NEW SIV AND PIV INVESTMENT PROGRAMMES RELEASED

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Legal Briefings – By **Fiona Smedley and Hannah Glass**

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IN BRIEF

- Amendments to the SIV programme and the new PIV programme both commence 1 July 2015.
- SIV investors must invest at least $500,000 in venture capital and growth private equity funds (VCPE) and at least $1.5 million in emerging companies funds. The range of permitted investments for the balance of the $5 million SIV investment is reduced.
- The PIV programme offers a fast track to residency where at least $15 million is invested in a broader range of eligible investments.
- Loan back agreements will be expressly prohibited.

WHAT'S HAPPENING IN RELATION TO THE SIV & PIV PROGRAMMES?

On 15 May 2015 Austrade released the framework for the amendments to the Significant Investor Visa (SIV) programme and the introduction of the Premium Investor Visa (PIV) programme, both of which will commence on 1 July 2015.

SIV PROGRAMME CHANGES AT A GLANCE

Under the amended SIV programme, SIV investors will no longer be able to invest in proprietary companies and must invest in managed funds investing minimum amounts in three broad categories of permitted investments (VCPE, emerging companies and balancing investments):

Other key changes are:

- **Governance and integrity**: Fund managers must be independent of the SIV applicant or their spouse and (except VCPE fund managers) must have and maintain $100 million in firm wide funds under management,
- **Balancing investments**: the range of permitted investments for the balancing investments is reduced – see 'What are the balancing investments?' below,
- **Cash**: a 20% limit has been introduced for cash in respect of the emerging companies and the balancing investments (but not the VCPE investment). Where investment is made through a fund of funds or IDPS structure, cash has to be invested in 30 days,
- **Derivatives**: the 20% limit has been removed but derivatives can only be used for risk management (not investment) purposes for the emerging companies and the balancing investments (not the VCPE investment), and
- **Loan backs**: the investments cannot be subject to loan back arrangements ie used as collateral by SIV applicants.

WHAT ARE THE VCPE INVESTMENTS?

At least $500,000 must be invested in eligible venture capital or growth private equity funds. The consultation draft of the framework released earlier this year proposed a minimum investment of $1 million and the government has announced that it proposes to increase this minimum investment in VCPE to $1 million within 2 years.

Investments in VCPE funds require three elements of proof for SIV applicants:

1. proof that funds are taken upfront by the fund vehicle (or held in escrow in a CMT or bank account as security),
2. proof of entering into a commitment with the fund within 12 months from the date the provisional visa is granted, and
3. proof that VCPE fund investments have commenced within 4 years from the date the visa is granted.

WHAT ARE THE EMERGING COMPANIES INVESTMENTS?

At least $1.5 million must be invested in funds investing in eligible ‘emerging companies’. These include:

- securities in companies with a market cap of less than $500 million at the time of first purchase. These securities can be in ASX listed companies or (subject to a limit of 20% of the fund’s net assets) unlisted companies,
- other Australian listed companies (subject to a limit of 20% of the fund’s net assets),
- foreign (eg NZ) exchange listed companies with a market cap of less than $500 million at the time of first purchase (subject to a limit of 10% of the fund’s net assets),
- previously held shares in companies which have grown their market cap over AUD$500 million (subject to a limit of 30% of the fund’s net assets), and
- at least 20 companies within 3 months of the managed fund’s inception date.

Open or closed ended managed funds and listed investment companies are eligible. As noted above, for the emerging companies investments, the:

- managed fund may use derivatives for risk management purposes and may hold cash up to a 20% limit, and
- manager must have and maintain $100 million in firm wide funds under management.

WHAT ARE THE BALANCING INVESTMENTS?

The balance of the $5 million SIV investment must be invested in ‘balancing investments’. The table below outlines the key differences between the permitted fund investments under the current SIV programme and the permitted fund ‘balancing investments’ under the amended SIV programme from 1 July 2015.

Current permitted fund investment	Permitted balancing investments from 1 July
infrastructure projects	Aus listed infrastructure trusts
cash with ADI	cash (< 20%)
Cth and state bonds	–
corporate bonds/debt listed in Aus to be listed in 12 months	corporate bonds/notes issued by Aus listed corporate (or wholly owned subsidiary)or investment grade and rated bonds/notes
bonds/term deposits with Aus financial institution	–
real property	real property (but 10% limit on residential real estate)
Aus agribusiness	–
annuities	deferred annuities (paybacks commence after the provisional visa period)
derivatives for portfolio management only (< 20%)	derivatives for risk management only (not subject to 20% limit)
loans	–
managed funds investing in the investments above	managed funds investing in the investments above

Open or closed ended managed funds and listed investment companies are eligible. As noted above, for the balancing investments, the:

- managed fund may use derivatives for risk management purposes and may hold cash up to a 20% limit, and
- manager must have and maintain $100 million in firm wide funds under management.

NEW PIV PROGRAMME

As previously announced, the PIV programme will allow investors a 12 month path to permanent residency where an investment of $15 million is made in Australia.

The PIV is a separate class of visa to, and has less prescriptive investment requirement to, the SIV. VCPE and emerging companies investments are not mandated and permitted investments include:

- Australian securities exchange listed assets,
- Australian government or semi-government notes or bonds,
- corporate bonds/notes issued by an Australian listed corporate (or its wholly owned subsidiary) or investment grade and rated bonds/notes,
- direct investment in Australian proprietary companies,
- direct investment in non-residential property in Australia,
- deferred annuities issued by an Australian registered life company, and
- state and territory approved philanthropic donations.

All of the $15 million can be invested in one complying investment and the managed fund may use derivatives for risk management purposes and may hold cash up to 20% of the fund’s net assets. The PIV programme will be by invitation only, however applicants will be assessed on the proposed investment, their entrepreneurial skill, talent, benefit to Australia and character.

KEY CONTACTS

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

FIONA SMEDLEY
PARTNER, SYDNEY

+61 2 9225 5828
Fiona.Smedley@hsf.com

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