

CHANGES TO SIGNIFICANT INVESTOR VISA REGIME

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Legal Briefings - By **Fiona Smedley and Yorick Ng**

Fund managers operating SIV compliant funds should take note of key changes from 1 July 2021.

CHANGES TO THE SIGNIFICANT INVESTOR VISA REGIME CAME INTO EFFECT 1 JULY 2021

The Australian government has made changes to the Significant Investor Visa (**SIV**) regime that have expanded the visa streams that will be required to maintain complying investments, reduced the investment period and adjusted investment allocations away from balancing investments towards venture capital and growth private equity investments. The changes took effect on 1 July 2021.

BACKGROUND TO THE CHANGES

On [19 May 2021](#), the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs outlined changes to the SIV regime to come into effect from 1 July 2021. These changes followed announcements made by the Former Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on [17 December 2020](#) and the Department of Home Affairs' review of the Business Innovation and Investment program and the complying investment framework.

On 1 July 2021, the *Migration Regulations 1994 (Cth)* was amended and [Migration \(Complying Investments\) Amendment Instrument \(LIN 21/041\) 2021](#) amended *Migration (IMMI 15/100: Complying Investments) Instrument 2015*.

WHAT DO FUND MANAGERS NEED TO KNOW?

The changes that took effect on 1 July 2021 include the following matters of interest to fund managers:

1. Complying Investment Framework to extend to Investor visas

The complying investment framework now extends beyond SIV to the 'Investor visa' (**IV**). IV holders will be required to maintain an investment of \$2.5 million in complying investments. In comparison, the investment requirement of SIV holders will remain at \$5 million.

2. Changes to investment allocation

For applicants after 1 July 2021, the venture capital and private equity component has increased from 10% to 20% of the investment amount. The investment allocation for emerging companies remains at 30%, while the balancing investment allocation has reduced from 60% to 50%.

For new SIV holders, this means that they must maintain a minimum of \$1 million in venture capital and private equity investments and the amount available for investment in balancing investments will reduce to \$2.5 million per SIV holder. The investment requirements of existing SIV holders and applicants before 1 July 2021 remain unchanged.

3. Shorter investment period

New SIV holders will be eligible to apply for permanent residence if they meet the qualification requirements after three years, which is a year quicker than the old qualification period of four years. The SIV will now be valid for five years, which gives SIV holders additional time to meet the requirements.

4. Requirement to provide annual independent audit reports

From FY21-22, fund managers of emerging company investments and balancing investments will also be required to conduct an annual audit. A copy of the annual audit will need to be provided to IV and SIV holders, so they can attach it to their visa applications.

5. Clarification in relation to use of fund of funds, emerging companies and derivatives

The SIV Instrument now clarifies that:

- a. a fund of funds must itself be a managed investment fund for the purposes of the SIV regime;
- b. venture capital and private equity investments may be held through fund of funds and investor directed portfolio services;
- c. derivatives which are 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 are not permitted; and
- d. emerging companies which in turn invest in companies which do not meet the market capitalisation requirements for emerging companies are not permitted. For example, a small exchange traded fund which invests in the securities of large capitalised companies is not permitted.

SIV and IV holders will also be required to enter into venture capital and private equity investment fund agreements within 6 months of the grant of the visa (which is earlier than the 12 months timing under the old rules).

Further information on previous amendments to the SIV regime is available in Herbert Smith Freehills' legal briefings of [May 2015](#), [July 2015](#) and [July 2017](#)

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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