

Immigrant Investor Programme

Guidelines on Enterprise Investment Funds

December 2016

The Immigrant Investor Programme (IIP) and the Start-up Entrepreneur Programme (STEP) were approved by Government in January 2012 and applications for both programmes have been accepted by the Irish Naturalisation and Immigration Service (INIS) since April 2012 and considered by the evaluation committee established under the programme.

The Government has indicated that the Immigrant Investor Programme would be open to accepting enterprise investments that were made through investment funds. However, in order for that to be possible, some guidance is necessary as to how such funds might operate and how an investment that is made through the medium of an investment fund would be considered within the evaluation process set up for the IIP. This document is therefore intended to set out some guidelines for those involved in fund management as well as those considering making an application under the IIP in respect of a fund investment.

Rationale

While there have been some individual investments made under the IIP where one or more investors have sourced a commercial investment in Ireland, a common difficulty is that investors who might wish to come to Ireland under the terms of the programme lack familiarity with the Irish market and with the Irish business environment. As such they may be willing to invest but cannot identify a suitable project. An investment fund provides the link between the investor and the investment and will address the foreign investor's lack of knowledge of Ireland's potential. In addition, the Programme could also benefit from the involvement of investment professionals with a proven track record in investment management and who are regulated under the existing provisions of the Central Bank of Ireland.

Ultimately there are several benefits to investors of being part of a managed fund. A fund, where a large group of investors pool their assets to invest in Irish enterprises, gain the benefits of being a larger investor, allowing them to invest in a wider range of companies, to spread their risk, to have experts advise them on their investment and to have specialist service providers/ administrators manage the investment fund on their behalf.

Orientation

The objective of the IIP is job creation and it is recognised that funds can play a critically important role in delivering on that objective. At its heart, the IIP, in common with similar programmes in a number of other jurisdictions, is a programme that uses the immigration system to incentivise foreign investment in Ireland. It is recognised that for many investors under the IIP the primary driver for the investment is the prospect of rights of residence in Ireland. In Ireland's case the trade off is essentially immigration for jobs.

However, an investment fund and the relationship between the fund and those who participate in it is a purely commercial matter. It is a private investment entered into freely by the parties. It is very important therefore to state clearly that

- (1) the Irish authorities cannot and will not have any role whatever in promoting the commercial interests of any fund or in any way endorsing its suitability as a financial investment**
- (2) No funds are appointed as an agent of the Irish Government and no fund may claim to be acting in any way on behalf of the Irish authorities in the conduct of its business or in its marketing.**
- (3) Neither the Immigration Authorities nor the Evaluation Committee established to consider applications under the IIP have any role in the regulation of investment funds.**
- (4) The Immigrant Investor Programme has no responsibility of any kind for the financial performance or conduct of investment funds or for any losses that may be incurred by an investor**
- (5) The Immigrant Investor Programme does not require an investor to make any financial transfers to the fund in advance of a decision on their application for residence under the IIP.**

At the same time there are various funds in operation in the market and the prospective applicant needs to know whether an investment in a particular fund would be regarded as a suitable basis for the purposes of an application for residence rights under the IIP. Not all fund investments would meet the requirements of the IIP. This is outlined further in the next section.

Funds that meet the requirements of the IIP.

When an individual applies under the IIP for residence in Ireland there are essentially two components to the application, the person and the investment. The personal criteria relate to the good character of the individual, their net worth, the provenance of the funds invested etc. The investment component relates to the nature of their proposed investment, its jobs potential, business plan etc.

Unlike a single investment by an individual in a particular enterprise, a fund is likely to involve multiple investors and a portfolio containing several different investments. However for the purposes of the Immigrant Investor Programme the essential principle is the same for a fund investment as for an individual enterprise investment. It is important that any investments made through a fund would retain the essential character of the original programme, namely an actual investment in Ireland and potential job creation. Therefore, the Evaluation Committee will assess applications under the IIP in respect of an investment in a fund in much the same manner as it will evaluate an individual enterprise investment and in particular at the value added the fund delivers in terms of employment. The scale is clearly different and the business plan (or fund prospectus) will be less precise than in the case of an investment in a single enterprise but otherwise the assessment criteria are the same.

A great deal of consideration has been given to the issue of the extent to which the Department of Justice and Equality can signal that a particular fund meets the investment criteria for the IIP. It has been determined, notwithstanding the caveats set out earlier, that there is no way of doing this that can fully avoid the impression that a particular fund is in some way approved for the purposes of the programme and can attract investors on the basis of such an endorsement.

Therefore, a somewhat different approach is being adopted. It will still achieve the desired objective of informing prospective investors as to the prospects of an investment in the fund satisfying the investment criteria for the IIP.

Funds will not be pre-cleared as an investment under the IIP and there is no process for funds to apply to the Evaluation Committee in isolation from actual applications by investors. Therefore, the route for a fund to be accepted as an investment for the purposes of the IIP is for it to be part of an application by an individual investor. In other words, the applicant's proposed investment is an investment in the fund, details of which are attached to the application. If the investor's application is approved, then it is legitimate for the fund managers to point to this and to make the factual statement that "previous investors in the fund have had their applications under the IIP accepted".

Conditions Applicable to a Fund under the IIP

1. Regulatory regime

All funds must have Collective Investment Scheme (CIS) authorisation from the Central Bank of Ireland. The funds investment managers must be located in Ireland. Therefore, all interested investment managers must have an authorisation under the Markets in Financial Instruments Directive 2004/39/EC (MiFID) from the Central Bank of Ireland.

Note: INIS and the Evaluation Committee for the Immigrant Investor Programme do not have any role whatsoever in the regulatory processes operated by the Central Bank of Ireland. All funds that form part of IIP investor applications are expected to have the appropriate regulatory authorisations at the time of application. Applications made in respect of funds that are without appropriate regulatory authorisation will not be considered. Neither INIS nor the Evaluation Committee will offer any advice on the regulatory process nor will they make any intervention with the Central Bank of Ireland on behalf of investment managers who are in the regulatory process.

2. Investment Fund profile

In addition to the appropriate regulatory authorisations for investment managers, the fund must meet the objectives of the Immigrant Investor Programme. The primary focus of the IIP is to attract investment into Irish businesses which will generate employment and further economic opportunities. An eligible fund should be a private equity or venture capital fund. Funds which invest in stock market quoted investment will not be considered. The target companies for the fund should be Irish Small and Medium Enterprises (SMEs) and other Irish based companies which are not currently quoted on any stock exchange.

Applicant investment managers should provide comprehensive details of:

- a. The target investment pool for the fund and the proposed sources of funding – investment funds are not required to raise funding exclusively through IIP applicants. Applicants should detail the proposed funding sources and their proportion of the total fund. Funds should have a minimum target size of **€20 million**.

- b. Investment Strategy –fund managers should provide comprehensive details of their investment strategy, the commercial sectors they will target, the company profile in which they intend to invest and the typical investment in each company. In order to maintain consistency with the Immigrant Investor Programme the minimum investment that must be allocated to a project for the purposes of an application under the IIP is **€1.0 million**, similar to that under the Enterprise option). The applicant fund manager should also detail how long investment funds will be committed to target investments. For the purposes of the Immigrant Investor Programme applicants are required to commit to an investment project or company for a minimum of three years. It is recognised that funds may receive monies or commitments from participants in advance of making an actual investment. However, when assessing whether an applicant satisfies the 3 year minimum condition, the start date is not that of lodgement of the investment in the fund but rather the date when the investment can be shown to have become active in Ireland (i.e. invested on their behalf by the fund).

- c. Management and investment fees – applicants should provide comprehensive details of the management fees and investment charges that they will operate in relation to the fund. This is to enable the Evaluation Committee to gauge how much of the funding raised under the Immigrant Investor Programme will be directed into the enterprise sector.
- d. Projected return based on strategy and current performance - Applicant fund managers should provide details of their fund valuation methods and the target return to investors. While the Immigrant Investor Programme does not attach any conditions to return on investment, the Evaluation Committee will require details of the target return on investment in order to satisfy themselves that the fund and the investment strategy is at least based on viable and realistic return projections. In effect this is the same approach as applied to individual investments.
- e. The fund should clearly state the employment projections of the investments under the fund when fully subscribed and invested and should also indicate the nature of prospective investments, for instance as between equity participation or finance.
- f. Whether as part of the fund documentation approved by the Central Bank of Ireland or by separate undertaking for the purposes of the IIP, the fund must provide such information as the Evaluation Committee might reasonably require in order to satisfy itself that funds lodged by an investor for the purposes of making an application under the IIP are still in place.

Any changes in the investment strategy of a fund must be notified to the Department. It should also be noted that previous acceptance of an application under the IIP in respect of a fund cannot act as a guarantee in respect of future applications. This is self-evident in the case of a fund which has altered its investment criteria or failed to comply with applicable conditions but could also be influenced by changes in the prevailing business environment over time .

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NB: All approved investment fund operators and potential investors under the Immigrant Investor Programme should note that INIS does not take any responsibility for the performance of approved investment funds. INIS does not conduct any oversight of fund operators and confers approved investment fund status on the basis of the external regulatory regime of the Central Bank of Ireland. Investors commit funds at their own risk and should be aware that the value of the funds is dependent on the performance of their fund manager and the value of their investment may rise or fall. However, fund performance is not a condition of renewal of immigration permission.

3. Submission of Applications

An investment fund manager shall be deemed to be an appropriate representative of the investor in his/her dealings with the IIP in the same manner as a solicitor or accountant acting for that investor. However specific authorisation must be furnished by the client to that effect.

The usual criteria and supporting documentation requirement for applicants to the Immigrant Investor Programme shall apply regarding character, proof of wealth and source of funds. However, where the manager of an approved investment fund is submitting applications on behalf of clients, the following additional criteria also apply.

All applications for permission under the Immigrant Investor Programme involving an association with a managed fund will be assessed by the Evaluation Committee in the normal manner and according to the published criteria. It is preferred if all applications under this option come through the appropriate investment manager or through the legal representative which the investment manager has engaged to process applications.

4. Conditions of Residence Permission for successful applicants

Applicants who are successful will be granted immigration permission in the normal manner. However, some additional conditions shall apply to the renewal of their permission after two years.

It is accepted that the funding which applicants commit to the approved investment fund may not be invested immediately at the point of issuing the initial immigration permission. Some lags may apply while the fund manager conducts due diligence on target investments in Ireland.

However, the committed funding should be **held in an appropriate escrow account** until it is required for investment by the investment manager. In addition, it shall be a condition of renewal of immigration permissions after the initial two year period that the approved investment fund has drawn down the committed funding and invested it into the target companies, enterprises and projects.

All approved investment fund operators will be required to submit an annual report to the Evaluation Committee which details the overall value of the fund, the performance of the fund, the withdrawal and exit of any investors (immigrant investors or otherwise) the projected return on investment and the charges and fees which have been imposed by the fund manager.