

Corporate Collective Investment Vehicles

11 October 2018

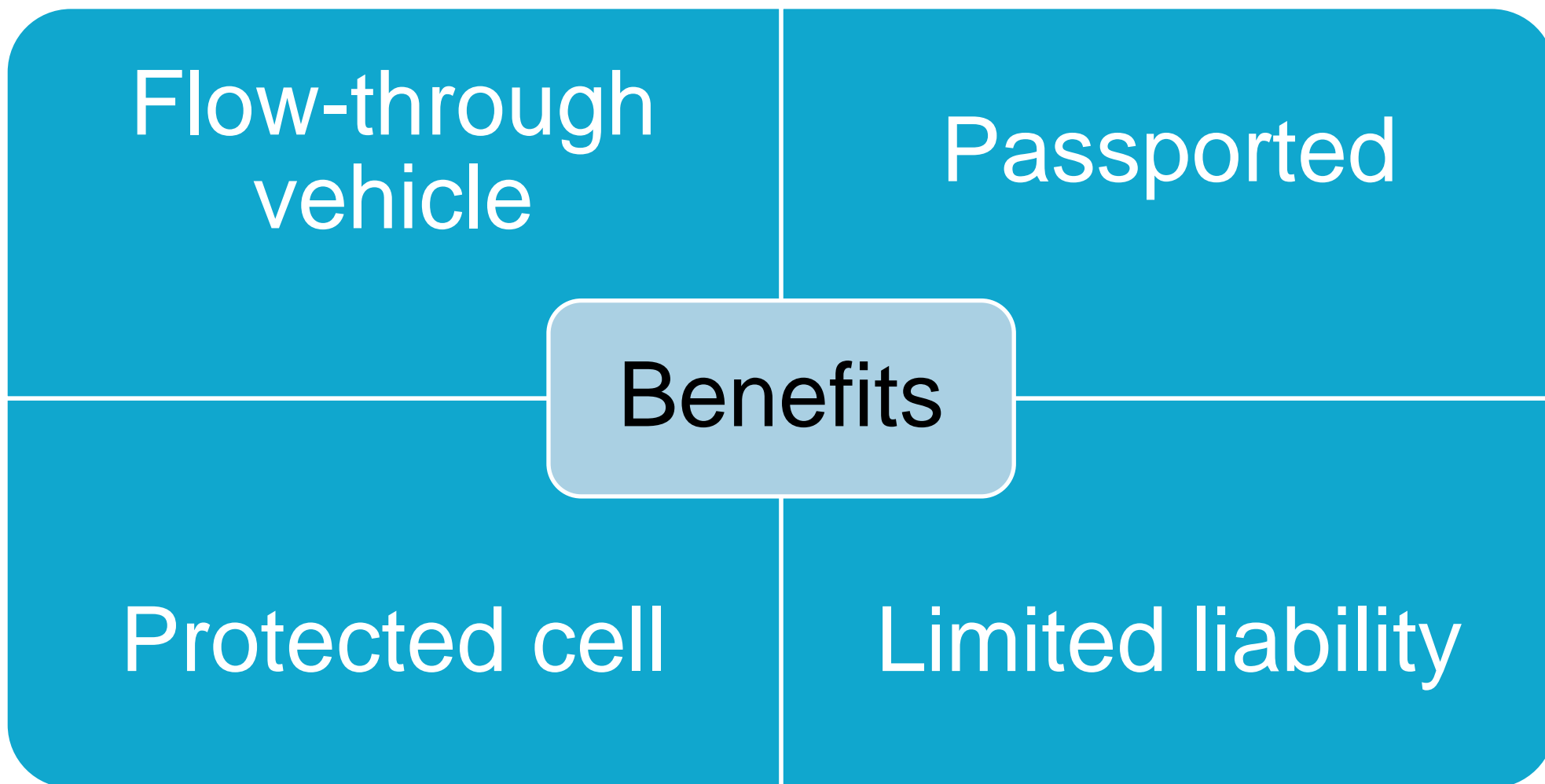
First – Asia Region Funds Passport

- Overall policy aims
 - Promote Australia as a financial services hub
 - Develop a flow-through Australian CIV that can be passported into Asia
- Japan, Thailand and Australia enacted legislation
 - South Korea and New Zealand are well advanced in enacting their legislation
- Australia
 - legislated and commenced 18 September 2018
 - ASIC updated and new Regulatory Guides
 - ASIC relief instruments amended to facilitate Passport regime
 - Corporations Act requires amendment to incorporate CCIVs once CCIVs legislation passed
- Pilot program used by a number of funds to obtain registration in their Home Economy
- Cross-border offers available from 1 February 2019
- Joint Committee exploring extension to other Asian economies
- Joint Committee has published guidance on Passport operation

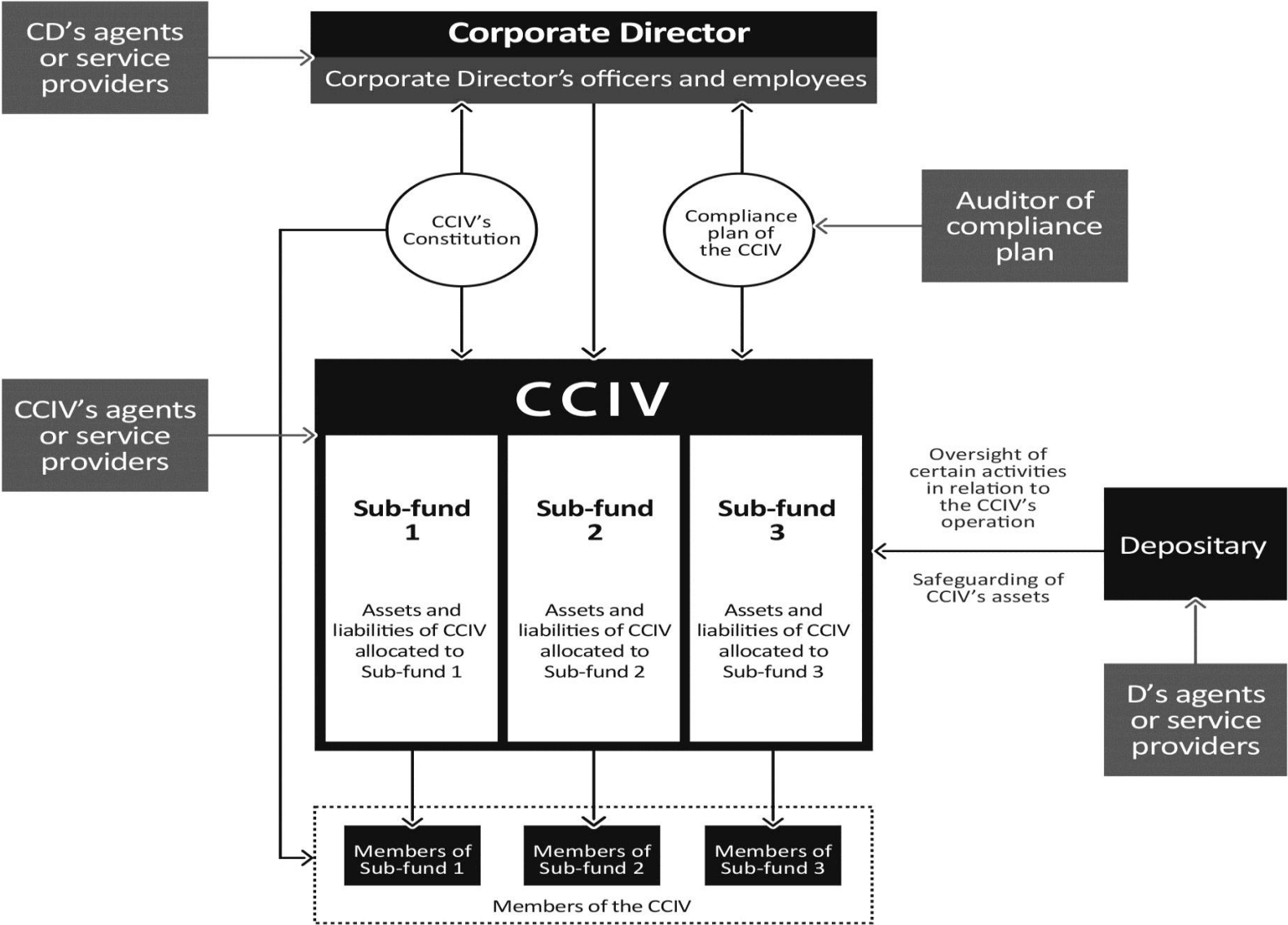
CCIVs – Timeline of draft legislation

- Proposed new Chapter 8B of the Corporations Act
- First tranche in August 2017 – core features of the CCIV regime
- Revised first tranche July 2018 – revised core features
- Second tranche July 2018 – insolvency; takeovers; Chapter 7 application
- More draft legislation still to come
- Legislation expected to be introduced in Spring session of Parliament

So why bother with a CCIV?



Overview of CCIVs



Some key features of CCIVs

- New type of company limited by shares
 - Limited liability for investors – game changer compared with MISs
- Constitution is a statutory contract between CCIV, CD and each member
- Sole director is a public company with an AFSL – like an RE
- Retail CCIVs and wholesale CCIVs – 1 retail client makes a CCIV wholesale
- Retail CCIVs assets to be held by a depositary

Some key features of CCIVs – cont'd

- Sub-funds:
 - business of CCIVs conducted through sub-funds
 - each CCIV must have at least one sub-fund
 - each sub-fund to be registered with ASIC
 - shares of sub-funds can be divided into classes
 - asset and liability segregation in sub-funds – with allocation rules
 - no joint investment of same asset with another sub-fund of same CCIV
 - no cross-investment into another sub-fund of the same CCIV
 - no legal personality

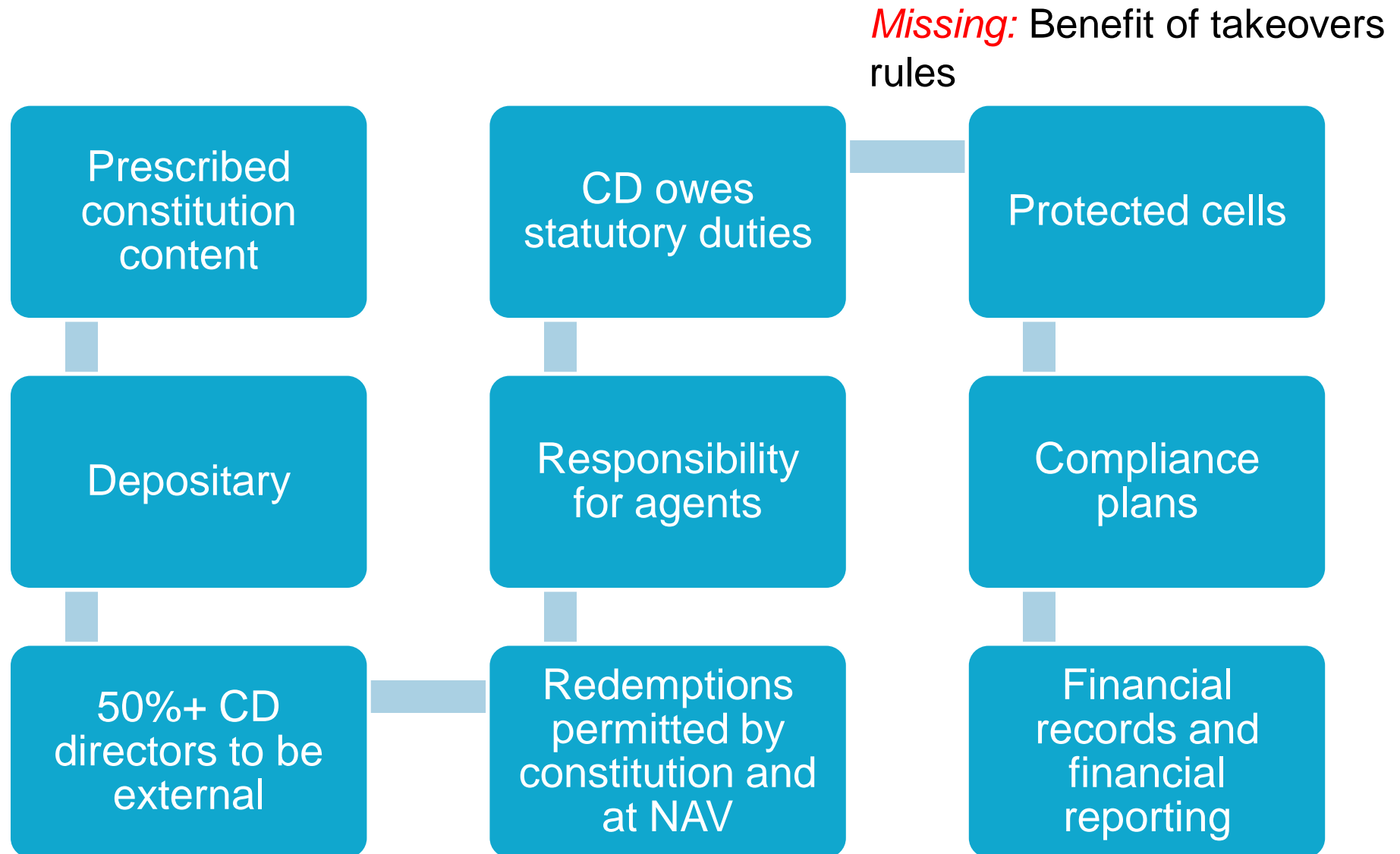
Some key features of CCIVs – cont'd

- Depositary:
 - is a public company or foreign registered company
 - holds an AFSL
 - meets independence requirements
 - executes CD's lawful instructions and supervises aspects of operation of a CCIV
 - can appoint agents – eg custodians
 - member approval required to appoint replacement depositary

Some key features of CCIVs – cont'd

- Rules analogous for other companies:
 - member approval (at the affected sub-fund level) required for related party benefits (subject to exceptions for CD's fees and indemnities)
 - oppressive conduct of affairs remedy available
 - statutory derivative action remedy available
 - class rights variation / cancellation rules
 - dividend rules similar but modified
 - rules regarding self-acquisition of shares (therefore cross-investing in sub-funds not permitted) and giving financial assistance
 - financial reporting
 - modified rules for share capital reduction
- MIS meeting rules apply on an 'as if' basis
- Takeovers rules do not apply to CCIV control transactions (but CCIVs must comply with takeovers rules for other entities)
- Continuous disclosure rules apply where CCIV is a disclosing entity

Key retail investor protections



Retail MIS vs retail CCIV

Retail MIS	Retail CCIV
Not a legal person	<p>CCIV is a legal person</p> <p>A sub-fund is not a legal person</p>
Constitution is not a statutory contract	Constitution is a statutory contract
Constitution has prescribed content requirements	Constitution has prescribed content requirements
<p>Register scheme only</p> <p>Do not register each class</p>	<p>Register CCIV as a company</p> <p>Register each sub-fund</p>
Requires registration only if more than 20 members or promoted by professional promoter	Registration is mandatory
Interests (units) can have classes	Shares can have classes
Business conducted at whole-of-fund level	Business conducted through sub-fund(s)

Retail MIS vs retail CCIV – cont'd

Retail MIS	Retail CCIV
Assets and liabilities co-mingled (but referability possible in classes)	Segregated assets and liabilities
Operated by responsible entity	Operated by Corporate Director
RE, officers and employees owe special statutory duties to members	CD, officers and employees owe special statutory duties to members
RE removed by members by special resolutions to remove and to appoint new RE	CD removed by members by special resolutions to remove and to appoint new CD
RE to have AFSL authorising it to operate scheme	CD to have AFSL authorising it to operate business and conduct affairs of CCIV
Scheme does not require AFSL	CCIV does not require AFSL
Custodian to hold AFSL	Depositary to hold AFSL

Retail MIS vs retail CCIV – cont'd

Retail MIS	Retail CCIV
RE holds assets but can appoint custodian	Depository holds assets but can appoint custodian
Custodian appointed by RE	Depository appointed at inception, changed by member approval, and must be independent
PDS required for retail offer	PDS required for retail offer
Requires a compliance plan	Requires a compliance plan
May require a compliance committee	No requirement for a compliance committee but at least half of CD directors to be external
Consumer protection provisions apply (hawking; cooling-off; unsolicited offers; insider trading)	Consumer protection provisions apply (hawking; cooling-off; unsolicited offers; insider trading)
Wind-up governed by constitution mainly	Winding-up of each sub-fund based on statutory assumptions

Retail MIS vs retail CCIV – cont'd

Retail MIS	Retail CCIV
Takeovers provisions apply (for listed schemes)	Takeovers provisions do not apply
Continuous disclosure provisions for disclosing entities	Continuous disclosure provisions for disclosing entities
Related party transactions provisions apply	Related party transactions provisions apply
Distributions made under constitution	Distributions subject to statutory dividend rules
No maintenance of capital rules	Transactions affecting share capital subject to rules

Wholesale MIS vs wholesale CCIV

Wholesale MIS	Wholesale CCIV
Do not need to be registered	Register CCIV as a company Register each sub-fund
Trustee need not be a public company	Corporate Director must be a public company
Constitution does not need to be lodged with ASIC	Constitution needs to be lodged with ASIC
Constitution is not a statutory contract	Constitution is a statutory contract
Replacement governed by constitution Custodian replaced by trustee	Replacement of CD and any depositary requires member approval
No special AFSL authorisation regarding scheme required	Special AFSL authorisation to operate business and conduct affairs of CCIV
No reports about interest/unit transactions to be lodged with ASIC	Half-yearly reports about shares to be lodged with ASIC
Wind-up governed by constitution mainly	Winding-up of each sub-fund based on statutory assumptions
Related party transactions provisions do not apply	Related party transactions provisions apply
Distributions made under constitution	Distributions subject to statutory dividend rules
No maintenance of capital rules	Transactions affecting share capital subject to rules

Some key issues under current draft CCIV legislation

- Hybrid between a company and an MIS
- Regulatory equivalence between:
 - CCIVs and MISs; and
 - wholesale CCIVs and wholesale MISs
- Effect of sub-fund having no legal personality
 - Contracting with third parties
 - Key issue to be dealt with in winding-up provisions
- Independence requirements of the depositary and entities performing depositary functions
 - Currently only principles-based in the EM
- Replacement of the depositary

Some key issues under current draft CCIV legislation

– cont'd

- Nature of depositary's oversight of the corporate director
- Sub-fund joint investment of same asset
- Cross-ownership of one sub-fund by another sub-fund in same CCIV
- Whether assumptions about sub-funds on winding-up achieves 'protected cell' aim
- Takeovers of sub-funds
 - Problem of single Corporate Director
- Listing of sub-funds



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Thank you