



OFFICIAL

Discussion Paper on the Complying Investment Framework (CIF) for the Business Innovation and Investment Program (BIIP). These questions seek to inform Government considerations for policy changes.

Improving the CIF

On 17 December 2020 the government announced key changes to the Business Innovation and Investment Program (BIIP) as a part of getting a better deal for Australia. Details of key changes are available in the [Minister's media release](#) and the [BIIP Review findings report](#). In this announcement, the Government committed to further consultation with industry to inform any further changes to the Complying Investment Framework (CIF).

On 19 December 2019, the government announced a public consultation process, seeking submissions from stakeholders to inform the Department's review of the Business Innovation and Investment Program with a view to getting a better deal for Australia. The consultation process closed on 14 February 2020.

41 written submissions were received and nine roundtable discussions were held with a range of stakeholders, including state and territory governments, Commonwealth agencies, fund managers and migration agents.

As part of the 2020-21 Federal Budget, changes were announced to streamline the BIIP and adjust investment and residency visa requirements, ensuring the program is targeted at Australian venture capitals and emerging small and medium-size businesses to support Australia's economic recovery. These changes will come into effect from July 2021.

This consultation process seeks views on how to:

- Improve the quality and integrity of investments made under the CIF.
- Improve the quality of investments by applying the CIF to the Investor (IV) stream, as well as the Significant Investor (SIV) stream of the Business Innovation and Investment Program, from 1 July 2021.

Providing a submission

We welcome written submissions in response to the consultation questions. Please note, if you have previously provided comments on these issues, you do not need to resubmit unless you have new information to add.

Please send your submission to us by email: ICAP@homeaffairs.gov.au by close of business **17 February 2021**, and address it to:

The Director, Skills and Innovation Policy Section

Migration Planning and Visa Policy Branch

Department of Home Affairs

Submissions received after this deadline may not be considered. Please note that we intend to publish submissions and share the content with other parties such as state and territory governments or other Commonwealth agencies. Please advise if you do not want your submission to be shared outside the Department of Home Affairs.

Current settings

The CIF was introduced to better target migrants who will invest in line with Australia's economic priorities.

The current CIF was introduced on 1 July 2015 and was designed to attract international investors with business and entrepreneurial skills to make Australia home, while simultaneously benefiting the Australian economy and enhancing investment in Australian businesses.

The Government's objective in making these changes was to support Australia's long term economic future by directing investment into emerging enterprises, the commercialisation of Australian ideas and research and development, which are both higher risk investments than previously required and critical to Australia's economic growth.

Currently the CIF divides the \$5,000,000 investment to be made by SIV holders into three components:

- At least \$500,000 in eligible Australian venture capital or growth private equity funds investing in start-up and small private companies
- At least \$1.5 million in an eligible managed funds or Listed Investment Companies (LICs) that invest in emerging companies
- A 'balancing investment' (i.e. the remaining portion of the \$5 million) of up to \$3 million in managed funds or LICs that invest in eligible assets, including Australian listed securities, eligible corporate bonds or notes, annuities and real property. The current CIF was implemented in 2015.

Consultation questions

Your input on the following questions will assist in amending the CIF to provide the greatest economic benefit to Australia and applying it to both the Investor and Significant Investor streams.

We are seeking to improve the clarity of the CIF legislative instrument, improve the quality of the investments and maintain integrity within the BIIP.

1. Should the ratios currently applied by the CIF to the Significant Investor visa remain?

The current CIF was implemented in 2015 and is defined by the instrument: Migration (IMMI 15/100: Complying Investments) Instrument 2015.

It divides the \$5,000,000 investment to be made by SIV holders into three components:

- \$500,000 (10%) Venture Capital and Private Growth Equity funds (VCPE)
- \$1,500,000 (30%) funds investing in Emerging Companies
- Up to \$3,000,000 (60%) in balancing investments

In submissions to date there have been two schools of thought shared, one suggests increasing the VCPE component, the other suggests retaining the VCPE component as it is.

2. How should the CIF be applied to the Investor Visa?

Please share your opinions on the pros and cons of the three options outlined below. If you have other comments regarding the CIF ratios, please provide them in your submission.

a. Option 1, current CIF ratios

- 10% Venture Capital and Private Growth Equity funds (VCPE)
- 30% in Emerging Companies
- Up to 60% in balancing investments.

b. Option 2

- \$500,000 in VCPE
- Remaining funds invested in Emerging Companies and balancing investments at the discretion of the client.

c. Option 3

- \$500,000 in VCPE or Emerging Companies at the discretion of the client.
- Remaining funds invested in balancing investments.

3. Changes to the types of funds eligible to offer complying investments

- a. Should all eligible funds be limited to ASIC registered funds only?**
- b. Should the threshold of funds under management be increased to further improve the integrity and function of the CIF?**
 - i. If so, what amount should the threshold be increased to and what is the evidence supporting your proposed threshold**

The increase of funds under management seeks to provide applicants with more confidence in the stability of their investment.

4. What are your views on the following options to address potential integrity concerns, provide greater clarity in the CIF and to ensure the benefits to the Australian economy are realised?

The government has strong compliance measures in place to maintain the integrity of Australia's borders and economic migration program and to ensure the BIIP is not targeted by economic fugitives or money launderers.

Possible amendments to the Complying Investments Instrument (IMMI 15/100)

Through the consultations the following suggestions were made to amend the Complying Investments Instrument (IMMI 15/100). Your advice on the impacts of these proposals is appreciated.

- a. Provide a clear definition of Fund of Funds (FoF). Currently FoFs is referred to in the general requirements of the instrument but is not defined. This is open to interpretation and potential misuse.**
 - Fund of funds could be defined as:
 - i. A 'fund of funds' is generally a managed investment fund that invests in other funds.
 - ii. an investor is permitted to invest in managed investment funds through a fund of funds or investor directed portfolio service provided the managed investment fund(s) in which the a fund of funds or investor directed portfolio service invests comply with the other requirements of the complying investment framework.
 - iii. the fund of fund structure cannot be solely vertically integrated.
 - Would this definition be clearer and mitigate potential risks?
- b. Can the 12 month option for Venture Capital funds investments be removed or reduced as the market is now more mature? (section 8(2) of IMMI 15/100)**
 - Is a full 12 months to enter into this agreement still required?

c. Under the Balancing Investment component should investments be limited to bonds or notes issued by a company that is quoted on the Australian securities exchange?

- This could include removing items (ii) and (iii) from the following (section 10(3)(b) of IMMI 15/100):
 - 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; 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;

d. Ensure the emerging companies investment is made into securities that properly meet the market capitalisation requirements for the emerging companies component of the CIF.

- This could include adding item (iii) to the following (section 9(5) of IMMI 15/100):

The investment must not be made in:

- i. securities issued or proposed to be issued by a government; or
- ii. debentures; or
- iii. securities that otherwise meet the requirements under this section but where the issuer of those securities invests the proceeds of the issue of those securities in securities that do not meet the market capitalisation requirements under subsection six.

Note: For example, a small exchange traded fund which invests in the securities of large capitalised companies is excluded under this paragraph.

e. Clarify the use of derivatives for risk management and ensure hedging is only used to manage currency and interest rate movements and not used to guarantee investment value.

- Specify that complying investments may only be made in a derivative if the investment is not designed to substantially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an investment. Furthermore, allow hedging of currency and interest rate risks, however capital guarantee products should no longer be considered as complying investments.
- To achieve this, section 11(9) in the current instrument (IMMI 15/100) could be amended to the following:

Derivatives

- i. 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; and

- c. the investment is not designed to materially reduce or completely eliminate the exposure of an investor to the risk of loss from changes in the market price of an emerging companies investment.

Note: Hedging of currency and interest rate risks will be permitted under subsection (9), however capital guarantee products will be prohibited.

f. Clarify that venture capital investments (in addition to emerging and balancing investments) may be made through a fund of fund structure.

- “Venture capital fund” could be added to the following (section 11(11) of IMMI 15/100):

Managed investment fund and venture capital fund investment —fund of funds or investor directed portfolio services

- An investment in a managed investment fund or venture capital 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.

5. Should fund managers be required to provide annual independent audit reports to show their compliance with the CIF legislative instrument?

Should fund managers be required to have an annual audit of their CIF compliance completed and a copy of this report attached to each IV or SIV application at both the provisional (subclass 188) and permanent (subclass 888) stages?

For example for a subclass 188 applicant the most recent compliance report would need to be attached to their visa application. For a subclass 888 visa application, copies of the audits for each year that the applicant held the investment would need to be provided as attachments to their visa application.

Please note that visa holders will need to show the compliance of their funds during their provisional visa period, which will mean providing a transaction history if they have switched funds. Separate audits may be necessary if the visa holder has switched funds.

Requiring funds to perform an audit annually will give both applicants and the Australian Government more confidence and visibility on the compliance of their funds with the CIF.