

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration (Purposes of Managed Fund Investments) Instrument (LIN 23/056) 2023

- 1 The instrument, Departmental reference LIN 23/056, is made by the Minister for Immigration, Citizenship and Multicultural Affairs under paragraph 5.19B(2)(c) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration Regulations 1994 – Specification of Eligible Managed Fund Investments - IMMI 13/092* (F2013L01571, IMMI 13/092). Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument IMMI 23/056 commences on the day after it is registered on the Federal Register of Legislation. It is a legislative instrument for the purpose of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa (Subclass 188 visa) in the Significant Investor Extension stream and a Subclass 888 (Business Innovation and Investment (Permanent)) visa (Subclass 888 visa) in the Significant Investor stream are set out in Divisions 188.2 and 888.2 of Schedule 2 to the Regulations, respectively.
- 5 Subclauses 188.261(1A) and 888.241(2A) of Schedule 2 to the Regulations provide that if an applicant's most recently held Subclass 188 visa in the Significant Investor stream was applied for before 1 July 2015, then the applicant's subsequent Significant Investor Extension stream (for the provisional visa) and Significant Investor stream (for the permanent visa) applications will be assessed by reference to whether the applicant held a complying investment (within the meaning of regulation 5.19B of the Regulations as in force at the time of the initial Subclass 188 visa application) throughout the period in which the Subclass 188 visa was held.
- 6 Regulation 5.19B of the Regulations sets out the requirements that an investment by a person (the investor) must meet to be a 'complying investment'. Paragraph 5.19B(2)(c) of the Regulations requires that the investment must be one that is in a managed fund (directly or through an investor directed portfolio service) for a purpose specified by the Minister in an instrument in writing.

- 7 The purpose of the instrument is to specify the purpose of an investment in a managed fund for paragraph 5.19B(2)(c) of the Regulations.
- 8 The previous instrument listing managed fund investments under paragraph 5.19B(2)(c) of the Regulations was IMMI 13/092, which commenced on 23 November 2013.
- 9 The instrument operates to repeal IMMI 13/092 and enable visa holders who held a valid Subclass 188 visa in the Significant Investor stream that was granted on the basis of an application made between 23 November 2013 and 30 June 2015 to meet the criteria for the Significant Investor Extension stream of the Subclass 188 visa or the Significant Investor stream of the Subclass 888 visa. The instrument does not make changes to the purposes of investments in managed funds specified in IMMI 13/092.

Consultation

- 10 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OIA reference number is OIA23-05340.
- 11 No further consultation was undertaken as the instrument does not substantially alter existing arrangements and the current requirements are still necessary and appropriate.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.
- 14 Section 3 provides that *Migration Regulations 1994 – Specification of Eligible Managed Fund Investments - IMMI 13/092* (F2013L01571) is repealed.
- 15 Section 4 specifies the purposes of an investment in a managed fund under paragraph 5.19B(2)(c) of the Regulations.
- 16 Section 5 provides that the instrument applies in relation to an application made by a person on or after the commencement date whose most recently held Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream was granted on the basis of an application made between 23 November 2013 and 30 June 2015.

Parliamentary scrutiny etc.

- 17 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because a legislative instrument made under Part 5 of the Regulations is prescribed under section 10, item 20(b), of the *Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument not subject to disallowance.

- 18 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 19 The instrument is made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with paragraph 5.19B(2)(c) of the Regulations.