

Business Skills Visa - Investor

This article discusses the Investor Category under the Business Skills Migration Program and the application process.

Since the change to the Business Skills Migration – Investor program on 1 March 2003, it is no longer possible for a Business Skills Investor applicant to apply directly for permanent residence. Instead, there is a 2-stage process where the applicant first applies for a provisional visa (subclass 162) and after 4 years may apply for permanent residence visa pursuant to subclass 891. The visa applicant is required to be outside Australia on the granting of the visa.

This 2-stage scheme ensures that the applicant continues to satisfy the provisional requirements at the end of the 4 years whereby the applicant may apply for permanent residence.

The Investor category of the Business Skills Migration program best suits applicants who are able to demonstrate a successful record in an eligible investment activity or qualifying business activity. The applicant must also invest \$1.5 million into a designated investment.

Provisional

At the time of application, the applicant must satisfy these criteria as set out in the Migration Regulations:

- Applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more **qualifying business or eligible investments**;

The requirement of the 3 years experience is not narrowed down to consecutive years or even whole years. It may be anytime within the applicant's history.

Qualifying Business

Under the “qualifying business” criteria, the applicant needs to demonstrate that the applicant exercised responsibility in terms of decision-making authority, responsibility for employees, expenditure etc.

Eligible Investments

An eligible investment is defined by the Procedures Advice Manual to be asset which is “owned by the applicant for the purposes of generating a return by way of income or through capital appreciation”. Any loans taken to purchase this investment will need to be deducted from the total value. If the applicant is applying under the eligible investments scheme, the applicant must demonstrate that they exercised responsibility in making key decisions concerning the evaluation, selection, purchase and sale.

Some Points to Consider:

- Loans to the business listed on the balance sheet or notes to the accounts may evidence the value and ownership of the business. If this is not listed, loan documents may be provided.
- Cash held by banks of financial institutions that earn little interest should not be included. Nor are superannuation interests included as these are not managed directly by the applicant. Although superannuation interests are not included as investment, it may be included as personal assets.
- Stocks and bonds held by the applicant are also included and may be evidence by share scripts, bond certificates or other documentation. Stocks held in managed funds are acceptable provided that the applicant is able to demonstrate that the investment was not made in reliance on the broker or financial adviser but on their own informed decisions.
- Real Estate can be evidenced in title deeds and value by valuations prepared by registered valuers. The applicant's residence is usually not included unless the applicant can show that the property is used for investment purposes such as leasing out to a third party (including relatives). Although the personal residence is not included as investment, it may be included as personal assets.

The Requirements:

- Applicant has maintained direct involvement in managing a qualifying business in which the applicant and/or spouse has an ownership interest of at least **10%** of total value at least 1 of 5 fiscal years immediately before the application or maintained direct involvement in managing eligible investments of the applicant and/or spouse where the total net value was at least of **A\$1,500,000**;

DIMA requires a Statement of Management Activity detailing active management. Also, by the time of the decision, DIMA requires confirmation that the \$1.5 million has been lodged with the appropriate designated investment and the funds was in fact legally owned unencumbered by the applicant and/or spouse.

- Throughout the 2 fiscal years immediately before the application, the net value of the business and personal assets of the applicant and/or the applicant's spouse was at least **A\$2,250,000**.

Under this requirement, Form 1139 needs to be completed whereby a Statement of Asset and Liabilities Position will be required. This form provides information on the 3 consecutive snapshots of the applicant's financial position throughout the 2 years prior to the application relating to the value and ownership of their assets.

Net value of business assets include those as stated above.

Personal assets include such items as residential home, cars, jewellery or superannuation interests.

Liabilities such as mortgages, bank loans or outstanding tax assessments must be deducted to calculate the net value.

Other Requirements:

- Applicant has demonstrated a high level of management skill in relation to an eligible investment or qualifying business activity;
- The applicant is less than 45 years old;
- Applicant has vocational English;
- Applicant has genuine commitment after entry to continue business or investment activity in Australia after the designated investment made by the applicant has matured.

Although a portion of net assets do not need to be transferred to Australia, funds deposited inside the designated investment is locked in for 4 years. The designated investment is specified by the Gazette Notice with repayment of principal guaranteed on maturity and

which do not expose the Commonwealth Government to financial liability. The locked in 4 years might include an additional 30 days to counteract delays that might occur.

To assess the applicant's intentions after the 4 years, the Department of Immigration will generally look at broad details of proposed business or investment activities and assess whether they have an understanding of the Australian business and investment environment. They will be asked to indicate their long-term plans in relation to business or investments but are not required to present definitive plans.

The applicant or spouse must not have a history of illegal activities or engaged in activities not generally accepted in Australia.

Permanent

Applicants applying for this visa should be continuing to satisfy the primary criteria in subclass 162. The additional requirements that the applicant must satisfy are as follows:

- has been in Australia for a total of at least 2 years in the 4 years immediately preceding the application;
- the designated investment made has been continuously held in the name of the applicant and/or spouse for the 4 years;
- have a genuine and realistic commitment to maintain the business or investment activity in Australia; and
- neither the applicant or spouse has any history of business or investment activities not generally acceptable in Australia.

Comasters is able to prepare a comprehensive application to the Immigration Department on behalf of clients.

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Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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