



BRIEFING

Active Investor Plus visa – final decisions to support implementation

Date:	25 August 2022	Priority:	Medium
Security classification:	In Confidence	Tracking number:	2223-0653

Action sought		
	Action sought	Deadline
Hon Stuart Nash Minister for Economic and Regional Development	Agree to the eligibility criteria that will determine the list of acceptable investments under the Active Investor Visa Indicate your preference for real estate and property related investments under all investment categories Indicate your preferred option for when the four-year qualifying investment period commences	31 August 2022
Hon Michael Wood Minister of Immigration		
Hon Dr Ayesha Verrall Minister of Research, Science and Innovation		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1 st contact
Landon McMillan	Manager, Investment Policy	Privacy of natural persons	✓
Kirsty Hutchison	Manager, Immigration (Border and Funding) Policy		
Dr Jess Robertson	Manager, Innovation Policy		

The following departments/agencies have been consulted
New Zealand Trade and Enterprise, MBIE (Immigration Policy, Immigration New Zealand)

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Active Investor Plus visa – final decisions to support implementation

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Purpose

To seek agreement to:

- the eligibility criteria that will determine the list of acceptable investments under the Active Investor Plus visa (Minister for Economic and Regional Development, Minister of Immigration, and Minister for Research, Science and Innovation), and
- operational policy decisions required to finalise immigration instructions (Minister for Economic and Regional Development and Minister of Immigration).

Executive summary

On 20 July the Minister for Economic and Regional Development announced the new Active Investor Plus visa policy and the closure of the current Investor visa programmes. The Active Investor Plus visa will go live on 19 September.

Detailed eligibility criteria will determine if investments meet the threshold to qualify

Detailed eligibility criteria have been formulated...

Cabinet has agreed to high-level criteria for the types of funds or programmes that should qualify as acceptable investments for the purposes of the Active Investor Visa. Cabinet also agreed that New Zealand Trade and Enterprise (NZTE) would have a stewardship role to determine what is an acceptable investment and that final decisions on the eligibility criteria would be taken by the Ministers for Economic and Regional Development, Immigration and Research, Science and Innovation [CAB-22-MIN-0162.01 refers].

NZTE has, in consultation with MBIE and selected expert stakeholders, developed detailed eligibility criteria to determine which funds or programmes qualify to be on the list of acceptable investments. The criteria (attached at Annex One) are intended to provide clear, accessible, and workable guidance for determining which funds or programmes constitute an acceptable investment. The criteria have been used to generate an initial list of qualifying investments when the new visa goes live.

NZTE also proposes to convene an advisory panel to assist it to determine the eligibility of managed funds as acceptable investments and / or make them aware of market developments. NZTE will update the list of eligible private funds at regular intervals to support depth in the range of acceptable investments whilst managing the administrative costs of maintaining the acceptable list of investments.

The criteria are intended to evolve as officials learn more about how the market and investors are responding to the new visa. For this reason, the initial criteria are intentionally tight, but can be broadened. Changes to the detailed eligibility criteria will require Ministers' agreement.

.. but clarity is sought regarding investments in real estate and property

Previous advice did not explicitly seek agreement on whether real estate and property related investments should be eligible to be qualifying investments. Officials recommend that only those real estate and property investments of companies promoted by NZTE are eligible and where the

property assets are important to the business model, but not the primary purpose. Similarly, we recommend that where private funds have a small property holding (for example 25 per cent or less) they may be eligible.

Other decisions required to finalise immigration instructions

Clarifying when the four-year investment period commences

Cabinet has also authorised the Minister for Economic and Regional Development and Immigration to finalise any remaining details for the Active Investor Plus visa [CAB-22-MIN-0162.01 refers]. We seek joint Ministers' agreement to clarify when the four-year investment period begins.

In May 2022, Cabinet agreed to provide investors with flexibility to progressively invest the required minimum investment amount (\$15 million or weighted equivalent) over a four-year period. As a condition of the visa, Ministers agreed that investors must have invested 50 per cent of their capital into qualifying investments at the end of 18 months and 100 per cent at the end of 36 months. To manage the risk that investors wait until just before the end of 36 months to invest the full amount, the Ministers of Economic and Regional Development and Immigration (joint Ministers) agreed that qualifying investments must be held for a fourth year in order for conditions to be lifted on the resident visa.

The previous advice did not explicitly seek agreement on when the investment period commences. There are two options:

- Option A – the date when the investor transfers their funds into holding investments in New Zealand (i.e., cash, bonds, or term deposits), or
- Option B – the date when the investor first makes an acceptable investment into a qualifying asset in New Zealand.

Option A means that a residence visa can be granted provided investors have transferred nominated funds into holding investments in New Zealand. This option also provides the investor with more time to undertake due diligence and the greatest flexibility in terms of when they commence their active investments. However, this option enables investors to defer making investments into qualifying assets.

Option B provides that the investment period commences on the date an investor makes a qualifying investment, at which time they also become eligible for a resident visa. Investors would then have 18 months to meet the 50 per cent investment requirement and 36 months to invest the full amount. The advantage of this option is that it nudges investors to explore the suite of acceptable investments and commence their active investment period sooner. Officials propose that, should Ministers prefer this option, the following minimum first active investment be required:

- \$1 million for listed equities
- \$500,000 for private funds, and
- \$100,000 for direct investments

The immigration instructions have been drafted in accordance with option B as officials consider that requiring investors to commence active investment in order to be granted a residence visa best meets the intent of the new policy. However, instructions can be amended should Ministers prefer option A.

Regardless of which option is chosen, all investors are granted a temporary work visa (following approval in principle), which can be up to 12 months, to enable investors to come to New Zealand, familiarize themselves with the investment opportunities and conduct due diligence.

Additional design details for the Active Investor Plus visa

Immigration instructions have been drafted to give effect to the new policy, support Immigration New Zealand to carry out its regulatory functions, and improve flexibility and workability where possible.

For example, instructions that support Immigration New Zealand (INZ) to effectively carry out its core regulatory functions include requirements around health and character and English language.

In addition, a number of improvements to previous Investor category settings have been identified through initial rounds of consultation, such as more generous travel conditions and enabling 'top-ups' to nominated funds where those funds have lost value.

INZ proposes to consult on draft immigration instructions in the week commencing 29 August with the group of stakeholders who were involved in NZTE's working group on acceptable investments to ensure that the instructions are technically complete and workable.

In order to meet the timeframes for drafting immigration instructions and to publish the eligibility criteria and list of qualifying investments, we are seeking Ministers' decisions on this paper by 31 August.

Recommended actions

Criteria for acceptable investments under the Active Investor Plus visa

The Ministry of Business, Innovation and Employment (MBIE) recommends that:

the Minister for Regional and Economic Development, Minister of Immigration and Minister for Research, Science and Innovation

- a **Note** that Cabinet has previously signed off on the following principles for assessing whether funds or programmes should be acceptable investments:
- i. investments are into New Zealand entities that clearly contribute to the Government's economic strategy (by being high growth potential firms or contributing to positive social and economic impacts)
 - ii. proper verification is conducted to ensure that the business is legitimate (note, this is not a test of its financial health and growth potential, which is for the investor to ascertain), and
 - iii. investments do not prejudice New Zealand's reputation as a responsible member of the world community

Noted

- b **Note** that NZTE has, in consultation with MBIE and selected expert stakeholders, developed detailed eligibility criteria to give effect to these principles and determine which funds or programmes qualify to be on the list of acceptable investments

Noted

- c **Agree** to the detailed eligibility criteria set out in Annex One

Agree / Disagree / Discuss

Eligibility of real estate as an acceptable investment

- d **Note** that previous advice did not explicitly seek agreement on whether real estate and property related investments should be included or excluded in acceptable investments

Noted

- e **Indicate** your preference for real estate and property related investments under all investment categories

EITHER

- i. exclude all forms of real estate and property investments including direct investments into residential and commercial developments or funds that hold a majority of assets in property development

Agree / Disagree

OR (recommended by officials)

- ii. allow only those real estate and property investments if promoted for investment by NZTE Investment or where funds have been determined by NZTE to be acceptable

Agree / Disagree

- f **Note** that all property for personal use (e.g. residential) is excluded from qualifying as an acceptable investment

Noted

- g **Note** that your agreement will be sought on any future changes to the detailed criteria for acceptable investments

Noted

Design details for the Active Investor Plus visa

MBIE recommends that the Minister for Regional and Economic Development, and the Minister of Immigration:

When the investment period begins

- h **Note** that under the new visa, investors will have flexibility to make active investments over a three-year period, with 50 per cent invested into qualifying assets by 18 months, 100 percent invested by 36 months, and the full investment held for the fourth year

Noted

- i **Note** that previous advice to Ministers on the design parameters did not explicitly seek agreement on when the investment period begins

Noted

- j **Indicate** your preference for when the investment period begins:

EITHER

- i. the date when the investor transfers their funds into holding investments in New Zealand (i.e., cash, bonds, or term deposits)

Agree / Disagree

OR (recommended by officials)

- ii. the date when the investor first makes an acceptable investment into a qualifying asset in New Zealand

Agree / Disagree

- k **note** that if you agree to recommendation **j(ii)** above we recommend that the following minimum investments must be met for the investment period to start:

- i. \$1 million for listed equities
ii. \$500,000 for private funds, and
iii. \$100,000 for direct investments

Noted

Minor and technical changes to immigration instructions

- I **Note** that Immigration instructions have been drafted to give effect to the new policy, support Immigration New Zealand to carry out its regulatory functions, or improve flexibility and workability where possible, including:
- i. carrying over standard instructions relating to 'fit and proper' persons, health and character, and English language requirements
 - ii. adding greater flexibility to instructions based on learnings from implementing previous Investor visa categories, such as longer travel conditions and the ability to 'top-up' nominated funds

Noted

Privacy of natural persons

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25 / 08 / 2022

Privacy of natural persons

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25 / 08 / 2022

Hon Stuart Nash
Minister for Economic and Regional Development

..... / /

Hon Michael Wood
Minister of Immigration

..... / /

Hon Dr Ayesha Verrall
Minister of Research, Science and Innovation

..... / /

Background

1. In August 2021, Cabinet agreed to create the new Active Investor Plus visa and close existing Investor 1 and 2 visa categories [DEV-21-MIN-0162]. In May 2022, Cabinet agreed to enhancements to the new Active Investor Plus visa category to better attract skilled and experienced high-value investor migrants who would make more active and upfront investments in New Zealand [DEV-22-MIN-009 confirmed by CAB-22-MIN-0162]. The new visa replaces the previous Investor 1 and 2 categories and will open on 19 September [briefing 2223-0600 refers].
2. There are a small number of outstanding decisions ahead of implementation of the new visa, which Cabinet has delegated authority to joint ministers on [CAB-22-MIN-0162.01 refers]. This briefing seeks Ministers' agreement to:
 - the detailed eligibility criteria for acceptable investments under the new visa (decisions required from the Ministers for Economic and Regional Development, Immigration, and Research, Science and Enterprise), and
 - technical design decisions for the new visa (decisions required from the Ministers for Economic and Regional Development, and Immigration).

Detailed criteria for acceptable investments

3. Cabinet has previously agreed to the following investment categories and weighting system:

Investment category	Weighting	Broad Criteria
<i>Direct investments</i>		
Direct investments	3x	Acceptable direct investment, e.g. into a New Zealand business which: <ul style="list-style-type: none">• has also received capital from an approved fund, or• is on NZTE Live Deals, or• is listed as an NZTE investment customer with capital raise as an objective.
<i>Indirect investments</i>		
Private Fund	2x	Acceptable funds, e.g those funds which invest in, or those funds otherwise approved by NZTE
Listed equities (i.e. NZX) (max 50%)	1x	NZ equity listed on an NZ regulated market (e.g. NZX)
Philanthropy (max 50%)	1x	Acceptable charity

4. Cabinet also agreed to the following principles for assessing whether funds or programmes should be acceptable investments:
 - investments are into New Zealand entities that clearly contribute to the Government's economic strategy (by being high growth potential firms or contributing to positive social and economic impacts)
 - proper verification is conducted to ensure that the business is legitimate (note, this is not a test of its financial health and growth potential, which is for the investor to ascertain), and

- investments do not prejudice New Zealand's reputation as a responsible member of the world community [CAB-22-MIN-0162.01 refers].
2. Cabinet authorised the Ministers for Economic and Regional Development, Immigration, and Research, Science and Innovation to make any changes to determine what qualifies as an acceptable investment under the new visa, consistent with the principles above [CAB-22-MIN-0162.01 refers].
 3. NZTE, as the steward of determining what an acceptable investment is, has developed detailed eligibility criteria to determine which funds or programmes qualify to be on the list of acceptable investments. The detailed criteria discussed below and attached at Annex One are intended to provide clear, accessible, and workable guidance for determining which funds or programmes constitute an acceptable investment.

Detailed criteria for determining acceptable investments

Direct Investments

4. Direct investments occur when investors directly buy equity or an equity-convertible stake in privately-held New Zealand resident entities (investee entities).
5. Qualifying direct investments are those made into investee entities that meet any of the following criteria:
 - has previously or will receive capital from an eligible fund managed by Crown Entities, or
 - is listed on the NZTE Live Deals platform¹, or
 - is being promoted for investment by NZTE Investment, or
 - has been determined by NZTE to be an acceptable direct investment.
5. As an alternative to buying stakes in entities, investors can undertake greenfield projects and/or establish “startup” entities. In this context, NZTE may draw on the following considerations to determine if the investment qualifies an acceptable direct investment, such as:
 - it aligns with NZTE Investment sectors of focus, or
 - approval having been provided by the Overseas Investment Office where applicable, or
 - a business case² is developed and evidence of market validation, feasibility, or other reasonable diligence having been completed.
6. The technical details and definitions for direct investments can be found in Annex One.

Private Funds

7. Private funds mean that investors invest in a managed fund. The managed fund identifies, selects, and makes investments on the investor's behalf. Private funds can be managed by,

¹ 46 companies are listed on the NZTE Live Deals platform, as of 24 August 2022.

² NZTE's proper verification is conducted to ensure that the business is legitimate (note: not a test of its financial health and growth potential, which is for the investor to ascertain)

for example, investment scheme managers³ or providers of discretionary investment management services.⁴

8. Qualifying investments in private funds are those made into managed funds which are determined to be acceptable private funds by NZTE. NZTE may convene an advisory panel made up of government and industry specialists to assist in determining whether a fund qualifies as an acceptable investment, based on considerations such as those criteria outlined for direct investments, listed equities, and philanthropy.
9. The technical details and definitions for private funds can be found in Annex One.

Listed Equities

10. Listed equities mean that entities' equity and its equity-linked products are traded on a New Zealand-regulated⁵ marketplace, operated by services providers or operators who are licensed by the Minister of Commerce and Consumer Affairs. Furthermore, and in this context, listed equities can mean that equity and its equity-linked products are available to retail investors.
11. Qualifying listed equities are those limited to crowdfunding providers⁶ and market operators⁷, based in New Zealand. For example, these are:

Crowdfunding providers	Market Operators
<ul style="list-style-type: none"> • The Property Crowd Limited 	<ul style="list-style-type: none"> • NZX Limited
<ul style="list-style-type: none"> • Collinson Crowdfunding Limited 	<ul style="list-style-type: none"> • Catalist Markets Limited
<ul style="list-style-type: none"> • Equitise Pty Ltd 	
<ul style="list-style-type: none"> • Crowdsphere Limited 	
<ul style="list-style-type: none"> • Pledgeme Limited 	
<ul style="list-style-type: none"> • The Snowball Effect Limited 	

(Source: FMA, as of 24 August 2022)

12. Crowdfunding Providers and Market Operators facilitate investment opportunities for both retail and wholesale investors. Investments undertaken by investors, as wholesale investors, will qualify as direct investment. In contrast, investments undertaken by investors, as retail investor, will qualify as listed equities.

³ In general terms, a managed investment scheme (MIS) pools money from a number of investors who rely on the investment expertise of the MIS manager. The definition in the FMC Act (section 9) is broad and includes a wide range of collective investment schemes. These schemes can be structured in different ways and may invest in a wide range of investments. They can be open-ended (offered continuously) or close-ended (fixed number of managed investment product). (Source: [FMA](#))

⁴ Discretionary Investment Management Services (DIMS) are when investors give the manager the authority to make decisions about buying and selling financial products on their behalf. To provide DIMS under the FMC Act, service providers must hold a DIMS market services licence issued under the FMA Act. (Source: [FMA](#))

⁵ [Financial Markets Authority](#)'s licensed and reporting entities which have been granted a license or have been authorised by the FMA.

⁶ Crowdfunding provider: crowd funding is a type of financial market service covered by the Financial Markets Conduct Act 2013 (FMC Act). An equity-based crowd funding service licence holder acts as an intermediary between companies issuing shares and investors purchasing shares. The licence holder provides a facility where offers of shares can be made to the investing public.

⁷ Market Operator: a financial product market is a facility where financial products are bought or sold, or where offers or invitations to buy or sell financial products are made. Anyone operating a financial product market needs to be licensed unless the market is exempt.

13. Incorporated entities can be listed and vary by the type of underlying assets, which range from a single incorporated entity to portfolio of entities (such as an exchange-traded-funds (ETFs)), including index funds. To be considered as acceptable investments:
 - the investee entity must have the New Zealand-regulated marketplace as their home exchange, and
 - the marketplace must be the primary jurisdiction in relation to the listing and compliance requirements.
14. ETFs whose investment strategy is not specific to New Zealand or not domiciled in New Zealand are not eligible to be qualifying investments. For example, the following are excluded:
 - strategy not specific to New Zealand: Smartshares US Large Value ETF (Ticker: [USV](#))
 - not domiciled in New Zealand: F&C Investment Trust PLC (Ticker: [FCT](#))
15. The technical details and definitions for listed equities can be found in Annex One.

Philanthropy

16. Qualifying philanthropy must be donated to an organisation(s) which satisfy the following criteria:
 - a charity which is registered with Charities Services⁸ (with at least two years annual returns)
 - has Inland Revenue domestic⁹ donee status,¹⁰ and
 - status is not ceased.

Refining the detailed criteria and updating the list

17. The detailed criteria and the list of acceptable investments will be reviewed regularly and may be updated. We will continue to monitor and review the detailed criteria for acceptable investments and brief you on a regular basis.

Real estate and property investments

18. Previous advice did not explicitly seek your preference if investments relating to real estate and property should be included or excluded.
19. Real estate and property are a popular investment asset class for many investors.¹¹ Investments in real estate and property can be made directly (i.e. direct investments) or indirectly (i.e. listed equities or private funds). Real estate investing can also be categorised

⁸ Generally to obtain tax benefits, charities must be registered by the Charities Services. These are not the same as a charitable trust incorporated under the Charitable Trusts Act 1957 (Source: [IRD](#))

⁹ The interpretation of "wholly or mainly" for the purposes of the donee organisation test means at least 75% of the organisation's funds are used for charitable, benevolent, philanthropic or cultural purposes within New Zealand. Source: [Inland Revenue's Interpretation statement IS 18/05: Income tax – donee organisations – meaning of wholly or mainly applying funds to specified purposes in New Zealand](#)

¹⁰ A Donee organisation is an organisation Inland Revenue considered to have met the requirements set out in the Income Tax Act 2007. Generally, a donee organisation is one which applies its funds wholly or mainly to charitable, benevolent, philanthropy or cultural purposes within New Zealand. (Source: [IRD](#))

¹¹ MBIE, Project Oystercatcher (2020). Over May 2017 to September 2020, 51 per cent of investments under investor visa categories were in bonds (9 per cent in Government bonds and 42 per cent in other bonds), 21 per cent in publicly listed shares, and 17 per cent in commercial property.

by type of capital (debt or equity) and source of capital (private or public markets). The basic forms of real estate investments and examples are:

	Debt	Equity
Private	<ul style="list-style-type: none"> • Mortgages • Construction lending • Mezzanine debt 	<ul style="list-style-type: none"> • Direct ownership of real estate (sole ownership, joint venture, real estate limited partnerships etc) • Indirect ownership via private funds or REITs
Public	<ul style="list-style-type: none"> • MBS (residential and commercial) • CMOs • Mortgage REITs, • ETFs which own securitised mortgage debt 	<ul style="list-style-type: none"> • ETFs • Listed REIT shares • Listed REOC shares

20. Examples of real estate public equity investment entities listed on the NZX are:

- Auckland Real Estate Trust (Ticker: [AKL](#))
- CDL Investments New Zealand (Ticker: [CDI](#)), and
- Smartshares NZ Property ETF (Ticker: [NPF](#)) and
- Private Land and Property Fund (Ticker: [PLP](#))

21. Based on the broad criteria of what is an acceptable investment, under this visa, we have identified two options:

- **Option A** – exclude all forms of real estate and property investments including direct investments into residential and commercial developments or funds that hold a majority of assets in property development; or
- **Option B** – allow only those real estate and property investments if promoted for investment by NZTE Investment or where funds have been determined by NZTE to be acceptable.¹²

22. Option A would be most aligned with the intent of the policy which is to support the growth of high-potential businesses. However, this option excludes all real estate investment projects which contribute to the Government's economic strategy. One example would be direct investment in residential developers approved by KiwiBuild.¹³

23. Option B provides flexibility for real estate and property investment projects to be considered, as long as the projects can demonstrate:

- their contribution to New Zealand Government's economic strategy, or
- that the investee entities' underlying business model is not a pure play on the real estate and property assets but delivers an additional value-add¹⁴ compared to stand-alone real estate properties.

¹² Subject to OIO approval.

¹³ Established in 2018 by Government, KiwiBuild is part of a broad initiative to address the housing challenges currently facing New Zealand. This initiative works with residential developers to support the delivery of new and more affordable homes for New Zealanders. Residential developers who are willing to deliver turnkey, affordable homes at scale are considered, and criteria for assessing the right developers are engaged in building quality homes.

¹⁴ A real estate is improved or a new one is created in the development process, or a significant uncertainty is associated with development, because of process complexity.

Decisions required to finalise immigration instructions

24. Cabinet has authorised the Ministers for Economic and Regional Development and Immigration to finalise any remaining details for the Active Investor Plus visa [CAB-22-MIN-0162.01 refers]. We seek joint Ministers' agreement to clarify when the four-year investment period begins. We have also provided an overview of key design details that will be incorporated in immigration instructions to give effect to the new visa.

When qualifying investment starts for the purposes of resident visa application

25. In May this year, Cabinet agreed to improve flexibility for the investor by allowing investors to invest over a three-year investment period (and maintain their investments up to the end of a fourth year) [CAB-22-MIN-0162.01 refers]. This was a shift from initial decisions in August 2021, which would have required migrants to make and maintain their full investment for three years [DEV-21-MIN-0162 refers]. Providing investors with more flexibility was intended to better reflect the realities of active investment [2122-2969 refers]
26. As part of advice on shifting to a more flexible investment period ahead of Cabinet decisions, the Minister for Economic and Regional Development and the Minister of Immigration agreed that investors should be able to make qualifying investments throughout a three-year investment period (and maintain their investments up to the end of a fourth year), with a flow of requirements and checks set out in Table 1 below [2122-2969 refers]. This flow of requirements was also signalled in the May Cabinet paper.

Table 1: Flow of requirements and checks under the Active Investor Plus visa

Year	Requirement	Check
0	Transfer all nominated funds to NZ (could be bonds) as a holding investment	INZ
1	Check in with NZTE	NZTE
1.5	50% of total (i.e. \$7.5m, or weighted equivalent)	INZ
3	100% of total (i.e. \$15m, or weighted equivalent)	INZ
4	100% of total (i.e. \$15m, or weighted equivalent) is maintained	INZ

27. At the time of advice, the Minister for Economic and Regional Development had indicated his preference that investors make 50 per cent of their investments in the first 18 months. This was intended to mitigate the risk that investors become settled in New Zealand by the final year, making deportation more difficult if they have not made their investments in time.
28. An additional fourth year was also built into the visa conditions in order to mitigate the risk that an investor may opt to make the final 50 per cent of the required acceptable investments right at the end of the investment period (up to the last day). This advice noted that the gradual progression framework would involve checks at the end of the second and third year to ensure investors are making their investments and a final check at the end of the fourth year to ensure all investments have been maintained.
29. However, this advice did not make explicit when the qualifying investment period would begin. Officials have identified two options:
- **Option A** - the date when the investor transfers their funds into holding investments in New Zealand (i.e., cash, bonds, or term deposits), or
 - **Option B** – the date when the investor first makes an acceptable investment into a qualifying asset in New Zealand.

30. Option A would provide the investor with more time to undertake due diligence and the greatest flexibility in terms of when they commence their active investments. However, this option enables investors to defer making active investments up until the 18-month check.
31. Option B would mean that the qualifying investment period commences on the date an investor makes an active investment. They then have 18 months to meet the full first 50 per cent investment (inclusive of the first acceptable investment) requirement and 36 months to invest the full amount. The advantage of this option is that it nudges investors to explore the suite of acceptable investments and commence their active investment period sooner.
32. There is a risk that requiring an active investment for the grant of the resident visa could result in perverse incentives to make small qualifying investments in order to activate the investment period. To mitigate this risk, officials propose that investors must make the following minimum qualifying investments in order to meet criteria for the grant of a resident visa and initiate the investment period:
 - \$1 million for listed equities
 - \$500,000 for private funds, and
 - \$100,000 for direct investments.

Additional design details for the Active Investor Plus visa

33. The detailed criteria for the grant of the Active Investor Plus visa will be set out in immigration instructions, which are the rules and criteria for the grant of visas and entry permission to New Zealand. MBIE is currently working through the detailed criteria for the new visa and will be undertaking targeted consultation on draft immigration instructions with stakeholders from the NZTE working group on acceptable investments in the week beginning 29 August.

Some existing criteria will be carried over...

34. A number of existing instructions for the previous Investor categories will be carried over to the new Active Investor Plus visa category, in line with standard INZ processing requirements. For example, existing instructions relating to health and character, assessing legally earned and acquired funds, English language requirements, and assessment of whether investors meet a 'fit and proper' test. These instructions ensure that INZ can effectively execute its role in making visa decisions, and maintaining existing requirements provides consistency to decisions makers and investors.
35. Similarly, officials propose that investors can apply for and be granted a temporary work visa for up to 12 months. This will provide investors time to transfer their nominated funds and travel to New Zealand to undertake due diligence and familiarise themselves with the New Zealand investment ecosystem if they wish to do so. Partners and dependent children of investor visa applicants will be able to apply for visitor visas or student visas, as is currently applicable.

... and some improvements can be made

36. Officials also propose a number of minor and technical improvements on previous Investor 1 and 2 category instructions for the Active Investor Plus visa. This reflects feedback from INZ's staff along with stakeholders who participated in NZTE's working group on acceptable investments. The following shifts in detailed criteria for the Active Investor Plus visa are intended to provide greater flexibility to the market, while ensuring certainty for investors (and their representatives) and decision makers:

Aspect of policy	Previous settings	Proposed change under Active Investor Plus visa settings
Transfer of nominated funds	Investors must transfer nominated funds to New Zealand in their personal name	Enabling an extended, but limited, group of third parties to transfer nominated funds to New Zealand, for example, solicitors trust account, investment portfolio account.
Additional funds can be considered if nominated funds have lost value (before a resident visa is granted)	Not explicitly provided for and therefore not clear for investors if it is an option	Provide clarity to investors as to when additional funds might be acceptable
Travel conditions	Investors granted travel conditions for two years, consistent with most other residence class visas	Grant travel conditions to cover the full investment period given INZ will be undertaking checks at 18 and 36 months and 48 months
Constitutional conventions		

Prioritisation of the Active Investor Plus visa

37. Officials also propose that the Minister of Immigration certify instructions indicating that priority be given to processing the Active Investor Plus visa within business category processing resource. The Minister for Economic and Regional Development and Minister of Immigration have previously endorsed prioritisation of new Active Investor Plus visas, relative to on-hand investor visas [briefing 2223-0060 refers].
38. We consider that the appropriate mechanism is to include an explicit instruction to prioritise the Active Investor Plus visa providing a clearer statement of Ministerial priority for visa processing. In doing so officials, note that there will be a perception of preferred treatment to the Active Investor Plus applicants over existing Investor 1 and 2 applications that are currently in the queue (it can take up to 3 years to process these applications) and who made applications some time ago.

■

Next steps

39. The table below outlines the upcoming milestones ahead of the go-live date on 19 September:

Milestone	Date
Targeted consultation on draft immigration instructions	Week of 29 August 2022
Immigration instructions to the Minister of Immigration for certification	Week of 12 September 2022
NZTE publishes detailed eligibility criteria for the acceptable investments	Following approval by Ministers
Active Investor Plus visa opens to applications	19 September 2022
Constitutional conventions	

Annexes

Annex One: Detailed eligibility criteria

Annex One: Detailed eligibility criteria

Category	Eligibility criteria
Direct investments	<p>Direct investments occur when investors directly buy equity or equity-convertible stake in a privately-held New Zealand resident entities (investee entities). Qualifying direct investments are those made into investee entities which meets any of the following criteria:</p> <ul style="list-style-type: none"> • Has previously or will receive capital from an eligible fund managed by Crown Entities, or • Is listed on the NZTE Live Deals platform¹⁵, or • Is being promoted for investment by NZTE Investment, or • Has been determined by NZTE to be an acceptable direct investment. <p>If investee entities do not satisfy the criteria, NZTE may undertake the following additional considerations to determine if the investment qualifies as an acceptable direct investment, such as:</p> <ul style="list-style-type: none"> • Is a New Zealand legal entity (including Māori entity) with a New Zealand Business Number, • Compliant with NZTE’s internal know-your-customer (KYC) process, • Adheres to NZTE Investment’s Environmental, Social, and Governance (ESG) and responsible investment principles, • The capital must be to support growth of the business, creation/saving of jobs (which will have economic or other benefits to New Zealand) or support the growth of the investee entities and deliver additional benefit to New Zealand, as determined by NZTE, • If subject to Overseas Investment Office (OIO) approval, such approval having been provided by the OIO. <p>Alternative to buying stakes in entities, investors can undertake greenfield projects and/or establish a “startup” entities. In this context, NZTE may undertake the following additional considerations to determine if the investment qualifies as an acceptable direct investment, such as, but not exclusive to:</p> <ul style="list-style-type: none"> • If alignment with NZTE Investment sectors of focus, or • If subject to Overseas Investment Office (OIO) approval, such approval having been provided by the OIO, or • Business case¹⁶ developed and evidence of market validation, feasibility, or other reasonable diligence having been completed.

¹⁵ 46 companies are listed on the NZTE Live Deals platform, as of 24 August 2022.

¹⁶ NZTE’s proper verification is conducted to ensure that the business is legitimate (note: not a test of its financial health and growth potential, which is for the investor to ascertain)

In this context, “directly” means that investors purchase an ownership stake in investee entities. Investors avoid the services of an external manager (i.e. private funds) and bypasses the use of special vehicles. Exception is if an investor undertakes a purchase via special purpose vehicles such as a trust¹⁷, which the investor has 100% ownership. When investors choose direct investment, they typically have the highest level of control over how their asset is managed, greatest amount of flexibility in terms of building a portfolio of investee entities to their preference, conducts the investment process and ongoing monitoring of their portfolio entities on their own, and avoids paying ongoing management fees to external managers.

The investment period begins when investors enter into a written contractual agreement with investee entities.

Equity and equity-convertible investment products are permitted. The equity and equity-convertible stake includes mergers, acquisitions, and consolidations¹⁸, where investors acquire up to a 100% stake. Pure debt products¹⁹ are unacceptable.

A New Zealand resident entity is a resident entity if it meets any of the criteria below, prescribed by Inland Revenue²⁰. To align with the intention of the new policy, all four criteria must be satisfied to be recognised as a New Zealand resident entity:

- It is incorporated in New Zealand,
- It has its head office in New Zealand,
- It has its centre of management in New Zealand,
- Control by company directors is exercised in New Zealand.

A privately held entity may be listed and/or traded on a New Zealand-regulated marketplace²¹. In this case, to qualify as direct investment the investors must invest as wholesale investors and the investment must be approved by NZTE.

When the product becomes ineligible, the investor has 180 days from receipt of their principal investment to trade/re-invest the funds back into the same investment category.

¹⁷ A trust is an entity which holds money for the benefit of its beneficiaries for law purposes (Source: [IRD](#))

¹⁸ Merger (company A + company B = company A); acquisition (company A + company B = company A and company B); consolidation (company A + company B = company C).

¹⁹ Pure debt products are those which share same characteristics without embedded options for equity participation like typical bank loans.

²⁰ Tax residency status for companies (Source: [IRD](#))

²¹ A financial product market is a facility where financial products are bought or sold, or where offers or invitations to buy or sell financial products are made. Anyone operating a financial product market needs to be licensed unless the market is exempt.

<p>Private Funds</p>	<p>Private funds mean that investors invest a managed fund. The managed fund identifies, selects, and makes investments on the investor's behalf. Private funds can be managed by, for example investment scheme managers²² or providers of discretionary investment management services²³. Qualifying investments in Private Funds are those made into managed funds which are determined to be acceptable by NZTE.</p> <p>NZTE will convene an advisory panel to assist it to determine the eligibility of private funds as acceptable investments and / or make them aware of market developments. NZTE will update the list of eligible private funds at regular intervals to support depth in the range of acceptable investments whilst managing the administrative costs of maintaining the acceptable list of investments.</p> <p>When the investor enters into a binding and non-revocable commitment to a fund, the total commitment of the investor to the fund is treated as invested (not just the amount called by the fund).</p> <p>All private funds must be managed by managers who are licensed by the Financial Markets Authority and are New Zealand-domiciled.</p> <p>Private funds can have a debt or equity strategy. Both strategies are eligible but the investment by the investor to the fund itself cannot be structured as debt. Private debt²⁴ primarily refers to various forms of debt provide by investors. Private debt can fill the gap between companies demanding capital and lending supply from traditional lenders such as banks. We propose that direct investments structured as private debt is generally acceptable. A broad array of strategies means that a highly prescriptive criteria may be unnecessary at this time, but we will continue to monitor and review.</p> <p>All funds must be invested wholly or substantially in entities with a New Zealand connection. To be substantially invested in entities with a New Zealand Connection, a minimum of 70 per cent of the net committed capital made available to the fund must be allocated for investment in entities with a New Zealand connection.</p>
<p>Listed equities</p>	<p>Listed equities mean that entities' equity and its equity-linked products are traded on a New Zealand-regulated marketplace, operated by services providers or operators who are licensed by the Minister of Commerce and Consumer Affairs.</p>

²² In general terms, a managed investment scheme (MIS) pools money from a number of investors who rely on the investment expertise of the MIS manager. The definition in the FMC Act (section 9) is broad and includes a wide range of collective investment schemes. These schemes can be structured in different ways and may invest in a wide range of investments. They can be open-ended (offered continuously) or close-ended (fixed number of managed investment product). (Source: [FMA](#))

²³ Discretionary Investment Management Services (DIMS) are when investors give the manager the authority to make decisions about buying and selling financial products on their behalf. To provide DIMS under the FMC Act, service providers must hold a DIMS market services licence issued under the FMA Act. (Source: [FMA](#))

²⁴ Referring to loans which are not provided by public markets or banks, private debt investors provide capital direct to borrowers. Private debt differs from traditional debt products such as bonds which are issued to many participants and traded in public markets. While similar to bank lenders, private debt's differences are that it provides capital to entities which require capital but lack alternatives to bank lenders, and credit which is subordinated to bank loans and may include options for equity participation (i.e. mezzanine debt).

Furthermore, and in this context, listed equities can further mean that equity and its equity-linked products are available to retail investors.

The coverage of New Zealand-regulated marketplace is limited to Crowdfunding Providers²⁵ and Market Operators²⁶, who are based in New Zealand. These are:

Crowdfunding providers	Market Operators
<ul style="list-style-type: none"> • The Property Crowd Limited 	<ul style="list-style-type: none"> • NZX Limited
<ul style="list-style-type: none"> • Collinson Crowdfunding Limited 	<ul style="list-style-type: none"> • Catalist Markets Limited
<ul style="list-style-type: none"> • Equitise Pty Ltd 	
<ul style="list-style-type: none"> • Crowdsphere Limited 	
<ul style="list-style-type: none"> • Pledgeme Limited 	
<ul style="list-style-type: none"> • The Snowball Effect Limited 	

(Source: FMA, as of 24 August 2022)

Crowdfunding Providers and Market Operators facilitate investment opportunities for both retail and wholesale investors. Officials also propose that investments undertaken by investors, as wholesale investors, will qualify as Direct Investment. Should investors seek their investments to be considered as wholesale, the transactions must be pre-determined and approved by NZTE. In contrast, investments undertaken by investors, as retail investor, will qualify as Listed Equities.

Incorporated entities can be listed and vary by the type of underlying assets, which ranges from a single incorporated entity to portfolio of entities (such as an exchange-traded-funds, ETFs) including index funds. To be considered as acceptable investments:

- the investee entity must have the New Zealand-regulated marketplace as their home exchange, and
- the marketplace must be the primary jurisdiction in relation to the listing and compliance requirements.

²⁵ Crowdfunding provider: crowd funding is a type of financial market service covered by the Financial Markets Conduct Act 2013 (FMC Act). An equity-based crowd funding service licence holder acts as an intermediary between companies issuing shares and investors purchasing shares. The licence holder provides a facility where offers of shares can be made to the investing public.

²⁶ Market Operator: a financial product market is a facility where financial products are bought or sold, or where offers or invitations to buy or sell financial products are made. Anyone operating a financial product market needs to be licensed unless the market is exempt.

	<p>For ETFs whose investment strategy is not specific to New Zealand or not domiciled in New Zealand are excluded. For example, the following are excluded:</p> <ul style="list-style-type: none"> • Strategy not specific to New Zealand: Smartshares US Large Value ETF (Ticker: USV) • Not domiciled in New Zealand: F&C Investment Trust PLC (Ticker: FCT) <p>Investments can be made through managed funds, brokers and platforms (per the definition in the current instructions), provided the underlying securities meet the above criteria.</p>
<p>Philanthropy</p>	<p>For investments under philanthropy to be considered acceptable investments, the investments funds are invested/donated to an organisation(s) which satisfies all the criteria:</p> <ul style="list-style-type: none"> • A charity which is registered with Charities Services²⁷ (with at least two years annual returns); • Has Inland Revenue domestic²⁸ donee status²⁹, • Status is not ceased. <p>These investments must not be revocable.</p> <p>List of donee organisations approved by Inland Revenue is available on Inland Revenue's website. As of 12 August 2022, a total of 32,908 donee organisations are listed with the Inland Revenue. Of these, 27,356 organisations are qualified, and 5,552 organisations do not qualify because of its ceased status (i.e. not active).</p>

²⁷ Generally to obtain tax benefits, charities must be registered by the Charities Services. These are not the same as a charitable trust incorporated under the Charitable Trusts Act 1957 (Source: [IRD](#))

²⁸ The interpretation of "wholly or mainly" for the purposes of the donee organisation test means at least 75% of the organisation's funds are used for charitable, benevolent, philanthropic or cultural purposes within New Zealand. [Source: Inland Revenue's Interpretation statement IS 18/05: Income tax – donee organisations – meaning of wholly or mainly applying funds to specified purposes in New Zealand](#)

²⁹ A Donee organisation is an organisation Inland Revenue considered to have met the requirements set out in the Income Tax Act 2007. Generally, a donee organisation is one which applies its funds wholly or mainly to charitable, benevolent, philanthropy or cultural purposes within New Zealand.(Source: [IRD](#))

Across all categories

If an investment product is ineligible or becomes ineligible

All investment products must be qualified as acceptable investment at the time the investment transaction takes place or contracts are signed to effectuate the transaction.

During the life of an investment, investee entities may become ineligible. For example, investee entities may cease operations, or may undertake actions which are inconsistent with or violates the criteria for acceptable investments. In such cases, remediation actions can be taken by either by the investee entities or investor migrants.

Investee entities wish to remain as an acceptable investment, they must in the first instance work with NZTE to ensure they meet the criteria for acceptable investment. The entities must meet the criteria within 90 days. The date begins from the day which NZTE notifies the entity and investor migrants of the compliance violation by the investee entities.

Should investors seek to divest, they must re-invest into the same investment categories or to a higher-weighting investment categories, within the following time-frames:

Direct Investments: within 180 days

Private Funds: within 90 days

Listed Equities: within 30 days

The time-frames start from the one working day after the funds are returned to the investor.

Liquidity events

Investors may experience challenges in satisfying the criteria for maintaining their investment holdings up to the end of a fourth year. This generally occurs if the invested capital (along with any surplus) is returned to the investor due to a liquidity event. Liquidity events and/or developments of the investee entity may occur which result in the investment no longer being qualified. For example,

- For Direct Investments and Private Funds, the decision to provide a liquidity event is normally born by the investee entity or the manager of the Private Funds.
- For Listed Equities, the decision to liquidate is normally the responsibility of the investor. However, an entity can be delisted for voluntary reasons such as going private, changing its primary listing to a foreign exchange from a New Zealand-based exchange, or for involuntary reasons such as compliance issues.

Where investors are forced to liquidate due to reasons beyond their direct control, investors must reinvest into the same investment category or to a higher-weighted investment category within the following timeframes (i.e. the “following period”):

- For Direct Investments: within 180 days, if prior total holding period was less than 3.5 years.
- For Private Funds: within 90 days, if prior total holding period was less than 3.5 years.
- For Listed Equities: within 30 days, regardless of prior holding period, and

Reasons for forced liquidations include, but not limited to, cease of operations of bankruptcy of investee entities, going private, changes to shareholder structures such as going private or public (which results in changes to investment categories) or forced secondary-sales due to drag-along obligations.

The longer grace period recognises that investment opportunities under Direct investments and Private Funds have smaller universe of opportunities which are immediately transactable and require greater level of due diligence in contrast to opportunities under Listed Equities.

For liquidity events where the event is not forced and investor has made the decision to liquidate, investors must reinvest into the same investment category or to a higher-weighted investment category within 30 days. The time-frames start from the one working day after the funds are returned to the investor.

Changing investment categories

Changing investment categories is allowable as long as the change is to a higher weighting investment category.

