
International Families & Investors

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PROTECTING
YOUR INTERESTS**



What is the practical significance of government changes to the schemes for investors and entrepreneurs?

**WhitePaper Business Immigration
Conference
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Agenda

- **Tier 1 Investors**
 - > Update on the Nov 2015 changes to the Investor route
 - > The future of the Investor visa category
- **Tier 1 Entrepreneurs**
 - > January 2013 changes-Practical Tips on the "genuine entrepreneur" test
 - > Issues with buying and investing in businesses following the April 2014 changes
 - > July 2014 2014 changes on switching
 - > Possible future changes to the Entrepreneur Category

Tier 1 (Investor) route: a potted history

- In place since 1994 with level at £1m
- Changed in 2004 to allow loaned funds to be used for those with £2m net assets
- Changed in **April 2011** to bring in:
 - > accelerated settlement based on £5m (3 years)and £10m (2 years)
 - > limits on absences to 180 days per year to qualify for settlement
- Changed in 2013 to allow Investors aged 16+

BUT THEN....

- Restriction on leveraging portfolios-December 2012
- 6 November 2014-changes: Investment thresholds etc
- April 2015: Investment management and bank accounts

Introduction (cntd.)

Entry clearance applications 2008-2014

Year	Applications	Granted	Refused	% Refused
2008	68	43	10	19
2009	173	153	19	11
2010	233	211	18	8
2011	383	331	30	8
2012	507	470	37	7
2013	604	565	33	6
2014	1294	1173	119	9

- **Funds**
- £1m of own funds / £1m of loaned funds with £2m net assets
- **Investment allocation**
- 75% in portfolio-bonds, shares, loan capital
- 25% UK cash/UK property
- Investment within 3 months of arrival/in-country grant
- Investment restrictions-property investment, pooled investments etc.
- **Topping up** required by next reporting period

- Home Office requested a review by the MAC in October 2013
 - “*whether the investment thresholds are appropriate to deliver significant economic benefits for the UK, in particular the minimum £1m threshold?*”
- MAC Review published February 2014 –recommended:
 - > The minimum £1 million threshold increased to £2 million
 - > Relax current restrictions on permissible investment
 - > Remove topping up rule and quarterly valuations requirement
 - > Remove loan option
 - > Better alternative to premium route
 - » relax residence requirements – halving current 180 day limit
 - » Auction of limited number of premium route visa – minimum £2.5 m
 - » £2m to investments, £500k to good causes fund

Tier 1 (Investor) : November 2014 changes

Investment threshold

- Increase from £1 million to £2 million

Investment allocation

- Full investment sum in share or loan capital in active and trading UK companies, or UK government bonds
- Property element of 25% no longer allowed

Loan option

- Removed

Topping up

- No “top up” required but need to reinvest proceeds to purchase new investments

- Refusal of leave to enter or remain where :
 1. **Control of funds**

the applicant is not in control of and at liberty to freely invest the money
 2. **Source of funds-own funds**

“acquired by means of conduct which is unlawful in the UK, or would constitute unlawful conduct if it occurred in the UK”;
 3. **Source of funds- Third party funds**

“character, conduct or associations of that party are such that approval of the application would not be conducive to the public good

- **Due diligence**
- Not in control of the investment funds (ie hidden loans, “gifts” to nannies etc.)
- Due diligence on gifts by spouses, parents etc
- Interviews to check whether true and irrevocable gifts
- Enhanced due diligence reports/proof of on-boarding with UK wealth manager to be provided with the application?

Tier 1 (Investor) : November 2014 changes

2014-2015 immigration statistics

Quarter	2014 Q1	2014 Q2	2014 Q3	2014 Q4	NOV 2015 RULES	2015 Q1	2015 Q2	2015 Q3
PBS - Tier1 Investors (Main apps)	213	251	237	472		58	44	46

April 2015 Changes to the Tier 1 (Investor) Visa route

- **6 April 2015 changes** – build on MAC’s recommendations and provides for a number of significant changes affecting the Tier 1 (Investor) Visa route
- **The main changes are:**
 - > **Change 1:** Clarifications to permissible investment provisions
 - > **Change 2:** Raising the minimum age for main applicants from 16 to 18
 - > **Change 3:** A new requirement to open a UK regulated investment account before first applying for leave in the Tier 1 (Investor) category
 - > **Change 4:** Clarifications to the topping up provisions
 - > **Change 5:** New Home Office power to interview/produce evidence

Change 3 – UK regulated investment account (3)

- *“This change will ensure UK banks carry out due diligence checks on investors before they apply for entry clearance or leave to remain, not after”* (Explanatory Memorandum to HC 1025, p. 13)

Change 4 – Investment provisions (1)

Clarifications are introduced to the topping-up provisions

- need to re-invest gross proceeds of all sales, including those made at a gain, into qualifying investments in the portfolio
- applicant may withdraw interest and dividend payments generated by the qualifying investments from the portfolio;
- Fees, for example those charged by institutions for managing the portfolio, and transaction costs and tax incurred through buying and selling investments, cannot be paid for from the investment funds
- fees, transaction costs and tax referred to in (ii) above may be paid from the surplus investment, providing the surplus investment was made at the same time or before the fees, transaction costs and tax were incurred

- A new para 39D is inserted so that caseworkers will have powers to require persons holding limited leave to enter or remain in the UK to show that they continue to meet the requirements of the Rules by:
 - > providing evidence; and/or
 - > attending an interview-
- Those failing to comply with such a request without a reasonable explanation may be liable to have their leave curtailed as a result”
- “Credibility Interviews“ at the Visa Application Centres

Future of the Investor visa?

- “In particular, it is highly likely that substantial amounts of corrupt wealth stolen from China and Russia have been laundered into the UK through the UK’s ‘golden’ visa programme.” ***Gold Rush: Investment visas and corrupt capital flows into the UK, Transparency International, 20 October 2015***
- “We are giving settlement away. We are paying the Russians and the Chinese to come here. We are paying interest on the gilts, and when they get their citizenship, we give them the money back, so British residents are paying them to come here. Right now my own view...is the system is absolutely not fit for purpose because there is no gain to British residents whatsoever from this system”
Sir David Metcalf, Evidence to Home Affairs Select Committee, 20 October 2015

Future of the Investor visa?

“Fast track visas for rich foreigners could be scrapped over “dodgy cash”” *Evening Standard 29 January 2016*

- Amendment tabled by Baroness Hamwee and Lord Paddick in the Lords proposes closure of route by January 2017.
- to be debated Friday 5 February 2016

The Tier 1 (Entrepreneur) route

“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.

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.

Last year we issued far too few visas to those who wish to set up a business or invest in the UK - I intend to change that.”

Damian Green UK Government Immigration Minister, 16 March 2011

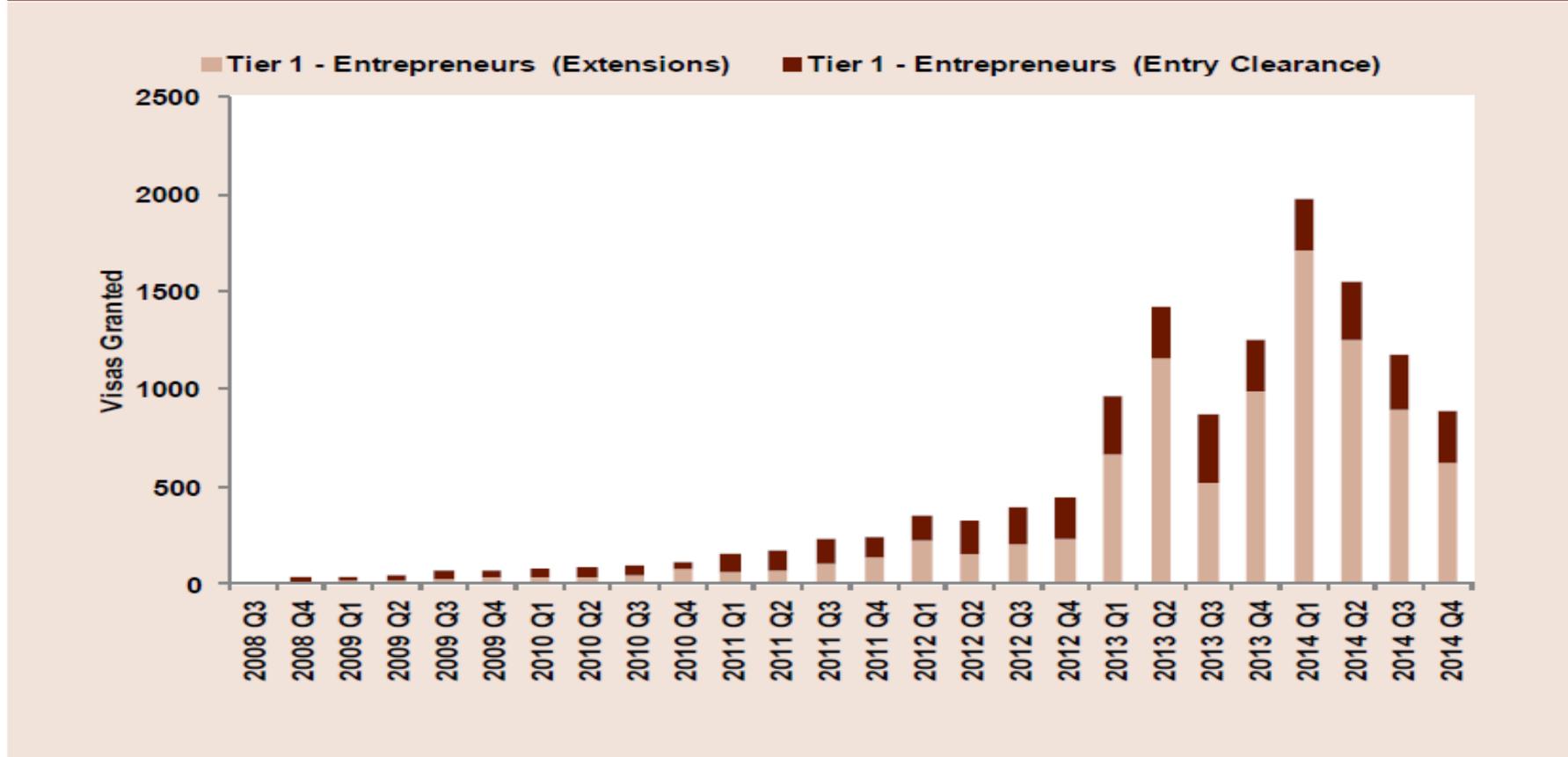
The Tier 1 (Entrepreneur) route

“The Tier 1 (Entrepreneur) category is for those who wish to establish a genuine business which will generate jobs in the UK. It has, however, become clear that the majority of those applying in-country for leave in the category are those who have come here for the purpose of study and are making speculative or fraudulent applications simply to extend their stay in the UK”

James Brokenshire , Security and Immigration Minister, 10 July 2014

Tier 1 Entrepreneur - Applications

Figure 1: Main applicant entry clearance and in country extension visas issued to Tier 1 entrepreneurs 2008 Q3 to 2014 Q4



Tier 1 (Entrepreneur) : Legislative Fatigue?

- April 2011 HC 863
- December 2012 HC 760
- January 2013 HC 943
- October 2013 HC 628
- April 2014 HC 1138
- July 2014 HC 532
- November 2014 HC 693
- April 2015 HC 1025
- October 2015 HC 535

“genuine entrepreneur” test

- Test for all applications from 31 January 2013
 - > the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
 - > the applicant genuinely intends to invest the money
 - > that the money is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses.

Curtailment

- Curtailment provisions
- allow curtailment if within 6 months of grant of leave/arrival the applicant has not done one or more of the following things:
 - > registered with HM Revenue and Customs as self-employed,
 - > registered a new business in which he is a director, or
 - > registered as a director of an existing business, or
 - > **the funds cease to be available to him, except where they have been spent in the establishment or running of his business or businesses.**

What will the decision maker assess?

- The decision maker will assess on the balance of probabilities and may take into account the following factors:
 - > (i) the evidence the applicant has submitted
 - > (ii) the viability and credibility of the source of the money
 - > (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector
 - > (iv) the applicant's previous educational and business experience (or lack thereof)
 - > (v) the applicant's immigration history and previous activity in the UK
 - > (vi) any other relevant information
 - > (vii) whether required hat accreditation, registration and/or insurance has been obtained

Extension of genuine entrepreneur test

- Expanded for applications decided on or after 1 October 2013, to enable information/evidence relating to testing genuineness to be requested even if the application would fall for refusal on other grounds
- Extension of “genuineness test” to extension and ILR applications-April 2015

Tier 1 (Entrepreneur): April 2014 changes (HC1138)

- Applicable to all applications **decided** on or after 6 April 2014 -retrospective
- Following initial grant of leave the minimum level of funds remains available to the applicant until such time as it is spent for the purposes of the business,
- (i) “Available” means that the funds are:
 - > (1) in the applicant’s own possession,
 - > (2) in the financial accounts of a UK incorporated business of which he is the director, or
 - > (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.
- (ii) “Spent” excludes spending on:
 - > (1) the applicant’s own remuneration,
 - > (2) **buying the business from a previous owner, where the money goes to that previous owner rather than into the business,**
 - > (3) investing in other businesses, and
 - > (4) any spending which is not directly for the purpose of establishing or running the applicant’s own business or businesses.

Tier 1 (Entrepreneur): April 2014 changes

- Job creation
- For those who apply for entry clearance or switch into the route from 6 April 2014, the employment must:
 - > be for at least two separate jobs, and
 - > exist for at least a full 12 months each.
- Tier 1 (Entrepreneur) migrants who successfully applied to enter the route before 6 April 2014, and still meet the requirements when they apply for extensions may continue to employ:
 - > one worker for 24 months
 - > one worker for six months and one for 18 months, or
 - > four workers for six months each.

Tier 1 (Entrepreneur): July 2014 changes

- Switching Tier 4 students
- only allowed if they have access to £50,000 funding from:
 - > UKTI endorsed seed funding competitions
 - > UK or devolved Government Departments.
- Venture capital funding option removed
- £200,000 option no longer possible
- Switching from Tier 1 (Post Study Work) only if
 - > have access to £50,000 from UKTI endorsed body/Government department (as above) or
 - > have access to £50,000 from any source and
 - > Started the business before 11 July 2014
 - > Appendix A-extensive proof of starting the business (landlines)

Tier 1 (Entrepreneur): July 2014 changes

- Working for your business
 - > no employment other than working for the business(es) the applicant has established, joined or taken over, but working for such business(es) does not include anything undertaken by the applicant pursuant to a contract of service or apprenticeship, whether express or implied and whether oral or written, with another business,

- Applicants switching into category, funds available for investment must be held in the UK.
- Where several documents are being used to evidence funds, they must show that the funds are available on the same date
- Definitions of 'property development' and 'property management' were added.
- 'any development of property owned by the applicant or his business to increase the value of the property with a view to earning a return either through rent or a future sale or both, or management of property (whether or not it is owned by the applicant or his business) for the purposes of renting it out or resale'
- written declaration where third party is another business in which the applicant is self-employed or a director

- New requirement for a written declaration where third party is another business in which the applicant is self-employed or a director.
 - > Evidence of the applicant's status within that business and that s/he is sole controller of the business' finances
 - > Where applicant is not sole controller, declaration must be signed by another authorised official -

Tier 1 (Entrepreneur): November 2014 changes (Cont)

- Retrospective introduction of job creation at ILR stage

'Where the applicant's last grant of entry clearance or leave to enter or remain was as a Tier 1 (Entrepreneur) Migrant, the jobs must have existed for at least 12 months during that last grant of leave'

- For non-accelerated settlement cases where the entrepreneur has had at least one extension, this means they must have created jobs which existed for at least 12 months during the period covered by their extension grant of leave. These may be the same jobs that were created during their initial grant of leave, providing those jobs continue to exist, or they may be new jobs.

Tier 1 (Entrepreneur): April 2015 changes (HC1025)

- Business plan mandatory
- Applicants relying on funds they hold themselves must provide evidence of the third party source if those funds have been held for less than **90 days**
- Extension of “genuineness test” to extension and ILR applications
- **Power to interview, request further information and evidence at any point during period of leave**
- Restrictions on Tier 1 (General) switching – only if they established a UK business prior to 6 April 2015.
- Funds channelled through business to previous owner will not be counted for the award of points
- Introduction of Administrative Review and loss of appeal rights

- We found a wide spectrum of activity on the Tier 1 (Entrepreneur) visa route. At the top end we found examples of Tier 1 (Entrepreneur) migrants establishing highly innovative, high growth potential businesses. At the bottom end of the spectrum, we found activity that is neither entrepreneurial nor of economic benefit to UK residents. In between, we found that a large proportion of Tier 1 (Entrepreneur) migrants establish low-value businesses with limited potential to grow or contribute to innovation or productivity growth.
- Our view is that there is a strong case for reform of the Tier 1 (Entrepreneur) visa route. In summary, any reform should look for ways to incorporate third party endorsement into the route as a preferred approach, where appropriate partners can be identified.

- “strong case for opening up a low volume, highly selective start-up visa to attract the best entrepreneurial talent”
- partnering with selected accelerator programmes
- Broadening third party endorsement
- approving selected angel investor networks or syndicates to provide third party endorsement
- emphasis on innovative entrepreneurs.
- External/specialist assessment of business plans for the non-endorsed
- broader emphasis on individual skills, qualifications and/or previous business history of the applicant
- introduce interim monitoring requirements
- alternative measures that could indicate business progress
- Flexibility on 180 day absence rule

Questions?



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