17 February 2021

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The Director, Skills and Innovation Policy Section
Migration Planning and Visa Policy Branch
Department of Home Affairs

By email:

Attention: The Director, Skills and Innovation Policy Section

Dear Sir/Madam,

Re: Review of Complying Investment Framework (CIF)
- **Business Innovation and Investment Program**

At the outset, we thank you for your invitation to provide a submission response addressing the Discussion Paper on the Complying Investment Framework for the Business Innovation and Investment Program.

We appreciate this opportunity to provide our input into the policy planning of the CIF. Given our roles being the legal representatives of SIV clients, we will restrict our response with an exclusive focus on regulating and monitoring of the Complying Investment Framework.

Should you require any further information or input from us during stages in the policy planning, please do not hesitate to contact our office.

Yours faithfully,

John Zhuang
Solicitor & RMA 9359571
Johninfo & Associates

17 February 2021

The Director, Skills and Innovation Policy Section
Migration Planning and Visa Policy Branch
Department of Home Affairs

Attention: The Director, Skills and Innovation Policy Section

Re: Review of Complying Investment Framework (CIF)
Business Innovation and Investment Program

At the outset, we thank you for your invitation to provide a submission addressing the Discussion Paper on the Complying Investment Framework for the Business Innovation and Investment Program.

We appreciate this opportunity to provide our input into the policy planning of the CIF. Given our roles being the legal representatives of SIV clients, we will focus our response on improving the Complying Investment Framework from client perspectives.

About Johninfo

Johninfo & Associates have been providing immigration advice since 1993 and we pride ourselves as a leading migration service firm in the specialization and delivery of professional assistance in relation to significant investor visa applications. Our team is well versed in all areas of immigration services and we are always keeping ourselves actively ready for the ever-changing Migration policies.

We have been representing our clients on Significant Investor Visa applications since 2012, at initial inception of the SIV program.

We have actively participated in many Business Innovation and Investment Program roadshows with the NSW state government in the past and have undertaken initiatives to host our own BIIP presentation shows in different Chinese cities such as Beijing, Shanghai, Xiamen and Shenzhen.

Given our extensive frontline experience in dealing with a comprehensive range of potential SIV clients, we are able to provide you with a more practical view of ways in improving the quality and integrity of the Complying Investment Framework as a whole.

Since we do not hold the roles of being a financial institution that specializes in financial investments, we will restrict our response with an exclusive focus on regulating and monitoring of the Complying Investment Framework.

Current Complying Investment Framework

We acknowledge the positive effects of the SIV program on Australia's economy since its initial inception in 2012. We have noticed from our recent case files that the government has sped up the visa assessment processing of the SIV stream visas as a part of the nation's strategic response to the COVID-19 economic revival plan.

We would like to take this opportunity to compliment the government's policy planning on this, as it is certainly one of the most effective ways in boosting the economy.

Despite of the overall success in the SIV program, we also observed pitfalls in our past engagement with many SIV clients. We are pleased to provide our input in assisting your department of finding ways to improve the quality and integrity of the investments under the CIF.

Increasing Fallouts on SIV Fund Management – Non-Compliance

There has been an increasing number of cases arising from poor investment management under CIF where actions taken by the Fund Managers have created loss and burden for the SIV visa holders during the complying 4-year investment periods.

We have noted that these types of poor investment managements under CIF are arising at higher frequency as more fund managers tap into this industry to gain their share of the market.

Scenario 1:

In the recent news published under Financial Reviews, a woman from Malaysia had applied for a Significant Investor Visa and proceeded to invest her funds with Morgan, a financial service provider that identifies itself as Australia's largest national full-service retail stockbroking and wealth management firm. Morgans has mistakenly told her that her investments had been allocated in the categories for complying investment requirements. The woman alleged that this had scuttled her application to secure herself for a permanent visa in Australia when she found out that her investments were not compliant years later.

Scenario 2:

Another high-profile fallout case includes the CEO of iProperty Group Michael Gu who has fled the country of after drawing millions of investments. The iProperty group had tapped into the high-net-worth foreign investors where the Significant Investors had been one of the most targeted victims. It was reported that Michael Gu had raised $124 million from the SIV related visa program.

Scenario 3:

Some years ago, we came across an SIV client who had experienced mismanagement of his Complying Significant Investment by his Fund Manager.

When the fund manager had proceeded to invest his SIV funds in a private company, it was invested into the company in the form of a director's loan. Under the complying investment framework, investment funding must be in the form of equity or share capital when invested into companies.

The involved SIV fund manager had been known as a leading firm where it ranks itself as one of the largest financial services network in Australia. Yet, it is apparent that they have not fully understood the CIF before providing such financial services for their SIV clients.

Our Case Experiences

In the past, Johninfo & Associates have been approached by SIV clients whose migration pathways have been jeopardized by poor investment management. Poor investment management not only applies to the high-profile fallout incidences which we have mentioned earlier but could also occur on small errors that arise from negligence.

Back in 2020, we were engaged with a client for an AAT matter where this client had been a previous provisional subclass 188 visa holder under the Significant Investor stream. She had applied for a subclass 888 visa upon the completion of her Complying Significant Investment, only to find herself with a visa refusal due to poor investment management.

The refusal decision was mainly based on the reasonings that there had been a period of absence of investment for more than 30 days during the total 4 years of her investment. We quote you extracts of the relevant decision in the refusal letter:

> '*Based on the information available I find that the funds were withdrawn from …..Fund on …..May 2016. The applicant reinvested the funds on ….June 2016. More than 30 days passed between the events…. Therefore, the requirements specified under paragraph 5.19B(6)(b) and 5.19B(6)(c) are not met. Consequently, the requirements specified under clause 5.19B(6) are not met….*"

The client had instructed the fund managers to manage her complying significant investment with full entrustment and she was not aware that the fund managers have negligently left her funds within a period of absence of investment for more than 30 days until it was too late. This had left the client vulnerable at the decision stage of the subclass 888 visa application, and eventually led to her AAT application.

Need for Increasing the level of Monitoring on SIV Fund Managers

Over-reliance on Fund Managers

From our past engagements with our SIV clients, we have noted that most of them choose to entrust Fund Managers with their Complying Significant Investment. We note that many of these SIV clients do not have high knowledge or backgrounds in high profile investments. Being able to meet the relevant investment requirements would be their most important factor to consider when looking at the different ways of completing their complying investments.

This had been particularly the case when the department has introduced the investment component standards under the SIV program in July 2015. Investors were more inclined to use Fund Managers to sort out the different investment categories rather than having to manage it by themselves. Naturally, Fund Managers have been the key players in ensuring investment compliance within the SIV program.

Current Legislative Framework on CIF

We have noted that the current migration policies are formed in such ways that leave the investors with the full liability when they experience poor investment management. The form 1412 deed of acknowledgement, undertaking and release form which the investors sign at time of their subclass 188 visa application leaves the Commonwealth of Australia non-liable for any loss of investments.

We note that under the current legislative framework, visa holders do not have access to having any deliberations made on their circumstances when non-compliance complying investment occurs. Under the current provisions:

- It is open for a delegate not to cancel the subclass 188 SIV visas, on the basis that the non-compliance was due to a circumstance outside the control of the individual visa holder.

- When such non-compliances occur, the visa holder is not eligible for a subclass 888 Significant Investor Visa.

- In terms of visa options, the visa holder would be eligible to either apply for a subclass 188 SIV visa under extension stream if their current subclass 188 visa is still valid, or a apply for a new subclass 188 SIV visa.

The current regulatory requirements tend to leave the investors vulnerable to secure a permanent visa at later stages of their migration pathways at times when such non-compliances occur. It would be quite unfair for the investors to bear the loss to their visa when non-compliances of their investments had occurred whilst been beyond their control.

Proposed Level of Monitoring on SIV Fund Managers

When Fund Managers play such important roles in the compliance of investments, it is time for the policy department to rethink on the extent of the monitoring required. Regard ways of implementing such monitoring, we suggest not to land the burden on the visa holders but on the fund managers separately.

Recommendation 1: Establish an independent auditing team to monitor the SIV fund managers

The department could consider establishing an independent auditing team to monitor the fund managers instead of requesting the visa applicants to provide more specific documents at the lodgement stage of their subclass 888 permanent visa, as it is often too late at that time for them to notice their non-compliance.

It should also be noted that these visa holders may not realize that their investment is non-compliant by just looking at the more specific documents from the Fund Managers by themselves. When such matter occurs, they often find out about the issue at the visa decision stage and receive a refusal decision before they proceed to any alternative solutions.

Recommendation 2: Require SIV Fund managers to provide annual audit reports of SIV Investments

Fund Managers should be required to lodge the investment auditing reports of all their SIV clients to the above-mentioned independent auditing team.

Having such obligations in place will require Fund Managers to review and audit the managed investment funds on more regular basis. This will increase the scrutiny of the investment funds and minimize the occurrences of negligent behaviours from the Fund Managers.

Non-compliance of investments could also be spotted out at a prompter instance, rather than at the decision stage when the clients lodge their application for the 888 SIV visa.

Recommendation 3: Publishing the records of SIV Fund Managers' Non-compliance

The department could also publish the performances of these Fund managers on online platforms, so that investors have ways of knowing if a particular fund manager had been non-competent in staying compliant for the complying investments.

Reconsidering the Current Regulation Provisions

On this note, we urge you to reconsider the current regulations in place for the permanent subclass 888 visa under the Significant Investor Stream. The current regulations have been focused on the applicants to stay compliant with their investments. In reality, most SIV holders do not participate in the investment activities and it is the fund managers who have a greater control over how the funds have been invested.

Victims of Poor Investment Management

As we have mentioned before, there have been many SIV clients who had been victims of poor investment management due to Fund Manager's negligence. It defies the purpose of the BIIP policy when it is the third-party investment managers who have committed such errors, and yet leaving applicants being fully liable for not only financial losses but eventually leading them to the detriment of their permanent migration pathways as well.
It is clear that these SIV applicants are not at fault and the current policy regime leaves them vulnerable to the exploitations of ill-managed fund management institutions. The department could consider on providing opportunities for them to continue on their permanent migration pathways as the applicants should not bear such ill fortune when their investments are already at stake.

Recommendations for concession provisions

We encourage the government to introduce policy deliberations under the continuous complying investment requirement, allowing applicants to continue in their application for the final grant of their permanent subclass 888 visa when they have demonstrated to a sufficient level of commitment effort to stay compliant in their investments. This could be applied to case scenarios, where the fault for non-compliance lies with the SIV fund managers.

The deliberation of such assessments could be focused on the actual personal circumstances of each applicant, where applicable, officers should consider whether it is reasonable to disregard the requirements of continuous complying investment requirement.

We encourage the policy-making department to implement fairer and more practical approaches in improving the current Complying Investment Framework. The department should also take reasonable approaches in the assessments of the permanent subclass 188 visa applications under the significant investor stream, where deliberations should be made on when applicants have their own compelling and compassionate circumstances.