

BIIP Review Consultation Paper

SUBMISSION FROM AUSA MIGRATION

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Introduction

AUSA Migration is a migration agency specializing in migration to Australia from China since 2003. Managing Director Jennifer Kwok, an Australian citizen with a Chinese heritage, has been a leader in the migration advice profession for over 15 years. She is a Fellow of the Migration Institute of Australia (MIA) and a member of the MIA's NSW Advisory Committee. Senior Consultant, Tom McAlary was Senior Manager of the NSW Government's migration sponsorship program for eight years from 2004 to 2012. During this time, he was actively involved with the Department of Immigration and Citizenship in developing migration policy in a range of fields including business and investor migration. Tom advises on state sponsorship, business and investment-related issues surrounding the Significant Investor visa and other business visas.

Our team members come from China, Hong Kong, Japan and Australia and are fluent in Mandarin, Cantonese, Japanese and English. They have relevant expertise in migration, business and accounting.

We offer premium level personal services to selected investor and business clients looking for a trusted adviser - more than someone to just 'manage the paperwork'. AUSA Migration has submitted BIIP program visa applications for over 90 clients since 2012 placing us in a highly informed position to advise on the BIIP program.

1. Increasing Investment Thresholds for Investor Visas

Changes to investment thresholds should take place rarely and should be minimal. Confidence in the Australian investor visa program from potential applicants will decline if it is perceived as not being certain or stable.

Increases to investment thresholds will lead to more volatility in numbers of visa applications:

- The reforms to the Complying Investment Framework (CIF) in 2015 led to a surge in numbers of applications for the Significant Investor Visa (SIV) before the change on 1 July 2015 (doubling from 800 to 1600 applications per annum) and a significant decline in application numbers after the change (falling to 200 applications per annum). The SIV program has still not fully recovered from these changes with current applications at around 400 per annum. A repeat of this experience is likely if there is a considerable increase in investment thresholds.

- An increase in investment thresholds will lead to speculation of further increases in future years generated by unscrupulous and unlicensed migration agents seeking to generate more business ('get in now before they increase the investment threshold again') reducing confidence in Australia's BIIP program.

An increase in investment thresholds fails to recognize the growing difficulties being experienced by applicants from China to access the Australian program:

- Tightening of foreign exchange controls by the Chinese government is making it increasingly difficult for applicants to transfer funds out of China to Australia
- Tightening credit conditions making it more difficult for potential applicants to sell business assets in China for an acceptable price to reinvest in Australia.

A recognition of this situation by authorities by minimizing an increase in investment thresholds is likely to generate more goodwill from prospective applicants to Australia. A substantial increase in thresholds in the face of such difficulties will have the opposite effect ('they just don't understand').

The price elasticity of demand for the SIV is irrelevant. Australia's strict requirements to document source of funds limits the funds belonging to the applicant that can be used to make a Complying Investment. The requirement to fully document the trail of funds from China to Australia to make the Complying Investment also limits the funds belonging to the applicant that can be used to make the Complying Investment. Levels of demand for the SIV are not just a simple price/demand economic consideration.

The value of the Australian dollar is also not a driving factor in the eyes of the applicant. AUSA Migration notes that all its clients who have been granted permanent residence under the Significant Investor Stream have maintained all their investments in Australia even when they were free to redeploy them elsewhere. This is long term 'sticky' investment – if the money is not going back to China then the exchange rate becomes a lesser matter in the eyes of the applicant when they apply.

2. Composition of Designated Investments

If the government wishes to replace mandatory investment into state or territory government bonds it should replace it with the existing Complying Investment Framework (CIF).

The Complying Investment Framework (CIF) established in 2015 has today been finally understood and accepted by most Significant Investor applicants after a considerable education and persuasion campaign over several years by migration agents and managed funds (the words 'venture capital' translate in Chinese as 'high risk' which discourages investors).

Any change to the composition of Designated Investments should build on this campaign.

Due to low rates of return the popularity of state or territory government bonds has declined in recent years. A ‘safe’ investment that provided ‘capital preservation’ was a key requirement of many SIV visa holders when the SIV program was first established. After 1-2 years some SIV holders became more interested in alternative investments that provided higher levels of return. Today fewer applicants express interest in government bonds but safety and capital preservation is still a key driver.

AUSA Migration has only limited experience with the 188B investor visa.

3. Streamlining the BIIP Visa Program.

There are several BIIP visas that are rarely granted and which only serve to confuse prospective applicants including:

- Premium Investor Stream (188D)
- Entrepreneur Stream (188E)
- Business Talent Visa (Venture Capital Stream) (132B)

The program can be simplified by cancelling unused and unnecessary visas.

The government should maintain the most popular and best understood visa programs:

- Business Innovation & Investment (Significant Investor Stream) (188C)
- Business Innovation & Investment (Investor Stream) (188B)
- Business Innovation & Investment (Business Innovation Stream) (188A)
- Business Talent Visa (Significant Business History Stream) (132A)

These programs maintain a choice for prospective investors (between a \$1.5 million and \$5 million investment) and business owners (between a lower commitment for a provisional visa and a higher commitment for a permanent visa).

The current levels of excess demand for the 188A and 132A visas should be addressed by updating their selection criteria. The thresholds for turnover and net personal and business assets for the 188A visa have not been increased since 1 July 2012. The thresholds for the 132A visa have not been updated since 2003. These criteria should be updated to attract a smaller number of higher quality applicants.

- 188A Visa Criteria

The turnover criteria for 188A (then known as the 163 visa) was established at \$300,000 per annum in 2003 and increased to \$500,000 in 2012. An increase to \$800,000 in 2020 would suppress the current excess demand for this visa without any undue long term impact. The net personal and business assets criteria was set at \$250,000 in 2003 and increased to \$800,000 in 2012. An increase to \$2.5 million in 2020 again would suppress current excess demand while not having any undue long term effect.

- *132A Visa Criteria*

These criteria have not been increased since 2003. In 2003 they were set at a much higher level than the 163 visa (now 188A visa) as the 132A visa offered permanent residence rather than just a provisional visa. The turnover criteria was ten times the 163 visa and net personal and business assets six times the 163 visa. Sponsorship was a gift of the Premier of each State (but could be delegated once only) and was intended for only a handful of applicants each year. This has changed in recent years.

A return to the original approach to the 132A visa would set the turnover criteria at \$8.0 million (ten times our proposed 188A criteria) and the net personal and business assets criteria at \$15.0 million (six times our proposed 188A criteria). The quantum of such an increase would disrupt demand for the visa (returning it to the originally intended levels) and see many of these applicants choose instead the Significant Investor Visa. If the government prefers to maintain the current approach to 132A then a doubling in the current turnover and net assets criteria would suppress current levels of excess demand without an undue long term impact.

4. Encouraging Higher Levels of Investment

Providing permanent residence more quickly would be the most effective way of encouraging higher levels of investment.

Investor visa applicants currently wait for approximately 6-7 years to obtain permanent residence in Australia. Visa processing times for provisional visas are currently 24 months. The applicant is required to hold the provisional visa for four years. Visa processing times for permanent visas are then 9-12 months. Significant additional investment is unlikely without the certainty of permanent residence.

Some applicants would be prepared to make a higher level Complying Investment if it offered a shorter waiting period for permanent residence. New Zealand offers a similar investment visa option. However in New Zealand a much higher threshold of \$NZ 10 million (compared to the standard threshold of \$NZ 3.0 million) only attracts 13% of investor applicants. Australia could consider a much smaller premium for a reduction in the provisional visa period to three years.

- *BIIP Points Test*

The points test appears to add little value to the BIIP program. Most applicants that meet the basic requirements for the visa easily meet the points test requirement. The points test merely adds complexity and potential for misunderstanding of the program and should be discontinued. Increases in selection criteria for 188A Business Innovation Stream and 132A Significant Business History Stream visas would be a simpler way to control levels of excess demand for BIIP visas without the added complexity of a points test.

5. Encouraging Investment and Business Innovation in Regional Australia

The establishment of a regional investor visa that does not compel residence in a regional area could be considered to attract investment into regional Australia.

From 1996 to 2003 in Australia the government attempted to promote business owners and business innovation in regional areas under State/Territory Sponsored Business Skills (SSBS) and Regional Established Business in Australia (REBA) visas with very limited success. As a result these visas were discontinued.

One of the reasons for this failure was the reluctance of prospective applicants primarily from China to live in regional Australia. By contrast, the US EB5 visa program has had some success in attracting migrant investment into regional areas under its Regional Centers program by offering a lower minimum investment threshold and by not compelling applicants to also live in those regional areas.

The US EB5 visa program has suffered from several integrity issues¹ that Australia would need to avoid. These integrity issues might perhaps be addressed by adopting some of the controls that have been successfully adopted as part of the current Complying Investment Framework (CIF). For example a CIF for a regional investor visa could perhaps require:

- A. Regional investments to be made through a licensed managed fund
- B. Licensed managed fund to have a minimum of \$100 million funds under management
- C. Regional investment funds to have a minimum of 20 investee companies/projects in at least 10 regions
- D. No company/project or region to represent more than 10% of the value of the fund
- E. Investee companies/projects to have a minimum market capitalization of \$20 million.

Austrade would have to be consulted on the monitoring and policing of these funds to ensure invested funds meet such requirements.

Similarities to the existing Complying Investment Framework (CIF) would assist in building understanding among prospective migrant investors of such requirements.

6. Implementation of Changes

The following should be considered as part of any changes to the BIIP program:

- A. Any changes should be minimal. Most customers of the BIIP program are part of the program for over six years as: provisional visa applicants, then provisional visa

¹ See for example: <https://www.migrationpolicy.org/article/controversial-eb-5-immigrant-investor-program-faces-possibility-overhaul> <https://www.sec.gov/oiea/investor-alerts-bulletins/investor-alerts-ia-immigrant.htm> <https://www.migrationpolicy.org/article/controversial-eb-5-immigrant-investor-program-faces-possibility-overhaul> <https://www.grassley.senate.gov/news/news-releases/newly-discovered-eb-5-scam-highlights-fraud-national-security-weaknesses-need>

- holders and finally applicants for permanent residence. Extension visa applicants are part of the program for even longer. Any changes reduce confidence and certainty in such a program which could adversely affect future visa applications and inward migrant investment. Any increases in investment thresholds should not be communicated in advance to avoid surges and subsequent declines in application numbers that adversely affect DHA processing centres, migration agents and managed funds.
- B. The Complying Investment Framework (CIF) should be left unchanged. The CIF after several years has now been successfully implemented and is finally understood by most applicants.
 - C. The most popular BIIP visas should be left unchanged except for updating of turnover and net assets requirements of the 188A and 132A visas. If the government wishes to streamline the program then the largely unused and unnecessary BIIP visas should be cancelled.
 - D. The attraction of more investment into regional Australia may be possible by not requiring residence in regional Australia and by utilizing the existing BIIP framework for complying investment to avoid integrity issues such as those experienced under the US EB5 visa program.

Conclusion

Applicants for the 188A and 132A visas are quite different people to those who apply for the 188C visa. In his book, *Millionaire Migrants*, a study of business and investor migration from China to Canada, Professor David Ley from the University of British Columbia quotes an unnamed government official to describe the difference:

“The investors, they put more in, it’s like they are flying business class. The entrepreneurs, they have less, it’s like they are back in the hold.”²

When interviewing prospective BIIP clients we often ask “What do you want to do in Australia?” and the answer most often is “I want to invest”. Few actually say “I want to start a business”.

AUSA Migration would suggest that to maximize the return to the Australian economy from the BIIP program the Department of Home Affairs should re-focus the program on ‘high value’ investor migration. The Department should ‘win’ the Complying Investments they bring to Australia more quickly by reducing visa processing times, attracting more applications. This can be achieved by updating selection criteria for the ‘lower value’ 188A and 132A visas thereby suppressing the current excess demand for these visas making more places available for ‘high

² D. Ley “*Millionaire Migrants: Trans-Pacific Life Lines*” Royal Geographic Society with IBG RGS-IBG Book Series Wiley-Blackwell 2010 63.

value' investor migrants. It can also be done by reducing the period required on a provisional visa for investor migrants before qualifying for permanent residence.

If the government is determined to increase the investment threshold for the Significant Investor Visa then any increase should be minimal and the government's focus should be on attracting more investor applicants rather than just increasing thresholds.