end of section 51F**

23 Add:

24 *References to property of a sub-fund of a CCIV*

- 25 (3) A reference in a provision of this Act to property of a sub-fund of a
26 CCIV (including a substituted reference provided for by Part 8B.6)
27 is a reference to something that is:
28 (a) property of the CCIV (within the meaning of the provision);
29 and
30 (b) an asset of the sub-fund of the CCIV.

31 Note: For assets of a sub-fund of a CCIV, see section 1233H.

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29 Section 53 (heading)

Repeal the heading, substitute:

53 Affairs of a body corporate (other than a CCIV)

30 Section 53

After “body corporate” (first occurring), insert “(other than a CCIV)”.

31 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.
- (2) In applying paragraph 53(d) to the CCIV:
 - (a) disregard subparagraphs (ii) and (iia); 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);

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-
- 1 (j) section 1244K (about financial services disclosure does not
2 apply to conducting the affairs of CCIVs);
3 (k) a provision of this Act prescribed by the regulations for the
4 purposes of this paragraph.

32 Paragraph 53AA(b)

5 After “53”, insert “or 53AAA”.

33 At the end of subsection 57(1)

6 Add:

7 Note: A CCIV must have a minimum of 1 class of shares per sub-fund: see
8 section 1231A.

34 Section 64A

9 Omit “and 8A”, substitute “, 8A and 8B”.

35 At the end of subsection 92(4)

10 Add:

11 Note: However, in Chapter 6D, *securities* does not include securities in a
12 CCIV: see section 1243E.

36 At the end of section 111AF

13 Add:

- 14 (3) Securities (except debentures) in a class of securities of a CCIV are
15 *ED securities* if 100 or more people hold securities in that class as
16 a result of offers that gave rise to obligations to give Product
17 Disclosure Statements (whether or not all in the same terms) under
18 Chapter 7 (as that Chapter applies to those securities under
19 Division 4 of Part 8B.7).

37 At the end of subsection 111AR(1)

20 Add:

- 21 ; (e) Division 4 of Part 8B.4 as it applies to disclosing entities;
22 (f) Division 2 of Part 8B.7 as it applies to disclosing entities.

38 At the end of subsection 117(2)

23 Add:

24 Note 5: For modifications applicable to applications to register a CCIV, see
25 section 1222A.

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1 **39 Subsection 118(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **40 At the end of subsection 118(1)**

4 Add:

5 Note 2: For modifications applicable to applications to register a CCIV, see
6 section 1222C.

7 **41 At the end of subsection 120(1)**

8 Add:

9 Note: For the equivalent provision for a CCIV, see section 1222D.

10 **42 Subsection 124(1) (note)**

11 Omit “Note”, substitute “Note 1”.

12 **43 At the end of subsection 124(1)**

13 Add:

14 Note 2: A CCIV’s power to issue shares is affected by sections 1231 and
15 1231B.

16 **44 Subsection 127(1) (note)**

17 Omit “Note”, substitute “Note 1”.

18 **45 At the end of subsection 127(1)**

19 Add:

20 Note 2: Because a CCIV has no natural person directors and no company
21 secretary, it executes documents through the directors and company
22 secretary of its corporate director: see section 1223.

23 **46 Subsection 127(2) (note)**

24 Omit “Note”, substitute “Note 1”.

25 **47 At the end of subsection 127(2)**

26 Add:

27 Note 2: Because a CCIV has no natural person directors and no company
28 secretary, it executes documents through the directors and company
29 secretary of its corporate director: see section 1223.

30 **48 At the end of subsection 135(1)**

31 Add:

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1 Note 3: There are modifications for CCIVs: see section 1223A.

2 **49 Subsection 136(1) (note)**

3 Omit “Note”, substitute “Note 1”.

4 **50 At the end of subsection 136(1)**

5 Add:

6 Note 2: Section 1223B applies instead of this section in relation to the
7 constitution of a CCIV.

8 **51 At the end of subsection 169(3)**

9 Add:

10 Note 3: A CCIV’s register must also show the sub-fund to which each share is
11 referable: see section 1222ZB.

12 **52 At the end of subsection 170(1)**

13 Add:

14 Note: A CCIV’s register must also show the sub-fund to which each share is
15 referable: see section 1222ZB.

16 **53 Subsection 171(1) (note)**

17 Omit “Note”, substitute “Note 1”.

18 **54 At the end of subsection 171(1)**

19 Add:

20 Note 2: A CCIV’s register must also show the sub-fund to which each
21 debenture is referable: see section 1222ZB.

22 **55 At the end of subsection 179(1)**

23 Add:

24 Note: For a CCIV, there are additional duties: see Divisions 2 and 3 of
25 Part 8B.3.

26 **56 Division 1 of Part 2D.1 (after the heading)**

27 Insert:

28 Note: This Division applies in relation to CCIVs in a modified form: see sections 1224C.

29 **57 At the end of subsection 188(1)**

30 Add:

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1 Note 3: This section has an extended operation in relation to the secretary of a
2 corporate director of a CCIV: see sections 1225A and 1225B.

3 **58 Division 2 of Part 2D.1 (after the heading)**

4 Insert:

5 Note: This Division applies in relation to CCIVs in a modified form: see sections 1225C and
6 1224L.

7 **59 Subsection 198D(1) (note)**

8 Omit “Note”, substitute “Note 1”.

9 **60 At the end of subsection 198D(1)**

10 Add:

11 Note 2: If the company is a CCIV, section 1224M applies instead of this
12 section.

13 **61 Subsection 198F(1) (note)**

14 Omit “Note”, substitute “Note 1”.

15 **62 At the end of subsection 198F(1)**

16 Add:

17 Note 2: This section also applies to a director of a corporate director of a
18 CCIV: see section 1225D.

19 **63 At the end of subsection 198G(1)**

20 Add:

21 Note: For a CCIV, section 1224Q applies instead of this section.

22 **64 At the end of subsection 199A(1)**

23 Add:

24 Note: This section has an extended operation in relation to officers and
25 auditors of the corporate director of a CCIV: see section 1225E.

26 **65 At the end of subsection 199B(1)**

27 Add:

28 Note: This section has an extended operation in relation to officers and
29 auditors of the corporate director of a CCIV: see section 1225F.

30 **66 At the end of subsection 200B(1)**

31 Add:

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1 Note 4: This section has a modified operation in relation to CCIVs: see section
2 1224ZD.

3 **67 At the end of subsection 200C(1)**

4 Add:

5 Note: This section has a modified operation in relation to CCIVs: see section
6 1224ZD.

7 **68 Part 2D.3 (after the heading)**

8 Insert:

9 Note: This Part does not apply to a CCIV: see section 1224E.

10 **69 Part 2D.4 (after the heading)**

11 Insert:

12 Note: This Part does not apply to a CCIV: see section 1224E.

13 **70 Part 2D.5 (after the heading)**

14 Insert:

15 Note: This Part does not apply to a CCIV: see section 1224E.

16 **71 Part 2D.6 (after the heading)**

17 Insert:

18 Note: This Part does not apply to a CCIV: see section 1224E.

19 **72 Part 2D.7 (after the heading)**

20 Insert:

21 Note: This Part does not apply to a CCIV: see section 1224E.

22 **73 Part 2D.8 (after the heading)**

23 Insert:

24 Note: This Part does not apply to a CCIV: see section 1224E.

25 **74 Chapter 2E (after the heading)**

26 Insert:

27 Note: This Chapter applies to a CCIV with modifications: see Division 6 of Part 8B.3.

28 **75 At the end of subsection 208(1)**

29 Add:

30 Note 3: This section applies to a CCIV in a modified form: see section 1228A.

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76 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.

77 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.

78 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).

79 Subsection 237(4) (note)

Omit “Note”, substitute “Note 1”.

80 At the end of subsection 237(4)

Add:

Note 2: For who is a third party of a CCIV, see section 1228H.

81 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.

82 At the end of subsection 246B(2)

Add:

Note: This subsection applies to a CCIV in a modified form: see section 1228J.

83 At the end of subsection 246F(3)

Add:

Note: This subsection also applies to a CCIV: see section 1228L.

84 Part 2G.1 (after the heading)

Insert:

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1 Note: Section 1229 applies instead of this Part in relation to a CCIV.

2 **85 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 **86 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 **87 Part 2G.4 (after the heading)**

11 Insert:

12 Note: Section 1229A applies a modified version of this Part in relation to a CCIV. Section
13 1229B applies a modified version of this Part in relation to a sub-fund of a CCIV.

14 **88 At the end of subsection 254B(1)**

15 Add:

16 Note 5: A CCIV may issue a share only if the share is referable to a sub-fund
17 of the CCIV (see section 1231).

18 **89 Subsection 254G(1) (note)**

19 Omit “Note”, substitute “Note 1”.

20 **90 At the end of subsection 254G(1)**

21 Add:

22 Note 2: Section 1231C applies to a CCIV instead of this section.

23 **91 Subsection 254H(1) (note)**

24 Omit “Note”, substitute “Note 1”.

25 **92 At the end of subsection 254H(1)**

26 Add:

27 Note 2: Section 1231C applies to a CCIV instead of this section.

28 **93 Part 2H.2 (after the heading)**

29 Insert:

30 Note: This Part does not apply to a CCIV: see section 1231D.

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1 **94 At the end of subsection 254N(1)**

2 Add:

3 Note: This section does not apply to a CCIV: see section 1231L.

4 **95 At the end of subsection 254T(1)**

5 Add:

6 Note 3: Section 1231M applies to a CCIV instead of this section.

7 **96 At the end of subsection 254W(1)**

8 Add:

9 Note: Section 1231N is about dividend rights in a CCIV.

10 **97 Part 2H.6 (after the heading)**

11 Insert:

12 Note: This Part does not apply to a CCIV: see section 1231P.

13 **98 Chapter 2J (after the heading)**

14 Insert:

15 Note: This Chapter is modified for CCIVs: see Division 2 of Part 8B.4.

16 **99 Division 1 of Part 2J.1 (after the heading)**

17 Insert:

18 Note: This Division does not apply to a CCIV: see subsection 1231R(4).

19 **100 Division 2 of Part 2J.1 (after the heading)**

20 Insert:

21 Note: This Division does not apply to a CCIV: see subsection 1231T(6).

22 **101 Division 3 of Part 2J.1 (after the heading)**

23 Insert:

24 Note: This Division applies to a CCIV with modifications: see section 1231Y.

25 **102 Part 2J.2 (after the heading)**

26 Insert:

27 Note: This Part applies to a CCIV with modifications: see sections 1231Z and 1231ZA.

28 **103 Subsection 259B(1) (note)**

29 Omit “Note”, substitute “Note 1”.

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104 At the end of subsection 259B(1)

Add:

Note 2: Subsection (3) does not apply to a CCIV: see section 1231ZA.

105 Part 2J.3 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1231ZB.

106 At the end of section 285

Add:

Note: Section 1232 applies a modified version of this Chapter to CCIVs.

107 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.

108 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.

109 Division 1 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to retail CCIVs: see section 1232C.

110 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.

111 At the end of subsection 295(5)

Add:

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

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112 At the end of subsection 298(2)

Add:

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

113 At the end of subsection 300(1)

Add:

Note: This subsection applies to retail CCIVs in a modified form: see section 1232E.

114 At the end of subsection 300(13)

Add:

Note: This subsection applies to retail CCIVs in a modified form: see section 1232E.

115 At the end of section 302

Add:

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.

116 At the end of subsection 303(5)

Add:

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

117 At the end of subsection 306(1)

Add:

Note: Section 1232G replaces the requirements of paragraph (1)(b) for retail CCIVs.

118 At the end of subsection 306(3)

Add:

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

119 Division 3 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to sub-funds of retail CCIVs in a modified form: see section 1232H.

120 At the end of section 307

Add:

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1 Note: This section applies to sub-funds of retail CCIVs in a modified form:
2 see section 1232H.

3 **121 At the end of subsection 311(4)**

4 Add:

5 Note: This subsection applies to sub-funds of retail CCIVs in a modified
6 form: see section 1232H.

7 **122 Division 4 of Part 2M.3 (after the heading)**

8 Insert:

9 Note: This Division applies to reports relating to sub-funds of retail CCIVs in a modified
10 form: see section 1232J.

11 **123 At the end of subsection 314(1)**

12 Add:

13 Note: This section applies to sub-funds of retail CCIVs in a modified form:
14 see section 1232J.

15 **124 At the end of subsection 315(3)**

16 Add:

17 Note: Section 1232K applies this subsection to retail CCIVs (and their
18 sub-funds).

19 **125 At the end of subsection 316(1)**

20 Add:

21 Note: This section applies to sub-funds of retail CCIVs in a modified form:
22 see section 1232L.

23 **126 At the end of subsection 317(1)**

24 Add:

25 Note 4: This section does not apply to retail CCIVs: see section 1232M.

26 **127 At the end of subsection 318(1)**

27 Add:

28 Note: This section applies to sub-funds of retail CCIVs in a modified form:
29 see section 1232N.

30 **128 At the end of subsection 322(1)**

31 Add:

32 Note: This section applies to sub-funds of retail CCIVs in a modified form:
33 see section 1232P.

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1 **129 At the end of subsection 324CD(2) (after the table)**

2 Add:

3 Note: This subsection applies in relation to retail CCIVs in a modified form:
4 see section 1232Q.

5 **130 Subdivision B of Division 3 of Part 2M.4 (after the**
6 **heading)**

7 Insert:

8 Note: This Division applies in relation to retail CCIVs in a modified form: see section 1232R.

9 **131 At the end of subsection 324CL(1)**

10 Add:

11 Note: This section applies in relation to retail CCIVs in a modified form: see
12 section 1232S.

13 **132 Division 6 of Part 2M.4 (after the heading)**

14 Insert:

15 Note: This Division does not apply in relation to a CCIV. Instead, section 1232T applies a
16 modified version of Division 7 to a retail CCIV.

17 **133 Division 7 of Part 2M.4 (after the heading)**

18 Insert:

19 Note: Section 1232T applies a modified version of this Division in relation to a retail CCIV.

20 **134 Subsection 344(1) (note)**

21 Omit “Note”, substitute “Note 1”.

22 **135 At the end of subsection 344(1)**

23 Add:

24 Note 2: This subsection has an extended operation in relation to a retail CCIV:
25 see section 1232V.

26 **136 At the end of subsection 344(2)**

27 Add:

28 Note: This section has an extended operation in relation to a retail CCIV: see
29 section 1232V.

30 **137 Part 2N.3 (after the heading)**

31 Insert:

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1 Note: This Part does not apply to CCIVs: see subsection 1232W(1).

2 **138 At the end of subsection 348C(1)**

3 Add:

4 Note: This section does not apply to CCIVs: see subsection 1232W(2).

5 **139 Part 5.1 (after the heading)**

6 Insert:

7 Note: This Part applies to CCIVs with modifications: see Division 2 of Part 8B.6.

8 **140 Part 5.2 (after the heading)**

9 Insert:

10 Note: This Part applies to CCIVs with modifications: see Division 3 of Part 8B.6.

11 **141 At the end of Division 1 of Part 5.3A**

12 Add:

13 **435D Part does not apply to CCIVs**

14 This Part does not apply to a CCIV or a sub-fund of a CCIV.

15 **142 Part 5.4 (after the heading)**

16 Insert:

17 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of
18 Part 8B.6.

19 **143 Part 5.4A (after the heading)**

20 Insert:

21 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of
22 Part 8B.6.

23 **144 Part 5.4B (after the heading)**

24 Insert:

25 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of
26 Part 8B.6.

27 **145 Part 5.4C (after the heading)**

28 Insert:

29 Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Division 4 of
30 Part 8B.6.

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1 **146 Part 5.5 (after the heading)**

2 Insert:

3 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of
4 Part 8B.6.

5 **147 Part 5.6 (after the heading)**

6 Insert:

7 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 4 of
8 Part 8B.6.

9 **148 At the end of subsection 530C(1)**

10 Add:

11 Note: This section applies to a CCIV in a modified form: see section 1238Z.

12 **149 Part 5.7B (after the heading)**

13 Insert:

14 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 3 of
15 Part 8B.6 (for provisions relating to Division 2B), Division 4 of Part 8B.6 (for
16 provisions relating to Divisions 2 and 2A) and Division 5 of Part 8B.6 (for provisions
17 relating to Divisions 3, 4, 5 and 6).

18 **150 Part 5.8 (after the heading)**

19 Insert:

20 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 6 of
21 Part 8B.6.

22 **151 At the end of subsection 596(1)**

23 Add:

24 Note: This section applies to a CCIV in a modified form: see section 1240B.

25 **152 Part 5.9 (after the heading)**

26 Insert:

27 Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 7 of
28 Part 8B.6.

29 **153 At the end of section 596A**

30 Add:

31 Note: This section applies to a CCIV in a modified form: see section 1238U.

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1 **154 Part 5A.1 (after the heading)**

2 Insert:

3 Note 1: This Part applies to the deregistration of CCIVs with modifications: see Subdivision A
4 of Division 8 of Part 8B.6.

5 Note 2: For the deregistration of sub-funds of CCIVs, see Subdivision A of Division 8 of
6 Part 8B.6.

7 **155 Part 5A.2 (after the heading)**

8 Insert:

9 Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Subdivision B of
10 Division 8 of Part 8B.6.

11 **156 Chapter 6 (after the heading)**

12 Insert:

13 Note: This Chapter only applies to acquisitions of interests in a CCIV if the CCIV is a listed
14 company: see Division 1 of Part 8B.7.

15 **157 Subsection 616(1) (note)**

16 Omit “Note”, substitute “Note 1”.

17 **158 At the end of subsection 616(1)**

18 Add:

19 Note 2: Although the prohibition in section 606 only applies to acquiring
20 relevant interests in voting shares in a CCIV if the CCIV is a listed
21 company, a takeover bid may be made for securities in any CCIV
22 whether or not the CCIV a listed company: see subsection 1243A(2).

23 **159 Section 660A (note)**

24 Omit “Note”, substitute “Note 1”.

25 **160 At the end of section 660A**

26 Add:

27 Note 2: This Chapter only applies to the acquisition of securities in a CCIV if
28 the CCIV is a listed company: see section 1243C.

29 **161 Chapter 6B (after the heading)**

30 Insert:

31 Note: This Chapter only applies in relation to an off-market bid for securities in a CCIV if the
32 CCIV is a listed company: see subsection 1243A(3).

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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 761A (paragraph (a) of the definition of *financial services law*)

Omit “or 8A”, substitute “, 8A or 8B”.

166 After paragraph 766A(1)(d)

Insert:

(da) operate a CCIV; or

167 Paragraph 766C(4)(c)

After “body corporate”, insert “(other than a CCIV)”.

168 After paragraph 766C(4)(c)

Insert:

(ca) a CCIV;

169 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).

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Who may apply to be a passport fund

Item	Column 1	Column 2
	Collective investment fund	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

1

2 **170 Paragraph 1212(2)(b)**

3 Omit “responsible entity for the scheme”, substitute “proposed operator
4 of the collective investment fund”.

5 **171 Subparagraph 1212(2)(b)(i)**

6 Omit “responsible entity”, substitute “proposed operator”.

7 **172 Subparagraph 1212(2)(b)(ii)**

8 Omit “scheme”, substitute “fund”.

9 **173 Subsection 1212(3)**

10 Omit “scheme is registered as an Australian”, substitute “fund is
11 registered as a”.

12 **174 Section 1212A (heading)**

13 Repeal the heading, substitute:

14 **1212A Registration of Australian passport funds**

15 **175 Subsection 1212A(1)**

16 Omit “a registered scheme”, substitute “a collective investment fund
17 that is a registered scheme or a sub-fund of a retail CCIV”.

18 **176 Paragraph 1212A(1)(a)**

19 Omit “responsible entity for the scheme”, substitute “proposed operator
20 of the fund”.

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1 **177 Paragraph 1212A(1)(b)**

2 Omit “scheme”, substitute “fund”.

3 **178 Subsection 1212A(2)**

4 Omit “A registered scheme”, substitute “A collective investment fund”.

5 **179 Section 1212B**

6 Omit “registered scheme”, substitute “collective investment fund”.

7 **180 Section 1212B**

8 Omit “scheme’s”, substitute “fund’s”.

9 **181 Subsection 1213B(3)**

10 After “managed investment schemes”, insert “, or CCIVs,”.

11 **182 At the end of subsection 1272B(1)**

12 Add:

13 Note: This subsection has a modified operation in relation to CCIVs: see
14 section 1245AA.

15 **183 At the end of subsection 1274(2)**

16 Add:

17 Note: This subsection applies in relation to CCIVs with modifications: see
18 section 1245.

19 **184 At the end of subsection 1300(2A)**

20 Add:

21 Note: This section applies to a CCIV as if the CCIV were a proprietary
22 company: see section 1245A.

23 **185 At the end of subsection 1307(1)**

24 Add:

25 Note: This subsection applies in relation to CCIVs with modifications: see
26 section 1245B.

27 **186 At the end of subsections 1309(1) and (2)**

28 Add:

29 Note: This subsection applies in relation to CCIVs with modifications: see
30 section 1245C.

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1 **187 At the end of subsections 1309(9) and (10)**

2 Add:

3 Note: This subsection applies in relation to information given to CCIVs with
4 modifications: see section 1245C.

5 **188 Before paragraph 1311(1A)(e)**

6 Insert:

7 (de) Chapter 8B;

8 **189 At the end of subsection 1317(1)**

9 Add:

10 Note: This section applies in relation to a defendant who is a CCIV with
11 modifications: see section 1245C.

12 **190 Part 9.4AAA (after the heading)**

13 Insert:

14 Note: This Part applies in relation to CCIVs with modifications: see 1245D.

15 **191 In the appropriate position in subsection 1317E(3)**

16 Insert:

subsection 1224D(1)	duties owed by director of a CCIV	corporation/scheme
subsection 1224D(2)	duties owed by director of a retail CCIV	corporation/scheme
subsection 1225(1)	duties owed by officers of corporate director of retail CCIV	corporation/scheme
subsection 1225G(1)	duties owed by employees of corporate director of retail CCIV	corporation/scheme
subsection 1231F(5)	share capital transactions for CCIVs	corporation/scheme
subsection 1231PC(4)	cross-investment restrictions or requirements for CCIVs	corporation/scheme
subsection 1231S(4)	unauthorised reduction of share capital by a CCIV	corporation/scheme
subsections 1233ZC(1), (2) and (3)	holding of sub-fund assets of a CCIV	corporation/scheme

17 **192 At the end of subsection 1322(1)**

18 Add:

19 Note: This section applies in relation to CCIVs with modifications: see
20 section 1245F.

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1 **193 Sections 1324A and 1324B**

2 Omit “or Part 7.10”, substitute “, Part 7.10 or Chapter 8B”.

3 **194 Subsection 1325(7) (at the end of the definition of**
4 **section 1325 order provision)**

5 Add:
6 ; and (j) a provision of Chapter 8B.

7 **195 At the end of section 1351**

8 Add:
9 Note: Subsection (4) applies in relation to CCIVs with modifications: see
10 section 1245G.

11 **196 At the end of subsection 70-35(3) of Schedule 2**

12 Add:
13 Note: There is a modification for a winding up of a sub-fund of a CCIV: see
14 section 1238P.

15 **197 At the end of subsection 70-35(4) of Schedule 2**

16 Add:
17 Note: There is a modification for a winding up of a sub-fund of a CCIV: see
18 section 1238P.

19 **198 In the appropriate position in Schedule 3**

20 Insert:

Subsection 1222L(3)	20 penalty units.
Subsection 1222L(7)	20 penalty units.
Subsection 1222W(1)	30 penalty units.
Subsection 1222Y(2)	20 penalty units.
Subsection 1222Z(3)	120 penalty units.
Subsection 1223B(3)	20 penalty units.
Subsection 1223C(4)	20 penalty units.
Subsection 1223C(5)	20 penalty units.
Subsection 1223D(3)	20 penalty units.
Subsection 1224(1)	2 years imprisonment.
Subsection 1224(5)	2 years imprisonment.
Subsection 1224A(1)	2 years imprisonment.
Subsection 1224A(2)	2 years imprisonment.

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Subsection 1224G(4)	2 years imprisonment.
Subsection 1224G(5)	20 penalty units.
Subsection 1224G(6)	60 penalty units.
Subsection 1224Q(4)	30 penalty units.
Subsection 1224Q(5)	20 penalty units.
Subsection 1224T(3)	20 penalty units.
Subsection 1224U(4)	20 penalty units.
Subsection 1224V(3)	20 penalty units.
Subsection 1224W(2)	20 penalty units.
Subsection 1224W(8)	20 penalty units.
Subsection 1224Z(1)	20 penalty units.
Subsection 1225(2)	5 years imprisonment.
Subsection 1225G(2)	5 years imprisonment.
Subsection 1227(3)	20 penalty units.
Subsection 1227C(2)	60 penalty units.
Subsection 1227D(3)	20 penalty units.
Subsection 1227D(4)	20 penalty units.
Subsection 1227E(3)	20 penalty units.
Subsection 1227F(1)	20 penalty units.
Subsection 1227G(1)	20 penalty units.
Subsection 1227G(3)	60 penalty units.
Subsection 1227G(4)	20 penalty units.
Subsection 1227H(6)	1 year imprisonment.
Paragraph 1227J(1)(a)	20 penalty units.
Subsection 1227K(1)	20 penalty units.
Subsection 1229D(4)	20 penalty units.
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.
Subsection 1231G(1)	20 penalty units.
Subsection 1231G(2)	20 penalty units.
Subsection 1231G(4)	20 penalty units.
Subsection 1231J(5)	20 penalty units.
Subsection 1231J(8)	20 penalty units.
Subsection 1231M(1)	2 years imprisonment.
Subsection 1231PC(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and

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	(b) for a body corporate—20,000 penalty units.
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.
Subsection 1233B(4)	2 years imprisonment.
Subsection 1233B(5)	60 penalty units.
Subsection 1233C(2)	60 penalty units.
Subsection 1233D(5)	2 years imprisonment.
Subsection 1233D(6)	60 penalty units.
Subsection 1233E(5)	2 years imprisonment.
Subsection 1233E(6)	60 penalty units.
Subsection 1233F(4)	20 penalty units.
Subsection 1233G(3)	2 years imprisonment.
Subsection 1233G(4)	60 penalty units.
Subsection 1233J(6)	2 years imprisonment.
Subsection 1233K(5)	2 years imprisonment.
Subsection 1233M(6)	2 years imprisonment.
Subsection 1233N(5)	2 years imprisonment.
Subsection 1233P(3)	20 penalty units.
Subsection 1233X(3)	2 years imprisonment.
Subsection 1233X(4)	60 penalty units.
Subsections 1233ZC(1), (2) and (3)	60 penalty units.
Subsection 1238P(4)	50 penalty units.
Subsection 1242D(3)	20 penalty units.
Subsection 1242L(1)	20 penalty units.
Subsection 1243F(1)	5 years imprisonment.
Subsection 1243F(2)	5 years imprisonment.

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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.7 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

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:

(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.

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7 After paragraph 12BAB(14)(d)

Insert:

- (da) operating as a CCIV;
- (db) operating the business and conducting the affairs of a CCIV;
- (dc) the holding of the money or property of a CCIV;

8 At the end of subsection 12BAB(14)

Add:

Note: Holding the assets of a sub-fund of a CCIV (within the meaning of section 1233H of Corporations Act) is covered by paragraph (dc) and does not constitute providing a *custodial or depository service*.

9 Paragraph 12GI(2)(b)

After “body corporate”, insert “(other than a CCIV)”.

10 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;

11 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.

12 Section 84

Repeal the section, substitute:

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1 **84 Requirement made of a body corporate**

2 If a provision of this Part empowers a person to make a
3 requirement of a body corporate, the provision also empowers the
4 person to make that requirement of a person who is or has been:

- 5 (a) unless paragraph (b) applies—an officer or employee of the
6 body corporate; or
7 (b) if the body corporate is a CCIV:
8 (i) an officer of the CCIV; or
9 (ii) an officer or employee of the corporate director of the
10 CCIV.

11 **13 Part 3A (heading)**

12 Repeal the heading, substitute:

13 **Part 3A—Enforceable undertakings relating to** 14 **registered schemes or CCIVs**

15 **14 At the end of Part 3A**

16 Add:

17 **93BA Undertakings by corporate director of a CCIV**

- 18 (1) ASIC may accept a written undertaking given by the corporate
19 director of a CCIV in connection with a matter:
20 (a) concerning the CCIV; and
21 (b) in relation to which ASIC has a power or function under the
22 corporations legislation (other than the excluded provisions).
- 23 (2) The corporate director may withdraw or vary the undertaking at
24 any time, but only with ASIC's consent.
- 25 (3) If ASIC considers that the corporate director has breached any of
26 the terms of the undertaking, ASIC may apply to the Court for an
27 order under subsection (4).
- 28 (4) If the Court is satisfied that the corporate director has breached a
29 term of the undertaking, the Court may make all or any of the
30 following orders:
31 (a) an order directing the corporate director to comply with that
32 term of the undertaking;

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-
- 1 (b) an order directing the corporate director to transfer to the
2 CCIV an amount up to the amount of any financial benefit
3 that the corporate director has obtained directly or indirectly
4 and that is reasonably attributable to the breach;
- 5 (c) any order that the Court considers appropriate directing the
6 corporate director to compensate any person who has
7 suffered loss or damage as a result of the breach;
- 8 (d) any other order that the Court considers appropriate.
- 9 (5) ASIC must keep a record of the full text of the undertaking.
- 10 (6) ASIC must make available to a person who asks for it a copy of the
11 text of the undertaking, but ASIC must delete from the copy
12 information:
- 13 (a) that the corporate director has asked it not to release; and
14 (b) that ASIC is satisfied:
- 15 (i) is commercial in confidence; or
16 (ii) should not be disclosed because it would be against the
17 public interest to do so; or
18 (iii) consists of personal details of an individual.
- 19 (7) If ASIC makes available a copy that has information deleted from
20 it, the copy must include a note stating that information has been
21 deleted.

22 **15 After section 243E**

23 Insert:

24 **243F Treat the corporate director of a CCIV as providing financial** 25 **services etc. being provided by the CCIV**

- 26 (1) This section applies to a provision of this Act that applies in
27 relation to:
- 28 (a) a service, or matter, that is a financial service for the
29 purposes of that provision; or
30 (b) a financial services business; or
31 (c) a matter that is prescribed by the regulations for the purposes
32 of this paragraph.

33 *General rule*

- 34 (2) For the purposes of that provision of this Act:

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-
- 1 (a) treat any conduct engaged in by, or on behalf of, a CCIV as
2 also being engaged in by, or on behalf of, the corporate
3 director of the CCIV; and
4 (b) treat any conduct relating to the CCIV that is engaged in by a
5 person (other than the corporate director of the CCIV) as also
6 being engaged in by that person in relation to the corporate
7 director of the CCIV.

- 8 (3) In subsection (2), *conduct* means an act, an omission to perform an
9 act or a state of affairs.

10 *Exceptions*

- 11 (4) If the CCIV issues a security in the CCIV, then subsection (2) does
12 not treat the corporate director of the CCIV as also being the issuer
13 of the security.

- 14 (5) If the CCIV is a participant (within the meaning of Chapter 7 of the
15 Corporations Act) in:

- 16 (a) a clearing and settlement facility; or
17 (b) a financial market;

18 subsection (2) does not treat the corporate director of the CCIV as
19 also being a participant (within the meaning of Chapter 7 of the
20 Corporations Act) in relation to the facility or market.

- 21 (6) Subsection (2) does not apply in any circumstances prescribed by
22 the regulations for the purposes of this subsection.

23 ***Personal Property Securities Act 2009***

24 **16 At the end of section 267**

25 Add:

26 *Effect of winding up of a sub-fund of a CCIV*

- 27 (4) Paragraph (1)(a) applies in relation to a grantor if:
28 (a) the grantor is a CCIV (within the meaning of the
29 *Corporations Act 2001*); and
30 (b) the security interest is in personal property that is an asset of
31 a sub-fund of the CCIV (within the meaning of that Act); and
32 (c) an order is made, or a resolution is passed, for the winding up
33 of the sub-fund.