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Immigration

Two New Residency Schemes for Foreign Investors: Immigrant Investor Programme and Start-Up Entrepreneur Programme

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The Minister for Justice, Equality and Defence, Mr Alan Shatter, TD, ("the Minister") announced on 24th January 2012 that the Government had approved two new residency schemes: the Immigrant Investor Programme and the Start-Up Entrepreneur Programme which are due to be formally launched in March 2012.

The motivation behind these two new immigration initiatives is to assist economic recovery in Ireland and to encourage and facilitate non-EEA nationals, who are entrepreneurs and investors, to establish themselves and invest in Ireland. Such individuals will be granted permission to reside in Ireland in return for saving or creating Irish jobs.

These two initiatives follow on from the recent introduction of the Visa Waiver Programme for short stay visitors which was introduced in July 2011 by the Department of Justice and Equality ("the Department "). This programme is aimed at boosting tourism in Ireland during the period in which the United Kingdom is hosting the Olympics by making it easier for visa-requiring nationals to visit Ireland during this time.

THE IMMIGRANT INVESTOR PROGRAMME

The Immigrant Investor Programme is intended to attract successful business people to invest and relocate to Ireland. It is anticipated that approved participants in this programme and their immediate family members will be allowed to reside in Ireland for a defined period, estimated to be an initial period of 2 years and up to a period of five years.

The Department anticipate that this programme will attract different types of investment and the Minister set out a number of examples such as specially created low interest government bond, capital investment in an Irish business and endowments in the cultural, sporting, educational or health areas. The level and duration of financial commitment required from each investor will depend on the nature of the investment in question. The general range of financial commitments will vary from €400,000 in respect of endowment related investments to approximately €2 million in relation to low interest bearing Government bonds. The Department have advised that in relation to investment in business entities where jobs are being created or saved, it is anticipated that an investment of approximately €1 million will be required. However, it is anticipated that the Department will be guided by and will rely upon the advice and expertise of IDA Ireland and Enterprise Ireland in assessing individual proposals. Special interest will be afforded to those investors purchasing property in the State which has been enforced by the National Asset Management Agency. This may have "competition law" repercussions.

THE START-UP ENTREPRENEUR PROGRAMME

The Start-up Entrepreneur Programme is aimed at capitalising on the entrepreneurial potential of migrants to Ireland and has been developed in consultation with Enterprise Ireland.

While a Business Permission Scheme is currently being operated by the Department of Justice and Equality, the conditions which applicants for this scheme must meet are considered to be too onerous and as a result Ireland is not capitalising on this potential source of economic activity. It is hoped that the Start-up Entrepreneur Programme will be more flexible in its approach to the innovation sector of the economy, in recognition of the need to foster start up enterprises as a priority in this sector.

The Start-up Entrepreneur Programme will enable migrants to reside in Ireland for the purpose of developing their business provided they have a good business idea in the innovation economy and have secured funding of €75,000. It should be noted that the requirement for funding of €75,000 is in stark contrast to the minimum funding requirement under the existing Business Permission Scheme of €300,000. Further, the new scheme does not contain a stipulation in relation to minimum initial job creation targets which businesses must meet and therefore the new programme should afford these businesses a greater opportunity to successfully establish themselves in the Irish economy.

Under the existing programme, any successful applicant to the Business Permission Scheme must in addition to the funding requirements, also create at least two full time jobs for EEA nationals in a new project or must maintain employment levels in existing business. The Department has admitted that this scheme is largely inadequate in relation to attracting innovation start-ups and/or attracting international investors to Ireland.

EVALUATION COMMITTEE

It is proposed that applications under both the Immigrant Investor Programme and the Start Up Entrepreneur Programme will be considered by a newly established committee called an Evaluation Committee which will be comprised of representatives of a number of government bodies including the IDA Ireland, Enterprise Ireland, the Department of Finance, the Department of Jobs, Enterprise and Innovation, the Department of Foreign Affairs and Trade, the Department of Health.

Applicants to both programmes must be of good character and be able to financially support themselves while residing in Ireland. Further, applicants will be required to attest to their bona fides on affidavit, which must be sworn in Ireland. Where applicants under these programmes provide false or misleading or incomplete information, they may be removed from the State and in addition their residency permissions may be revoked. One potential area of concern which may arise once these programmes are implemented in Ireland is the origin of any monies invested and it will be interesting to see how the government may address this in the future.

IRISH CITIZENSHIP

It is noteworthy that the two new programmes do not offer any special access to Irish citizenship and that any successful applicants will be subject to the same rules and requirements as other migrants in Ireland. Under the current rules, applicants must have a period of 5 years of "reckonable residence" in order to apply for Irish citizenship by naturalisation and therefore it is possible that successful applicants to these two new programmes may be eligible, in due course, to apply for Irish citizenship.

The fact that successful applicants to these programmes will be subject to the same rules and requirements in relation to citizenship applications as other migrants contrasts with the investment based naturalisation scheme which was introduced in April 1989. The investment based naturalisation scheme ran from April 1989 to 20th April 1998, enabling successful applicants to obtain a Certificate of Naturalisation which evidenced their Irish citizenship. While there was no minimum figure in relation to the level of investment prescribed, it is understood that approximately £500,000 to £1,000,000 appears to have been the average level of investment put forward by applicants under this scheme. In addition, successful applicants had to acquire a residence in Ireland and had to have spent a minimum of 60 days in Ireland during the previous two years.

Approximately 107 investors obtained Certificates of Naturalisation under this scheme from the date of its inception in 1989 to the date it was abolished, 20th April 1998. It is understood that in addition to the 107 investors who were naturalised, 71 spouses and minor children of investors were also naturalised.

INVESTMENT SCHEMES IN OTHER JURISDICTIONS

A number of other countries already offer investment schemes as a means to gain permanent residency status and ultimately citizenship.

It is interesting to note the different parameters used to judge applications to investment schemes in other countries. For example some countries require a minimum level of investment and use weighted points systems to measure applicants' suitability in relation to business experience, education and language skills. Applicants must provide evidence that their monies were the result of their own labour and not gifts or the result of divorce settlements. Most include a "legal source" test of proposed investment monies. Where an investment fails within the first two years of operation, an investor may lose his or her permanent residence status. Some countries oblige its applicants to provide evidence that their net worth is at least 50% more than the level of their proposed investment and prove that they have a successful business or investment record during the previous three years. Some countries also place a cap on the number of successful applications permitted per year. It is not apparent from the Minister's announcement if Ireland intends to limit the number of applications it accepts, nor did the Minister give any indication as to the anticipated level of uptake. The success of the schemes will depend on the parameters set for evaluating successful applications, the quality of the applicant and the judgement of those tasked with the evaluation exercise.

FORMAL LAUNCH MARCH 2012

The Minister advised that new legislation will not be required in advance of implementing these programmes. It is hoped that the two new immigration programmes will be formally launched during March 2012, at which time the details of the operation of the schemes will be released.

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