



LIN 21/041

Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021

I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument under subregulation 5.19C(6) of the *Migration Regulations 1994* (the **Regulations**).

Dated 24 June 2021

Alex Hawke

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

1 Name

This instrument is the *Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021*.

2 Commencement

This instrument commences on the later of:

- (a) 1 July 2021; and
- (b) the day after registration.

3 Amendment

Schedule 1 amends *Migration (IMMI 15/100: Complying Investments) Instrument 2015* (F2015L01012).

Schedule 1 Amendment

(s.3)

[1] Part 1, heading

omit

[2] **Section 3**

substitute

3 Authority

This instrument is made under regulation 5.19C of the *Migration Regulations 1994*.

[3] **Section 4, heading, note, paragraph (b)**

omit

[4] **Section 4**

insert

fund of funds means a managed investment fund that invests in other funds.

Note An investor can invest in managed investment funds through a fund of funds or investor directed portfolio service if the managed investment funds in which the fund of funds or investor directed portfolio service invests complies with the other requirements of the complying investment framework.

[5] **Section 4, definition of *investor***

omit

or 5.19D of the Regulations, as the case requires.

insert

of the Regulations.

[6] **Section 4, definition of *visa*, paragraph (c)**

substitute

(c) *the Investor Stream*.

[7] **Part 2, heading**

omit

[8] **After section 4**

insert

4A Application and savings provisions

- (1) The amendments of this instrument made by Schedule 1 to the *Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021* apply to:
 - (a) an applicant who is invited to apply for a Subclass 188 visa if the invitation is made after 30 June 2021; and
 - (b) an applicant who applies for a Subclass 888 visa where the applicant was invited to apply for a Subclass 188 visa after 30 June 2021.
- (2) Part 3 of this instrument, as in force immediately before the commencement of *Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021*, continues to apply to an application for a Subclass 888 visa if the applicant holds a Subclass 188 visa in the Premium Investor stream that was granted or applied for before 1 July 2021.

[9] Section 5

omit each occurrence of

Part

insert

instrument

[10] Section 5, after note 2

insert

Note 2A The primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream include a minimum total amount for the investment that is required to be made on or after the time of application to satisfy the criteria for grant of the visa—see Regulations, Schedule 2, subclause 188.244(2)(b)(ii).

[11] Section 6

substitute

6 Value of required investments

(1) The investment must include:

- (a) at least 20% of the total investment in 1 or more venture capital funds in accordance with section 8; and
- (b) at least 30% of the total investment in emerging companies investments in accordance with section 9.

(2) Any remaining portion of the investment must be invested in any of the following:

- (a) 1 or more venture capital funds in accordance with section 8;
- (b) emerging companies investments in accordance with section 9;
- (c) 1 or more balancing investments in accordance with section 10.

[12] Subsections 8(2) and (3)

omit

AUD 500 000 in total

insert

20% of the total investment

[13] Subsection 8(2)

omit

12 months

insert

6 months

[14] Subsection 9(5)

substitute

(5) The investment must not be made in:

- (a) securities issued or proposed to be issued by a government; or
- (b) debentures; or

- (c) securities that otherwise comply with this section but the issuer of the securities invests the proceeds of the issue of those securities in securities that do not meet the market capitalisation requirements under subsection (6).

Example A small exchange traded fund that invests in the securities of large capitalised companies is excluded under this paragraph.

[15] After subsection 9(11)

insert

Auditing requirements

- (12) Beginning financial year 2021–22, an annual audit is required for the emerging companies investment components of the complying investment framework.

[16] After subsection 10(3)

insert

Auditing requirements

- (4) Beginning financial year 2021–22, an annual audit is required for the balancing investment components of the complying investment framework.

[17] Subsection 11(9)

substitute

Derivatives

- (9) An investment may be made in a derivative, other than an option mentioned in paragraph (e) of the definition of ***securities*** in section 3, only if the investment:
 - (a) is made for risk management purposes; and
 - (b) is not a speculative investment; and
 - (c) is not designed to materially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an emerging companies investment.

Note Hedging of currency and interest rate risks will be permitted under subsection (9), however capital guarantee products are not permitted.

[18] Subsection 11(11)

substitute

Managed investment fund and venture capital fund investments—fund of funds or investor directed portfolio services

- (11) An investment in a managed investment fund or venture capital fund may be:
 - (a) made through a fund of funds or an investor directed portfolio service, if the investment otherwise complies with this instrument; and
 - (b) held in cash in the fund of funds, or investor directed portfolio service:
 - (i) for up to 30 days after the funds are first made available for investment; and
 - (ii) during any switching period mentioned in subregulation 5.19C(7) of the Regulations.

[19] Part 3

omit

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Regulations 1994

Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021

- 1 The instrument, Departmental reference LIN 21/041, is made under subregulation 5.19C(6) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (IMMI 15/100: Complying Investments) Instrument 2015* (IMMI 15/100) (F2015L01012) made under regulations 5.19C and 5.19D of the Regulations, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. The effect of that subsection is to include a power in the Regulations to make, amend or repeal an instrument made under the Regulations.
- 3 The instrument commences on the later of:
 - (a) 1 July 2021; and
 - (b) the day after registration on the Federal Register of Legislation.
- 4 The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 5 IMMI 15/100 specifies the investments permitted for certain streams for Subclass 188 (Business Innovation and Investment (Provisional)) visa and Subclass 888 (Business Innovation and Investment (Permanent)) visa under Australia's Business Innovation and Investment Program (BIIP). One of the primary criteria for these streams was that an applicant has made a complying investment of a minimum total amount. IMMI 15/100 currently sets out the requirements for complying investments under the streams, known as *complying significant investments* (see regulation 5.19C of the Regulations) and *complying premium investments* (see regulation 5.19D of the Regulations).
- 6 On 1 July 2021, the Regulations were amended by the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulations 2021*. The BIIP component of the migration program aims to bring to Australia migrants with business, investment and entrepreneurial skills that will benefit the Australian economy. The amendments will streamline and improve the BIIP to ensure that it is well-placed to support Australia's post-COVID-19 economic recovery by maximising the impact of high value investors, business owners and entrepreneurs.
- 7 The amended Regulations will change the current *designated investment* requirement for the Investor stream (based on passive investment in State and Territory government security) to a requirement to make a *complying significant investment* which will be overhauled to direct investments into areas where there is a greater need and greater impact on Australia's economic growth by directly helping emerging and start-up companies. Subclass 188 and related provisions will be amended to increase the investment required for the Investor stream from at least \$1,500,000 to at least \$2,500,000.
- 8 Furthermore, amendments will also be made to close three underperforming streams, including the Premium Investor stream (amendments to Subclass 188). As a result of the amendments, the reference

to *complying premium investment* (regulation 5.19D of the Regulations) will no longer be relevant in Subclass 188 when the Premium Investor stream is closed from 1 July 2021 (see amendments to item 1202B of Schedule 1 to the Regulations). However, the term *complying premium investment* and regulation 5.19D of the Regulations will continue to be relevant to applicants for a Subclass 888 visa who hold a Subclass 188 visa in the Premium Investor stream that was granted or applied for before 1 July 2021.

- 9 Subregulation 5.19C(1) of the Regulations provides that an investment by a person (the investor) is a *complying significant investment* if all of the requirements in the Regulations are met. Subregulation 5.19C(6) of the Regulations provides that the Minister may, by legislative instrument, specify requirements for subregulation 5.19C(5), namely to define the scope of a *complying significant investment*.
- 10 The purpose of the instrument is to amend IMMI 15/100 to specify the scope and requirements of complying significant investments that are required as a result of the amendments made to the Regulations.
- 11 The instrument also addresses feedback identified in a review conducted by the Department of Home Affairs in consultation with the Australian Trade and Investment Commission (Austrade). The items the instrument address include several technical issues considered in the review regarding exchange traded funds and the use of derivatives for risk management purposes. The instrument also clarifies the eligibility of venture capital investments via fund of fund structures.

Consultation

- 12 In preparing the instrument, a range of relevant agencies were consulted including the Australian Trade and Investment Commission, the Australian Securities and Investment Commission, the Department of Foreign Affairs and Trade, the Department of Industry, Science, Energy and Resources, the AusIndustry, and the Treasury. Austrade agreed with the components of complying significant investment being specified in the instrument.
- 13 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 25905.

Details of the instrument

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 sets out the commencement date of the instrument.
- 16 Section 3 provides that IMMI 15/100 (F2015L01012) is amended as set out in Schedule 1 to the instrument. Details on the amendments in Schedule 1 are set out in **Attachment A**

Parliamentary scrutiny etc.

- 17 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Part 5 of the Migration Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

- 18 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subregulation 5.19C(6) of the Regulations.

Details of Schedule 1 to *Migration (Complying Investments) Amendment Instrument (LIN 21/041) 2021*

Item 1 Amendments to the heading of Part 1

Item 1 removes the heading of Part 1. Specifically, it removes the heading words ‘Part 1 – Preliminary’.

Item 2 Amendments to section 3

Item 2 omits the current contents of section 3 relating to the legislative authority and substitutes new text. The effect will be to remove the reference to regulation 5.19D of the Migration Regulations and only refer to regulation 5.19C. This is to reflect that regulation 5.19D is no longer a head of power to make the instrument.

Items 3–7 Amendments to section 4

Items 3-7 amend section 4 of IMMI 15/100, which is the definitions section.

Item 3 amends the note at the beginning of the definitions provision to **remove the reference to *complying premium investment*.**

Item 4 inserts the definition of *fund of funds*, which will mean a managed investment fund that invests in other funds. This term was referred to in the general requirements under section 11 of IMMI 15/100, but it was not defined previously.

Item 5 **removes a reference to regulation 5.19D of the Regulations, which is no longer required.**

Item 6 **omits the reference to *Premium Investor Stream* in the definition of *visa* and substitutes *Investor Stream*.**

Item 7 Amendments to the heading of Part 2

Item 7 removes the heading of Part 2. Specifically, it removes the words ‘Part 2—Complying significant investments’.

Item 8 After section 4

Item 8 inserts section 4A, which contains savings and transitional provisions.

New subsection 4A(1) provides that the amendments made by this instrument to IMMI 15/100 only apply to:

- applicants for a Subclass 188 visa who are invited to apply for a Subclass 188 visa after 30 June 2021; and
- applicants for a Subclass 888 visa who were invited to apply for a Subclass 188 visa after 30 June 2021.

New subsection 4A(2) provides that Part 3 (which related to complying premium investments) continues to apply in relation to an application for a Subclass 888 visa where the applicant holds a Subclass 188 visa in the Premium Investor stream that was granted or applied for before 1 July 2021.

Items 9-10 Amendments to section 5

Item 9 removes all references to a 'Part' in section 5, as the amended instrument does not have Parts. A reference to the instrument will be substituted in its place.

Item 10 inserts a new note in section 5 explaining requirements for the Investor stream.

Item 11 Amendments to section 6

Item 11 amends section 6 of IMMI 15/100 to set out the requirements for an investment. The amendments will set out proportions of the investment that must be made in each of the various types set out in sections 8-10 of the instrument. This will replace the previous approach, which set out absolute amounts that had to be applied to each type.

The amendments to section 6 will specify the required allocations for an eligible investment, which will be:

- at least 20% of the total investment in 1 or more venture capital funds in accordance with section 8; and
- at least 30% of the total investment in emerging companies investments in accordance with section 9.

Any remaining portion of the investment must be invested in any of the following:

- 1 or more venture capital funds in accordance with section 8;
- emerging companies investments in accordance with section 9; or
- 1 or more balancing investments in accordance with section 10.

Item 12 Amendments to subsection 8(2) and 8(3)

Item 12 replaces the references to absolute dollar amounts (AUD 500 000) for an investment with references to a requirement for at least 20% of the investment in the specified matter in subsections 8(2) and 8(3).

Item 13 Amendments to subsection 8(2)

Item 13 amends subsection 8(2) to reduce the time from 12 months after the visa is granted to the investor to 6 months, during which the investor must enter into an agreement with the general partner of each of one or more venture capital funds.

Item 14 Amendments to subsection 9(5)

Item 14 amends subsection 9(5) to insert a new paragraph 9(5)(c) to clarify that an emerging company investment must not be made in securities that otherwise meet the requirements of section 9 but where the issuer of those securities invests the proceeds of the issue of those securities in securities that do not meet the market capitalisation requirements under subsection 9(6). For example, a small exchange traded fund which invests in the securities of large capitalised companies is excluded under new paragraph 9(5)(c).

Paragraphs 9(5)(a)-(b) will continue to provide that an emerging company investment must not be made in:

- securities issued or proposed to be issued by a government; or
- debentures.

Items 15-16 New subsections 9(12) and 10(4)

New subsections 9(12) (item 15) and 10(4) (item 16) require each fund managed offering products for the *emerging companies investments* and/or the *balancing investments* components of the Complying Investment Framework to be audited annually beginning financial year 2021-22.

Item 17 Amendments to subsection 11(9)

Item 17 amends subsection 11(9) to include qualifying provisions, ensuring that derivatives cannot be used to materially reduce an investor or significant investor's exposure to the market price of emerging companies' securities.

Item 18 Amendments to subsection 11(11)

Item 18 amends subsection 11(11) to clarify that investment of the venture capital component may be made through a fund of funds structure.

Item 19 Amendments to Part 3

Item 19 removes Part 3. This is to remove the provisions relating to *complying premium investments*. This is because the reference to *complying premium investment* (regulation 5.19D of the Regulations) will no longer be relevant in Subclass 188 visas when the Premium Investor stream is closed from 1 July 2021.

However, under new subsection 4A(2), Part 3 will continue to apply to applicants for a Subclass 888 (Business Innovation and Investment (Permanent)) visa who hold a Subclass 188 visa in the Premium Investor stream that was granted or applied for before 1 July 2021.



Australian Government

Department of Home Affairs

Streamlining the Business Innovation and Investment Program (BIIP)

Summary of changes implemented on 1 July 2021

Current BIIP		Streamlined BIIP from 1 July 2021	
Entry Stream	Key requirement	Stream	Key requirement~
Investor (subclass 188)	<ul style="list-style-type: none"> Designated Investment of \$1.5 million (for four years) Invested in a state or territory government bond 65 points on business innovation and investment points test Nominated by a State or Territory government 	Investor (subclass 188)	<ul style="list-style-type: none"> Complying Investment of \$2.5 million (held for the duration of the provisional visa) 65 points on business innovation and investment points test Functional English (or pay 2nd VAC) Under 55 (unless waived by nominator) Reside in Australia for at least two years Nominated by a State or Territory government
Significant Investor (subclass 188)	<ul style="list-style-type: none"> Significant Investment of \$5 million (for four years): 10% in Venture Capital 30% in Emerging Businesses 60% balancing investment Nominated by a State or Territory government, or Austrade 	Significant Investor (subclass 188)	<ul style="list-style-type: none"> Complying Investment of \$5 million (held for the duration of the provisional visa) Functional English (or pay 2nd VAC) Reside in Australia for an average of 40 days/year for primary visa holders or 180 days per/year for secondary visa holders before applying for the permanent visa Has access to an extension stream (for up to 4 years) Nominated by a State or Territory government, or Austrade
Premium Investor (subclass 188)	<ul style="list-style-type: none"> Premium Investment of \$15 million (for one year) Nominated by Austrade 		
Business Innovation (subclass 188)	<ul style="list-style-type: none"> Minimum net assets of \$800,000 Owned a business with \$500,000 annual turnover 65 points on business innovation and investment points test Nominated by a State or Territory government 	Business Innovation (subclass 188)	<ul style="list-style-type: none"> Minimum net assets of \$1,250,000 Owned a business with \$750,000 annual turnover 65 points on business innovation and investment points test Functional English (or pay 2nd VAC) Under 55 (unless waived by nominator) Reside in Australia for at least one year Has access to an extension stream (for up to 2 years) Nominated by a State or Territory government
Significant Business History* (subclass 132)	<ul style="list-style-type: none"> Have \$1.5 million in net assets and owned a business with \$3 million in annual turnover Nominated by a State or Territory government 		
Entrepreneur (subclass 188)	<ul style="list-style-type: none"> Have an agreement in place with an approved third party funding body for at least \$200,000 Nominated by a State or Territory government 	Entrepreneur (subclass 188)	<ul style="list-style-type: none"> Endorsement by a state or territory government and service providers in state and territory innovation ecosystems Competent English Under 55 (unless waived by nominator) Reside in Australia for at least two years
Venture Capital Entrepreneur* (subclass 132)	<ul style="list-style-type: none"> Have an agreement in place with an approved third party funding body for at least \$1 million Nominated by a State or Territory government 		

~ Applicants will be able to apply for permanent residence after holding the 188 for 3 years if all requirements. Their initial subclass 188 visa will be valid for 5 years

* Direct to permanent streams will no longer be offered

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Changes to the Complying Investment Framework (CIF)

Current Investment		Investment required from 1 July 2021	
Entry Stream	Key requirement	Stream	Key requirement
Investor	<ul style="list-style-type: none"> Designated Investment of \$1.5 million (for four years) Invested in a state or territory government bond 	Investor	<ul style="list-style-type: none"> Complying Investment of \$2.5 million (held for the duration of the provisional visa): 20% in Venture Capital (\$500,000) 30% in Emerging Businesses (\$750,000) Up to 50% balancing investment (\$1,250,000)
Significant Investor	<ul style="list-style-type: none"> Significant Investment of \$5 million (for four years): 10% in Venture Capital 30% in Emerging Businesses 60% balancing investment 	Significant Investor	<ul style="list-style-type: none"> Complying Investment of \$5 million (held for the duration of the provisional visa): 20% in Venture Capital (\$1,000,000) 30% in Emerging Businesses (\$1,500,000) Up to 50% balancing investment (\$2,500,000)

The following improvements will be also be made to the CIF from 1 July 2021.

Measure	Current State/ Issue	From 1 July 2021
Define Fund of Funds	Currently Fund of Funds is referred to in the general requirements of the instrument but is not defined.	<p>The definition of Fund of Fund will be:</p> <ol style="list-style-type: none"> A 'fund of funds' is generally a managed investment fund that invests in other funds. an investor is permitted to invest in managed investment funds through a fund of funds or investor directed portfolio service provided the managed investment fund(s) in which the a fund of funds or investor directed portfolio service invests comply with the other requirements of the complying investment framework.
VCPE agreement time	Currently applicants are given up to 12 months to enter into their Venture Capital and Private Growth Equity (VCPE) funds agreement.	Applicants will be given 6 months to enter into their VCPE agreement.
Emerging companies debentures	Ensure the emerging companies investment is made into securities that properly meet the market capitalisation requirements for the emerging companies component of the CIF.	<p>The investment must not be made in:</p> <ol style="list-style-type: none"> securities issued or proposed to be issued by a government; or debentures; or securities that otherwise meet the requirements under this section but where the issuer of those securities invests the proceeds of the issue of those securities in securities that do not meet the market capitalisation requirements. <p>Note: For example, a small exchange traded fund which invests in the securities of large capitalised companies is excluded under this paragraph.</p>

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Clarify use of derivatives	Specify that complying investments may only be made in a derivative if the investment is not designed to substantially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an investment.	<p>An investment may be made in a derivative, only if:</p> <ul style="list-style-type: none"> a. the investment is made for risk management purposes; and b. the investment is not a speculative investment; and c. the investment is not designed to materially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an emerging companies investment. <p>Note: Hedging of currency and interest rate risks will be permitted under Emerging Companies, however capital guarantee products will be prohibited.</p>
Clarify use of VCPE fund of funds	Current CIF only specifies Fund of Funds use for managed investment funds.	<p>Add "Venture capital fund" to the following definition: Managed investment fund and venture capital fund investment —fund of funds or investor directed portfolio services. An investment in a managed investment fund or venture capital fund may be:</p> <ul style="list-style-type: none"> a. made through a fund of funds or an investor directed portfolio service, if the investment is otherwise in accordance with the requirements of this Part; and b. held in cash in the fund of funds, or investor directed portfolio service: <ul style="list-style-type: none"> i. for a period of up to 30 days after the time the funds are first made available for investment; and ii. during any switching period mentioned in the Regulations.
Annual audits	Fund managers should be required to have an annual audit of their CIF compliance completed and a copy of this report attached to each Investor visa (IV) or Significant Investor visa (SIV) application at both the provisional (subclass 188) and permanent (subclass 888) stages	<p>Fund managers will need to complete an annual audit for all of the funds they manage. A copy of the annual audit will need to be provided to each of their IV and SIV clients, so they can attach it to their visa applications.</p> <p>The audit report will be required by the Department of Home Affairs before the time of decision for the visa application.</p>

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Changes to the Business Innovation and Investment Points Test

The requirements below have been updated to align with the overall changes to the Business Innovation and Investor streams.

All other aspects of the Business Innovation and Investment points test are unchanged.

Item	Current requirement	From 1 July 2021	Points
Part 7A.6 Investor experience qualifications—Investor stream only			
7A61	held eligible investments which had a value of not less than AUD100 000 for not less than 4 years immediately before the time of invitation to apply for the visa	held eligible investments which had a value of not less than AUD250 000 for not less than 4 years immediately before the time of invitation to apply for the visa	10
7A62	held eligible investments which had a value of not less than AUD100 000 for not less than 7 years immediately before the time of invitation to apply for the visa	held eligible investments which had a value of not less than AUD250 000 for not less than 7 years immediately before the time of invitation to apply for the visa	15
Part 7A.7 Financial asset qualifications			
7A71	not less than AUD800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD1 250 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	5
7A72	not less than AUD1 300 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD1 750 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	15
7A73	not less than AUD1 800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD2 250 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	25
7A74	not less than AUD2 250 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD2 750 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	35
Part 7A.8 Business turnover qualifications			
7A81	not less than AUD500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD750 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	5
7A82	not less than AUD1 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD1 250 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	15
7A83	not less than AUD1 500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD1 750 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	25
7A84	not less than AUD2 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	not less than AUD2 250 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	35



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Complying Investment Framework (CIF)

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General Questions

What are the changes to the Complying Investment Framework from 1 July 2021?

The changes to the CIF having now been compiled into the Migration ([IMMI 15/100](#): Complying Investments) Instrument 2015.

The changes were enacted by Migration (Complying Investments) Amendment Instrument ([LIN 21/041](#)) 2021, this is only an amending instrument, showing the changes made on 1 July 2021.

From 1 July 2021 the CIF ratios will apply to both the Investor and the Significant Investor streams as follows:

- 20 per cent Venture Capital and Private Growth Equity funds (VCPE)
- 30 per cent funds investing in emerging companies
- 50 per cent in balancing investments

What visa streams does the Complying Investment Framework apply to?

From 1 July 2021 the CIF will apply to both the Investor and the Significant Investor streams of subclass 188.

Applicants who were invited to apply for an Investor visa before 1 July 2021 do not need to make a Complying Significant Investment.

Do I have to make all of my Complying Significant Investments through AFS licensed managers?

Yes. All Complying Significant Investments must be provided by an Australian Financial Services (AFS) licensed manager(s) domiciled in Australia. Fund managers must be independent of the applicant, the applicant's spouse or de facto partner, and any associate (within the meaning of the *Corporations Act 2001*) of the applicant.

What is an Investor Directed Portfolio Service?

Investor Directed Portfolio Services are unregistered managed investment schemes for holding and dealing with one or more investments selected by investors. In broad terms, they provide custodial, transactional and reporting services, while the investor retains management and control of the investment decisions. For more information, please refer to the [Australian Securities and Investments Commission](#).

Can I invest in a Fund of Funds (FoF) or Investor Directed Portfolio Service (IDPS)?

Note: This is when a managed investment fund is used as the FoF.

A 'fund of funds' (FoF) is generally a managed investment fund that invests in other funds. An 'investor directed portfolio service' (IDPS) is generally a custody and reporting service that allows an investor to invest in managed investment funds and other financial products.

An investor can invest separately into each component of the complying investment framework, or alternatively can invest through a FoF or IDPS.

Under the complying investment framework, an investor is permitted to invest in managed investment funds through a FoF or IDPS, provided the managed investment fund(s) in which the FoF or IDPS invests comply with the other requirements of the complying investment framework.

It is also the intention to allow an investment in venture capital funds through a FoF or IDPS provided the venture capital fund(s) in which the FoF or IDPS invests comply with the other requirements of the complying investment framework. A venture capital fund includes an Australian venture capital fund of funds (AFOF) conditionally registered, or unconditionally registered, under the *Venture Capital Act 2002* (Cth). An AFOF can in turn invest in other Early Stage Venture Capital Limited Partnerships (ESVCLP) and Venture Capital Limited Partnerships (VCLP) and their investees.

What does 'central management and control' mean in *Migration (IMMI 15/100: Complying Investments) Instrument 2015*, sections 9(4) and 11(4)?

When determining whether:

- a company or managed investment scheme referred to in section 9(3)(c) of the Instrument; or
- a person (other than an individual) referred to in section 11(3)(a) of the Instrument;

(together a 'body') is taken to have its 'central management and control' (CM&C) in Australia, regard should be had to the meaning given to this expression in relevant case law and in ATO Taxation Ruling TR 2004/15.

Broadly, determining CM&C involves an analysis of who is responsible for the strategic decision making of the body and where and when this occurs. By way of an example, coming to Australia for the purpose of holding a board meeting but conducting regular management decisions offshore would not be considered to be in compliance as this would indicate an artificial or contrived CM&C outcome. If the CM&C occurs in a place outside of Australia, then the body cannot be regarded as satisfying the requirements of the Instrument.

Can qualifying investments for the purpose of the Complying Significant Investment be made indirectly, such as through an interposed entity?

No. The Instrument sets out limited circumstances when an indirect investment may be made by a managed investment fund, for example through the use of 'fund of funds' structures or 'investor directed portfolio services'. The Instrument does not otherwise provide for indirect investments by a managed investment fund through an interposed entity, such as trust, company or partnership.

For applicants who were invited to apply for a subclass 188 investor visa after 1 July 2021, how long do they need to hold their investment?

From 1 July 2021 BIIP provisional visa validity will be extended to five years and the minimum provisional period will be set at three years for all BIIP streams.

This will mean that visa holders can apply for permanent residence if they meet the requirements of that stream after 3 years, but they will have up to five years to do so.

For those holding investor visas, they are requirement to hold their investment for the term of their visa, which is up to 5 years. Their investment term would end when the subclass 188 visa ends or they are granted a subclass 888 application.

Emerging Companies

When making an emerging companies investment, is it a requirement that the market capitalisation be less than \$500 million for the first investment only or for all subsequent investments?

For investments made by a managed investment Fund (Fund) to qualify as an 'emerging companies investment', investments must:

- (a) at the time the Fund first invested in each company or managed investment scheme, the market capitalisation of the company or managed investment scheme which the Fund invested in must have been less than \$500m; and
- (b) at any time, the proportion of the Fund's net assets held in the securities of companies and managed investment schemes whose market capitalisation exceeds \$500m since the securities were first invested must not exceed 30% of its net assets.

In practice, this means that further investments in a company or other managed investment scheme can be made by a fund manager where the market capitalisation of that company or other managed investment scheme is greater than \$500m after the first investment. However, at all times the fund manager must consider the fund's net assets to ensure it meets the proportion limit set out in section 9(6)(b) of the Instrument. Depending on the circumstances this may mean that the fund can retain an investment in a company that now has a market capitalisation of more than \$500m or may require divestment taking into account the fund's overall net assets.

What does 'market capitalisation' mean?

The meaning of market capitalisation in section 9 of the Instrument is the current market price of an entity's ordinary securities multiplied by the number of securities on issue.

ASX methodology is used for calculating market capitalisation for the purposes of section 9 of the Instrument.

Venture Capital and Growth Private Equity

What is Venture Capital and Growth Private Equity (VCPE)?

The complying investment framework requires applicants to make a mandatory investment into VCPE funds. VCPE is a form of investment that provides capital to typically new, innovative or fast-growing unlisted companies.

What VCPE funds can I invest in?

In order to be eligible to take Complying Significant Investments, a VCPE fund must be registered under the Early Stage Venture Capital Limited Partnership (ESVCLP) or Venture Capital Limited Partnership (VCLP) programs, operated by the Department of Industry, Science, Energy and Resources (DISER).

DISER is responsible for the administration of the ESVCLP and VCLP programs. For more information on registering funds, eligibility criteria and lists of funds registered under the ESVCLP and VCLP programs please refer to the [DISER](#).

Are venture capital fund investments for terms longer than visa?

VCPE funds mostly require longer investment terms than the provisional visa period. It is the responsibility of applicants to decide whether they are willing to invest for periods longer than the provisional visa period.

Where can I find lists of Complying Significant Investment funds investing in VCPE and emerging companies?

Individual fund managers are responsible for certifying their compliance under the Business Innovation and Investment Program. The Department of Industry, Science, Energy and Resources (DISER) publishes lists of the funds registered under the ESVCLP, VCLP and AFOF programs on their website, but does not specify Complying Significant Investments eligibility. If you have any further questions on the programs, they can be addressed to the DISER via phone (13 28 46) or email (venturecapital@industry.gov.au).

Is the investor required to sign an individual commitment agreement with the general partner of the venture capital fund? If so, how does this work for a manager offering a fund of funds (FoFs) solution?

Note: This is when a managed investment fund is used as the FoF.

Yes. For a venture capital fund investment, the investor (that is, the visa applicant) is required to enter into an agreement with the general partner of the venture capital fund(s). This is the case even where the visa applicant intends to invest in the venture capital fund(s) through a 'fund of funds' or 'investor directed portfolio service'. The visa applicant can enter into this agreement directly or the 'fund of funds' operator or 'investor directed portfolio service' operator can enter into the agreement as agent for the investor. Further, the investor is required to commit a minimum investment to a venture capital fund(s). This amount is to be net of any fees or costs associated with a FoF or IDPS.

Real Estate

What does ‘Australian real property’ mean?

In the context of the Instrument, ‘Australian real property’ means land and interests in land in Australia, including leasehold interests. Land includes buildings located on that land.

Australian real property does not extend to entities that own or otherwise develop land.

What does ‘Australian residential real property’ and ‘Australian land zoned for residential use’ mean?

‘Australian residential real property’ is a subset of ‘Australian real property’. In the context of the Instrument it means land and interests in land in Australia, including leasehold interests, which is or may be used for residential purposes.

‘Australian land zoned for residential use’ means land that is permitted to be used for residential purposes under relevant state or territory zoning laws.

It includes land that is zoned for multiple purposes (e.g. residential and commercial). It does not include land that one day in the future could be zoned for residential use (e.g. after further planning approvals are obtained).

For example, land may be zoned as ‘Multi-use’, under the applicable law and is permitted to be used for residential purposes (including where specific approval is granted for that use), this would be considered to be ‘Australian land zoned for residential use’.

What are investments in Australian real property and how does the restriction on residential real property investments apply?

Section 10(3)(d) of the Instrument allows investment in “Australian real property” as a “balancing investment”. These investments are, however, subject to the restrictions in section 11(7) of the Instrument. Section 11(7) provides:

*The following requirements apply to investment by a managed investment fund in Australian residential real property, including any Australian land zoned for residential use (a **residential real property investment**):*

- a. *no direct residential real property investment may be made through the fund;*
- b. *no other residential real property investment (including, but not limited to, a debt or equity instrument, or a derivative) may be made through the fund unless:*
 - i. *the value of all residential real property investments is no more than 10% of the value of the fund’s net assets; and*
 - ii. *the investment is not made for the dominant purpose of deriving financial benefits; and*
 - iii. *the investment is not made for the dominant purpose covered by subsection (8).*

Investment in “Australian real property” includes, for the purposes of the Instrument:

- a direct investment in “Australian residential real property” (defined in section 11(7) of the Instrument); and
- an indirect investment in Australian residential real property through a debt or equity instrument, or a derivative.

An example of an indirect investment in Australian residential real property through a debt instrument includes a managed investment fund that invests in loans secured by a mortgage over real property for the purposes of making a profit.

Importantly, any balancing investment in residential real property (whether direct or indirect through a debt or equity instrument, or a derivative) must:

- restrict its exposure to residential real property investments to no more than 10% of the value of the managed investment fund’s net assets; and
- ensure that the residential real property investment is not made for the dominant purpose of deriving financial benefits; and
- ensure that the residential real property investment is not made for the dominant purpose of assisting the applicant, their spouse or de facto partner or any other member of the applicant’s family unit or their spouse or de facto partner’s family unit to reside in or gain legal ownership in Australian residential real property.

It follows that no residential real property investment can be made where the dominant purpose is to derive a financial benefit from doing so, regardless of the 10% limit.

No managed investment fund is permitted to use an applicant’s contributions as security or collateral for a loan.

Integrity and Audits

What integrity measures does the Business Innovation and Investment Program have?

The Department of Home Affairs has strong compliance measures in place to maintain the integrity of Australia's borders and economic migration program. All visa applicants are required to meet Australia's security, identity and character requirements, as well as visa stream specific requirements, as defined in the *Migration Act 1958*.

Integrity measures are in place to ensure the BIIP is not targeted by economic fugitives or money launderers. These include close scrutiny of applicants' financial arrangements and history, including verifying the sources of applicants' funds

What is the audit requirements under the Complying Investment Framework?

From 1 July 2021, all funds will be required to provide annual independent audit reports showing their compliance with the CIF. These audits apply to each fund managed offering products for the Emerging Companies and/or Balancing Investment components.

These annual audits will build a picture of the funds ongoing compliance with the CIF, for both the Department and applicants.

The audit would be expected to provide a report that would be provided to applicants to attach to their applications at both the subclass 188 and subclass 888 stages. For those applying for a subclass 888 application, the audit report for each financial year from 2021-22 would need to be attached, to show their funds ongoing compliance.

Funds would not be expected to provide individual audits for each applicant's portfolio, but instead one that covers that funds eligible Emerging Companies and/or Balancing Investment investments.

The Department recommends that an acceptable audit should be contact by an ASIC registered auditor that is independent from the fund.

The audit report should show how the fund complies with subsections 9 (emerging companies) and 10 (balancing investments) respectively.

The report should show the breakdown of the fund and how that relates to the relevant CIF components, including (but not limited too) how the fund complies with specific limitations in those sections, such as market capitalisation, real property and cash holdings.

Should I seek professional advice before applying or making a Complying Significant Investment?

Yes. All applicants are encouraged to seek professional legal and financial advice before making any decision.