Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

No. 8, 2022

An Act to provide for corporate collective investment vehicles, to amend the law relating to taxation and superannuation and to make miscellaneous and technical amendments of the law in the Treasury portfolio, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 2
2 Commencement 2
3 Schedules 4

Schedule 1—Corporate collective investment vehicles: main amendments 5

Corporations Act 2001 5

Schedule 2—Corporate collective investment vehicles: other amendments of the Corporations Act 2001 198

Corporations Act 2001 198

Schedule 3—Corporate collective investment vehicles: amendments of other Acts 229

Australian Securities and Investments Commission Act 2001 229

Personal Property Securities Act 2009 233

Schedule 4—Corporate collective investment vehicles: contingent amendments 235

Corporations Act 2001 235

Schedule 5—Corporate collective investment vehicles: tax framework 237

Part 1—Main amendments 237

Income Tax Assessment Act 1997 237

International Tax Agreements Act 1953 246

Part 2—Consequential amendments 247

A New Tax System (Australian Business Number) Act 1999 247

Income Tax Assessment Act 1997 247

Part 3—Amendments consequential on enactment of the Commonwealth Registers Act 2020 250

Income Tax Assessment Act 1997 250

Authorised Version C2022A00008

Schedule 6—Extension of temporary loss carry back 252
Part 1—Main amendments 252
Income Tax Assessment Act 1997 252
Taxation Administration Act 1953 256
Part 2—Contingent amendments 257
Income Tax Assessment Act 1997 257
Schedule 7—Deductible gift recipients 258
Income Tax Assessment Act 1997 258
Schedule 8—Minor and technical amendments Spring 2021 260
Part 1—Amendments commencing day after Royal Assent 260
Australian Prudential Regulation Authority Supervisory Levies Determination 2021 260
Corporations Act 2001 260
Foreign Acquisitions and Takeovers Act 1975 264
Income Tax Rates Act 1986 264
National Consumer Credit Protection Act 2009 265
National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 265
Payment Times Reporting Act 2020 267
Taxation Administration Act 1953 269
Part 2—Amendments commencing first day of next quarter 270
Income Tax Assessment Act 1997 270
Taxation Administration Act 1953 270
Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 271
Part 3—Amendments commencing on 1 July 2022 272
National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 272
Part 4—Amendments with contingent commencement 273
Income Tax Assessment Act 1936 273

Authorised Version C2022A00008

Taxation Administration Act 1953 273

Schedule 9—Retirement income covenant 275

Superannuation Industry (Supervision) Act 1993 275

Schedule 10—Employee share schemes: removing cessation of employment as a taxing point 278

Income Tax Assessment Act 1997 278

Authorised Version C2022A00008

Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

No. 8, 2022

An Act to provide for corporate collective investment vehicles, to amend the law relating to taxation and superannuation and to make miscellaneous and technical amendments of the law in the Treasury portfolio, and for related purposes

[*Assented to 22 February 2022*]

The Parliament of Australia enacts:

Authorised Version C2022A00008

1 Short title

This Act is the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 February 2022
2. Schedules 1, 2 and 3	1 July 2022.	1 July 2022
3. Schedule 4	Immediately after the commencement of the provisions covered by table item 2. However, Schedule 4 does not commence at all if Schedule 2 to the *Corporations Amendment (Meetings and Documents) Act 2022* does not commence before 1 July 2022.	1 July 2022
4. Schedule 5, Parts 1 and 2	1 July 2022.	1 July 2022
5. Schedule 5, Part 3	A single day to be fixed by Proclamation. However, if the provisions do not commence before 1 January 2025, they commence on that day.	
6. Schedule 6, Part 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2022

Authorised Version C2022A00008

Commencement information

Column 1 Provisions	Column 2 Commencement	Column 3 Date/Details
7. Schedule 6, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 6; and (b) immediately after the commencement of Division 6 of Part 1 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 April 2022 (paragraph (a) applies)
8. Schedule 7	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2022
9. Schedule 8, Part 1	The day after this Act receives the Royal Assent.	23 February 2022
10. Schedule 8, Part 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2022
11. Schedule 8, Part 3	Immediately after the commencement of Part 2 of Schedule 2 to the *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021*.	1 July 2022
12. Schedule 8, Part 4	Immediately after the commencement of item 143 of Schedule 4 to the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020*.	4 April 2021
13. Schedule 9	The day after this Act receives the Royal Assent.	23 February 2022
14. Schedule 10	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2022

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

Authorised Version C2022A00008

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of a legislative instrument (the ***principal instrument***) amended or inserted by this Act, and any other provisions of the principal instrument, may be amended or repealed by a legislative instrument made under the enabling provision for the principal instrument (see subsection 13(5) of the *Legislation Act 2003*).

Authorised Version C2022A00008

Schedule 1—Corporate collective investment vehicles: main amendments

Corporations Act 2001

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

Add:

Corporate collective investment vehicles	Limited by shares

2 Subsection 112(1) (note)

Omit "Note", substitute "Note 1".

3 At the end of subsection 112(1)

Add:

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

4 Before Chapter 9

Insert:

Chapter 8B—Corporate collective investment vehicles

Part 8B.1—Preliminary

1221 Objects of this Chapter

The objects of this Chapter are:

(a) to provide a regulatory framework for corporate collective investment vehicles that is fair, efficient and competitive; and

(b) together with Chapter 7, to promote confident and informed decision making by consumers of financial products and services related to shares in corporate collective investment vehicles.

Authorised Version C2022A00008

Part 8B.2—Registration of CCIVs

Division 1—Registering a CCIV

Subdivision A—Requirements for registration as a CCIV

1222 Requirements for registration as a CCIV

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

(a) the company is a company limited by shares;

(b) the company has a constitution;

(c) the sole proposed director of the company is a public company that holds an Australian financial services licence authorising it to operate the business and conduct the affairs of a CCIV;

(d) the company will, upon registration, have at least one sub-fund;

(e) each sub-fund of the company will, upon registration, have at least one member;

(f) a notice under subsection 1222A(4) (about whether a CCIV is to be a retail CCIV or a wholesale CCIV) has been lodged with the application;

(g) if the company will, on registration, be a retail CCIV—the company has a compliance plan.

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

Subdivision B—How a CCIV is registered

1222A Applying for registration

(1) This section applies in relation to an application for registration made under subsection 117(1) if the type of company that is proposed to be registered under this Act is a CCIV.

(2) The application is not required to state the information mentioned in paragraphs 117(2)(d), (e), (f), (ma) and (mb).

Authorised Version C2022A00008

(3) In addition to the information required by subsection 117(2) as modified by subsection (2) of this section, the application must also state:

(a) the name, and the address of the registered office, of the public company that consents in writing to become the director of the CCIV; and

(b) the proposed name of each sub-fund the CCIV is to have when it is registered; and

(c) for each such proposed sub-fund:

(i) which of the members identified under paragraph 117(2)(c) are to be members of the sub-fund; and

(ii) which of the shares identified under paragraph 117(2)(k) are to be referable to the sub-fund.

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

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

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

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

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

Note: The requirement for a retail CCIV to have a compliance plan is set out in section 1226.

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

1222B No other way to register a CCIV

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

1222C Registration of a CCIV

If:

Authorised Version C2022A00008

(a) an application to register a company as a CCIV is lodged under section 117; and

(b) the company meets the requirements for registration as a CCIV set out in section 1222;

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

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

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

1222D Corporate director and members of a CCIV

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

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

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

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

Subdivision C—Names of CCIVs

1222E Special requirements for naming of CCIVs

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

(2) A CCIV must have the expression "Corporate Collective Investment Vehicle" at the end of its name.

1222F Special requirements for acceptable abbreviations of CCIV names

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

Authorised Version C2022A00008

10	Corporate Collective Investment Vehicle	CCIV

1222G Carrying on business using "CCIV" in name

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

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

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

Subdivision D—Retail CCIVs and wholesale CCIVs

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

(1) A CCIV is a ***retail CCIV*** if:
  (a) the CCIV satisfies the retail CCIV test in section 1222K; or
  (b) the CCIV is notified as a retail CCIV (see section 1222L).

(2) A CCIV that is not a retail CCIV is a ***wholesale CCIV***.

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).

Authorised Version C2022A00008

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);

(b) the person acquired the security as a retail client for the purposes of Chapter 7;

(c) the person is not associated (within the meaning of subsection 1241S(3)) with the CCIV;

(d) if the person acquired the security by way of an issue—the issue was not made in a situation, or pursuant to an offer made in a situation, to which section 1012E (about small scale offerings) applies.

Note: Section 1012E applies to financial products that are securities in a CCIV: see subsection 1241S(6).

When a person is a protected client under a custodial arrangement

(3) For the purposes of paragraph (1)(b), a person is covered by this subsection in relation to a CCIV if all of the following apply:

(a) an acquisition of a security (within the meaning of Chapter 7) in the CCIV occurs pursuant to an instruction given by the person under a custodial arrangement (within the meaning of section 1012IA);

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

(c) the person is not associated (within the meaning of subsection 1241S(3)) with the CCIV.

Authorised Version C2022A00008

When a person is a protected passport fund member

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

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

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

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

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

(c) the person:

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

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

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

Regulations

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

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

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

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

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

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

(b) both:

(i) the notice required by subsection 1222A(4) to be lodged with the application to register the CCIV stated that the CCIV was to be a retail CCIV; and

Authorised Version C2022A00008

(ii) the CCIV has not lodged a notice with ASIC under this section stating that the CCIV is eligible to be, and wishes to be, a wholesale CCIV.

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

(a) lodge with ASIC a notice in the prescribed form stating that the CCIV is, or wishes to be, a retail CCIV; or

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

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

When a retail CCIV notice must be lodged

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

(4) A notice required by subsection (3) must be lodged within 2 business days of the CCIV becoming a retail CCIV.

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

(6) In any proceedings against a person for an offence based on subsection (3), it is a defence if at the relevant time the person did not know, and could not reasonably be expected to have known, that the CCIV satisfied the retail CCIV test.

Note: A defendant bears an evidential burden in relation to the matter in 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.

Authorised Version C2022A00008

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 1224M
7	Limitation on right of the corporate director of a retail CCIV to fees and indemnities	section 1224N
8	Limitation on right of the corporate director of a retail CCIV to acquire shares in the CCIV	section 1224P
9	Duties owed by the officers of the corporate director of a retail CCIV	section 1225
10	Duties owed by the employees of the corporate director of a retail CCIV	section 1225F
11	Requirement for a retail CCIV to have a compliance plan	Division 4 of Part 8B.3
12	Requirement for member approval for certain related party transactions relating to retail CCIVs (application of Chapter 2E)	Subdivision A of Division 5 of Part 8B.3
13	Further requirements for redemptions of shares by a retail CCIV	sections 1230G to 1230K
14	Requirements for self-acquisition by retail CCIV	subsection 1231J(2)
15	Part 2M.3 (financial reporting)	section 1232

Authorised Version C2022A00008

Subdivision E—Listing not permitted for certain CCIVs and sub-funds

1222N Certain CCIVs and sub-funds must not be listed

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

(a) a wholesale CCIV;

(b) a retail CCIV that has more than one sub-fund;

(c) a sub-fund of a wholesale CCIV;

(d) a sub-fund of a retail CCIV that has more than one sub-fund.

Note 1: This section does not prohibit either or both of the following from being included in the official list of a prescribed financial market operated in this jurisdiction:

(a) a sub-fund of a retail CCIV that has only one sub-fund;

(b) that retail CCIV.

Note 2: A retail CCIV will be a listed company if its single sub-fund is included in such an official list even if the retail CCIV is not so included (see the definition of ***listed*** in section 9).

Subdivision F—Changing company type not permitted

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

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

Division 2—Registering a sub-fund of a CCIV

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

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

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

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

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

Authorised Version C2022A00008

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

Note: For when a share is referable to a sub-fund, see section 1230.

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

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

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

Note: If ASIC deregisters a sub-fund, and as a result the CCIV has no sub-funds, ASIC must deregister the CCIV: see section 1239K.

1222S Registration of a sub-fund

Registration of initial sub-funds

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

Registration of further sub-funds

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

ASIC to give sub-fund an ARFN

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

ASIC must keep record of registration

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

Authorised Version C2022A00008

1222T Sub-fund is established on registration

(1) A sub-fund of a CCIV is established at the beginning of the day on which the sub-fund is registered.

(2) The sub-fund's name is the name specified in ASIC's record of the registration.

1222U Application to register further sub-funds

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

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

(2) The application must state:

(a) the name and ACN of the CCIV; and

(b) the proposed name of the sub-fund; and

(c) the name and address of each person who consents to become a member of the sub-fund; and

(d) the following:

(i) the number and class of shares each member agrees in writing to take up;

(ii) the amount (if any) each member agrees in writing to pay for each share;

(iii) whether the shares each member agrees in writing to take up will be fully paid on registration;

(iv) if that amount is not to be paid in full on registration—the amount (if any) each member agrees in writing to be unpaid on each share;

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

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

Authorised Version C2022A00008

Subdivision C—Names of sub-funds

1222V A sub-fund's name

CCIV using ACN

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

CCIV using available name

(2) If a CCIV has as its name an available name, a sub-fund of the CCIV may have as its name an expression comprising the following 3 elements, in the following order:
   (a) first element—the CCIV's name (without the words "Corporate Collective Investment Vehicle" at the end of the name);
   (b) second element—a name that meets the requirements in subsection (3);
   (c) third element—the expression "Sub-fund".

(3) A name meets the requirements in this subsection unless the name is:
   (a) identical to a name that is used as the second element of the name of another sub-fund of the same CCIV; or
   (b) identical to a name that is reserved by ASIC in respect of another person who is not the person applying to have the name; or
   (c) unacceptable for registration under the regulations.

1222W Using sub-fund name and ARFN on documents

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

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

Authorised Version C2022A00008

1222X Acceptable abbreviations of sub-fund names

(1) The abbreviations set out in the following table may be used:

(a) instead of words that this Act requires to be part of a sub-fund's name or to be included in a document or negotiable instrument; and

(b) instead of words that are part of a sub-fund's name; and

(c) with or without full stops.

Acceptable abbreviations

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

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

1222Y Sub-fund changing its name

(1) To change the name of a sub-fund of a CCIV, the CCIV may lodge an application to ASIC in the prescribed form stating the proposed name of the sub-fund.

(2) However, no application may be lodged with ASIC under subsection (1) while the sub-fund is in liquidation.

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

Authorised Version C2022A00008

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

(1) ASIC may direct a CCIV in writing to change the name of a sub-fund of the CCIV within 2 months if:
  (a) the name should not have been registered; or
  (b) ASIC has directed the CCIV to change its name under section 158.

(2) The CCIV must comply with the direction within 2 months after being given it.

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

(4) If the CCIV does not comply with subsection (2), ASIC may change the sub-fund's name to the expression "Australian Registered Fund Number" followed by the sub-fund's ARFN. ASIC does this by altering ASIC's record of the sub-fund's registration to reflect the change.

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

(5) A change of name under subsection (4) takes effect when ASIC alters ASIC's record of the sub-fund's registration.

1222ZA Effect of name change

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

Division 3—Registers

1222ZB Registers relating to CCIVs

(1) The register of members kept by a CCIV in accordance with section 169 must, in addition to the information mentioned in subsection 169(3), also show the following:
  (a) the sub-fund of the CCIV to which each share is referable;

Authorised Version C2022A00008

(b) if the CCIV holds a share in the CCIV:
(i) the sub-fund of the CCIV to which the share is referable; and
(ii) the other sub-fund of the CCIV for which the share has been acquired;
(c) if another CCIV holds a share in the CCIV:
(i) the sub-fund of the CCIV to which the share is referable; and
(ii) the sub-fund of the other CCIV for which the share has been acquired.

(2) The register of option holders kept by a CCIV in accordance with section 170 must, as part of the description of an unissued share mentioned in paragraph 170(1)(d), also show the following:
(a) the sub-fund of the CCIV to which the share is referable;
(b) if the CCIV holds an option over the share:
(i) the sub-fund of the CCIV to which the share is referable; and
(ii) the other sub-fund of the CCIV for which the option over the share has been acquired;
(c) if another CCIV holds an option over the share:
(i) the sub-fund of the CCIV to which the share is referable; and
(ii) the sub-fund of the other CCIV for which the option over the share has been acquired.

(3) The register of debenture holders kept by a CCIV in accordance with section 171 must also contain information about the following:
(a) the sub-fund of the CCIV to which each debenture is referable;
(b) if the CCIV holds a debenture issued by the CCIV:
(i) the sub-fund of the CCIV to which the debenture is referable; and
(ii) the other sub-fund of the CCIV for which the debenture has been acquired;
(c) if another CCIV holds a debenture issued by the CCIV:

Authorised Version C2022A00008

(i) the sub-fund of the CCIV to which the debenture is referable; and

(ii) the sub-fund of the other CCIV for which the debenture has been acquired.

Part 8B.3—Corporate governance of CCIVs

Division 1—Governance rules

Subdivision A—How a CCIV exercises company powers

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

(1) A document is taken to have been signed in accordance with subsection 127(1) if the document is signed by:

(a) 2 directors of the corporate director of the CCIV; or

(b) a director and a company secretary of the corporate director of the CCIV.

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

(2) A CCIV's common seal (if any) is taken to have been fixed to a document in accordance with subsection 127(2) if:

(a) the CCIV's common seal is fixed to the document; and

(b) the fixing of the seal is witnessed by:

(i) 2 directors of the corporate director of the CCIV; or

(ii) a director and a company secretary of the corporate director of the CCIV.

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

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

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

Authorised Version C2022A00008

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

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

Note 2: Some provisions of this Chapter modify section 124, for example sections 1230 and 1231N.

Subdivision B—Constitution

1223A Replaceable rules do not apply to a CCIV

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

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

1223B Requirement for a CCIV to have a constitution

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

Minimum content requirements for the constitution

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

Strict liability offence

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

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

(1) ASIC may direct a retail CCIV to modify its constitution, as set out in the direction, to ensure that the CCIV's constitution complies with the content requirements applicable to the CCIV under Subdivision C. The direction is to be given by notice in writing to the CCIV.

Authorised Version C2022A00008

(2) ASIC may also direct a retail CCIV to modify its constitution, as set out in the direction, to ensure that the CCIV's constitution deals in adequate detail with:

(a) the matters required to be included in the constitution under Subdivision C; and

(b) the specification (if any) of any rights of the corporate director to be paid fees out of assets of a sub-fund of the CCIV, as mentioned in section 1224N.

(3) Despite section 1223D, the corporate director may modify the constitution to comply with the direction.

(4) The CCIV must comply with the direction within 14 days after being given it.

(5) The CCIV must lodge with ASIC a copy of the modified constitution within 14 days after the modification.

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

1223D Adoption, modification and repeal of constitution

(1) A CCIV adopts on registration the constitution lodged with the application to register the CCIV.

(2) The constitution of a CCIV may be modified, or repealed and replaced with a new constitution:

(a) if the CCIV is a retail CCIV:

(i) by special resolution of the members of the CCIV; or

(ii) by the corporate director, if the corporate director reasonably considers the change will not adversely affect members' rights; or

(iii) by special resolution of the members of a sub-fund of the CCIV, if the corporate director reasonably considers the change will not adversely affect the rights of any member of any other sub-fund of the CCIV; or

(b) if the CCIV is a wholesale CCIV—by complying with the requirements set out in the constitution for the modification or repeal.

Authorised Version C2022A00008

(3) If the constitution of a CCIV is modified, or repealed and replaced with a new constitution, the CCIV must lodge with ASIC:

(a) a copy of the modification, or the new constitution; and

(b) if the corporate director of the CCIV determines a later date mentioned in paragraph (5)(b) or (c) for the modification or replacement to take effect—notice of the later date;

within 14 days after the modification or replacement.

Note: The constitution may be modified or repealed by Court order: see section 233.

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

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

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

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

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

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

1223E Effect of constitution

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

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

1223F Wholesale CCIV—Basic content requirement

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

Authorised Version C2022A00008

1223G Retail CCIV—Basic content requirements

A retail CCIV's constitution must do the following:

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

(b) make provision for the method by which complaints made by members in relation to the CCIV are to be dealt with;

(c) state that the CCIV has the power to borrow or raise money;

(d) if there are to be any limits on the CCIV's exercise of the power to borrow or raise money—sets out those limits;

(e) if the CCIV is to acquire in respect of any of its sub-funds, one or more shares that are referable to another of its sub-funds—make provision for such acquisitions.

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

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

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

(a) specify a period within which a redemption must ordinarily be satisfied while section 1230H (about when a sub-fund is liquid) applies to the sub-fund to which the share is referable; and

(b) be fair and reasonable to the members of the sub-fund to which the share is referable; and

(c) set out a price, or a method for determining a price, at which shares in the CCIV are to be redeemed if, at the time of the redemption, section 1230H (about when a sub-fund is liquid) applies to the sub-fund to which the shares are referable.

Authorised Version C2022A00008

Division 2—Officers and employees of the CCIV

Subdivision A—Officers and employees generally

1224 A CCIV has a single corporate director

A CCIV may only have one director

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

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

Position of director is the position of corporate director

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

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

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

No alternate directors

(4) There is no position of alternate director of a CCIV.

(5) The corporate director of a CCIV commits an offence if the corporate director appoints an alternate director.

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

*Definition of **director** not limited*

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

1224A A CCIV has no secretary and no employees

(1) A CCIV must not appoint a secretary.

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

Authorised Version C2022A00008

(2) A CCIV must not have any employees.

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

1224B Meaning of *officer* of a CCIV

In this Act:

officer of a corporation that is a CCIV means:

(a) a director of the CCIV; or

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

(c) a liquidator of a sub-fund of the CCIV; or

(d) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

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

1224C General duties owed by officers

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

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

(a) treat references to the best interests of the corporation as instead being references to the best interests of the sub-fund referred to in subsection (3); and

(b) treat references to causing detriment to the corporation as instead being references to causing detriment to the sub-fund referred to in subsection (3); and

(c) treat references to the business operations of the corporation as instead being references to the business operations of the sub-fund referred to in subsection (3).

(3) The sub-fund is:

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

(b) for a liquidator of a sub-fund of the CCIV—the sub-fund; or

(c) for a trustee or other person administering a compromise or arrangement made between the CCIV and someone else—the

Authorised Version C2022A00008

sub-fund on whose members or creditors the compromise or arrangement is binding.

1224D Duties owed by director

Duties owed by a director of any CCIV

(1) A director of a CCIV must, in exercising its powers and carrying out its duties:

(a) act honestly; and

(b) act in the best interests of the members of the CCIV and, if there is a conflict between the interests of those members and its own interests, give priority to the members' interests; and

(c) act in the best interests of the members, as a whole, of each sub-fund of the CCIV and:

(i) if there is a conflict between the interests of the members, as a whole, of a sub-fund and its own interests, give priority to the members' interests; and

(ii) if there is a conflict between the interests of the members, as a whole, of a sub-fund and the best interests of the members of the CCIV, give priority to the interests of the members of the CCIV; and

(d) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the director in exercising those powers and carrying out those duties; and

(e) not make use of information acquired through being a director of the CCIV in order to:

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

(ii) cause detriment to the members of the CCIV.

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

Additional duties owed by a director of a retail CCIV

(2) A director of a retail CCIV must, in exercising its powers and carrying out its duties:

(a) exercise the degree of care and diligence that a reasonable person would exercise in the director's position; and

Authorised Version C2022A00008

(b) treat members of the CCIV who hold shares of the same class equally; and

(c) treat members of the CCIV who hold shares of different classes fairly; and

(d) treat members of different sub-funds of the CCIV fairly; and

(e) ensure that the CCIV's constitution meets the requirements of this Act; and

(f) ensure that the CCIV's compliance plan meets the requirements of section 1226A; and

(g) comply with the CCIV's compliance plan; and

(h) ensure that:

(i) assets and liabilities of the sub-funds of the CCIV are clearly identified; and

(ii) any property of the CCIV to which section 1233K (about property that has to be converted) applies is clearly identified; and

(iii) any liabilities of the CCIV to which section 1233M (about liabilities allocated to 2 or more sub-funds) applies is clearly identified; and

(i) ensure that assets of a sub-fund of the CCIV are held in the manner required by section 1234J; and

(j) ensure that the assets of a sub-fund of the CCIV are valued at regular intervals appropriate to the nature of the assets; and

(k) ensure that all payments out of the assets of the CCIV are made in accordance with the CCIV's constitution and this Act; and

(l) carry out or comply with any other duty, not inconsistent with this Act, that is conferred on the director by the CCIV's constitution.

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

Additional duties owed by a director of a wholesale CCIV

(3) A director of a wholesale CCIV must, in exercising its powers and carrying out its duties:

(a) exercise the degree of care and diligence that a reasonable person would exercise in the director's position; and

Authorised Version C2022A00008

(b) treat members of the CCIV who hold shares of the same class equally; and

(c) treat members of the CCIV who hold shares of different classes fairly; and

(d) treat members of different sub-funds of the CCIV fairly.

(4) A director of a wholesale CCIV contravenes this subsection if:

(a) the director contravenes paragraph (3)(a), (b), (c) or (d); and

(b) either:

(i) the constitution of the CCIV does not exempt the director from liability for the contravention; or

(ii) the contravention was dishonest or involved a lack of good faith.

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

Duties under this section prevail in case of conflict

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

Interaction with other laws etc.

(6) Subsection (1) or (2):

(a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and

(b) does not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

Interaction with section 199A

(7) Section 199A does not prevent a wholesale CCIV from exempting or indemnifying a director of the CCIV from a liability incurred in relation to a contravention of subsection (3) if the contravention:

(a) is not dishonest; and

(b) does not involve a lack of good faith.

Authorised Version C2022A00008

To avoid doubt, this subsection does not affect the operation of section 199A in relation to a contravention of a duty owed under Part 2D.1.

Interaction with section 199B

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

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

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

The following do not apply to a CCIV:

(a) Part 2D.3 (about appointment, remuneration and cessation of appointment of directors);

(b) Part 2D.4 (about appointment of secretaries);

(c) Part 2D.5 (about public information about directors and secretaries);

(d) Part 2D.6 (about disqualification from managing corporations);

(e) Part 2D.7 (about ban on hedging remuneration of key management personnel);

(f) Part 2D.8 (about remuneration recommendations in relation to key management personnel for disclosing entities).

Subdivision B—The corporate director of a CCIV

1224F Who can be the director of a CCIV

The only kind of person who may be appointed as the director of a CCIV is a public company that:

(a) holds an Australian financial services licence authorising it to operate the business and conduct the affairs of the CCIV; and

(b) is not a Chapter 5 body corporate.

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

(1) At least half of the directors of the corporate director of a retail CCIV must be external directors.

Authorised Version C2022A00008

(2) A director of the corporate director is an external director if the director:

(a) is not, and has not been in the previous 2 years, an employee of the corporate director or a related body corporate; and

(b) is not, and has not been in the previous 2 years, a senior manager of the corporate director or a related body corporate; and

(c) is not, and has not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the corporate director or a related body corporate; and

(d) is not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the corporate director or a related body corporate; and

(e) does not have a material interest in the corporate director or a related body corporate; and

(f) is not a relative of a person who has a material interest in the corporate director or a related body corporate.

(3) The corporate director of a retail CCIV must not fail to comply with subsection (1) for a period exceeding 14 days (or a longer period allowed in writing by ASIC).

Fault-based offence

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

Strict liability offence

(5) A person commits an offence of strict liability if the person fails to comply with subsection (3).

(6) In agreeing to a longer period under subsection (3), ASIC may impose conditions to be complied with and the corporate director must comply with them.

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

Authorised Version C2022A00008

1224H Effectiveness of acts by corporate director

(1) An act done by the company named in ASIC's record of a CCIV's registration as the corporate director or temporary corporate director of the CCIV is effective even if:

(a) the company's appointment as corporate director or temporary corporate director did not comply with the CCIV's constitution or any provision of this Act; or

(b) the continuance of the company's appointment as corporate director or temporary corporate director does not comply with the CCIV's constitution or any provision of this Act.

(2) Subsection (1) does not deal with the question whether an effective act by a corporate director:

(a) binds the CCIV in its dealings with other people; or

(b) makes the CCIV liable to another person.

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

1224J Corporate director must operate the CCIV

(1) The corporate director of a CCIV is to:

(a) operate the business and conduct the affairs of the CCIV; and

(b) perform the functions conferred on the corporate director by the CCIV's constitution and this Act.

Note 1: If a CCIV commits an offence or contravenes a civil penalty provision, the corporate director is generally responsible: see Division 7 of this Part.

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

(2) The corporate director of a CCIV may exercise all the powers of the CCIV except any powers that this Act or the CCIV's constitution requires:

(a) the CCIV to exercise in general meeting; or

(b) the members of a sub-fund of the CCIV to exercise in a meeting of members of the sub-fund.

Authorised Version C2022A00008

1224K 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.

1224L 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.

1224M 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

Authorised Version C2022A00008

(b) the corporate director has properly performed its duties for the purposes of section 1224N.

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

Extended liability for acts of agents

(2) If:

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

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

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

Note: This subsection does not apply to receivers: see section 1236F.

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

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

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

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

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

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

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

Authorised Version C2022A00008

1224P Retail CCIV—limitation on right of corporate director to acquire shares in CCIV

(1) The corporate director of a retail CCIV may acquire and hold a share in the CCIV, but the corporate director must only do so:

(a) for not less than the consideration that would be payable if the share were acquired by another person; and

(b) subject to terms and conditions that would not disadvantage other members.

Note: If the corporate director holds a share in the CCIV, the corporate director does so subject to section 253E, as affected by section 1228G (certain members cannot vote or be counted).

(2) A corporate director who contravenes subsection (1), and any person who is involved in a corporate director's contravention of that subsection, contravenes this subsection.

Note 1: Section 79 defines involved.

Note 2: This subsection is a civil penalty provision (see section 1317E).

(3) A person must not intentionally be involved in a corporate director's contravention of subsection (1).

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

Powers of corporate director while sub-fund in liquidation

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

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

(b) the corporate director purports to do any of the following:

(i) carry on the business of the sub-fund;

(ii) enter into a transaction or dealing on behalf of the CCIV affecting the property of the sub-fund.

(2) However, subsection (1) does not apply to the extent that the corporate director is acting:

(a) with the written approval of the liquidator of the sub-fund or the Court; or

Authorised Version C2022A00008

(b) in circumstances in which, despite the fact that the sub-fund is being wound up, the corporate director is permitted by this Act to act.

(3) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence based on subsection (1) of this section, a defendant does not bear an evidential burden in relation to the matter in paragraph (2)(b).

Fault-based offence

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

Strict liability offence

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

Functions and powers of liquidator prevail in case of conflict

(6) If subsection (2) applies and there is a conflict between a function or power of the liquidator of the sub-fund and a function or power of the corporate director in relation to the CCIV, the liquidator's function or power prevails.

Effect of section

(7) This section does not remove the corporate director of a CCIV from office.

(8) Nothing in this section affects a secured creditor's right to realise or otherwise deal with the security interest.

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

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

Definitions

(11) In this section:

liquidator includes a provisional liquidator.

Authorised Version C2022A00008

Subdivision C—Replacing the corporate director

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

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

1224S CCIV does not have an eligible corporate director

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

(a) ASIC;

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

1224T Retirement of corporate director

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

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

(a) set out the corporate director's reason for wanting to retire; and

(b) nominate as the new corporate director a company (the ***nominated company***) that:

(i) meets the requirements of section 1224F; and

(ii) has consented in writing to being chosen as the new corporate director of the CCIV.

(3) If the members choose the nominated company to be the new corporate director, as soon as practicable and in any event within 2

Authorised Version C2022A00008

business days after the day of the meeting, the current corporate director must lodge a notice with ASIC asking it to alter the record of the CCIV's registration to name the nominated company as the corporate director of the CCIV.

(4) If:

(a) the members choose the nominated company to be the new corporate director; and

(b) the current corporate director does not lodge the notice required by subsection (3);

the nominated company may lodge that notice.

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

(6) If the members do not choose the nominated company to be the new corporate director, an application to the Court for appointment of a temporary corporate director under section 1224V may be made by the current corporate director of the CCIV.

1224U Replacement of corporate director by members

(1) If members of a CCIV want to replace the corporate director, the members may take action under Part 2G.4 (as that Part applies to the CCIV under section 1228A) for the calling of a meeting of the CCIV's members to consider and vote on:

(a) a special resolution that the current corporate director should be removed; and

(b) a special resolution choosing a company to be the new corporate director.

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

(a) set out the intention to remove the current corporate director; and

(b) nominate, as the new corporate director of the CCIV, a company that:

(i) meets the requirements of section 1224F; and

(ii) has consented in writing to being appointed as the new corporate director of the CCIV.

Authorised Version C2022A00008

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

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

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

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

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

1224V Appointment of temporary corporate director by Court

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

(a) if the CCIV has a current corporate director—order the removal of the current corporate director; and

(b) order the appointment of a company as the temporary corporate director of the CCIV; and

(c) make any further orders that the Court considers appropriate.

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

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

(a) the Court is satisfied that:

(i) the appointment is in the interests of the members of the CCIV; and

(ii) the company meets the requirements of section 1224F; and

(b) the company consents in writing to becoming the CCIV's temporary corporate director.

(3) The person who made the application for the order must, as soon as practicable and in any event within 2 days after the Court's order

Authorised Version C2022A00008

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

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

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

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

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

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

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

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

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

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

Authorised Version C2022A00008

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

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

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

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

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

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

(1) This section applies if:

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

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

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

(a) ASIC;

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

1224Y Members fail to appoint permanent corporate director

(1) This section applies if:

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

Authorised Version C2022A00008

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

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

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

Note: For provisions about winding up a sub-fund of a CCIV, see Division 5 of Part 8B.6.

(3) An application to the Court for a winding up of all the sub-funds of the CCIV may be made by any of the following, if the corporate director does not do so:

(a) ASIC;

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

(4) On an application under this section, the Court may:

(a) order the winding up of all the sub-funds of the CCIV; and

(b) make any further orders that the Court considers appropriate.

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

(1) If the corporate director of a CCIV changes, the former corporate director must:

(a) as soon as practicable give the new corporate director any books in the former corporate director's possession or control that this Act requires to be kept in relation to the CCIV; and

(b) give other reasonable assistance to the new corporate director to facilitate the change of corporate director.

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

Authorised Version C2022A00008

1224ZA Rights, obligations and liabilities of former corporate director

(1) If the corporate director of a CCIV changes, the rights, obligations and liabilities of the former corporate director in relation to the CCIV become rights, obligations and liabilities of the new corporate director.

(2) Despite subsection (1), the following rights and liabilities remain rights and liabilities of the former corporate director:

(a) any right of the former corporate director to be paid fees for the performance of its functions before it ceased to be the corporate director;

(b) any right of the former corporate director to be indemnified for expenses it incurred before it ceased to be the corporate director;

(c) any right, obligation or liability that the former corporate director had as a member of the CCIV;

(d) any liability for which the former corporate director could not have been indemnified out of the assets of the CCIV if it had remained the CCIV's corporate director;

(e) any liability arising out of a contravention by the former corporate director of a provision of this Act.

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

(1) If the corporate director of a CCIV changes, a document relating to the CCIV:

(a) to which the former corporate director is a party, in which a reference is made to the former corporate director, or under which the former corporate director has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the corporate director; and

(b) that is capable of having effect after the change;

has effect as if the new corporate director (and not the former corporate director) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it.

Authorised Version C2022A00008

(2) Subsection (1) does not apply to a right, obligation or liability that remains a right, obligation or liability of the former corporate director because of subsection 1224ZA(2).

Subdivision D—Termination payments

1224ZC Member approval not needed for benefit specified in constitution

Despite subsection 200AB(1), for the purposes of Division 2 of Part 2D.2, a ***benefit*** does not include a payment made by the CCIV to its corporate director if:

(a) the corporate director is entitled to the payment under provisions of the constitution; and

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

1224ZD Modified member approval for CCIVs

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

(a) the members whose approval is required under those provisions were the members of the sub-fund of the CCIV that would be affected by the giving of the benefit; and

(b) the member approval mentioned in paragraph (a) were required to be given under section 200E as modified by subsection (3) of this section.

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

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

Member approval

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

Authorised Version C2022A00008

1224ZE Benefits paid to corporate director not covered by exemptions

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

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

Subdivision A—Officers and auditors of the corporate director

1225 Retail CCIV—duties owed by officers of corporate director

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

(a) act honestly; and

(b) exercise the degree of care and diligence that a reasonable person would exercise in the officer's position; and

(c) act in the best interests of the members of the CCIV and, if there is a conflict between the interests of those members and the interests of the corporate director, give priority to the members' interests; and

(d) act in the best interests of the members, as a whole, of each sub-fund of the CCIV and:

(i) if there is a conflict between the interests of the members, as a whole, of a sub-fund and the interests of the corporate director, give priority to the members' interests; and

(ii) if there is a conflict between the interests of the members, as a whole, of a sub-fund and the best interests of the members of the CCIV, give priority to the interests of the members of the CCIV; and

(e) not make use of information acquired through being an officer of the corporate director in order to:

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

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

Authorised Version C2022A00008

(f) not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the CCIV; and

(g) take all steps that a reasonable person would take, in the officer's position, to ensure that the corporate director complies with:

(i) this Act; and

(ii) any conditions imposed on the corporate director's Australian financial services licence; and

(iii) the CCIV's constitution; and

(iv) the CCIV's compliance plan.

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

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

Duties under this section prevail in case of conflict

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

Interaction with other laws etc.

(4) Subsection (1):

(a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and

(b) does not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

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

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

Authorised Version C2022A00008

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

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

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

Provisions that are taken to be *corporate responsibility provisions*

Item	Column 1 Provision(s)	Column 2 Topic
1	(a) subsection 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 1226(3); (b) subsection 1226D(4); (c) subsection 1226E(3)	lodgement of compliance plans etc. (retail CCIV only)
5	subsection 1226G(4)	lodgement of report of auditor of compliance plan (retail CCIV only)
6	subsection 1226K(1)	notifying ASIC when auditor of compliance plan changes (retail CCIV only)
7	subsection 1230J(5)	lodgement of a redemption offer
8	subsection 1230J(8)	notifying ASIC of the cancellation of a redemption offer

Authorised Version C2022A00008

1225C Extended obligation of directors of corporate director

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

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

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

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

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

(5) Nothing in this section limits:

(a) the effect sections 191 and 192 have in relation to the director of the corporate director apart from this Subdivision; or

(b) the effect section 193 has in relation to sections 191 and 192 as those sections apply as a result of this section.

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

1225D Right of access to CCIV books

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

(2) For the purposes of subsection (1), a person is taken to cease being a director of the CCIV if either of the following occurs:
  (a) the person ceases to be a director of the corporate director;
  (b) the company of which the person is a director ceases to be the corporate director of the CCIV.

1225E Extended operation of sections 199A and 199B (about indemnities and insurance)

(1) The operation of sections 199A and 199B in relation to a CCIV and a related body corporate of a CCIV is extended by:
  (a) treating an officer of the corporate director of the CCIV as an officer of the CCIV; and
  (b) treating an auditor of the corporate director of the CCIV as an auditor of the CCIV.

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

(2) 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(8).

Subdivision B—Employees of the corporate director

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

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

Authorised Version C2022A00008

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

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

Duties under this section prevail in case of conflict

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

Interaction with other laws etc.

(4) Subsection (1):

(a) has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and

(b) does not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

Division 4—Compliance plan for retail CCIVs

Subdivision A—Documenting the compliance plan

1226 Requirement for compliance plan

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

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

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

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

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

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

Authorised Version C2022A00008

1226A Contents of the compliance plan

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

1226B Compliance plan may incorporate provisions from another CCIV's plan

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

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

1226C 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.

1226D 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.

Authorised Version C2022A00008

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 1226A. 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.

1226E 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 1226B(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.

Authorised Version C2022A00008

Subdivision B—Auditing the compliance plan

1226F 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

(b) the lead auditor or review auditor of the compliance plan (on the one hand) and the lead auditor or review auditor of the corporate director's financial statements (on the other hand) may work for the same firm of auditors or audit company.

(5) This Subdivision does not prevent the corporate director from arranging for the auditor of the compliance plan to carry out audits in addition to those required by this Subdivision.

1226G Audit and audit report

(1) Within 3 months after the end of a financial year of the retail CCIV, the auditor of the compliance plan must:

(a) examine the CCIV's compliance plan; and

(b) carry out:

Authorised Version C2022A00008

(i) if the CCIV has only had one corporate director during the financial year—an audit of the corporate director's compliance with the compliance plan during the financial year; or

(ii) if the CCIV has had more than one corporate director during the financial year—an audit of each corporate director's compliance with the compliance plan during that part of the financial year when it was the CCIV's corporate director; and

(c) give to the CCIV's current corporate director a report that states whether, in the auditor's opinion:

(i) the corporate director, or each corporate director, complied with the CCIV's compliance plan during the financial year or that part of the financial year when it was the CCIV's corporate director; and

(ii) the plan continues to meet the requirements of this Division.

(2) The auditor of the compliance plan:

(a) has a right of access at all reasonable times to the books of the CCIV; and

(b) may require an officer of the corporate director to give the auditor information and explanations for the purposes of the audit.

(3) An officer of the corporate director must:

(a) allow the auditor of the compliance plan to have access to the books of the CCIV; and

(b) give the auditor information or an explanation required under subsection (2); and

(c) otherwise assist the conduct of the audit.

(4) The corporate director must lodge the auditor's report under subsection (1) with ASIC at the same time as the financial statements and reports in respect of the CCIV are to be lodged with ASIC (see sections 292, 319 and 1232C).

(5) The auditor of the compliance plan has qualified privilege in respect of:

(a) a statement made in a report under subsection (1); or

(b) a notification to ASIC under any of the following:
(i) paragraph 1226H(1)(c);
(ii) paragraph 1226H(2)(c);
(iii) paragraph 1226H(3)(d).

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

1226H Contraventions by auditor

Contravention by individual auditor

(1) An individual auditor conducting an audit of a compliance plan contravenes this subsection if:
(a) the auditor is aware of circumstances that:
(i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or
(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (7)); or
(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
(b) if subparagraph (a)(i) applies:
(i) the contravention is a significant one; or
(ii) the contravention is not a significant one and the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and
(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

Contravention by audit company

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

Authorised Version C2022A00008

(a) the lead auditor for the audit is aware of circumstances that:
(i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or
(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (7)); or
(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
(b) if subparagraph (a)(i) applies:
(i) the contravention is a significant one; or
(ii) the contravention is not a significant one and the lead auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; and
(c) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

Contravention by lead auditor

(3) A person contravenes this subsection if:
(a) the person is the lead auditor for an audit of a compliance plan; and
(b) the person is aware of circumstances that:
(i) the person has reasonable grounds to suspect amount to a contravention of this Act; or
(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (7)); or
(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
(c) if subparagraph (b)(i) applies:
(i) the contravention is a significant one; or

Authorised Version C2022A00008

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

(d) the person does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

Significant contraventions

(4) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:

(a) the level of penalty provided for in relation to the contravention; and

(b) the effect that the contravention has, or may have, on:

(i) the overall financial position of a sub-fund of the CCIV; or

(ii) the adequacy of the information available about the overall financial position of a sub-fund of the CCIV; and

(c) any other relevant matter.

(5) Without limiting paragraph (4)(a), a penalty provided for in relation to a contravention of a provision of Part 2M.2 or 2M.3 includes a penalty for failing to take reasonable steps to comply with, or to secure compliance with, that provision imposed on each of the following:

(a) the corporate director, because of the operation of sections 344 and 1232T;

(b) a director of the corporate director, because of the operation of sections 344 and 1232T.

Fault-based offence

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

Authorised Version C2022A00008

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.

1226J 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 1226F(3) to act as auditor of the compliance plan; and

(b) may, with ASIC's written consent, remove the auditor of the compliance plan.

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

Resignation of auditor

(3) The auditor of the compliance plan may resign by written notice to the corporate director if:

(a) the auditor:

(i) applies to ASIC in writing for its consent to the resignation; and

(ii) gives the corporate director written notice of the application at or about the same time as applying to ASIC; and

(b) ASIC consents to the resignation.

(4) As soon as practicable after receiving the application, ASIC must notify the auditor and the corporate director whether it consents to the resignation.

(5) A statement by the auditor in the application or in answer to an inquiry by ASIC relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor (other than proceedings for a contravention of section 1308); and

(b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor.

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

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

(a) the day (if any) specified in the notice of resignation; or

(b) the day ASIC consents to the resignation; or

(c) the day (if any) fixed by ASIC for the purpose.

1226K Action on change of auditor of compliance plan

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

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

Division 5—Member protection

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

1227 Application of Chapter 2E to retail CCIVs

(1) Subject to this Part, Chapter 2E applies:

(a) to a retail CCIV in the same way as it applies to a public company; and

(b) to an entity a retail CCIV controls in the same way as it applies to an entity a public company controls.

(2) In its application in relation to a retail CCIV, the members whose interests the rules in Chapter 2E are designed to protect are:

(a) if one sub-fund would be affected by the giving of the relevant financial benefit to the related party—the members, as a whole, of that sub-fund; or

(b) if 2 or more sub-funds would be affected by the giving of the relevant financial benefit to the related party—the members, as a whole, of each such sub-fund.

(3) Chapter 2E does not apply to a wholesale CCIV.

1227A Need for member approval for financial benefit

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

(a) the members whose approval is required to be obtained under subparagraph 208(1)(a)(i) were the members of the sub-fund of the CCIV that would be affected by the giving of the financial benefit; and

(b) the member approval mentioned in paragraph (a) were required to be given in the way set out in sections 217 to 227 (as modified by this Part).

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

Note 2: For provisions about meetings of members of sub-funds, see section 1228A.

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

(2) If the giving of a financial benefit would affect 2 or more sub-funds of the CCIV, paragraph 208(1)(a) applies as if it required the CCIV or entity to:

(a) obtain the approval of each affected sub-fund in the way mentioned in subsection (1) of this section; and

(b) give the benefit within 15 months after the first such approval is given.

Authorised Version C2022A00008

Exception for certain fees and indemnities payable to corporate director

(3) Subsection 208(1) does not apply in relation to a financial benefit if:

(a) the financial benefit is fees, or an indemnity, to be given to the corporate director by the CCIV; and

(b) the corporate director is entitled to the fees, or the indemnity, under provisions of the constitution; and

(c) the provisions comply with section 1224N (about fees and indemnities must be available only in relation to the proper performance of duties).

1227B Exceptions not available for a retail CCIV

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

(a) section 211 (which deals with remuneration and reimbursement for an officer or employee);

(b) section 213 (which deals with small amounts given to a related party);

(c) section 214 (which deals with financial benefits given to a closely held subsidiary).

(2) Subsection (1) does not affect the application of those provisions where the financial benefit is, or is to be, given by an entity the retail CCIV controls.

1227C Requirements for explanatory statement to members

(1) Section 219 applies to a retail CCIV as if:

(a) the requirements in paragraphs 219(1)(c) and (d) applied in relation to:

(i) the corporate director of the CCIV; and

(ii) each director of the corporate director of the CCIV; and

(b) the requirement in paragraph 219(1)(e) were a requirement to set out all other information that:

(i) is reasonably required by members in order to decide whether or not it is in the sub-fund's interests to pass the proposed resolution; and

Authorised Version C2022A00008

(ii) is known to the corporate director of the CCIV or to any of the directors of the corporate director of the CCIV.

(2) An example of the kind of information referred to in paragraph (1)(b) is the kind of information mentioned in subsection 219(2).

1227D 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.

1227E 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.

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).

Authorised Version C2022A00008

Relatives of directors and spouses

(4) The following relatives of persons referred to in subsection (3) are related parties of the CCIV:

(a) parents;

(b) children.

Entities controlled by other related parties

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

Related party in previous 6 months

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

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

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

Acting in concert with related party

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

Subdivision B—Rights and remedies of members of a CCIV

1227F Grounds for Court order

In addition to the grounds in section 232, the Court may also make an order under section 233, in respect of a CCIV, if a matter listed

Authorised Version C2022A00008

in paragraph 232(a), (b) or (c) is contrary to the interests of the members as a whole of one or more sub-funds of the CCIV.

1227G Orders the Court can make

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

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

Note: A receiver may only be appointed in relation to property of a particular sub-fund of a CCIV: see section 1236B.

Order altering constitution

(2) Subsection 233(3) applies to a CCIV as if the reference to section 136 were instead a reference to:

(a) if the CCIV is a retail CCIV—section 1223D; or

(b) if the CCIV is a wholesale CCIV—the CCIV's constitution.

1227H Applying for and granting leave

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

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

Note: ***Related party***, in relation to a CCIV, is defined in section 1227E.

1227J Varying and cancelling class rights

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

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

Authorised Version C2022A00008

1227K Certain actions taken to vary rights etc.

If:

(a) a CCIV has a sub-fund to which only one class of shares is referable (the ***existing shares***); and

(b) the CCIV issues new shares that are also referable to that sub-fund; and

(c) the rights attaching to the new shares are not the same as the rights attached to the existing shares; and

(d) the rights attaching to the new shares are not provided for in:

(i) the CCIV's constitution; or

(ii) a notice, document or resolution that is lodged with ASIC;

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

1227L Company must lodge documents and resolutions with ASIC

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

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

Subdivision C—Civil liability of corporate director to members

1227M Civil liability of corporate director to members

(1) A member of a CCIV who suffers loss or damage because of conduct of the CCIV's corporate director that contravenes a provision of this Chapter may recover the amount of the loss or damage by action against the corporate director whether or not the corporate director has been convicted of an offence, or has had a civil penalty order made against it, in respect of the contravention.

(2) An action under subsection (1) must be begun within 6 years after the cause of action arises.

(3) This section does not affect any liability that a person has under other provisions of this Act or under other laws.

Authorised Version C2022A00008

Division 6—Meetings

Subdivision A—Directors' meetings

1228 Resolutions of CCIVs

(1) The corporate director of a CCIV may pass a resolution by the directors of the corporate director passing a resolution that:
   (a) expressly states that the resolution is passed on behalf of the corporate director in its capacity as corporate director; and
   (b) if the corporate director is the corporate director of more than one CCIV—expressly states the CCIV on behalf of which the resolution is passed.

(2) Part 2G.1 (about directors' meetings) does not apply to a CCIV.

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

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

1228A Meetings of members of CCIVs

(1) Parts 2G.2 (about meetings of members of companies) and 2G.3 (about minutes and members' access to minutes) do not apply to a CCIV or its members.

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

Authorised Version C2022A00008

(e) the CCIV's compliance plan were the compliance plan of that scheme.

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

(a) a particular CCIV; or

(b) a particular class of CCIV.

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

1228B Meetings of members of sub-funds

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

(a) the sub-fund were a registered scheme; and

(b) the members of the sub-fund were the members of that scheme; and

(c) the corporate director of the CCIV were the responsible entity of that scheme; and

(d) the CCIV's constitution were the scheme's constitution; and

(e) the CCIV's compliance plan were the compliance plan of that scheme.

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

(a) a particular sub-fund of a CCIV; or

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

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

Authorised Version C2022A00008

1228C Auditors of scheme compliance plans

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

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

1228D Copy of the register of members—sub-funds

(1) Subsection 252C(3) does not apply in relation to a CCIV or a sub-fund of a CCIV.

(2) To call a meeting of the members of a CCIV, the members requesting the meeting may ask the CCIV under section 173 for a copy of the register of members.

(3) To call a meeting of the members of a sub-fund of a CCIV, the members requesting the meeting may ask the CCIV under section 173 for a copy of so much of the register of members as relates to membership of the sub-fund.

(4) Despite paragraph 173(3)(b), the CCIV must, without charge, give the members requesting the meeting:
  (a) if subsection (2) of this section applies—the copy of the register; or
  (b) if subsection (3) of this section applies—so much of the register of members as relates to membership of the sub-fund.

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

1228E Members' resolutions

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

Authorised Version C2022A00008

Note: The effect of paragraph (1)(a) is that subsection 252L(1B) will apply to all CCIVs, including a CCIV that is a listed company.

(2) Subsection 252L(1B) applies in relation to one or more sub-funds of a CCIV as if:

(a) paragraph 252L(1B)(c) did not apply; and

(b) the resolution is subject to a further requirement that it must not affect the interests of any member of any other sub-fund of the CCIV.

Note: A CCIV that is a listed company has only one sub-fund, see section 1222N.

1228F Voting at meetings of members

(1) Sections 253C and 253D do not apply in relation to a CCIV or a sub-fund of a CCIV.

(2) At a meeting of members of a CCIV:

(a) on a show of hands, each member has 1 vote; and

(b) on a poll, each member has 1 vote for each dollar of the value of the total shares in the CCIV that the member holds; and

(c) the chair has a casting vote, and also, if the chair is a member, any vote the chair has in the chair's capacity as a member; and

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

(3) At a meeting of members of a sub-fund of a CCIV:

(a) on a show of hands, each member has 1 vote; and

(b) on a poll, each member has 1 vote for each dollar of the value of the total shares in the CCIV that:

(i) are held by the member; and

(ii) are referable to the sub-fund; and

(c) the chair has a casting vote, and also, if the chair is a member, any vote the chair has in the chair's capacity as a member; and

(d) if a share that is referable to the sub-fund is held jointly and more than one member votes in respect of that share—only

Authorised Version C2022A00008

the vote of the member whose name appears first in the register of members counts.

1228G Corporate director and associates cannot vote if interested in resolution

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

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

1228H How to work out the value of a share

(1) For the purposes of section 1228F, the value of a share in a CCIV is the amount worked out under this section.

(2) The value of a share in a CCIV (other than a share to which subsection (3), (4) or (5) applies) is the amount that the corporate director of the CCIV determines in writing to be the price that a willing but not anxious buyer would pay for the share if it was sold on the business day immediately before the day on which the poll is taken.

(3) The value of a share in a listed CCIV is the last sale price on the relevant prescribed financial market on the trading day immediately before the day on which the poll is taken.

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

(a) the CCIV is not listed; and

(b) the share is redeemable; and

(c) the share is referable to a sub-fund to which section 1230H applies (about when a sub-fund is liquid);

is the amount that, under the constitution of the CCIV, would be paid to redeem the share on the business day immediately before the day on which the poll is taken.

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

(a) the share is redeemable; and

Authorised Version C2022A00008

(b) the share is referable to a sub-fund to which section 1230H applies (about when a sub-fund is liquid); and

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

is the amount that, under the provision, would be paid to redeem the share on the business day immediately before the day on which the poll is taken.

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

Division 7—Corporate contraventions

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

1229 Application of this Subdivision

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

1229A Other rules for corporate contraventions do not apply

Part 2.5 of Criminal Code does not apply

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

Note: Section 1229B applies instead.

Other rules for corporate contraventions do not apply

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

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

(b) treat conduct (however described) engaged in by a person in relation to another person other than a CCIV as having been engaged in by the person in relation to the CCIV; or

Authorised Version C2022A00008

(c) treat a state of mind (however described) held by a person other than a CCIV as being sufficient to show that the CCIV had the state of mind; or

(d) require an element of:

(i) an offence; or

(ii) a provision in relation to a contravention of which a civil penalty may be imposed;

done by a person other than a CCIV to be attributed to the CCIV.

Note 1: Section 1229B applies instead.

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

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

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

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

1229B General rule for attributing conduct and state of mind to a CCIV

Attributing conduct to a CCIV

(1) Conduct engaged in by a person (other than a CCIV) is taken to have been engaged in also by a CCIV if:

(a) the person is specified in column 1 of an item of the table in subsection (4) in relation to the CCIV; and

(b) the conduct was engaged in on behalf of the CCIV; and

(c) in engaging in the conduct, the person met any conditions specified in column 2 of that item of the table.

Attributing conduct to a person in relation to a CCIV

(2) Conduct engaged in by a person in relation to another person (other than a CCIV) (the ***counterparty***) is taken to have also been engaged in in relation to a CCIV if:

(a) the counterparty is specified in column 1 of an item of the table in subsection (4) in relation to the CCIV; and

(b) the counterparty was acting on behalf of the CCIV; and

(c) in acting on behalf of the CCIV, the counterparty met any conditions specified in column 2 of that item of the table.

Authorised Version C2022A00008

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 ***official***) 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 ***first person***) 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.

Authorised Version C2022A00008

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

(a) an agent who is, or is appointed by, a receiver, or receiver and manager, of property of a sub-fund of the CCIV;

(b) an agent who is, or is appointed by, a liquidator or provisional liquidator of a sub-fund of the CCIV;

(c) an agent who is, or is appointed by, a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

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

Interpretation

(7) In this section:

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

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

1229C Exceptions etc. specific to this Act

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

Subdivision B—Consequences of contraventions of Commonwealth laws

1229D Corporate director generally taken to commit offences committed by CCIV

(1) This section applies if:

(a) a CCIV commits an offence against a law of the Commonwealth; and

(b) the conduct constituting the offence was not engaged in by the CCIV solely as a result of an exercise of powers by:

(i) a liquidator or provisional liquidator of a sub-fund of the CCIV; or

Authorised Version C2022A00008

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

(iii) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Corporate director taken to also commit the offence

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

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

CCIV not liable for any penalty

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

Infringement notices

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

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

(b) the CCIV may not be given an infringement notice for the alleged commission of the offence.

1229E Corporate director generally liable for civil penalties for which the CCIV would be liable

(1) This section applies if:

(a) a CCIV contravenes a provision covered by subsection (2); and

(b) the conduct constituting the contravention was not engaged in by the CCIV solely as a result of an exercise of powers by:

(i) a liquidator or provisional liquidator of a sub-fund of the CCIV; or

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

Authorised Version C2022A00008

(iii) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Commonwealth civil penalty provisions

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

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

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

Corporate director taken to also contravene the provision

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

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

CCIV not liable

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

Infringement notices

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

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

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

Authorised Version C2022A00008

Subdivision C—Consequences of contraventions of State and Territory laws

1229F Compensation orders—State and Territory laws

Compensation for penalties incurred etc.

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

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

(b) the loss or damage is:

(i) a pecuniary penalty to which the CCIV is liable in respect of the contravention or alleged contravention; or

(ii) an amount paid by the CCIV in settlement of proceedings in respect of the contravention or alleged contravention; and

(c) the person was the corporate director of the CCIV at the time of the contravention or alleged contravention; and

(d) the exception in subsection (3) does not apply.

The order must specify the amount of the compensation.

State and Territory offences and civil penalty provisions

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

Exception where liquidator etc. acting

(3) Subsection (1) does not apply if the conduct constituting the contravention or alleged contravention was engaged in solely as a result of an exercise of powers by:

(a) a liquidator or provisional liquidator of a sub-fund of the CCIV; or

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

(c) a trustee or other person administering a compromise or arrangement made between the CCIV and someone else.

Authorised Version C2022A00008

Recovery of damage

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

Who may apply

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

Other laws not affected

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

1229G 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.

1229H 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.

Authorised Version C2022A00008

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

Division 1—Shares

Subdivision A—Issuing and converting shares in a CCIV

1230 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) and regulations made for the purposes of subsection (5) limit 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, or regulations made for the purposes of subsection (5) of this section, unless the Court considers that the interests of justice require otherwise.

(5) Regulations made for the purposes of this subsection may make provision for and in relation to further requirements for the issue of shares by a CCIV.

(6) Without limiting subsection (5), regulations made for the purposes of that subsection may prescribe requirements for the issue of shares, or classes of shares, in relation to one or more of the following:

Authorised Version C2022A00008

(a) all CCIVs;
(b) a specified class of CCIVs;
(c) all sub-funds of all CCIVs;
(d) a specified class of sub-funds of CCIVs;
(e) all sub-funds of a specified class of CCIVs.

1230A Minimum of one class of shares per sub-fund

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

Note: A CCIV can issue shares only if the rights attaching to the shares are referable to one (and only one) sub-fund of the CCIV: see section 1230.

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

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

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

1230B Power to issue redeemable shares

(1) Subject to section 1230, a CCIV's power under section 124 to issue shares includes the power to issue redeemable shares.

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

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

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

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

Authorised Version C2022A00008

Option to redeem is not a preference

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

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

1230C Conversion of shares

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

Conversion of shares

Item	Column 1 To convert a share into a share of this kind:	Column 2 These requirements must be met:
1	An ordinary share (other than a redeemable share)	No specified requirements (but see Note 1)
2	A redeemable share	The conversion has been approved by a special resolution of the sub-fund of the CCIV to which the share is referable (see also Notes 1 and 2)
3	A preference share (other than a redeemable preference share)	The holders' rights with respect to the matters mentioned in subsection 254G(2) are set out in the CCIV's constitution (if any) or have been otherwise approved by special resolution of the sub-fund of the CCIV to which the share is referable (see also Note 1)

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

Note 2: For a director's duty to prevent insolvent trading on converting shares into redeemable shares, see sections 588G and 1238C.

Authorised Version C2022A00008

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

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

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

Subdivision B—Redemption of shares

1230D Redemptions to which this Subdivision applies

(1) This Subdivision applies to both of the following:
  (a) a redemption by a CCIV of a redeemable share;
  (b) a redemption by a CCIV of a redeemable preference share.

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

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

1230E Redeemed shares to be cancelled

On redemption by a CCIV, a share is cancelled.

1230F Requirements for redemptions by all CCIVs

Redemption must be in accordance with terms of issue

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

Sub-fund must be solvent

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

Authorised Version C2022A00008

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

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

Consequences of contravention

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

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

(b) the CCIV does not commit an offence.

Fault-based offence

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

Civil liability

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

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

1230G Further requirements for redemptions by retail CCIVs

Redemption must be permitted by constitution

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

Redemption price must be in accordance with constitution

(2) A retail CCIV must not redeem shares if:

(a) at the time of the redemption, section 1230H (about when a sub-fund is liquid) applies to the sub-fund to which the shares are referable; and

(b) the redemption is not in accordance with the CCIV's constitution.

Authorised Version C2022A00008

Redemption must comply with sections 1230J and 1230K if sub-fund is not liquid

(3) A retail CCIV must not redeem shares if:

(a) at the time of the redemption, section 1230H (about when a sub-fund is liquid) does not apply to the sub-fund to which the shares are referable; and

(b) any of the following apply:

(i) the CCIV has not offered members an opportunity to redeem shares under section 1230J;

(ii) the redemption is not made in satisfaction of a redemption request made in response to the offer;

(iii) the redemption does not comply with section 1230K.

Strict liability offence

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

Consequences of contravention

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

Court orders

(6) If the Court is satisfied, on application under subsection (7), that the consideration for a redemption of shares by a retail CCIV is not in accordance with this section, the Court may make any orders the Court considers appropriate.

(7) An application to the Court for an order under subsection (6) may be made by any of the following:

(a) ASIC;

(b) the corporate director of the CCIV;

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

Authorised Version C2022A00008

1230H When a sub-fund is liquid

(1) This section applies to a sub-fund of a CCIV at a time if liquid assets account for at least 80% of the value of the assets of the sub-fund at that time.

(2) For the purposes of subsection (1):

(a) the following are liquid assets unless it is proved that the CCIV cannot reasonably expect to realise them within the period specified in the constitution for satisfying redemptions while the sub-fund is liquid:

(i) money in an account or on deposit with a bank;

(ii) bank accepted bills;

(iii) marketable securities (as defined in section 9);

(iv) property of a kind prescribed by regulations made for the purposes of this subparagraph; and

(b) any other property is a liquid asset if the corporate director reasonably expects that the property can be realised for its market value within the period specified in the constitution for satisfying redemptions while the sub-fund is liquid.

1230J Redemption offers for non-liquid sub-funds of retail CCIVs

(1) A retail CCIV may offer members an opportunity to redeem shares in the CCIV if:

(a) section 1230H (about when a sub-fund is liquid) does not apply to the sub-fund to which the shares are referable; and

(b) the offer is made to the extent that particular assets of the sub-fund are available and able to be converted to money in time to satisfy redemption requests that members may make in response to the offer; and

(c) no other redemption offer is open in relation to the sub-fund.

(2) The redemption offer must:

(a) be in writing; and

(b) if the constitution of the CCIV specifies procedures for making redemption offers under this section while section 1230H does not apply to the sub-fund—be made in accordance with those procedures.

Authorised Version C2022A00008

(3) The redemption offer must specify:

(a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made); and

(b) the assets that will be used to satisfy redemption requests; and

(c) the amount of money that is expected to be available when those assets are converted to money; and

(d) the method for dealing with redemption requests if the money available is insufficient to satisfy all requests.

The method specified under paragraph (d) must comply with section 1230K.

(4) For joint members, a copy of the redemption offer need only be given to the joint member named first in the register of members.

(5) As soon as practicable after making the redemption offer, the CCIV must lodge a copy of the offer with ASIC.

(6) A CCIV that makes a redemption offer under this section:

(a) may cancel a redemption offer before it closes if the offer contains a material error; and

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

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

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

Strict liability offence

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

1230K Satisfying redemption requests for non-liquid sub-funds of retail CCIVs

(1) A retail CCIV that makes a redemption offer under section 1230J must ensure that redemption requests made in response to the offer are satisfied within 21 days after the offer closes.

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

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

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

Subdivision C—Partly-paid shares

1230L Section 254N does not apply to a CCIV

Section 254N does not apply to a CCIV.

Subdivision D—Dividends

1230M Circumstances in which a dividend may be paid

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

(a) the sub-fund to which the share is referable is insolvent; or

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

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

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

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

Authorised Version C2022A00008

1230N Dividend rights

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

(a) the CCIV's constitution provides for the shares to have different dividend rights; or

(b) different dividend rights are provided for by special resolution of the sub-fund to which the shares are referable.

Subdivision E—Notice requirements

1230P Part 2H.6 does not apply to a CCIV

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

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

1230Q Cross-investment between sub-funds is permitted

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

Note: Requirements or restrictions may apply, see section 1230R.

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

(a) any written law; or

(b) any unwritten law such as a principle or rule of common law or equity;

that is or has been in force anywhere in Australia or elsewhere.

1230R Requirements or restrictions for cross-investment

(1) Regulations made for the purposes of this subsection may prescribe either or both of the following:

(a) one or more requirements for a CCIV to make an acquisition mentioned in subsection 1230Q(1);

(b) one or more restrictions on a CCIV making an acquisition mentioned in subsection 1230Q(1).

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may prescribe requirements or restrictions in relation to one or more of the following:
  (a) all CCIVs;
  (b) a specified class of CCIVs;
  (c) all sub-funds of all CCIVs;
  (d) a specified class of sub-funds of CCIVs;
  (e) all sub-funds of a specified class of CCIVs.

1230S Consequences for failing to comply with requirements or restrictions for cross-investment

(1) A CCIV to which regulations made for the purposes of subsection 1230R(1) apply in relation to an acquisition must comply with any applicable requirements or restrictions in those regulations.

Consequences for CCIV of contravention

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

Fault-based offence

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

Civil liability

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

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

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

Authorised Version C2022A00008

1230T Requirements or restrictions on membership rights for shares acquired from cross-investment

Voting at a meeting of the CCIV's members

(1) Despite any other provision of this Act, a CCIV's acquisition mentioned in subsection 1230Q(1) of one or more shares referable to one of its sub-funds does not entitle the CCIV to vote as a member on a resolution at a meeting of the CCIV's members.

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

(2) A CCIV's acquisition mentioned in subsection 1230Q(1) of one or more shares referable to one of its sub-funds entitles the CCIV to vote as a member on a resolution at a meeting of the members of the sub-fund.

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

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

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

1230U Cross-investment between sub-funds is not a share buy-back

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

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

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

1230V General duties still apply for cross-investment between sub-funds

None of the following:

(a) the corporate director of a CCIV;

(b) an officer, or employee, of the corporate director of a CCIV;

is relieved from any of their duties under this Act, or their fiduciary duties, in connection with an acquisition merely because the acquisition is permitted by this Subdivision.

Authorised Version C2022A00008

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

Division 2—Transactions affecting share capital

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

1231 Purpose

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

1231A CCIV may make reduction not otherwise authorised

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

(a) the reduction is permitted by the CCIV's constitution; and

(b) immediately before the reduction:

(i) each sub-fund that the reduction affects is solvent; and

(ii) there are no reasonable grounds for suspecting that any sub-fund that the reduction affects would become insolvent immediately after the reduction; and

(c) the reduction complies with any requirements prescribed by regulations made for the purposes of this paragraph.

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

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

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

Note: The liabilities of a sub-fund can only be met from assets of the sub-fund: see section 1234A.

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

Regulations

(4) Without limiting paragraph (1)(c), regulations made for the purposes of that paragraph may prescribe requirements for

Authorised Version C2022A00008

reductions of share capital, or classes of reductions of share capital, in relation to one or more of the following:

(a) all CCIVs;

(b) a specified class of CCIVs;

(c) all sub-funds of all CCIVs;

(d) a specified class of sub-funds of CCIVs;

(e) all sub-funds of a specified class of CCIVs.

Note: An example of a class of a reduction of share capital is an off-market share buy-back.

Certain provisions do not apply to a CCIV

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

1231B Consequences of making an unauthorised reduction

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

(a) does not comply with subsection 1231A(1); and

(b) is not otherwise authorised by law.

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

(a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and

(b) the CCIV does not commit an offence.

Fault-based offence

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

Civil liability

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

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

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

Authorised Version C2022A00008

1231C A CCIV's power to buy back its own shares

(1) A CCIV may buy back its own shares, including redeemable shares and redeemable preference shares.

Note: Cross-investment between sub-funds is not a buy-back (see section 1230U).

(2) However, if the buy-back involves a reduction of share capital, the reduction must be authorised by law.

Note: A share buy-back that involves a reduction of share capital will be authorised by law if, for example, the buy-back complies with subsection 1231A(1).

(3) If a CCIV has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.

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

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

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

1231D Authorised reductions—share redemptions

A CCIV may reduce its share capital if:

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

(b) the redemption complies with section 1230F; and

(c) for a retail CCIV—the redemption also complies with section 1230G.

1231E Authorised reductions—regulations

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

1231F Authorised reductions—Court orders

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

Authorised Version C2022A00008

1231G Authorised reductions—return of financial product

A CCIV may cancel shares returned to it under Division 5 of Part 7.9 (as that Division applies to the CCIV under section 1241ZA) and any reduction in the CCIV's share capital that is involved is authorised by this section.

1231H Other share capital reductions

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

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

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

Subdivision B—Self-acquisition and control of shares

1231J Directly acquiring own shares

(1) A CCIV must not acquire shares (or units of shares) in itself except:
  (a) in buying back shares under section 1231C; or
  (b) under a court order; or
  (c) in circumstances covered by section 1230Q (about cross-investment).

(2) Section 259A does not apply to a CCIV.

(3) Subject to subsection (1), a retail CCIV may acquire and hold a share in the CCIV, but it must only do so:
  (a) for not less than the consideration that would be payable if the share were acquired by another person; and
  (b) subject to terms and conditions that would not disadvantage other members.

Note: A similar limitation applies to the corporate director of a retail CCIV: see section 1224P.

Authorised Version C2022A00008

(4) If a CCIV contravenes subsection (1) or (3):

(a) the contravention does not affect the validity of the acquisition or security or of any contract or transaction connected with it; and

(b) the CCIV is not guilty of an offence.

Civil liability

(5) Any person who is involved in a CCIV's contravention of subsection (1) or (3) contravenes this subsection.

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

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

Fault-based offence

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

1231K Taking security over own shares

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

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

Subdivision C—Financial assistance

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

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

Subdivision D—Interaction with other duties

1231M Other duties still apply

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

Authorised Version C2022A00008

Division 3—Debentures

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

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

(2) Subsection (1) limits paragraph 124(1)(b) in relation to a CCIV.

(3) If a security interest is included in or created by a debenture or the trust deed required by section 283AB, the security interest must not be over property of the CCIV that forms part of the assets of a different sub-fund of the CCIV.

1231P Modified operation of section 283AA

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

Division 4—Financial reports and audit of CCIVs

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

1232 Application of Chapter 2M to CCIVs

Application of Chapter 2M to retail CCIVs

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

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

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

Note: Section 1228 deals with directors' resolutions for CCIVs.

Application of Part 2M.2 to wholesale CCIVs

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

Part 2M.3 does not apply to wholesale CCIVs

(3) Part 2M.3 (about financial reporting) does not apply to a wholesale CCIV.

Subdivision B—Financial records (all CCIVs)

1232A Obligation to keep financial records for sub-funds

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

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

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

(c) comply with any further requirements prescribed by regulations made for the purposes of this paragraph.

Note: Section 9 defines ***financial records***.

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

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

Authorised Version C2022A00008

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

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

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

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

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

Subdivision C—Financial reporting (retail CCIVs only)

1232C Annual financial reports and directors' reports for sub-funds—general rules

(1) Division 1 of Part 2M.3 applies to a retail CCIV as if:

(a) subsection 292(1) required the CCIV to prepare a financial report for each of its sub-funds for each financial year; and

(b) subsections 292(1) and 298(1) required the CCIV to prepare a directors' report for each of its sub-funds for each financial year.

Note: The CCIV is not required to prepare such reports for the CCIV itself.

(2) The remaining provisions of Division 1 of Part 2M.3 apply in relation to the following documents relating to each sub-fund of the retail CCIV:

(a) a financial report and a directors' report referred to in subsection (1) of this section;

(b) the documents of which the financial report consists under subsection 295(1);

as if the sub-fund were the CCIV.

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

Example: References in the remaining provisions of Division 1 of Part 2M.3 to a listed company will be read as referring to the sub-fund if the sub-fund is listed (see also paragraph (c) of the definition of ***listed*** in section 9).

(3) Without limiting subsection (2), Division 1 of Part 2M.3 so applies as if references in that Division to members (other than references to members of an audit firm) were instead references to members of the sub-fund.

(4) Despite subsection (2), Division 1 of Part 2M.3 applies to the retail CCIV in relation to each of its sub-funds as if:

(a) references in that Division to the officers of, or an officer of, the company were instead references to each of the following:

(i) an officer of the CCIV;

(ii) an officer of the corporate director of the CCIV; and

(b) despite paragraph 1232(1)(a), references in that Division to the directors of, or a director of, the company were instead references to each of the following:

(i) the corporate director of the CCIV;

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

(5) Subparagraphs (4)(a)(i) and (b)(i) are included for the avoidance of doubt.

1232D Annual financial reports and directors' reports for sub-funds—special rules for financial reports

(1) Despite subsection 1232C(2), paragraph 295(4)(c) applies to a directors' declaration relating to a sub-fund referred to in subsection 1232C(1) as if the debts mentioned in that paragraph were only the debts referable to the sub-fund.

(2) Despite subsection 1232C(2), subsection 301(1) applies to a CCIV referred to in subsection 1232C(1) in relation to the financial report for each of its sub-funds.

(3) A financial report for a sub-fund referred to in subsection 1232C(1) must comply with any further requirements prescribed by regulations made for the purposes of this subsection.

Authorised Version C2022A00008

1232E Annual financial reports and directors' reports for sub-funds—special rules for directors' reports

(1) Section 300 applies in relation to a sub-fund of a CCIV referred to in subsection 1232C(1) as if:

(a) a reference in that section to options, shares or interests relating to the CCIV were instead a reference to options, shares or interests referable to the sub-fund; and

(b) a reference in that section to indemnities given, or insurance premiums paid, in relation to the CCIV were instead a reference to indemnities given, or insurance premiums paid, out of the assets of the sub-fund.

Note: This translation rule applies in addition to the translation rules in subsections 1232C(2) to (4).

(2) Subsection 300(13) applies in relation to a sub-fund of a CCIV referred to in subsection 1232C(1) as if:

(a) the sub-fund were a registered scheme; and

(b) the corporate director of the CCIV were the responsible entity for the scheme; and

(c) references in that subsection to interests in the scheme were instead references to shares in the CCIV referable to the sub-fund; and

(d) references in that subsection to scheme property were instead references to the property of the sub-fund.

Note: This translation rule applies in addition to the translation rules in subsections 1232C(2) to (4).

(3) If a sub-fund of a CCIV referred to in subsection 1232C(1) is a listed sub-fund, section 300A does not apply in relation to the sub-fund.

1232F Half-year financial reports and directors' reports for sub-funds with ED securities on issue

(1) Section 302 does not apply to a CCIV that is a disclosing entity except as set out in this section.

(2) If any securities referable to a sub-fund of a retail CCIV are ED securities, section 302 applies to the CCIV as if the requirement in

Authorised Version C2022A00008

paragraph 302(a) required the CCIV to prepare a financial report and directors' report for each half-year for the sub-fund.

Note: For ED securities in a CCIV, see subsection 111AF(3), and section 111AI as affected by section 1231P.

(3) For the purposes of subsection (2), ED securities that are units of shares in a CCIV are referable to the sub-fund of the CCIV to which the shares are referable.

(4) The remaining provisions of Division 2 of Part 2M.3 apply in relation to the following documents relating to the sub-fund:

(a) a financial report and directors' report prepared under paragraph 302(a) as applied by subsection (2) of this section;

(b) the documents of which the financial report consists under subsection 303(1);

as if the sub-fund were the CCIV.

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

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

(6) Section 306 applies to the sub-fund of the CCIV as if the requirement in subsection 306(1) were instead a requirement for the directors' report for the sub-fund for each half-year to include:

(a) a review of the sub-fund's operations during the half-year and the results of those operations; and

(b) details of:

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

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

Authorised Version C2022A00008

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

(1) Subject to the modifications set out in this section, Division 3 of Part 2M.3 applies in relation to a sub-fund of a retail CCIV, and in relation to the following documents relating to the sub-fund:

(a) a financial report prepared as described in subsection 1232C(1);

(b) a financial report prepared as described in section 1232F;

as if the sub-fund were the CCIV.

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

(2) Without limiting subsection (1), Division 3 of Part 2M.3 so applies as if:

(a) references in that Division to members (other than references to members of an audit firm) were instead references to members of the sub-fund; and

(b) references in that Division to an officer included references to an officer of the corporate director of the CCIV.

Audit

(3) Section 307 applies in relation to the sub-fund of the CCIV as if the requirements in paragraphs 307(c) and (d) do not apply, and as if those paragraphs instead require the auditor to form an opinion about whether the CCIV has kept:

(a) financial records, relating to the sub-fund, sufficient to enable a financial report, relating to the sub-fund, to be prepared and audited; and

(b) other records and registers, relating to the sub-fund, as required by this Act.

Reporting to ASIC

(4) Section 311 applies in relation to the sub-fund of the CCIV as if the requirement in paragraph 311(4)(b) were a requirement to have regard to the effect that the contravention has, or may have, on:

(a) the overall financial position of either the CCIV or the sub-fund, or both; or

(b) the adequacy of the information available about the overall financial position of either the CCIV or the sub-fund, or both.

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

1232H Annual financial reporting to members of sub-funds

(1) Section 314 applies to a retail CCIV, in relation to each sub-fund of the CCIV, as if the requirement in subsection 314(1) were instead a requirement to report to members of the sub-fund for the year by providing either of the following in accordance with subsection 314(1AA) or (1AE):

(a) all of the following reports:

(i) the financial report and directors' report relating to the sub-fund for the year;

(ii) the auditor's report on the financial report;

(b) a concise report relating to the sub-fund for the year that complies with subsection 314(2).

(2) Division 4 of Part 2M.3 applies in relation to a report relating to the sub-fund as if references in that Division to members were instead references to members of the sub-fund.

1232J Deadline for reporting to members of sub-funds

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

1232K Consideration of reports at AGM

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

1232L Additional reporting by CCIVs that are debenture issuers

If a 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:

Authorised Version C2022A00008

(a) the requirement in subsection 318(1) were instead 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 1232J, a copy of each of the reports mentioned in paragraph 1232H(1)(a) for the sub-fund; and

(b) the right of a debenture holder under paragraph 318(2)(a) were instead the right to ask the CCIV for copies of the last reports provided under subsection 1232H(1) to members of the sub-fund; and

(c) the right of a debenture holder under paragraph 318(2)(b) were instead the right to ask the CCIV for copies of:

(i) the full financial report and directors' report described in section 1232C for the sub-fund and prepared 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) were instead 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.

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

1232M Relodgement if financial statements or directors' reports relating to sub-fund amended after lodgement

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

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

1232N Conflict of interest situation

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

Authorised Version C2022A00008

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

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

1232P Auditor independence—specific requirements

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

(a) references in the table in subsection 324CH(1) to the audited body included references to the corporate director of the CCIV; and

(b) references in subsection 324CH(3) and sections 324CI, 324CJ and 324CK to a listed entity do not include references to a CCIV that is a listed company.

1232Q People who are regarded as officers of a CCIV

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

1232R Appointment, removal and fees of auditors for CCIVs

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

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

(a) the CCIV were a registered scheme; and

Authorised Version C2022A00008

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

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

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

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

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

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

(3) The events are as follows:

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

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

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

Subdivision G—Sanctions for contravention of Chapter 2M

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

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

(a) the corporate director of the CCIV;

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

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

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

Division 5—Updating ASIC information about CCIVs

1232U Solvency resolutions

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

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

Part 8B.5—Operating a CCIV

Division 1—Preliminary

1233 References to property

In this Part:

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

(a) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);

(b) section 588FL of this Act (collateral not registered within time).

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

1233A References to liabilities of a CCIV

(1) A reference in this Act to the liabilities of a CCIV includes a reference to:

(a) debts of the CCIV (including contingent and prospective debts); and

(b) expenses of the CCIV; and

(c) anything not covered by paragraphs (a) and (b) that might give rise to a debt of the CCIV, or a claim against the CCIV (present or future, certain or contingent, ascertained or sounding only in damages).

Authorised Version C2022A00008

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

(3) This section does not apply for the purposes of Chapter 2M (about financial reports and audit).

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

1233B Sub-funds to be operated as separate businesses

(1) A part of the business of a CCIV must not be operated if it is not registered as a sub-fund.

(2) A part of the business of a CCIV that is registered as a sub-fund must be operated as a separate business from the business of any other sub-fund of the CCIV.

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

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

Fault-based offence

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

Strict liability offence

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

Authorised Version C2022A00008

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

Subdivision A—The CCIV's allocation register

1233C Corporate director to keep allocation register

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

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

Strict liability offence

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

Corporate director must maintain allocation register during liquidation

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

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

1233D Requirement to enter assets on the allocation register

(1) The assets of a sub-fund of a CCIV must be clearly identified in the allocation register as assets of the sub-fund.

(2) If section 1233K (about property that has to be converted into money etc.) applies to an item of property of a CCIV:

(a) the item of property must be clearly identified in the allocation register as an item of property to which that section applies; and

Authorised Version C2022A00008

(b) the proportion of the property applicable to each sub-fund under subsection 1233H(3) must be clearly identified in the allocation register as the proportion applicable to the sub-fund.

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

(4) An entry required by subsection (3) must be made within:

(a) for a case where money or property is acquired by the CCIV:

(i) 5 business days after the money or property is acquired, unless subparagraph (ii) applies; or

(ii) if an allocation determination is required to be made in relation to the money or property under section 1233J—5 business days after the determination is made; or

(b) for a case where money or property is disposed of, or otherwise ceases to be money or property of the CCIV—5 business days after the disposal or cessation.

Fault-based offence

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (3); and

(b) the person fails to comply with the requirement.

Strict liability offence

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

1233E Requirement to enter liabilities on the allocation register

(1) The liabilities of a sub-fund of a CCIV must be clearly identified in the allocation register as liabilities of the sub-fund.

(2) If section 1233M (about liabilities allocated to 2 or more sub-funds) applies to a liability of a CCIV:

(a) the liability must be clearly identified in the allocation register as a liability to which that section applies; and

Authorised Version C2022A00008

(b) the proportion of the liability applicable to each sub-fund under subsection 1233L(2) must be clearly identified in the allocation register as the proportion applicable to the sub-fund.

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

(4) An entry required by subsection (3) must be made within:

(a) for a case where a liability arises—5 business days after the liability arises; or

(b) for a case where a liability is discharged, or otherwise ceases to be a liability of the sub-fund—5 business days after the discharge or cessation.

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

Fault-based offence

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (3); and

(b) the person fails to comply with the requirement.

Strict liability offence

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

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

(1) This section applies if:

(a) a debt payable by, or claim against, a CCIV (present or future, certain or contingent, ascertained or sounding only in damages) is not entered as a liability of any sub-fund of the CCIV in the allocation register of the CCIV; or

(b) property of the CCIV is not entered as an asset of any sub-fund of the CCIV in the allocation register of the CCIV.

Authorised Version C2022A00008

(2) A liquidator of a sub-fund of the CCIV may, by notice in writing given to the corporate director of the CCIV, require the corporate director to make entries in the allocation register within the period (which must be at least one business day after the notice is given) specified in the notice.

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

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

Note 1: Only liabilities of a sub-fund of a CCIV are provable in a winding up of the sub-fund: see section 1237W.

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

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

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

1233G Requirement to retain records of allocations for 7 years

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

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

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

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

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

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

Authorised Version C2022A00008

Fault-based offence

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

Strict liability offence

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

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

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

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

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

(2) Subject to subsection (1), the ***assets*** of a sub-fund of a CCIV at a particular time are the following:

(a) amounts paid up in consideration for the issue of shares that are referable to the sub-fund;

(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:

Authorised Version C2022A00008

(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 1235F (about arrangements and reconstructions of sub-funds), are to be assets of the sub-fund; and

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

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

Regulations

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

1233J When an allocation determination is required

(1) This section applies if money or property acquired by a CCIV in a single transaction does not become wholly part of the assets of a single sub-fund of the CCIV under section 1233H.

(2) The corporate director must determine (whether in the CCIV's allocation register or otherwise in writing) the proportion (including nil) of the money or property that is to be allocated to each sub-fund of the CCIV.

Authorised Version C2022A00008

Requirements for determination

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

When the determination is operative

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

(5) A determination under this section is irrevocable.

Fault-based offence

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

Determinations during winding up and controllership

(7) Subsection (2) does not apply if all of the CCIV's sub-funds are being wound up.

(8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence based on subsection (6) of this section, a defendant does not bear an evidential burden in relation to the matter in subsection (7).

(9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a sub-fund of a CCIV, may not make a determination under this section.

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

Authorised Version C2022A00008

1233K When property must be converted into money etc.

(1) This section applies if, as a result of the operation of section 1233H, a single item of property of a CCIV forms part of the assets of 2 or more sub-funds of the CCIV.

(2) For the purposes of subsection (1), treat an item of property as a single item if the item would generally be applied or dealt with as an indivisible item in the ordinary course of commercial dealing.

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

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

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

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

Fault-based offence

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

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

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

(1) The ***liabilities*** of a sub-fund of a CCIV at a particular time are the following:
(a) liabilities of the CCIV that relate solely to the business of the sub-fund;
(b) liabilities of the CCIV not covered by paragraph (a), to the extent that it is fair and reasonable in the circumstances to

Authorised Version C2022A00008

allocate the liability to the sub-fund at the time having regard to the following matters:

(i) the extent to which the liability, when it arose, related to the business of the sub-fund;

(ii) the extent to which assets of the sub-fund, and assets of other sub-funds, of the CCIV have been applied to meet the liability;

(iii) the regulations (if any) made for the purposes of subsection (4).

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

Effect of an allocation determination

(2) Despite subsection (1), if:

(a) a particular proportion of a liability of a CCIV is allocated to a sub-fund of the CCIV at a time under a determination made under section 1233M (including a determination as varied under section 1233N); and

(b) the determination is operative at the time (see subsection 1233M(4));

that proportion of the liability is taken to form part of the ***liabilities*** of the sub-fund at that time.

Effect of a Court order about an arrangement or reconstruction

(3) Despite subsections (1) and (2), the ***liabilities*** of a sub-fund of a CCIV:

(a) include liabilities that, in accordance with a Court order made under section 1235F (about arrangements and reconstructions of sub-funds), are to be liabilities of the sub-fund; and

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

Regulations

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

Authorised Version C2022A00008

1233M When an allocation determination is required

(1) This section applies if a liability of a CCIV does not relate solely to the business of one sub-fund of the CCIV.

(2) The corporate director must determine (whether in the CCIV's allocation register or otherwise in writing) the proportion (including nil) of the liability that is to be allocated to each sub-fund of the CCIV.

Requirements for determination

(3) The determination:

(a) must be fair and reasonable in the circumstances and having regard to the matters referred to in paragraph 1233L(1)(b); and

(b) must result in the liability being wholly allocated; and

(c) must be made as soon as practicable after the liability arises; and

(d) must be expressed to apply from the time the liability arises (which may be earlier than the time at which the determination is made).

When the determination is operative

(4) A determination under this section (including a determination as varied under section 1233N) is operative at a time if:

(a) the determination applies at that time; and

(b) the determination is one that a reasonable person in the corporate director's position could make.

(5) A determination under this section is irrevocable, however it may be varied under section 1233N even if it has become inoperative.

Fault-based offence

(6) A person commits an offence if:

(a) the person is subject to a requirement under this section; and

(b) the person fails to comply with the requirement.

Authorised Version C2022A00008

Determinations during winding up and controllership

(7) Subsection (1) does not apply if all of the CCIV's sub-funds are being wound up.

(8) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence based on subsection (6) of this section, a defendant does not bear an evidential burden in relation to the matter in subsection (7).

(9) A liquidator of a sub-fund of a CCIV, or a receiver of property of a sub-fund of a CCIV, may not make a determination under this section.

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

1233N Variations of proportional allocation of liabilities

(1) The corporate director may vary a determination made under section 1233M if it is necessary to do so to ensure that the determination remains operative for the purposes of subsection 1233M(4).

(2) If, as a result of a change in circumstances, a determination has or will become inoperative, the corporate director must vary the determination as soon as is practicable.

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

(3) The variation:

(a) must be fair and reasonable in the circumstances and having regard to:

(i) the matters referred to in paragraph 1233L(1)(b); and

(ii) the time at which it starts to apply; and

(b) must specify the time at which it starts to apply, which may be earlier or later than the time at which the variation is made; and

(c) must result in the liability being wholly allocated; and

(d) must be made in writing.

Authorised Version C2022A00008

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

Authorised Version C2022A00008

appropriate in relation to the assets and liabilities of the sub-funds of a CCIV, including any of the following:

(a) an order requiring the corporate director to update or correct the CCIV's allocation register;

(b) an order declaring that money or property of a CCIV forms part of the assets of a particular sub-fund of the CCIV;

(c) an order declaring that a determination made by the corporate director under section 1233J is not operative;

(d) an order requiring the corporate director to make one or more determinations under section 1233J;

(e) an order declaring the extent to which the money or property forms part of the assets of each sub-fund of the CCIV;

(f) an order declaring that a liability of a CCIV forms part of the liabilities of a particular sub-fund of the CCIV;

(g) an order declaring that a determination made by the corporate director under section 1233M (including a determination as varied under section 1233N), is not operative;

(h) an order requiring the corporate director to make one or more determinations under section 1233M, or to vary a determination under section 1233N;

(i) an order declaring the extent to which a liability forms part of the liabilities of each sub-fund of the CCIV at a time.

(2) The Court may make an order or give directions under subsection (1) if any of the following applies:

(a) the Court is satisfied a determination made by the corporate director under section 1233J or 1233M (including a determination varied under section 1233N) is not operative;

(b) the Court is satisfied that the CCIV's allocation register is otherwise incorrect or deficient;

(c) all of the CCIV's sub-funds are being wound up.

(3) An application for an order or directions under subsection (1) may be made by any of the following:

(a) the corporate director of the CCIV;

(b) a liquidator of a sub-fund of the CCIV;

(c) a controller of property of a sub-fund of the CCIV.

Authorised Version C2022A00008

(4) If the Court makes an order under paragraph (1)(b), (e) or (i), the corporate director does not have the power under section 1233J, 1233M or 1233N (as the case requires) to make a determination that is inconsistent with the order unless:

(a) the order states that the corporate director does have the power to make an inconsistent determination; or

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

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

1234 Unallocated money and property may not be applied for any purpose

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

1234A Requirement for segregated application of assets of sub-funds

(1) The assets of a sub-fund of a CCIV must not be applied, or dealt with, whether directly or indirectly:

(a) subject to paragraph (b), for any purpose other than a purpose covered by section 1234B; or

(b) for a purpose prescribed by regulations made for the purposes of this paragraph.

Note: For the consequences of a contravention of this requirement, see section 1234F.

(2) Subsection (1) does not apply to:

(a) money or property to which section 1234 applies; or

(b) assets of a sub-fund of the CCIV, to the extent the assets consist of property to which section 1233K (about property that has to be converted into money etc.) applies.

Note: For paragraph (b), see instead section 1234C.

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

Authorised Version C2022A00008

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

Liquidators

(4) However, a liquidator or provisional liquidator of a sub-fund of a CCIV may:

(a) make a disposition of assets of the sub-fund that is an exempt disposition for the purposes of subsection 468(2), as that subsection applies to the sub-fund under Division 5 of Part 8B.6; or

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

1234B Purposes for which sub-fund assets may be applied

This section covers the following purposes:

(a) meeting liabilities of the sub-fund;

(b) carrying on the business of the sub-fund;

(c) paying a dividend to members of the sub-fund;

(d) providing consideration to a member of the sub-fund in respect of a reduction of share capital affecting the sub-fund;

(e) redeeming redeemable shares or redeemable preference shares that are referable to the sub-fund;

(f) making a payment covered by section 1237Y (about winding up);

(g) making a payment covered by section 1236K (about certain priority payments by a receiver);

(h) complying with a compromise or arrangement relating to the sub-fund and approved by the Court under paragraph 411(4)(b), or an order made under section 413 in relation to such a compromise or arrangement;

(i) making any other distribution to members of the sub-fund that the CCIV is permitted by this Act and its constitution to make;

(j) a purpose prescribed by regulations made for the purposes of this paragraph.

Authorised Version C2022A00008

Note: The assets may also be applied in accordance with a court order: see subsection 1234E(2).

1234C Property that is required to be converted to be applied only for that purpose

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

Note: For the consequences of a contravention of this requirement, see section 1234F.

1234D 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 1234F.

1234E 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 1234, 1234A, 1234C or 1234D, 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 1234, 1234A, 1234C or 1234D, 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.

1234F Consequences of non-compliant application of assets

(1) If money or property of a CCIV is applied or dealt with in contravention of section 1234, 1234A, 1234C or 1234D, 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).

Authorised Version C2022A00008

(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 1234, 1234A, 1234C or 1234D.

Fault-based offence

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

Strict liability offence

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

Division 5—How CCIV assets must be held

1234G Who may hold the assets of a CCIV

(1) The money and property of a CCIV may be held by the CCIV or another person.

(2) Subsection (1) is subject to the regulations made for the purposes of this subsection.

Note: This Division contains requirements for holding the money and property of a CCIV. Further requirements that apply to a CCIV or another person who holds such assets may be prescribed by regulations made for the purposes of subsection (2).

1234H Person other than CCIV holds money or property on trust

(1) A person other than the CCIV who holds money or property of the CCIV is taken to hold the money or property on trust for the CCIV.

(2) To avoid doubt, nothing in this Chapter is intended to have the effect of making a CCIV or its corporate director a trustee or trustees of the money or property of the CCIV.

Authorised Version C2022A00008

1234J How CCIV money and property must be held

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

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

(2) A person who holds money or property of a CCIV that has not yet been clearly identified in the CCIV's allocation register as forming part of the assets of a sub-fund or sub-funds of the CCIV must hold that money or property separately from any other property.

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

(3) Despite subsection (1), a person who holds an item of property of a CCIV to which section 1233K (about property that has to be converted into money etc.) applies must hold that item of property separately from any other property.

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

(4) Subsections (1), (2) and (3) are subject to the regulations made for the purposes of this subsection.

Strict liability offence

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

1234K 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).

Authorised Version C2022A00008

(3) Without limiting subsection (1), regulations made for the purposes of that subsection may prescribe assets that are held outside of Australia in prescribed circumstances as a class of assets.

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 9 of this Part);
(d) extraordinary resolution (see section 9);
(e) member (see section 1222Q);
(f) property (see subsection 51F(3));
(g) solvent and insolvent (see section 1231A);
(h) special resolution (see section 9).

Terms or expressions that do not have a particular meaning in relation to a sub-fund

(2) If:

Authorised Version C2022A00008

(a) a term or expression has a particular meaning in this Act or in a provision of this Act in relation to a company, corporation or body corporate; and

(b) because of a reference (including an implied reference) that is required by this Part to be substituted with a reference to a sub-fund, it is necessary to determine the meaning of the term or expression in relation to a sub-fund of a CCIV; and

(c) the term or expression does not have a particular meaning in relation to a sub-fund of a CCIV;

then the meaning the term or expression has in relation to the sub-fund is the meaning the term or expression would have in relation to the CCIV if the CCIV had no other sub-funds.

Note: For example, the term ***related entity*** is defined in section 9 in relation to a body corporate, and is not defined in relation to a sub-fund of a CCIV. To determine whether a person is a related entity of a sub-fund:

(a) first, assume that the CCIV has no other sub-funds (this includes disregarding any shares held by the CCIV that are assets of other sub-funds of the CCIV); and

(b) then, apply the definition of ***related entity*** in section 9 to the CCIV based on that assumption.

As a result, a member of the CCIV (paragraph (d) of the definition of ***related entity***) will only be a related entity of a sub-fund of the CCIV if the person is a member of the sub-fund.

Division 2—Arrangements and reconstructions of sub-funds

1235A Object of this Division

The object of this Division is to provide for arrangements and reconstructions of sub-funds of CCIVs to occur in the same way that arrangements and reconstructions of Part 5.1 bodies occur.

1235B 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.

Authorised Version C2022A00008

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 1235E.

1235C 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 the Corporations legislation (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) a provision prescribed by regulations made for the purposes of this paragraph.

Authorised Version C2022A00008

Translation rules

(4) In the application of the arrangements and reconstructions provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision …	Column 2 substitute a reference to …
1	refers to the Part 5.1 body (the ***relevant body***) (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 ***officer*** 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

Note: For item 2—for example, the draft explanatory statement provided for in subsection 411(2) must state any material interests of the corporate director and of the directors of the corporate director.

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if

Authorised Version C2022A00008

the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

Note 1: For example, references to the Part 5.1 body, in the context of the body as a party to a compromise or arrangement, are references to the CCIV, because the CCIV is the legal person that is a party to, and that is bound by, the compromise or arrangement.

Note 2: For example, references to the Part 5.1 body, in the context of identifying a liquidator, are references to the sub-fund, because winding up of a CCIV takes place at the sub-fund level.

(6) If a reference in a provision to the relevant body is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1235D Persons not to be appointed to administer compromise or arrangement

Subsection 411(7) has effect in relation to a CCIV as if the persons referred to in that subsection included a person who holds money or property of the CCIV.

1235E Provisions for facilitating reconstruction and amalgamation of sub-funds within a CCIV

(1) If:

(a) a compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of a sub-fund or sub-funds or the amalgamation of 2 or more sub-funds; and

(b) under the scheme, the whole or any part of the undertaking or of the property of a sub-fund concerned in the scheme (the ***transferor sub-fund***) is to become a part of the undertaking or of the property of another sub-fund of the same CCIV;

the Court may by order provide for any of the matters referred to in subsection 413(1) as if the other sub-fund were the transferee company referred to in that subsection.

(2) Nothing in this section limits the orders a Court may make under section 413 if it approves a compromise or arrangement relating to a sub-fund of a CCIV.

Authorised Version C2022A00008

1235F 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

1236 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.

1236A 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

1236B 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

Authorised Version C2022A00008

(b) may be made only in relation to property of a CCIV that is property of a particular sub-fund of the CCIV.

(2) The appointments covered by this subsection are appointments, whether made under a power contained in an instrument, or by a Court, of a person to act as a:

(a) receiver; or

(b) receiver and manager; or

(c) controller;

of property of the CCIV.

Note: A Court may appoint a receiver under section 233, 283HB, 1101B or 1323.

1236C Persons not to act as receivers

(1) A person is not qualified to be appointed, and must not act, as receiver of property of a sub-fund of a CCIV if the person:

(a) is a secured party in relation to any property (including PPSA retention of title property) of the sub-fund; or

(b) is the corporate director of the CCIV; or

(c) is a person who holds money or property of the CCIV; or

(d) is an auditor of the CCIV or the sub-fund; or

(e) is a director, secretary, senior manager or employee of a body corporate that is a secured party in relation to any property (including PPSA retention of title property) of the sub-fund; or

(f) is not a registered liquidator; or

(g) is a director, secretary, senior manager or employee of:

(i) the corporate director; or

(ii) a body corporate related to the corporate director; or

(iii) a body corporate related to the CCIV; or

(h) unless ASIC directs in writing that this paragraph does not apply in relation to the person in relation to the sub-fund of the CCIV—has at any time within the last 12 months been:

(i) a corporate director or promoter of the CCIV; or

(ii) a director, secretary, senior manager, employee or promoter of the corporate director or a related body corporate of the CCIV or the corporate director.

Authorised Version C2022A00008

(2) Paragraph (1)(f) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the sub-fund concerned.

(3) Section 418 does not apply to a CCIV.

(4) In this section:

senior manager does not include a receiver and manager.

1236D Notifying of appointment or cessation of controller

If:

(a) a person (the ***controller***) is appointed as, or ceases to be, the controller of property of a sub-fund of a CCIV; and

(b) one or more persons, other than the CCIV, holds assets of the sub-fund of the CCIV;

the controller must, as soon as practicable, and in any event within 3 business days after the controller's appointment or cessation, notify each such person in writing of the appointment or cessation.

Subdivision C—Application of Part 5.2 to control of property of sub-funds

1236E Applying Part 5.2 etc. to sub-funds

(1) The controller provisions referred to in subsection (2) apply to a CCIV with:

(a) the modifications set out in this Division; and

(b) such other modifications as are made necessary by the fact that the provisions are applying to a sub-fund instead of to a corporation.

Controller provisions

(2) The provisions (the ***controller provisions***) are as follows:

(a) Part 5.2 and Division 2B of Part 5.7B (other than a provision excluded by subsection (3));

(b) the other provisions of the Corporations legislation (other than a provision excluded by subsection (3)) to the extent to

Authorised Version C2022A00008

which they relate to the operation of the provisions referred to in paragraph (a).

(3) For the purposes of subsection (2), the provisions excluded from the controller provisions are as follows:

(a) section 416;

(b) section 418;

(c) a provision prescribed by regulations made for the purposes of this paragraph.

Note: Section 1236C 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 ***relevant corporation***) 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

Authorised Version C2022A00008

Substitutions to be made		
Item	**Column 1** **If the provision …**	**Column 2** **substitute a reference to …**
		definition of ***officer*** of a CCIV in section 1224B in relation to the sub-fund
4	refers to shares in the relevant corporation	shares referable to the sub-fund
5	refers to debentures of the relevant corporation	debentures referable to the sub-fund

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

(6) If a reference in a provision to the relevant corporation is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

Subdivision D—Modified duties and powers of receivers etc.

1236F Liability of controller

(1) Section 1224M (about extended liability for acts of agents) does not apply to a person who, as agent for the CCIV, enters into possession or assumes control of any property of a sub-fund of the CCIV for the purposes of enforcing any security interest.

(2) Subsection (1) does not affect the application of section 419.

1236G Powers of receiver

If:

(a) a receiver is appointed in respect of property of a sub-fund of a CCIV; and

(b) one or more persons, other than the CCIV, holds assets of the sub-fund of the CCIV;

Authorised Version C2022A00008

the powers conferred under section 420 on the receiver are taken to include the power to instruct each such person in relation to dealing with the assets of the sub-fund.

1236H Controller may require reports relating to other sub-funds if necessary

The affairs of a CCIV about which a controller of property of a sub-fund of the CCIV may require a report under section 430 include:

(a) the affairs of the sub-fund; and

(b) the affairs of any other sub-fund, to the extent the information about those affairs is required by the controller for the purpose of attaining the objectives for which the controller was appointed.

1236J 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

1236K 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.

Authorised Version C2022A00008

1236L Transfer of books to ASIC etc.

(1) Before ASIC destroys, in accordance with subsection 422D(9), books relating to the control of property of a sub-fund of a CCIV, ASIC must notify the CCIV that it intends to do so.

(2) Despite subsection 422D(9), if:

(a) ASIC retains books under subsection 422D(8) in relation to the control of property of a sub-fund of a CCIV; and

(b) the retention period mentioned in that subsection ends; and

(c) the CCIV, by resolution of the corporate director, directs ASIC not to destroy the books;

ASIC must, as soon as practicable, transfer possession or control of those books to the CCIV.

Division 4—Administration and restructuring

1236M Part 5.3A does not apply to a CCIV

Part 5.3A (about the administration of a company's affairs with a view to executing a deed of company arrangement) does not apply to a CCIV or a sub-fund of a CCIV.

1236N Part 5.3B does not apply to a CCIV

Part 5.3B (about restructuring a company) does not apply to a CCIV or a sub-fund of a CCIV.

Division 5—Winding up 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 a separate winding up procedure for each sub-fund.

1237A No winding up of a CCIV

A CCIV cannot be wound up, or placed in liquidation.

Note: If a CCIV has no sub-funds, ASIC must deregister the CCIV: see section 1239K.

Subdivision B—Application of winding up provisions to winding up of sub-funds

1237B Applying winding up provisions to sub-funds

(1) An application to wind up a sub-fund of a CCIV, and the winding up of a sub-fund of a CCIV, are regulated:

(a) by the provisions of this Division; and

(b) by the winding up provisions referred to in subsection (2), applying, so far as they are capable of so doing, subject to:

(i) such modifications as are set out in this Division; and

(ii) such other modifications as are made necessary by the fact that the provisions are applying to a sub-fund instead of to a company.

Winding up provisions

(2) The provisions (the ***winding up provisions***) are as follows:

(a) sections 53 and 91, paragraph 233(1)(a), Parts 5.4, 5.4A, 5.4B, 5.5 and 5.6, Divisions 2 and 2A of Part 5.7B and Schedule 2 (other than a provision excluded by subsection (3));

(b) the other provisions of the Corporations legislation (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

Note 1: Parts 5.8 and 5.9 also apply to CCIVs with modifications: see Divisions 8 and 9 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;

Authorised Version C2022A00008

(b) Subdivision B of Division 3 of Part 5.5 (about simplified liquidation process);
(c) Division 8 of Part 5.6 (about pooling);
(d) 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 ***relevant company***) that is being, is to be, or has been wound up, or is the subject of an application for a winding up order (whether the reference is express or implied, and (if the reference is express) whether the 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 ***officer*** 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

Authorised Version C2022A00008

Substitutions to be made		
Item	**Column 1** **If the provision …**	**Column 2** **substitute a reference to …**
5	refers to debentures of the relevant company	debentures referable to the sub-fund
6	refers to a general meeting, in relation to the relevant company (other than a reference to the company in general meeting)	a members' meeting of the sub-fund (see section 1228B)
7	refers to the relevant company in general meeting	the members of the sub-fund at a members' meeting of the sub-fund
8	refers to the incorporation of the relevant company	the registration of the sub-fund

Note 1: Item 1—for example, in paragraph 459P(1)(b) there is an implied reference to "of the company" after "a creditor", and in paragraph 459P(1)(c) there is an implied reference to "of the company" after "a contributory". For a CCIV, both these implied references would be substituted with implied references to "of the sub-fund".

Note 2: Item 4—for example, if the winding up of a sub-fund of a CCIV commences, section 468A will operate to void a transfer of shares in the CCIV only if the shares are referable to the sub-fund.

Note 3: Item 7—for example, subsection 495(1) requires the members of the sub-fund to appoint a liquidator or liquidators.

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

Note 1: For example, the references in paragraphs 459P(1)(a) and 462(2)(a) to "the company" are taken to be references to "the CCIV" because an application to the Court would be made by the legal person that is the CCIV.

Note 2: For example, the reference in subsection 461(2) to "A company must lodge" is taken to be a reference to "The CCIV must lodge" because the lodging of documents with ASIC would be done by the legal person that is the CCIV.

Note 3: For example, the reference in section 493 to the "corporate state and corporate powers of the company" is a reference to the "corporate state and corporate powers of the CCIV".

Authorised Version C2022A00008

(6) If a reference in a provision to the relevant company is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

Note: For example, the first reference in paragraph 471B(a) to "the company" is a reference to the CCIV, because only a legal person can be a party to a proceeding in a court. However, the operation of section 471B to prevent proceedings against the CCIV is confined to proceedings that relate to the sub-fund.

1237C References to debts etc. of a sub-fund

For the purposes of the application of the winding up provisions, as those provisions apply subject to item 1 of the table in subsection 1237B(4):

(a) a debt of the CCIV is taken to be a debt of a sub-fund to the extent (if any) that the debt is a liability of the sub-fund; and

(b) a claim against the CCIV is taken to be a claim against a sub-fund of the CCIV to the extent (if any) that the claim is a liability of the sub-fund.

Note: A reference to a liability of a sub-fund of a CCIV includes debts and claims: see section 1233A.

Subdivision C—Winding up of a sub-fund in insolvency

1237D When a sub-fund is presumed to be insolvent

Paragraph 459C(2)(a) is taken to be satisfied in relation to a sub-fund of a CCIV if:

(a) the CCIV failed (as defined by section 459F) to comply with a statutory demand; and

(b) the failure affects the sub-fund (see subsection 1237E(3)).

1237E Statutory demand—creditor may serve demand on CCIV

(1) A person may serve a statutory demand on a CCIV under section 459E.

(2) However, subsection 459E(2) applies to a statutory demand served on a CCIV as if it also required the demand to specify, in relation to each debt to which the demand relates:

Authorised Version C2022A00008

(a) the sub-fund or sub-funds of the CCIV of which the debt is a liability; and

(b) if the debt is a liability of 2 or more sub-funds of the CCIV—the proportion of the debt allocated to each sub-fund at the time the demand is served.

(3) Whether a CCIV has failed to comply with a statutory demand is determined under section 459F. If the CCIV has failed to comply with a statutory demand, the failure affects each sub-fund specified in the demand.

Note: The sub-funds specified may be affected by a variation made by the Court under subsection 1237H(3).

1237F Statutory demand—CCIV may apply to set aside demand

(1) A CCIV may apply to the Court under section 459G for an order setting aside a statutory demand served on the CCIV.

(2) Division 3 of Part 5.4 applies in relation to the application subject to the modifications set out in sections 1237G to 1237J.

1237G Statutory demand—determining application to set aside where there is a dispute or offsetting claim

(1) Paragraph 459H(1)(b) applies in relation to a debt to which a demand relates only if the CCIV has an offsetting claim that is an asset of the sub-fund of which the debt or a proportion of the debt (as the case requires) is a liability.

(2) Subsection 459H(2) has effect as if it required the Court to calculate a separate substantiated amount in relation to each sub-fund specified in the statutory demand.

(3) For the purposes of the calculation:

(a) the amount of the debt is to be determined having regard only to a debt or a proportion of a debt (as the case requires) that is a liability of the sub-fund; and

(b) the amount of an offsetting claim is to be determined having regard only to so much of an offsetting claim as is an asset of the sub-fund.

Authorised Version C2022A00008

1237H Statutory demand—determining application to set aside where there is a dispute about the sub-fund

(1) This section applies if:

(a) a CCIV applies under section 459G for an order setting aside a statutory demand served on the CCIV; and

(b) within the statutory period referred to in subsection 459G(3):

(i) a notice complying with subsection (6) is filed with the Court; and

(ii) a copy of the notice is served on the person who served the demand on the CCIV; and

(c) the information specified in the notice about a debt is not the same as the information specified in the demand about the debt; and

(d) section 459H does not apply.

(2) The Court must determine the following information for the debt:

(a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;

(b) if the debt is a liability of 2 or more sub-funds of the CCIV—the proportion of the debt allocated to each sub-fund.

(3) If the information determined by the Court under subsection (2) is different from the information specified in the demand, the Court may make an order:

(a) varying the demand as specified in the order; and

(b) declaring the demand to have had effect, as so varied, as from when the demand was served on the CCIV.

The order may be made subject to conditions.

(4) This section has effect subject to section 459J.

(5) Section 459L has effect as if the orders referred to in that section included an order under this section.

(6) A notice complies with this subsection in relation to a statutory demand if the notice specifies the following information for each debt to which the demand relates:

(a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;

Authorised Version C2022A00008

(b) if the debt is a liability of 2 or more sub-funds of the CCIV—the amount of the debt allocated to each sub-fund.

1237J Substitution of sub-fund where statutory demand not relied on

(1) This section applies if:
   (a) a creditor applies under section 459P for a sub-fund of the CCIV to be wound up in insolvency; and
   (b) the application does not rely on a failure by the CCIV to comply with a statutory demand.

(2) The Court may by order substitute, in an application under section 459P, the sub-fund or sub-funds of the CCIV in respect of which the application is made.

(3) The Court may only make an order if:
   (a) a notice complying with subsection (5) is filed with the Court; and
   (b) the Court thinks it is appropriate to do so.

(4) After the order is made, the application has effect, and may be proceeded with, as if the substituted sub-fund or sub-funds had been the original sub-fund or sub-funds.

(5) A notice complies with this subsection in relation to a creditor if the notice specifies the following information for each of the creditor's debts:
   (a) the sub-fund or sub-funds of the CCIV of which the debt is a liability;
   (b) if the debt is a liability of 2 or more sub-funds of the CCIV—the amount of the debt allocated to each sub-fund.

1237K Declaration of solvency

A written declaration under section 494 about the affairs of a sub-fund may be made by the corporate director of the CCIV.

Authorised Version C2022A00008

Subdivision D—Modified duties and powers of liquidator of a sub-fund

1237L Disqualification of liquidator

Paragraph 532(2)(c) has effect in relation to a sub-fund of a CCIV as if the persons referred to in that paragraph included the following:

(a) a director of the corporate director of the CCIV;

(b) a person (if any), other than the CCIV, who holds assets of the sub-fund.

1237M 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.

1237N 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 1237B(2), as those provisions apply under this

Authorised Version C2022A00008

Division, extend only to matters that relate solely to the carrying on of the business of the sub-fund.

(2) However, the books of a CCIV that a liquidator of a sub-fund is entitled under subsection 477(3) to inspect at any reasonable time include:

(a) the allocation register kept by the corporate director under section 1233C (about the allocation of assets and liabilities to sub-funds); and

(b) any other books of the CCIV, to the extent the inspection of those books is necessary for the liquidator to perform or exercise the functions or powers of that office.

Note 1: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

Note 2: A provisional liquidator also has the power under subsection 477(3): see paragraph 472(4)(b).

Liquidator may instruct person who holds assets of a sub-fund

(3) If:

(a) a liquidator of a sub-fund of a CCIV is appointed; and

(b) one or more persons, other than the CCIV, holds assets of the sub-fund of the CCIV;

the powers conferred on the liquidator are taken to include the power to instruct each such person in relation to dealing with the assets of the sub-fund.

Liquidator may inspect certain books

(4) If:

(a) a liquidator of a sub-fund of a CCIV is appointed; and

(b) one or more persons, other than the CCIV, holds assets of the sub-fund of the CCIV;

the liquidator is entitled to inspect at any reasonable time books of each such person, to the extent the inspection of those books is necessary for the liquidator to perform or exercise the functions or powers of that office.

Note: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

Authorised Version C2022A00008

Definitions

(5) In this section:

liquidator includes a provisional liquidator.

1237P Retention and destruction of books

(1) The following provisions do not apply in relation to a winding up of a sub-fund:

(a) subsection 70-35(3) of Schedule 2 (about when an external administrator is not required to retain books);

(b) subsection 70-35(4) of Schedule 2 (about when an external administrator may destroy books).

Liquidator must transfer books to CCIV

(2) If:

(a) books are retained under section 70-35 of Schedule 2 by a liquidator of a sub-fund in relation to a winding up of the sub-fund; and

(b) the retention period mentioned in subsection 70-35(1) of that Schedule ends; and

(c) before the end of the retention period, the CCIV requests the liquidator by notice in writing to transfer possession or control of the books to the CCIV;

the liquidator must, as soon as practicable after the end of the retention period, transfer possession or control of those books to the CCIV.

(3) Otherwise, the books may be destroyed at the end of the retention period.

Offence

(4) A person commits an offence if:

(a) the person is subject to a requirement under subsection (2); and

(b) the person intentionally or recklessly fails to comply with the requirement.

Authorised Version C2022A00008

Subdivision E—Modified duties and powers of officers of corporate director and CCIV

1237Q Officers of corporate director to help liquidator

(1) Section 530A applies as if each of the following were an officer of a CCIV:

(a) an officer of the CCIV;

(b) an officer of the corporate director of the CCIV;

(c) an officer of a former corporate director of the CCIV.

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

(3) In this section:

officer includes former officer.

1237R Corporate director may retain certain books

(1) The corporate director of a CCIV is entitled, as against a liquidator of a sub-fund of the CCIV, to retain possession of books of the CCIV that relate to:

(a) the business or affairs of the CCIV as a whole; or

(b) the business or affairs of other sub-funds of the CCIV.

Note: Books that the corporate director is not entitled to retain must be delivered to the liquidator: see section 530A.

(2) Subsection (1) applies despite subsection 530B(1).

(3) In this section:

liquidator includes a provisional liquidator.

1237S Corporate director may access certain books

The corporate director of a CCIV is entitled to inspect at any reasonable time books relating to the winding up of a sub-fund of the CCIV, to the extent the inspection of those books is necessary for the corporate director to perform or exercise the functions or powers of that office.

Authorised Version C2022A00008

Note: A person entitled to inspect a book may make copies or take extracts: see subsection 1300(3).

1237T Corporate director may direct ASIC not to destroy books

(1) Before ASIC destroys, in accordance with subsection 70-31(9) of Schedule 2, books relating to the winding up of a sub-fund of a CCIV, ASIC must notify the CCIV that it intends to do so.

(2) Despite subsection 70-31(9) of Schedule 2, if:

(a) ASIC retains books under subsection 70-31(8) of Schedule 2 in relation to the winding up of a sub-fund of a CCIV; and

(b) the retention period mentioned in that subsection ends; and

(c) the CCIV, by resolution of the corporate director, directs ASIC not to destroy the books;

ASIC must, as soon as practicable, transfer possession or control of those books to the CCIV.

1237U Mandatory examination

(1) Section 596A applies in relation to a CCIV as if the following were officers of the CCIV:

(a) a natural person who is an officer of the CCIV;

(b) a natural person who is a director of the corporate director of the CCIV.

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

1237V Court may make order imposing liability on unlicensed person operating CCIV

Where:

(a) a sub-fund of a CCIV is being wound up; and

(b) within the period of 4 years ending before the relation-back day, a person not meeting the requirements in subsection 1224F(1) for the director of a CCIV operated the business and conducted the affairs of the CCIV;

the Court may, on the application of the sub-fund's liquidator, order that the person is personally liable for so much of the

Authorised Version C2022A00008

sub-fund's debts and liabilities as does not exceed an amount specified in the order.

Subdivision F—Proof and ranking of claims

1237W Liquidator must be satisfied debt or claim is a liability of the sub-fund

(1) The liquidator of a sub-fund must determine that the whole or a part of a debt of the CCIV is not admissible to proof against the sub-fund if the liquidator is satisfied that the debt or the part of the debt (as the case requires) is not a liability of the sub-fund.

(2) Such a determination does not have the effect of extinguishing the debt or the part of the debt.

1237X Determination of debts and claims that relate to the business of 2 or more sub-funds and are of uncertain value

(1) This section applies if, in the winding up of a sub-fund, the liquidator admits a debt or claim that:

(a) is a liability of the CCIV that does not relate solely to the business of the sub-fund; and

(b) as at the relevant date, did not bear a certain value.

Note: If the liability relates solely to the business of the sub-fund but is of uncertain value, the liquidator must estimate the value of the debt or claim (paragraph 554A(2)(a)) or refer the question of the value of the debt or claim to the Court (paragraph 554A(2)(b)).

(2) Section 554A applies in relation to the debt or claim as if the value of the debt or claim that is to be estimated as at the relevant date were the value of the whole of the debt or claim (not just the proportion that is applicable to the sub-fund under subsection 1233L(2)).

(3) However, despite subsection 554A(8), for the purposes of Division 6 of Part 5.6, the amount of the debt or claim that is admissible to proof is the product of:

(a) the value as estimated or worked out under section 554A (as modified by this section); and

Authorised Version C2022A00008

(b) the proportion of the liability applicable to the sub-fund under subsection 1233L(2).

1237Y Application of sub-fund property

If a sub-fund of a CCIV is being wound up, the assets of the sub-fund may be applied for the purposes of paying debts and claims that, under section 556 as it applies in relation to the winding up of the sub-fund, must be paid in priority to all other unsecured debts and claims.

Subdivision G—Powers of Courts

1237Z Warrant in relation to books

(1) This section applies in relation to a warrant issued by a Court under subsection 530C(2) on application by the liquidator or provisional liquidator of a sub-fund of a CCIV.

(2) The books of a CCIV that may be searched for under the warrant are any books of the CCIV.

(3) The books of the CCIV that may be seized under the warrant are books of the CCIV that relate to the sub-fund.

Specified person to be in possession of warrant

(4) When executing the warrant, the specified person must be in possession of the warrant or a copy of the warrant.

Notification of entry

(5) Subsections (6) and (7) apply if:
(a) the warrant is being executed in relation to premises; and
(b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.

(6) Before entering the premises under the warrant, the specified person must:
(a) announce that the person is authorised to enter the premises; and

Authorised Version C2022A00008

(b) show the occupier or other person evidence of the person's identity that:

(i) includes a photograph of the person; and

(ii) has not expired.

(7) The specified person must, as soon as practicable:

(a) make a copy of the warrant available to the occupier or other person; and

(b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under this section and section 530C.

Books to be used only for purpose of liquidation

(8) A book of the CCIV seized under the warrant may be used only for the purpose for which it was seized.

Return of seized things

(9) Despite subsection 530C(4), and subject to any contrary order of the Court, a person who has custody of property or a book because of the execution of the warrant must take reasonable steps to return the property or book to the CCIV when the property or book is no longer required to be retained for the purpose for which it was seized.

Receipts

(10) If property or a book is seized under the warrant, the specified person must provide a receipt for the property or book.

(11) If 2 or more books or items of property are seized, they may be covered by the one receipt.

Subdivision H—Recovering property

1237ZA Presumptions to be made in recovery proceedings

A reference in section 588E to financial records a company is required by subsection 286(1) to keep is taken, in relation to a

Authorised Version C2022A00008

winding up of a sub-fund of a CCIV, to be a reference to both of the following:

(a) financial records that the CCIV is required to keep and retain for the sub-fund under subsection 286(1), as that subsection applies in relation to the sub-fund under section 1232A;

(b) financial records that the CCIV is required to keep and retain for itself under subsection 286(1), as that subsection applies to the CCIV under section 1232.

1237ZB Directors of the corporate director

(1) Sections 588FDA and 588FGA apply in relation to a sub-fund of a CCIV as if each of the following were a director of a CCIV:

(a) a director of the CCIV;

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

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

1237ZC Vesting of PPSA security interests if collateral not registered within time

Section 588FL applies in relation to a PPSA security interest granted by a CCIV if:

(a) an order is made, or a resolution is passed, for the winding up of a sub-fund of the CCIV; and

(b) the PPSA security interest is in collateral that is an asset of the sub-fund of the CCIV.

Division 6—Recovering property of sub-funds

1238 Duties owed by directors of corporate director of a CCIV

The object of this Division is to ensure that the officers of the corporate director of a CCIV, instead of the corporate director itself, owe the duties in Divisions 3, 4, 5 and 6 of Part 5.7B.

1238A Applying property recovery provisions to CCIVs

(1) The property recovery provisions referred to in subsection (2) apply to a CCIV subject to:

Authorised Version C2022A00008

(a) such modifications as are set out in this Division; and

(b) such other modifications as are made necessary by the facts that:

(i) for a CCIV, solvency and insolvency are determined at the level of a sub-fund, instead of at the level of the CCIV; and

(ii) the officers to whom the provisions are directed are the officers of the corporate director, instead of the officers of the CCIV.

Property recovery provisions

(2) The provisions (the ***property recovery provisions***) are as follows:

(a) Divisions 3, 4, 5 and 6 of Part 5.7B (other than a provision excluded by subsection (3));

(b) the other provisions of the Corporations legislation (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

(3) For the purposes of subsection (2), the regulations may specify provisions that are excluded from the property recovery provisions.

Translation rules

(4) In the application of the property recovery provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision …	Column 2 substitute a reference to …
1	refers to the company (the ***relevant company***) 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),	the sub-fund (but see subsections (5) and (6))

Authorised Version C2022A00008

Substitutions to be made		
Item	**Column 1** **If the provision …**	**Column 2** **substitute a reference to …**
	and the reference is not covered by another item of this table	
2	refers to the directors, or a director, or the board of the relevant company	the directors, or a director, or the board of the corporate director of the CCIV
3	refers to an officer of the relevant company	an officer of the corporate director
4	refers to shares in the relevant company	shares referable to the sub-fund

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

(6) If a reference in a provision to the relevant company is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1238B References to incurring debts

For the purposes of the application of the property recovery provisions, as those provisions apply subject to item 1 of the table in subsection 1238A(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.

1238C When debts arise in relation to redeemable shares

(1) For the purposes of section 588G, if a CCIV takes action set out in column 1 of an item of the following table, it incurs a debt at the time set out in column 2 of the item.

Authorised Version C2022A00008

When debts are incurred		
Item	**Column 1** **Action of company**	**Column 2** **When debt is incurred**
1	redeeming redeemable shares that are redeemable only at its option	when the company exercises the option
2	issuing redeemable shares that are issued on terms that they are liable to be redeemed otherwise than only at its option	when the shares are issued
3	converting under section 1230C a share that is not a redeemable share into a share that is liable to be redeemed otherwise than only at its option	when the shares are converted

(2) This section has effect in relation to a CCIV in addition to the table set out in subsection 588G(1A).

Division 7—External administration offences

1238D Applying external administration offences to CCIVs

(1) The external administration offences provisions referred to in subsection (3) apply to a CCIV.

(2) In addition to the application referred to in subsection (1), the external administration offences provisions apply to a CCIV subject to:

(a) such modifications as are set out in this Division; and

(b) such other modifications as are necessary.

External administration offences provisions

(3) The provisions (the ***external administration offences provisions***) are as follows:

(a) Part 5.8 (other than a provision excluded by subsection (4));

Authorised Version C2022A00008

(b) the other provisions of the Corporations legislation (other than a provision excluded by subsection (4)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

(4) For the purposes of subsection (3), the regulations may specify provisions that are excluded from the external administration offences provisions.

Translation rules

(5) In the application of the external administration offences provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision …	Column 2 substitute a reference to …
1	refers to the company (the ***relevant company***) 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 ***officer*** 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

Authorised Version C2022A00008

(6) Despite item 1 of the table in subsection (5), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

(7) If a reference in a provision to the relevant company is, as a result of subsection (6), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

1238E Interpretation of ceased to carry on business

(1) For the purposes of Part 5.8, a sub-fund is taken to have ceased to carry on business only if:

(a) 2 months have passed since a notice under subsection 1239(5) (about voluntary deregistration of a sub-fund) relating to the sub-fund was published and ASIC has not been informed that the part of the business of the CCIV that is registered as the sub-fund is being carried on; or

(b) ASIC has published a notice under subsection 1239B(1) (about ASIC initiated deregistration of a sub-fund) relating to the sub-fund.

(2) Subsection 589(3) does not apply to determine when a sub-fund of a CCIV is taken to have ceased to carry on business.

1238F Frauds by officers

(1) Section 596 applies in relation to a CCIV as if the following were officers of the CCIV:

(a) a natural person who is an officer of the CCIV;

(b) a natural person who is a director of the corporate director of the CCIV.

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

Authorised Version C2022A00008

Division 8—Miscellaneous

1238G Applying external administration miscellaneous provisions to sub-funds

(1) The external administration miscellaneous provisions referred to in subsection (2) apply to a CCIV subject to:

(a) such modifications as are set out in this Division; and

(b) such other modifications as are necessary.

External administration miscellaneous provisions

(2) The provisions (the ***external administration miscellaneous provisions***) are as follows:

(a) Part 5.9 (other than a provision excluded by subsection (3));

(b) the other provisions of the Corporations legislation (other than a provision excluded by subsection (3)) to the extent to which they relate to the operation of the provisions referred to in paragraph (a).

(3) For the purposes of subsection (2), the regulations may specify provisions that are excluded from the external administration miscellaneous provisions.

Translation rules

(4) In the application of the external administration miscellaneous provisions, those provisions apply as if the substitutions set out in the following table were made.

Substitutions to be made

Item	Column 1 If the provision …	Column 2 substitute a reference to …
1	refers to the corporation (the ***relevant corporation***) in relation to which the provision applies (whether the reference is express or implied, and (if the reference is express) whether the corporation is referred to as a company, a body	the sub-fund (but see subsections (5) and (6))

Substitutions to be made		
Item	**Column 1** **If the provision …**	**Column 2** **substitute a reference to …**
	corporate, a corporation, or in some other way), and the reference is not covered by another item of this table	
2	refers to an officer of the relevant corporation	each of the following: (a) a director of the CCIV; (b) a person covered by paragraph (b), (c) or (d) of the definition of ***officer*** of a CCIV in section 1224B in relation to the sub-fund
3	refers to shares in the relevant corporation	shares referable to the sub-fund

(5) Despite item 1 of the table in subsection (4), a reference covered by column 1 of that item is taken to be a reference to the CCIV if the context of the reference so requires (for example, because the reference requires the legal capacity and powers of a company).

(6) If a reference in a provision to the relevant corporation is, as a result of subsection (5), taken to be a reference to the CCIV, the operation of the provision in relation to the CCIV is confined, to the extent possible, to the sub-fund.

Division 9—Deregistration and transfer of registration

Subdivision A—Deregistration

1239 Deregistration of a sub-fund—voluntary

Who may apply for deregistration

(1) An application to deregister a sub-fund of a CCIV may be lodged with ASIC by:
  (a) the CCIV; or
  (b) the corporate director of the CCIV; or

Authorised Version C2022A00008

(c) a liquidator of the sub-fund.

If the CCIV lodges the application, it must nominate a person to be given notice of the deregistration.

Circumstances in which application can be made

(2) A person may apply only if:
(a) the sub-fund has no assets or liabilities; and
(b) the CCIV is not a party to any legal proceedings that relate to the sub-fund.

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

ASIC may ask for information about officers

(4) The applicant must give ASIC any information that ASIC requests about the following officers:
(a) the current and former officers of the CCIV;
(b) the current and former officers of the corporate director of the CCIV.

Deregistration procedure

(5) If:
(a) ASIC decides to deregister the sub-fund under this section; and
(b) ASIC is not aware of any failure to comply with subsections (1) to (4);

ASIC must:
(c) give notice of the proposed deregistration on ASIC database; and
(d) publish notice of the proposed deregistration in the prescribed manner.

(6) When 2 months have passed since the publication of the notice under paragraph (5)(d), ASIC may deregister the sub-fund.

(7) ASIC must give notice of the deregistration to:
(a) the applicant; or

Authorised Version C2022A00008

(b) the person nominated in the application to be given the notice.

Notices taken to have been given under section 601AA

(8) For the purposes of the provisions of this Act (other than a provision of this Chapter):
(a) a notice given under paragraph (5)(c) is taken to have been given under paragraph 601AA(4)(c); and
(b) a notice published under paragraph (5)(d) is taken to have been published under subsection 601AA(4)(d).

ASIC must not deregister a sub-fund that is an Australian passport fund if the fund has certain members

(9) However, ASIC must not decide, under this section, to deregister a sub-fund that is an Australian passport fund if:
(a) there are members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; or
(b) there are members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(10) For the purposes of subsection (9), ignore any member of the fund that:
(a) is, or has at any time been, the operator of the fund; or
(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

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

1239A Deregistration of a sub-fund—ASIC initiated

Circumstances in which ASIC may deregister

(1) ASIC may decide to deregister a sub-fund of a CCIV if:
(a) the CCIV has not lodged any documents that relate to the sub-fund under this Act in the last 18 months; and

Authorised Version C2022A00008

(b) ASIC has no reason to believe that the part of the business of the CCIV that is registered as the sub-fund is being carried on.

(2) ASIC may also decide to deregister a sub-fund of a CCIV if:

(a) the CCIV's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment; and

(b) the review fee is to any extent a liability of the sub-fund.

(3) ASIC may also decide to deregister a sub-fund of a CCIV if the sub-fund is being wound up and ASIC has reason to believe that:

(a) the liquidator of the sub-fund is no longer acting; or

(b) the sub-fund's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or

(c) the sub-fund's affairs have been fully wound up under Part 5.4 (as modified by this Part) and the assets of the sub-fund are not enough to cover the costs of obtaining a Court order for the sub-fund's deregistration.

(4) However, ASIC must not decide, under this section, to deregister a sub-fund that is an Australian passport fund if ASIC is of the opinion that to do so would not be in the interests of:

(a) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and

(b) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(5) For the purposes of subsection (4), ignore any member of the fund that:

(a) is, or has at any time been, the operator of the fund; or

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

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

Authorised Version C2022A00008

Show cause notice

(6) Before deciding to deregister a sub-fund, ASIC must give the CCIV a written notice that requires the CCIV to show cause, at a hearing before a specified person, why the sub-fund should not be deregistered.

(7) The notice must specify:
  (a) the grounds on which it is proposed to deregister the sub-fund; and
  (b) a reasonable time and place at which the hearing is to be held.

However, if the CCIV consents, the person conducting the hearing may fix a different time or place.

(8) The person conducting the hearing must:
  (a) give the CCIV an opportunity to be heard at the hearing; and
  (b) give ASIC:
    (i) a report about the hearing; and
    (ii) a recommendation about the grounds in the notice on which it is proposed to deregister the sub-fund.

(9) After considering the report and recommendation, ASIC may decide to:
  (a) take no further action in relation to the matter and give written advice of that decision to the CCIV; or
  (b) deregister the sub-fund.

(10) Neither of the following is a legislative instrument:
  (a) a notice under subsection (6);
  (b) a report under subsection (8) (if it is in writing).

1239B Process for ASIC initiated deregistration of a sub-fund

(1) If ASIC decides under section 1239A to deregister a sub-fund of a CCIV, it must:
  (a) give notice setting out the date on which ASIC proposes to deregister the sub-fund:
    (i) to the CCIV; and
    (ii) to the liquidator of the sub-fund (if any); and

Authorised Version C2022A00008

(iii) to the corporate director; and

(iv) on the ASIC database; and

(b) publish notice of the date on which ASIC proposes to deregister the sub-fund in the prescribed manner.

(2) A notice under paragraph (1)(a) must be given at least 5 business days before the sub-fund is deregistered.

(3) ASIC may deregister the sub-fund if:

(a) 5 business days have passed since the publication of the notice under paragraph (1)(b); and

(b) at the time ASIC deregisters the sub-fund, ASIC has reason to believe that there is no property of the CCIV to which section 1233K (about property that has to be converted) applies.

(4) ASIC does not have to give a person notice under paragraph (1)(a) if ASIC does not have the necessary information about the person's identity or address.

(5) If ASIC deregisters a sub-fund of a CCIV under this section, ASIC must give notice that the fund has been deregistered, and the date on which it has been deregistered, to everyone who was notified of the proposed deregistration under subparagraph (1)(a)(ii) or (iii).

(6) The notice must be given within 5 business days after the sub-fund is deregistered.

Notices taken to have been given under section 601AB

(7) For the purposes of the provisions of this Act (other than a provision of this Chapter):

(a) a notice given under paragraph (1)(a) is taken to have been given under paragraph 601AB(3)(a); and

(b) a notice published under paragraph (1)(b) is taken to have been published under subsection 601AB(3)(b).

1239C 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 8 of this Part.

1239D 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 1239L.

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

Authorised Version C2022A00008

Consequences of deregistration on status as an Australian passport fund

(5) If:

(a) a sub-fund of a CCIV is deregistered; and

(b) the sub-fund was an Australian passport fund;

ASIC must annotate the Register of Passport Funds to indicate that the sub-fund is no longer an Australian passport fund, or cause that annotation to be made on the Register.

1239E The Commonwealth's and ASIC's power to fulfil outstanding obligations in relation to deregistered sub-fund

The Commonwealth or ASIC may do an act on behalf of the CCIV of a deregistered sub-fund or the liquidator of the sub-fund if the Commonwealth or ASIC is satisfied that the CCIV or liquidator would be bound to do the act if the sub-fund had not been deregistered.

Note: This power is a general one and is not limited to acts in relation to property vested in the Commonwealth under subsection 601AD(1A), or ASIC under subsection 601AD(2). The Commonwealth or ASIC has all the powers that automatically flow from the vesting of property under that subsection (see subsections 601AD(3A) and (4)) and may exercise those powers whether or not the CCIV was bound to do so.

1239F Claims against insurers in relation to deregistered sub-fund

A person may recover from the insurer of a CCIV an amount that was payable to the CCIV under the insurance contract if:

(a) a sub-fund of the CCIV is deregistered; and

(b) the CCIV has a liability to the person that was a liability of the sub-fund; and

(c) the insurance contract covered that liability immediately before the sub-fund was deregistered.

1239G Reinstatement of a sub-fund

(1) The registration of a sub-fund of a CCIV may be reinstated under section 601AH as if the sub-fund were a company.

Note: Notice of the reinstatement must be given: see section 1239J.

Authorised Version C2022A00008

(2) If the registration of a sub-fund of a CCIV is reinstated under section 601AH, the sub-fund is taken to have been registered throughout the period it was deregistered.

(3) The Court's power to make an order under subsection 601AH(3) includes the power to make an order in relation to the following:

(a) the assets or liabilities of a sub-fund of a CCIV whose registration is reinstated;

(b) the assets or liabilities of any other sub-fund of the CCIV which is affected by the reinstatement.

(4) If the registration of a sub-fund of a CCIV is reinstated under section 601AH, any property of the CCIV that was property of the sub-fund that is still vested in the Commonwealth or ASIC revests in the CCIV. If the CCIV held particular property subject to a security or other interest or claim, the CCIV takes the property subject to that interest or claim.

Note: The CCIV must allocate the property to the sub-fund in accordance with Subdivision B of Division 3 of Part 8B.5.

(5) Subsections 601AH(1A), (4), (4A) and (5) do not apply in relation to the reinstatement of the registration of a sub-fund of a CCIV.

Registration as an Australian passport fund not reinstated

(6) The reinstatement of the registration of a sub-fund of a CCIV does not result in the sub-fund's registration as a passport fund under Part 8A.3 being reinstated, even if the sub-fund was an Australian passport fund immediately before its deregistration.

1239H CCIV reinstated following reinstatement of a sub-fund

(1) If a CCIV is deregistered and:

(a) ASIC reinstates the registration of a sub-fund of the CCIV under subsection 601AH(1); or

(b) the Court makes an order that ASIC reinstate the registration of the sub-fund under subsection 601AH(2);

ASIC must also reinstate the registration of the CCIV.

Note: Notice of the reinstatement of the registration of the CCIV must be given: see section 1239J.

Authorised Version C2022A00008

Effect of reinstatement

(2) If the registration of a CCIV is reinstated the CCIV is taken to have continued in existence as if it had not been deregistered.

Note: Any property of the CCIV that comprised assets of the sub-fund that is still vested in the Commonwealth or ASIC revests in the CCIV: see subsection 1239G(4).

(3) To avoid doubt, the reinstatement of the registration of the CCIV also has the effect of reinstating, at the time the registration is reinstated, ASIC's record, kept as part of the registration, of the company that is the corporate director or temporary corporate director of the CCIV.

Note: The company named in the record as the corporate director or temporary corporate director of the CCIV is the corporate director of the CCIV (see subsection 1224(3)). See section 1224S for what happens if the corporate director does not meet the requirements of section 1224F.

1239J Notices relating to reinstatement of a sub-fund

If the registration of a sub-fund of a CCIV is reinstated under section 601AH, ASIC must publish notice in the Gazette and give notice to the corporate director of the CCIV of the following:

(a) the reinstatement of the registration of the sub-fund;

(b) if as a result of reinstating the sub-fund the registration of the CCIV is also reinstated under section 1239H—the reinstatement of the registration of the CCIV.

1239K Deregistration of a CCIV

CCIV must be deregistered if it has no registered sub-funds

(1) If, as the result of ASIC deregistering a sub-fund of a CCIV, the CCIV has no registered sub-funds, ASIC must deregister the CCIV.

Note: Subject to this Subdivision, sections 601AD to 601AG apply in relation to the deregistration of the CCIV.

(2) ASIC must give the corporate director of the CCIV written notice that the CCIV has been deregistered and the date on which it has been deregistered.

Authorised Version C2022A00008

(3) The notice must be given within 5 business days after the date the CCIV has been deregistered.

CCIV may not be deregistered under section 601AA, 601AB or 601AC

(4) ASIC may not deregister a CCIV under section 601AA, 601AB or 601AC.

1239L Books of the CCIV to be kept by former corporate director

(1) If a CCIV is deregistered, the corporate director of the CCIV immediately before the deregistration must keep the CCIV's books (other than books that a liquidator has to keep under subsection 70-35(1) of Schedule 2) for 3 years after the deregistration.

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

(3) Books that the corporate director of the CCIV is required to keep under subsection (1) are taken to be books of the corporate director for the purposes of subsections 601AD(5) to (7) as those sections apply in relation to deregistration of the corporate director.

Note: If the corporate director is deregistered, the directors of the corporate director immediately before deregistration must keep the corporate director's books for 3 years after the deregistration: see subsection 601AD(5).

(4) Subsections 601AD(5) to (7) do not apply in relation to the deregistration of a CCIV.

1239M A CCIV may not be reinstated under section 601AH

The registration of a CCIV may not be reinstated under section 601AH.

Note: If a CCIV has been deregistered and the registration of a sub-fund is reinstated under section 601AH, ASIC must reinstate the registration of the CCIV: see section 1239H.

Authorised Version C2022A00008

Subdivision B—Transfer of registration

1239N Registration of CCIV cannot be transferred

Part 5A.2 does not apply to a CCIV.

Part 8B.7—Control, financial services and disclosure

Division 1—Takeovers, compulsory acquisitions and buy-outs

1240 Meaning of *securities*

The term ***securities*** has the same meaning in this Part as it has in Chapters 6 to 6CA (see subsection 92(3)).

1240A Takeovers—prohibition on acquisitions of shares in a listed CCIV

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.

1240B 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);

Authorised Version C2022A00008

(c) subsection 638(3);
(d) subsection 639(1);
(e) subsection 640(1);
(f) subsection 642(1);
(g) subsection 658C(5);
(h) subsection 670B(1);
(i) subsection 670D(3).

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

1240C Takeovers—bidder's statement content

(1) Subsection 636(1) has effect as if:
(a) a reference in paragraph 636(1)(c) to a company or body did not include a reference to a CCIV that is a listed company; and
(b) subsection 636(1) also included the following paragraph:
"(da) if the target is a CCIV that is a listed company—details of the bidder's intentions regarding:
(i) the continued operation of the CCIV; and
(ii) any major changes to be made to the operation of the CCIV, including any redeployment of the property of the CCIV; and
(iii) any plans to remove the current corporate director of the CCIV and appoint a new corporate director;".

(2) Subsection 636(1) also has effect as if:
(a) a reference in paragraph 636(1)(g) to securities did not include a reference to securities in a CCIV that is a listed company; and
(b) subsection 636(1) also included the following paragraph:
"(gb) if any securities in a CCIV that is a listed company are offered as consideration under the bid and the bidder is:
(i) a retail CCIV; or
(ii) the corporate director of a retail CCIV; or
(iii) a person who controls a retail CCIV or the corporate director of a retail CCIV;

Authorised Version C2022A00008

all material that would be required by section 1013C to be included in a Product Disclosure Statement given to a person in an issue situation (within the meaning of section 1012B) in relation to those securities;".

1240D Takeovers Panel—declaration of unacceptable circumstances may only be made in relation to a listed CCIV

The Panel may only declare under section 657A circumstances to be unacceptable circumstances in relation to the affairs of a CCIV if the CCIV is a listed company.

1240E Compulsory acquisition—only available for securities in a listed CCIV

(1) Securities in a CCIV may only be compulsorily acquired or bought out under Chapter 6A if the CCIV is a listed company.

(2) If Part 6A.1 applies to a CCIV that is a listed company at the end of the bid period for a takeover, that Part continues to apply to the CCIV in relation to the takeover bid even if the CCIV ceases to be listed.

(3) If Part 6A.2 applies to a CCIV that is a listed company when a compulsory acquisition notice under section 664C is lodged, that Part (including Division 2 of that Part) continues to apply to the CCIV in relation to the notice even if the CCIV ceases to be listed.

Division 2—Continuous disclosure

1240F Continuous disclosure—CCIVs

Paragraph 675(2)(c) applies in relation to securities in a CCIV in the same way the paragraph applies in relation to securities that are managed investment products.

Authorised Version C2022A00008

Division 3—Fundraising

1240G Fundraising rules do not apply to CCIVs

Subject to subsection 1240H(6), in Chapter 6D, ***securities*** does not include a security in a CCIV.

1240H Offering securities of a CCIV or sub-fund that does not exist

(1) A person must not offer securities of a CCIV that does not exist if the offer would give rise to an obligation to give a Product Disclosure Statement under Chapter 7 (as that Chapter applies to securities in a CCIV under Division 4 of Part 8B.7) if the CCIV did exist.

(2) A person must not offer securities of a CCIV that are referable to a sub-fund of the CCIV that has not been established if the offer would give rise to an obligation to give a Product Disclosure Statement under Chapter 7 (as that Chapter applies to securities in a CCIV under Division 4 of Part 8B.7) if the sub-fund were established.

Note 1: For when a sub-fund is established, see section 1222T.

Note 2: For when shares and debentures are referable to a sub-fund of a CCIV, see sections 1230 (for shares) and 1231N (for debentures).

(3) Subsections (1) and (2) apply even if it is proposed to incorporate the CCIV or register the sub-fund.

(4) In this section, ***securities*** has the same meaning as it has in Chapter 6D (apart from section 1240G).

(5) For the purposes of subsection (2), a security referred to in paragraph (c) or (d) of the definition of ***security*** in section 761A is taken to be referable to the sub-fund of the CCIV to which the relevant security covered by paragraph (a) or (b) of that definition is, or would be, referable.

Note: For example, an option to acquire by way of issue a share in a CCIV (paragraph (d) of the definition) is referable to the sub-fund of the CCIV to which the share (paragraph (a) of the definition) is referable.

Authorised Version C2022A00008

(6) The following provisions apply in relation to this section in the same way the provisions apply in relation to Chapter 6D:
  (a) subsections 700(2), (3) and (4);
  (b) sections 702, 703 and 703A.

Division 4—Financial services and markets

1241 Application of Chapter 7 to CCIVs

Chapter 7 applies to a CCIV subject to the modifications set out in this Division.

1241A For Chapter 7, treat the corporate director as providing financial services etc. being provided by the CCIV

(1) This section applies to a provision of Chapter 7 that applies in relation to:
  (a) a financial services licensee; or
  (b) a financial service or a financial services business; or
  (c) a matter prescribed by the regulations for the purposes of this paragraph.

General rule

(2) For the purposes of that provision of Chapter 7:
  (a) treat any conduct engaged in by, or on behalf of, a CCIV as also being engaged in by, or on behalf of, the corporate director of the CCIV; and
  (b) treat any conduct relating to the CCIV that is engaged in by a person (other than the corporate director of the CCIV) as also being engaged in by that person in relation to the corporate director of the CCIV.

(3) In subsection (2), ***conduct*** means an act, an omission to perform an act or a state of affairs.

Authorised Version C2022A00008

Exceptions

(4) If the CCIV issues a security in the CCIV, then subsection (2) does not treat the corporate director of the CCIV as also being the issuer of the security.

(5) If the CCIV is a participant (within the meaning of Chapter 7) in:

(a) a clearing and settlement facility; or

(b) a financial market;

subsection (2) does not treat the corporate director of the CCIV as also being a participant (within the meaning of Chapter 7) in relation to the facility or market.

(6) Subsection (2) does not apply in any circumstances prescribed by the regulations for the purposes of this subsection.

1241B Certain licensing concepts do not apply to CCIVs

(1) Subsection 911A(1) (about the requirement to be licensed to carry on a financial services business) does not apply to a CCIV.

Note: That subsection will instead apply to the corporate director of the CCIV in relation to any financial services business carried on by the CCIV (see subsection 1241A(2)).

(2) Subsection 911B(1) (about requirements for providing financial services on behalf of another person) does not apply to a CCIV.

Note: This subsection confirms that the CCIV is not subject to extra requirements if it is viewed as providing financial services on behalf of its corporate director.

(3) For the purposes of Chapter 7, treat a CCIV as not being a representative (within the meaning of Part 7.6) of the corporate director of the CCIV.

Note: Activities of the CCIV relating to a financial service etc. are instead treated as activities of the corporate director (see subsection 1241A(2)).

(4) For the purposes of Chapter 7, a CCIV cannot be authorised under Division 5 (about authorised representatives of licensees) of Part 7.6.

Authorised Version C2022A00008

Note: Activities of the CCIV relating to a financial service etc. are instead treated as activities of the corporate director (see subsection 1241A(2)).

1241C Extra kinds of financial services relating to CCIVs

(1) Subject to paragraph 766A(2)(b), treat subsection 766A(1) as also providing that a person provides a ***financial service*** if:

(a) the person operates the business and conducts the affairs of a CCIV; and

(b) the person is the corporate director of the CCIV.

Note: Subsection (1) means persons other than the corporate director will not be treated as providing that financial service if they operate the business and conduct the affairs of the CCIV while:

(a) acting as an agent of the CCIV, or as an agent or employee of the corporate director; or

(b) taking steps to wind up the CCIV.

(2) For the purposes of Chapter 7, each of the members of a CCIV covered by subsection (1) is a client for the financial service covered by that subsection.

1241D CCIV buy-back or redemption facility does not make a market

Subsection 766D(1) does not apply to a CCIV, nor to the corporate director of a CCIV, for:

(a) a proposed buy-back by the CCIV; or

(b) the proposed issuing or redeeming by the CCIV of:

(i) redeemable shares in the CCIV; or

(ii) redeemable preference shares in the CCIV.

1241E 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;

Authorised Version C2022A00008

(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***.

1241F 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:

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

RSE licensee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Authorised Version C2022A00008

1241G Immediate suspensions or cancellations of licences

Treat subsection 915B(3) as also providing that ASIC may suspend or cancel an Australian financial services licence held by a body corporate, by giving written notice to the body, if:

(a) the body is the corporate director of a CCIV; and

(b) the CCIV or the members of the CCIV have suffered, or are likely to suffer, loss or damage because the corporate director or the CCIV has breached this Act.

1241H Restriction on use of certain words or expressions

Treat subsection 923A(1) as also providing that a CCIV contravenes that subsection if the CCIV assumes or uses, in this jurisdiction, a restricted word or expression in relation to a financial services business or financial service.

1241J Agreements with certain unlicensed persons

(1) Subdivision B of Division 11 of Part 7.6 also applies to an agreement entered into by:

(a) a CCIV (in that Subdivision called the ***non-licensee***); and

(b) another person (in that Subdivision called the ***client***) who is not a financial services licensee;

that constitutes, or relates to, the provision of a financial service by the corporate director of the CCIV (in that Subdivision called the ***corporate director***) if:

(c) the agreement is entered into in the course of a financial services business carried on by the corporate director; and

(d) the corporate director does not hold an Australian financial services licence covering the provision of the financial service; and

(e) the corporate director is not exempt from the requirement to hold such a licence.

Note 1: A CCIV does not need to be licensed to provide a financial service, instead the CCIV's corporate director needs to be (see subsection 1241B(1)). This means section 924A will work appropriately only if the agreement mentioned in that section is between the corporate director and the client.

Authorised Version C2022A00008

Note 2: This section works similarly to section 924A to ensure that the appropriate result happens if the agreement mentioned in section 924A is instead between the CCIV and the client.

Note 3: This section applies whether the financial service is provided to the client as a wholesale client or as a retail client.

(2) Subdivision B of Division 11 of Part 7.6 applies to the agreement whether or not anyone else is a party to the agreement.

(3) That Subdivision applies to the agreement as if subsections 925A(4) and (5) were replaced by the following:

"(4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that the corporate director did not hold an Australian financial services licence.

(5) If, at a time when an Australian financial services licence held by the corporate director was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the corporate director did not hold the licence.".

1241K Treat the CCIV as a professional investor

Treat the definition of ***professional investor*** in section 9 as also meaning a CCIV if and while the corporate director of the CCIV holds an Australian financial services licence.

1241L Financial services disclosure does not apply to operating the business and conducting the affairs of CCIVs

Part 7.7 does not apply to a financial service if:

(a) the financial service consists only of operating the business and conducting the affairs of a CCIV; and

(b) the financial service is provided by the corporate director of the CCIV.

Authorised Version C2022A00008

1241M Financial records of the corporate director of a CCIV

When section 988E applies to a licensee because the licensee is the corporate director of a CCIV, treat that section as requiring the particulars of the matters in paragraphs 988E(a) to (g) to be shown so that they are clearly identifiable for each sub-fund of the CCIV.

Note: Section 988E is about the categories of information to be shown in the licensee's financial records.

1241N Prohibition on hawking of securities in a CCIV

(1) Treat subsection 992A(2) as also providing that subsection 992A(1) does not apply to the offering of securities in a CCIV, hawking of which is prohibited by section 992AA (as extended by this section).

(2) Subsection 992AA(1) also applies as if the reference in that subsection to interests in managed investment schemes included a reference to securities in a CCIV.

Note: Failure to comply with subsection 992AA(1) is an offence (see subsection 1311(1)).

(3) Subsection 992AA(1), as it applies because of subsection (2) of this section, does not apply to an offer of securities in a CCIV if:

(a) the offer is not to a retail client; or

(b) the CCIV is a listed company and the offer is an offer of securities in the CCIV made by telephone by a financial services licensee; or

(c) the offer is made to a client by a financial services licensee through whom the client has acquired or disposed of a security in a CCIV in the previous 12 months.

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

(4) For the purposes of subsection 992AA(1), as it applies because of subsection (2) of this section:

(a) a reference to offering securities in a CCIV for issue includes a reference to inviting an application for the issue of securities in the CCIV; and

Authorised Version C2022A00008

(b) a reference to offering securities in a CCIV for sale includes a reference to inviting an offer to purchase securities in the CCIV.

(5) Subsection 736(1) (about prohibiting the hawking of securities) does not apply to securities in a CCIV.

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

1241P Modifications of Part 7.8A

(1) Paragraph 994B(3)(d) (about an exception to making a target market determination for a financial product) does not apply to a fully paid ordinary share in a CCIV.

(2) If a contravention referred to in paragraph 994M(1)(a) is a contravention by a CCIV, subsection 994M(1) applies to authorise recovery by action against the CCIV's corporate director instead of against the CCIV.

Note: Subsection 994M(1) authorises a client to recover the amount of loss or damage suffered because of certain contraventions.

1241Q Part 7.9 applies to the issue or sale of securities in a CCIV

(1) Despite subsection 1010A(1), Part 7.9 applies to securities in a CCIV.

Note: This and other sections in this Part extend and modify how Part 7.9 applies for a CCIV. A consequence is that, for a CCIV, references outside of Part 7.9 to provisions of Part 7.9 become references to those provisions as they apply because of this Part.

(2) Despite subsection 1010B(1), Part 7.9 applies in relation to the issue of any security in a CCIV.

(3) If the corporate director of a CCIV is, apart from this subsection, a regulated person (within the meaning of Division 2 of Part 7.9) because it is the seller of a security in the CCIV, treat the CCIV as being the regulated person within the meaning of that Division instead of the corporate director.

Note 1: The corporate director of the CCIV will continue to be a regulated person for any other case.

Authorised Version C2022A00008

Note 2: The CCIV will also be the regulated person for an issue of securities in the CCIV (see subsection 1241A(4) and section 1011B).

(4) If a reference in Part 7.9 to a seller of a financial product applies to the corporate director of a CCIV as the seller of a security in the CCIV, treat the reference as referring to the CCIV.

(5) Subsections (3) and (4) apply despite subsection 1241A(2).

Note: This subsection confirms that the general rule in subsection 1241A(2) does not affect subsections (3) and (4) of this section.

1241R Product Disclosure Statements—when a security in a CCIV is of the same kind as another product

For the purposes of sections 1012C and 1012D (as affected by this Part), a security in a CCIV that is referable to a sub-fund of the CCIV is of the same kind as another product only if the other product:

(a) is also a security in the CCIV; and

(b) is also referable to that sub-fund of the CCIV; and

(c) is issued on the same terms and conditions (other than price) as the first-mentioned security.

1241S Product Disclosure Statements—situations when not required for CCIVs

No consideration to be provided

(1) Paragraph 1012D(5)(b) also applies to the case where the financial product is not an option and is a security in a CCIV.

Client is associated with the CCIV

(2) Treat section 1012D as also providing that, in a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is a security in a CCIV; and

(b) the client is associated (within the meaning of subsection (3) of this section) with the CCIV.

Authorised Version C2022A00008

(3) For the purposes of subsection (2), the client is associated with the CCIV if the client is:

(a) the corporate director of the CCIV; or

(b) a director or secretary of that corporate director; or

(c) a senior manager of the corporate director or of a related body corporate of that corporate director; or

(d) a spouse, parent, child, brother or sister of a person who is a director or senior manager of:

(i) that corporate director; or

(ii) a related body corporate of that corporate director; or

(e) a body corporate controlled by a person referred to in paragraph (a), (b), (c) or (d).

Dividend reinvestment plan or bonus share plan

(4) Treat section 1012D as also providing that, in a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement for a fully-paid share in a CCIV if:

(a) the client already holds a share, of the same kind, in the CCIV; and

(b) either:

(i) in a recommendation situation—the advice that constitutes the relevant conduct relates to an offer made under a dividend reinvestment plan or bonus share plan; or

(ii) in an issue situation—the offer or issue that constitutes the relevant conduct is made under a dividend reinvestment plan or bonus share plan.

Note: For when such a share is of the same kind, see section 1241R.

Compromise or arrangement under Part 5.1

(5) Treat section 1012D as also providing that, in an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if the issue situation or sale situation is an offer:

(a) of securities in a CCIV; and

Authorised Version C2022A00008

(b) made under a compromise or arrangement under Part 5.1 approved at a meeting held as a result of an order under subsection 411(1) or (1A).

Rights issues

(6) Subsection 1012DAA(3) also applies to contraventions of the following provisions:

(a) if the relevant product is a security in a CCIV—the provisions of Chapter 2M (as affected by Division 4 of Part 8.4B), or the provisions of that Division, as they:

(i) apply to the CCIV; or

(ii) apply for a sub-fund of the CCIV;

(b) if the relevant product is a security in a CCIV—section 675 as it applies to the CCIV.

(7) Treat subsection 1012DAA(7) as:

(a) providing that paragraph 1012DAA(7)(d) applies only if the relevant product is an interest in a registered scheme; and

(b) also including the following paragraph:

"(da) if the relevant product is a security in a CCIV—states that, as at the date of the notice, the CCIV has complied with the provisions of Chapter 2M (as affected by Division 4 of Part 8.4B), and the provisions of that Division, as they:

(i) apply to the CCIV; and

(ii) apply for each sub-fund of the CCIV; and".

Small scale offerings

(8) Section 1012E also applies to financial products that are securities in a CCIV. For the purposes of that section, to the extent that those securities are referable to a sub-fund of the CCIV, treat the:

(a) 20 purchasers ceiling (subsections 1012E(6) and (7)); and

(b) $2 million ceiling (subsections 1012E(6) and (7));

as applying only to financial products that are securities referable to that sub-fund of the CCIV.

Authorised Version C2022A00008

1241T 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.

1241U 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.

1241V 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.

Authorised Version C2022A00008

(2) When section 1015B so applies, treat subsection 1015B(2) as instead providing that the lodgement with ASIC of a Statement in relation to a security in the CCIV requires the consent of every director of the corporate director of the CCIV.

Note: This is the case whether the Statement is an issue Statement or a sale Statement.

1241W Product Disclosure Statements—use of application forms

Treat the definition of ***relevant financial product*** in subsection 1016A(1) as also meaning a security in a CCIV.

1241X Product Disclosure Statements—if lodged, then security not to be issued or sold before specified period

Section 1016B does not apply in relation to a financial product to which a Product Disclosure Statement relates if the financial product is a security that:

(a) is in a CCIV; and

(b) is referable to a sub-fund of the CCIV that is an Australian passport fund.

Note: This section does not prevent section 1016B from applying in relation to a security in the CCIV referable to any other kind of sub-fund of the CCIV.

1241Y Remedies for person acquiring financial product under defective Product Disclosure Document

If, for the purposes of subsection 1016F(2), the responsible person is a CCIV, treat the reference in that subsection to the directors of the responsible person as if it were instead a reference to the directors of the corporate director of the CCIV.

1241Z Disclosure obligations of issuers of securities in CCIVs

(1) Subsection 1017B(2) also applies in relation to a financial product that is an ED security in a CCIV.

Note: A defendant bears an evidential burden in relation to the matter in subsection 1017B(2) (see subsection 13.3(3) of the *Criminal Code*).

(2) Paragraph 1017D(1)(b) also applies as if it referred to a product that is a security in a CCIV.

1241ZA Cooling-off periods

Division 5 of Part 7.9 also applies as if securities in a CCIV were another class of financial product covered by paragraph 1019A(1)(a).

1241ZB 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.

1241ZC Product intervention orders

If a contravention referred to in paragraph 1023Q(1)(a) is a contravention by a CCIV, subsection 1023Q(1) applies to authorise recovery by action against the CCIV's corporate director instead of against the CCIV.

Note: Subsection 1023Q(1) authorises a client to recover the amount of loss or damage suffered because of contraventions of a product intervention order.

1241ZD 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.

Authorised Version C2022A00008

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 instead a reference to:

(a) the corporate director of the CCIV acting on behalf of the CCIV; or

(b) an officer or employee (an ***official***) of the corporate director of the CCIV acting:

(i) on behalf of the CCIV; and

(ii) within the scope of the official's actual or apparent authority in relation to the corporate director;

and as if subsection 1043I(3) were not enacted, and the reference to that subsection in subsection 1043I(2) were omitted.

(4) If the second person for the purposes of section 1043J is a CCIV, that section applies as if the reference in subsection 1043J(1) to the first person were instead a reference to:

(a) an agent of the CCIV acting:

(i) on behalf of the CCIV; and

(ii) within the scope of the agent's actual or apparent authority in relation to the CCIV; or

(b) the corporate director of the CCIV acting on behalf of the CCIV; or

(c) 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;

Authorised Version C2022A00008

and as if subsection 1043J(2) were not enacted, and the reference to that subsection in subsection 1043J(1) were omitted.

Part 8B.8—Miscellaneous

1242 Director identification numbers

Treat subsection 1272B(1) as also providing that an ***eligible officer*** does not include the corporate director of a CCIV.

1242A Registers

Treat paragraph 1274(2)(a) as also providing that the constitution of a wholesale CCIV that is lodged with ASIC may not be inspected by a person.

1242B Inspection of books

Section 1300 applies to a CCIV as if the CCIV were a proprietary company.

1242C Falsification of books

(1) Subsection 1307(1) applies as if:
  (a) each of the following were an officer of a CCIV:
    (i) an officer of the CCIV;
    (ii) an officer of the corporate director of the CCIV; and
  (b) each of the following were a former officer of a CCIV:
    (i) a former officer of the CCIV;
    (ii) a former officer of the corporate director of the CCIV; and
  (c) an employee of the corporate director of a CCIV were an employee of the CCIV; and
  (d) a former employee of the corporate director of a CCIV were a former employee of the CCIV.

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

Authorised Version C2022A00008

1242D Application of Part 9.4

(1) Sections 1309 and 1317 apply as if:

(a) each of the following were a director of a CCIV:

(i) the corporate director of the CCIV;

(ii) a director of the corporate director of the CCIV; and

(b) each of the following were an officer of a CCIV:

(i) an officer of the CCIV;

(ii) an officer of the corporate director of the CCIV; and

(c) an employee of the corporate director of a CCIV were an employee of the CCIV; and

(d) each of the following were an agent of a CCIV:

(i) an agent of the CCIV;

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

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

1242E Disclosures qualifying for protection under Part 9.4AAA

Eligible whistleblower

(1) Treat section 1317AAA as also providing that an individual is an ***eligible whistleblower*** in relation to a regulated entity that is a CCIV if the individual is, or has been, any of the following:

(a) an officer of the corporate director of the CCIV;

(b) an employee of the corporate director of the CCIV;

(c) a relative of an individual referred to in paragraph (a) or (b);

(d) a dependant of an individual referred to in paragraph (a) or (b), or of such an individual's spouse.

Eligible recipient

(2) Treat subsection 1317AAC(1) as also providing that each of the following is an ***eligible recipient*** in relation to a regulated entity that is a CCIV:

(a) an officer of the corporate director of the CCIV;

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

Authorised Version C2022A00008

Whistleblower policies

(3) Treat subsection 1317AI(5) as also providing that the matters that must be set out in a policy for a corporate director of a CCIV also include the following:

(a) information about to whom disclosures in relation to the CCIV that qualify for protection under Part 9.4AAA may be made, and how they may be made;

(b) information about how the CCIV will support whistleblowers and protect them from detriment;

(c) information about how the CCIV will investigate disclosures that qualify for protection under Part 9.4AAA;

(d) information about how the policy is to be made available to officers of the CCIV;

(e) any matters prescribed by the regulations for the purposes of this paragraph.

1242F Powers of Courts—irregularities

Subparagraph 1322(1)(b)(i) applies to:

(a) a meeting of the members of a sub-fund of the CCIV in the same way as it applies in relation to a meeting of a corporation; and

(b) a joint meeting of creditors and members of a sub-fund of a CCIV in the same way as it applies in relation to a joint meeting of creditors and members of a corporation.

1242G Fees payable to the Commonwealth

Subsection 1351(4) has effect in relation to a fee imposed under the *Corporations (Review Fees) Act 2003* payable to the Commonwealth by a CCIV in relation to a review date in a year as if paragraph 1351(4)(a) were substituted with the following:

"(a) all of the following apply:

(i) ASIC has given notice of the proposed deregistration of a sub-fund of the CCIV in accordance with paragraph 1239(5)(c), and published notice of the proposed deregistration of the sub-fund in accordance with paragraph 1239(5)(d);

Authorised Version C2022A00008

(ii) as a result of ASIC deregistering the sub-fund, ASIC will be required to deregister the CCIV under section 1239K;

(iii) the review date for that year falls in the 2 month period before or after the publication of the notice published in accordance with paragraph 1239(5)(d); or".

Part 8B.9—Subordinate legislation relating to CCIVs

1243 ASIC's power to make exemption and modification orders

(1) This section applies in relation to the following (the ***CCIV provisions***):

(a) Part 8B.2 (registration of CCIVs);

(b) Part 8B.3 (corporate governance of CCIVs);

(c) sections 1230J and 1230K (about redemptions for non-liquid sub-funds);

(d) Division 4 of Part 8B.4 (financial reports and audits of CCIVs);

(e) Division 9 of Part 8B.6 (deregistration and transfer of registration);

(f) Part 8B.7 (control, financial services and disclosure).

(2) ASIC may do either or both of the following:

(a) exempt from all or specified provisions of the CCIV provisions:

(i) a specified CCIV, a specified class of CCIVs or all CCIVs; or

(ii) a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs; or

(iii) a specified entity, a specified class of entities or all entities, in relation to a specified CCIV, a specified class of CCIVs or all CCIVs; or

(iv) a specified entity, a specified class of entities or all entities, in relation to a specified class of sub-funds of

Authorised Version C2022A00008

CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs;

(b) declare that the CCIV provisions apply in relation to:

(i) a specified CCIV, a specified class of CCIVs or all CCIVs; or

(ii) a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs; or

(iii) a specified entity, a specified class of entities or all entities, in relation to a specified CCIV, a specified class of CCIVs or all CCIVs; or

(iv) a specified entity, a specified class of entities or all entities, in relation to a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs;

as if specified provisions were omitted, modified or varied as specified in the declaration.

(3) The exemption or declaration may:

(a) relate to a specified security, a specified class of securities or all securities; and

(b) relate to any other matter generally or as specified.

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

Exemptions and declarations relating to all or a class of persons

(5) An exemption or declaration must be made by legislative instrument if it relates to:

(a) all CCIVs, a specified class of CCIVs, or 2 or more specified CCIVs; or

(b) all sub-funds of all CCIVs, all sub-funds of a specified class of CCIVs, or a specified class of sub-funds of CCIVs; or

(c) all entities, a specified class of entities, or 2 or more specified entities.

Authorised Version C2022A00008

Exemptions and declarations relating to specified persons

(6) Subject to subsection (5), an exemption or declaration must be made by notifiable instrument if it relates to a specified CCIV or specified entity.

(7) An exemption or declaration that relates to a specified CCIV may apply to the CCIV in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of the CCIV.

(8) An exemption or declaration that relates to a specified entity may apply to the entity in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of a specified CCIV.

(9) ASIC must also give a copy of an exemption or declaration that relates to a specified CCIV or a specified entity to the CCIV or entity. ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

1243A Modification by regulations

(1) The regulations may modify the operation of this Chapter or any other provisions of this Act in relation to:
  (a) a specified CCIV; or
  (b) a specified class of CCIVs; or
  (c) all CCIVs; or
  (d) a specified class of sub-funds of CCIVs; or
  (e) all sub-funds of a specified class of CCIVs; or
  (f) all sub-funds of all CCIVs.

(2) Regulations made for the purposes of subsection (1) in relation to a specified CCIV may apply to the CCIV in respect of a specified sub-fund, a specified class of sub-funds or all sub-funds of the CCIV.

Authorised Version C2022A00008

Schedule 2—Corporate collective investment vehicles: 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:

Authorised Version C2022A00008

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.

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 1230A; 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.

Authorised Version C2022A00008

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).

creditor of a sub-fund of a CCIV means a creditor of the CCIV, if the debt or claim is, to any extent, a liability of the sub-fund.

10 Section 9 (definition of *entity*)

Omit "and 8A", substitute ", 8A and 8B,".

11 Section 9 (paragraph (a) of the definition of *expectation*)

After "managed investment scheme", insert "or a sub-fund of a CCIV".

12 Section 9 (definition of *extraordinary resolution*)

After "registered scheme", insert ", a CCIV or a sub-fund of a CCIV".

13 Section 9 (definition of *financial benefit*)

Omit "Chapter 2E", substitute "Chapters 2E and 8B".

14 Section 9 (definition of *insolvent*)

Repeal the definition, substitute:

insolvent:

(a) in relation to a person—has the meaning given by subsection 95A(2); and

(b) in relation to a sub-fund of a CCIV—has the meaning given by subsection 1231A(3).

15 Section 9

Insert:

liabilities, in relation to a sub-fund of a CCIV, has the meaning given by section 1233L.

Authorised Version C2022A00008

16 Section 9 (definition of *listed*)

Repeal the definition, substitute:

listed:

(a) a company, managed investment scheme or other body is ***listed*** if it is included in the official list of a prescribed financial market operated in this jurisdiction; and

(b) a retail CCIV that is not listed because of paragraph (a) is ***listed*** if:

(i) the retail CCIV has only one sub-fund; and

(ii) that sub-fund is included in the official list of a prescribed financial market operated in this jurisdiction; and

(c) a sub-fund of a retail CCIV is ***listed*** if:

(i) the sub-fund is included in the official list of a prescribed financial market operated in this jurisdiction; or

(ii) the retail CCIV is listed because of paragraph (a).

17 Section 9 (before paragraph (e) of the definition of *member*)

Insert:

(c) in relation to a sub-fund of a CCIV—means a person who is a member under subsection 1222Q(3); or

18 Section 9 (definition of *officer* of a corporation)

After "of a corporation" (first occurring), insert "(other than a CCIV)".

19 Section 9

Insert:

officer of a corporation that is a CCIV has the meaning given by section 1224B.

20 Section 9 (at the end of the definition of *professional investor*)

Add:

Note: A CCIV can also be a professional investor, see section 1241K.

Authorised Version C2022A00008

21 Section 9 (definition of *public company*)

After "a proprietary company", insert "or a CCIV".

22 Section 9

Insert:

redeemable share, in a CCIV, has the meaning given by subsection 1230B(4).

referable:

(a) in relation to a sub-fund, and a share in a CCIV—has the meaning given by subsection 1230(1); and

(b) in relation to a sub-fund, and a class of shares in a CCIV—has the meaning given by subsection 1230A(2); and

(c) in relation to a sub-fund, and a debenture issued by a CCIV—has the meaning given by subsection 1231N(1).

23 Section 9 (definition of *registered office*)

Omit "in relation to a body corporate, means the body's registered office", substitute "in relation to a company or registered body, means the registered office of the company or body".

24 Section 9 (paragraph (a) of the definition of *related party*)

Repeal the paragraph, substitute:

(a) when used in Chapter 2E (other than in relation to a CCIV) has the meaning given by section 228; and

(aa) when used in Chapters 2E and 8B, in relation to a CCIV, has the meaning given by section 1227E; and

25 Section 9

Insert:

retail CCIV has the meaning given by subsection 1222J(1).

26 Section 9 (definition of *solvent*)

Repeal the definition, substitute:

solvent:

Authorised Version C2022A00008

(a) in relation to a person—has the meaning given by subsection 95A(1); and

(b) in relation to a sub-fund of a CCIV—has the meaning given by subsection 1231A(2).

27 Section 9 (paragraph (b) of the definition of *special resolution*)

After "registered scheme", insert ", a CCIV or a sub-fund of a CCIV".

28 Section 9

Insert:

sub-fund, of a CCIV, has the meaning given by subsection 1222Q(1).

wholesale CCIV has the meaning given by subsection 1222J(2).

29 Section 51E (definition of *secured creditor*)

Repeal the definition, substitute:

secured creditor:

(a) of a corporation means a creditor of the corporation, if the debt owing to the creditor is secured by a security interest; and

(b) of a sub-fund of a CCIV means a secured creditor of the CCIV, if the debt owing to the creditor is, to any extent, a liability of the sub-fund.

30 At the end of section 51F

Add:

References to property of a sub-fund of a CCIV

(3) A reference in a provision of this Act to property of a sub-fund of a CCIV (including a substituted reference provided for by Part 8B.6) is a reference to something that is:

(a) property of the CCIV (within the meaning of the provision); and

(b) an asset of the sub-fund of the CCIV.

Authorised Version C2022A00008

Note: For assets of a sub-fund of a CCIV, see section 1233H.

31 Section 53 (heading)

Repeal the heading, substitute:

53 Affairs of a body corporate (other than a CCIV)

32 Section 53

After "body corporate" (first occurring), insert "(other than a CCIV)".

33 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 1237V (about Court order imposing liability on unlicensed person operating CCIV);
  (g) section 1241C (about extra kinds of financial services relating to CCIVs);

Authorised Version C2022A00008

(h) section 1241E (about when conduct does not constitute providing a custodial or depository service in relation to a CCIV);

(i) section 1241F (about Australian financial services licences to conduct the affairs of a CCIV);

(j) section 1241L (about financial services disclosure does not apply to conducting the affairs of CCIVs);

(k) a provision of this Act prescribed by the regulations for the purposes of this paragraph.

34 Paragraph 53AA(a)

After "53", insert "or 53AAA".

35 At the end of subsection 57(1)

Add:

Note: A CCIV must have a minimum of one class of shares per sub-fund: see section 1230A.

36 Section 64A

Omit "and 8A", substitute ", 8A and 8B".

37 At the end of subsection 92(4)

Add:

Note: However, in Chapter 6D, ***securities*** does not include securities in a CCIV: see section 1240G.

38 At the end of section 111AF

Add:

(3) Securities (except debentures) in a class of securities of a CCIV are ***ED securities*** if 100 or more people hold securities in that class as a result of offers that gave rise to obligations to give Product Disclosure Statements (whether or not all in the same terms) under Chapter 7 (as that Chapter applies to those securities under Division 4 of Part 8B.7).

39 At the end of subsection 111AR(1)

Add:

Authorised Version C2022A00008

; (e) Division 4 of Part 8B.4 as it applies to disclosing entities;
(f) Division 2 of Part 8B.7 as it applies to disclosing entities.

40 Subsection 117(1) (note)

Omit "Note", substitute "Note 1".

41 At the end of subsection 117(1)

Add:

Note 2: For modifications applicable to applications to register a CCIV, see section 1222A.

42 Subsection 118(1) (note)

Omit "Note", substitute "Note 1".

43 At the end of subsection 118(1)

Add:

Note 2: For modifications applicable to applications to register a CCIV, see section 1222C.

44 At the end of subsection 120(1)

Add:

Note: For the equivalent provision for a CCIV, see section 1222D.

45 Subsection 124(1) (note)

Omit "Note", substitute "Note 1".

46 At the end of subsection 124(1)

Add:

Note 2: A CCIV's power to issue shares is affected by sections 1230 and 1230B.

47 At the end of subsection 127(1)

Add:

Note 3: Because a CCIV has no natural person directors and no company secretary, it executes documents through the directors and company secretary of its corporate director: see section 1223.

Authorised Version C2022A00008

48 Subsection 127(2) (note)

Omit "Note", substitute "Note 1".

49 At the end of subsection 127(2)

Add:

Note 2: Because a CCIV has no natural person directors and no company secretary, it executes documents through the directors and company secretary of its corporate director: see section 1223.

50 At the end of subsection 135(1)

Add:

Note 3: Paragraph (a) does not apply for CCIVs: see section 1223A.

51 Subsection 136(1) (note)

Omit "Note", substitute "Note 1".

52 At the end of subsection 136(1)

Add:

Note 2: Section 1223B applies instead of this section in relation to the constitution of a CCIV (see also subsection 1223D(6)).

53 At the end of subsection 169(3)

Add:

Note 3: A CCIV's register must also show the sub-funds relevant to each share: see subsection 1222ZB(1).

54 At the end of subsection 170(1)

Add:

Note: A CCIV's register must also show the sub-funds relevant to each share or option: see subsection 1222ZB(2).

55 Subsection 171(1) (note)

Omit "Note", substitute "Note 1".

56 At the end of subsection 171(1)

Add:

Authorised Version C2022A00008

Note 2: A CCIV's register must also show the sub-funds relevant to each debenture: see subsection 1222ZB(3).

57 At the end of subsection 179(1)

Add:

Note: For a CCIV, there are additional duties: see Divisions 2 and 3 of Part 8B.3.

58 Division 1 of Part 2D.1 (after the heading)

Insert:

Note: This Division applies in relation to CCIVs in a modified form: see sections 1224C.

59 At the end of subsection 188(1)

Add:

Note 3: This subsection has an extended operation in relation to the secretary of a corporate director of a CCIV: see sections 1225A and 1225B.

60 Division 2 of Part 2D.1 (after the heading)

Insert:

Note: This Division applies in relation to CCIVs in a modified form: see sections 1225C and 1224K.

61 Subsection 198D(1) (note)

Omit "Note", substitute "Note 1".

62 At the end of subsection 198D(1)

Add:

Note 2: If the company is a CCIV, section 1224L applies instead of this section.

63 Subsection 198F(1) (note)

Omit "Note", substitute "Note 1".

64 At the end of subsection 198F(1)

Add:

Note 2: This section also applies to a director of a corporate director of a CCIV: see section 1225D.

Authorised Version C2022A00008

65 At the end of subsection 198G(1)

Add:

Note: For a CCIV, section 1224Q applies instead of this section.

66 At the end of subsection 199A(1)

Add:

Note: This section is modified for the director of a wholesale CCIV: see subsection 1224D(7). This section has an extended operation in relation to officers and auditors of the corporate director of a CCIV: see section 1225E.

67 At the end of subsection 199B(1)

Add:

Note: This section has an extended operation in relation to officers and auditors of the corporate director of a CCIV: see section 1225E.

68 At the end of subsection 200B(1)

Add:

Note 4: This section has a modified operation in relation to CCIVs: see section 1224ZD.

69 At the end of subsection 200C(1)

Add:

Note: This section has a modified operation in relation to CCIVs: see section 1224ZD.

70 Part 2D.3 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

71 Part 2D.4 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

72 Part 2D.5 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

Authorised Version C2022A00008

73 Part 2D.6 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

74 Part 2D.7 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

75 Part 2D.8 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1224E.

76 Chapter 2E (after the heading)

Insert:

Note: This Chapter applies to a CCIV with modifications: see Division 5 of Part 8B.3.

77 At the end of subsection 208(1)

Add:

Note 3: This section applies to a CCIV in a modified form: see section 1227A.

78 At the end of subsection 209(2)

Add:

Note 3: This section has an extended operation in relation to a retail CCIV: see section 1227A.

79 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 1227F.

80 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 1227G and Part 8B.6).

Authorised Version C2022A00008

81 At the end of subsection 233(3)

Add:

Note: If the company is a CCIV the reference to section 136 is modified (see subsection 1227G(2)).

82 Subsection 237(4) (note)

Omit "Note", substitute "Note 1".

83 At the end of subsection 237(4)

Add:

Note 2: For who is a third party of a CCIV, see section 1227H.

84 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 1230A.

85 At the end of subsection 246B(2)

Add:

Note: This subsection applies to a CCIV in a modified form: see section 1227J.

86 At the end of subsection 246F(3)

Add:

Note: This subsection also applies to a CCIV: see section 1227L.

87 Part 2G.1 (after the heading)

Insert:

Note: Section 1228 applies instead of this Part in relation to a CCIV.

88 Part 2G.2 (after the heading)

Insert:

Note: This Part does not apply to a CCIV or its members. Instead, section 1228A applies a modified version of Part 2G.4.

Authorised Version C2022A00008

89 Part 2G.3 (after the heading)

Insert:

Note: This Part does not apply to a CCIV or its members. Instead, section 1228A applies a modified version of Part 2G.4.

90 Part 2G.4 (after the heading)

Insert:

Note: Section 1228A applies a modified version of this Part in relation to a CCIV. Section 1228B applies a modified version of this Part in relation to a sub-fund of a CCIV.

91 At the end of subsection 254B(1)

Add:

Note 5: A CCIV may issue a share only if the share is referable to a sub-fund of the CCIV (see section 1230).

92 Subsection 254G(1) (note)

Omit "Note", substitute "Note 1".

93 At the end of subsection 254G(1)

Add:

Note 2: Section 1230C applies to a CCIV instead of this section.

94 Subsection 254H(1) (note)

Omit "Note", substitute "Note 1".

95 At the end of subsection 254H(1)

Add:

Note 2: Section 1230C applies to a CCIV instead of this section.

96 Part 2H.2 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1230D.

97 At the end of subsection 254N(1)

Add:

Note: This section does not apply to a CCIV: see section 1230L.

Authorised Version C2022A00008

98 At the end of subsection 254T(1)

Add:

Note 3: Section 1230M applies to a CCIV instead of this section.

99 At the end of subsection 254W(1)

Add:

Note: Section 1230N is about dividend rights in a CCIV.

100 Part 2H.6 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1230P.

101 Chapter 2J (after the heading)

Insert:

Note: This Chapter is modified for CCIVs: see Division 2 of Part 8B.4.

102 Division 1 of Part 2J.1 (after the heading)

Insert:

Note: This Division does not apply to a CCIV: see subsection 1231A(5).

103 Division 2 of Part 2J.1 (after the heading)

Insert:

Note: This Division does not apply to a CCIV: see subsection 1231C(6).

104 Division 3 of Part 2J.1 (after the heading)

Insert:

Note: This Division applies to a CCIV with modifications: see section 1231H.

105 Part 2J.2 (after the heading)

Insert:

Note: This Part applies to a CCIV with modifications: see sections 1231J and 1231K.

106 Subsection 259B(1) (note)

Omit "Note", substitute "Note 1".

107 At the end of subsection 259B(1)

Add:

Note 2: Subsection (3) does not apply to a CCIV: see section 1231K.

108 Part 2J.3 (after the heading)

Insert:

Note: This Part does not apply to a CCIV: see section 1231L.

109 Part 2M.1 (after the heading)

Insert:

Note: This Chapter applies to CCIVs with modifications: see Division 4 of Part 8B.4.

110 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.

111 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.

112 Division 1 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to retail CCIVs with modifications: see Subdivision C of Division 4 of Part 8B.4.

113 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 1232C extends this section to preparing annual financial reports and directors' reports for sub-funds of retail CCIVs, and applies this Division accordingly.

Authorised Version C2022A00008

114 At the end of subsection 295(5)

Add:

Note: Section 1228 deals with directors' resolutions for CCIVs.

115 At the end of subsection 298(2)

Add:

Note: Section 1228 deals with directors' resolutions for CCIVs.

116 At the end of subsection 300(1)

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232E.

117 At the end of subsection 300(13)

Add:

Note: This subsection applies to sub-funds of retail CCIVs in a modified form: see section 1232E.

118 At the end of section 302

Add:

Note 4: Section 1232F extends this section to preparing half-year financial reports and directors' reports for sub-funds of retail CCIVs (if there are ED securities referable to the sub-fund), and applies this Division accordingly.

119 At the end of subsection 303(5)

Add:

Note: Section 1228 deals with directors' resolutions for CCIVs.

120 At the end of subsection 306(1)

Add:

Note: This subsection applies to sub-funds of retail CCIVs in a modified form: see subsection 1232F(6).

121 At the end of subsection 306(3)

Add:

Note: Section 1228 deals with directors' resolutions for CCIVs.

Authorised Version C2022A00008

122 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 1232G.

123 At the end of section 307

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232G.

124 At the end of subsection 311(4)

Add:

Note: This subsection applies to sub-funds of retail CCIVs in a modified form: see section 1232G.

125 Division 4 of Part 2M.3 (after the heading)

Insert:

Note: This Division applies to reports relating to sub-funds of retail CCIVs in a modified form: see section 1232H.

126 At the end of subsection 314(1)

Add:

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232H.

127 At the end of subsection 315(3)

Add:

Note: Section 1232J applies this subsection to retail CCIVs in relation to their sub-funds.

128 At the end of subsection 317(1)

Add:

Note 4: This section does not apply to retail CCIVs: see section 1232K.

129 At the end of subsection 318(1)

Add:

Authorised Version C2022A00008

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232L.

130 Subsection 322(3) (note)

Omit "Note", substitute "Note 1".

131 At the end of subsection 322(3)

Add:

Note 2: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232M.

132 At the end of subsection 324CD(2) (after the table)

Add:

Note: This subsection applies in relation to retail CCIVs in a modified form: see section 1232N.

133 Subdivision B of Division 3 of Part 2M.4 (after the heading)

Insert:

Note: This Subdivision applies in relation to retail CCIVs in a modified form: see section 1232P.

134 At the end of subsection 324CL(1)

Add:

Note: This section applies in relation to retail CCIVs in a modified form: see section 1232Q.

135 Division 6 of Part 2M.4 (after the heading)

Insert:

Note: This Division does not apply in relation to a CCIV. Instead, section 1232R applies a modified version of Division 7 to a retail CCIV.

136 Division 7 of Part 2M.4 (after the heading)

Insert:

Note: Section 1232R applies a modified version of this Division in relation to a retail CCIV.

137 Subsection 344(1) (note)

Omit "Note", substitute "Note 1".

Authorised Version C2022A00008

138 At the end of subsection 344(1)

Add:

Note 2: This subsection has an extended operation in relation to a retail CCIV: see section 1232T.

139 At the end of subsection 344(2)

Add:

Note: This subsection has an extended operation in relation to a retail CCIV: see section 1232T.

140 Part 2N.3 (after the heading)

Insert:

Note: This Part does not apply to CCIVs: see subsection 1232U(1).

141 At the end of subsection 348C(1)

Add:

Note: This section does not apply to CCIVs: see subsection 1232U(2).

142 Part 5.1 (after the heading)

Insert:

Note: This Part applies to CCIVs with modifications: see Division 2 of Part 8B.6.

143 Part 5.2 (after the heading)

Insert:

Note: This Part applies to CCIVs with modifications: see Division 3 of Part 8B.6.

144 Part 5.3A (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Division 4 of Part 8B.6.

145 Part 5.3B (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Division 4 of Part 8B.6.

Authorised Version C2022A00008

146 Part 5.4 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 5 of Part 8B.6.

147 Part 5.4A (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 5 of Part 8B.6.

148 Part 5.4B (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 5 of Part 8B.6.

149 Part 5.4C (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Division 5 of Part 8B.6.

150 Part 5.5 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 5 of Part 8B.6.

151 Part 5.6 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 5 of Part 8B.6.

152 At the end of subsection 530C(1)

Add:

Note: This section applies to a CCIV in a modified form: see section 1237Z.

153 Part 5.7B (after the heading)

Insert:

Authorised Version C2022A00008

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 3 of Part 8B.6 (for provisions relating to Division 2B), Division 5 of Part 8B.6 (for provisions relating to Divisions 2 and 2A) and Division 6 of Part 8B.6 (for provisions relating to Divisions 3, 4, 5 and 6).

154 Part 5.8 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 7 of Part 8B.6.

155 At the end of subsection 596(1)

Add:

Note: This section applies to a CCIV in a modified form: see section 1238F.

156 Part 5.9 (after the heading)

Insert:

Note: This Part applies to a sub-fund of a CCIV in a modified form: see Division 8 of Part 8B.6.

157 At the end of section 596A

Add:

Note: This section applies to a CCIV in a modified form: see section 1237U.

158 Part 5A.1 (after the heading)

Insert:

Note 1: This Part applies to the deregistration of CCIVs with modifications: see Subdivision A of Division 9 of Part 8B.6.

Note 2: For the deregistration of sub-funds of CCIVs, see Subdivision A of Division 9 of Part 8B.6.

159 Part 5A.2 (after the heading)

Insert:

Note: This Part does not apply to a CCIV or a sub-fund of a CCIV: see Subdivision B of Division 9 of Part 8B.6.

160 Chapter 6 (after the heading)

Insert:

Authorised Version C2022A00008

Note: This Chapter only applies to acquisitions of interests in a CCIV if the CCIV is a listed company: see Division 1 of Part 8B.7.

161 Section 660A (note)

Omit "Note", substitute "Note 1".

162 At the end of section 660A

Add:

Note 2: This Chapter only applies to the acquisition of securities in a CCIV if the CCIV is a listed company: see section 1240E.

163 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 1240F.

164 At the end of subsection 700(1)

Add:

Note: In this Chapter, subject to subsection 1240H(6), ***securities*** also does not include a security in a CCIV: see section 1240G.

165 Chapter 7 (after the heading)

Insert:

Note: This Chapter applies to a CCIV in a modified form: see Division 4 of Part 8B.7.

166 Section 761A (paragraph (a) of the definition of *financial services law*)

Omit "or 8A", substitute ", 8A or 8B".

167 After paragraph 766A(1)(d)

Insert:

(da) operate the business and conduct the affairs of a CCIV; or

168 Paragraph 766C(4)(c)

After "body corporate", insert "(other than a CCIV)".

Authorised Version C2022A00008

169 After paragraph 766C(4)(c)

Insert:

(ca) a CCIV;

170 Subsection 1212(1)

Repeal the subsection, substitute:

(1) A person may lodge an application with ASIC to have a scheme or sub-fund in an item in column 1 of the following table (a ***collective investment fund***) registered as a passport fund if the person is the entity mentioned in the corresponding item in column 2 of the table (the ***proposed operator*** of the fund).

Who may apply to be a passport fund

Item	Column 1 Collective investment fund	Column 2 Proposed operator
1	a managed investment scheme that is a registered scheme	the responsible entity of the scheme
2	a managed investment scheme in respect of which an application for registration under section 601EB has been made	the proposed responsible entity of the scheme
3	a sub-fund of a retail CCIV	the corporate director of the CCIV

171 Paragraph 1212(2)(b)

Omit "responsible entity for the scheme", substitute "proposed operator of the collective investment fund".

172 Subparagraph 1212(2)(b)(i)

Omit "responsible entity", substitute "proposed operator".

173 Subparagraph 1212(2)(b)(ii)

Omit "scheme", substitute "fund".

Authorised Version C2022A00008

174 Subsection 1212(3)

Omit "scheme is registered as an Australian", substitute "fund is registered as a".

175 Section 1212A (heading)

Repeal the heading, substitute:

1212A Registration of Australian passport funds

176 Subsection 1212A(1)

Omit "a registered scheme", substitute "a collective investment fund that is a registered scheme or a sub-fund of a retail CCIV".

177 Paragraph 1212A(1)(a)

Omit "responsible entity for the scheme", substitute "proposed operator of the fund".

178 Paragraph 1212A(1)(b)

Omit "scheme", substitute "fund".

179 Subsection 1212A(2)

Omit "A registered scheme", substitute "A collective investment fund".

180 Section 1212B

Omit "registered scheme", substitute "collective investment fund".

181 Section 1212B

Omit "scheme's", substitute "fund's".

182 Subsection 1213B(3)

After "managed investment schemes", insert ", or CCIVs,".

183 At the end of subsection 1272B(1)

Add:

Note: This subsection has a modified operation in relation to CCIVs: see section 1242.

Authorised Version C2022A00008

184 At the end of subsection 1274(2)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1242A.

185 At the end of subsection 1300(2A)

Add:

Note: This section applies to a CCIV as if the CCIV were a proprietary company: see section 1242B.

186 At the end of subsection 1307(1)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1242C.

187 At the end of subsections 1309(1) and (2)

Add:

Note: This subsection applies in relation to CCIVs with modifications: see section 1242D.

188 At the end of subsections 1309(9) and (10)

Add:

Note: This subsection applies in relation to information given to CCIVs with modifications: see section 1242D.

189 Before paragraph 1311(1A)(e)

Insert:

(de) Chapter 8B;

190 At the end of subsection 1317(1)

Add:

Note: This section applies in relation to a defendant who is a CCIV with modifications: see section 1242D.

191 Part 9.4AAA (after the heading)

Insert:

Note: This Part applies in relation to CCIVs with modifications: see 1242E.

Authorised Version C2022A00008

192 In the appropriate position in subsection 1317E(3)

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 1224D(4)	duties owed by director of a wholesale CCIV	corporation/scheme
subsection 1224P(2)	acquisition of share in CCIV by corporate director of retail CCIV	corporation/scheme
subsection 1225(1)	duties owed by officers of corporate director of retail CCIV	corporation/scheme
subsection 1225F(1)	duties owed by employees of corporate director of retail CCIV	corporation/scheme
subsection 1230F(5)	share redemption requirements for CCIVs	corporation/scheme
subsection 1230S(4)	cross-investment restrictions or requirements for CCIVs	corporation/scheme
subsection 1231B(4)	unauthorised reduction of share capital by a CCIV	corporation/scheme
subsection 1231J(5)	directly acquiring own shares	corporation/scheme
subsections 1234J(1), (2) and (3)	holding of sub-fund assets of a CCIV	corporation/scheme

193 At the end of subsection 1322(1)

Add:

Note: This section applies in relation to CCIVs with modifications: see section 1242F.

194 Sections 1324A and 1324B

Omit "or Part 7.10", substitute ", Part 7.10 or Chapter 8B".

195 Subsection 1325(7) (at the end of the definition of *section 1325 order provision*)

Add:

; and (j) a provision of Chapter 8B.

Authorised Version C2022A00008

196 At the end of section 1351

Add:

Note: Subsection (4) applies in relation to CCIVs with modifications: see section 1242G.

197 At the end of subsection 70-35(3) of Schedule 2

Add:

Note: This subsection does not apply for a winding up of a sub-fund of a CCIV: see section 1237P.

198 At the end of subsection 70-35(4) of Schedule 2

Add:

Note: This subsection does not apply for a winding up of a sub-fund of a CCIV: see section 1237P.

199 In the appropriate position in Schedule 3

Insert:

Subsection 1222L(3)	20 penalty units
Subsection 1222L(7)	20 penalty units
Subsection 1222W(1)	30 penalty units
Subsection 1222Z(2)	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
Subsection 1224G(4)	2 years imprisonment
Subsection 1224G(5)	20 penalty units
Subsection 1224G(6)	60 penalty units
Subsection 1224P(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units

Authorised Version C2022A00008

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 1225F(2)	5 years imprisonment
Subsection 1226(3)	20 penalty units
Subsection 1226C(2)	60 penalty units
Subsection 1226D(3)	20 penalty units
Subsection 1226D(4)	20 penalty units
Subsection 1226E(3)	20 penalty units
Subsection 1226F(1)	20 penalty units
Subsection 1226G(1)	20 penalty units
Subsection 1226G(3)	60 penalty units
Subsection 1226G(4)	20 penalty units
Subsection 1226H(6)	1 year imprisonment
Paragraph 1226J(1)(a)	20 penalty units
Subsection 1226K(1)	20 penalty units
Subsection 1228D(4)	20 penalty units
Subsection 1230F(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 1230G(1)	20 penalty units
Subsection 1230G(2)	20 penalty units
Subsection 1230G(3)	20 penalty units
Subsection 1230J(5)	20 penalty units
Subsection 1230J(8)	20 penalty units
Subsection 1230M(1)	2 years imprisonment
Subsection 1230S(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and

Authorised Version C2022A00008

	(b) for a body corporate—20,000 penalty units
Subsection 1231B(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 1231J(6)	(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 1234F(3)	2 years imprisonment
Subsection 1234F(4)	60 penalty units
Subsections 1234J(1), (2) and (3)	60 penalty units
Subsection 1237P(4)	50 penalty units
Subsection 1239D(3)	20 penalty units
Subsection 1239L(1)	20 penalty units
Subsection 1240H(1)	5 years imprisonment
Subsection 1240H(2)	5 years imprisonment

Authorised Version C2022A00008

Schedule 3—Corporate collective investment vehicles: 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:

Authorised Version C2022A00008

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 a sub-fund of the CCIV.

7 After paragraph 12BAB(14)(d)

Insert:

(da) operating as a CCIV;

(db) operating the business and conducting the affairs of a CCIV;

(dc) holding 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);

Authorised Version C2022A00008

(ii) an officer or employee of the corporate director of the CCIV.

12 Section 84

Repeal the section, substitute:

84 Requirement made of a body corporate

If a provision of this Part empowers a person to make a requirement of a body corporate, the provision also empowers the person to make that requirement of a person who is or has been:

(a) unless paragraph (b) applies—an officer or employee of the body corporate; or

(b) if the body corporate is a CCIV:

(i) an officer of the CCIV; or

(ii) an officer or employee of the corporate director of the CCIV.

13 At the end of Part 3A

Add:

93BA Undertakings by corporate director of a CCIV

(1) ASIC may accept a written undertaking given by the corporate director of a CCIV in connection with a matter:

(a) concerning the CCIV; and

(b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).

(2) The corporate director may withdraw or vary the undertaking at any time, but only with ASIC's consent.

(3) If ASIC considers that the corporate director has breached any of the terms of the undertaking, ASIC may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the corporate director has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the corporate director to comply with that term of the undertaking;

(b) an order directing the corporate director to transfer to the CCIV an amount up to the amount of any financial benefit that the corporate director has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the corporate director to compensate any person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

(5) ASIC must keep a record of the full text of the undertaking.

(6) ASIC must make available to a person who asks for it a copy of the text of the undertaking, but ASIC must delete from the copy information:

(a) that the corporate director has asked it not to release; and

(b) that ASIC is satisfied:

(i) is commercial in confidence; or

(ii) should not be disclosed because it would be against the public interest to do so; or

(iii) consists of personal details of an individual.

(7) If ASIC makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

14 After section 243E

Insert:

243F Treat the corporate director of a CCIV as providing financial services etc. being provided by the CCIV

(1) This section applies to a provision of this Act that applies in relation to:

(a) a service, or matter, that is a financial service for the purposes of that provision; or

(b) a financial services business; or

Authorised Version C2022A00008

(c) a matter that is prescribed by the regulations for the purposes of this paragraph.

General rule

(2) For the purposes of that provision of this Act:
   (a) treat any conduct engaged in by, or on behalf of, a CCIV as also being engaged in by, or on behalf of, the corporate director of the CCIV; and
   (b) treat any conduct relating to the CCIV that is engaged in by a person (other than the corporate director of the CCIV) as also being engaged in by that person in relation to the corporate director of the CCIV.

(3) In subsection (2), ***conduct*** means an act, an omission to perform an act or a state of affairs.

Exceptions

(4) If the CCIV issues a security in the CCIV, then subsection (2) does not treat the corporate director of the CCIV as also being the issuer of the security.

(5) If the CCIV is a participant (within the meaning of Chapter 7 of the Corporations Act) in:
   (a) a clearing and settlement facility; or
   (b) a financial market;

subsection (2) does not treat the corporate director of the CCIV as also being a participant (within the meaning of Chapter 7 of the Corporations Act) in relation to the facility or market.

(6) Subsection (2) does not apply in any circumstances prescribed by the regulations for the purposes of this subsection.

Personal Property Securities Act 2009

15 At the end of section 267

Add:

Authorised Version C2022A00008

Effect of winding up of a sub-fund of a CCIV

(4) Paragraph (1)(a) applies in relation to a grantor if:

(a) the grantor is a CCIV (within the meaning of the *Corporations Act 2001*); and

(b) the security interest is in personal property that is an asset of a sub-fund of the CCIV (within the meaning of that Act); and

(c) an order is made, or a resolution is passed, for the winding up of the sub-fund.

Authorised Version C2022A00008

Schedule 4—Corporate collective investment vehicles: contingent amendments

Note: The amendments in this Schedule only commence if Schedule 2 to the *Corporations Amendment (Meetings and Documents) Act 2022* has already commenced (see subsection 2(1) of this Act).

Corporations Act 2001

1 Paragraph 110(2)(a)

Repeal the paragraph, substitute:

(a) a meeting of the members of a company, registered scheme or sub-fund of a CCIV (including a meeting of a class of members); or

2 After paragraph 110(2)(b)

Insert:

(ba) a resolution to be considered by the members of a sub-fund of a CCIV without a meeting; or

3 After paragraph 110C(1)(b)

Insert:

(ba) the corporate director of a CCIV;

4 Paragraph 110C(2)(a)

Repeal the paragraph, substitute:

(a) if the sender is a company, responsible entity of a registered scheme, or corporate director of a CCIV:

(i) relates to a meeting of the members of the company, registered scheme or sub-fund of the CCIV (including a meeting of a class of members); or

(ii) for a company—relates to a resolution to be considered by the members of the company (including a resolution to be considered by a class of members of the company) without a meeting; or

(iii) for the corporate director of a CCIV—relates to a resolution to be considered by the members of a sub-fund of the CCIV without a meeting; or

Authorised Version C2022A00008

5 After paragraph 110E(1)(b)

Insert:

(ba) where the sender is the corporate director of a CCIV—the recipient is a member of the CCIV; or

6 After paragraph 110J(3)(b)

Insert:

(ba) where the sender is the corporate director of a CCIV—the recipient is a member of the CCIV; or

7 After subsection 110K(2)

Insert:

(2A) A CCIV must:

(a) send the members of the CCIV, at least once in each financial year, a notice setting out the matters mentioned in subsection (4); or

(b) make such a notice readily available on a website.

8 Subsections 110K(4) and (5)

After "(2)", insert ", (2A)".

9 Subsection 1232H(1)

Omit "subsection 314(1AA) or (1AE)", substitute "subsection 314(1AE)".

10 In the appropriate position in Schedule 3

Insert:

Subsection 110K(2A)	30 penalty units

Authorised Version C2022A00008

Schedule 5—Corporate collective investment vehicles: tax framework

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Division 195

Add:

Subdivision 195-C—Corporate collective investment vehicles

Guide to Subdivision 195-C

195-100 What this Subdivision is about

The business, assets and liabilities of each sub-fund of a CCIV are taken to constitute the trust estate of a separate trust (a CCIV sub-fund trust), of which the CCIV is the trustee and the members of the sub-fund are the beneficiaries.

This Subdivision sets out further rules to facilitate the CCIV, and the sub-fund and its members, being taxed on this basis, including:

- modifications of the rules for determining whether the CCIV sub-fund trust is a managed investment trust (under Division 275) and an attribution managed investment trust (under Division 276); and

  Note: These modifications also affect whether the trust is a withholding MIT under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*.

- rules to support the application of Division 6 or 6C of Part III of the *Income Tax Assessment Act 1936*, to the extent that Division applies to the trust; and

- rules to support the application to the trust of relevant rules about trust losses and capital gains.

Authorised Version C2022A00008

Table of sections

Operative provisions

195-105 Effect of this Subdivision
195-110 Each sub-fund of a CCIV is taken to be a separate trust
195-115 A CCIV sub-fund trust is a unit trust
195-120 Beneficiary of a CCIV sub-fund trust has fixed entitlements to shares of income and capital of the trust
195-123 How to work out the income of the trust estate of a CCIV sub-fund trust for an income year
195-125 When a beneficiary of a CCIV sub-fund trust is presently entitled to trust income
195-127 When a beneficiary of a CCIV sub-fund trust has an individual interest in exempt income and non-assessable non-exempt income of the trust estate
195-130 Application of Division 275 (managed investment trusts) to a CCIV sub-fund trust
195-135 Application of Division 276 (AMITs) to a CCIV sub-fund trust
195-140 Entry on Australian Business Register

Operative provisions

195-105 Effect of this Subdivision

(1) This Subdivision has effect for the purposes of all *taxation laws, to the exclusion of those laws as they would otherwise apply in relation to *CCIVs and their members (in their capacity as such).

Note: Subsection (3) excludes some taxation laws from this subsection.

(2) Without limiting the generality of subsection (1), the purposes referred to in that subsection include how *taxation laws apply in relation to other entities, in so far as that application is affected by the application of those laws in relation to *CCIVs and their members (in their capacity as such).

Note: For example, in applying subsection 318(1) of the *Income Tax Assessment Act 1936* to determine whether a CCIV is an associate of a natural person for the purposes of a provision affecting the income tax payable by that person:

(a) paragraph 318(1)(d) of that Act (providing for when a trustee of a trust is an associate of the natural person) would apply; and

(b) paragraph 318(1)(e) of that Act (providing for when a company is an associate of the natural person) would not apply.

Authorised Version C2022A00008

(3) Subsections (1) and (2) do not apply to the following *taxation laws:

(a) the *Foreign Acquisitions and Takeovers Act 1975*;

(b) legislative instruments made under that Act.

195-110 Each sub-fund of a CCIV is taken to be a separate trust

(1) For each *sub-fund of a *CCIV, the business, *assets and *liabilities of the sub-fund are taken to constitute the trust estate of a separate trust, of which the CCIV is the trustee and the *members of the sub-fund are the beneficiaries.

(2) A trust that is taken to exist because of the application of subsection (1) to a *sub-fund of a *CCIV is a ***CCIV sub-fund trust***.

Note: The combined effect of this section and subsections 960-100(2) and (3) is that a CCIV is a different entity in its capacity as trustee of each of its CCIV sub-fund trusts.

Because of subsection 195-105(1), the tax treatment of the CCIV in those capacities excludes the tax treatment that would otherwise apply to the CCIV as a company. Also, the tax treatment of members of the CCIV is based on them being treated as beneficiaries of their respective CCIV sub-fund trusts, to the exclusion of the tax treatment that would otherwise apply to them as members of a company.

Example 1: CCIV A has only one sub-fund (sub-fund A). CCIV B has only one sub-fund (sub-fund B).

CCIV A holds shares in CCIV B. The shares are referable to sub-fund B. They are assets of sub-fund A.

In its capacity as trustee of the CCIV sub-fund trust for sub-fund A, CCIV A is a beneficiary of the CCIV sub-fund trust for sub-fund B.

Example 2: A CCIV has 2 sub-funds: sub-fund A and sub-fund B.

As permitted by section 1230Q of the *Corporations Act 2001*, the CCIV acquires, in respect of sub-fund A, shares that are referable to sub-fund B. The shares are assets of sub-fund A.

In its capacity as trustee of the CCIV sub-fund trust for sub-fund A, the CCIV is a beneficiary of the CCIV sub-fund trust for sub-fund B.

195-115 A CCIV sub-fund trust is a unit trust

(1) A *CCIV sub-fund trust is taken to be a unit trust.

Authorised Version C2022A00008

Note: One consequence of this subsection is that a CCIV sub-fund trust can be a public unit trust if it meets the other tests in section 102P of the *Income Tax Assessment Act 1936*.

(2) The *shares that are *referable to the *sub-fund are taken to be the units in the trust.

(3) The rights, obligations and other characteristics attaching to a unit in the trust are taken to be the same, as nearly as practicable, as the rights, obligations and other characteristics attaching to the share that is taken to be that unit.

Note: One consequence of this section is that if shares that are referable to the sub-fund are listed for quotation in the official list of a stock exchange, the units in the sub-fund trust that those shares are taken to be will likewise be taken to be listed in that official list.

Examples of provisions to which this is relevant are:

(a) paragraph 275-20(2)(a) (widely-held requirement for managed investment trusts) of this Act; and

(b) paragraph 102P(1)(a) of the *Income Tax Assessment Act 1936* (public unit trusts).

195-120 Beneficiary of a CCIV sub-fund trust has fixed entitlements to shares of income and capital of the trust

(1) A *beneficiary of a *CCIV sub-fund trust is taken to have a ***fixed entitlement*** to a share of income of the trust that the trust derives from time to time. At a particular time, that share is equal to the percentage worked out using the formula:

$$\frac{\text{Beneficiary dividends}}{\text{Total dividends}} \times 100$$

where:

beneficiary dividends is the total of the *dividends that the *beneficiary has a right to receive because of *shares that the beneficiary holds at that time and are *referable to the *sub-fund.

total dividends is the total of all *dividends that are payable on all *shares that are on issue at that time and are *referable to the *sub-fund.

Authorised Version C2022A00008

(2) A *beneficiary of a *CCIV sub-fund trust is taken to have a ***fixed entitlement*** to a share of the capital of the trust at a particular time equal to the percentage worked out using the formula:

$$\frac{\text{Beneficiary capital distribution}}{\text{Total capital distribution}} \times 100$$

where:

beneficiary capital distribution is the amount of a distribution of paid-up capital (in the event of a return of capital) that the *beneficiary has a right to receive because of *shares that the beneficiary holds at that time and are *referable to the *sub-fund.

total capital distribution is the total distribution of paid-up capital (in that event) payable on all *shares that are on issue at that time and are *referable to the *sub-fund.

(3) A fixed entitlement that exists because of this section is taken to be a fixed entitlement within the meaning given by sections 272-5, 272-10, 272-15 and 272-40 in Schedule 2F to the *Income Tax Assessment Act 1936*.

Note: This is relevant to, for example, the definition of ***fixed entitlement*** in subsection 102UC(4) of the *Income Tax Assessment Act 1936*.

195-123 How to work out the income of the trust estate of a CCIV sub-fund trust for an income year

(1) The income (the ***trust income***) of the trust estate of a *CCIV sub-fund trust for an income year is worked out in accordance with this section.

Note: This is relevant to working out the income tax position of the CCIV sub-fund trust and its beneficiaries under Division 6 of Part III of the *Income Tax Assessment Act 1936*.

(2) If:

(a) the *CCIV is a *retail CCIV at the end of the income year; and

(b) the amount of the *sub-fund's profit for the income year, as required to be stated in the financial statements included in the financial report for the sub-fund for the income year that the CCIV is required to prepare because of

Authorised Version C2022A00008

paragraph 1232C(1)(a) of the *Corporations Act 2001*, is greater than nil;

the trust income is that profit.

(3) If:

(a) the *CCIV is not a *retail CCIV at the end of the income year; and

(b) the amount of the *sub-fund's profit for the income year that would, if the CCIV had been a retail CCIV at the end of the income year, be required to be stated as mentioned in paragraph (2)(b) is greater than nil;

the trust income is that profit.

(4) If neither of subsections (2) and (3) applies, the trust income is nil.

195-125 When a beneficiary of a CCIV sub-fund trust is presently entitled to trust income

(1) A *beneficiary of a *CCIV sub-fund trust is taken to be presently entitled to a share of the income of the trust estate for an income year if any of the *sub-fund's profit for the income year was or is payable to the beneficiary by way of one or more *dividends declared during, or within 3 months after, the income year.

(2) That share consists of so much of that profit as was or is payable to the beneficiary by way of one or more such *dividends.

Note: To the extent that any of that profit is not payable to a beneficiary by way of such dividends, it will be income to which no beneficiary is presently entitled. This can have consequences under section 99 or 99A of the *Income Tax Assessment Act 1936*.

(3) Within 3 months after the end of the income year, the *CCIV must notify the *beneficiary, in the *approved form, of the following matters:

(a) whether the beneficiary is presently entitled to a share of the income of the trust estate for the income year and, if so, the amount of that share;

(b) for each *dividend that was declared during, or within 3 months after, the income year on *shares referable to the *sub-fund, and was or is payable to the beneficiary:

(i) the amount of the dividend; and

Authorised Version C2022A00008

(ii) how much of the dividend consists of any of the *sub-fund's profit for the income year.

Note: Failure to comply with this section may constitute an offence against subsection 8C(1) of the *Taxation Administration Act 1953*.

(4) For the purposes of this section, an amount is taken to be payable to the *beneficiary if it is required to be applied or dealt with in any way on the beneficiary's behalf or as the beneficiary directs.

(5) Except as provided in this section, a *beneficiary of a *CCIV sub-fund trust is not taken to be presently entitled to a share of income of the trust estate.

195-127 When a beneficiary of a CCIV sub-fund trust has an individual interest in exempt income and non-assessable non-exempt income of the trust estate

(1) A *beneficiary of a *CCIV sub-fund trust:

(a) is taken to have an individual interest in the exempt income of the trust estate from time to time; and

(b) is taken to have an individual interest in the *non-assessable non-exempt income of the trust estate from time to time.

(2) The individual interest referred to in paragraph (1)(a) or (b) is the same as the share (of income that the trust derives from time to time) to which the beneficiary has a *fixed entitlement under subsection 195-120(1).

(3) Except as provided in this section, a *beneficiary of a *CCIV sub-fund trust is not taken to have an individual interest in the exempt income, or *non-assessable non-exempt income, of the trust estate.

195-130 Application of Division 275 (managed investment trusts) to a CCIV sub-fund trust

(1) This section sets out how to apply Division 275 to a trust that is a *CCIV sub-fund trust.

Authorised Version C2022A00008

Determining whether the trust is a managed investment trust

(2) Section 275-10 has effect in relation to the trust as if the following paragraph were substituted for paragraph 275-10(3)(c):

(c) at the time the payment is made, the *sub-fund is being used for collective investment by pooling the contributions of the *members of the sub-fund as consideration to acquire rights to benefits produced from those contributions; and

(3) In applying section 275-10 to the trust, disregard the following provisions:

(a) paragraph 275-10(3)(d);

(b) paragraph 275-10(3)(g).

(4) Section 275-10 has effect in relation to the trust as if the following paragraph were substituted for paragraph 275-10(3)(e):

(e) the trust satisfies, in relation to the income year:

(i) if, at the time the payment is made, the trust is covered by section 275-15—either or both of the widely-held requirements in subsection 275-20(1) and 275-25(1); or

(ii) if, at the time the payment is made, the trust is *not* covered by section 275-15—either or both of the widely-held requirements in subsections 275-20(2) and 275-25(1); and

Determining whether the trust is a trust with wholesale membership

(5) In applying section 275-15 to the trust, disregard paragraph 275-15(a).

Determining whether the trust satisfies the widely-held requirements

(6) In applying section 275-45 to the trust, disregard paragraph 275-45(1)(d).

Authorised Version C2022A00008

195-135 Application of Division 276 (AMITs) to a CCIV sub-fund trust

(1) This section sets out how to apply Division 276 to a trust that is a *CCIV sub-fund trust.

Determining whether the trust is an attribution managed investment trust (AMIT)

(2) In applying section 276-10 to the trust, disregard the following provisions:

(a) paragraph 276-10(1)(b);

(b) paragraph 276-10(1)(e).

Note: The effect of disregarding paragraph 276-10(1)(e) is that the trustee of a *CCIV sub-fund trust does not have a choice as to whether the trust is an AMIT.

Trustee cannot choose to treat classes of membership interests as separate AMITs

(3) In applying Division 276 to the trust, disregard section 276-20.

195-140 Entry on Australian Business Register

(1) If a *CCIV sub-fund trust has an *ABN, the *Australian Business Registrar must enter in the *Australian Business Register in relation to the trust a statement that:

(a) indicates that the trust is taken to exist for tax purposes because of the application of section 195-110 to a *sub-fund of a *CCIV; and

(b) sets out the sub-fund's ARFN (within the meaning of the *Corporations Act 2001*).

Note: ARFN is short for Australian Registered Fund Number.

(2) The *Australian Business Registrar must take reasonable steps to ensure that information entered in the *Australian Business Register under this section is accurate. For this purpose, the Registrar may correct or update the information.

Authorised Version C2022A00008

2 Subsection 703-20(2) (after table item 3)

Insert:

4	A company	The company is a *CCIV at any time during the income year

3 Subsection 703-20(2) (at the end of the table)

Add:

8	A trust	The trust is a *CCIV sub-fund trust

4 At the end of section 703-20

Add:

(3) Item 8 of the table in subsection (2) of this section has effect despite section 713-130 (which enables a public trading trust to form a consolidated group).

International Tax Agreements Act 1953

5 Subsection 4(2)

Omit "Part IVA of the *Income Tax Assessment Act 1936*", substitute "the provisions covered by subsection (3)".

6 At the end of section 4

Add:

(3) This subsection covers the following provisions:
(a) Part IVA of the *Income Tax Assessment Act 1936*;
(b) Subdivision 195-C (Corporate collective investment vehicles) of the *Income Tax Assessment Act 1997*.

Authorised Version C2022A00008

Part 2—Consequential amendments

A New Tax System (Australian Business Number) Act 1999

7 Paragraph 26(3)(g)

After "section 30-229", insert "or 195-140".

Income Tax Assessment Act 1997

8 Section 9-1 (after table item 3)

Insert:

3A	A company that is a corporate collective investment vehicle (CCIV)	Subdivision 195-C
3B	The trustee of an attribution managed investment trust (AMIT)	sections 276-405 to 276-425

9 Section 9-5 (after table item 1)

Insert:

1A	The trustee of an attribution managed investment trust (AMIT) is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets	sections 276-405 to 276-425

10 Subsection 995-1(1)

Insert:

asset, of a *sub-fund of a *CCIV, means any of the assets of the sub-fund, ascertained in accordance with Subdivision B of Division 3 of Part 8B.5 of the *Corporations Act 2001*.

beneficiary, of a *CCIV sub-fund trust, means a *member of the *sub-fund who is taken because of subsection 195-110(1) to be a beneficiary of the trust.

CCIV: see ***corporate collective investment vehicle***.

Authorised Version C2022A00008

CCIV sub-fund trust has the meaning given by subsection 195-110(2).

corporate collective investment vehicle or ***CCIV*** has the same meaning as in the *Corporations Act 2001*.

11 Subsection 995-1(1) (definition of *fixed entitlement*)

Repeal the definition, substitute:

fixed entitlement:

(a) an entity has a ***fixed entitlement*** to a share of the income or capital of a company, partnership or trust if the entity has a fixed entitlement to that share within the meaning of Division 272 in Schedule 2F to the *Income Tax Assessment Act 1936*; and

(b) despite paragraph (a) of this definition, a *beneficiary of a *CCIV sub-fund trust is taken to have a ***fixed entitlement*** to a share of the income or capital of the trust as provided by section 195-120 of this Act.

Note: Section 165-245 of this Act affects when an entity is taken to have held or had, directly or indirectly, a fixed entitlement to a share of income or capital of a company.

12 Subsection 995-1(1)

Insert:

liability, of a *sub-fund of a *CCIV, means any of the liabilities of the sub-fund, ascertained in accordance with Subdivision C of Division 3 of Part 8B.5 of the *Corporations Act 2001*.

13 Subsection 995-1(1) (at the end of the definition of *member*)

Add:

; and (f) in relation to a *sub-fund of a *CCIV—means a person who is, under subsection 1222Q(3) of the *Corporations Act 2001*, a member of the sub-fund.

14 Subsection 995-1(1)

Insert:

Authorised Version C2022A00008

referable: a *share in a *CCIV is ***referable*** to a *sub-fund of the CCIV if it is so referable under subsection 1230(1) of the *Corporations Act 2001*.

retail CCIV has the meaning given by subsection 1222J(1) of the *Corporations Act 2001*.

sub-fund, of a *CCIV, has the meaning given by subsection 1222Q(1) of the *Corporations Act 2001*.

Authorised Version C2022A00008

Part 3—Amendments consequential on enactment of the Commonwealth Registers Act 2020

Income Tax Assessment Act 1997

15 Subsection 195-140(1)

Omit "the *Australian Business Registrar must enter in the *Australian Business Register in relation to the trust", substitute "the *Registrar must make a record of".

16 Paragraph 195-140(1)(b)

Repeal the paragraph, substitute:

(b) sets out:

(i) the sub-fund's ARFN (within the meaning of the *Corporations Act 2001*); and

(ii) the name of the *corporate director of the CCIV; and

(iii) the number of the corporate director's Australian financial services licence (within the meaning of that Act).

17 Subsection 195-140(2)

Repeal the subsection, substitute:

(2) The *Registrar must take reasonable steps to ensure that a statement recorded under subsection (1) is accurate. For this purpose, the Registrar may correct or update the record of the statement.

18 Subsection 995-1(1)

Insert:

corporate director of a *CCIV has the same meaning as in the *Corporations Act 2001*.

Authorised Version C2022A00008

19 Application of amendments

The amendments made by this Part apply to a CCIV sub-fund trust that has an ABN, even if the trust began to have an ABN before the commencement of this Part.

Authorised Version C2022A00008

Schedule 6—Extension of temporary loss carry back

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Subsection 36-17(1) (note 2)

Omit "2020-21 or 2021-22 income year", substitute "2020-21, 2021-22 or 2022-23 income year".

2 Subsection 36-17(1) (note 2)

Omit "or 2020-21", substitute ", 2020-21 or 2021-2022".

3 Section 36-25 (table dealing with tax losses of corporate tax entities)

Omit "*or 2021-22*", substitute "*, 2021-22 or 2022-23*".

4 Division 160 (heading)

Omit "**or 2021-22**", substitute "**, 2021-22 or 2022-23**".

5 Section 160-1

Omit "2019-20, 2020-21 or 2021-22 against the income tax liability it had for 2018-19, 2019-20 or 2020-21", substitute "2019-20, 2020-21, 2021-22 or 2022-23 against the income tax liability it had for 2018-19, 2019-20, 2020-21 or 2021-22".

6 Section 160-1

Omit "refundable tax offset for 2020-21 or 2021-22", substitute "refundable tax offset for 2020-21, 2021-22 or 2022-23".

7 At the end of paragraph 160-5(a)

Add:

or (iii) the 2022-23 income year;

Authorised Version C2022A00008

8 At the end of paragraph 160-5(c)

Add:

(iv) if the current year is the 2022-23 income year—the 2022-23 income year or the 2021-22 income year;

9 At the end of paragraph 160-5(d)

Add:

(iv) if the current year is the 2022-23 income year and the 2022-23 income year was a loss year—the 2021-22 income year or the 2020-21 income year;

(v) if the current year is the 2022-23 income year and the 2021-22 income year was a loss year—the 2020-21 income year;

10 Section 160-5 (after note 2)

Insert:

Note 2A: The entity can be entitled to only one loss carry back tax offset for 2022-23. However, that offset has 4 components: one relating to 2018-19, one relating to 2019-20, one relating to 2020-21 and one relating to 2021-22: see section 160-10.

11 At the end of paragraph 160-10(1)(a)

Add:

and (iv) if the current year is the 2022-23 income year—the 2021-22 income year and the 2020-21 income year;

12 Subparagraph 160-10(2)(b)(ii)

Omit "or 3", substitute ", 3 or 4".

13 Subsection 160-10(3) (at the end of the heading)

Add "*—entitlement to loss carry back tax offset for 2021-22 income year*".

14 After subsection 160-10(4)

Insert:

Authorised Version C2022A00008

Income tax liability for the 2018-19, 2019-20 or 2020-21 income year already utilised—entitlement to loss carry back tax offset for 2022-23 income year

(4A) Subsection (4B) applies in relation to applying paragraph (2)(b) to work out the entity's *loss carry back tax offset component for the 2018-19, 2019-20 or 2020-21 income year (the ***gain year***) as part of working out the entity's entitlement to a *loss carry back tax offset for the 2022-23 income year.

(4B) Disregard so much of the entity's *income tax liability for the gain year as has previously been included (as part of working out the entity's entitlement to a *loss carry back tax offset for the 2020-21 or 2021-22 income year) in a *loss carry back tax offset component.

15 At the end of subsection 160-10(5)

Add:

; and (d) if the current year is the 2022-23 income year:

(i) where the entity carries back an amount to the 2021-22 income year—more than half of the 2021-22 income year; and

(ii) where the entity carries back an amount to the 2020-21 income year—more than half of the 2020-21 income year.

16 Subsection 160-15(1)

Omit "2020-21 or 2021-22 income year", substitute "2020-21, 2021-22 or 2022-23 income year".

17 After paragraph 160-15(1)(a)

Insert:

(aa) if the current year is the 2022-23 income year and the 2022-23 income year was a loss year:

(i) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2022-23 income year is to be carried back to the 2021-22 income year; and

Authorised Version C2022A00008

(ii) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2022-23 income year is to be carried back to the 2020-21 income year; and

(iii) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2022-23 income year is to be carried back to the 2019-20 income year; and

(iv) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2022-23 income year is to be carried back to the 2018-19 income year;

(ab) if the current year is the 2022-23 income year and the 2021-22 income year was a loss year:

(i) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2021-22 income year is to be carried back to the 2020-21 income year; and

(ii) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2021-22 income year is to be carried back to the 2019-20 income year; and

(iii) how much (expressed as a specified amount) of the entity's tax loss (if any) for the 2021-22 income year is to be carried back to the 2018-19 income year;

18 At the end of section 160-25 (after the note)

Add:

(3) If the *current year is the 2022-23 income year:

(a) the entity cannot *carry back an amount of a *tax loss to the 2018-19 income year unless the entity was a *corporate tax entity throughout:

(i) the 2018-19 income year (disregarding any period when the entity was not in existence); and

(ii) the 2019-20 income year; and

(iii) the 2020-21 income year; and

(iv) the 2021-22 income year; and

(b) the entity cannot carry back an amount of a tax loss to the 2019-20 income year unless the entity was a corporate tax entity throughout:

(i) the 2019-20 income year (disregarding any period when the entity was not in existence); and

Authorised Version C2022A00008

(ii) the 2020-21 income year; and
(iii) the 2021-22 income year; and

(c) the entity cannot carry back an amount of a tax loss to the 2020-21 income year unless the entity was a corporate tax entity throughout:
(i) the 2020-21 income year (disregarding any period when the entity was not in existence); and
(ii) the 2021-22 income year; and

(d) the entity cannot carry back an amount of a tax loss to the 2021-22 income year unless the entity was a corporate tax entity throughout the 2021-22 income year (disregarding any period when the entity was not in existence).

Note: The entity must be a corporate tax entity throughout 2022-23: see paragraph 160-5(b).

19 Paragraph 195-15(5)(c)

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

20 Section 195-37

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

21 Paragraph 320-149(2)(aa)

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

22 Subsection 995-1(1) (note to the definition of *carry back*)

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

Taxation Administration Act 1953

23 Section 45-340 in Schedule 1 (paragraph (db) of step 1 of the method statement)

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

Authorised Version C2022A00008

Part 2—Contingent amendments

Income Tax Assessment Act 1997

24 Subsection 160-16(1)

Omit "or 2021-22", substitute ", 2021-22 or 2022-23".

Authorised Version C2022A00008

Schedule 7—Deductible gift recipients

Income Tax Assessment Act 1997

1 In the appropriate position in subsection 30-25(2) (table)

Insert:

2.2.53	SU Australia Ministries Limited	the gift must be made on or after 1 July 2021 and before 1 July 2023

2 In the appropriate position in subsection 30-50(2) (table)

Insert:

5.2.36	Virtual War Memorial Limited	the gift must be made on or after 1 July 2021 and before 1 July 2026

3 Subsection 30-80(2) (table item 9.2.15)

Repeal the item.

4 Subsection 30-80(2) (cell at table item 9.2.27, column headed "Special conditions")

Repeal the cell, substitute:

the gift must be made on or after 1 July 2021 and before 1 July 2026

5 Section 30-105 (cell at table item 13.2.23, column headed "Special conditions")

Repeal the cell, substitute:

the gift must be made on or after 1 September 2021 and before 1 September 2026

6 In the appropriate position in section 30-105 (table)

Insert:

13.2.29	Australian Associated Press Ltd	the gift must be made on or after 1 July 2021 and before

Authorised Version C2022A00008

1 July 2026

7 In the appropriate position in section 30-105 (table)

Insert:

13.2.30	The Greek Orthodox Community Of New South Wales Ltd	the gift must be made on or after 1 July 2019

8 Section 30-315 (after table item 17)

Insert:

17AAAA	Australian Associated Press Ltd	item 13.2.29

9 Section 30-315 (table item 45B)

Repeal the item.

10 Section 30-315 (after table item 52B)

Insert:

52C	Greek Orthodox Community Of New South Wales Ltd	item 13.2.30

11 Section 30-315 (before table item 112AG)

Insert:

112AFA	SU Australia Ministries Limited	item 2.2.53

12 Section 30-315 (after table item 121B)

Insert:

121C	Virtual War Memorial Limited	item 5.2.36

Authorised Version C2022A00008

Schedule 8—Minor and technical amendments Spring 2021

Part 1—Amendments commencing day after Royal Assent

Australian Prudential Regulation Authority Supervisory Levies Determination 2021

1 Section 9-2 (cell at table item 3, column headed "Minimum restricted levy amount ($)")

Omit "7,50", substitute "7,500".

2 At the end of the instrument

Add:

Part 10—Application provisions

10-1 Amendment of section 9-2

The amendment of section 9-2 made by Part 1 of Schedule 8 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* applies for the financial year beginning on 1 July 2021.

Corporations Act 2001

3 Subsection 323DC(1)

Omit "regulators", substitute "operators".

4 At the end of subsection 912D(3)

Add:

; (e) an obligation of a representative of the licensee under the financial services law, so far as it relates to provisions of this Act or the ASIC Act referred to in paragraphs (a), (b), (ba)

Authorised Version C2022A00008

and (c) of the definition of ***financial services law*** in section 761A.

5 At the end of section 912D

Add:

(6) Regulations for the purposes of paragraph (4)(b) may prescribe a civil penalty provision to the extent that it relates to the following:
(a) contraventions of specified provisions;
(b) specified matters.

6 Subsection 916B(3)

Repeal the subsection (not including the note), substitute:

(3) An authorised representative (an ***authoriser***) of a financial services licensee may, in that capacity, give an individual a written notice authorising that individual, for the purposes of this Chapter, to provide a specified financial service or financial services on behalf of the licensee, but only if the licensee consents in writing given to the authoriser.

7 After subsection 916B(3)

Insert:

(3A) An individual who is authorised as mentioned in subsection (3) cannot, in that capacity, authorise another person under subsection (3).

8 Subsection 916B(5A)

Omit "a body corporate", substitute "an authoriser".

9 Paragraph 916B(7)(b)

Omit "the body corporate", substitute "the authoriser".

10 Subsection 916B(9)

Omit "the body corporate", substitute "the authoriser".

11 Subsection 916F(1AA)

Repeal the subsection, substitute:

Authorised Version C2022A00008

(1AA) Subsection (1) does not apply to an authorisation of a representative by an authorised representative (the ***authoriser***) if:

(a) the authorisation is given as mentioned in subsection 916B(3); and

(b) the relevant consent under subsection 916B(3) was given in respect of a specified class of individuals of which the representative is a member; and

(c) the representative is an employee of the authoriser; and

(d) the only financial services that the representative is authorised to provide are one or more of the following:

(i) general advice that relates to financial products covered by regulations made for the purposes of this paragraph;

(ii) dealing in financial products covered by regulations made for the purposes of this paragraph;

(iii) personal advice about a basic deposit product or about a facility for making non-cash payments that relates to a basic deposit product; and

(e) the authoriser provides information about the representative and the representative's authorisation when requested.

Note 1: Regulations made for the purposes of paragraph (d) may be expressed to cover all financial products, or only 1 or more specified kinds of financial products.

Note 2: A defendant bears an evidential burden in relation to the matters in subsection (1AA). See subsection 13.3(3) of the *Criminal Code*.

12 Paragraph 946C(3)(c)

Omit "5 days", substitute "5 business days".

13 Paragraph 1019B(3)(b)

Omit "5th day", substitute "fifth business day".

14 In the appropriate position in Chapter 10

Insert:

Authorised Version C2022A00008

Part 10.62—Application provisions relating to Schedule 8 to the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

1689 Definitions

In this Part:

amending Part means Part 1 of Schedule 8 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*.

commencement day means the day the amending Part commences.

1690 Application of paragraph 912D(3)(e)

(1) Paragraph 912D(3)(e), as inserted by the amending Part, applies in relation to a reportable situation that arises on or after 1 October 2021 and relates to a breach of an obligation referred to in that paragraph.

(2) If:

(a) due to subsection (1), a financial services licensee is required, under a provision of Division 3 of Part 7.6, to do a thing in relation to a reportable situation that arose before the commencement day; and

(b) that thing must be done within a period of a specified number of days after the licensee first knows about, or is reckless with respect to, particular matters; and

(c) that period began before the commencement day;

then that requirement is taken to be a requirement to do the thing within the specified number of days after the commencement day.

1691 Application of subsection 912D(6)

Subsection 912D(6), as inserted by the amending Part, applies in relation to a reportable situation that arises on or after the commencement day.

Authorised Version C2022A00008

1692 Saving of regulation 7.6.04A of the *Corporations Regulations 2001*

Regulation 7.6.04A of the *Corporations Regulations 2001*, as in force immediately before the commencement day, has effect, on and after the commencement day, as if the regulation had been made for the purposes of paragraph 916F(1AA)(1)(d) as inserted by the amending Part.

Foreign Acquisitions and Takeovers Act 1975

15 Paragraph 62A(3)(b)

Omit "subsection (1)", substitute "subsection (2)".

16 Subsection 76(4)

Omit "paragraph (1)(c)", substitute "subparagraph (1)(b)(i)".

Income Tax Rates Act 1986

17 At the end of subsection 3A(1)

Add:

; or (d) a COVID-19 pandemic event 408 visa (as defined by subclause 9204(1) of Schedule 13 to the *Migration Regulations 1994*).

18 Application of amendment

The amendment of subsection 3A(1) of the *Income Tax Rates Act 1986* made by this Part applies to an individual in relation to a particular time if:

(a) the time is in an income year (a ***pre-commencement income year***) that begins on or after 1 July 2019 but before the first 1 July to occur after the day this Part commences and the individual is a non-resident taxpayer in relation to that income year; or

(b) the time:

(i) is in a pre-commencement income year in relation to which there are one or more part-year residency periods in relation to the individual; and

Authorised Version C2022A00008

(ii) is not in one of those part-year residency periods; or

(c) the time is in an income year that begins on or after the first 1 July to occur after the day this Part commences.

National Consumer Credit Protection Act 2009

19 Paragraph 50A(3)(c)

Repeal the paragraph, substitute:

(c) the obligation under paragraph 47(1)(d), so far as it relates to Commonwealth legislation that is:

(i) covered by paragraph (d) of the definition of ***credit legislation*** in subsection 5(1); and

(ii) specified in regulations made for the purposes of this subparagraph.

20 At the end of subsection 50A(3)

Add:

; (d) an obligation of a representative of the licensee under this Act, the Transitional Act, Division 2 of Part 2 of the ASIC Act or regulations made for the purpose of that Division.

21 After subsection 50A(5)

Insert:

(5A) Regulations for the purposes of paragraph (4)(b) may prescribe a civil penalty provision to the extent that it relates to the following:

(a) contraventions of specified provisions;

(b) specified matters.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

22 In the appropriate position

Insert:

Authorised Version C2022A00008

Schedule 20—Application provisions relating to Schedule 8 to the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022

1 Definitions

In this Schedule:

amending Part means Part 1 of Schedule 8 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*.

commencement day means the day the amending Part commences.

2 Application of paragraph 50A(3)(d) of the National Credit Act

(1) Paragraph 50A(3)(d) of the National Credit Act, as inserted by the amending Part, applies in relation to a reportable situation that arises on or after 1 October 2021 and relates to a breach of an obligation referred to in that paragraph.

(2) If:

(a) due to subitem (1), a licensee is required, under a provision of Division 5 of Part 2-2 of the National Credit Act, to do a thing in relation to a reportable situation that arose before the commencement day; and

(b) that thing must be done within a period of a specified number of days after the licensee first knows about, or is reckless with respect to, particular matters; and

(c) that period began before the commencement day;

then, that requirement is taken to be a requirement to do the thing within the specified number of days after the commencement day.

Authorised Version C2022A00008

3 Application of paragraph 50A(3)(c) and subsection 50A(5) of the National Credit Act

Paragraph 50A(3)(c) and subsection 50A(5) of the National Credit Act, as inserted by the amending Part, apply in relation to a reportable situation that arises on or after the commencement day.

Payment Times Reporting Act 2020

23 Section 5 (definition of *volunteering entity*)

Omit "paragraph 7(1)(b)", substitute "subsection 7(1A)".

24 Subsection 7(1)

Repeal the subsection, substitute:

(1) A constitutionally covered entity becomes a ***reporting entity*** at the start of an income year for the entity if the entity is covered by subsection (2).

(1A) If a constitutionally covered entity gives the Regulator notice in writing that the entity elects to become a reporting entity, the entity becomes a ***reporting entity*** when the notice is given.

Note: A reporting entity that is a reporting entity only because of an election under subsection (1A) is a ***volunteering entity***: see section 5.

25 Section 8

Omit "Each", substitute "(1) Subject to subsections (2) and (3), each".

26 At the end of section 8

Add:

(2) If a volunteering entity becomes a reporting entity within the first 6 months of an income year for the entity, the first 6 months of that income year is not a reporting period for the entity.

(3) If a volunteering entity becomes a reporting entity after the first 6 months of an income year for the entity, no period in that income year is a reporting period for the entity.

27 Application of volunteering entity amendments

The amendments of sections 5, 7 and 8 of the *Payment Times Reporting Act 2020* made by this Part apply in relation to an election to become a reporting entity given by an entity on or after the commencement of this Part.

28 Paragraph 14(1)(h)

Repeal the paragraph, substitute:

(h) state the proportion, determined by total value, of all invoices paid by the entity during the reporting period that were small business invoices; and

29 Subsection 14(2)

Repeal the subsection, substitute:

(2) The rules may prescribe the method for working out any of the matters mentioned in paragraph (1)(e), (f), (g) or (h), including in relation to the issue or payment of small business invoices.

30 Application of amendments of section 14

(1) Paragraph 14(1)(h) of the *Payment Times Reporting Act 2020*, as inserted by this Part, applies in relation to a payment times report given on or after the commencement of this Part, including a payment times report for a reporting period that began before that commencement.

(2) Subsection 14(2) of the *Payment Times Reporting Act 2020*, as inserted by this Part, applies in relation to a payment times report given on or after the commencement of this Part, including a payment times report for a reporting period that began before that commencement.

(3) Rules that were:

(a) made for the purposes of subsection 14(2) of the *Payment Times Reporting Act 2020*; and

(b) in force immediately before the commencement of this Part;

have effect, on and after that commencement as if they had been made for the purposes of subsection 14(2) of the *Payment Times Reporting Act 2020* as inserted by this Part.

Authorised Version C2022A00008

31 Paragraphs 27(3)(a) and (b)

Repeal the paragraphs.

Taxation Administration Act 1953

32 Subsection 350-10(4) in Schedule 1

Omit "the matters set out in the document to the same extent as the original document would have been evidence of those matters", substitute "a matter to the same extent as the original document would have been evidence of the matter".

Authorised Version C2022A00008

Part 2—Amendments commencing first day of next quarter

Income Tax Assessment Act 1997

33 Paragraph 840-905(b)

Repeal the paragraph, substitute:

(b) that you *derive at a time when you are a foreign resident and:

(i) you hold a Temporary Work (International Relations) Visa (subclass 403); or

(ii) you hold a Temporary Activity Visa (subclass 408) having previously held a Temporary Work (International Relations) Visa (subclass 403).

34 Application of amendment

The amendment of paragraph 840-905(b) of the *Income Tax Assessment Act 1997* made by this Part applies in relation to income derived on or after 1 July 2019.

Taxation Administration Act 1953

35 Paragraph 12-319A(b) in Schedule 1

Repeal the paragraph, substitute:

(b) at a time when the employee is a foreign resident and:

(i) the employee holds a Temporary Work (International Relations) Visa (subclass 403); or

(ii) the employee holds a Temporary Activity Visa (subclass 408) having previously held a Temporary Work (International Relations) Visa (subclass 403).

36 Application of amendment

The amendment of paragraph 12-319A(b) in Schedule 1 to the *Taxation Administration Act 1953* made by this Part applies in relation to salary, wages, commission, bonuses or allowances paid on or after 1 July 2019.

Authorised Version C2022A00008

Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020

37 The whole of the instrument

Repeal the instrument.

Authorised Version C2022A00008

Part 3—Amendments commencing on 1 July 2022

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

38 Item 23 of Schedule 9

Omit "23", substitute "1".

Authorised Version C2022A00008

Part 4—Amendments with contingent commencement

Income Tax Assessment Act 1936

39 After subsection 204(2)

Insert:

(2A) The Commissioner may disclose the tax file number of a person to a registrar specified in subsection 355-67(2) in Schedule 1 to the *Taxation Administration Act 1953* if:

(a) the Commissioner is appointed as that registrar; and

(b) no other person or body is appointed as that registrar; and

(c) the disclosure is made through use of a computer application or system that is used for the performance of functions, or the exercise of powers, of both the Commissioner and that registrar; and

(d) use of the application or system by that registrar is on the condition that tax file numbers disclosed through use of the application or system are only to be recorded, used, divulged, disclosed or communicated to the extent reasonably necessary for the application or system to be used for the performance of that registrar's functions, or the exercise of that registrar's powers.

40 Subsection 204(3)

Omit "or (2)", substitute ", (2) or (2A)".

Taxation Administration Act 1953

41 After paragraph 8WB(1A)(b)

Insert:

(ba) in connection with the first-mentioned person exercising powers or performing functions of a registrar specified in subsection 355-67(2) in Schedule 1; or

Authorised Version C2022A00008

42 Subsection 8WB(2)

After "(b)", insert ", (ba)".

43 Application of amendments

The amendments of section 204 of the *Income Tax Assessment Act 1936* and section 8WB of the *Taxation Administration Act 1953* made by this Part apply, from the commencement of this Part, in relation to a tax file number issued before, on or after that commencement.

Authorised Version C2022A00008

Schedule 9—Retirement income covenant

Superannuation Industry (Supervision) Act 1993

1 After subsection 52(8)

Insert:

Retirement income covenants

(8A) The covenants referred to in subsection (1) include the following covenants by each trustee of the entity:

(a) to formulate, review regularly and give effect to a retirement income strategy that meets the requirements in section 52AA;

(b) to take reasonable steps to gather the information necessary to inform the formulation and review of the strategy;

(c) to record the strategy in writing;

(d) to record in the document in which the strategy is recorded:

(i) each determination made by the trustee for the purposes of the strategy, and the reasons for the determination; and

(ii) each other decision made by the trustee in formulating, reviewing or giving effect to the strategy that the trustee considers to be significant, and the reasons for the decision; and

(iii) the steps taken to gather the information that informed the formulation of the strategy, and the reasons for taking those steps;

(e) to make a summary of the strategy publicly available on the website of the entity.

(8B) Subsection (8A) does not apply if the entity is a regulated superannuation fund, and the only benefits it provides to, or in respect of, its members are any of the following:

(a) death benefit;

(b) permanent incapacity benefit;

(c) a benefit provided if, and only if, a member is suffering temporary incapacity (within the meaning of the superannuation data and payment standards).

Authorised Version C2022A00008

2 After section 52

Insert:

52AA Retirement income strategy requirements—registrable superannuation entities

(1) A retirement income strategy formulated for an entity by a trustee for the purposes of subsection 52(8A) must meet the requirements in this section.

(2) The strategy must be for the benefit of beneficiaries of the entity who are retired or who are approaching retirement and must address how the trustee will assist those beneficiaries to achieve and balance the following objectives:

(a) to maximise expected retirement income over the period of retirement;

(b) to manage expected risks to the sustainability and stability of retirement income over the period of retirement of the following kinds:

(i) longevity risks;

(ii) investment risks;

(iii) inflation risks;

(iv) any other risks to the sustainability and stability of the retirement income;

(c) to have flexible access to expected funds over the period of retirement.

Determining the class of beneficiaries who are retired or who are approaching retirement

(3) The trustee must determine the class of beneficiaries of the entity who are retired or who are approaching retirement for the purposes of the strategy. The class may be determined excluding beneficiaries who:

(a) only hold a defined benefit interest in the entity; and

(b) are not eligible to commute that benefit (whether during the period of retirement or otherwise).

(4) The strategy may divide the class of beneficiaries into sub-classes and make different provision in respect of those sub-classes.

Authorised Version C2022A00008

Determining meaning of retirement income and period of retirement

(5) The trustee must determine the meaning of retirement income for the purposes of the strategy, which:

(a) must include income, net of tax, received during the period of retirement of the following kinds:

(i) income paid from, or supported by, a superannuation interest in the entity;

(ii) income from an age pension under the *Social Security Act 1991*; and

(b) may include income from any other source if the trustee determines that it is appropriate to include income from that source.

(6) The trustee must determine the meaning of period of retirement for the purposes of the strategy.

3 Application of this Schedule

(1) The amendments of the *Superannuation Industry (Supervision) Act 1993* made by this Schedule apply, on and after the commencement of this Schedule, in relation to a registrable superannuation entity (including a registrable superannuation entity in existence before that commencement).

(2) Despite subitem (1), a trustee of the entity is not required to have formulated a retirement income strategy or published a summary of a retirement income strategy before 1 July 2022.

Authorised Version C2022A00008

Schedule 10—Employee share schemes: removing cessation of employment as a taxing point

Income Tax Assessment Act 1997

1 Section 83A-100 (paragraph beginning "If there is a real risk")

Omit "If you cease employment earlier, or if 15 years pass", substitute "If 15 years pass".

2 Subsection 83A-115(2)

Omit "earliest of the times mentioned in subsections (4) to (6)", substitute "earlier of the times mentioned in subsections (4) and (6)".

3 Subsection 83A-115(5)

Repeal the subsection.

4 Subsection 83A-115(6)

Omit "3rd", substitute "2nd".

5 Subsection 83A-120(2)

Omit "subsections (4) to (7)", substitute "subsections (4), (6) and (7)".

6 Subsection 83A-120(5)

Repeal the subsection.

7 Subsection 83A-120(6)

Omit "3rd", substitute "2nd".

8 Subsection 83A-120(7)

Omit "4th", substitute "3rd".

Authorised Version C2022A00008

9 Application of amendments

The amendments made by this Schedule apply in relation to each ESS interest for which the ESS deferred taxing point occurs on or after:

(a) unless paragraph (b) applies—the first 1 July to occur after the day on which this Act receives the Royal Assent; or

(b) if this Act receives the Royal Assent on a 1 July—that 1 July.

[*Minister's second reading speech made in—*
House of Representatives on 25 November 2021
Senate on 10 February 2022]

(165/21)

Authorised Version C2022A00008