

18 July 2018

Financial System and Services Division  
Market Group  
The Treasury

By email: [CIVreform@treasury.gov.au](mailto:CIVreform@treasury.gov.au)

Dear Sir / Madam,

**Property Funds Association of Australia (PFA) - Submission to Treasury**

**First tranche of the *Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018 (CCIV Bill)***

The PFA welcomes this opportunity to make a submission to Treasury in relation to the CCIV Bill and explanatory materials

The PFA is an industry body representing the Australian unlisted wholesale and retail property funds sector, currently some \$79 billion in size.

The PFA's members consist of Australian Financial Services Licensed property fund managers, their advisors, consultants and representatives.

The PFA supports the establishment of the CCIV regime in Australia. This new investment vehicle has the potential to introduce fund structuring alternatives to local unlisted property fund managers and increase Australia's international competitiveness.

The CCIV Bill substantially improves on the Treasury release of *Collective Investment Vehicles: Introducing the Regulatory Framework and Core Exposure Draft for a Corporate Vehicle Consultation September 2017*.

However, there are still elements of the Exposure Draft that we believe can be further improved, having regard to:

- (a) maintaining parity between the regulation of the current managed investment scheme (MIS) structure and the CCIV, including wholesale MIS structures;

- (b) ensuring that the CCIV vehicles will be internationally competitive, particularly in the Asia Pacific region and comparable to competing vehicles in other jurisdictions; and
- (c) ensuring that the vehicle can also be used in the Australian market without being too burdensome and costly for local fund managers.

We understand that Treasury is not minded at this stage to make wholesale changes to the draft legislation and is focused on practical refinements.

With this in mind, we have focused on the key elements of the Exposure Draft of the CCIV Bill which we feel need to be addressed.

We would be pleased to assist the inquiry and be involved in any further consultation in relation to these matters and other proposed reforms, including subsequent tranches of the legislation, which may impact the unlisted property funds sector.

Yours sincerely



Paul Healy  
Chief Executive Officer  
Property Funds Association of Australia

## KEY ISSUES

### 1. Wholesale CCIVs

There are numerous proposed regulatory requirements that will apply to wholesale CCIVs that do not apply under the wholesale MIS regime. This will dissuade wholesale property fund managers from adopting CCIVs and which will also add considerable costs to operating wholesale CIVs.

These requirements include:

- (a) registration of wholesale CIVs with ASIC;
- (b) that a wholesale CIV corporate director must be a public company;
- (c) lodgement of constitution with ASIC;
- (d) procedures for the retirement and removal of the corporate director
- (e) restrictions on ability to remove a depository once appointed;
- (f) that absence of the equivalent of a small scale offering exemption which would prevent a wholesale CCIV from becoming a retail CCIV;
- (g) share provisions;
- (h) strict liability for agents of wholesale CCIVs;
- (i) requirement to have separate bank accounts for each sub-fund for a wholesale CCIV;
- (j) application of related party provisions;
- (k) the requirement for the corporate director to have at least half external directors; and
- (l) half-yearly reporting in relation to certain share transactions.

We submit that these requirements will discourage wholesale fund managers from adopting the CCIV and increase costs and thus raise the barriers to entry, particular for small unlisted property fund managers.

## **2. Sub-Funds**

We submit that there are number of proposed restrictions in the Exposure Draft in relation to sub-funds which are unnecessary and would prevent the efficient operation of the CCIV in sub-fund dealings. These include:

- (a) restrictions for sub-funds investing in the same asset unless the assets are fungible or converted to money;
- (b) restrictions on self-acquisition and cross-funding; and
- (c) single assets of a CCIV cannot be an asset of more than one sub-fund;

## **3. Depository**

We submit that there are a number of proposed requirements in relation to the appointment of a depository which are not necessarily consistent with other international vehicles and may also be impractical in the local market. These include:

- (a) complex 'structural' independence requirements (control and voting power tests) should be replaced with functional tests taken for UCITS V directive and proposed for Hong Kong. These conflict issues should be able to be managed by conflict management policies being in place and implemented;
- (b) the depository can only be replaced by a meeting of investors and should be able to be removed by the corporate director, as is currently the case for MIS;
- (c) clarification that the depository's verification role is discharged after the performance of the relevant activities of the CCIV;
- (d) the depository should be able to appoint agents to assist in the verification function; and
- (e) the depository should be able to refuse to act when not given appropriate instructions.

## **4. Compliance Committee**

The corporate director of a retail fund should have the option to appoint a compliance committee instead of having half of its directors as external directors, as is the option for retail MIS.