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Corporate collective investment vehicles: Preparing for the commencement of the new regime

Dear Stephanie

The Property Council welcomes the opportunity to provide comments on ASIC's proposed guidance on corporate collective investment vehicles (CCIVs).

We welcome the Government's commitment to enhancing flexibility and choice for Australian fund managers through the introduction of a CCIV regime and aligning it with the robust and successful managed investment scheme (MIS) and managed investment trust (MIT) frameworks. The MIT and attribution MIT (AMIT) regimes are a vital cornerstone of Australia's property sector, facilitating global and domestic capital investment into office buildings, industrial precincts, retail centres and other types of property assets across our cities and regions.

A principle we urge ASIC to consider in preparing for the commencement of the CCIV regime is that an operator's decision to pursue a CCIV should not be driven by the financial and insurance requirements that would apply to it. As our submission outlines below, we suggest amendments to the proposed approach to ensure regulatory neutrality is maintained across Australia's funds management sector.

Further details can be found below but by way of summary, suggested amendments include:

- A 'true' streamlining process for corporate directors of an MIS who wish to operate a CCIV, avoiding re-submission of existing 'proofs' already provided to ASIC.
- Ensuring there is clarity around the net tangible asset (NTA) requirement for corporate directors, so that the same assets can be counted to meet multiple financial requirements.
- A transition period of 12 months regarding CCIV insurance to allow providers to respond to the commencement of the new regime.

We see the CCIV regime existing in a complementary fashion to MIS/MIT and MIS/AMIT regimes. Once an operator is authorised in the ASIC system for one type of vehicle, there should be a 'true' streamlined application process that allows operators to choose additional or alternative vehicles for their investors. Fund managers, whether they are new market entrants or existing operators, will be able to choose between regimes based on investment and business considerations rather than requiring technical or specialised knowledge to complete the application process.

Streamlined licensing process

We support the requirement for CCIV operators to be appropriately licensed and appreciate ASIC's commitment to streamline the process where possible, particularly for existing AFS licensees. We understand ASIC has proposed a form of streamlining for existing AFSL holders authorised to advise on/deal in MIS interests, and no variation is required for existing AFSL holders authorised to advise on/deal in securities.

However, the proposed forms of streamlining will not apply to the corporate director itself, which is required to hold authorisation to "operate the business and conduct the affairs of a CCIV". Given the regulatory similarities between CCIVs and MIS, it would be appropriate to facilitate a 'true' streamlined variation, where the corporate director applicant is an existing licensee authorised to act as responsible entity (RE) of registered schemes.

Applications for licence variations for corporate directors of an MIS, whether retail or wholesale, could be streamlined by limiting the required 'proofs' to the incremental information ASIC requires in relation to CCIVs. An analogy can be drawn with the 'true' streamlining process that applied at the commencement of the *Financial Services Reform Act 2001* (FSRA) – holders of dealer's licences could make a simple application seeking the equivalent authorisations under an AFSL, without needing to submit a full application or detailed proofs.

Financial resource requirements for corporate directors

The rationale given by ASIC for applying the NTA requirements to corporate directors is that "responsible entities and corporate directors perform functionally similar roles as operators of retail collective investment schemes and managers of retail client money" (paragraph 56 of CP 360). We note that paragraph 61 of CP 360 states that the NTA requirement will be a "separate, standalone compliance obligation". We are concerned that there is confusion between this statement and the underlying principles in RG 166 (published 29 April 2021), which at paragraph 166.225 provides the NTA requirement as it applies to REs:

> *"a) ensure that as a responsible entity, you have adequate financial resources to meet your operating costs (e.g. the costs of ensuring compliance with the Corporations Act) throughout the life of your registered schemes and any IDPSs you operate;*
>
> *b) align your interests and the interests of scheme members by ensuring that you are an entity of substance and that your shareholders have sufficient equity in the business to have a real incentive to ensure its success; and*
>
> *c) provide some level of assurance that, if you do fail, there is sufficient money available for the orderly transition to a new responsible entity or to wind up each registered scheme."*

The above factors do not preclude REs from applying that amount to its NTA obligations if it also acts as a corporate director of a CCIV.

We read ASIC's intention at RG 166.26 as implying that the same assets can be counted to meet multiple financial requirements (see extract below from existing RG 166):

> *Depending on the types of financial products and services you offer, more than one set of financial requirements may apply to you. If this is the case, you need to meet all applicable requirements; however, there is no need to hold separate assets to meet each requirement and you can count the same assets to meet multiple requirements.*

We do not believe ASIC is suggesting an effective double NTA requirement, as this would be onerous and likely pose a significant barrier to establishing the availability of corporate directors, and accordingly CCIVs in Australia. We suggest that paragraph 61 of CP 360 (which makes the NTA requirement applying to CCIV operators a standalone obligation) be further clarified to avoid confusion.

Compensation and insurance arrangements for AFS licensees

Paragraph 51 of CP 360 states that the professional indemnity (PI) insurance as it applies to corporate directors will be a standalone compliance obligation. While we understand the rationale behind this approach, we are of the view that the market will require time to adjust to this requirement, as insurers settle on appropriate pricing to cover this new class of insurance. This problem could also be exacerbated in the current environment where PI insurance has been increasingly difficult to acquire.

Combined with the proposed ASIC initiated variation to licenses, we consider that there is a very real chance that any attempts by industry to launch products taking advantage of the new CCIV regime will be unnecessarily delayed by this PI requirement.

As such, we suggest that a transition period of 12 months, starting from 1 July, be provided to CCIV providers that are otherwise holders of PI insurance that meet the requirements of RG 126 to allow the market to adjust to this new regime.

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Given the complexity of creating a new regime and the resultant regulatory changes required, there may be further issues that have yet to be identified. For this reason, the Property Council remains open to further consultation with ASIC.

If you would like to discuss any aspect of this submission further, please contact Adele Lausberg on 0415 225 638 and alausberg@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely

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