



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (CCIV Auditors) Instrument 2024/668

This is the Explanatory Statement for *ASIC Corporations (CCIV Auditors) Instrument 2024/668 (Instrument)*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. Under section 1232 of the *Corporations Act 2001 (Corporations Act)*, the financial reporting and audit provisions in Chapter 2M of the Corporations Act apply to a corporate collective investment vehicle (**CCIV**), subject to the modifications in Division 4 of Part 8B.4 of the Corporations Act and any regulations made under these provisions.
2. Part 2M.3 of the Corporations Act sets out the financial reporting provisions, including the requirement for various types of entities to prepare an annual financial report and a directors' report (section 292), to have the financial report audited and to obtain an audit report (section 301), and to lodge the annual financial report, directors' report and audit report with ASIC (section 319). Subsection 1232(3) states that Part 2M.3 does not apply to a wholesale CCIV. As a result, in relation to CCIVs, only retail CCIVs must comply with Part 2M.3 of the Corporations Act.
3. Part 2M.4 of the Corporations Act deals with the appointment and removal of auditors. Under subsection 1232R(2) of the Corporations Act, the provisions about the appointment, removal and fees of auditors of a registered scheme in Division 7 of Part 2M.4 apply to a retail CCIV. Under section 331AAA, the responsible entity of a registered scheme and, as a result of subsection 1232R(2), the corporate director of a retail CCIV, must appoint an auditor within one month after the registered scheme or retail CCIV is registered.
4. In relation to subsequent auditor appointments, section 331AAB provides that, where there is a vacancy in the office of auditor of a registered scheme, the responsible entity must appoint an auditor to fill the vacancy within one month of the occurrence of the vacancy. As a result of subsection 1232R(2), the corporate director of a retail CCIV must fill an auditor vacancy within one month of the occurrence of the vacancy.

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5. Regulation 2M.4.01 of the *Corporations Regulations 2001* (**Corporations Regulations**) provides that the responsible entity of a registered scheme must lodge a notice in the approved form telling ASIC of the appointment of an auditor of the scheme under section 331AAA or 331AAB of the Corporations Act within 14 days of the appointment. The approved form for auditor appointment notifications for scheme auditors is ASIC Form 5137 *Notification of appointment of scheme auditor*.
 6. There is a form to notify ASIC of auditor appointments for retail CCIVs as well, which is ASIC Form 5230 *Notification of appointment of auditor for a corporate collective investment vehicle* (**Form 5230**). However, the Corporations Regulations do not specifically address the notification timing requirements in relation to the office of auditor of a retail CCIV.
 7. To confirm that regulation 2M.4.01, in conjunction with section 1232R, applies to the appointment of an auditor of a retail CCIV, the Instrument amends section 1232R by adding a new subsection 1232R(3), which requires the corporate director of a retail CCIV to lodge a notice in the approved form telling ASIC of the appointment of an auditor of a retail CCIV under section 331AAA or 331AAB of the Corporations Act within 14 days of the appointment.

Purpose of the instrument

8. The purpose of the Instrument is to amend section 1232R of the Corporations Act to confirm that, consistent with the obligation on a responsible entity, a corporate director of a retail CCIV must lodge a notice in the approved form (Form 5230) with ASIC within 14 days of appointing an auditor of a retail CCIV.

Consultation

9. ASIC has consulted with Treasury on a confidential basis. Treasury supports the Instrument.
10. ASIC has also consulted with the Office of Impact Analysis (OIA) (ref OIA24-07222), who determined that a detailed Impact Analysis is not required.
11. Given the Instrument confirms the operation of regulation 2M.4.01 and does not change its practical operation, ASIC did not undertake any further consultation before making the Instrument.

Operation of the instrument

12. Section 5 of the Instrument provides that the *CCIV provisions*— a term defined in section 4—apply to retail CCIVs as if a new subsection 1232R(3) were added. Subsection 1232R(3) requires corporate directors of retail CCIVs to lodge an approved form (Form 5230) with ASIC within 14 days of appointing an auditor of a retail CCIV.

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13. Section 3 of the Instrument states that the Instrument is made under paragraph 1243(2)(b) of the Corporations Act. Paragraph 1243(2)(b) provides that ASIC may declare that the CCIV provisions apply in relation to:
- (a) a specified CCIV, a specified class of CCIVs or all CCIVs; or
 - (b) a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs; or
 - (c) a specified entity, a specified class of entities or all entities, in relation to a specified CCIV, a specified class of CCIVs or all CCIVs; or
 - (d) a specified entity, a specified class of entities or all entities, in relation to a specified class of sub-funds of CCIVs, all sub-funds of a specified class of CCIVs, or all sub-funds of all CCIVs,
- as if specified provisions were omitted, modified or varied as specified in the declaration.
14. Section 4 of the Instrument contains the definitions of the terms *Act* and *CCIV provisions*. *CCIV provisions* has the same meaning as in section 1243 of the Corporations Act.

Legislative instrument and primary legislation

15. The subject matter and policy implemented by the Instrument are more appropriate for a legislative instrument, rather than primary legislation, because:
- (a) the Instrument modifications are highly specific amendments designed to ensure the application of primary legislation is consistent with the intended policy and the enabling provisions in the primary legislation; and
 - (b) ASIC understands that the Government will consider whether to make future amendments to the Corporations Act to incorporate the Instrument into primary law or regulations. Therefore, the Instrument has been made for a term of five years to allow sufficient time for this to occur.

Duration of instrument

16. ASIC considers that five years is the appropriate duration for the Instrument, after which the Instrument will sunset unless action is taken to remake it. Section 6 of the Instrument repeals the Instrument at the start of 1 October 2029.

Legislative authority

17. The Instrument is made under paragraph 1243(2)(b) of the Corporations Act.
18. The Instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

19. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (CCIV Auditors) Instrument 2024/668

Overview

1. This instrument amends section 1232R of the *Corporations Act 2001* (**Corporations Act**) to confirm that the auditor notification requirements for registered schemes under regulation 2M.4.01 of the *Corporations Regulations 2001* (**Corporations Regulations**) extend to retail CCIVs as a result of the operation of section 1232R.
2. Section 5 adds a new subsection 1232R(3), which provides that the corporate director of a retail CCIV must lodge a notice in the approved form telling ASIC of the appointment of an auditor of the CCIV within 14 days of the appointment.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.