27 September 2017

Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Email: CIVreform@treasury.gov.au

Dear Madam/Sir,

SMSF ASSOCIATION SUBMISSION ON ASIA REGION FUNDS PASSPORT AND CORPORATE COLLECTIVE INVESTMENT VEHICLE

The Self Managed Super Fund Association (SMSFA) welcomes the opportunity to make a submission on the Government's draft Asia Region Funds Passport (ARFP) and Corporate Collective Investment Vehicle (CCIV) bills. We embrace the move to regulatory frameworks that will give SMSF trustees and advisors greater choice, more opportunity and reduce 'red-tape' for investing in global and Australian markets.

SMSFs currently have $696 billion in superannuation assets and therefore form a large component of investment in the Australian economy. Furthermore, almost 20% of SMSF investments (approximately $133 billion) are made through a trust or managed investment structure. This will mean that SMSFs will be key investors in CCIVs.

Asia Region Funds Passport

The SMSFA is supportive of the introduction of the ARFP. The ARFP will give the opportunity for SMSF trustees to access markets in an emerging region which previously had been difficult.

The ARFP should ultimately aim to provide more choice for investors and lower fees. Working together with the implementation of the CCIV will give both international parties to a 'passported' fund regulatory familiarity and efficient oversight between them. It will also allow fund managers to access larger pools of funds and deeper capital markets. This should encourage greater investment choice for SMSF trustees who have significant amounts of capital to invest and are striving for better diversified portfolios.

Despite our support for the ARFP we do believe that safeguards need to be put in place to ensure investors are not investing in funds that are unregulated and potentially insolvent. We consider the minimum fund eligibility standards currently in the Bill as essential to ensuring that investors are protected. The SMSFA also encourages the mandatory liquidity and diversification requirements which are placed on funds that are 'passported' into Australia in the Memorandum of Cooperation.

This will ensure that illiquid overseas assets will not cause issues in regulation and on events of share redemption and insolvency.

We also support the draft law's constraint that funds which are notably different in their application and implementation to our regulatory system should be barred by the Australian Securities and Investment Commission (ASIC) from being able to be accessed by Australian investors and being 'passported'.

Corporate Collective Investment Vehicle

The SMSFA is also supportive of the proposed establishment of a regulatory framework for operating CCIVs that reduces the regulatory burden in the current investment vehicle landscape. Despite our support we do believe there are a few issues in consumer protection that need to be resolved before its implementation.

Primarily, CCIVs should reduce the amount of 'red tape' and regulatory burden involved when fund managers create a fund for investment. This should improve the amount of choice that investors, including SMSF trustees have in the market. We also support the framework's initial design due to its similarity to other vehicles in the global market. With the move away from unit trusts in the Asian market, this will give familiarity to fund managers and investors in the Asian region especially when packaged with the ARFP.

Independence requirements and sub-fund design

The SMSFA believes that consumer protection is paramount in the design of the CCIV. Therefore, the corporate director of a CCIV must ensure it upholds its best interest duty to members, which may be difficult given the introduction of sub-funds. It is crucial that, given this structure, corporate directors exercise good governance and independence especially when a single board may oversee many sub-funds which could have different investment objectives, risks and targeted returns.

Broadly, we are supportive of the sub-fund design in the proposed legislation but there must be strong safeguards put in place to ensure consumers in different sub-funds are always protected and that all sub-funds have fair and equitable treatment.

Despite sub-funds not having a separate legal personality in the proposed Bill, they should be treated as such in situations such as wind-ups and court orders and therefore it is essential that appropriate safeguards are put in place to satisfy this. The CCIV design must ensure that all segregation issues regarding assets and sub-funds are properly considered. These issues include:

- Ensuring there is appropriate segregation between shareholders and the assets each sub-fund holds.
- Joint ownership of assets between sub-funds, if allowed, is regulated.
- Opposing interests of sub-funds are regulated.
- On the event of insolvency, consumer protections are in place to ensure investors are dealt with fairly and equitably compared to investors in other sub-funds.

Ensuring that these issues are considered will help ensure that consumers are not in a position where they have no recourse for their investment, especially when the removal of regulatory burden can lead to potential negative consumer protection effects. It must also be made certain that no sub-fund is given preferential treatment so that all investors have equal opportunity for recourse if a CCIV becomes insolvent. This should be reviewed by ASIC at regular intervals.

We also believe that many managed investment scheme funds will transition across to the CCIV, if the proposed framework is designed correctly. During this process, we think it is important that unit holders in schemes that are transitioning are protected so that their assets and legal rights are secure and that any fees are reasonable.

The SMSFA believes that the taxation outcomes under CCIVs should not be worse than under the current investment opportunities for consumers. We understand Treasury will be releasing draft taxation legalisation in the coming weeks.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

John L Maroney

John Maroney
Chief Executive Officer
SMSF Association

ABOUT THE SMSF ASSOCIATION

The Self Managed Super Fund (SMSF) Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have $696 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.