

Significant Investor Visa

The Minister for Immigration and Citizenship first announced the introduction of the new Significant Investor visa as part of the Business Innovation and Investment program in May 2012 and released further details on 29 August 2012.

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What is the Significant Investor visa?

The Significant Investor visa has been introduced as a new stream within the Business Innovation and Investment (Provisional) (Subclass 188) visa and the Business Innovation and Investment (Permanent) (Subclass 888) visa.

The purpose of the visa is to provide a boost to the Australian economy and to compete effectively for high net worth individuals seeking investment migration. Migrant investors will be required to invest AUD5million into complying investments for a minimum of four years before being eligible to apply for a permanent visa.

When is the Significant Investor visa being implemented?

This visa commenced on 24 November 2012.

Is there a points test or an age requirement for the Significant Investor visa?

Significant Investor visa applicants do not need to satisfy the innovation points test and there are no upper age limits.

What is the English language requirement for the Significant Investor visa?

There is no English language threshold requirement for applicants. However, all applicants and any dependants over the age of 18 years old who are unable to demonstrate functional English language ability must pay a second instalment of the visa application charge.

What are complying investments?

Complying investments for the Significant Investor visa include:

- Commonwealth, State or Territory government bonds
- Australian Securities and Investment Commission (ASIC) regulated managed funds with a mandate for investing in Australia; and
- direct investment into Australian proprietary companies.

Visa applicants may hold investments in each of the above investment options in any proportion and may also change between complying investments, provided they meet specified reinvestment requirements.

What are the reinvestment requirements if I want to change between complying investments?

As the holder of a Significant Investor visa, you may switch between complying investments as long as the sum withdrawn corresponds with the sum reinvested.

Visa holders have a maximum period of 30 calendar days from the date the funds are withdrawn to reinvest in other complying investments. Funds reinvested into a complying investment within 30 calendar days are taken to have been held continuously from the original investment date.

What are Commonwealth, State or Territory government bonds?

Commonwealth, State or Territory government bonds are bonds issued by the Commonwealth, or a State or Territory government authority.

There are no specific requirements regarding the term or purpose of the bonds being issued.

What is an ASIC regulated managed fund?

An ASIC regulated managed fund for the purpose of the Significant Investor visa is a managed investment scheme defined in the *Corporations Act 2001* and regulated by the Australian Securities and Investment Commission. Any interests issued in the fund must not be able to be traded on a financial market and must be covered by an Australian Financial Services Licence.

Investments in ASIC regulated managed funds include any investments made through an Investor Directed Portfolio Service.

What requirements must an ASIC regulated managed fund meet to qualify as a complying investment?

For an ASIC regulated managed fund to qualify as a complying investment it must be limited to categories of investments specified by the Minister in a legislative instrument in writing.

These categories include:

- 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 companies and trusts listed on an Australian Stock Exchange
- bonds or term deposits issued by Australian financial institutions
- real estate in Australia; and
- Australian agribusiness.

How do I prove that the ASIC regulated managed funds I invest in meet the visa requirement to be classified as a complying investment?

To prove that the ASIC regulated managed funds you invest have only invested in the categories mentioned above, the responsible manager of the relevant managed fund must make a declaration on Form 1413 that their services would be limited to the categories of investments in Australia specified by the Minister in the legislative instrument.

This declaration will be required for each managed fund you invest in.

Form 1413 will be published on the Department's website.

Will there be a list of approved managed funds that I can invest in?

There won't be a list of managed funds approved by the Department for the purpose of the Significant Investor visa.

You are responsible for making sure the managed fund you invest in meets the requirement of a complying investment.

What is an Australian proprietary company?

An Australian proprietary company is a company that is registered as a proprietary company under the *Corporations Act 2001*. It must be registered with ASIC.

What requirements must a direct investment into an Australian proprietary company meet to qualify as a complying investment?

For a direct company investment to qualify as a complying investment, the applicant must acquire an 'ownership interest' in the company, and the company must operate as a 'qualifying business'.

An 'ownership interest' means interests as a shareholder in a company that carries on the business, including interests held directly through one or more interposed companies, partnerships or trusts. You may hold your ownership in any proportion in the Australian proprietary company.

A 'qualifying business' means 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. It must have an Australian Business Number.

Can I invest to establish a new company that is not yet operating as a qualifying business?

You may choose to invest any part of your complying investment into establishing a new company with the purpose to operate as a qualifying business.

In this case, if you invest in the company for a period of two years or more while holding the provisional visa then the company must operate a qualifying business for at least two years. If your period of investment in the company is for less than two years then the company must operate a qualifying business for that whole period.

Otherwise you must show that you have made a genuine attempt to establish and/or maintain a qualifying business.

How do I show that I have made a genuine attempt to operate a qualifying business?

You must provide evidence that you or the people responsible for managing the company have done their best to establish and run a qualifying business in Australia. Evidence may include business proposals, research that has been undertaken, the value of investment used in establishing a qualifying business, and business activities undertaken.

What investment structure can I use to make and hold the complying investments?

Complying investments must be made and held:

- directly by you or together with your spouse or de facto partner; or
- through a company where the total amount of issued shares are owned by you or together with your spouse or de facto partner; or
- through a valid trust where the trustees and beneficiaries are you or together with your spouse or de facto partner.

Through these structures you may hold complying investments in any proportion.

This will allow you flexibility to make your own decisions on the level of investment risk that you undertake and also allow you to exercise your investment skill when constructing and managing your investment portfolio.

Am I allowed to engage another person to manage my complying investments?

You may engage a third party to manage the complying investment on your behalf if you so choose. As the holder of a Significant Investor visa you are not required to have direct involvement in managing the complying investments.

Is there a guaranteed return on my complying investments?

The Australian Government or your immigration case officer is not to take any role in your investment decisions and cannot guarantee any return on your complying investments.

Like any other investment activities, investing in complying investments can involve risk. The value of your complying investments can go down as well as up and is not guaranteed at any time. You may get back less than you originally invested and also, in some circumstances lose all of your investment.

It is recommended that you seek your own professional legal and financial advice before investing.

Are there requirements around the source of funds I am going to use to make the complying investment?

You must demonstrate that the assets or funds you use to make the complying investment are unencumbered and lawfully acquired.

At the time of application you are required to provide a statement identifying your ownership and value of assets for a minimum of AUD5million proposed to be used to fund the complying investments.

When do I need to make the complying investment?

You will be required to make the investment before the grant of your visa.

The complying investment must not be made until you have been informed by the office processing your visa to do so. This is to ensure that you have met the remaining visa criteria, including health and character requirements for this visa, prior to making a financial commitment.

Can current investments (investments prior to application for the visa) be counted towards the AUD5million complying investment?

Yes, if they meet the requirements of a complying investment. However, prior investments must still be held for at least four years on the provisional visa before you become eligible to apply for the permanent visa.

Is it possible to invest in property?

Investments in property will not be considered as a complying investment. You may however invest in ASIC regulated managed funds which may invest in real estate in Australia.

What is the process for applying for a provisional Significant Investor visa?

All intending migrants who are interested in applying for a provisional Significant Investor visa must submit an Expression of Interest through SkillSelect and be nominated by a State or Territory government in order to receive an invitation to lodge a visa application.

SkillSelect is an online service that enables skilled workers and business people interested in migrating to Australia to record their details to be considered for a skilled visa through an Expression of Interest.

See: www.immi.gov.au/skills/skillselect/

How do I lodge an application?

If you have been nominated through SkillSelect by a State or Territory for a Significant Investor visa and you meet other mandatory criteria, you will receive an invitation to make an application for a Significant Investor visa.

You will have 60 days to lodge your visa application using the Department's electronic lodgment system. If you have not lodged an online application within this time you will be sent another invitation and you will have a further 60 days to lodge your online application. If you receive two consecutive invitations in SkillSelect but do not lodge a valid visa application as a result of either invitation, your Expression of Interest will be removed from the SkillSelect database. You will have to formally resubmit an Expression of Interest to be considered for future invitation rounds.

How do I supply supporting documents?

If you are invited to apply for a provisional Significant Investor visa, you need to provide additional supporting documentation directly to a processing center. The processing center to which you must send documentation depends on your country of residence. This documentation must be provided at the same time as the visa application.

How do Australian States or Territories nominate applicants?

Once your Expression of Interest is in SkillSelect, it can be viewed and a State or Territory can decide whether to nominate you to apply for a visa. The following State and Territory governments have their own criteria for deciding which applicants they will nominate. In some cases, and before you are nominated, the relevant State or Territory will contact you to discuss business possibilities. Other State or Territories may wait for you to contact them.

- Australian Capital Territory: www.canberrayourfuture.com.au
- New South Wales: www.business.nsw.gov.au
- Northern Territory: www.nt.gov.au
- Queensland: www.workliveplay.qld.gov.au
- South Australia: www.migration.sa.gov.au
- Tasmania: www.migration.tas.gov.au
- Victoria: www.liveinvictoria.vic.gov.au
- Western Australia : www.smallbusiness.wa.gov.au

If I am nominated by a specific Australian State or Territory, am I allowed to move to a different State or Territory?

When you are nominated by a State or Territory for a provisional Significant Investor visa, it is the expectation of the Department and the State or Territory government that has nominated you that you have a genuine intention to reside in their jurisdiction.

What are my options if a State or Territory does not nominate me for a Significant Investor visa?

The Business Innovation and Investment program is a State and Territory government nominated program. You must have been nominated by a State or Territory government to apply for a Significant Investor visa.

Can I extend my Significant Investor visa?

If you meet the requirements for the Significant Investor Extension stream you are able to be granted another provisional Significant Investor visa if you would like to. You will be able to apply for a maximum of two additional provisional visas in the Significant Investor Extension stream, bringing the maximum total period on a provisional Significant Investor visa to eight years.

How do I extend my provisional Significant Investor visa?

To be able to be granted another Significant Investor visa, you need to be nominated by a State or Territory government and have continuously held complying investment for the life of your previous provisional Significant Investor visa. You can apply online using the Department's electronic lodgment system.

At the time of application, you must have held a provisional Significant Investor stream visa for at least three years or have not held more than one provisional visa in the Significant Investor Extension stream.

What requirements do I need to meet to be eligible to apply for a permanent Significant Investor visa?

To be eligible to apply for a permanent Significant Investor visa you must:

- be nominated by a State or Territory government
- have continuously held complying investments for the life of your provisional Significant Investor visa
- have held the provisional Significant Investor visa for a minimum period of four years; and
- have met the residence requirement.

What does it mean to hold the complying investments for the life of my provisional Significant Investor visa?

It means that you must hold your original complying investment continuously until you apply for a permanent Significant Investor visa (for any reinvested complying investments, you are considered holding them continuously if you satisfy the reinvestment requirements). It includes the duration of your original four year provisional Significant Investor visa and any extension visas granted afterwards.

Visa condition 8557 will be placed on your provisional Significant Investor visa which requires you to maintain the complying investment. If you breach this condition your visa may be subject to cancellation.

What happens if the value of my complying investment falls below AUD5million?

The value of your complying investment might fluctuate throughout the duration of your provisional Significant Investor visa. So far as you do not withdraw your complying investment, you are not required to provide additional funds to maintain the threshold of AUD5million. Conversely, if the value of your investments increases you are not allowed to withdraw the increased value.

Should you choose to withdraw your complying investment, you would need to reinvest it into other complying investments within 30 calendar days. Otherwise you will breach visa condition 8557 to maintain the complying investment and your visa may be subject to cancellation.

Do I still have to hold complying investments once I am granted a permanent Significant Investor visa?

If you are granted a permanent Significant Investor visa, you can decide for yourself what you want to do with your complying investments. To be granted a permanent Significant Investor visa, you must genuinely have a realistic commitment to maintain business or investment activities in Australia, but they do not need to be complying investments.

What is the residence requirement for the Significant Investor visa?

To be granted a permanent Significant Investor visa, primary visa holder must be resident in Australia for at least 40 days for every year or part year that they have held a provisional Significant Investor visa. The residence period does not need to be met per year but can be met cumulatively over the time the primary visa holder held the provisional visa.

Are my family and I able to work or study in Australia as a provisional Significant Investor visa holder?

In relation to the right to undertake work or study, there is no limitation placed on you or your family members when holding a provisional Significant Investor visa in Australia.

Who can I contact for further information about the Significant Investor visa?

Information on the Significant Investor visa can be found on the Department of Immigration and Citizenship's website.

See: www.immi.gov.au/skilled/business/whats-new.htm

Email: business.innovation@immi.gov.au