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INTRODUCTION

On 29 March 2019, a 294-page long statement of changes was implemented to reform the Tier 1 visa scheme rules. The statement of changes has amended various rules applicable to the Tier 1 Investor visa scheme, replaced the Tier 1 Entrepreneur visa scheme with a new Innovator scheme and introduced a new Start-up visa scheme. The UK Government has commented that these changes are reflective of their commitment to attracting leading entrepreneurial talent but also to deter applicants intending to misappropriate the Tier 1 visa.

INVESTOR VISA

The Tier 1 Investor visa rules have been amended to enhance the focus of the source of funds and the length of time funds have been held by the applicant. Under the previous rules, Tier 1 visa applicants who must have £2 million of funds to invest (individually or with their partner or spouse) and must have held funds for 90 days prior to their application. This holding period has now been extended to two years and the source of these funds must be demonstrated. Applicants must also show evidence for funds where they have not been held by the applicant for that two-year period. Funds not having been held for 2 years should not necessarily preclude an applicant from applying for an Investor visa. The statement of changes states that if the funds have been held for less than 2 years, then the applicant may still be able to qualify for a UK investor visa, if the source of funds is:

- a gift received by the applicant (and/or their husband, wife, civil partner, or unmarried or same-sex partner) in the 3 months prior to the date of application; or
- the proceeds of sale of assets such as business or property within the 3 three months before the date of application; or
- money held in the applicant’s business (and/or the business of the husband, wife, civil partner, or unmarried or same-sex partner); or
- inheritance under a will received within the 3 months before making the application; or
- the proceeds of a divorce settlement received within the 3 months immediately before the date of application; or
- a financial award or winnings; or
- any other source provided that the source can be documented and independently corroborated.

The requirement to open a UK, FCA regulated, bank account up to 3 months prior to making an investor visa application has also being tightened. The statement of changes makes it explicitly clear that banks will be required to carry out all necessary due diligence checks and enquiries and must confirm, in writing, that these have been carried out before a visa application is progressed.

Additionally, Investor visa applicants can no longer purchase UK national debt to be eligible for a Tier 1 visa. The purchase of UK government bonds is now excluded as a qualifying investment. The changes have also included restrictions on routing funds via intermediaries, including a requirement that any intermediaries involved in routing investment funds must be regulated by the Financial Conduct Authority.

The definition of active and trading companies has narrowed. Previously, it was enough to show the company had a head office or registered office in the UK along with a UK bank account. As of 29 March 2019, the statement of changes defines “active and trading” companies as:

- registered with UK Companies House;
- registered with HMRC for corporation tax and PAYE;
- having accounts and a business bank account in the UK, with both showing regular trading of goods and services;
- having at least two UK-based staff members who are not company directors.

The Investor visa allows for settlement (sometimes referred to as “indefinite leave to remain”) depending on the amount of money invested:

- apply to settle after 2 years if the applicant invested £10 million;
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- apply to settle after 3 years if the applicant invested £5 million;
 - apply to settle after 5 years if the applicant invested £2 million;
 - or you can extend the visa for another two years after the initial period.

Investor Visa holders will be able to bring family members (“dependants”) to the UK.

Over the course of their stay in the UK, the visa holders will need to submit evidence of their investment activity to the Home Office.

UK START-UP VISA

In June 2018, it was announced that a new Start-up visa would be launched for young entrepreneurs starting a new business for the first time in the UK. At the time of the announcement, it was unclear whether the new Start-up visa would replace the current Tier 1 Graduate Entrepreneur visa.

The new statement of changes has officially confirmed that the Graduate Entrepreneur programme will be closed to new applicants from 6 July 2019. People were able to continue to apply for the Graduate Entrepreneur visa up until 5 July 2019.

The new Start-up visa category has been described as an expanded version of the Graduate Entrepreneur route. The visa will be available to anyone starting a business in the UK for the first time and applicants do not have to be graduates and will not require to have initial funding. Start-up visa holders will be able to bring family members into the UK.

To qualify, applicants need to meet the general requirements applicable to most other types of visas:

- applicant must be over 18 and must have passed an English language test at upper intermediate (B2) level or have an academic qualification that was taught in English and be recognised as being equivalent to a UK bachelor's, master's degree or a PHD;
- a maintenance requirement: showing the applicant has held £945 in savings over a 90-day period before applying;
- an applicant is endorsed by an organisation that will assess the applicant's business idea.

The criteria to qualify for the Start-up visa requires an applicant to be endorsed by an organisation that will assess their business idea. An endorsement is required from a trusted UK organisation, for example, business accelerators, seed competitions, government agencies and higher education providers. A list of endorsing bodies for the Start-up visa may be found at [here](#).

There are three specific endorsement criteria for the UK Start-up visa, outlined in the statement of changes:

- Innovation – proof of a genuine, original business plan that meets new or existing market needs and/or creates a competitive advantage;
- Viability – applicants must have, or be actively acquiring, the necessary skills, knowledge and experience, and market awareness, to successfully run the business; and
- Scalability – evidence of structured planning and the potential for job creation and growth into national and international markets.

Approved applicants will be granted a visa valid for two years (doubled from one under the Graduate Entrepreneur route) and will be able to switch to the Innovator category after the two-year period to continue growing their business in the UK.

The Start-up visa does not lead to direct settlement in the UK. However, Start-up visa holders can switch to the Innovator visa after two years, which can lead to UK settlement.

Meanwhile, provisional plans are in place for Graduate Entrepreneur visa holders to switch to the new system.

A decision on a Start-up visa application should be made within 3 weeks.

UK INNOVATOR VISA

From 29 March, 2019, the UK Innovator visa has replaced the Tier 1 Entrepreneur visa. The replacement Innovator visa targets more experienced business people. The key criteria for application to this new visa is: a satisfactory English Language requirement; together with £50,000 investment into the business from a legitimate source; and endorsement from a sponsor. Applicants will be exempt from the funding requirement if they are switching from a Start-up visa and they have hit several milestones outlined in their initial business plan.

The requirement that the applicant must invest £50,000 into their business from a legitimate source, has been reduced from the previous £200,000 requirement that was needed for the Entrepreneur visa. Although, you can form a team of Innovator visa applicants that will form a business together, this will not further reduce the investment requirement, and each applicant will need to show they have £50,000 of funds.

Similarly, to the Start-up visa, the Innovator visa requires that the applicant secures endorsement from a “relevant” business sponsor prior to making their application to the Home Office, which it is hoped, will then offer a more subjective evaluation of the business idea being proposed.

The new statement of changes outline three specific endorsement criteria to be eligible for a UK Innovator visa, including:

- Innovation – proof of a genuine, original business plan that meets new or existing market needs and/or creates a competitive advantage;
- Viability – applicants must be able to demonstrate the necessary skills, knowledge and experience, plus market awareness, to successfully run the business; and
- Scalability – evidence of structured planning and the potential for job creation and growth into national and international markets.

A list of endorsing bodies for the Innovator visa may be found at [here](#).

Although the criteria are similar to the Start-up visa, the applicants to the Innovator visa must show they already have the necessary skills and experience to run the business rather than be in the process of acquiring those.

Additionally, the applicant must also show their commitment to the business venture – visa holders will only be permitted to work in the UK on the relevant business.

A decision on an Innovator visa application should be made within 3 weeks. If the applicant meets the requirements the visa is valid for 3 years subject to employment and other conditions. Investor visa holders will be able to bring family members into the UK.

The Innovator visa can lead to indefinite leave to remain in the UK with applications being considered after 3 years of continuous residence in the UK provided that a minimum of two of the following conditions are met:

- a minimum of £50,000 has been spent and invested in the business;
- the business has created at least 10 full time jobs for resident workers;
- the business has created the equivalent of at least 5 full time jobs for resident workers paying at least £25,00 per annum;
- the business has generated a gross revenue of at least £1 million;
- the number of the business’ customers has at least doubled in the 3 years since the visa was granted and is higher than the mean number of customers for other UK businesses offering comparable main products or services;
- the business has engaged in significant research and development activity and has applied for intellectual property protection in the UK;
- the business is generating at least £500,000 in revenue with at least £100,000 from exporting overseas.

COMMENT

According to the UK Government, these changes were aimed to improve the UK visa regime for business people, with faster applications and a more favourable regime for entrepreneurs and investors. It is hoped the expanded scope of the Start up visa will encourage more foreign entrepreneurs to come to the UK and contribute to the British economy. The endorsing bodies comprise mainly of universities and start-up tech incubators demonstrating that the focus of UK Government is in attracting and growing the tech sector in the UK. At present, the list is limited, restricting applicants to the various industry parameters set up by the endorsing bodies. The addition of endorsing bodies and business experts involvement in the application process for a Tier 1 visa, rather than the Home Office assessing applicant’s business ideas is meant to increase the quality of applicants.

Although the UK visas have been subject to much change recently, more change to UK immigration policy is likely in the foreseeable future.

If you require any assistance in applying for a visa please do not hesitate to contact us.

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