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05.08.2021

NEWS

Latest changes to the SIV regime

The Australian government announced changes to the Significant Investor Visa (SIV) regime which took effect on 1 July 2021. Here, partner Elliott Stumm explains the latest key changes which relate to—

- the complying investment framework
- a new annual audit requirement
- investment in derivatives
- clarification of fund of funds
- a shorter investment period.

The changes relate to applications made after 30 June 2021. The old rules continue to apply to applications accepted on or prior to 30 June 2021.

COMPLYING INVESTMENT FRAMEWORK

SIV applicants will be required to invest at least $5 million over four years in 'complying investments', which must now include:

- At least 20 percent of the total investment ($1 million) in eligible Australian venture capital or growth private equity fund(s) investing in start-up and small private companies.
- At least 30 percent ($1.5 million) in an eligible managed fund(s) or Listed Investment Companies (LICs) that invest in emerging companies listed on the ASX.

  There is a new restriction which excludes a small exchange traded fund which invests in the securities of large companies. This has been added to close a loophole where investments were being made in small LICs that met the requirements of an 'emerging business' but subsequently invested its funds in large ASX-listed companies.

- A 'balancing investment' of up to 50 percent ($2.5 million) in managed fund(s) or LICs that invest in a combination of eligible assets that include other ASX listed companies, eligible corporate bonds or notes, annuities, and real property (subject to a 10 percent limit on residential real estate). There are several further conditions, including:
  - A complying fund must have no more than 20 percent of its net assets in cash.
  - Derivatives are to be used for risk management purposes only (see change below in respect of derivatives).
  - Fund managers are to have and maintain a minimum $100 million in firm-wide funds under management to offer a complying fund(s) to applicants.

AUDIT REQUIREMENT

From the 2021-22 financial year, fund managers of emerging company investments and balancing investments will be required to conduct an annual audit. A copy of the annual audit will need to be provided to SIV investors, so they can attach it to their visa applications.

DERIVATIVES

Investment in derivatives is permitted only where the investment—

- is made for risk management purposes
- is not a speculative investment, and
- is not designed to materially reduce or eliminate the exposure of an investor to the risk of loss from changes in the market price of an emerging companies. This aspect is new. It essentially means derivatives which are designed to materially reduce, or eliminate, the exposure of an investor to the risk of loss from changes in the market price of an emerging company investment is not permitted.

FUND OF FUNDS

The new changes now clarify—

- a fund of funds must itself be a managed investment fund (which includes investor directed portfolio services) for the purposes of the SIV regime, and
- venture capital and private equity investments may be held through fund of funds and investor directed portfolio services.

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.

WE CAN HELP

Our team has extensive experience in funds management under the SIV regime, and our lawyers can explain the impact of these latest changes.

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