



CharlesRussell  
Speechlys

**How do you reduce the scope for refusals when applying for or extending Tier 1 visas (Investor and Entrepreneur): Turkey, Russia, China, US etc?  
How are investments being assessed?**

8 February 2018

Business and Immigration Law Conference

# Introduction

Tier 1 of the Points Based System is a category for the highly skilled, highly talented and investors.

- Tier 1 Investor
- Tier 1 Entrepreneur
- Tier 1 Exceptional Talent
- Tier 1 General –only open for Indefinite Leave to Remain (ILR).  
Closed from 6 April 2018

# Tier 1 Entrepreneur

# Initial Visa

- £200,000 (£50,000) own or third party funds
- Money held in regulated financial institution 90 days if own funds
- Money disposable/transferable to UK
- Entrepreneurial team possible
- Genuine entrepreneur test
- English language level B1
- Maintenance
- Criminal record check

# Extension and ILR

- Invested £200,000 (£50,000)
- Registered as self employed/director within 6 months of entering UK
- Still registered as self employed/director at time of extension/ILR
- Created at least two full time posts for 12 months for settled workers
- Genuine entrepreneur test
- Initial visa 3 years 4 months - extension for 2 years (or 3 years 4 months if submitted as visa application)
- ILR possible after 5 years or accelerated 3 years if business generated £5 million gross income or employed 10 settled workers. Life in UK test

# Problems at Initial Application Stage

- New change -source of funds. Third party funding now requires lawyer to confirm signatures “genuine”
- Format of documents
- Interviews
- Genuineness test
- Location of application
- New change -bank letter for third party funding to confirm amount of money available from third party and not aware of promise by third party to make that money available to someone else
- New change -third party funding from “close” family member excluded

# Genuineness Test – Immigration Rules Initial

- 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;
- Applicant genuinely intends to invest the money in the business or businesses;
- The money is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses;
- If the applicant is relying on one or more previous investments to score points, they have genuinely invested all or part of the investment funds required into one or more genuine businesses in the UK;
- The applicant does not intend to take employment in the United Kingdom other than working for business(es) applicant has established/joined/taken over

# “Available” and “Invested”

- ‘available’ means funds are
  - in own possession
  - in financial accounts of UK business which he is relying on to claim points
  - available from a third party(ies) named in application under the terms of the declaration
- ‘invested’ means invested into UK business(es) applicant is *running as self-employed or as director or member of partnership*
- ‘invested’ or ‘spent’ excludes spending on:
  - applicant’s own remuneration
  - buying business where £ ‘ultimately’ goes to previous owner
  - investing in businesses, other than those which the applicant is running as self-employed or as a director
  - any spending which is not directly for the purpose of establishing or running the applicant’s own business

# Assessment of Genuineness

- The evidence the applicant has submitted;
- The viability and credibility of the source of the money;
- The viability and credibility of the applicant's business plans and market research into their chosen business sector;
- The applicant's previous educational and business experience;
- The applicant's immigration history and previous activity in the UK
- Any other relevant information

# Genuineness Evidence

- Business plan/any market research into starting up
- Evidence of appropriate accreditation/registration/insurance
- Financial information overseen by a bank, eg small business loan
- Hierarchy charts of larger businesses
- Evidence of advertising
- Contracts showing trading

## Genuineness Evidence Cont.

- Tax documentation (eg returns/registration with HMRC)
- Affidavit from any mentors – eg by member of British Business Angels Assn
- Evidence of previous businesses owned by the applicant
- Details of trading premises/permissions if trading in the applicant's home
- Evidence of investment
- Evidence of job creation

# Problems at Extension and ILR

- Genuineness test applies all the way through
- Business does not need to be successful. Needs to be active/trading
- Changes to type of business –evidence carefully
- New change re job creation -transitional arrangements on amalgamation of hours pre 6 April 2014 cases available until 6 April 2019
- Delay in investing money into business
- Content of accounts -direct investment in applicant's own name, or by third party then letter from DIT required

## Problems at Extension and ILR Cont.

- Delay in preparing Director's Loan agreement
- New change—evidence investment by way of DL through identifiable transactions in applicant's business bank statements for investments made after 19 November 2015 not applications made after 19 November. Issue as applicants who applied before 19 November 2015 may not be aware of requirement –retrospective change
- Extension applications as EC - if leave as Tier 1 Entrepreneur in last 12 months, Table 5 (extension points) applies – prevents fresh EC where can't meet extension criteria but conversely enables extension as EC
- New change – absences counted on rolling basis
- NB new change job creation 12 months in most recent period of leave or in previous 12 months if leave granted less than 12 months ago

# Genuineness Test –Immigration Rules Extension/ILR

- The applicant has established, taken over or become a director of one or more genuine businesses in the UK, and has genuinely operated that business or businesses while he had leave as a Tier 1 (Entrepreneur) Migrant; and
- The applicant has genuinely invested the money into one or more genuine businesses in the UK to be spent for the purpose of that business or businesses; and
- The applicant genuinely intends to continue operating one or more businesses in the UK; and for extensions
- The applicant does not intend to take employment in the United Kingdom other than working for business(es) applicant has established/joined/taken over

# Top Tips –Initial Applications

## Genuineness – more is more

- Focus on strengths. If client has other businesses provide evidence
- If client is expert in area get letters in support/certificates showing qualifications
- If client is joining established company get support from other Directors, evidence to establish that business
- Most difficult cases young entrepreneurs inexperienced creating new start up with funding from wealthy family. Focus on research. Who has s/he spoken to get letters in support. Caution on funding from close family member

## Top Tips –Initial Applications Cont.

- Business plans
  - Not a carbon copy
  - Client must be directly involved in drafting
  - Get reputable accountant on board to do financial bit with client
  - Make sure client has read the plan thoroughly
- Prepare client for interview. test them. Do a mock interview
- Interviews –client must be available. Client must be able to hear clearly and understand questions.

# Top Tips-Extensions and ILR

- New business plan for change of business -think of other evidence e.g letters in support
- DL agreement can be drafted later to reflect earlier loan.  
Explanation on delay
- Put money in asap
- New accounts to show delayed investment
- Work early with accountant to get the right evidence on job creation
- Start preparing application early

## Top Tips-Extensions and ILR Cont.

- Super Premium available for extensions (not ILR) worth using for tricky cases (appointment fee can be shared)
- Mark relevant pages and sections e.g highlighting transfer of funds to company account
- Tab pertinent sections in business plan
- Real time information can be tricky
- Have conversation early with client –year before on timing especially if postal application. Manage travel expectations

# Tier 1 Investor

## Initial Visa

- £2 million own funds over which they have control
- Money held in regulated financial institution 90 days or source of funds
- Money disposable/transferable to UK
- Have opened an account with a UK regulated bank for the purposes of investing not less than £2 million in the UK
- Criminal record check

# Extension and ILR

- £2m investment in the UK - UK Government bonds, share capital or loan capital in active and trading UK registered companies
- The investment must have been made:
  - Entry clearance. Within 3 months of the applicant's entry to the UK as a Tier 1 (Investor), or
  - In country. Within 3 months of the date of the grant of Tier 1 (Investor) immigration permission
- £2 million must have been maintained. No capital removal
- ILR
  - 5 years £2m investment
  - 3 years £5 million
  - 2 years £10 million
- Life in the UK test and English language requirement.

# Problems Initial Visa

- Immigration officer must not have reasonable grounds to believe that:
  - the applicant is not in control of and at liberty to freely invest the money;
  - any of the money held by:
    - the applicant; or
    - where the money has been made available to the applicant by another party, that party, has been acquired by means of conduct which is unlawful in the UK, or would constitute unlawful conduct if it occurred in the UK; or where the money has been made available by another party, the character, conduct or associations of that party are such that approval of the application would not be conducive to the public good
- Opening UK bank account

# Problems Extension and ILR

- Delayed investment
  - Reasons for delay must be unforeseeable and outside of the applicant's control. Delays caused by the applicant failing to take timely action will not be accepted. The applicant must have taken reasonable steps to mitigate such delay
- Removal of capital
- £1 million route where property is relied on for balance of funds
- Minor criminal convictions not declared –findings of deception
- Excess absences
- New change- absences calculated on rolling basis
- New change -residence requirements for PBS partners from 11 January 2018

## Problems Qualifying Investments

- Investment excludes
  - Offshore company or trust, or investments that are held in offshore custody
  - **Open-ended investment companies, investment trust companies, investment syndicate companies or pooled investment vehicles**
  - **Companies mainly engaged in property investment, property management or property development (that is any investment or development of property 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 for the purposes of renting it out or resale)**
  - Deposits with a bank, building society or other enterprise whose normal course of business includes the acceptance of deposits,
  - ISAs, premium bonds and saving certificates issued by the NS&I
  - Leveraged investment funds

# Top Tips Initial Visa

- Even if funds have been held 90 days check can evidence source of funds
- Check timing of application and factor in police check
- Client should look for UK bank asap as bank's DD process can take 3 months. Metro bank and private banks like Coutts usually helpful
- Check source of funds as client may need tax advice
- Advise clients at outset about police registration in the UK
- Check ages of children as application must be made before they turn 18
- Advise clients at outset children must remain unmarried and dependant on parents to qualify for extensions and ILR after they turn 18. They need to transfer money via bank account if child over 16 will live separately e.g. at university

# Top Tips –Extensions and ILR Maintaining Investment

Make sure wealth manager is aware of requirements

- 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
- If the applicant has invested more than the required level in qualifying investments, the fees, transaction costs and tax 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 (e.g. if the applicant is satisfying the Tier 1 (Investor) criteria by investing £2m in qualifying investments, but has actually invested £2.1 million, up to £100,000 in fees, transaction costs and tax may be paid for from the investment funds); or
- Separate pot of money for fees and charges

## Top Tips –Extensions and ILR Evidence of Investment

- Applicant must provide a series of investment portfolio reports, certified as correct by a UK regulated financial institution, which must:
  - cover the required period, beginning no later than the end of the 3 month timescale
  - continue to the last reporting date of the most recent reporting period
  - include the price of the investments and show the dates that they were made
  - show the destination of the investments and certify that it was maintained
  - include the name and contact details of the financial institution that has certified the portfolio as correct and confirmation that is regulated by the FCA / PRA
  - confirm the investments were made in the applicant's (and their partner's name)
  - include the date that the portfolio was certified by the financial institution, and
  - state that the institution will confirm the content of the reports to the Home Office

## Top Tips Evidence of Investment Cont.

- For investments made as loan funds to companies, audited accounts or unaudited accounts with an accounts compilation report for the investments made, giving the full details of the applicant's investment
- Accountant must have a valid licence to practise or practising certificate and must be a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Scotland, the Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, or the Association of Authorised Public Accountants, the Chartered Institute of Public Finance and Accountancy, the Institute of Financial Accountants, the Chartered Institute of Management Accountants, or the Association of International Accountants
- NB The whole report can be provided by an accountant if the investor has invested in a private limited company

# Top Tips Extensions and ILR

- With investment in private limited companies get accountant report as well as wealth manager
- Check information on Companies House
- If concerns about pooled investment get counsel's advice
- Check portfolio reports carefully –look for sales and purchases. Gross proceeds of sale must be reinvested. Check companies are UK companies
- If dip in capital need wealth manager to explain. Get letter
- If delay in investment consider statement from client and letter from wealth manager
- Advise clients of absences change. For excessive absences consider grounds for discretion



CharlesRussell  
Speechlys

## Contact

If you have any queries please contact

### Rose Carey

Partner

+44 (0)20 7427 6524

[rose.carey@crsblaw.com](mailto:rose.carey@crsblaw.com)

[charlesrussellspeechlys.com](http://charlesrussellspeechlys.com)

Charles Russell Speechlys LLP is a limited liability partnership registered in England and Wales, registered number OC311850, and is authorised and regulated by the Solicitors Regulation Authority. Charles Russell Speechlys LLP is also licensed by the Qatar Financial Centre Authority in respect of its branch office in Doha. Any reference to a partner in relation to Charles Russell Speechlys LLP is to a member of Charles Russell Speechlys LLP or an employee with equivalent standing and qualifications. A list of members and of non-members who are described as partners, is available for inspection at the registered office, 5 Fleet Place, London, EC4M 7RD.

For information as to how we process personal data please see our privacy policy on our website [www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)