

7 January 2022

To Committee Secretary
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
Email: economics.sen@aph.gov.au

Dear Senators

Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 (“Bill”)

The purpose of this submission is to support the passage of the provisions of the Bill that establish the corporate and tax framework for the use by the Australian funds management industry of a new form of investment fund, the corporate collective investment vehicle (“CCIV”).

1 Introduction

Our firm

Our firm has a market leading practice in funds and financial services law.

Our clients operate the whole range of investment structures including retail funds and platforms for both investment and superannuation, ASX-listed trusts and structures for institutional and offshore investors.

Our work to date in relation to the Bill

Our interest and involvement in the development of an Australian globally competitive corporate vehicle dates back to the early 2000s when we recognised the potential significance of the Luxembourg SICAV as an alternative investment structure both in Australia and throughout our region.

It has continued through our engagement with the review by the Board of Taxation of the tax arrangements applying to Collective Investment Vehicles commenced by the then Government announcement on 11 May 2010¹.

¹ <https://ministers.treasury.gov.au/ministers/nick-sherry-2009/media-releases/board-taxation-review-collective-investment-vehicles-tax>

We have had ongoing significant involvement in the consultative process in the development of a Collective Investment Vehicle structure in Australia.

In 2016/17, we provided a secondees to Treasury to assist with the development of the regulatory model.

Since the first draft of the legislation was released in 2017, we have engaged in extensive direct discussions and provided detailed submissions on every draft, mainly through the Financial Services Council, to help make this a practical new tool that the industry will embrace, and in the process seeking to become the industry specialists on the topic.

2 Purpose and effect of the Bill

What problem does the Bill seek to solve?

Investment funds in Australia are almost exclusively structured as trusts. This is primarily because trusts have “flow through” tax treatment and are not taxed at source as is the case for a trading company; but also because the rules of capital return for trading companies are onerous and do not facilitate normal fund outflows as investors choose to move their money between investments.

Although trust structures (including trusts regulated as registered managed investment schemes) have served investors quite well to date, there are difficulties including:

- certain foreign investors may not be familiar with trusts, making it more difficult for Australian managers to attract foreign capital; and
- as trusts are constructs of the courts of equity, they have no separate legal personality and there is no statutory regime covering their “insolvency”, which makes things complicated and costly should a fund happen to fail.

The CCIV seeks to provide the best of both worlds – the clarity of a company structure with the tax treatment of a trust (so long as the fund is a passive investor, not conducting an active business).

Will consumers be protected?

The investor protection framework and day-to-day manner of functioning of a CCIV that includes retail investors will be very similar to that of a registered managed investment scheme (“MIS”).

This approach of aligning the regulatory and tax laws for the two fund types has been deliberate on the part of the policy development team at Treasury and is supported by industry. It allows the same IT, compliance and governance systems to support both types of fund, giving industry a choice and ensuring that retail investors are no less protected overall than they would be in a MIS.

3 Should the Bill be passed?

Yes, with a vision for ongoing enhancement

Voltaire observed that “perfect is the enemy of good”.

The Bill has come a very long way from its early iterations, which contained burdensome requirements that would have deterred fund managers from using the structures, such as the need for a supervisory depository, a prohibition on listing on an exchange and punitive tax outcomes for a fund that failed to meet the CCIV tests.

Although the Bill is not yet perfect, we strongly support its introduction and passing, on the basis that it is now a thoroughly considered and generally well-crafted piece of legislation that will represent a significant improvement in the range of investment vehicles which may be offered to both Australian and foreign investors.

The most important aspect from our perspective is the introduction of the regime within the proposed timetable for commencement on 1 July 2021.

We believe there are some matters which, if dealt with, could improve the take up of the new regime and its ultimate success. These are matters which we consider could be introduced very simply through subsequent amendments and which would not affect the fiscal integrity associated with the new regime.

However, even without these changes we believe it is appropriate to enact the current legislation as soon as possible.

Potential for improvement to tax provisions of the Bill

One aspect that could be improved is the specific provisions of the Bill which deal with the taxation of a CCIV sub fund in the event widely held conditions are not satisfied. The appropriate policy is to produce an equivalent outcome to that which would apply if the corporate collective investment sub fund was a MIS. The current drafting does not achieve this policy objective.

A second area for improvement is the requirement in the legislation that the amount to which beneficiaries must be presently entitled is based on accounting profits. This will be inconsistent with the way funds normally operate. The reliance on accounting profits can in some cases potentially produce inappropriate outcomes for members.

We believe that a simple solution to the problem is to remove reliance on the concept of accounting profits and rely on the definition of income stated in the CCIV's constitution, which would align with the concept of trust income for a MIS.

It would also be beneficial to improve the tax rules that rely on the concept of a dividend, which is not the same as the MIS concept of a distribution.

Other future improvements

In the regulatory provisions of the Bill, future changes that we would like to see considered for subsequent legislation include:

- a transitional regime, to allow MISs to change their legal form into a CCIV without creating a tax event or requiring a members' meeting. This would be of particular utility to a fund manager that has a large and successful Australian-based fund with a track record, that it would like to market overseas; and
- a small number of refinements to the regulation of a CCIV, such as to allow investors in a particular sub fund of the CCIV to vote to change to a new fund operator (known as the corporate director).

Although the non-core improvements we have suggested may well be critical to the *long-term* success of the CCIV regime, we do not consider that they should hold up the passage of the Bill now.

We express our support for its passage through both houses at the earliest opportunity.

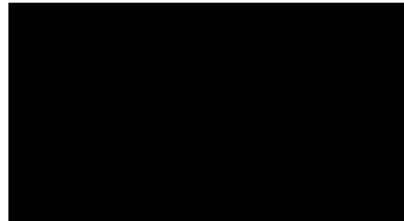


We would be happy to provide further information or submissions to the Committee if it would be of assistance to the Committee.

Yours sincerely



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