

Corporate Alert

Migrating to and investing in Australia under the new Significant Investor 188 visa

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The new Significant Investor visa introduces a simplified pathway to permanent residence for migrant investors who invest \$5 million into "complying investments" in Australia for a minimum period of four years.

Applicants for the provisional (subclass 188) visa will be required to apply for nomination by a State or Territory government, submit an expression of interest with the Commonwealth Department of Immigration and Citizenship (**DIAC**) SkillSelect program and make an investment of at least \$5 million into complying investments.

Implications for migrants

The Significant Investor visa provides valuable opportunities for prospective business migrants as it includes several concessions which are not available for other types of visas. For example, there is no upper age limit, there is no need to satisfy the innovation points test, there is no English language threshold requirement and the residency requirement is reduced to 160 days cumulatively over the initial four year visa period.

Business migrants may include family members such as their partner (spouse or de facto of at least 12 months), their partner's dependent children, and other dependent relatives in the visa application. Importantly, this means that the children of business migrants will have access to study opportunities in Australia.

What is a "complying investment"?

The \$5 million aggregate investment can be invested

solely in, or divided amongst, the following investment products:

- an investment in a government bond of the Commonwealth, a State or Territory;
- a direct investment in an Australian proprietary company that meets the following requirements:
 - the company is not listed on an Australian stock exchange;
 - the company has not been established wholly or substantially to comply with the new visa rules; and
 - the investment is an "ownership interest" in the company; and
- an investment in a "managed fund" where the fund only makes investments in assets which fall into categories determined by the Minister for Immigration and Citizenship (set out below).

Which funds qualify as "managed funds" under the new rules?

The rules require that the investment is an acquisition of interests in a "managed investment scheme" (as that term is defined in the Corporations Act 2001 (Cth) (**Corporations Act**)). This means the fund can be a registered or unregistered (e.g., wholesale) managed investment scheme. The interests in the fund must not be able to be traded on a financial market and no representation can be made to any member of the scheme that the interests will be able to be traded on a financial market.

What can the fund invest in?

The grant of Significant Investor visa is generally a two-step process: an applicant must be nominated by a State or Territory government agency before their application will be accepted by the DIAC. This gives the states and territories the opportunity to impose their own investment requirements on a fund seeking to comply with the new rules. At the time this article was prepared, the State and Territory requirements can be summarised in the table below.

Investment restrictions

In addition to meeting the requirements above, the fund must meet restrictions imposed by the Commonwealth government by only investing in the following classes of assets determined by the Minister:

- infrastructure projects in Australia;
- cash held by Australian deposit taking institutions;
- bonds issued by the commonwealth or a State or Territory government;
- bonds, equity, hybrids or other corporate debt in

State	Relevant Authority	Requirements
NSW	Business Migration and Industry Skills, Department of Trade and Investment.	<ul style="list-style-type: none"> • Applicant must invest at least 30 percent of the \$5 million in NSW Waratah Bonds.
QLD	Skilled and Business Migration Unit, Department of Education, Training and Employment.	<ul style="list-style-type: none"> • Applicants will be considered on a case by case basis with preference given to applicants with investments that have a direct economic benefit to Queensland. • Applicants should have a genuine and realistic commitment to reside in Queensland. • Complying investments can include Queensland Treasury Corporation's Queensland Bonds which are used for significant infrastructure projects in Queensland. • If the investment is in a new or existing business, the business will be required to be registered and operating in Queensland.
SA	Immigration South Australia.	<ul style="list-style-type: none"> • Applicants must have a commitment to conduct bi-annual surveys issued by Immigration SA during the provisional visa term. • Applicants must invest a minimum of \$3 million in a South Australian ASIC registered proprietary business for a minimum of 2 of the 4 year provisional visa period.
TAS	Department of Economic Development, Tourism and the Arts.	<ul style="list-style-type: none"> • Applicants must participate in regular surveys conducted by the Tasmanian Government to track investment and success of visa programs. • Applicants must consult the Tasmanian Government prior to switching between complying investments. • Applicants may hold complying investments in any proportion they choose. Complying investments include Tasmanian State Government Bonds issued by the Tasmanian Public Finance Corporation (TASCORP), Australian Securities and Investment Commission (ASIC) regulated managed funds and direct investments made into Tasmanian companies not listed on the Australian stock exchange.
WA	Small Business Development Corporation, Business Migration Centre.	<ul style="list-style-type: none"> • Applicants must have an additional \$50,000 available for domestic and/or settlement purposes. • Applicants may hold complying investments in any proportion they choose. Complying investments can include Western Australian State Government bonds. • Applicants will be considered on a case by case basis with the contribution to the Western Australian economy being the prime factor considered for approval.
ACT	Migration and Information Services, Chief Minister's Department.	<ul style="list-style-type: none"> • Criteria are currently under review by the relevant State authority.
VIC	Skilled and Business Migration Program, Department of Business and Innovation.	<ul style="list-style-type: none"> • Criteria are currently under review by the relevant State authority.
NT	Skilled Migration, Department of Business and Employment.	<ul style="list-style-type: none"> • No statement regarding criteria has been issued.

companies and trusts listed on an Australian stock exchange;

- bonds or term deposits issued by Australian financial institutions;
- real estate in Australia;
- Australian agribusiness; and
- other ASIC regulated managed funds that invest in the above list of investments.

Investments in shares in Australian proprietary companies

To be complying, a direct investment into an Australian proprietary company must satisfy the following criteria:

- the company must genuinely operate a “qualifying business” in Australia;
- the applicant must obtain an “ownership interest” in the company;
- the company must be registered with ASIC; and
- the business must have an Australian Business Number.

The rules define a “qualifying business” as an enterprise that is operated for the purpose of making profit through the provision of goods, services or goods and services (other than the provision of rental property) to the public and is not operated primarily or substantially for the purpose of speculative or passive investment.

A business will not be a qualifying business if, for example, the main activity of the business is holding share portfolios, interest bearing deposits or rental property, involves currency speculation, or is property speculation (i.e., buying and selling real estate) rather than property development (i.e., building or renovating property). “Ownership interest” means an interest in the business as a shareholder in a company that carries on the business, a partner in a partnership that carries on the business or the sole proprietor of the business. This includes an interest held indirectly through one or more interposed companies, partnerships or trusts.

Direct investments in property

Direct investment in property, or direct investment in an Australian proprietary company which operates with the purpose of providing rental property or property speculation, does not constitute a complying investment. However, investments in ASIC regulated managed funds which invest in real estate in Australia are complying investments.

Current investments

Business migrants can include their current investments in the \$5 million threshold, provided the current investments meet the Commonwealth and State requirements for complying investments. However, prior investments still need to be held for at least four years throughout the provisional visa period.

Gains and losses and switching investments

The rules require visa holders to hold the complying investment for the whole of the investment period. However, visa holders have the ability to switch between investments, provided that the visa holder makes a new investment of at least the value of the withdrawn money or the cancelled investment, the new investment is a complying investment and the reinvestment is made within 30 days of withdrawing the funds from the original complying investment.

If the balance of the complying investment fluctuates below \$5 million, the visa holder is not required to provide additional funds to maintain the threshold value so long as they do not withdraw their complying investment. Conversely, if the balance increases, the visa holder cannot withdraw the increased value.

Extensions and the Permanent Significant Investor visa

The provisional visa is for an initial term of four years. There is potential for visa holders to extend their visa term by an additional two years, with a maximum of two extension periods permitted. This brings the maximum total period for a provisional Significant Investor visa to eight years.

After the initial four year term, provisional visa holders may be eligible to obtain a permanent (subclass 888) visa. To be granted the permanent Significant Investor visa, the visa holder must have held the provisional visa for a minimum period of four years, continuously held complying investments for the initial four year visa period, complied with the residency requirement, and been nominated by a State or Territory government for the permanent visa.

Investment and migration opportunities for migrants

It has been estimated by DIAC that it will grant 700 visas annually. If these estimates are accurate, then there is a

significant opportunity for migrants to gain temporary (and potentially permanent) residence in Australia whilst simultaneously accessing a wealth of investment opportunities.

Thomsons Lawyers can assist prospective migrants and their advisers with:

- applying for the new visa;
- structuring a complying investment (e.g., a private trust to acquire a property asset (e.g., shopping centre, hotel or industrial warehouse));
- advice on foreign investment rules; and
- introductions to investment managers with investment products that meet the visa's investment criteria.

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For further information, please [click here](#) to contact our national Funds Management & Financial Services team.

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