

27 September 2023

Director
Investment Funds Unit
Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600
c-/ MISReview@treasury.gov.au

Dear Director,

Review of the regulatory framework for managed investment schemes

Thank you for the opportunity to comment on the Review of the regulatory framework for managed investment schemes ("**the MIS**").

The UDIA is the development industry's most broadly representative industry association with more than 2,500 member companies – spanning top tier global enterprises, expert consultants, small-scale developers and local governments. The development industry is critical to the Australian economy, contributing 1.3 million jobs (11% of Australia's full time employment) and \$360 billion in GDP annually (9% of total GDP).

UDIA National supports the review of the MIS regulatory regime being undertaken by Treasury and outlines below some comments on aspects of the review that touch upon our industry. We are happy to meet with you to explain and expand upon these brief comments.

1. Wholesale Client Thresholds

In UDIA National's view these thresholds are well understood and are, in general, applied appropriately and consistently in an Australian context. As such, we don't see any significant need to increase the various thresholds or to complicate the tests by providing for the exclusion of certain assets.

If such exclusions are deemed appropriate, they must be clearly defined and capable of sensible implementation. The desire to appropriately protect investors needs to be balanced against the imposition of a prohibitive burden on the scheme promoter.

Subject to reviewing the detail of the proposed recommendations, UDIA is in favour of proposed consent requirements along the lines of those outlined in the document.

2. Suitability of Scheme Investments

UDIA National's view is that we need to maintain a balance between appropriate regulation and ensuring retail investors can access a wide range of investment options.

Focusing on real estate investment, we consider that real estate as an asset class is relatively straightforward and well understood. We would be happy to consider the following discourse related issues in a real estate context:

- a) clear guidance on the liquidity available within the fund;
- b) a requirement to include clear examples disclosing how the fund investments operate and the associated risks;
- c) detailed description of financial aspects including leverage and any related party transactions, fees or other arrangements.

ASIC having an ability to refuse registration might itself increase the risk that investors consider registration to involve some level of ASIC approval. We think it is difficult to draw ASIC into issues involving an initial consideration of commercial viability and prefer a regime based on disclosure and intervention powers.

3. Scheme Governance

UDIA National's views can be summarised as follows:

- a) ASIC should have the power to direct a responsible entity to amend a scheme constitution to meet the minimum content requirement;
- b) There should be a general requirement to have a compliance plan which is tailored to the individual scheme and this should be signed off by an appropriately qualified auditor;
- c) Auditors should be required to meet minimum qualitative standards. We consider that our proposal under b) above might help to sharpen the ongoing audit process and are happy to consider further initiatives in this area.
- d) Careful consideration be given to a requirement to have external board members. External board members are not of themselves a guarantee of improved governance outcomes.

4. Replacement of Responsible Entities

UDIA National has no specific comments here, but as a general matter, supports the existing voting regimes relating to RE's and would be willing to consider changes designed to facilitate due diligence by an incoming RE and to prevent existing RE's from being inappropriately embedded in a scheme.

5. Right to withdrawal

Real estate schemes are generally regarded as non-liquid and requests for withdrawal are dealt with in accordance with the provisions included in the scheme documents. Subject to our comments under 2) above, we see no reason to change these outcomes.

6. Winding up Insolvent Schemes

This is a complex area which we have not had time to fully consider in responding to the review but we do see merit in further exploring both a more tailored insolvency regime and limits on members liability.

7. Commonwealth and State regulation on Real Property Investments

Whilst UDIA National accepts that dual jurisdictional responsibility creates complexity, experience suggests that we are unlikely to see changes in this area. In our view, the only real option is to ensure that there is appropriate disclosure of the different regulatory regimes and the associated risks.

8. Regulatory Cost Savings

UDIA National's overarching view is that the most cost effective regulatory reform involves a streamlined and focussed approach - preserving existing rules and processes that are working, (as identified above) and avoid "improving" rules outside of rectifying specific, identified problems.

As a principle, UDIA National recommends minimising changes to avoid the risk of creating a patchwork of rules.

We are keen to workshop any amendments you propose to implement and look forward to meeting with you at your convenience. You can contact Andrew Mihno, Head of Policy and Government Relations on 0406 45 45 49.

A handwritten signature in black ink, appearing to read 'Maxwell Shifman'.

Maxwell Shifman

UDIA National President