

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### ***Migration (IMMI 15/100: Complying Investments) Instrument 2015***

1. This Instrument is made under regulations 5.19C and 5.19D of the *Migration Regulations 1994* (the Regulations).
2. The purpose of the Instrument is to specify the investments permitted for certain visa streams under the Business Innovation and Investment programme (Subclass 188 (Provisional) visa) and (Subclass 888 (Permanent) visa), namely the Significant Investor stream, the Significant Investor Extension stream and the new Premium Investor stream. The primary criteria for these streams are that an applicant has made a complying investment of a certain Australian dollar amount. The Instrument sets out the requirements for complying investments under the streams, known as ‘complying significant investments’ and ‘complying premium investments.’
3. The scope of ‘complying significant investments’ and the scope of ‘complying premium investments’ are set out in an Instrument, pursuant to subregulations 5.19C(6) and 5.19D(8). These are designed to encourage investment into Australia that makes a material difference and attracts entrepreneurial skill and talent.

#### *Complying significant investment*

4. Subregulation 5.19C(1) of the Regulations provides that an investment by a person (the investor) is a complying significant investment if all of the requirements in the Regulations are met.
5. Subregulation 5.19C(6) of the Regulations provides that the Minister may, by legislative instrument, specify requirements for the purposes of subregulation 5.19C(5), namely to define the scope of ‘complying significant investments.’ Part 2 of this Instrument sets out the scope of ‘complying significant investments.’

6. Specifically, the Instrument provides that in order to meet the criteria to have made or hold a complying significant investment for the purposes of regulation 5.19C of the Regulations, every applicant for a visa in the Significant Investor stream must invest at least AUD 500,000 in eligible venture capital and growth private equity fund(s) and at least AUD 1 500 000 in eligible fund(s) investing in emerging companies. Any remaining portion of the value of the AUD 5 000 000 of the complying significant investment must be invested in one or more balancing investments listed in this Instrument.
7. Importantly, the Instrument provides that it is a requirement that an investment be in a managed fund or listed investment company that is an Australian listed security, is managed in accordance with Australian laws and not used speculatively or for hedging market exposure.

*Complying premium investment*

8. Subregulation 5.19D of the Regulations provides that an investment by a person (the investor) is a complying premium investment if all of the requirements in the regulation are met.
9. Subregulation 5.19D(8) of the Regulations provides that the Minister may, by legislative instrument, specify requirements for the purposes of subregulation 5.19D(7), namely to define the scope of complying premium investments. Part 3 of this Instrument sets out the scope of ‘complying premium investments.’
10. Specifically, the Instrument provides that in order to meet the criteria to have made or hold a complying premium investment for the purposes of regulation 5.19D of the Regulations, the investor’s funds may be invested in a managed fund or by direct investment. The Instrument provides that the investment may only be made directly or through a managed fund that invests in the investments provided under this Instrument. Importantly, Part 3 notes that the minimum total amount for a complying premium investment may consist partly or completely of a philanthropic contribution approved by a State or Territory Government agency. Such a contribution is not an investment for the purposes of regulation 5.19D or for Part 3.

*Consultation*

11. This Instrument was drafted in consultation the Australian Trade Commission, which is also known as Austrade, and the Department of Industry and Science.
  
12. The Office of Best Practice Regulation was consulted about the changes to the significant investor visa and introduction of the premium investor visa within the Business Innovation and Investment Programme and has advised that the regulatory impact was minor (OBPR reference C-17285). A short-form Regulatory Impact Statement was completed and is published as part of the Explanatory Statement to the *Migration Amendment (Investor Visas) 2015 Regulation 2015*.
  
13. Under section 44 of the *Legislative Instruments Act 2003*, this Instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required. Subsection 44(2) of the *Legislative Instruments Act 2003* provides that a legislative instrument made under a Part listed included in the table under this provision is not subject to disallowance. This Instrument is made under Part 5, Division 5.3 of the Regulations. Item 26 of the table under subsection 44(2) includes a legislative instrument made under Part 5 of the Regulations.