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Practice Group(s):

*Investment
Management*

Australia's "Significant Investor Visa" Creates Opportunities For Fund Managers

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The Australian Government is looking to encourage foreign investment into Australia through the introduction of a new visa pathway for individuals who make substantial investments in Australia. The "Significant Investor Visa" (SIV) was introduced in November 2012 to facilitate migration by individuals who are willing to invest at least AUD5 million in Australia.

The SIV is likely to drive demand for investment opportunities in Australia and may provide fund managers with an additional source of assets. Fund managers wishing to capitalise on this demand will need to create complying investment structures and assist individuals to satisfy the criteria for the SIV.

Complying investments

SIV applicants must invest at least AUD5 million in "complying investments", which include:

- direct investment in government bonds issued by the Australian Government or an Australian State or Territory government
- direct investment in unlisted Australian companies
- investment certain Australian regulated managed funds.

Investment through managed funds will provide applicants with the greatest flexibility in terms of underlying asset classes and investment structure. However, among other things, a managed fund will need to meet the following requirements to be a complying investment:

- the trustee of the fund must hold an Australian Financial Services Licence (AFSL). While it is not necessary for the trustee to be located or incorporated in Australia, compliance with Australia's financial services laws are necessary. The fund need not be a "registered managed investment scheme", unless this is otherwise required under the financial services laws
- the fund must only be permitted to invest in a combination of the following asset classes:
 - infrastructure projects in Australia
 - cash held with an Australian bank
 - government bonds issued by the Australian Government or an Australian State or Territory government
 - bonds issued by Australian financial institutions
 - ASX listed shares, bonds, hybrids or corporate debt instruments issued by Australian companies or trusts
 - real estate in Australia
 - Australian agribusiness.

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- the trustee must make a declaration in a prescribed form confirming that the investments of the fund will be limited to the categories of investments
- the fund must be open to investment from the general public, but must not be listed on the ASX.

Requirements imposed by a State or Territory

When applying for a SIV, an applicant must nominate the Australian State or Territory in which they wish to live. That State or Territory may then impose additional criteria for determining what are "complying investments".

For example, some States and Territories will require that some or all of the AUD5 million is invested for the benefit of that particular State or Territory, or that it be invested in particular asset classes (such as government bonds issued by that State or Territory).

Fund managers wishing to attract investment from SIV applicants will need to be able to accommodate the various State and Territory requirements within the fund.

Other criteria

There are a number of other criteria which an applicant will need to meet in order to be issued with a SIV, including lodging an application with the Australian Government and spending a minimum number of days in Australia during the four year application period.

How we can help

The Australian offices of K&L Gates have experience assisting local and overseas fund managers obtain AFSLs and establish managed funds in Australia. We can assist with all stages of this process.

We are also available to assist existing Australian fund managers to make the necessary changes to their current offerings to attract investment from SIV applicants.

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