

Australia - Corporate Collective Investment Vehicle (CCIV)

September 2022

J.P.Morgan

Regulatory Change Overview and Latest Developments

Background

As a part of the 2016-2017 Budget, the Australian Federal Government (the Government) announced that it would introduce a corporate collective investment vehicle (CCIV) – similar to the European Union (EU) domiciled corporate funds popular with investors in Asia – along with a limited partnership collective investment vehicle (CIV). Following a multi-year legislative journey, the final CCIV law was passed in February 2022. The CCIV framework was introduced by the Corporate Collective Investment Vehicle Framework and Other Measures Act 2022, including the addition of a new Chapter 8B to the Corporations Act 2001 (the Act).

As of July 1, 2022, investment managers can register their proposed CCIVs with the Australian Securities & Investments Commission (ASIC).

It is worth noting that the limited partnership CIV was not adopted simultaneously.

A key driver for the launch of these new investment vehicles is to increase the competitiveness of Australia's fund management industry through the introduction of internationally recognizable investment products. The intention is to align Australia more closely with successful collective investment fund regimes such as the United Kingdom's Open Ended Investment Companies (OEICs) and the EU's Undertakings for Collective Investment in Transferable Securities (UCITS).

A further driver is the Asia Region Funds Passport (ARFP), which aims to facilitate the cross-border marketing of managed funds across participating countries including Australia, Japan, Republic of Korea, New Zealand and Thailand. The CCIV and CIV investment vehicles are expected to be more marketable under such a passport.

It should be noted that one of the challenges Australia faces is the ability to attract foreign investments via the existing unit trust fund structure as its legal format is somewhat unfamiliar to non-resident investors. The CCIV investment vehicle would offer an alternative to the existing unit trust fund structure operating under a tax regime which broadly mirrors the current tax regime of Attribution Managed Investment Trusts (AMITs). Effectively, there will be tax neutral outcomes between CCIVs and AMITs, and CCIV will be able to attribute amounts to investors for tax purposes. Investors will generally be taxed as if they had undertaken the investments directly. Similar to AMITs, non-resident investors will generally be taxed at concessional rates on attributed income and be subject to the withholding tax provisions.

Key Features of the CCIV Regime¹

The CCIV regime includes, but is not limited to, the following key features:

- ❖ A CCIV is a company that is limited by shares and is a separate legal entity.
- ❖ A CCIV must have at least one sub-fund at all times, and its sub-funds must be registered with ASIC.
- ❖ A sub-fund of a CCIV is all or part of the business of a CCIV and not a separate legal entity. Each sub-fund's assets and liabilities must be segregated from that of the other sub-funds.
- ❖ A sub-fund can acquire shares in another sub-fund in the same CCIV, which is referred to in the Act as cross-investing and a single asset may be allocated across multiple sub-funds, in each case subject to certain conditions.

¹ <https://asic.gov.au/regulatory-resources/managed-funds/corporate-collective-investment-vehicles/>

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- ❖ The CCIV must have a corporate director that is a public company and holds an Australian Financial Services License (AFSL) authorizing it to operate the business and conduct the affairs of a CCIV (this is a new CCIV-specific AFSL authorisation).
- ❖ The CCIV must not have any officers or employees other than the single corporate director (although the single corporate director may have officers and employees of its own).
- ❖ The Act imposes duties on a corporate director and its directors and officers. The directors and officers owe obligations to the corporate director in their capacity as directors and officers of a public company.
- ❖ A CCIV can offer both wholesale and retail fund types, with the retail investment vehicle being subject to additional regulatory requirements.
- ❖ All CCIVs, whether wholesale or retail, will have the option, but not the requirement, to have a depositary or custodian under the current bill.

Retail and Wholesale CCIVs²

The CCIV regulatory framework distinguishes between retail and wholesale CCIVs.

A CCIV is considered a retail investment vehicle if it satisfies one of the following three criteria under the Act:

- ❖ At least one member of the CCIV is a protected retail client.
- ❖ At least one person is a protected client under a custodial arrangement.
- ❖ At least one member is a protected member of a passport fund.

Only a retail CCIV with a single sub-fund or sub-fund of a retail CCIV which only has that one sub-fund is allowed to be included in the official list of a prescribed financial market in Australia, such as the Australian Securities Exchange (ASX) or Cboe Australia (CXA). However, a share in a CCIV may be quoted on a financial market that is not prescribed.

A CCIV can be either a retail or wholesale fund vehicle; however, just one retail client in the fund will make it a 'retail CCIV', which is subject to greater disclosures (i.e., product disclosure statements) and potentially other regulatory obligations³.

Whereas wholesale CCIVs are subject to a more limited regulatory framework, reflecting a higher degree of investor sophistication among wholesale investors.

Finally, retail CCIVs are required to prepare audited annual and half-yearly financial and directors' reports for each of their sub-funds, rather than as a combined CCIV financial report.

CCIV Structure⁴

As previously mentioned, one of the key features of the CCIV is the introduction of the sub-fund structure. The CCIV must offer at least one sub-fund and can include multiple sub-funds. The assets and liabilities of each sub-fund must be segregated from others to ensure investor protection.

² <https://asic.gov.au/regulatory-resources/managed-funds/corporate-collective-investment-vehicles/>

³

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6817_ems_5cff4b6c-34e7-4092-807d-4cc20bac5e27/upload_pdf/JC004201.pdf;fileType=application%2Fpdf (Explanatory Memorandum, [1.91], [1.92])

⁴ <https://asic.gov.au/regulatory-resources/funds-management/#cciv>



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Sub-funds allow for segregated pools of assets with different investment strategies. This is an attractive feature for investment managers as sub-funds can be launched with a reduced time to market given there is no need to establish a new legal structure at a sub-fund level.

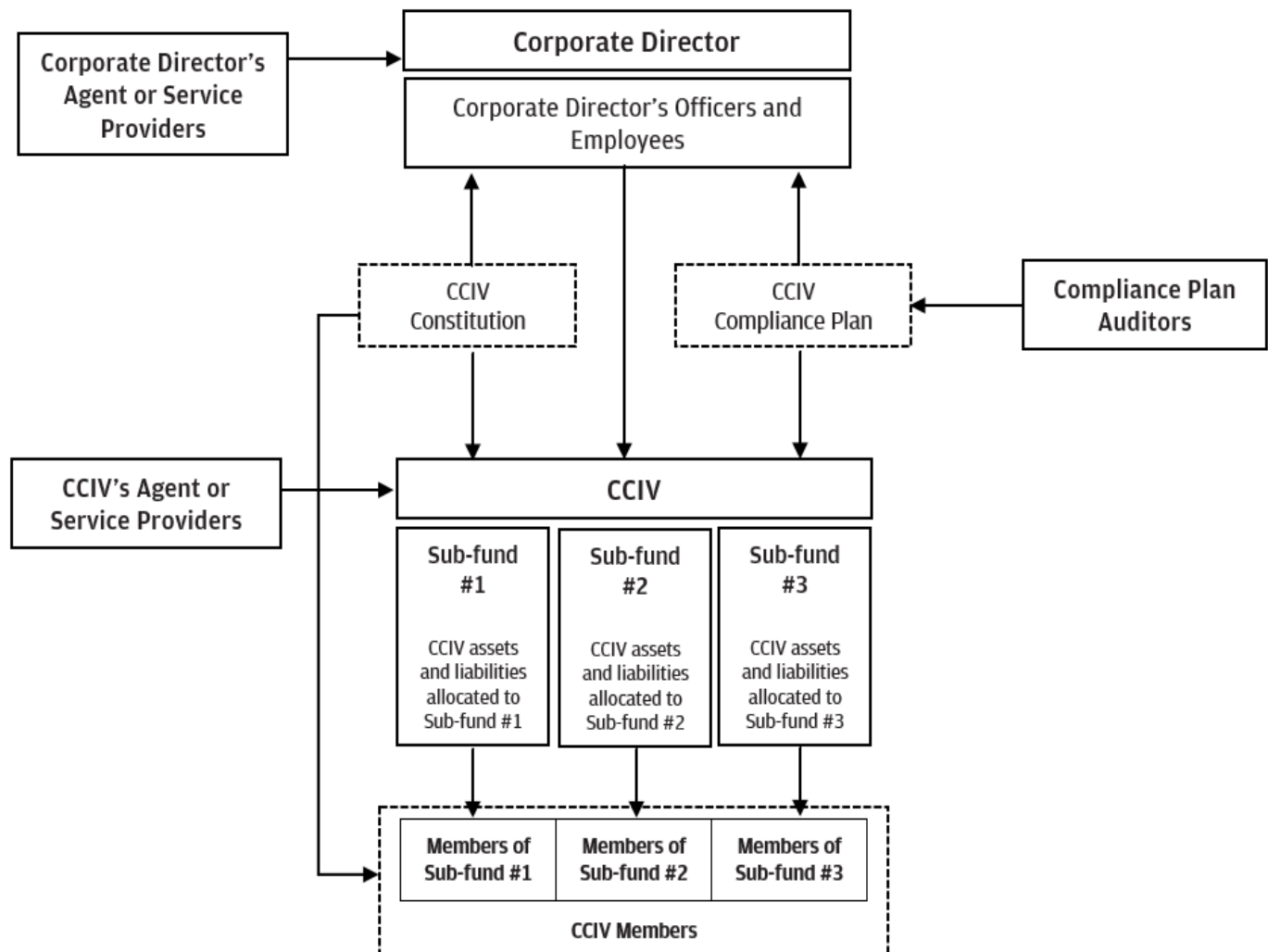
Cross-investments between sub-funds are permitted and are intended to allow a CCIV to utilize funds management structures such as:

- ❖ A building blocks structure (also known as a master-feeder structure), where a CCIV establishes sub-funds that hold a certain asset class (building block sub-funds) and then creates a number of other sub-funds with different levels of exposure to the building block sub-funds.
- ❖ A hedging structure, where one sub-fund of the CCIV holds core assets and additional sub-funds hold a relevant hedging instrument and shares in the core sub-fund.

The ability to engage in cross-investment between sub-funds of a CCIV applies despite any law (including legislation, common law or equity) enforced in Australia or elsewhere. For example, the rules in the Corporations Act that prohibit a company from directly acquiring its own shares do not restrict cross-investment between sub-funds of a CCIV.

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The following diagram demonstrates how the new CCIV regulatory framework operates⁵:



Note: This diagram shows the regulatory framework as it applies to a retail CCIV. A wholesale CCIV is not required to have a compliance plan. The CCIV and the corporate director may each appoint agents and service providers to exercise their respective powers and functions.

⁵ https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6817_ems_5cff4b6c-34e7-4092-807d-4cc20bac5e27/upload_pdf/JC004201.pdf;fileType=application%2Fpdf (Explanatory Memorandum, [1.96] Diagram 1.1 Regulatory framework for a CCIV)

J.P. Morgan Service and Operating Model

In Australia, J.P. Morgan offers investment management clients an extensive suite of services including but not limited to Global Custody, Fund Administration, Foreign Exchange, Agency Securities Financing and Banking.

As noted in this briefing, one of the key features of the CCIV regime is the alignment of the tax treatment with the existing tax treatment of AMITs and their investors.

The CCIV tax framework achieves this by leveraging the existing trust taxation framework and the attribution flow-through regime (i.e., the new tax system for MITs or the AMIT regime) rather than creating a new bespoke tax regime.

As a part of broader range of fund services provided by J.P. Morgan, we have developed a fully integrated tax platform to complete the distribution calculations and associated reporting for AMITs which can be leveraged for CCIVs.

J.P. Morgan remains committed to supporting our clients who opt to use the new CCIV regime and are looking to leverage our extensive experience and expertise as a Securities Services provider.

Industry and Client Engagement

As a member of the Australian Custodial Services Association (ACSA), J.P. Morgan has been actively engaged in the industry work to shape the CCIV regime.

J.P. Morgan contributed to the ACSA Regulatory Affairs and Tax working groups by providing feedback on the CCIV consultation papers from the Government and ASIC throughout the multi-year legislative process.

These engagements via the industry working groups sought to ensure that the final CCIV requirements are closely aligned to existing operating models and requirements of the AMIT regime. The consultation in August 2021 also removed the need for a depositary service further simplifying the model.

As previously mentioned, the final CCIV bill allows cross-investments between the sub-funds within the CCIVs; this aspect previously lacked clarity in the proposed versions of the bill. Cross-investment can enhance the investment manager's ability to implement certain investment strategies, support seeding of new sub-funds and facilitate rationalization of the existing investment fund structures.

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Appendix: International Comparability: Retail Variable Capital Investment Companies⁶

	Hong Kong Open-ended Fund Company (OFC)	Singapore Variable Capital Company (VCC)	Corporate Collective Investment Vehicle (CCIV)
Structure	<ul style="list-style-type: none"> ❖ Corporate investment vehicle regulated and administered by Securities and Futures Commission ❖ Must be open-ended 	<ul style="list-style-type: none"> ❖ Corporate investment vehicle regulated by the Monetary Authority of Singapore and administered by the Accounting and Corporate Regulatory Authority ❖ Can be open or closed-ended 	<ul style="list-style-type: none"> ❖ Corporate investment vehicle regulated and administered by ASIC ❖ Can be open or closed-ended
Key entities	<ul style="list-style-type: none"> ❖ Board of directors of OFC with at least two directors ❖ Duties owed to OFC including reasonable care, skill and diligence ❖ Must have licensed investment manager (Type 9) ❖ Custodian entrusted with safe-keeping of scheme property - may outsource custodial duty 	<ul style="list-style-type: none"> ❖ Board of directors of S-VACC with at least 3 directors (retail) 1 director (non-retail) ❖ Subject to disqualification and duties similar to company directors ❖ Must have licensed fund manager (R/L FMC) ❖ Mandatory custodian (all funds) must safeguard assets and rights and interests of shareholders 	<ul style="list-style-type: none"> ❖ Corporate Director is a licensed (AFSL) public company, made up of external directors ❖ Duties owed to members including care, skill and, diligence
Structure	<ul style="list-style-type: none"> ❖ Protected cell regime with sub-funds within one legal entity ❖ Cross sub-fund investments may be enabled 	<ul style="list-style-type: none"> ❖ Single legal entity with sub-funds as separate cells (without legal personality) ❖ Assets and liabilities of each sub-fund must be segregated from others 	<ul style="list-style-type: none"> ❖ Single legal entity with sub-funds as separate cells (without legal personality) ❖ Assets and liabilities of each sub-fund must be segregated from others ❖ Cross sub-fund investments are allowed
Winding up	<ul style="list-style-type: none"> ❖ Winding up as if individual sub-funds are separate legal persons 	<ul style="list-style-type: none"> ❖ Winding up of each sub-fund as if it were a separate legal person 	<ul style="list-style-type: none"> ❖ Winding up of each sub-fund as if it were a separate legal person

⁶ https://consult.treasury.gov.au/financial-system-division/asia-region-funds-passport/supporting_documents/CCIV%20Slides.pdf-1



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