



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

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I, Michaelia Cash, Assistant Minister for Immigration and Border Protection, make the following instrument.

Dated 25 June 2015

Michaelia Cash  
Assistant Minister for Immigration and Border Protection

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## Part 1—Preliminary

### 1 Name

This is the *Migration (IMMI 15/100: Complying Investments) Instrument 2015*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2015.	1 July 2015

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under regulations 5.19C and 5.19D of the *Migration Regulations 1994*.

### 4 Dictionary

Note: A number of expressions used in this instrument are defined in the Regulations, including the following:

- (a) AUD (Australian dollars);
- (b) complying premium investment;
- (c) complying significant investment;
- (d) member of the family unit.

In this instrument:

**Australian ADI** has the same meaning as in the *Corporations Act 2001*.

Note: ADI is short for authorised deposit-taking institution.

**Australian financial services licence** means a licence under section 913B of the *Corporations Act 2001*.

**balancing investment**: see section 10.

**body** has the same meaning as in the *Corporations Act 2001*.

**derivative** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

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**emerging companies investment:** see section 9.

**incorporated in Australia** has the same meaning as in the *Corporations Act 2001*.

Note: The *Corporations Act 2001* (section 9) defines **incorporated in Australia** and **incorporated**.

**investor** has the meaning given by regulation 5.19C or 5.19D of the Regulations, as the case requires.

**listed investment company** has the same meaning as in the *Income Tax Assessment Act 1997*.

**managed investment fund** means any of the following (whether open or closed):

- (a) a managed investment scheme based only on interests:
  - (i) that are not able to be traded on a financial market (within the meaning of section 767A of the *Corporations Act 2001*); and
  - (ii) for which no representation has been made to any member, or prospective member, of the managed investment scheme that the interests will be able to be traded on such a financial market;
- (b) a listed investment company;
- (c) a financial product mentioned in paragraph 764A(1)(d), (e) or (f) of the *Corporations Act 2001* that may result in a payment from an approved benefit fund (within the meaning of the *Life Insurance Act 1995*), or a statutory fund maintained under the *Life Insurance Act 1995*.

**managed investment scheme** has the same meaning as in the *Corporations Act 2001*.

**registered foreign company** means a foreign company, within the meaning of the *Corporations Act 2001*, that is registered under that Act.

**Regulations** means the *Migration Regulations 1994*.

**securities** means any of the following interests:

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
- (b) shares in, or debentures of, a body;
- (c) interests in a managed investment scheme;
- (d) units of such shares;
- (e) options to acquire by way of transfer any of the interests mentioned in paragraphs (a) to (d);

but does not include derivatives other than the options mentioned in paragraph (e).

**venture capital fund** means any of the following bodies:

- (a) a venture capital limited partnership conditionally registered, or unconditionally registered, under the *Venture Capital Act 2002*;
- (b) an early stage venture capital limited partnership conditionally registered, or unconditionally registered, under that Act;

- (c) an Australian venture capital fund of funds conditionally registered, or unconditionally registered, under that Act.

**visa** means a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted in whichever of the following streams is relevant:

- (a) the Significant Investor Stream;
- (b) the Significant Investor Extension Stream;
- (c) the Premium Investor Stream.

## Part 2—Complying significant investments

### 5 Compliance with this Part

For subregulation 5.19C(6) of the Regulations, the requirements for an investment applying at any particular time are that the investment complies with all requirements under this Part that are applicable at that time.

- Note 1: Regulation 5.19C of the Regulations includes additional requirements for an investment to be a *complying significant investment*.
- Note 2: The primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream include a minimum total amount for the investment that is required to be made on or after the time of application to satisfy the criteria for grant of the visa (see subclause 188.252(1) of Schedule 2 to the Regulations).
- Note 3: If an investment is based on one or more other investments, regulation 5.19C of the Regulations and this Part apply to the other investment or other investments in the same way, to the extent practicable.

### 6 Value of required investments

- (1) The investment must include:
  - (a) a total of at least AUD 500 000 invested, or to be invested, in one or more venture capital funds under section 8; and
  - (b) a total of at least AUD 1 500 000 in emerging companies investments (see section 9).
- (2) Any remaining portion of the investment may be invested in one or more balancing investments (see section 10).

### 7 Timing of required investments

The investment must be made on or after the time of application for the visa.

### 8 Venture capital fund investments

#### *General*

- (1) Investments by the investor in a venture capital fund or funds must comply with the requirements of this section.

#### *Initial investment requirements*

- (2) Between the time of application for the investor's visa, and the time that is 12 months after the visa is granted to the investor:
  - (a) the investor must enter into an agreement with the general partner of each of one or more venture capital funds committing the investor to make an investment in one or more venture capital funds of at least AUD 500 000 in total; and
  - (b) the amount of each investment in a venture capital fund must be held:
    - (i) in escrow in favour of the general partner of the fund; or



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- (ii) as security for a guarantee issued by an Australian ADI in favour of the general partner of the fund.
- (3) At the time of decision for the investor's visa, at least AUD 500 000 in total must be held either:
- (a) as mentioned in paragraph (2)(b); or
  - (b) on deposit in either or both of the following for investment in accordance with this section:
    - (i) a cash management trust or trusts (within the meaning of the *Income Tax Assessment Act 1997*);
    - (ii) an Australian ADI.

*Investment requirements while visa is in effect*

- (4) A substantial part of the total of amounts held under paragraph (2)(b) for investment by one or more venture capital funds (not including any fees related to the investment) must be invested during the period the visa is in effect.

*Investment realised*

- (5) If an investment in a venture capital fund is realised before the visa ceases to have effect, the amount realised from the investment must be reinvested in one or more of the following:
- (a) one or more venture capital funds (which may include the same fund);
  - (b) emerging companies investments (see section 9);
  - (c) balancing investments (see section 10).

*Investment reimbursed following lapse of conditional registration*

- (6) If an investment in a venture capital fund (the **original venture capital fund**) is reimbursed (in whole or in part) in the circumstances covered by subsection (7) before the visa ceases to have effect, the amount reimbursed must be reinvested in another venture capital fund or funds.
- (7) The circumstances covered by this subsection are as follows:
- (a) the original venture capital fund was conditionally registered under section 13-5 of the *Venture Capital Act 2002*;
  - (b) the fund's conditional registration has lapsed under subsection 13-10(3) of that Act;
  - (c) the investor's investment in the original venture capital fund is reimbursed (in whole or in part) because of that lapse.

Note: See subregulations 5.19C(7) and (8) of the Regulations for the allowable period during which funds may be transferred from one investment to another.

## 9 Emerging companies investments

*General*

- (1) An **emerging companies investment** is an investment in accordance with this section.
- (2) The investment must:

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- (a) be invested through one or more managed investment funds; and
- (b) comply with the requirements of this section at any time.

### *Permitted investments*

- (3) The investment may be made only in one or more of the following:
  - (a) securities quoted on ASX Limited;
  - (b) securities (***Australian non-ASX quoted securities***) quoted on an Australian securities exchange other than ASX Limited;
  - (c) securities (***unquoted Australian securities***) not quoted on an Australian securities exchange that are covered by subsection (4) (but see section 11 for investments in Australian residential real estate);
  - (d) securities (***foreign quoted securities***) quoted on a securities exchange operated in a foreign country;
  - (e) cash held by Australian ADIs, including certificates of deposit, bank bills and other cash-like instruments (but see section 11);
  - (f) derivatives (but see section 11).
- (4) For paragraph (3)(c), unquoted Australian securities are covered by this subsection if:
  - (a) they are issued by:
    - (i) a company incorporated in Australia; or
    - (ii) a trustee or responsible entity of a managed investment scheme that invests in Australian real property or Australian infrastructure assets; and
  - (b) the central management and control of the company or managed investment scheme mentioned in paragraph (a) is in Australia.
- (5) The investment must not be made in:
  - (a) securities issued or proposed to be issued by a government; or
  - (b) debentures.

### *Market capitalisation*

- (6) For an investment in securities of a company or managed investment scheme:
  - (a) at the time of the first investment in those securities, the company or the managed investment scheme must have a market capitalisation of less than AUD 500 000 000; and
  - (b) at any time, the proportion of the value of the managed investment fund's net assets held in securities of companies and managed investment schemes whose market capitalisation has grown to AUD 500 000 000 or more (since their securities were first invested in) must not exceed 30%.

### *Australian non-ASX quoted securities*

- (7) The total value of investments in Australian non-ASX quoted securities must comprise no more than 20% of the value of the managed investment fund's net assets at any time.

*Unquoted Australian securities*

- (8) An investment in unquoted Australian securities must result in no more than 20% of the value of the managed investment fund's net assets being held in such securities immediately after the time of investment.

*Foreign quoted securities*

- (9) The total value of investments in foreign quoted securities must comprise no more than 10% of the value of the managed investment fund's net assets at any time.

*Investments issued by 20 different issuers*

- (10) The investment must be maintained in securities issued by 20 or more different issuers from a time that is 3 months after the first investment is made by the managed investment fund.

*Percentage of investments issued by a particular issuer*

- (11) An investment in securities issued by a particular issuer must result in no more than 10% of the value of the managed investment fund's net assets being held immediately after the time of investment in securities issued by that issuer.

**10 Balancing investments***General*

- (1) A **balancing investment** is an investment of an investor's funds in accordance with this section.
- (2) The investment must:
- (a) be invested through one or more managed investment funds; and
  - (b) comply with the requirements of this section at any time.

*Permitted investments*

- (3) The investment may be made only in one or more of the following:
- (a) securities of any of the following bodies, if the body is quoted on an Australian securities exchange:
    - (i) a company;
    - (ii) a real estate investment trust;
    - (iii) an infrastructure trust;
  - (b) bonds or notes issued by:
    - (i) a company that is quoted on an Australian securities exchange; or
    - (ii) a wholly-owned subsidiary of a company mentioned in subparagraph (i), if the subsidiary is incorporated in Australia; or
    - (iii) a company incorporated in Australia, or a registered foreign company, if the bonds or notes are rated as investment grade by a credit rating agency that holds an Australian financial services licence;

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- (c) annuities issued by a company registered under section 21 of the *Life Insurance Act 1995*, if the annuity does not repay capital during the period the visa is in effect;
- (d) Australian real property (but see section 11);
- (e) cash held by Australian ADIs, including certificates of deposit, bank bills and other cash-like instruments (but see section 11);
- (f) derivatives (but see section 11).

### 11 General requirements

#### *General*

- (1) The requirements under this section apply in relation to an investment made through a venture capital fund or a managed investment fund.

#### *Australian financial services licence requirements*

- (2) A person covered by subsection (3) in relation to the investment must:
  - (a) hold, or be otherwise covered by, an Australian financial services licence; or
  - (b) be exempt from any provision of the *Corporations Act 2001* requiring an Australian financial services licence to be held in relation to the investment.
- (3) The following persons are covered by this subsection in relation to the investment:
  - (a) a person issuing the interests in the venture capital fund or the managed investment fund (the **issuer**), including the following (without limitation):
    - (i) the general partner of a venture capital fund;
    - (ii) a trustee or the responsible entity of a managed investment scheme;
    - (iii) the issuer of shares in a listed investment company;
    - (iv) for an investment mentioned in paragraph (c) of the definition of **managed investment fund** in section 4—the insurer;
  - (b) a person authorised by the issuer to manage the investment, or to make the investment, on the issuer's behalf.
- (4) The central management and control of a person (other than an individual) mentioned in subsection (3) must be in Australia.
- (5) The investor and (if applicable) the investor's spouse or de facto partner, and any associate (within the meaning of the *Corporations Act 2001*) of the investor, spouse or de facto partner, must not:
  - (a) be a person mentioned in subsection (3); or
  - (b) be involved in the management or control of, or in partnership with, a person mentioned in subsection (3).

#### *Funds under management in Australia*

- (6) The following persons in relation to an investment must maintain a minimum of AUD 100 000 000 in funds that are under management in Australia:

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- (a) if the investment is made through a managed investment scheme—a trustee, or the responsible entity, for the scheme;
  - (b) if the investment is made through a listed investment company—the issuer of shares in that company, or the person authorised by the issuer to manage the investment, or to make the investment, on the issuer’s behalf;
  - (c) if the investment is made in a financial product mentioned in paragraph (c) of the definition of *managed investment fund* in section 4 (which deals with life insurance products)—the issuer of that product;
  - (d) if the investment is made through a fund of funds or an investor directed portfolio service—the issuer of the fund of funds or the person responsible for operating the investor directed portfolio service.

*Australian residential real property*

- (7) The following requirements apply to investment by a managed investment fund in Australian residential real property, including any Australian land zoned for residential use (a *residential real property investment*):
  - (a) no direct residential real property investment may be made through the fund;
  - (b) no other residential real property investment (including, but not limited to, a debt or equity instrument, or a derivative) may be made through the fund unless:
    - (i) the value of all residential real property investments is no more than 10% of the value of the fund’s net assets; and
    - (ii) the investment is not made for the dominant purpose of deriving financial benefits; and
    - (iii) the investment is not made for the dominant purpose covered by subsection (8).
- (8) For the purposes of subparagraph (7)(b)(iii), this subsection covers the dominant purpose of assisting any of the following individuals to reside in or gain legal ownership in Australian residential real property (including any Australian land zoned for residential use):
  - (a) the investor;
  - (b) the investor’s spouse or de facto partner;
  - (c) any other member of the family unit of the investor or the investor’s spouse or de facto partner.

*Derivatives*

- (9) An investment may be made in a derivative, other than an option mentioned in paragraph (e) of the definition of *securities* in section 4, only if:
  - (a) the investment is made for risk management purposes; and
  - (b) the investment is not a speculative investment.

*Managed investment fund investments—cash in Australian ADIs*

- (10) No more than 20% of a managed investment fund’s net assets may be invested in cash held by Australian ADIs (including certificates of deposit, bank bills and other cash-like instruments).

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*Managed investment fund investments—fund of funds or investor directed portfolio services*

- (11) An investment in a managed investment fund may be:
- (a) made through a fund of funds or an investor directed portfolio service, if the investment is otherwise in accordance with the requirements of this Part; and
  - (b) held in cash in the fund of funds, or investor directed portfolio service:
    - (i) for a period of up to 30 days after the time the funds are first made available for investment; and
    - (ii) during any switching period mentioned in subregulation 5.19C(7) of the Regulations.

### **12 Allowable non-compliance period**

Despite any other provision of this Part, if an investment would (apart from this section) breach of any of subsections 9(6) to (11) (which deal with emerging companies investments) or subsection 11(10) (which deals with cash holdings in managed investment funds), the investment is taken not to breach the requirement during the period starting on the first day of the breach and ending at the earlier of:

- (a) the day the breach is remedied; and
- (b) the day that is 10 business days after the first day of the breach.

Note: See subregulations 5.19C(7) and (8) of the Regulations for the allowable period during which funds may be transferred from one investment to another.

## Part 3—Complying premium investments

### 13 Compliance with this Part

For subregulation 5.19D(8) of the Regulations, the requirements for an investment applying at any particular time are that the investment complies with any requirements under this Part (including any conditions) that are applicable at that time.

- Note 1: Regulation 5.19D of the Regulations includes additional requirements for an investment to be a *complying premium investment*.
- Note 2: The primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream includes a minimum total amount for the investment that is required to be made on or after the time of application to satisfy the criteria for grant of the visa (see subclause 188.272(1) of Schedule 2 to the Regulations).
- Note 3: If an investment is based on one or more other investments, regulation 5.19D of the Regulations and this Part apply to the other investment or other investments in the same way, to the extent practicable.
- Note 4: 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 of the Regulations or this Part.

### 14 Premium investments

- (1) The investor's funds may be invested:
  - (a) through a managed investment fund; or
  - (b) by direct investment.
- (2) The investment may be made only in one or more of the following:
  - (a) securities quoted on an Australian securities exchange;
  - (b) bonds or notes issued by any of the following:
    - (i) a company that is quoted on an Australian securities exchange;
    - (ii) a wholly-owned subsidiary of a company mentioned in subparagraph (i), if the subsidiary is incorporated in Australia;
    - (iii) a company incorporated in Australia, or a registered foreign company, if the bonds or notes are rated as investment grade by a credit rating agency that holds an Australian financial services licence;
    - (iv) the Commonwealth Government, the government of a State or Territory or a local government authority in Australia;
  - (c) a proprietary company within the meaning of the *Corporations Act 2001* that is:
    - (i) incorporated in Australia; and
    - (ii) a limited company within the meaning of the Act;
  - (d) annuities issued by a company registered under section 21 of the *Life Insurance Act 1995*, if the annuity does not repay capital during the period of the visa;
  - (e) Australian real property (but see section 15);

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- (f) if the investment is made through a managed investment fund—cash held by Australian ADIs, including certificates of deposit, bank bills and other cash-like instruments (but see section 15);
- (g) derivatives (but see section 15).

### 15 General requirements

#### *Australian financial services licence requirements*

- (1) For an investment made through a managed investment fund, a person covered by subsection (2) must:
  - (a) hold, or be otherwise covered by, an Australian financial services licence; or
  - (b) be exempt from any provision of the *Corporations Act 2001* requiring an Australian financial services licence to be held in relation to the investment.
- (2) The following persons are covered by this subsection in relation to the investment:
  - (a) a person issuing the interests of the managed investment fund (the **issuer**), including the following (without limitation):
    - (i) a trustee or the responsible entity of a managed investment scheme;
    - (ii) the issuer of shares in a listed investment company;
    - (iii) for an investment mentioned in paragraph (c) of the definition of **managed investment fund** in section 4—the insurer;
  - (b) a person authorised by the issuer to manage the investment, or to make the investment, on the issuer's behalf.
- (3) The central management and control of a person (other than an individual) mentioned in subsection (2) must be in Australia.
- (4) The investor and (if applicable) the investor's spouse or de facto partner, and any associate (within the meaning of the *Corporations Act 2001*) of the investor, spouse or de facto partner, must not:
  - (a) be a person mentioned in subsection (2); or
  - (b) be involved in the management or control of, or in partnership with, a person mentioned in subsection (2).

#### *Australian residential real property*

- (5) The following requirements apply to investment in Australian residential real property, including any Australian land zoned for residential use (a **residential real property investment**):
  - (a) no direct residential real property investment may be made;
  - (b) no other residential real property investment (including, but not limited to, a debt or equity instrument, or a derivative) may be made unless:
    - (i) in the case of an investment through a managed investment fund—the value of all residential real property investments made through the fund is no more than 10% of the net value of the fund's assets; and



- (ii) in any case—the investment is not made for the dominant purpose of deriving financial benefits; and
  - (iii) in any case—the investment is not made for the dominant purpose covered by subsection (6).
- (6) For the purposes of subparagraph (5)(b)(iii), this subsection covers the dominant purpose of assisting any of the following individuals to reside in or gain legal ownership in Australian residential real property (including any Australian land zoned for residential use):
- (a) the investor;
  - (b) the investor's spouse or de facto partner;
  - (c) any other member of the family unit of the investor or the investor's spouse or de facto partner.

*Derivatives*

- (7) An investment may be made in a derivative, other than an option mentioned in paragraph (e) of the definition of *securities* in section 4, only if:
- (a) the investment is made through a managed investment fund; and
  - (b) the investment is made for risk management purposes; and
  - (c) the investment is not a speculative investment.

*Managed investment fund investments—cash in Australian ADIs*

- (8) For an investment made through a managed investment fund, no more than 20% of the fund's net assets may be invested in cash held by Australian ADIs (including certificates of deposit, bank bills and other cash-like instruments).

*Managed investment fund investments—fund of funds or investor directed portfolio services*

- (9) An investment in a managed investment fund may be:
- (a) made through a fund of funds or an investor directed portfolio service, if the investment is otherwise in accordance with the requirements of this Part; and
  - (b) held in cash in the fund of funds, or investor directed portfolio service:
    - (i) for a period of up to 30 days after the time the funds are first made available for investment; and
    - (ii) during any switching period mentioned in subregulation 5.19D(9) of the Regulations.

**16 Allowable non-compliance period**

Despite section 13, if an investment would (apart from this subsection) breach subsection 15(8) (which deals with cash holdings), the investment is taken not to breach the requirement during the period starting on the first day of the breach and ending at the earlier of:

- (a) the day the breach is remedied; and
- (b) the day that is 10 business days after the first day of the breach.

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Note: See subregulations 5.19D(9) and (10) of the Regulations for the allowable period during which funds may be transferred from one investment to another.