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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).*

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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.