

AUSTRALIAN SIV AND PIV REGIME UNDER REVIEW BY DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION

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Legal Briefings - By **Fiona Smedley, Yorick Ng and Aaron Jones**

The Department of Immigration and Border Protection (**DIBP**) is [consulting](#) on proposed amendments to the Significant Investor Visa (**SIV**) and Premium Investor Visa (**PIV**) regime (**Consultation**) following DIBP's review of Australia investment visas.

DIBP has released a [consultation paper](#) which identifies the questions for public consultation. While the DIBP is leading the Consultation as a whole, Austrade is responsible for the policy settings of the SIV and PIV complying investment framework (**CIF**) component of the Consultation.

WHAT ELEMENTS OF THE POLICY CONSULTATION ARE RELEVANT TO FUND MANAGERS?

Of interest to fund managers:

- the DIBP is consulting on the pros and cons of the investor stream, significant investor stream and premium investor stream of the Business Innovation and Investment (subclasses 188 and 888) visa; and
- Austrade is consulting on the quantum of the venture capital and growth private equity (**VCPE**) investment requirement of the SIV and PIV regime and whether it should be increased from \$500,000 to \$1 million in addition to:

- the likely impact on demand for the SIV if the VCPE component were increased;
- whether there is sufficient absorptive capacity in the Australian venture capital market to manage the proposed increase to the VCPE component; and
- whether the ‘emerging companies’ or ‘balancing investment components’ should be reduced by \$500,000 to compensate should the VCPE component increase to \$1 million.

WHAT ELEMENTS OF THE TECHNICAL CONSULTATION ARE RELEVANT TO FUND MANAGERS?

Of further interest to fund managers, Austrade is also seeking submissions on proposed amendments to several technical matters which are aimed to better align some specific SIV technical settings in the [Migration \(IMMI 15/100: Complying Investments\) Instrument 2015 \(Instrument\)](#) to the intended operation of these areas as identified in the [CIF summary](#). These technical matters on which Austrade is consulting include:

- **Emerging companies as ultimate investees:** The SIV emerging companies component is aimed to benefit small and emerging Australian companies. Austrade is consulting on whether the Instrument should specify that the emerging companies investment must not be made in emerging companies that invest in companies that don't meet the market capitalisation requirements for the emerging companies component (ie small ETFs that invest in large cap companies would be excluded from permitted emerging companies investments).
- **Derivatives and risk management:** The SIV regime provides that complying investments may be made in derivatives only if the investment is made for risk management purposes and is not a speculative investment. Austrade seeks views on whether the Instrument should provide greater clarification on the scope of risk management purposes including whether it should be specified 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 investment to the risk of loss from changes in the market price of an investment.

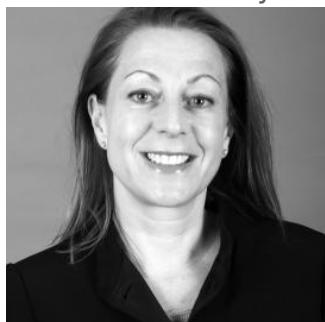
- **Cash holdings in a fund of funds:** The SIV framework requires that no more than 20% of a management investment fund's net assets are invested in cash held by Australian ADIs but it may be unclear how this requirement applies in a fund of funds structure. Austrade is consulting on whether the Instrument should specify that complying investments may not result in more than 20% of an investor's emerging companies or balancing investments being invested in cash held by Australian ADIs and whether investors need to have regard to the balance sheets of companies in which their emerging companies and balancing investments invest.
- **Complex fund of funds and IDPS structures:** The SIV regime permits the use of funds of funds and investor directed portfolio services (**IDPS**), however, there is currently no limit on the complexity or number of levels a fund of funds or IDPS structure may have. Austrade seeks submissions on whether the Instrument should specify that a fund of funds or IDPS may invest directly in complying investments or directly through another fund or entity that invests in complying investments, but that fund or entity may not invest through another fund or entity.

Submissions in respect of the Consultation are due by the close of business Monday 31 July 2017.

Further information on previous amendments to the SIV regime is available in Herbert Smith Freehills' legal briefing of [May 2015](#) and [July 2015](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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