**Report for Congress**
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# Investor Visas

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# Australia

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**SUMMARY** As a result of reforms to the relevant immigration program in 2012, there are now two main visas available to investors wishing to live in Australia. Such people must first obtain a state- or territory-sponsored provisional four-year visa and meet the conditions of that visa before applying for the permanent visa. Both the provisional and the permanent visas include two streams under which investors may qualify: an Investor stream and a Significant Investor stream. These differ in the minimum investment required (AUD1.5 million vs. AUD5 million) and types of investments that can be made, among other things. The Significant Investor stream provides such concessions as removing the fifty-five-year age limit, not requiring the passing of the innovation points test that applies to the Investor stream, and providing for a much lower residency requirement in order to qualify for the permanent visa.

A temporary, four-year visa is also available to state- or territory-sponsored investors over the age of fifty-five who wish to reside in Australia during their retirement years. The minimum investment required to qualify for this visa is AUD$750,000.

## I. Introduction

Significant changes to Australia's business and investment visas came into effect in July 2012 following a comprehensive review of the Business Skills Program in 2011.[1] As a result of the reforms, some visas were removed and others were consolidated into the three new visas that make up what is now called the Business Innovation and Investment Program.[2] This report provides information on two of these visas: the Business Innovation and Investment (Provisional) (subclass 188) visa and the Business Innovation and Investment (Permanent) (subclass 888) visa.

Part II of this report discusses the eligibility criteria and conditions that apply to the provisional subclass 188 visa. This visa provides investors with a pathway to the subclass 888 visa, which is a permanent residence visa. The subclass 888 visa is discussed in Part III of this report.

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[1] Department of Immigration and Citizenship (DIAC), Reforms to the Business Skills Program (June 2012), http://www.immi.gov.au/skilled/business/_pdf/reforms-business-skills-program.pdf.

[2] *See generally* DIAC, Frequently Asked Questions: Reforms to the Business Skills Program July 2012 (June 2012), http://www.immi.gov.au/skilled/business/_pdf/faq-reforms-business-skills-program.pdf; DIAC, Reforms to the Business Skills Program from 1 July 2012, http://www.immi.gov.au/skilled/business/_pdf/diagram-changes-business.pdf.

The Investor Retirement (subclass 405) visa is an additional investor visa that is available only to people aged fifty-five years or older. This is a temporary visa, allowing a holder to live in Australia for up to four years, and does not provide a pathway to permanent residence. Information on this visa is provided in Part IV.

## II. Subclass 188 (Provisional) Visa

The subclass 188 visa[3] is one of several state-nominated visa categories that are targeted at skilled workers, investors, and business owners. Applications for this visa may be made either from inside or outside Australia.[4] Family members can be included in a person's visa application. Primary visa applicants and any family members must satisfy standard health and character requirements.[5]

A subclass 188 visa applicant must first submit an "Expression of Interest" through the Department of Immigration and Citizenship's (DIAC) SkillSelect website and receive an invitation to apply for the visa before filing an application.[6] In order to be invited, a person must be nominated by a state or territory government and meet other mandatory criteria.[7] State and territory governments may have their own criteria for determining which applicants to nominate.[8] According to the DIAC, the SkillSelect migration selection process "aligns the best available prospective migration candidates with the fluctuating demands of the labour market, or the needs of individual states or territories."[9]

Subclass 188 visa applicants must make a declaration that they understand their obligations as a holder of a Business Innovation and Investment visa.[10]

The subclass 188 visa is divided into three streams: Business Innovation, Investor, and Significant Investor. The eligibility criteria and conditions applicable to the Investor and Significant Investor streams are discussed below.

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[3] The criteria and conditions related to this visa subclass are set out in the Migration Regulations 1994 (Cth) sch 2 pt 188, http://www.comlaw.gov.au/Details/F2013C00062/Html/Volume_3#_Toc347391734. Additional visa criteria and conditions referred to for each individual subclass relate to those in schedule 4 of the Regulations (Public interest criteria), schedule 5 (Special return criteria), as well as schedule 8 (Visa conditions).

[4] Frequently Asked Questions: Reforms to the Business Skills Program July 2012, *supra* note 2, at 7.

[5] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, DIAC SKILLSELECT, http://www.immi.gov.au/skills/skillselect/index/visas/subclass-188/ (select "Visa applicants" then "Who can apply") (last visited June 7, 2013). More details on these requirements are provided in DIAC, BUSINESS INNOVATION AND INVESTMENT 33–35 (Booklet 10, April 2013) (DIAC Booklet 10), http://www.immi.gov.au/allforms/booklets /1407.pdf.

[6] Frequently Asked Questions: Reforms to the Business Skills Program July 2012, *supra* note 2, at 2.

[7] *Id.* at 6.

[8] *Id.* at 5.

[9] Reforms to the Business Skills Program, *supra* note 1, at 4.

[10] DIAC Booklet 10, *supra* note 5, at 17–18.

## A. Investor Stream

Provisional visas issued under the subclass 188 Investor stream are valid for four years and cannot be renewed.[11] Successful applicants are expected to make the required investment and reside in the nominating state or territory during the period of their visa.[12]

### *1. Investment Requirements*

In terms of minimum investment requirements, applicants in the Investor stream must

> be prepared to make [their] government-approved designated investment[13] of AUD1.5 million [about USD1.42 million] using funds [they] accumulated from [their] direct involvement, for at least one of the five fiscal years before [they are] invited to apply, in one of the following activities:
>
> - managing [their] eligible investments[14] that total at least AUD1.5 million
> - managing a qualifying business in which [they] owned at least 10 per cent of the total value of the business.[15]

If a visa is granted, the holder's designated investment must be maintained for at least four years.[16]

Applicants must also

> - have a high level of management skill in relation to eligible investments;
> - have at least three years' experience of direct involvement in managing one or more qualifying businesses or eligible investments;
> - have a genuine and realistic commitment to continuing [their] business and investment activity in Australia after the original investment has matured; and
>
> . . .
>
> - have an overall successful record of eligible investment or qualifying business activity with no involvement in unacceptable activities.[17]

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[11] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (select "Visa holders").

[12] Frequently Asked Questions: Reforms to the Business Skills Program July 2012, *supra* note 2, at 6.

[13] A designated investment is an "investment in a security issued by an Australian state or territory government authority which is specified by the Minister in Gazette Notice for the purposes of the investor stream of the Business Innovation and Investment visa. DIAC Booklet 10, *supra* note 5, at 4. More details on designated investments are provided on page 19 of the Booklet.

[14] "Eligible investment" means an ownership interest in a business; a loan to a business; cash on deposit; real estate; or gold or silver bullion "that is owned by the person for the purposes of producing a return by way of income or capital gain and is not held for personal use." *Id.* at 4.

[15] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (select "Visa applicants" then "Who can apply").

[16] *Id.* (select "Visa holders").

*2. Innovation Points Test*

In addition to meeting the investment requirements, those seeking a visa through the Investor stream must pass an "innovation points test." The pass mark for this test is sixty-five points. Under the test, points are awarded for

- age
- English language ability
- qualifications
- experience in business or investment
- net personal and business assets
- business turnover
- innovation.[18]

Some aspects of the test reflect the additional minimum threshold requirements for subclass 188 visa eligibility.

a. Age

Subclass 188 visas are available only to people aged under fifty-five years, unless this requirement is waived by a state or territory government owing to the proposed business or investment activity being "of exceptional economic benefit to the relevant region."[19] The highest possible number of points (thirty) is awarded to persons aged between twenty-five and thirty-two years (inclusive).

b. English Language Ability

There are no minimum English language threshold requirements for subclass 188 visa applicants and their family members. However, "[a]ll applicants and any dependants over the age of 18 years old who are unable to demonstrate functional English must pay a second instalment of the visa application charge."[20] On the other hand, "[a]pplicants who can demonstrate vocational English or proficient English will be eligible to be awarded points under the innovation points test."[21] Ten points are awarded to proficient English speakers under the points test.

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[17] *Id.*

[18] *Id.* (select "Points test"). *See also* DIAC Booklet 10, *supra* note 5, at 21–24; DIAC, Innovation Points Test for the Business Innovation and Investment Program (Aug. 2012), http://www.immi.gov.au/skilled /business/_pdf /innovation-points-test.pdf. The full points test is set out in the Migration Regulations 1994 (Cth) sch 7A, http://www.comlaw.gov.au/Details/F2013C00062/Html/Volume_6#_Toc347394764.

[19] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (select "Visa applicants" then "Who can apply").

[20] Frequently Asked Questions: Reforms to the Business Skills Program July 2012, *supra* note 2, at 2.

[21] *Id.* at 3.

c. Experience in Investment

In order to be awarded points for investment experience, applicants "must have held eligible investments with a value of more than AUD100 000 for more than 4 years or more than 7 years," immediately before being invited to apply.[22]

d. Net Personal and Business Assets

Applicants must have net business and personal assets of at least AUD2.25 million (about USD2.14 million). Thirty-five points are awarded under the points test for meeting this minimum threshold, and more may be awarded for higher levels of assets.[23] To qualify for a visa, the assets must have been held for the two fiscal years prior to the receipt of an invitation to apply, and "must have been legally acquired and able to be legally transferred to Australia within two years of the visa being granted."[24]

## B. Significant Investor Stream

The Significant Investor stream is a more recent (November 2012) addition to the Business Innovation and Investment Program.[25] This stream offers visa requirement concessions that are not available under the subclass 188 Investor stream, including

- no points test requirement,
- no age limit, and
- reduced residence requirements in order to be eligible for a permanent residence visa.[26]

People in the Significant Investor stream are also able to extend the term of their four-year provisional visa by two years if certain conditions are met, with a maximum of two extensions.[27]

In order to qualify for a visa under this stream, applicants must invest at least AUD5 million (about USD4.75 million) in at least one "complying investment."[28] "Complying investments" include

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[22] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (click "Points test" then "Experience in business or investment"). More details on the investment experience requirements are provided in DIAC Booklet 10, *supra* note 5, at 32.

[23] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (click "Points test" then "Net personal and business assets").

[24] *Id.* (select "Visa applicants" then "Who can apply").

[25] *See* DIAC, Significant Investor Visa (Nov. 2012), http://www.immi.gov.au/skilled/business/_pdf/significant-investor.pdf; Press Release, Brendan O'Connor MP, Significant Investor Visa Opens to Business Migrants (Nov. 23, 2012), http://www.minister.immi.gov.au/media/cb/2012/cb191999.htm.

[26] *See* Press Release, Brendan O'Connor MP, Key Conditions Released for Significant Investor Visa (Aug. 29, 2012), http://www.minister.immi.gov.au/media/cb/2012/cb189539.htm.

[27] DIAC Booklet 10, *supra* note 5, at 18.

- 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 not listed on an Australian Stock Exchange.[29]

Income earned from such investments is subject to tax under Australian taxation law.[30]

Applicants for the Significant Investor stream must also

- have a genuine and realistic commitment to continue [their] business and investment activity in Australia after the complying investment has been held continuously for the life of [their] provisional visa;
- have a genuine and realistic commitment to reside in the state or territory that provided nomination for [their] application;
- have assets of at least AUD5 million that have been legally acquired, are unencumbered, and are available to be used to make the 'complying investment' in Australia;
- not have a history of involvement in unacceptable business or investment activities; and
- agree not to take legal action against the Commonwealth for any loss of capital arising from [their] complying investment.[31]

According to the Minister of Immigration and Citizenship, "[s]tate and territory governments are partnering with the Commonwealth when selecting prospective high net worth migrants, to ensure the available visas [in this stream] are offered to the most experienced business people and high profile investors."[32]

## III. Subclass 888 (Permanent) Visa

A person who has fulfilled the requirements of the provisional subclass 188 visa can apply for permanent residence status by way of the subclass 888 visa.[33] This visa is divided into the same three streams as the subclass 188 visa. Applicants must be the primary holder of a subclass 188 visa and must

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[28] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (select "Visa applicants").

[29] DIAC Booklet 10, *supra* note 5, at 20.

[30] *Id.*

[31] *Business Innovation and Investment (Provisional) (Subclass 188) Visa*, *supra* note 5 (select "Visa applicants").

[32] Press Release, Brendan O'Connor MP, Key Conditions Released for Significant Investor Visa, *supra* note 26.

[33] The criteria and conditions related to this visa subclass are set out in the Migration Regulations 1994 (Cth) sch 2 pt 888, http://www.comlaw.gov.au/Details/F2013C00062/Html/Volume_5#_Toc346282851.

- secure and maintain nomination from a state or territory government; and
  …
- for the Investor stream – have held a designated investment continuously for at least 4 years; or
- for the Significant Investor stream – have held a complying investment continuously for at least 4 years.[34]

Applicants for the permanent visa must also show that they

- have not been involved in any unacceptable business or investment activities;
- have a satisfactory record of complying with Australian laws, including those relating to taxation, superannuation, workplace relations and other laws relevant to [their] business and investment activity.[35]

Applicants must also demonstrate "a strong commitment" to continuing their business or investment activity in Australia.[36]

Minimum Australian residency requirements also apply. As noted above, these requirements are lower for the Significant Investor stream compared to the Investor stream. Investor stream applicants must have resided in Australia for at least two years in the four years immediately prior to applying for a subclass 888 visa, while Significant Investor stream applicants need only to have been in the country "for a cumulative period of 40 days for each year or part year while holding the provisional visa."[37] The Minister for Immigration and Citizenship has stated that "[t]his flexibility recognises the needs of the global investor community while also encouraging investment into Australia."[38]

## IV. Investor Retirement Visa

The Investor Retirement (subclass 405) visa[39] is a state or territory-sponsored temporary visa, valid for four years, that is available to retirees aged fifty-five years or older, and their partners of any age, "who have no dependants and who want to reside in Australia during their retirement years."[40] Applicants must be self-supported and "able to make a

[34] DIAC Booklet 10, *supra* note 5, at 11.

[35] *Id.* at 26.

[36] *Business Innovation and Investment (Permanent) Visa (Subclass 888)*, DIAC SKILLSELECT, http://www.immi.gov.au/skills/skillselect/index/visas/subclass-888/ (click on "Visa applicants").

[37] DIAC Booklet 10, *supra* note 5, at 25 & 27. If a person has extended his or her visa as part of the Significant Investor stream, eighty days are added for each two-year extension. *See Business Innovation and Investment (Permanent) Visa (Subclass 888)*, *supra* note 36 (click on "Visa applicants").

[38] Press Release, Brendan O'Connor MP, Key Conditions Released for Significant Investor Visa, *supra* note 26.

[39] The criteria and conditions related to this visa subclass are set out in the Migration Regulations 1994 (Cth) sch 2 pt 405, http://www.comlaw.gov.au/Details/F2013C00062/Html/Volume_3#_Toc347391749.

significant long term financial investment in Australia."[41] A points test is not required for this visa.

The minimum level of assets required to be eligible for the subclass 405 visa is AUD750,000 (about USD712,000). Such assets must have been held for at least two years prior to the lodging of an application, be "legally owned and lawfully acquired" by the applicant (or the applicant and his or her partner), and be "capable of and available for, transfer to Australia."[42] In addition, an applicant (or the applicant and his or her partner) must have access to minimum net income of AUD65,000 (about USD62,000). Subclass 405 visa holders are able to work for up to forty hours in each two week period if they wish.

An applicant must be able to make a designated investment of at least AUD750,000 in the sponsoring state or territory. Such funds are additional to the assets requirement.[43]

The eligibility criteria for this visa also include a requirement for adequate health insurance to be held and maintained for the period of the visa.

Holders of subclass 405 visas may apply for a further subclass 405 visa if various conditions have been maintained for the period of the visa, including the designated investment.[44] Although a holder cannot apply for permanent residence, he or she can keep applying for subsequent Investor Retirement visas as long as the requirements continue to be met.[45]

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[40] *Investor Retirement (Subclass 405): About this Visa*, DIAC, http://www.immi.gov.au/visitors/retirement/405/ (last visited June 7, 2013).

[41] *Id*. The amounts referred to in this part are reduced if the applicant intends to live in regional Australia.

[42] *Investor Retirement (Subclass 405): Eligibility*, DIAC, http://www.immi.gov.au/visitors/retirement/405/eligibility.htm (last visited June 7, 2013).

[43] *Id*.

[44] *Id*.

[45] *Investor Retirement (Subclass 405): How this Visa Works*, DIAC, http://www.immi.gov.au/visitors/retirement/405/how-the-visa-works.htm (last visited June 7, 2013).

# Austria

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Austria has no statutory provisions on the granting of visas to investors and therefore does not specify any threshold amounts for such investments.[1] According to section 60 of the Act on Temporary and Permanent Residence,[2] a self-employed person may be granted a temporary residence pass if he or she contractually agrees to carry out certain self-employed activity for at least six months. It appears that the discretion inherent in this provision would allow the Austrian authorities to enter into an agreement with investors in individual cases if this was deemed to be in the interest of Austria.

[1] Niederlassungs- und Aufenthaltsgesetz [Act on Temporary and Permanent Residence], BUNDESGESETZBLATT I 100/2005, as amended, *available at* the official database RIS, http://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20004242/NAG%2c%20Fassung%20vom%2020.07.2013.pdf?FassungVom=2013-07-20.

[2] *Id.*

# Bulgaria

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**SUMMARY** As a new member of the European Union, Bulgaria offers business opportunities and a quality lifestyle. Depending on the type and amount of investment, an investor may be eligible for different terms of residence and may have the possibility of applying for Bulgarian citizenship, including through an expedited process. Physical residency requirements were lifted in 2013. Eligible investments include the purchase of government bonds, investment in real estate, acquisition of shares of Bulgarian companies, financing a loan from a Bulgarian bank, and creating a specified number of jobs.

## I. Introduction

The Investor Program for Residence and Citizenship in Bulgaria, also known as the Immigrant Investor Program, was introduced in 2009 by amendments to the Bulgarian Citizenship Act,[1] Foreigners in the Republic of Bulgaria Act,[2] and implementing government regulations.[3] The program allows high-net-worth individuals from non-European Union countries who have a combined net worth greater than €1 million (approximately US$1.3 million) comprised of cash, property, business, or securities and their families to obtain Bulgarian permanent resident status and become eligible for Bulgarian citizenship with all the advantages of EU permanent residency. Applicants must be able to prove that the source of their income is legal and they cannot have a criminal record.

After five years of temporary resident status, permanent resident status is granted to an investor who will then become eligible to apply for Bulgarian citizenship in two or five years, depending on the type of investment. The investment of specific amounts in government bonds and in a company involved in the Priority Investment Project (a government-run development program) and making a commitment to maintain those investments for a period of at least two years after acquiring citizenship entitles an applicant to acquisition of Bulgarian citizenship within two years through the so called "Fast-Track Citizenship Option." Applicants and their family

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[*] This report was prepared with the assistance of the Law Library intern Svitlana Vodyanyk.

[1] Bulgarian Citizenship Act, Nov. 5, 1998, DRZHAVEN VESNIK [DV] [STATE GAZETTE] (in Bulgarian) 1998, No. 36, *as amended*, available in English *at* http://www2.ohchr.org/english/issues/women/docs/Governments/BulgariaLaw BulgarianCitizenship.doc.

[2] Foreigners in the Republic of Bulgaria Act, DV 1998, No. 153, Dec. 23, 1998, available in English *at* http://legislationline.org/documents/action/popup/id/6200.

[3] Regulation on Implementation of the Foreigners in the Republic of Bulgaria Act , approved by Government Decree No. 179, June 29, 2011, DV 2011, No. 51; DV 2013, Nos. 41, 62, *available at* http://www.lex.bg/bg/laws/ldoc/2135738597 (in Bulgarian).

members are not required to be physically present in Bulgaria for any time period and their absence from the country does not affect their immigration status.[4]

There are no nationality or religious restrictions for applicants and no requirements pertaining to management, work experience, education, or age for the investor. Previous requirements concerning language competence and relinquishment of current citizenship were eliminated by recent changes in legislation.[5]

The promotion of the Investor Program is endorsed by the InvestBulgaria Agency, a division of the Ministry of Economy, Energy and Tourism.[6]

## II. Investment Options

Amendments to the 1997 Law on Investment Promotion, which entered into force on February 23, 2013, created a variety of options for qualified investors participating in the Immigrant Investor Program, including the following:

- Open a personal bank account in Bulgaria and deposit the amount of no less than BL1 million (approximately US$675,000) for the purchase of government bonds. After five years, the invested amount will be refunded to the investor without accrued interest.
- Invest an amount of no less than €180,000 (approximately US$240,000) to finance a loan from a Bulgarian chartered bank.
- Invest more than €1 million (approximately US$1.3 million) and become a majority shareholder or legal representative of a company that participates in a government-designated Priority Investment Project.
- Invest at least €125,000 (approximately US$165,000) and obtain no less than 50% of the capital of a Bulgarian company operating in one of the underdeveloped regions in Bulgaria, and create and maintain at least five jobs for Bulgarian citizens under a labor contract.
- Invest at least €250,000 (approximately US$330,000) and obtain no less than 50% of the capital of a Bulgarian company, and create and maintain at least ten jobs for Bulgarian citizens under a labor contract.
- Invest as an individual no less than €300,000 (approximately US$396,000) or obtain more than 50% of the capital of a Bulgarian company, which in turn would invest the same amount in real estate. Financing is allowed as long as the outstanding amount of the loan is under

[4] *Id.* art. 44.

[5] Act to Amend and Supplement the Investment Promotion Act, DV 2013, No. 16, available in English *at* http://www.ice.gov.it/paesi/europa/bulgaria/legge_incentivi_investimenti_en.pdf.

[6] INVESTBULGARIA AGENCY, http://www.investbg.government.bg/en (last visited Aug. 5, 2013).

25% as of the date of the residency application. This final investment option does not lead to permanent residency status and residency should be renewed every year.[7]

[7] Act to Amend and Supplement the Investment Promotion Act §§ 11–22, 33; Foreigners in the Republic of Bulgaria Act arts. 22, 24.

# Canada

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**SUMMARY** At the federal level Canada has an Immigration Investor Program that allows qualified investors and their families to receive permanent resident status in Canada. Applicants must show that they have business experience, have a minimum net worth of about US$1,552,000, and have made a passive investment of approximately US$776,100. In addition to certain other requirements, applicants need to meet five selection criteria, which include business experience, age, education, languages, and adaptability.

The provinces and territories have their own Provincial Nominee Programs to attract qualified investors. Quebec, in particular, has its own immigration requirements and investor immigration program.

## I. Introduction

In Canada, the federal government and the provincial and territorial governments are jointly responsible for immigration.[1] Thus, both the federal and the provincial and territorial governments have the authority to grant business immigrants and individual investors the opportunity to apply for permanent resident status. Citizenship and Immigration Canada (CIC), the federal department responsible for immigration, has a mandate to work closely with provincial and territorial governments in order to develop immigration programs for the country as a whole, with the exception of the province of Quebec.[2] Under the Canada-Quebec Accord on Immigration, Quebec "establishes its own immigration requirements and selects foreign nationals who will adapt well to living in Quebec."[3]

As part of its mandate, CIC has incorporated an Immigration Investor Program into its Business Immigration Program. Similarly, Quebec operates its own immigrant investor program developed by Immigration Quebec.[4]

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[*] This report was prepared with the assistance of Law Library intern Ashley Munro.

[1] Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.), reprinted in R.S.C. 1985, app. II, no. 5, § 95.

[2] CITIZENSHIP AND IMMIGRATION CANADA [CIC], 2012 ANNUAL REPORT TO PARLIAMENT ON IMMIGRATION 19 (2012), http://www.cic.gc.ca/english/pdf/pub/annual-report-2012.pdf.

[3] *Applying for Permanent Residence — Business Class Applicants: Investors, Entrepreneurs, Self-Employed Persons*, CIC, http://www.cic.gc.ca/english/information/applications /guides/4000ETOC.asp (last modified Feb. 19, 2013).

[4] *Investor Program*, IMMIGRATION ET COMMUNAUTES CULTURELLES QUEBEC, http://www.immigration-quebec .gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/index.html (last modified March 27, 2013).

In addition, Provincial Nominee Programs (PNPs) have been established to attract foreign business investors.

## II. The Federal Immigrant Investor Program (IIP)

### A. Basic Requirements

The Immigrant Investor Program (IIP)[5] is part of Canada's federal Business Immigration Program. The Program allows qualified investors and their families to receive permanent resident status in Canada. Business immigrants seeking permanent residence under the IIP must first meet certain requirements, which include

- showing that they have business experience,
- having a minimum net worth of Can$1,600,000 (about US$1,552,000) that was obtained legally, and
- making a Can$800,000 (about US$776,100) investment.[6]

According to CIC,

> [a]n investor is said to have business experience if they have either: managed a qualifying business and controlled a percentage of equity of a qualifying business for at least two years in the period beginning five years before the date of application, or managed at least five full-time job equivalents per year in a business for at least two years in the period beginning five years before the date of application.[7]

According to the CIC website, "CIC will return your C$800,000 investment, without interest, about five years and three months after payment."[8] These investments are administered by CIC and "[are] guaranteed by the Canadian provinces that use [them] to create jobs and help their economies grow."[9] Some of the features of the program are as follows:

- Investors are not required to start a business in Canada;
- Investments are fully guaranteed by provinces and territories that participate in the program;
- The provinces and territories control the investment during the five year lock-in period; and
- No immigration conditions are imposed upon admission to Canada.[10]

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[5] *Investors*, CIC, http://www.cic.gc.ca/english/immigrate/business/investors/index.asp (last modified June 28, 2013).

[6] *Id*.

[7] *Applying for Permanent Residence*, *supra* note 3.

[8] *Investors*, *supra* note 5.

[9] *Id.*

[10] *Applying for Permanent Residence*, *supra* note 3.

Note that, as of July 1, 2012, CIC has temporarily stopped accepting applications for this program "to focus on processing the applications we already have while the program is reviewed."[11] According to news reports, as of June 2012, there were 85,598 applications in backlog and it would take nearly ten years to process existing applications.[12]

If an application meets the above requirements, it will then be processed according to five selection factors.

## B. Selection Criteria

A points test is used to determine eligibility for the IIP. The pass mark for business class applicants is thirty-five points out of a total of one hundred possible points on the selection grid. According to CIC, "[i]f your score is the same [as] or higher than the pass mark, then you may qualify to immigrate to Canada as a business class applicant."[13] If the applicant scores lower than a total of thirty-five points, the application may be refused.

The five selection criteria and the maximum number of points available for each criterion are as follows:

- Business Experience: A maximum of thirty-five points can be awarded for business experience. According to CIC, business experience "must have been obtained within the period beginning five years before the date of application." The maximum of thirty-five points can be earned for five years' business experience. For each year less than five, five points are deducted. The minimum number of twenty points can be earned through two years of qualifying experience.[14]
- Age: A maximum of ten points is awarded to persons who are between twenty-one and forty-nine years of age. Persons outside this range lose two points for each year that they are under twenty-one or over forty-nine.
- Education: According to CIC, "[p]oints are awarded for earned educational credentials as well as the number of years of full-time studies or full-time equivalent studies."[15] A maximum of twenty-five points can be earned by a person who has a Master's Degree or a Ph.D. and at least seventeen years of full-time study or its equivalent. The lowest number of points available is five for completion of high school.[16]
- Languages: A maximum of twenty-four points can be awarded to persons who are highly proficient in both English and French, the official languages of Canada. An applicant can be

[11] *Investors*, *supra* note 5.

[12] Fabiola Carletti & Janet Davison, *Super Rich Investors Stuck in Immigration Limbo*, CBCNEWS, Dec. 10, 2012, http://www.cbc.ca/news/canada/story/2012/12/07/f-rich-immigrant-investor-limbo.html.

[13] *Applying for Permanent Residence*, *supra* note 3.

[14] *Id.*

[15] *Id.*

[16] *Id.*

awarded up to twenty-four points for basic, moderate, or high proficiency in English and French. Written and oral tests are administered to ascertain a person's abilities in different language areas, including listening, speaking, reading, and writing.[17]

- Adaptability: An investor applicant may be awarded up to six points for adaptability in Canada. An applicant can receive six points if he or she can demonstrate either having "made a business exploration trip to Canada in the period beginning five years before the date of the application" or having "participated in joint federal-provincial business immigration initiatives."[18]

## III. Proposed Changes to the Federal Investor Immigration Program

On April 13, 2012, Immigration Minister Jason Kenney announced the initiation of roundtable discussions on reforming Canada's federal immigration investor program.

Proponents of the current program see the program as an important means to boost Canada's economy. The program, however, has been criticized for its severe application backlog and uncertainty over where an investment ends up once it is received by the federal government.[19] CIC also notes that "[w]hile [Canada has been] successful in attracting investment dollars and high net worth individuals to Canada, there are concerns around the extent to which Canada benefits from the business skills and networks of these investors and whether they have a vested interest or commitment to Canada's economic success."[20]

In his April 2012 announcement, Minister Kenney noted that "Canada's Immigrant Investor Program undervalues the importance of Canadian Citizenship and fails to ensure that new investors are investing actively in the Canadian economy"[21] He added that "[w]e will consult on changes to ensure that investments by immigrant investors contribute more effectively to growing our economy and creating jobs for Canadians."[22]

Late last year, CIC began a consultation process for improving the Immigration Investor Program. Stakeholders and the public were invited to comment on "how the current federal Immigrant Investor Program (IIP) can be improved and how it could support Government of Canada objectives related to long-term growth and prosperity"[23] by

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[17] *Id.*

[18] *Id.*

[19] Carletti & Davison, *supra* note 12.

[20] *Backgrounder — Improving the Immigrant Investor Program*, CIC, http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-07-31a.asp (last modified Aug. 1, 2012).

[21] Press Release, CIC, Minister Kenney Announces Roundtable Discussions on Immigrant Investment in Canada (April 13, 2012), http://www.cic.gc.ca/english/department/media/releases/2012/2012-04-13.asp.

[22] *Id.*

[23] *Backgrounder*, *supra* note 20.

- [i]ncreasing the economic benefit that immigrant **investment capital** brings to Canada;
- [a]ttracting experienced, international **investors** with the skills and resources needed to ensure they integrate into Canada's economy; and
- [d]eveloping efficient and cost effective ways of **delivering and ensuring the integrity of an immigrant investment program**.[24]

The consultations are taking place to determine "how best to target high value global investors, unlike the current program, which essentially requires a five-year interest-free loan to provincial and territorial governments for economic development activities."[25] According to news reports, the proposed new program is intended to complement rather then replace the current program, and will be designed so that "the investor would be actively involved in managing their investment and would bear the associated risk, for example, by providing venture capital to the private sector."[26]

## IV. The Quebec Investor Program

Quebec has three immigration programs for businesspeople wanting to immigrate to Quebec, one of which is the Investor Program.[27]

In order to be eligible for the Investor Program, the applicant must possess net assets of at least Can$1,600,000 (approximately US$1,552,000), have management experience, and intend to settle in Quebec. In addition, the applicant must sign an agreement to invest Can$800,000 (about US$776,100) with a financial intermediary. The assessment of an investor's application will also take into account other factors, such as the applicant's age, the nature and duration of his or her professional training, and his or her language skills.[28]

The Quebec Investor Program therefore mirrors the federally-established IIP discussed in Part II above by requiring the same fiduciary commitments from the applicant. However, under the Quebec plan the Can$800,000 investment is administered by a "financial intermediary (broker or trust company) authorized to participate in the Investor Program," whereas under the federal program this investment is administered directly by CIC.[29]

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[24] *Id.* (emphasis in original).

[25] Press Release, *supra* note 21.

[26] Carletti & Davison, *supra* note 12.

[27] *Businesspeople*, IMMIGRATION ET COMMUNAUTES CULTURELLES QUEBEC, http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/index.html (last modified Mar. 27, 2013).

[28] *Investor Program*, IMMIGRATION ET COMMUNAUTES CULTURELLES QUEBEC, http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/index.html (last modified Mar. 27, 2013).

[29] *Id.*

## V. Provincial Nominee Programs

Apart from the federal investor visa program, the provinces and territories have also implemented Provincial Nominee Programs (PNPs) to encourage foreign business operators to establish or acquire a business in Canada in exchange for accelerating the process of granting permanent resident status to them and their key employees.[30]

For example, the Opportunities Ontario program was designed both to facilitate the immigration process for key employees of a foreign business making an investment in Ontario and to allow the province to select economic immigrants who hold the skills required by businesses in the province.[31] In terms of the foreign investment component of the program, a company or business must make an investment of at least Can$3 million (about US$2,938,000) in its own operations in Ontario in order to meet the eligibility requirements.[32] In addition, the new or expanding business must create at least five full-time permanent jobs for Canadian citizens or permanent residents of Ontario. The investment must be endorsed by an Ontario ministry and cannot be an investment prohibited by federal law.[33]

[30] *Opportunities Ontario: Investor*, GOVERNMENT OF ONTARIO, http://www.ontarioimmigration.ca/en/pnp/OI_PNPINVESTORS.html (last modified Mar. 15, 2012).

[31] *Id.*

[32] *Id.*

[33] *Id.*

# France

*Edith Palmer*
*Chief, Foreign, Comparative, and*
*International Law Division II*

French immigration law does not contain any provisions that would allow foreign investors to become residents if they invested a certain threshold amount in France. French law merely provides that entrepreneurs may be granted a residence permit if their intended endeavors in France are economically feasible.[1] The initial duration of such a residence permit may not exceed one year but it is renewable.[2]

In an ongoing parliamentary debate on immigration law reform, the Office of the French President has communicated an interest in making France a more desirable destination for entrepreneurs by making it easier for them to obtain a biannual residence permit. In the fall of 2013, a bill may be introduced in Parliament that would grant entrepreneurs and other desirable immigrants a residence permit for an initial two-year period that could be obtained with little administrative effort. [3]

These principles for granting visas to entrepreneurs and other self-employed persons only apply to citizens of countries outside of the European Union. Citizens of the European Union do not need a visa to reside and work in France,[4] and certified long-term residents of other European Union Member States are accepted into France on the basis of that certification.[5]

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[1] CODE DE L'ENTRÉ E ET DU SÉJOUR DES ÉTRANGERS ET DU DROIT D'ASILE [CODE OF ENTRANCE AND STAY OF FOREIGNERS AND OF THE RIGHT OF ASYLUM] art. R. 313-16-1, http://www.legifrance.gouv.fr/initRechCodeArticle.do (click on the title of the Code under the rubric "nom du code").

[2] *Délivrance d'une carte de séjour temporaire pour raison professionelle*, SERVICE-PUBLIC.FR, http://vosdroits.service-public.fr/particuliers/F15898.xhtml#N10292.et (last visited July 31, 2013) (click on "Commerçants, industriels et artisans").

[3] *Débat parlamentaire sans vote sur l'immigration professionelle et étudiante*, POUR LA PROMOTION DE'L IMMIGRATION PROFESSIONELLE, http://www.immigration-professionnelle.gouv.fr/a-la-une/actualit%C3%A9s/d%C3%A9bat-parlementaire-sans-vote-sur-l%E2%80%99immigration-professionnelle-et-%C3%A9tudiante (last visited July 31, 2013).

[4] CODE DE L'ENTRÉ E ET DU SÉJOUR DES ÉTRANGERS art. L. 121-1.

[5] *Id*. art. L 314-1.

# Germany

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German law does not specify a particular amount that an investor must bring to Germany in order to obtain a residence permit. From January 1, 2009, until July 31, 2012, German law allowed for the granting of a residence permit to a foreign entrepreneur who, in addition to meeting other criteria, invested at least €250,000 (about US$325,000) in a German venture that created at least five new jobs.[1] A reform law that went into effect on August, 1, 2012,[2] eliminated these numerical conditions and entrepreneurs are currently admitted into Germany if an evaluation of their intended entrepreneurial activities indicates that there is a national or regional economic interest in their admission, the proposed activity would be favorable for the economy, and the financing of the venture has been guaranteed through the investors' own funds or through promised loans.[3]

The law was changed because it was felt that specifying a threshold amount led to superficial evaluations of visa applications that did not analyze a proposed venture in terms of the validity of the business proposition, the entrepreneurial experience of the applicant, and the effect that the new venture would have on enhancing employment, training, and research.[4] Now, as before the reform, the size of the investment is still a criterion, but no amount is specified.[5]

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[1] Aufenthaltsgesetz (Residence Act) July 30, 2004, BUNDESGESETZBLATT [BGBL.] I at 1950, as in effect until July 31, 2012, § 21(1) sentence 2, translation as effective in 2011 and as provided by the Federal Ministry of Justice *available at* http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0241.

[2] Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union, June 1, 2012, BGBL. I at 1224.

[3] Residence Act, § 21, as in effect since August 1, 2012. The new version of section 21(1) is identical to the former version, except for the omission of sentence 2, which specified an investment amount of €250,000 (about US$325,000) and insisted on the creation of five new jobs.

[4] Hinweise des Bundesministeriums des Inneren zu wesentlichen Änderungen durch das Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie (Remarks of the Federal Ministry of the Interior on Substantial Changes through the Act Transposing the Directive on Highly Qualified Employees), BUNDESMINISTERIUM DES INNEREN [FEDERAL MINISTRY OF THE INTERIOR], http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Auslaender/hochqualifiziertenrichtlinie.pdf?__blob=publicationFile (last visited July 19, 2013).

[5] Residence Act, as currently in effect, § 21(1).

# Italy

*Dante Figueroa*
*Senior Legal Information Analyst*

No specific minimum investment amounts are necessary to obtain an investor visa in Italy. Instead, Italian law provides that self-employed persons, including entrepreneurs, may be granted a temporary residence permit if the funds that are required for the proposed enterprise are made available.[1] The duration of such a permit may not exceed two years,[2] and the permit may be renewed.[3] The operative statutory provision for granting such a visa is article 26(2), sentence 1 of the Consolidated Immigration Act,[4] which may be translated as follows:

> In any event, the foreigner who in Italy wishes to exercise an industrial, professional, artisanal, or commercial activity or form a stock corporation or a partnership or accept a corporate office must demonstrate that he has adequate resources for the activity he intends to undertake in Italy.

According to information provided by the Ministry of the Interior, one of the requirements for a residence permit to engage in self-employed entrepreneurial activity is a certificate of the local Chamber of Commerce, attesting that the funds required for the proposed activity are made available.[5] No amounts are specified, thus apparently leaving it up to the judgment of the local Chamber of Commerce as to an appropriate amount for the intended activity.

These principles for granting visas to entrepreneurs and other self-employed persons only apply to citizens of countries outside of the European Union. Citizens of the European Union do not need a visa to reside and work in Italy, and certified long-term residents of other European Union Member States are accepted into Italy on the basis of that certification.[6]

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[1] Decreto legislativo 25 luglio 1998, n. 286, Testo unico delle disposizioni concernenti la disciplina dell' immigrazione e norme sulla condizione dello straniero [L.D. 286] [Legislative Decree No. 286 of July 5, 1998, Consolidated Text of the Provisions Concerning the Field of Immigration and Rules on the Conditions of Foreigners] art. 26, *available at* http://www.altalex.com/index.php?idnot=836.

[2] *Id.* art. 5(3-quarter).

[3] *Id.* art. 5(4).

[4] L.D. 286 art. 26(2) sentence 1.

[5] *Lavoro Autonomo*, MINISTERO DELL'INTERNO, http://www.interno.gov.it/mininterno/export/sites/default/it/temi/immigrazione/sottotema00101/Lavoro_autonomo.html (last visited July 30, 2013).

[6] L.D. 286 art. 5(1).

# Latvia

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**SUMMARY** Latvia offers foreigners the opportunity of becoming a temporary resident with a path to citizenship and access to the Schengen Area with minimal bureaucratic requirements. Since 2010, foreign businessmen have been able to obtain a residence permit by investing in a Latvian company, purchasing real estate, or depositing funds into a bank account in amounts specified by statute.

## I. Introduction

Latvia's business migration program was introduced in July 2010. It allows foreigners to obtain temporary residence permits in Latvia if they have made certain equity investments in a Latvian company, made subordinated investments in a Latvian credit institution, or purchased real estate. In each case, minimum amounts are established by law.[1]

The issuance of residence permits is regulated by the 2002 Immigration Law of Latvia. It states that temporary residence permits can be issued for a period of up to five years and must be registered each year at the Latvian Migration Office. These permits provide an opportunity to enter and leave the country, work, study, and use medical and other government and social services; invite relatives to Latvia; and enter any Schengen country without a visa.[2] The spouse, retired parents, and minor children of temporary residence permit holders are entitled to residency in Latvia also.

After five years of holding a temporary residence permit, an individual may apply for a permanent residence permit. After ten years of residency in Lithuania, including periods of temporary residency, an investor may apply for citizenship.[3] The 2010 amendments to the Immigration Law removed the physical presence requirement for investors receiving a temporary residence permit; however, physical presence in the country is required for those who apply for permanent residency or citizenship.[4]

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[*] This report was prepared with the assistance of Law Library intern Svitlana Vodyanyk.

[1] *2011 Investment Climate Statement – Latvia*, US DEPARTMENT OF STATE, BUREAU OF ECONOMIC, ENERGY AND BUSINESS AFFAIRS (Mar. 2011), http://www.state.gov/e/eb/rls/othr/ics/2011/157308.htm.

[2] Immigration Law of the Republic of Latvia (Oct. 31, 2002), http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Immigration_Law.doc (government prepared and published English translation).

[3] *Id*. secs. 22–31.

[4] *Id*.

## II. Investment Options

In July 2010 and June 2011, new amendments to the Latvian Immigration Law[5] came into effect, expanding the right of foreigners to obtain temporary residence permits for up to five years in exchange for their investment in the development of the Latvian economy.[6] The following investment options may be used to obtain temporary residence:

### A. Purchase of Real Estate

To qualify for a temporary residence permit through the purchase of real estate, an investor must purchase and own one or several properties in Latvia. The minimum amount of required investments depends on the location of the property. In the capitol city of Riga and surrounding areas, the total value of the acquired property must be no less than LVL 100,000 (approximately US$188,000). In other parts of the country the total value of purchased real estate must be no less than LVL 50,000 (approximately US$94,000). The real estate must be purchased only from a Latvian national or legal persons registered in Latvia, an EU citizen, or a person with a Latvian residence permit. This form of investment does not require the actual physical presence of the residence permit applicant in Latvia.[7]

### B. Business Investment

A foreign individual must invest at least LVL 100,000 (approximately US$188,000) in share capital or LVL 25,000 (approximately US$47,000) in a company in order to qualify for temporary residence on the basis of a business investment. If an investor chooses to invest at least LVL 25,000 in a Latvian company, the company must pay at least LVL 20,000 (approximately US$37,600) in taxes within a financial year, have no more than fifty employees, and have an annual turnover that does not exceed LVL 7 million (approximately US$13 million).[8]

### C. Financial Investment

To obtain temporary residency on the basis of a financial investment, a person must deposit at least 200,000 LVL (approximately US$377,000) into an account of a Latvian credit institution for at least five years without the right to withdraw this investment earlier.[9]

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[5] *Id*.

[6] *Investors in Latvia Granted Residence Permits for up to Five Years*, *LIVE RĪGA* (July 26, 2010), http://www.liveriga.com/en/2449-investors-in-latvia-granted-resi.

[7] Immigration Law of the Republic of Latvia sec. 23(1), para. 29.

[8] *Id*. sec. 23(1), para. 28.

[9] *Id*. sec. 23(1), para. 30.

## III. Impact of Recent Legislative Changes on Immigration

As a result of the new legislation, Latvia appears to be more attractive to foreign investors. After the amendments came into force in July 2010, residence permits in Latvia were requested by 5,171 investors and their family members within the next two and a half years. These investors invested LVL 318.3 million (approximately US$600 million) in the Latvian economy.[10]

In 2012, foreigners were mostly interested in the possibility of receiving residence permits by purchasing real estate in Latvia. During that year, 2,435 foreigners requested a residence permit based on the fact that they or their family members had purchased real estate in Latvia for the required amount of money. Between the time that the amendments to the Immigration Law came into force and January 1, 2013, a total of LVL 252.9 million (approximately US$475 million) was invested in real estate.[11] Statistics show that the majority of investors who purchase real estate in Latvia are citizens of Russia and other former Soviet countries.[12]

Foreigners' interest in the possibility of investing in the fixed capital of Latvian companies is relatively smaller. For the same two-and-a-half-year period, only LVL 12.1 million (approximately US$22 million) was invested in the fixed capital of companies. This type of investor came from different countries around the world, including China, Iran, Lebanon, Egypt, Nigeria, the Dominican Republic, the Philippines, Vietnam, Serbia, Afghanistan, the United States, Sri Lanka, Australia, and South Korea.[13]

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[10] *Residence Permit in Latvia: Facts and Results*, BALTIC LEGAL, http://www.baltic-legal.com/news-residence-permit-latvia-facts-results-eng.htm (last visited Aug. 1, 2013).

[11] *Id.*

[12] Damien McGuinness, *Latvian Property Scheme Brings Investors and Protests*, BBC (Jan. 3, 2011), http://www.bbc.co.uk/news/world-europe-12108423.

[13] BALTIC LEGAL, *supra* note 10.

**UPDATE (September 26, 2013):** In 2010 Latvia introduced the Business Migration Program. Since liberalization of this program in 2011, foreign investors have been eligible to obtain residence permits after purchasing real estate in the country. Generally speaking, the acquisition of real estate valued at LVL 50,000 (approximately US$95,000) or more puts an investor on a path to permanent residency in Latvia and provides this person with an immediate right to freely move within the European Union.

According to the Latvian Office of Citizenship and Migration, during the last two months, a record number of applications for temporary residence permits were submitted by foreign investors who purchased real estate in the country. These numbers reached 178 applications in July and 159 in August, while the average number of monthly requests for residence permits was about 131 during the first eight month of 2013. (*A Record Number of Applications for Residence Permits Submitted in Latvia*, NEWSRU.COM (Sept. 24, 2013), http://realty.newsru.com/article/24sep2013/vid_latvia (in Russian).) In 2012, foreign investors filed around 102 applications per month. (*Id*.) Since the program was introduced, around 7,000 people, 75% of whom are Russian citizens, received investor visas and residency in Latvia. Other buyers of Latvian real estate usually come from Ukraine, Kazakhstan, and China. (Juris Kaza, *Latvia's Offer of Residency Lures Investors*, THE WALL STREET JOURNAL (Aug. 26, 2013), http://online.wsj.com/article/SB10001424127887323608504579024710866871416.html#articleTabs%3Darticle.)

The international auditing and consulting firm Deloitte estimates that since 2010, more than LVL 500 million (almost US$1 billion) was invested in the Latvian economy by non-EU nationals through the purchase of real estate in exchange for temporary residence permits. (*Residence Permit in Exchange for Investments Brought Over Half a Billion Lat in Latvia*, DELFI (Sept. 9, 2013), http://www.delfi.lv/biznes/bnews/vid-na-zhitelstvo-v-obmen-na-investicii-prines-latvii-svyshe-polumilliarda-latov.d?id=43637431 (in Russian).) Deloitte reports that budget revenues from the Business Migration Program have reached LVL 145 million (about US$280 million), which is an amount equal to the annual budget of the Latvian Ministry of Defense. A total investment of LVL 1.24 billion (about US$2.3 billion) is expected by 2015. (*Id*.)

The influx of migrants is a matter of concern to the Latvian authorities, who are debating whether to continue implementation of this program on the same terms. The popular opinion is that foreign investors often use the Latvian Business Migration Program in order to get access to the EU and that the system is open to abuse due to only minor background checks on applicants. (*Cash-for-Residency Scheme in Latvia is Drawing Fire for Eurozone*, THE BALTIC COURSE (Sept. 24, 2013), http://www.baltic-course.com/eng/analytics/?doc=81048.) According to one member of the EU Parliament, "[t]hey are not buying houses, they are buying access to the Schengen area." (*Id*.)

Latvian politicians are calling for stricter rules for the issuance of residency permits, for an increase in the minimum amount of the investment required to obtain such permits, and even for abolishing the program. (NEWSRU.COM, *supra*.) Some have suggested that the program should be limited to investments in businesses, not real estate, and that the purchase of forest land by foreigners should be banned. (Juris Kaza, *supra*.)

Also, the program is a source for growing social tensions among the native Latvian population who compare the mass migration of citizens from post-Soviet countries to Latvia with the state-sponsored resettlement of the Russians to Latvia during the Soviet era. (*Id*.)

While all political parties represented in the legislature appear to support restrictions on the program, the government is reportedly going to decide before the end of this year, when Latvia is scheduled to enter the eurozone, whether to stop the issuance of temporary residence permits in exchange for real estate investments in Latvia. (NEWSRU.COM, *supra*.)

# Lithuania

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**SUMMARY** Under Lithuanian law, a temporary residence permit may be granted to business people and their family members who start a company with a minimum capital share value of approximately US$19,000. After five years of temporary residency, an individual may apply for permanent residency, and may seek Lithuanian citizenship after ten years of combined temporary and permanent residency.

Despite the lack of a formal "citizenship-by-investment" program, Lithuanian legislation provides for business immigration of foreigners who are willing to establish a company or be engaged in business activities in the country.

The Legal Status of Aliens Act states that in order to obtain a temporary residence permit in Lithuania through business investments,

- the share capital in the company, agency, or organization must be at least LTL 50,000 (approximately US$19,000);
- the foreign investor must be personally present in Lithuania; and
- the company must conduct genuine economic activities and start to pay minimum taxes no later than one year after its registration.[1]

In addition the applicant must meet other immigration requirements established by the European Union, including the entry conditions provided by the Schengen Borders Code, having valid health care insurance, possessing adequate means of subsistence, and owing or renting a place of accommodation in Lithuania.[2]

According to the Legal Status of Aliens Act, foreigners who establish a company in Lithuania may obtain an annually renewable one-year temporary residence permit.[3] A temporary residence permit allows its bearer to reside in and travel to and from Lithuania, including unrestricted travel within the Schengen Area.[4]

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[*] This report was prepared with the assistance of Law Library intern Svitlana Vodyanyk.

[1] Legal Status of Aliens Act, Law No. IX-2206 of April 29, 2004, art. 45(1), § 1, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453586 (in Lithuanian) (official publication), *official translation available at* http://www.refworld.org/docid/41c01b314.html.

[2] *Id*. art. 26.

[3] *Id*. art. 45.

[4] *Temporary Residence Permits*, MIGRATION DEPARTMENT UNDER THE MINISTRY OF THE REPUBLIC OF LITHUANIA, http://www.migracija.lt/index.php?1135548530 (text in English; last updated Jan. 10, 2011).

A permanent residence permit may be issued after five years of temporary residency if a foreign investor has been continuously living in Lithuania during this time. The period of required temporary residency may be reduced if the foreigner passes an examination in the Lithuanian language.[5]

Initial applications must be made to the Lithuanian diplomatic mission or consular office abroad. Applicants who already reside lawfully in Lithuania may apply to the immigration authority but this does not entitle the applicant to remain in Lithuania while the application is being processed.[6]

After ten years of residency in Lithuania, including periods of temporary residency, an investor may apply for citizenship if he or she meets other requirements defined by the Citizenship Act of Lithuania, such as knowledge of the Lithuanian language and Constitution, having a legal source of financial support, and revocation of his or her original citizenship.[7]

[5] Legal Status of Aliens Act art. 53(5)–(6).

[6] MIGRATION DEPARTMENT, *supra* note 4.

[7] Citizenship Act of Lithuania, No. 144-7361 of Dec. 2, 2010, art. 18, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=449329&p_query=&p_tr2=2 (in Lithuanian) (official publication).

# Netherlands*

*Wendy Zeldin*
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**SUMMARY** The Netherlands, as well as the European Union as a whole, is making an effort to attract foreign investors, the wealthy, and persons of "high quality" and with knowledge to reside permanently within its borders. Most non-EU investor visa applicants, who are eligible for a self-employed residence permit if they meet certain conditions, reportedly must invest a minimum of about $35,560 and engage in business activities that are substantially in the interest of the Netherlands. However, owing to friendship treaty arrangements, citizens of the United States and Japan need only invest a minimum $5,939 in a Dutch business and are exempt from the "substantial interest" requirement.

## I. Introduction

The Netherlands introduced a points-based immigration system "for independents, business proprietors and investors" on January 3, 2008,[1] although the system had already been launched in 2006 for "knowledge" and "high quality" migrants.[2] The country's investment visa program targets "individuals of high net worth status, business proprietors and foreign investors, provided each applicant adds value to the Netherland's economy."[3]

The European Union has also "publicly recognized the key contribution that migrant entrepreneurs can make to sustainable growth and employment," and stressed their importance in its European Agenda for the Integration of Third-Country Nationals.[4] Under its Entrepreneurship 2020 Action Plan, the European Commission pledges to "propose policy initiatives to attract migrant entrepreneurs and to facilitate entrepreneurship among migrants already present in the EU or arriving for reasons other than setting up business" and to "analyse the opportunity of proposing legislation aimed at removing legal obstacles to establishment of businesses and giving qualified immigrant entrepreneurs a stable permit."[5]

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* At present there are no Law Library of Congress research staff members versed in Dutch. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

[1] Jelle Kroes, *Investor Visa Program for The Netherlands*, VISALAW INTERNATIONAL, http://www.visalawint.com/index.aspx?page=F08_8 (last visited July 22, 2013).

[2] *Dutch Opt for Migration Points System*, EXPATICA.COM (May 22, 2006), http://www.expatica.com/hr/story/dutch-opt-for-migration-points-system-30182.html.

[3] *Netherlands Investment Immigration,* EUROPEAN FINANCIAL SERVICES ADVISORY GROUP, http://www.mysecondpassport.com/investment-immigration/netherlands-investment-immigration (last visited July 22, 2013).

[4] European Commission, Entrepreneurship 2020 Action Plan, COM(2012) 795 final (Jan. 9, 2013), at 25, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0795:FIN:EN:PDF. For the European Agenda for the Integration of Third-Country Nationals, the plan cites COM(2011) 455 final and SEC (2011) 957 final.

[5] Entrepreneurship 2020 Action Plan, *supra* note 4.

At the same time, the Commission invites EU Member States to take similar action to remove legal obstacles to migrant entrepreneurs,

> such as considering initiatives to give to qualified immigrant entrepreneurs or immigrant graduates of a European university-level institution a stable permit to allow them to set up a business in Europe, which can be extended if pre-defined targets in terms of job-creation, turnover or raising of new funding are achieved.[6]

Second, the European Commission urges Member States to "facilitate access to information and networking for migrant entrepreneurs and prospective migrant entrepreneurs by, e.g., creating relevant information centres in areas densely populated by migrants."[7]

## II. Self-Employed Residence Permit

Typically, foreigners who seek to work in the Netherlands are prohibited from working without a work permit.[8] However, article 14 of the Aliens Act 2000 (Vreemdelingenwet)[9] authorizes the Minister of Security and Justice to grant on his own initiative a residence permit for a fixed period or to extend the period of validity. Moreover, under the Aliens Employment Act (Wet Arbeid Vreemdelingen), an alien who has a residence permit for a fixed period, as referred to in the Aliens Act 2000, for the purpose of self-employment is exempt from the prohibition against foreigners working in the Netherlands without a work permit as long as he or she carries out work as a self-employed person.[10] Aliens in respect of whom there are agreements with other countries or a binding international organization decision for the Netherlands are also exempt from the work permit requirement.[11]

Persons who wish to practice a profession or set up a business in the Netherlands may apply for a residence permit as an entrepreneur[12] and will be exempt from the work permit requirement. Although investor visa applicants are not subject to the Dutch work permit requirement, in general they must have a provisional residence permit (*Machtiging tot Voorlopig Verblijf*,

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[6] *Id*.

[7] *Id*.

[8] Wet arbeid vreemdelingen [Aliens Employment Act] (Dec. 21, 1994, as last amended Nov. 18, 2010, in force June 1, 2013), art. 2(1), OVERHEID.NL, http://wetten.overheid.nl/BWBR0007149/geldigheidsdatum_23-07-2013.

[9] Wet van 23 november 2000 tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000) [Act of 23 November 2000 on Overall Review of the Aliens Act (Aliens Act 2000)], art. 14(1)(e) (as last amended June 19, 2013, in force July 1, 2013), http://wetten.overheid.nl/BWBR0011823/Hoofdstuk3/Afdeling3/Paragraaf1/Artikel14/geldigheidsdatum_22-07-2013; Aliens Act 2000, LEGISLATIONLINE, http://www.legislationline.org/documents/id/4680 (last visited July 24, 2013) [not up-to-date].

[10] Aliens Employment Act, art. 3(1)(b).

[11] *Id.* art. 3(1)(a).

[12] Immigration and Naturalisation Service, Ministry of Security and Justice, *Working on a Self-Employed Basis*, http://www.ind.nl/en/Residence-Wizard/work/working-on-a-self-employed-basis/Pages/default.aspx (last visited July 23, 2013). *See also* Aanvraag voor een verblijfsvergunning met het verblijfsdoel 'arbeid als zelfstandige' [Application for a Residence Permit with the Purpose of Stay [Being] 'Self-Employment'], IND, http://www.ind.nl/Klant-informatie/Documents/7024.pdf (last visited July 23, 2013).

MVV), issued for stays longer than three months, and/or a residence permit for the self-employed (*verrichten van arbeid als zelfstandige*) before they can begin working in the Netherlands.[13] The MVV is not required for EU or European Economic Area nationals or for nationals of Australia, Canada, Japan, Monaco, New Zealand, South Korea, the United States, or Vatican City.[14]

Directors and major shareholders are also seen as entrepreneurs if they have at least a 25 percent interest in the company, are liable for any company risks, and can influence their income level.[15] The maximum age of application is set at sixty years of age.[16] Applicants who wish to start a business in the Netherlands must first register the company with the Dutch Chamber of Commerce (Kamer van Koophandel);[17] those who seek to work in health-care services, however, must be registered in the "BIG" register.[18]

The applicants are eligible for a one-year residence permit, renewable on an annual basis if the holder continues to fulfil the requisite conditions, allowing the holder to work within the scope of his or her business.[19]

## A. Conditions for Non-EU Nationals in General

According to the European Financial Services Advisory Group, a business consultancy firm, in order to qualify for the self-employed residence permit, most non-EU entrepreneur nationals must make a minimum capital investment in the Netherlands of €27,000 (about US$35,559).[20] Other conditions for those who wish to go to the Netherlands as entrepreneurs include, for example, having a valid travel document, not posting a risk to public order and security, having "sufficient and long-term means of support," meeting the requirements for practice of one's profession, engaging in business activities that "serve an essential Dutch interest" (to be assessed, except in the case of Turkish nationals, by a points-based system described below).[21] Documents to be provided by the applicant include, for example, copies of identity details of his or her passport; the "Annex: Proof of Income" form; a certificate of qualification to practice a

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[13] *Self-Employed Residence Permit in The Netherlands (Holland)*, BUSINESS LEGAL CONSULTANCY, http://www.businesslegalconsultancy.com/en/3204/self-employed-residence-permit-in-the-netherlands-holland-ind.html (last visited July 23, 2013).

[14] *Procedure*, IND, http://www.ind.nl/en/Residence-Wizard/Procedure/Pages/default.aspx (last visited July 24, 2013).

[15] *Working on a Self-Employed Basis*, *supra* note 12. Freelancers must meet the additional condition of having an assignment to carry out as a freelancer in the Netherlands.

[16] *Netherlands Investment Immigration*, *supra* note 3.

[17] *Self-Employed Residence Permit in The Netherlands (Holland)*, *supra* note 13.

[18] *Working on a Self-Employed Basis*, *supra* note 12; *BIG-register*, CIBG, DUTCH MINISTRY OF HEALTH, WELFARE AND SPORT, https://www.bigregister.nl/en/ (last visited July 23, 2013).

[19] Kroes, *supra* note 1; *Self-Employed Residence Permit in The Netherlands (Holland)*, *supra* note 13.

[20] *Netherlands Investment Immigration*, *supra* note 3.

[21] *Working on a Self-Employed Basis*, *supra* note 12.

given profession, if applicable; a detailed business plan; and an income statement over the last twelve months before submission of the application.[22]

## B. The Points System

The applicant for an investor visa must have his business assessed according to a points system to ensure that it meets the requirement of serving the Dutch national interest and adding value to the economy. An applicant must acquire at least 90 points out of a maximum 100 per relevant category (i.e., 300 points in all) under the Netherlands points-based visa scheme.[23] The Immigration Service (IND) under the Ministry of Security and Justice administers the system, but SenterNovem, a Ministry of Economic Affairs agency, carries out the assessment and allocation of points. Processing of applicants takes three to six months.[24] The scheme is said to be similar to Denmark's point system.[25]

The points for the investor visa are awarded under three categories:

- Personal experience: education, employment experience, previous annual income, possession of high-level entrepreneurial experience, experience acquired in working with or in the Netherlands (Holland);
- Business plan: analysis of the market, organization, financing;
- Added value for the Dutch (Netherlands) economy: innovation, creation of working places, investment.[26]

Under this scheme, for example, if the entrepreneur's business plan will lead to the creation of two to five new job opportunities, the application will receive 10 points; a masters degree automatically confers 30 points; and a business plan involving a patent awards 20 points.[27] The advantage of such a points system "is that one can compensate a weak point with a strong point within the same category. For example, if an applicant does not have a PhD or Masters, then points can be scored with entrepreneurial experience, and the absence of financial investment can

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[22] *Id*.

[23] *Self-Employed Residence Permit in The Netherlands (Holland)*, *supra* note 13.

[24] Kroes, *supra* note 1. For an overview of the organization of the Dutch immigration system, *see, e.g.*, *The Organisation of Asylum and Migration Policies Factsheet: Netherlands*, EUROPEAN MIGRATION NETWORK (Nov. 2012), http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?entryTitle=0%2E%20Institutional%20Charts%20on%20Asylum%20and%20Migration (scroll down page to "NETHERLANDS Factsheet_Institutional Chart"). For a study of Dutch immigration policies, *see*, e.g., *Netherlands National Report*, EUROPEAN MIGRATION NETWORK (July 2012) (covering the period Jan. 1, 2011–Dec. 31, 2011), http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=861EB6D49E9DFE503C5FF1B31CD7B2FF?entryTitle=01. *See also* Section for Employment, Social Affairs and Citizenship (SOC), *EESC Opinion: The Contribution of Migrant Entrepreneurs to Economy*, EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, (Sept. 18, 2012), http://www.eesc.europa.eu/?i=portal.en.soc-opinions.21988.

[25] *Netherlands Investment Immigration*, *supra* note 3.

[26] *Self-Employed Residence Permit in The Netherlands (Holland)*, *supra* note 13.

[27] *Netherlands Investment Immigration*, *supra* note 3.

be compensated by an innovative product or patent."[28] Higher points may be allocated for those who invest in distressed businesses or in rural areas or ones suffering from high unemployment.[29]

A chart summarizing the three categories (the "investment" and "job creation" sub-categories are in full) has been published online as follows:[30]

| [Category] | sub-category | max. pts | breakdown of categories | | pts |
|---|---|---|---|---|---|
| **experience (30 pts required)** | education | 40 | e.g. Masters degree | | 30 |
| | as entrepreneur | 35 | e.g. company owner | | 30 |
| | as employee | 10 | e.g. senior > 5 years | | 9 |
| | in the Netherlands | 15 | e.g. Dutch client | | 5 |
| **business plan (30 pts required)** | commercial prospects | 50 | market analysis + clientèle + etc | | 15 |
| | | | unique selling pt + marketing + etc | | 25 |
| | | | price | | 10 |
| | organisation | 10 | e.g. supporting the product | | 10 |
| | financial justification | 40 | private capital > € 10.000,- | | 15 |
| | | | sales e.g. > € 125.000,- | | 10 |
| **added value (30 pts required)** | innovativity | 40 | e.g. patents | | 20 |
| | job creation (applicant not included) | 30 | general positions | 0,5-2 | 5 |
| | | | " | 2-5 | 10 |
| | | | " | 5-10 | 20 |
| | | | " | > 10 | 30 |
| | | | salary > € 45.000,- | 1-3 | 10 |
| | | | " | 3-6 | 20 |
| | | | " | > 6 | 30 |
| | investments | 30 | assets € 0,- to € 50.000,- | | 5 |
| | | | assets > € 50.000,- | | 10 |
| | | | assets > € 100.000,- | | 20 |
| | | | assets > € 1.000.000,- | | 30 |

***Source:*** Jelle Kroes, *Investor Visa Program for The Netherlands*, VISALAW INTERNATIONAL, http://www.visalawint.com/index.aspx?page=F08_8 (last visited July 22, 2013).

## C. Conditions for Permit Renewal and Family Reunion

Among the key conditions for renewal of the permit are that the applicant maintain an ongoing, active role in the business and a personal income level that is at least equivalent to the welfare

[28] *Residency for Self-Employed Entrepreneurs*, EVERAERT ADVOCATEN, http://www.visalawint.com/images/Residency%20for%20self-employed%20entrepreneurs.pdf (last visited July 23, 2013). The article also states that SenterNovem may make exceptions to strict adherence to the point system. "Experience with the system has shown that Senternovem may provide positive advice even if the minimum of 30 points is not acquired in each category. As an example, Senternovem may decide that an entrepreneur's exceptional knowledge or competency is of significant contribution to the Dutch economy as a whole." *Id.*

[29] Kroes, *supra* note 1.

[30] *Id.*; also found in *Dutch Business Immigration Program*, BUSINESS IMMIGRATION VISA, http://www.businessimmigrationvisa.com/netherlands.php (last visited July 23, 2013).

level, which the available sources in English state to be €800 net per month.[31] In order for spouses, unmarried partners, and/or children under the age of eighteen to join the entrepreneur, the entrepreneur's income must be at least €1,559 net per month.[32]

### D. Exceptions: Nationals of the United States and of Japan

Under the terms of the Dutch-American Friendship Treaty[33] or the Treaty of Trade and Navigation Between the Netherlands and Japan, citizens of either the United States or Japan may be self-employed and establish a business in the Netherlands without being subject to the requirement to prove that the business brings a substantial benefit to the Dutch national interest.[34] Reportedly, "any kind of small business or self-employment can qualify, except the practice of law or medicine."[35] The minimum amount of investment in a Dutch enterprise required is low, only €4,500 (about US$5,939).[36]

Among the other conditions that must be met to qualify for this type of self-employment visa are registry with the Dutch Chamber of Commerce and possession of a qualified accountant-prepared opening balance sheet and financial forecast; operation of a business between the U.S. and the Netherlands or between Japan and the Netherlands; start-up of a new business opportunity and representation of an American or Japanese business in the Netherlands, or launch of a profession in which one has invested "substantial capital"; and "sufficient and long-term means of support."[37]

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[31] Kroes, *supra* note 1; *Netherlands Investment Immigration*, *supra* note 3. However, according to the IND's "Table of Standard Amounts Considered Adequate Financial Resources," with amounts in effect from July 1, 2013, married couples and unmarried couples living together in the Netherlands for purposes of permanent residence or for a short stay visa must have a minimum monthly wage (including holiday allowance) of €1,596.02. *Table of Standard Amounts Considered Adequate Financial Resources,* IND, http://www.ind.nl/en/Customer-Information/sufficient income/Pages/default.aspx (last visited July 24, 2013).

[32] *Residency for Self-Employed Entrepreneurs*, *supra* note 28. For payment by the self-employed of social security contributions and health insurance, *see, e.g., If You Are Self-Employed in the Netherlands*, SOCIALE VERZEKERINGSBANK (SVB), http://www.svb.nl/int/en/bbz/werken/zelfstandige_nederland (last visited July 23, 2013).

[33] Treaty of Friendship, Commerce and Navigation, United States-Netherlands, Mar. 27, 1956, 8 U.S.T. 2043, 2055, T.I.A.S. No. 3942; Netherlands Friendship, Commerce, and Navigation Treaty (Mar. 27, 1956), Trade Compliance Center, http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005868.asp; Treaty of Commerce and Navigation Between the Netherlands and Japan, 8:3 AM. J. INT'L L., Supplement: Official Documents, 228-236 (July 1914), *available at* http://www.jstor.org/stable/2212312.

[34] *Dutch Self-Employment Visas*, EXPATLAW, http://expatlaw.nl/dutch-self-employment-visas.htm (last visited July 23, 2013).

[35] *Id*.

[36] *Self-Employed Residence Permit in The Netherlands (Holland)*, *supra* note 13.

[37] *Working on a Self-Employed Basis*, *supra* note 12.

### E. Wealthy Immigrants

The Netherlands also makes available to qualified foreign entrepreneurs who have over €1,250,000 in verified financial assets a wealthy immigrant residence permit, which "allows self-employment without any restriction or review by the IND."[38]

## III. Information on Use of Investor Visas

No information has been found on the use by non-EU foreign nationals of the self-employed residence permit to invest in the Netherlands. In terms of overall foreign investment in the Netherlands, the Dutch Minister of Economic Affairs, citing The Netherlands Foreign Investment Agency figures, stated that in 2012, 166 foreign companies invested almost €1 billion in the country, "the third highest number of foreign investors in the past decade," providing more than 5,000, mostly skilled jobs, "a new record."[39]

[38] *Dutch Self Employment Visas*, *supra* note 34.

[39] Henk Kamp, The Dutch Minister of Economic Affairs, State of the Economy, Speech in The Hague (Feb. 14, 2013), http://www.government.nl/ministries/ez/documents-and-publications/speeches/2013/02/14/the-state-of-the-economy.html.

# Portugal

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In Portugal, the entry, stay, exit, and removal of aliens, including the issuance of residence visas for investors is regulated by Law No. 23 of July 4, 2007.[1] Pursuant to article 60(2), a residence visa may be granted to an immigrant entrepreneur who wishes to invest in Portugal, provided that investment transactions have been made in Portugal, or the person can prove that he or she has funds available in Portugal, including those arising from financing from a financial institution in the country, and demonstrate, by any means, the intention to make an investment transaction in Portuguese territory.

To attract investments, Law No. 23 was amended in 2012 by Law No. 29 of August 9, 2012, which created a special system of residence permits for investment activities in the country. "Investment activity" is defined as any activity performed in person or through a company that leads, as a rule, to the implementation of at least one of the following situations, and for a minimum period of five years:[2]

> i) transfer of capital in an amount equal to or greater than €1 million [about US$1.3 million];
>
> ii) creation of at least 30 jobs;
>
> iii) acquisition of real estate with a value equal to or greater than €500,000 [about US$650,000].[3]

Order (*Despacho*) No. 11820-A/2012, issued jointly by the Ministry of Foreign Affairs (Ministério dos Negócios Estrangeiros) and the Ministry of Internal Administration (Ministério da Administração Interna), regulates the conditions for the application of the special system of residence permits for investment activities.[4]

On January 25, 2013, Order (*Despacho*) No. 1661-A/2013 amended Order (*Despacho*) No. 11820-A/2012 and, among other things, decreased to ten the number of required jobs to be created.[5]

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[1] Lei No. 23/2007, de 4 de Julho, art. 60(2), *as amended by* Lei No. 29/2012, de 9 de Agosto, available on the website of the Procuradoria-Geral Distrital de Lisboa [Lisboa Attorney General's Office], *at* http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=1&artigo_id=&nid=920&pagina=1&tabela=leis&nversao. For the general conditions for granting temporary residence permits, see article 77. For the requirements for residence permits for investment activities, see article 90-A.

[2] *Id.* art. 3(d).

[3] *Id.* (translation by author).

[4] Despacho No. 11820-A/2012, available on the website of the Serviço de Estrangeiros e Fronteiras [Foreigners and Borders Services], *at* http://www.sef.pt/portal/v10/PT/aspx/legislacao/legislacao_detalhe.aspx?id_linha=6263#0.

[5] Despacho No. 11820-A/2012, art. 3(1)(b), *as amended by* Despacho No. 1661-A/2013, de 28 de Janeiro, http://www.sef.pt/portal/v10/PT/aspx/legislacao/legislacao_detalhe.aspx?id_linha=6310#0.

# Spain

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Current Spanish immigration law[1] does not require any specific amount to issue an investor visa. A self-employed person may be issued a temporary residence visa valid for a period of ninety days to five years if the proposed investment is proved to be appropriate and will provide jobs for Spanish workers.[2]

In order to create more demand for real estate and foreign investment, the Spanish government has approved a major bill to enhance the economy and promote business that is now pending congressional approval,[3] and this bill proposes new provisions on investor visas.[4] In addition to other measures, the new law would allow the issuance of long-term residence permits to non-European Union citizens who invest in real estate of at least €500,000 (about US$664,500) in value; invest at least €2 million in Spanish public bonds or at least €1 million in deposits in Spanish financial institutions or the same amount in shares or participation in Spanish companies;[5] or start or participate in a business to be developed in Spain that would create jobs, have a positive socioeconomic impact in the region where it would operate, or add relevant scientific or technological innovation.[6]

In recent years, investment in real estate by foreigners in Spain has increased significantly, mainly from Russia, Norway, the United Kingdom, and Sweden.[7] Real estate agents are currently seeing interest from Chinese investors who are attracted by the low prices in Spain and the expectation of the availability of a new visa that would facilitate those investments.[8]

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[1] Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en España y su Integración Social [LODLE] [Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration], Jan, 11, 2000, BOLETIN OFICIAL DEL ESTADO [B.O.E], Jan. 12, 2000, *as amended by* Organic Law 2/2009, art. 37, http://www.boe.es/buscar/act.php?id=BOE-A-2000-544; *and* Real Decreto 557/2011, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009 [RLODLE] [Royal Decree 557/2011, Approving the Regulation of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and Their Social Integration, After Its Reform by Organic Law 2/2009], arts. 103–105.3.c and d, B.O.E. Apr. 30, 2011, http://www.boe.es/buscar/pdf/2011/BOE-A-2011-7703-consolidado.pdf.

[2] *Id.* (both LODLE & RLODLE).

[3] Proyecto de Ley 121/000052, BOLETÍN OFICIAL DE LAS CORTES GENERALES [B.O.C.G.], July 3, 2013, http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-52-1.PDF.

[4] *Id*., arts. 60–64.

[5] *Id*. art. 60.2.a.

[6] *Id*. art. 60.2.c.

[7] *La Venta de Viviendas a Extranjeros Creció un 15% en 2011 con 10,300 Transacciones*, EL MUNDO (Aug. 18, 2012), http://www.elmundo.es/elmundo/2012/08/18/valencia/1345310625.html.

[8] *Los Extranjeros Obtendrán la Residencia al Comprar un Inmueble de más de 500,000* €, EL MUNDO (May 24, 2013), http://www.elmundo.es/elmundo/2013/05/24/suvivienda/1369402921.html.

# United Kingdom

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**SUMMARY** The United Kingdom is actively seeking foreign investors to enter and remain on its shores through generous provisions in its immigration laws. It provides a fast track system for settlement of only two years, reduced from the standard five years, for individuals who enter as an investor and put significant amounts of money into the UK's economy. Further relaxations in the normally stringent immigration requirements include permission for investors to remain outside the UK for up to 180 days each year before losing their ability to apply for citizenship.

## I. Introduction

The United Kingdom has a series of provisions to encourage "high-value migrants" to enter and work in the country. High-value migrants are in the Tier 1 category of the UK's points-based system and include exceptionally talented and highly skilled workers, investors, and entrepreneurs.[1] The Tier 1 investor category is designed to attract individuals with a high net worth to come to and invest in the UK, with fast-track possibilities for settlement for those who invest significant amounts of money.

### A. Requirements to Obtain a Tier 1 Investor Visa

To obtain a visa to enter the UK as a Tier 1 investor the applicant must show that he or she

- holds at least £1 million (approximately US$1.6 million) in a regulated financial institution (i.e., a bank or building society) and these funds are under his/her control and disposable in the UK; or
- has a net personal wealth of at least £2 million (approximately US$3.2 million) and money borrowed from a financial institution regulated by the UK Financial Services Authority of at least £1 million.[2]

Investment funds held offshore do not count towards the figures required, and individuals may not take loans out using their investments as security.[3]

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[1] *Tier 1 (Investor)*, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/investor/ (last visited June 4, 2013).

[2] *Tier 1 (Investor): Points for Initial Applications*, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/investor/eligibility/initial/ (last visited June 12, 2013).

[3] *Tier 1 Investor Guidance, Addendum*, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1investorguidance1.pdf (last visited June 12, 2013).

### B. Requirements for Settlement for Tier 1 Investors

There are varying levels of requirements for Tier 1 (Investor) visa holders in the UK to apply for permission to settle permanently, depending on the amount of UK-based funds or total assets they have.[4]

To encourage the investment of larger sums of money in the UK, the requirements for continuous residence for citizenship have been relaxed for those who invest more in the country. The standard residency period before a person qualifies for UK citizenship is five years for individuals, who must be present in the country lawfully. For individuals in the UK as a Tier 1 investor, however, the residency period may be as low as two years, depending upon the amount they have invested:

- If a person has lived in the UK for two years he or she must have at least £10 million (approximately US$16 million) under his or her control in the UK, or personal assets with a value of at least £20 million (approximately US$32 million)and at least £10 million under his or her control and disposable in the UK that has been loaned by a UK-regulated financial institution.
- The amounts are reduced to £5 million (approximately US$ 8 million)in UK-based funds, or £10 million in assets and £5 million in UK loans, if a person has lived in the UK for three years.
- The lowest minimum requirements are for £1 million in UK-based funds, or £2 million in assets and £1 million in UK loans, if a person has lived in the UK for five years.[5]

### C. 2011 Modifications to the Requirements

In 2011 the provisions of the investor visas were adjusted to give applicants "red carpet treatment."[6] The aim of the change of rules was to "encourage the brightest and the best to locate to the UK."[7] The Immigration Minister made a strong statement that the rules were to increase the number of investors entering the country to help aid the recovery of the British economy:

> Today I have sent out a clear message – the UK remains open for business and we want those who have the most to offer to come and settle here.

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[4] *Tier 1 (Investor): Settlement*, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/investor/settlement/ (last visited June 4, 2013).

[5] *Id.*

[6] House of Commons Library Standard Note, *April 2011 Changes to Tier 1 and Tier 2 of the Points-based System and Indefinite Leave*, SN/HA/5922, Apr. 2011, http://www.parliament.uk/briefing-papers/SN05922.pdf.

[7] Press Release, UK Trade And Investment, Entrepreneurs and Investors Get Red Carpet Treatment to Set Up in UK (Mar. 16, 2011), http://webarchive.nationalarchives.gov.uk/20110704144231/ukti.gov.uk/pt_pt/uktihome/home/item/ 127984.html?null.

> Entrepreneurs and investors can play a major part in our economic recovery and I want to do everything I can to ensure that Britain remains an attractive destination for them.[8]

The major changes included a fast track for settlement, discussed above, as well as a relaxation of the rules concerning the amount of time investors may spend outside the country from ninety to 180 days per year. This relaxation was introduced as a result of complaints that prior rules reduced the mobility of investors that needed to travel and remain mobile to continue to be successful in their work.[9]

### D. Numbers of Entrants as Tier 1 Investors

The numbers of people entering the UK under the Tier 1 investor category have been steadily increasing since its introduction in 2007. The following table is compiled from information provided by immigration statistics that are prepared periodically by the UK Government:[10]

| | Main Applicant | Dependents |
|---|---|---|
| 2008 | 43 | 95 |
| 2009 | 153 | 282 |
| 2010 | 211 | 373 |
| 2011 | 331 | 529 |

[8] *Id.*

[9] *Id.*

[10] 14 May 2012, PARL. DEB., H.C. (6th ser.) 10W, http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120514/text/120514w0001.htm.