

21 January 2022

Director
Corporate Collective Investment Vehicles Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: CIVreform@treasury.gov.au

Dear Sir/Madam

Corporate Collective Investment Vehicles - Regulations

The Property Council welcomes the opportunity to provide comments to Treasury on draft versions of:

- the Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2021 and associated Explanatory Statement (the draft regulations); and
- the Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2021 and associated Explanatory Statement (the draft rules).

The property industry supports the introduction of a Corporate Collective Investment Vehicle (CCIV) framework and welcomes the Government's commitment to enhancing flexibility and choice for Australian fund managers through the introduction of a CCIV regime aligned with the robust and successful Managed Investment Trust (MIT) and attribution MIT (AMIT) frameworks.

We believe that the CCIV framework could be improved by amending the draft regulations to address an outstanding issue that the Property Council raised in a prior submission made to Treasury (dated 24 September 2021) on the exposure draft CCIV legislation.

Making distributions under the Corporations Act

In corporations law there are clear legal differences between the capital and dividend requirements of 'companies' and 'trusts'. Companies generally can only pay dividends out of profits and cannot make capital distributions without certain steps being undertaken, while trusts are able to distribute capital or profits as per the terms of the trust deed or constitution.

We understand that the intent of the CCIV provisions is to 'turn off' the dividend related requirements for ordinary companies to facilitate ease of distributions for CCIVs and allow for returns of capital by way of capital distributions. This is because sub-funds are intended to be able to act as open-ended investment funds with variable capital and will allow redemptions and have capital that varies from time to time.

However, the CCIV legislative framework includes extensive provisions regarding capital reductions, buy-backs and self-acquisition in addition to the provisions relating to the redemption of shares. This is quite different to both the existing framework for registered managed investment schemes and other jurisdictions like Singapore.

We believe that the capital reduction and self-acquisition rules should be generally disappplied to CCIVs, as they are not appropriate for open-ended investment funds and they wouldn't provide the necessary flexibility to distribute income or capital to the investors of a CCIV sub-fund.

Clarity on this issue could be provided to fund managers, investors and other stakeholders by stating in the regulations that under corporations law there is no need for the CCIV (or the corporate director) to distinguish the source of a distribution as being from either profits or share capital of the CCIV sub-fund.

While our preferred approach is for clarification on this issue through legislative amendment in the CCIV legislation – as we recommended in our earlier submission to the draft CCIV legislation from September 2021 – rather than through the regulations, we believe that the regulatory pathway could be an alternative solution.

In essence, the draft regulations should make clear that distributions made by a CCIV sub-fund may come from profits or share capital without the need for the CCIV to specify or delineate between the potential sources of those distributions.

If you would like to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



Belinda Ngo
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