

5 January 2015

Investor Visa  
Department of Immigration and Border Protection  
6 Chan Street  
BELCONNEN ACT 2617



Email: [investorvisas@austrade.gov.au](mailto:investorvisas@austrade.gov.au)

Dear Sir/Madam

**Complying Investment Framework for the Significant Investor Visa (SIV) and Premium Investor Visa (PIV) programmes**

Attached please find the Law Council of Australia submission relating to: Complying Investment Framework for the Significant Investor Visa (SIV) and Premium Investor Visa (PIV) programmes.

For further information please contact Jacintha Victor –John on 02-6246 3753 or [jacintha.victorjohn@lawcouncil.asn.au](mailto:jacintha.victorjohn@lawcouncil.asn.au)

Yours faithfully

A handwritten signature in black ink, appearing to read "M Hagan".

MARTYN HAGAN  
SECRETARY-GENERAL

## Invitation for Public Submissions - Complying Investment Framework for the Significant Investor Visa (SIV) and Premium Investor Visa (PIV) programmes

Please send your submission to Austrade by close of business 5 January 2015

By email: [investorvisas@austrade.gov.au](mailto:investorvisas@austrade.gov.au)

Please limit your submission length to a total of five pages

Name	Mr Martyn Hagan	Title	SECRETARY GENERAL
Organisation	LAW COUNCIL OF AUSTRALIA	Type	PROFESSIONAL REPRESENTATIVE BODY
Telephone number	(02) 6246 3753		
Email address	C/- jacintha.victorjohn@lawcouncil.asn.au		
Website	www.lawcouncil.asn.au		

### Suggestions on the scope and products for complying investment that will continue to attract applications, as well as attract more investment into Australia that makes a material difference.

There are cogent reasons why the Significant Investor Visa (SIV) should be more broadly promoted to attract a greater diversity of applicant-investors from around the globe. However, for so long as 9 out of 10 SIV applicants hail from China, Taiwan, HKSAR and surrounds, an analysis of the 'attractiveness' of migrant investment opportunities under the SIV program must take into account the characteristics of the program's major subscribers.

It is true that many SIV applicants are focussed on maximising returns on their investment, even going as far as to ask fund managers to guarantee rates of return. Such expectations may be a consequence of three decades of near double-digit GDP growth in China, but for the most part, SIV applicants from that region tend to initially favour 'lower risk' Australian investment opportunities, preferably in sectors they are familiar with, and ideally accompanied by a form of capital guarantee.

Such an approach mitigates the relative disadvantage these individuals have in operating in substantially unfamiliar political, linguistic, and socio-economic investment environments.

Canada's 'Federal Immigrant Investor Program' (terminated in June, 2014), understood this and offered residence in exchange for a relatively straightforward CAD800,000 interest free loan to government, and the attractiveness of that standardised 'option' has been mirrored in the uptake of State / Territory government bonds under the SIV program. However, the demise of the longstanding Canadian program was largely attributed to shortcomings in achieving appropriate value from the capital inflows which were ultimately directed toward low value / low risk propositions, which is arguably analogous to unallocated funds currently sitting in our own State and Territory infrastructure bonds courtesy of the SIV programme.

As such, the Law Council of Australia (the Law Council) welcomes the DIBP / Austrade joint initiative to maximise the economic outcomes derived from the SIV and Premium Investor Visa (PIV) categories.

Putting aside direct investments into Australian private companies and government bonds, the current instrument **IMMI 13/092**<sup>i</sup> operates to limit investments in complying managed funds to the following:

- infrastructure projects in Australia;
- cash held by Australian deposit taking institutions;
- Commonwealth Government or a State or Territory Government bonds;
- bonds, equity, hybrids or other corporate debt in companies and trusts listed or expected to be listed within 12 months on an Australian Stock Exchange;
- bonds or term deposits issued by Australian financial institutions;
- real property in Australia;
- Australian Agribusiness;
- annuities issued by an Australian registered life company in accordance with section 9 or 12A of the Life Insurance Act 1995;
- derivatives used for portfolio management and non-speculative purposes which constitute no more than 20 per cent of the total value of the managed fund;
- loans secured by mortgages over the investments listed above; and,
- other managed funds that invest in the investments noted above

The Law Council does not advocate to reduce the number of currently gazetted investment mandates, but acknowledges that some items such as investment in real estate, (albeit indirect), are prone to politicisation and controversy.

The Law Council supports the Federal Government's plan to expand and align the criteria for complying investments with the government's national investment priorities<sup>ii</sup>, namely by directing capital to the following growth centres identified for the Australian economy:

- food and agribusiness;
- mining equipment, technology and services;
- oil, gas and energy resources;
- medical technologies and pharmaceuticals; and,
- advanced manufacturing

Austrade's published target sectors<sup>iii</sup> arguably adds tourism infrastructure to the list of strategic growth opportunities that could benefit from additional FDI.

The Law Council takes this opportunity to highlight the importance of ensuring that the capital raised through the business and investment migration platform can be leveraged in areas of trade liberalisation that may emerge from bilateral agreements such as the ChAFTA, or recently ratified KAFTA. Opportunities in education and training exports are a case in point, and there is already significant international goodwill associated with this sector which should readily translate into investor interest and confidence.

States and Territories with the most flexible, transparent, and streamlined nomination criteria are the most attractive to investors who might want to park some or all of their funds into a low risk option before looking to swap or supplement their investments commensurate with an increasing appetite for risk and return. As such, the benefits of expanding the range of complying investment options is likely to be most apparent in the secondary marketplace, and short term treasury bonds can still be a useful initial entry point for investor migrants.

### **Comments on the inclusion of venture capital funds as part of the complying investment and suggestions on how to structure that inclusion effectively.**

AVCAL has consistently lobbied for the inclusion of private equity (PE) and venture capital (VC) funds into the legislative instrument/s prescribing the range of complying investments for SIV purposes<sup>iv</sup>.

If the Governments intention is for FDI to trickle down to support innovation at the small to medium enterprise level, then Austrade's functions would be complemented greatly by PE or VC funds being able to broker unique investment offerings for investor migrants interested in more bespoke investment opportunities than currently provided by managed funds.

This option may also appeal given that the policy and legislative framework relating to direct investment in Australian proprietary companies is patchy, and is generally affected without the benefit of a sophisticated intermediary. Incorporating private equity and venture capital interests is also an effective way to re-introduce aspects of the previous *Business Skills* program into the SIV (and/or PIV) framework by potentially facilitating the transfer of skills, and the development of international markets.

This is to be contrasted with the VC stream under the Business Talent (subclass 132) visa which is outside of the scope of this submission, but dealt with in the Law Council's submissions to the Parliamentary Inquiry into the Business Innovation and Investment Programme (BIIP)<sup>v</sup>.

There appears no reason why the inclusion of PE and VC platforms could not be implemented by simple amendment to the legislative instrument attached to reg. 5.19B of the *Migration*

*Regulations 1994 (IMMI 13/092).*

### **Comments on the inclusion of small and micro capital funds as part of the complying investment and suggestions on how to structure that inclusion effectively.**

Micro-cap funding in Australia *should* be adequately facilitated through capital raisings from superannuation trustees, debt finance and other arrangements that may not have otherwise been contemplated by the SIV/PIV programs. However, commentary on the liquidity issues for start-ups and the apparent exodus of local entrepreneurial talent point to a need for new capital streams to reinvigorate innovation in this area.

The challenge will be to ensure foreign subscribers are not oversold on what are inherently riskier investment propositions.

### **Comments or suggestions on the broad structure of PIV and SIV. For example, should PIV have the same complying investment framework as SIV but just a larger value of investment, or should PIV have a different framework?**

On 30 April 2014, the Law Council made submissions<sup>vi</sup> to the DIBP on the review of the SIV programme recommending, *inter alia*, an additional pathway to permanent residence for those willing to invest substantially greater than the AUD5 million required under SIV programme. The Council welcomes the introduction of the PIV accordingly.

The generous concessions attached to the PIV will presumably attract those wanting to secure a migration outcome whilst maintaining overseas business interests, preserving capital and minimising relative opportunity costs through the concessional 12 month investment term. The imperative for such applicants is likely to be no different to an SIV investor, namely seeking a relatively conservative investment option.

If passive investors are guided by risk profiles and a base familiarity with certain industry sectors, it may be possible for Austrade to develop and package diversified portfolios across those lines, consistent with the national investment priorities noted above.

However, it should be noted that the biggest challenge for the PIV will be the ability of the applicant to demonstrate these large sums are lawfully acquired, unencumbered and

transferable to Australia. Without appropriate guidelines or bilateral mechanisms for the clearance and transfer of funds, this issue will persist, and overshadow considerations of where the applicant should make their Australian investment.

### Suggestions on improving the integrity of the complying investment framework.

The Law Council supports measures to enhance the integrity of the SIV and PIV programmes. At the institutional level, this may include a certification or referral service relating to the vetting of complex or unusual investment structures. At the applicant level, appropriate expectation management of foreign investors would go a long way to reducing the growing numbers of withdrawals and refusals and to socialise the market with the aims and objects of Australia's investment migration program.

Other initiatives that may directly or indirectly improve the integrity of the complying investment framework might include:

- Disallowing fund structures or other schemes that operate at odds with the overarching policy objectives of the program (e.g. lending against the principal investment, proxy investment into real property, etc)
- Practical solutions to address and curtail offshore unregistered practice in the migration advice industry
- Identification of potential conflicts of interest arising from placement fees paid in the market
- Independent third-party assurance or audit of source of investment funds for SIV/PIV applicants
- Comprehensive bilingual resources for investor-applicants on complying investments (there is still no 'Invest in Australia' tab on the [immi.gov.au](http://immi.gov.au) website, and the Austrade webpage purporting to link to SIV information actually points to an irrelevant page on the [immi](http://immi.gov.au) website)<sup>vii</sup>.
- Links to, or introductory information on the Australian taxation landscape

<sup>i</sup> <http://www.comlaw.gov.au/Details/F2013L01571>

<sup>ii</sup> [http://www.dpvc.gov.au/sites/default/files/publications/industry\\_innovation\\_competitiveness\\_agenda.pdf](http://www.dpvc.gov.au/sites/default/files/publications/industry_innovation_competitiveness_agenda.pdf) p56

<sup>iii</sup> <https://www.austrade.gov.au/Invest/Opportunities-by-Sector>

<sup>iv</sup> <http://www.avcal.com.au/documents/item/849>

---

v. [http://www1.lawcouncil.asn.au/ILS/images/pdfs/2825\\_Inquiry\\_into\\_the\\_Business\\_Innovation\\_and\\_Investment\\_Programme\\_BIIP.pdf](http://www1.lawcouncil.asn.au/ILS/images/pdfs/2825_Inquiry_into_the_Business_Innovation_and_Investment_Programme_BIIP.pdf)

vi [http://www.lawcouncil.asn.au/ILS/images/pdfs/30.4.14\\_-\\_S\\_-\\_Submission\\_-\\_SIV.PDF](http://www.lawcouncil.asn.au/ILS/images/pdfs/30.4.14_-_S_-_Submission_-_SIV.PDF)

vii <http://www.immi.gov.au/Work/Pages/Work.aspx> linked from <http://www.austrade.gov.au/Invest/Doing-business-in-Australia/Investor-Guide/Coming-to-Australia>