

***Factual analysis of Member States  
Investors' Schemes granting  
citizenship or residence to third-  
country nationals investing in the  
said Member State***

***Deliverable B.II Investors' Residence  
Schemes in the Netherlands***

*JUST/2016/RCIT/FW/RIGH/0152 (2017/06)*



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## I. GENERAL BACKGROUND

### ■ *Legal background*

The investors' residence scheme in the Netherlands was initiated in 2013 with the **Modern Migration Policy Act (2013)**<sup>1</sup> and amended in 2014 and 2016. The scheme streamlined the application for investors (visa and residence at the same time) and made residence conditions easier (no obligatory integration, immediate possibility to have family move, no work permit necessary for the right to work in the Netherlands).<sup>2</sup> The aim of the scheme is to **attract migrants** that can make a **positive impact** to the Dutch economy.<sup>3</sup>

The **legal basis for residence applications** is the **Aliens Act (Vreemdelingenwet 2000)**,<sup>4</sup> as amended in 2017; this legal basis is further detailed in the **Aliens Decree (Vreemdelingenbesluit 2000)**,<sup>5</sup> as amended in June 2017. Further explanations on the Aliens Act can be found in the **Implementation Guidelines of the Aliens Act (Vreemdelingencirculaire 2000)**<sup>6</sup> as amended in December 2017.

The **Aliens Act** regulates the more general provisions of **entry to the Netherlands, visa applications, asylum procedures and residence permits**. The Act states that a migrant can stay in the Netherlands (for longer than 90 days) only with a valid residence permit.<sup>7</sup> The **residence permit is granted, withdrawn or rejected by the Minister of Security and Justice**.<sup>8</sup> The Minister has the power to withdraw or change the status of a residence permit **on his own initiative**.<sup>9</sup> Furthermore, the Act sets out that a residence permit for a fixed period can be granted by the Minister for a maximum of **five years**<sup>10</sup> and that **more specific conditions** for the granting of residence permits are set out by decree and/or implementing rules<sup>11</sup> (i.e. the Aliens Decree and the Implementation Guidelines). The Act stipulates also **reasons why an application can be rejected**, including the reason that the applicant is a danger to the public order and public security.<sup>12</sup>

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<sup>1</sup> Modern Migration Policy Act of 7 July 2010 (*Wet Modern Migratiebeleid*), identification number BWBR0027930, available at <http://wetten.overheid.nl/BWBR0027930/2013-09-21>.

<sup>2</sup> Before the introduction of the scheme, investors had to apply for visa and residence separately. There was no specific procedure in place. Investors applied for a "regular" residence permit as other third-country nationals.

<sup>3</sup> Further information can be found on the website of the Dutch government, available at <https://www.rijksoverheid.nl/onderwerpen/immigratie/mogelijkheden-voor-ondernemers-en-werknemers-uit-het-buitenland/buitenlandse-investeerdersand> in the letter to the House of Representatives (*Tweede Kamer*) prior to the introduction of the scheme, available at <https://zoek.officielebekendmakingen.nl/dossier/30573/kst-30573-120?resultIndex=28&sorttype=1&sortorder=4>

<sup>4</sup> Aliens Act of 23 November 2000 (*Vreemdelingenwet*), identification number BWBR0011823, available at <http://wetten.overheid.nl/BWBR0011823/2017-12-16#Hoofdstuk1> (last amended in 2017).

<sup>5</sup> Aliens Decree of 23 November 2000 (*Vreemdelingsbesluit 2000*), identification number BWBR0011825, available at <http://wetten.overheid.nl/BWBR0011825/2017-10-01#Hoofdstuk1>

<sup>6</sup> Implementation Guidelines of the Aliens Act (*Vreemdelingencirculaire 2000*), identification number BWBR0012289, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<sup>7</sup> Aliens Act, Article 8(1).

<sup>8</sup> Aliens Act, Article 14(1)(a)-(e).

<sup>9</sup> Aliens Act, Article 14(1)(a)-(e).

<sup>10</sup> Aliens Act, Article 14(4).

<sup>11</sup> Aliens Act, Article 14(4).

<sup>12</sup> Aliens Act, Article 16: An application for residency can be rejected on the following grounds (most relevant): the foreign national does not have a valid temporary residence permit that corresponds with the purpose of stay for which the residence permit has been applied for; the foreign national does not have a valid document for border crossing; the foreign national does not have sufficient means of subsistence independently and sustainably, or if the person with whom the foreign national wishes to reside does not have sufficient means of subsistence independently and sustainably; the foreign national constitutes a danger to public order or national security; the foreign national is not prepared to cooperate in a medical examination for a disease designated by or pursuant to the Public Health Act, for the protection of public health or undergoing medical treatment against such a disease; the foreign national works for an employer without having complied with the Aliens Employment Act; the foreign national does not meet the restriction related to the purpose for which he wishes to reside; the foreign national provided inaccurate data or withheld data while that data led to rejection of a previous application for granting, extending or changing a visa or residence permit.

The **Aliens Decree** is more specific in that it sets out, for example, that a person can be refused access to the Netherlands if no longer fulfilling the residence conditions.<sup>13</sup> The Decree further **lists all types of residence permits** that can be given **for a fixed term**, including, inter alia, the residence permit for **investors**.<sup>14</sup> The **Implementation Guidance** further sets out the specific procedures for application, including the **application procedure** of the investors' residence permit.<sup>15</sup>

The investors' residence scheme required, since it was launched, that the following four requirements concur:<sup>16</sup>

- Fulfilment of the **general application conditions** (no criminal past declaration, valid passport, tuberculosis test, no danger to public, public security and public health);
- **Investment of EUR 1 250 000**, deposited in a Dutch bank account, or an EU account that is supervised by the Dutch National Bank;
- Investment made **in a Dutch company** of an **added value to the Dutch economy** – the investment should lead to increase innovation at the company and create employment. This was assessed at the time on a point-based system<sup>17</sup> carried out by the Netherlands Enterprise Agency (at that time called *Nederlands Agentenschap*, since 2014 called *Rijksdienst Ondernemend Nederland* (RVO)), whereby at least 25 points out of 50 should be obtained;
- **The assets are not of malicious origin** – this was assessed on the basis of checks (see Table under Section II.4 of this Report) by the Financial Intelligence Unit (FIU) and the investor had to provide an audit opinion from a Dutch based accountancy.

After evaluation of the scheme by the Minister, the investors' residence scheme was first **amended by Decree of 27 May 2014**<sup>18</sup> which introduced the following changes:

- the investor is allowed to **spend eight months outside** the Netherlands without this having an impact on the residence permit; and
- **instead of investment in a company, the investor can invest in capital funds** such as those recognised by the Ministry of Economy to be compatible with the rules on seed funds,<sup>19</sup> or in a participation fund that is a member of the Dutch Association of Investment Companies (*Nederlandse Vereniging van Participatiemaatschappijen*). These are private equity or venture capital funds. The investment in such funds aims at supporting technology start-ups or start-ups falling under the Top Sectors Policy (*topsectorenaanpak*).<sup>20</sup>

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<sup>13</sup> Aliens Decree, Title I, Article 2(1).

<sup>14</sup> Aliens Decree, Title II, Article 3(4) further specifying the types of fixed term residence permits described under Article 14 of the Aliens Act.

<sup>15</sup> Implementation Guidelines of the Aliens Act, Title B 11, "Special Applications" (*Bijzonder Verblijf*).

<sup>16</sup> Letter of the Minister of Security and Justice to the House of Representatives of 20 September 2013 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-120.html>. In this letter the Minister explained the original scheme already providing that the scheme will be assessed one year after its entry into force and that potential amendments can be made.

<sup>17</sup> A table overview of the distribution of the points can be found in the Implementation Guidelines of the Aliens Act as amended in January 2014, available at: <http://wetten.overheid.nl/BWBR0012289/2014-01-23>. In principle the questions were similar to those used under the current assessment presented in Section II.1 of this Report.

<sup>18</sup> Decision of the State Secretary for Security and Justice of 27 May 2014 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 27 mei 2014 houdende wijziging van de Vreemdelingencirculaire*), Number WBV 2014/18, Official Gazette (*Staatscourant*) No. 15297 of 30 May 2014, available at: <http://cmr.jur.ru.nl/cmr/tbv/tbv13/14/WBV.2014.18.pdf>.

<sup>19</sup> Regulation concerning subsidies of the Ministry of Economic Affairs of 11 July 2014 (*Wet Regeling nationale EZ-subsidies*), identification number BWBR0035474, available at [http://wetten.overheid.nl/BWBR0035474/2018-03-01#Hoofdstuk3\\_Titeldeel3.10](http://wetten.overheid.nl/BWBR0035474/2018-03-01#Hoofdstuk3_Titeldeel3.10), Title 3.10. This regulation includes rules on seed capital funds for legal entities that conduct an enterprise or prepare the set-up of one, on the basis of a new technical invention or a new application of an existing technology (technostarters). This involves selling and supplying products, processes and/or services (no advice). The Regulation lays down rules of the functioning of seed funds and rules concerning applications of such funds for subsidies of the Ministry of Economic affairs to attract companies (technostarters) active in the field of ICT products.

<sup>20</sup> Top Sectors Policy website, available at <https://www.topsectoren.nl/topsectoren>. The aim of the policy is to keep the Netherlands in a competitive position in the international economy. The policy aims to bring researchers, universities and research centres, policy makers and companies together to produce smart product chains, new products and foster new skills. Nine sectors have been identified and are considered as most promising to help the Netherlands to remain an international

The scheme was **amended again in 2016**<sup>21</sup> due to lack of uptake.<sup>22</sup> The three most important changes were:<sup>23</sup>

- **The first-time issued residence permit for foreign investors is valid for three years** instead of one year (as originally since 2013). It was assessed that the short validity of the residence permit caused uncertainty for investors to prolong their stay.
- **Foreign investors are no longer required to provide an audit opinion.** The Immigration and Naturalisation Office (IND) only checks with the Financial Intelligence Unit (FIU) whether a foreign investor can be linked to a suspicious transaction in the Netherlands or in the country of origin.
- **Procedures to check the investment were simplified.** The investment has to contribute to the Dutch business sector on two of the following three areas: employment, innovation and non-financial contribution. Prior to making the investment, the contribution of the investment to the aforementioned areas is checked against a specific point system.<sup>24</sup>
  
- **Competent authorities**

The general competent authority for the **granting** of residence permits is the **Ministry of Security and Justice**.<sup>25</sup>

The **implementing** authorities of the scheme are the **Dutch Immigration and Naturalisation Service (IND)** which operates under the authority of the Ministry of Security and Justice. In order to check the application criteria for the investors' residence scheme the IND relies on the **assessment of the Netherlands Enterprise Agency (RVO)**<sup>26</sup> of the investment criteria and the **Financial Intelligence Unit (FIU)**<sup>27</sup> to check that the investor is not involved in a suspicious transaction.<sup>28</sup>

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competitive economy: Agri-Food, chemical, creative industries, energy, high tech systems and materials, logistics, life-science and health, water and maritime, horticulture and propagation materials sector.

<sup>21</sup> Decision of the State Secretary for Security and Justice of 21 June 2016 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 21 juni 2016, nummer WBV 2016/7, houdende wijziging van de Vreemdelingencirculaire 2000*), Official Gazette (*Staatscourant*) No. 33962 of 30 June 2016, available at <https://zoek.officielebekendmakingen.nl/stcrt-2016-33962.html>.

<sup>22</sup> Letter of the Minister of Security and Justice to the Dutch House of Representatives of 8 January 2016 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-134.html>.

<sup>23</sup> Decision of the State Secretary for Security and Justice of 21 June 2016 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 21 juni 2016, nummer WBV 2016/7, houdende wijziging van de Vreemdelingencirculaire 2000*), Official Gazette (*Staatscourant*) No. 33962 of 30 June 2016, available at <https://zoek.officielebekendmakingen.nl/stcrt-2016-33962.html>.

<sup>24</sup> This point system is based on the assessment presented in Section II.1 of this Report.

<sup>25</sup> Aliens Act, Article 14.

<sup>26</sup> The RVO is an agency that works under the authority of the Ministry of Economy.

<sup>27</sup> The FIU is an autonomous and independent governmental authority to fight fraud and money laundering in the Netherlands and abroad.

<sup>28</sup> Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

## II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

### 1 APPLICATION PHASE

#### 1.1 PROCEDURES

##### Application stage

An investor who can **invest a minimum of EUR 1,250,000 can apply** to the investors' residence scheme. The investment should be **paid into a Dutch bank account or a bank account of another EU Member State, which is supervised by the Dutch National Bank**. It is not possible to invest in residential property.<sup>29</sup>

The investor fills in a **paper-based application** for the residence investor scheme (*Aanvraag voor het verblijfsdoel 'vermogende vreemdeling' ('buitenlandse investeerder')*), which is available in Dutch and English.<sup>30</sup> This application covers three cases:<sup>31</sup>

- Third-country nationals who reside outside the Netherlands and intend to apply **for the first time** to the residence investor schemes;
- Third-country nationals who already reside in the Netherlands under an investors' residence permit and intend to **renew** it;
- Third-country nationals who already reside in the Netherlands **under a different residence permit and intend to renew** their stay under an investors' residence permit.

The application has to be **presented in person or sent by post** either to the **Dutch embassy** in the country of residence, when the investor resides outside the Netherlands, **or**, if already residing in the Netherlands, directly to the **Dutch Immigration and Naturalisation Service (IND)**.<sup>32</sup> The application must be presented in person at the IND if the applicant relies on the exemptions from the requirement to apply for a provisional residence permit (*Machtiging tot Voorlopig Verblijf, MVV*).<sup>33</sup>

The application must be sent alongside with **supporting documents**.<sup>34</sup> Where applicable, such documents can be compiled in Dutch, English, French or German. If the original language of the document is other than the aforementioned, the applicant must have them translated by a translator who has been sworn in by a Dutch District Court or have the translation legalised or to have an apostille stamp/authentication stamp provided by the competent authorities in the country of issue.<sup>35</sup>

**The investor receives an entry visa and the residence permit with one single application** called 'Access and stay' procedure (*Toegang en Verblijf, TEV*)<sup>36</sup> in accordance with the Single Permit

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<sup>29</sup> The assessment is set out under the Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>

<sup>30</sup> Application form for the investors' residence permit, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>31</sup> Application form for the investors' residence permit, 'For whom is this form?', available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>32</sup> Application form for the investors' residence permit, 'Submitting and paying for the application by the foreign national', p.17, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>33</sup> Aliens Act, Article 14; and MVV website <https://www.mvv-gezinshereniging.nl/wat-is-een-mvv>. MVV permits are visas category D which serve for the initial settlement of foreigners in the Netherlands. The exemptions are available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>34</sup> These documents are listed in the Application form for the investors' residence permit, 'Means of evidence', p.3, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>35</sup> Application form for the investors' residence permit, 'Means of evidence', p.3, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>36</sup> In the case that the investor is of American, Australian, Japanese or South Korean nationality no visa has to be obtained. The investor applies only for residence; an MVV is not necessary.



Directive (2011/98/EU).<sup>37</sup>

After the application has been submitted, **the IND has 90 days to examine the application.**<sup>38</sup> The IND can either grant or reject the application. **The application can only be rejected if the four general conditions are not met** (as described above in Section I: minimum investment amount; payment into a Dutch bank account, investment with an additional economic value to the Dutch economy (as certified by the Netherlands Enterprise Agency), the origin of the funds have not been suspected by the Dutch Financial Intelligence Unit), no investment in property).<sup>39</sup> It can also be rejected should it be proven that the **person is considered a danger to the public or public security.**<sup>40</sup>

The **fee** for the first-time application is **EUR 2,137.**<sup>41</sup> If the application is submitted by post, the applicant will receive a letter containing the amount of fees and information on how to pay, after the IND has received the application. If the application is submitted at the IND Desk, the applicant can pay the fees due at the IND Desk, with a bank card or in cash. This amount is non-refundable, whether the application is granted or rejected.<sup>42</sup>

In case the **application was rejected**, the investor can first **address a letter to the IND** to provide either **additional details or** further explain why he/she **objects** to the decision. The IND will then provide a **reasoned decision** based on the additional information and send an answer letter by post. If **the investor still does not agree** with the decision taken by the IND, he/she can make a **claim at the administrative court** (*Bestuursrechter*) against that decision within **four weeks** after reception of the answer from the IND.<sup>43</sup> The claim can be made by a **legal representative.**

The IND is responsible for the overall assessment of the application and the supporting documents. In addition to the criterion of the investment, the investor has to satisfy the following criteria:

- General application conditions;
- Investment in a company, or capital fund;
- The assets should not be obtained in a dishonest way.

### General application conditions

In order to apply, the investor should have a **valid passport**<sup>44</sup> and needs to present, together with the application, a **Clean Criminal Record Certificate** in which the applicant declares to never have committed a crime (in the Netherlands or abroad), illegally stayed in the Netherlands in the past or not to have given incorrect information in earlier residence procedures.<sup>45</sup> The applicant must also agree by

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<sup>37</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, L 343/1, OJ L 23 December 2011, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011L0098>.

<sup>38</sup> Aliens Act, Article 25.

<sup>39</sup> Implementation Guidelines of the Aliens Act, Section B11, Section 2.2.

<sup>40</sup> Aliens Act, Article 16.

<sup>41</sup> IND website, available at <https://ind.nl/overig/Paginas/buitenlandse-investeerder.aspx>.

<sup>42</sup> Application form for the investors' residence permit, 'Appendix', 'Submitting and paying for the application by the foreign national', available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>43</sup> Art. 69 of the Aliens Act.

<sup>44</sup> Application form for the investors' residence permit, 'Appendix', 'Fingerprints, passport photo and signature', p.9, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>45</sup> Application form for the investors' residence permit, 'Appendix', 'Antecedents Certificate', p.7, available at <https://ind.nl/en/Forms/7529.pdf>. The Certificate states the following: the person declares to never been sentenced to a prison sentence or a criminal offense for committing a crime and imprisoned; to never been ordered to perform unpaid work for committing a crime for the general utility or community service; to never been given an unconditional fine for committing a crime; to never accepted a transaction offer because of committing a crime; to never received a punishment order for committing a crime; to not currently be subject to criminal prosecution for committing a crime; to never been responsible for any of the following categories of actions as intended in Article 1F of the 1951 Refugee Convention; a crime against peace, a war crime; a crime against humanity, a serious non-political crime (eg murder or terrorism), or acts contrary to the purposes and principles of the United Nations (for example terrorist acts).

signing a form in the application to **take a medical test for Tuberculosis** and **take vaccination** (if not already vaccinated).<sup>46</sup>

### Investment condition

**The investment can be made either in a company, a joint-venture capital invested in company, a participative capital fund<sup>47</sup> or a fund that fits the Dutch Seed Capital Fund Scheme as recognised by the Ministry of Economy.**<sup>48</sup> The latter are funds that invest capital in start-ups fostering new technologies or that of the so-called “top sectors”.<sup>49</sup> The investment must be of **EUR 1,250,000 minimum**.

The **investment made in a company** will be **assessed** by the Netherlands Enterprise Agency (**RVO**) as part of the assessment of the application to the IND. The RVO evaluates the investment according to a **question-based system** (see Box 1 and 2 below).<sup>50</sup> The **investor** will have to **provide evidence** about the company where investments will be made. There are some **general criteria that the company has to fulfil** in order to be eligible for investment:

- the company must be **registered** with the Dutch Chamber of Commerce;
- the investment will have a **positive impact** on the Dutch economy; and
- the company will **continue to operate** once the investment is made.

If the investor invests in a Dutch company, the investor should prove that the investment made that provides **additional value to the Dutch economy** by satisfying two of the following three **criteria**:

- the investment adds to **innovation** in a particular industry;
- the investment **creates jobs**; and/or
- the investor brings a **high value personal network or specific knowledge** to the Dutch company in which the investment is made.<sup>51</sup>

With regard to **job creation**, the **Implementation Guidelines of the Aliens Act**<sup>52</sup> state that a minimum of **10 FTE within 5 years** should be created (whereby 60% should be created within the first three years).

As explained above, the RVO makes an assessment of the investment on the basis of a set of questions. Such assessment consists of a primary test (Box 1) and, if all of the requirements are met, a secondary test (Box 2).

#### **Box 1 Questions procedure: A. Primary test**

PartA: Primary test	Yes has to be the answer to all three questions to continue with part B
<b>General criteria for the investment in a company</b>	
■ The company is subscribed to the Dutch Chamber of Commerce.	Y/N
■ The investment agreement is in general positive for	Y/N

<sup>46</sup> Application form for the investors’ residence permit, p.11-16, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>47</sup> It must be a fund that is officially a member of the Dutch Association of Investment Companies (*Nederlandse Vereniging van Participatiemaatschappijen*, NVP).

<sup>48</sup> The scheme is administered by the Netherlands Enterprise Agency (RVO) – information available at <https://www.rvo.nl/subsidies-regelingen/seed-capital-voor-investeerders>.

<sup>49</sup> Top Sectors’ Policy website, available at <https://www.topsectoren.nl/topsectoren>.

<sup>50</sup> The assessment is set out under the Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<sup>51</sup> The assessment is set out under the Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<sup>52</sup> The assessment is set out under the Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<b>PartA: Primary test</b>	<b>Yes has to be the answer to all three questions to continue with part B</b>
the Dutch economy.	
<ul style="list-style-type: none"> <li>■ The continuity of the company after it has been demonstrated that the investment has been made.</li> </ul>	Y/N

If all of the answers under Box 1 are replied to in a positive way, the RVO will then proceed to assess the questions under Box 2. Regarding these questions, a minimum of two positive answers are needed in order for the RVO to issue a positive assessment on the investment and the application:

**Box 2 Questions procedure: B. Secondary test**

<b>B: Secondary test</b>	<b>A minimum of two "Yes" otherwise the application receives a negative answer</b>	
<b>Criteria to assess the effects of the investment</b>		
<b>(1) Work creation:</b>	<ul style="list-style-type: none"> <li>■ Minimum 10 FTE (exclusive of the applicant) within 5 years, whereby 60% within 3 years</li> </ul>	Y/N
<b>(2) Innovation:</b>	<p>Innovation exists if one of the following is demonstrated:</p> <ul style="list-style-type: none"> <li>■ The product or service is new for the Netherlands.</li> <li>■ There is new technology in production, distribution, marketing.</li> <li>■ There is an innovative organizational set-up and working method.</li> </ul> <p>This can be considered for example (not exhaustively listed):</p> <ul style="list-style-type: none"> <li>■ Activities promoted within the framework of the Top Sector Policy.</li> <li>■ Self-developed new products or services.</li> <li>■ Original approach to energy saving.</li> <li>■ Original approach to sustainability problem</li> <li>■ Smart and creative adjustments or combinations for cross-sector applications.</li> <li>■ New product-market combinations.</li> <li>■ Creative or innovative market approach.</li> <li>■ Social innovation.</li> <li>■ Introduction to corporate social responsibility.</li> </ul>	Y/N
<b>(3) Non-financial contribution of the foreign national to the company</b>	<p>There is added value if the investor meets one or more of the following aspects:</p> <ul style="list-style-type: none"> <li>■ Active founder / owner with relevant training at master level or higher (diploma required and IDW accredited training)</li> <li>■ Active founder / owner and at least five years (demonstrable) extensive</li> </ul>	Y/N

B: Secondary test	A minimum of two "Yes" otherwise the application receives a negative answer	
	entrepreneurship experience <ul style="list-style-type: none"> <li>■ Active founder / owner and at least five years (demonstrable) relevant work experience at senior level</li> <li>■ Active founder / owner who brings in at least five (demonstrable) trading partners or clients</li> </ul>	

Whether the investment entails an **innovation** is **assessed** on the basis of the following elements:

- that the investment introduces a **new product** in the Netherland,
- that the investment introduces **new technologies** in the production, distribution or marketing of the company,
- that the investment entails an **innovative organizational set-up or work organization** of the company.

If the investment is **linked to the investor's specific knowledge**, then the investor needs to:

- **provide additional information** with regard to his/her **qualifications** (master level and higher); or
- demonstrate that he/she is an **entrepreneur with at least five years of experience**; or
- is the **active owner or founder of a company** bringing in at least **five potential clients or trading partners**; or
- has **more than five years of relevant work experience for that company in the same sector**.

If the **investment** is made into a **fund**, the **innovative character** of the investment **does not need to be proven**. For such purposes, the investor has to:

- provide the **contractual documents** that show his/her participation in the fund; or
- what **type of investment** is going to be made; or
- show the **agreement between partners** of the joint venture and the funding plan.

#### Origin of the assets assessment

The **investment cannot be obtained by fraud or through an illegitimate mean**. A due diligence check is carried out by the FIU. This assessment is part of the application provided to the IND. The **investor has to agree** to this assessment. To this end, the investor's consent is given in the application form. No additional fees apply; only one fee applies to the whole procedure (see above in this section).<sup>53</sup> The home country financial intelligence police unit should be cooperative in this assessment so that it can be carried out properly. Otherwise the permit might not be granted.

#### **Residency stage**

The **residence permit granted** is valid for a **maximum of three years** (before July 2016 it was only one year).<sup>54</sup> The investor has to be **physically present** in the Netherlands at least 4 months in a 12-

<sup>53</sup> EUR 2,137.

<sup>54</sup> Letter of the Minister of Security and Justice to the Dutch House of Representatives of 8 January 2016 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-134.html>. This letter explains that the length of the scheme has changed due to the fact of the low uptake. In its interviews for the evaluation of the scheme the Ministry of Security and Justice found out that investors are reluctant to invest if the duration of the scheme is one year as, it could be that the residence permit is not renewed. The letter further explains the choice for three years. European Migration Network, 2015, 'Admitting third-country nationals for business purposes', p. 10-11, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_study\\_admitting\\_third\\_country\\_nationals\\_for\\_business\\_purposes\\_synthesis\\_report\\_04may2015.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_admitting_third_country_nationals_for_business_purposes_synthesis_report_04may2015.pdf). The EMN

month period. After that period the investor can request a **prolongation for up to five years** (in total). After five years of residency the investor may ask for **naturalisation or a residence permit for undetermined length**<sup>55</sup>. At the moment of request for prolongation of the investor residence permit, the investor has to provide **further evidence** with regard to the investments made. In case of investment **in a company**, the investor has to provide further evidence with regard to the **results obtained** (employment creation, impact on innovation). In case of investment **in a fund** the investor needs to provide **contractual proof** of the relationship and investments in the fund.<sup>56</sup>

## 1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES

The competent authority is the **Ministry of Security and Justice**.<sup>57</sup> In practice, the **Dutch Immigration and Naturalisation Service (IND)** manages the application procedure on its behalf. The IND works under the authority of the Ministry of Security and Justice and, thus, upon its request, it shall **report** to the Minister of Security and Justice.<sup>58</sup> The IND is authorized to communicate certain personal information of registered applicants to the Minister.<sup>59</sup>

The IND is also **competent to request** the Netherlands Enterprise Agency (**RVO**) to **check** whether the **investment is made according** to the set-out **criteria**. The Agency is a part of the Ministry of Economic Affairs and Climate and works under its authority.<sup>60</sup>

The **Financial Intelligence Unit (FIU)**<sup>61</sup> is in charge of verifying and confirming that the **investor is not involved in a suspicious transaction**. It provides the IND with clearance regarding the investor should there be no evidence obtained that the investor was involved in an unusual transaction.

The FIU is the only entity monitoring unusual transactions in the Netherlands on the basis of information from bodies that have a reporting obligation under the Money Laundering and Terrorism Financing (Prevention) Act,<sup>62</sup> which transposes the 4<sup>th</sup> Anti-Money Laundering Directive (2015/849)<sup>63</sup> and establishes the FIU. It is an independent and autonomous government body. Policy wise, the FIU works under the Ministry of Security and Justice and, administratively, under the Dutch Police. The Ministry of Justice nominates the Director of the FIU with approval of the Finance Ministry.<sup>64</sup> The FIU provides an annual report of its activities to the Ministry of Justice which informs the Ministry of

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report on investor scheme's in the EU showed that many Member States grant the residence permit for three or five years. Hence, the Dutch government choose a similar length.

<sup>55</sup> The main difference between temporary and permanent residence permit (apart from the duration) is that the migrant has to fully comply with integration requirements to be able to apply for the permanent one (meaning proof of language and passed integration test).

<sup>56</sup> Implementation Guidelines of the Aliens Act, Section B11, Section 5.1.

<sup>57</sup> The Aliens Act always refers to "Our Minister" as the Minister responsible for making the decisions on granting, revoking or rejecting applications on residence. Article 1(i) of the Act provides that the reference to "Our Minister" shall mean, for the purposes of the Act, the Minister of Justice.

<sup>58</sup> Aliens Act, Article 107(2).

<sup>59</sup> Aliens Act, Article 107(2). Under this provision, the IND shall report to the Minister the information necessary for the implementation of the Act. In particular, the provision refers to the national social security number and tax registration number of the Personal Records Database (BRP) (website available at <https://www.government.nl/topics/personal-data/personal-records-database-brp>).

<sup>60</sup> RVO website, 'What is RVO.nl', available at <https://english.rvo.nl/home/about-rvonl/what-is-rvonl>.

<sup>61</sup> FIU website, 'About the FIU', available at <https://www.fiu-nederland.nl/en/about-the-fiu>.

<sup>62</sup> Money Laundering and Terrorism Financing (Prevention) Act of 15 July 2008 (*Wet ter voorkoming van witwassen en financieren van terrorisme*), identification number BWBR0024282, available at <http://wetten.overheid.nl/BWBR0024282/2016-08-11/0/informatie>.

<sup>63</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141 of 5 June 2015, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.

<sup>64</sup> Money Laundering Prevention Act, Article 12(4).

Finance.

### 1.3 MONITORING OF THE PROCEEDINGS AND THE AUTHORITIES INVOLVED

**There is no cap of the scheme.** There are **no reporting obligations** in place set out by the Aliens Act. A certain scrutiny still exists as both **Parliamentary Chambers** (*Eerste en Tweede Kamer der Staten-Generaal*)<sup>65</sup> and the **Justice and Home Affairs Council** (JHA Council)<sup>66</sup> could **ask the Minister of Security and Justice** on the **number of successful applications**. The Minister provided at each amendment an overview and explanations of the uptake of the scheme.<sup>67</sup> The Ministry of Security and Justice publishes however half-yearly migration trend figures to the public.<sup>68</sup>

### 1.4 INFORMATION ON APPLICATIONS

In January 2016, the Minister of Security and Justice introduced amendments to the legal texts of the scheme. In his letter to the Parliament,<sup>69</sup> the Minister specifies that **up until 2016 only ten applications for the scheme were registered (since 2013)** and **only one** application to an investor from South Africa had been **granted**. All other applications were rejected because the required evidence was not provided or the application fees were not paid.<sup>70</sup> Because the scheme was not sufficiently used, the Ministry carried out several interviews with actors involved in the application procedure (IND, RVO) and other experts (from companies, auditors, representatives of the Chinese business community). This led to the Minister introducing changes in the scheme (see Section I of this Report).

The Ministry of Security and Justice informed that **since July 2016, an additional three applicants** to the ten recorded up until 2016 (see paragraph above) were successfully granted a residence permit under the scheme.<sup>71</sup> **None of the applications were turned down**. The Ministry did not provide an overview per year, as statistical data on residence permits is not disaggregated and, thus, does not specify which applications correspond specifically to investors. Therefore, no statistical data, apart from the numbers indicated above can be provided in this Report.<sup>72</sup>

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<sup>65</sup> The Dutch Parliament, called the States General (*Staten-Generaal*), consists of two chambers: Senate (*Eerste Kamer*) and the House of Representatives (*Tweede Kamer*). Website of the Dutch Parliament, available at [https://www.staten-generaal.nl/begrip/the\\_states\\_general](https://www.staten-generaal.nl/begrip/the_states_general).

<sup>66</sup> JHA website, available at <http://www.consilium.europa.eu/en/council-eu/configurations/jha/>.

<sup>67</sup> Decision of the State Secretary for Security and Justice of 27 May 2014 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 27 mei 2014 houdende wijziging van de Vreemdelingencirculaire*), Number WBV 2014/18, Official Gazette (*Staatscourant*) No. 15297 of 30 May 2014, available at: <http://cmr.jur.ru.nl/cmr/tbv/tbv13/14/WBV.2014.18.pdf>; Decision of the State Secretary for Security and Justice of 21 June 2016 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 21 juni 2016, nummer WBV 2016/7, houdende wijziging van de Vreemdelingencirculaire 2000*), Official Gazette (*Staatscourant*) No. 33962 of 30 June 2016, available at <https://zoek.officielebekendmakingen.nl/stcrt-2016-33962.html>.

<sup>68</sup> The latest report for 2017 are available on the following website: <https://www.rijksoverheid.nl/actueel/nieuws/2018/04/30/rapportage-vreemdelingenketen-2017-asielinstroom-stabiel-samenstelling-gewijzigd>. These reports do not include a specific statistical category just for the investor residence scheme but can be an indication of a trend (the figure includes three other legal migrant categories).

<sup>69</sup> Decision of the State Secretary for Security and Justice of 21 June 2016 amending the 2000 Implementation Guidelines of the Aliens Act (*Besluit van de Staatssecretaris van Veiligheid en Justitie van 21 juni 2016, nummer WBV 2016/7, houdende wijziging van de Vreemdelingencirculaire 2000*), Official Gazette (*Staatscourant*) No. 33962 of 30 June 2016, available at <https://zoek.officielebekendmakingen.nl/stcrt-2016-33962.html>.

<sup>70</sup> Letter of the Minister of Security and Justice to the Dutch House of Representatives of 8 January 2016 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-134.html>.

<sup>71</sup> Interview with the Ministry of Security and Justice, competent authority, 9 April 2018.

<sup>72</sup> Interview with the Ministry of Security of Justice, competent authority, 9 April 2018.

## 1.5 INFORMATION ON APPLICATIONS BY FAMILY MEMBERS

The Aliens Decree specifies that **family members (partners and/ or minor children) can also apply for residency in case it has been successfully granted to the investor.**<sup>73</sup> Family reunification can be requested **shortly after the granting of the permit to the investor or** both partners can apply **at the same time** should they move to the Netherlands together. The applicant (either the partner or investor) has to prove to have **enough income** for the time of stay.<sup>74</sup> When making the application for family reunification, **the investor is registered as the sponsor** for the partner and dependent minor children.<sup>75</sup>

The following **requirements** have to be met when applying for family reunification:<sup>76</sup>

- The partner is older than 21 years.
- The couple must be either married or have had a long and stable relationship or a registered partnership.
- Children need to be under 18 years.
- All family members have to be registered at the same address in the Netherlands.

The **application** can be **filed** either by the **investor** or by the **family member.**<sup>77</sup> There is a **special application** form that has to be filled in and filed with the IND.<sup>78</sup> The partner also has to also provide the **Clear Criminal Record Certificate** and take a Tuberculosis test and vaccination.<sup>79</sup>

No statistical data is available as information on applications by family members is not disaggregated (i.e. the data does not distinguish whether the family member is that of an investor or that of any other third-country national who is not an investor). This information would only be disaggregated if Parliament, as part of its scrutiny competences (see Section 1.3 above), would so request it (which has not happened at the time of research May 2018).<sup>80</sup>

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<sup>73</sup> Aliens Decree, Article 3(5).

<sup>74</sup> IND website, 'Sufficient independent and long-term income', available at <https://ind.nl/en/Pages/income.aspx>.

<sup>75</sup> Ministry of Security and Justice, Brochure, 'Investing and living in the Netherlands' (*Investeren en wonen in Nederland*), available at <https://ind.nl/Formulieren/3095.pdf>.

<sup>76</sup> Ministry of Security and Justice, Brochure, 'Investing and living in the Netherlands' (*Investeren en wonen in Nederland*), available at <https://ind.nl/Formulieren/3095.pdf>.

<sup>77</sup> IND website, 'Family', available at <https://ind.nl/en/family>.

<sup>78</sup> IND website, 'Forms and brochures', 'Application for the purpose of residence of 'family and relatives' (foreign national)-7525', available at [https://ind.nl/en/Pages/forms-and-brochures.aspx?pk\\_campaign=funnel-home&pk\\_kwd=forms-brochures](https://ind.nl/en/Pages/forms-and-brochures.aspx?pk_campaign=funnel-home&pk_kwd=forms-brochures).

<sup>79</sup> Application for the purpose of residence of 'family and relatives' (foreign national), available at <https://ind.nl/en/forms/7525.pdf>; and IND website, 'Spouse or (registered) partner', available at <https://ind.nl/en/family/Pages/Spouse-or-partner.aspx>.

<sup>80</sup> Interview with the Ministry of Security and Justice, competent authority, 9 April 2018 and 25 May 2018.

## 2 TYPE OF INVESTMENT<sup>81</sup>

The Table below shows the information regarding the type of investment required under Dutch law for investors' residence schemes. While the first row presents general considerations on the type of investments, the rows numbered (1) to (4) present specific information as regards each type of investment:

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<p>The investment must have added value for the Dutch economy.<sup>82</sup></p> <p>Types of investments under the Dutch law:<sup>83</sup></p> <ul style="list-style-type: none"> <li>■ <b>Investment in an innovative Dutch company:</b> innovative companies belong typically to the "top sectors"<sup>84</sup></li> <li>■ <b>Investment in joint-venture capital invested in an innovative company</b></li> <li>■ <b>Investment in a participative capital fund member of the Dutch Association of Investment Companies<sup>85</sup></b></li> <li>■ <b>Investment in a fund that fits the Dutch Seed Capital Fund Scheme as recognised by the Ministry of Economy.<sup>86</sup></b></li> </ul>	<p>Yes</p> <p>Minimum assets of the investor <b>EUR 1 250 000<sup>88</sup></b></p>	<ul style="list-style-type: none"> <li>■ The checks of the investment are carried out <b>at the moment of the application</b> for residency.</li> <li>■ The permit can be obtained only if all <b>evidence</b> has been provided. The IND considers as evidence of the investment a <b>statement</b> from a Dutch <b>bank</b> or a branch of a bank that relies on proof of identity of an EU passport and holds a license of the Dutch National Bank. This statement has to be presented at the time of application.<sup>89</sup></li> <li>■ <b>Additional checks</b> are carried out in case the <b>investor applies to prolong</b> the residence permit <b>to up to five years</b>. <b>Further evidence</b> is then needed to prove the benefits and positive impact of the investment.</li> <li>■ <b>The investment involves a transfer to the respective investment target</b> (company or fund) the funds can be transferred over time, however the initial amount needs to have been transferred in the application phase to a Dutch bank account (or EU account under supervision of the Dutch National Bank).<sup>90</sup> The</li> </ul>	<ul style="list-style-type: none"> <li>■ The Dutch Immigration and Naturalisation Office (<b>IND</b>) is the competent authority for the general procedure and the investment residency procedure.</li> <li>■ The Netherlands Enterprise Agency (<b>RVO</b>) controls that the <b>investment fulfils the investment criteria</b> and provides approval to the IND;</li> <li>■ The Financial Intelligence Unit (<b>FIU</b>) checks that the <b>investor has not obtained his assets maliciously</b>. Only if the FIU provides a positive opinion on the origin of the assets then the application procedure continues.</li> <li>■ The <b>Ministry for Security and</b></li> </ul>

<sup>81</sup> For the purposes of this Table, the term 'investment' covers any pecuniary disbursement required as part of the process for obtaining residence under the investors' residence scheme.

<sup>82</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (3).

<sup>83</sup> Implementation Guidelines of the Act under B11, Section 2.2, point (1), letters (a) to (d).

<sup>84</sup> Currently these are nine: energy, maritime and water industry, gardening sector, life science and health, logistics, high tech systems and materials, creative industry, chemicals, agri-food sector, available at <https://www.topsectoren.nl/topsectoren>.

<sup>85</sup> Dutch Association of Investment Companies (*Nederlandse Vereniging van Participatiemaatschappijen*, NVP).

<sup>86</sup> The scheme is administered by the Netherlands Enterprise Agency (RVO) – information available at <https://www.rvo.nl/subsidies-regelingen/seed-capital-voor-investeerders>.



Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
The investment cannot be in <b>real estate property</b> . <sup>87</sup>		procedure requires that the Dutch Financial Intelligence Unit (FIU) checks if the investor could be involved in an unusual transfer in his country of origin (country of residence) or the Netherlands. <sup>91</sup>	<b>Justice is the overall competent authority.</b>
<b>(1) Investment in an innovative Dutch company</b>		<p>The <b>investment in an innovative company</b> (whether directly or through joint-venture capital) must fulfil the legally established <b>general criteria</b>:<sup>92</sup></p> <ul style="list-style-type: none"> <li>■ the company must be registered in the Dutch Chamber of Commerce;</li> <li>■ the company must be of <b>added value for the Dutch economy</b>;<sup>93</sup></li> <li>■ the company must <b>continue to exist</b> after the investment requirement has been fulfilled and proven.</li> </ul> <p>In addition, the investment must fulfil two out of three of the following <b>criteria</b>:<sup>94</sup></p> <ul style="list-style-type: none"> <li>■ the investment <b>adds to innovation</b> in a particular industry</li> <li>■ the investment <b>creates jobs</b></li> <li>■ the investor brings a <b>high value personal network or specific knowledge</b></li> </ul> <p><b>Evidence</b> of the investment in a company:<sup>95</sup></p> <ul style="list-style-type: none"> <li>■ the investment agreement signed by the parties</li> </ul>	

<sup>88</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (1).

<sup>89</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2.

<sup>90</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (2).

<sup>87</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (5). Property for housing. It is possible to invest in offices for that business benefitting from the investment.

<sup>91</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (4).

<sup>92</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3.*, A. Primary test, General criteria for the investment in a company (*Primaire toets, Algemene criteria voor de investering in een onderneming*), see Box 1 and Box 2 in Section II.1 of this Report.

<sup>93</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3.*

<sup>94</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3.*, B. Secondary criteria (*Secundaire toets, Criteria voor de effecten van de investering*), see Box 1 and Box 2 in Section II.1 of this Report.

<sup>95</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2.

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
		<p>involved (investor and company) and showing the purpose of the investment;</p> <ul style="list-style-type: none"> <li>■ if the company was founded less than three years ago, a business plan containing specific information;<sup>96</sup></li> <li>■ annual accounts audited by an independent external party for the past three years or, if the company was established less than three years ago, the available annual accounts;</li> <li>■ data showing the expected positive effects of the investment in terms of size and time with regard to the capital position, turnover, result (net profit), employment and/or innovation, both technologically and non-technologically (e.g. patents, patents);</li> <li>■ investment plan of the company describing the purpose of the investment (can be integrated in the business plan or in the investment agreement). In case the company exists for less than three years an additional enterprise plan (according to Dutch standards) needs to be provided.</li> <li>■ evidence showing the non-financial ownership and degree of active involvement of the investor in the company, such as specific knowledge, specific work experience, references, patents, network and customers.</li> </ul>	

<sup>96</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2. The information that must be included in the business plan is the following:

- personal details and background of business management (training, experience);
- the product or service;
- a market analysis focused on the own product or service;
- description of pricing policy / structure with all costs included in it;
- organization;
- balance;
- operating overviews (realizations and prognoses);
- sales and liquidity forecast including calculations;
- specification and budget for job creation and investments.

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<b>(2) Investment in joint-venture capital invested in an innovative company</b>		<p>The investment in one or more innovative company through a joint-venture has to fulfil the same requirements as the investment in an innovative company (see above).<sup>97</sup> The assessment of such criteria is made in proportion to the contribution of the investor to the joint venture capital.<sup>98</sup></p> <p>The joint venture has to be registered in the Dutch Chamber of Commerce.<sup>99</sup></p> <p><b>Evidence</b> for investment in joint venture capital:<sup>100</sup></p> <ul style="list-style-type: none"> <li>■ investment agreement between the participants (with the fund and/ or other partners participating in the fund) showing the scope and conditions;</li> <li>■ fund plan demonstrating the nature of the organization, aims of the fund and conditions for investment;</li> <li>■ proof of continuity of the joint venture (for example, through annual accounts);</li> <li>■ same evidence as described when investing in a company (see above).</li> </ul>	
<b>(3) Investment in a participative capital fund member of the Dutch Association of Investment Companies (NVP)</b>		<p><b>Evidence</b> for investment in case of a participative investment fund member of the Dutch Association of Participative Funds:<sup>101</sup></p> <ul style="list-style-type: none"> <li>■ proof of participation in the fund;</li> <li>■ proof of membership with NVP</li> </ul>	
<b>(4) Investment in a fund that fits the Dutch Seed Capital Fund Scheme as recognised by the Ministry of Economy</b>		<p><b>Evidence</b> for investment in seed fund:<sup>102</sup></p> <ul style="list-style-type: none"> <li>■ proof of participation in the fund;</li> <li>■ proof of recognition given by the Ministry of Economy</li> </ul>	

<sup>97</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3*, point (1).

<sup>98</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3*, point (2).

<sup>99</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3*, point (2).

<sup>100</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2.

<sup>101</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2.

<sup>102</sup> Implementation Guidelines of the Aliens Act under B11, Section 4.2.

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
		or recognition by the Ministry that the fund fulfils the criteria of the seed fund capital rules.	

### 3 RESIDENCE PHASE

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit
A <b>regular residence permit</b> for a fixed term of <b>three years</b> . The investor is <b>exempted</b> in addition from needing apply for a <b>work permit</b> .	<ul style="list-style-type: none"> <li>■ The investor has the obligation to be <b>physically present</b> at least <b>four months</b> in a 12-month period;<sup>103</sup></li> <li>■ In practice the fulfilment of the residence criterion <b>is rather difficult to control</b>.<sup>104</sup></li> <li>■ One element to prove residency can be checking the <b>registration of the applicant at the town hall</b> in the city where he/she resides;</li> <li>■ <b>No specific frequency</b> for controls is determined under the Dutch system.</li> </ul>	<ul style="list-style-type: none"> <li>■ Verification of the residence criterion is a competence of the <b>city hall administration</b> where the applicant resides.</li> </ul>	<ul style="list-style-type: none"> <li>■ A <b>new application</b> form has to be filed to request for prolongation. The residence permit can be prolonged <b>once for a validity of in total five years</b>. <b>After that</b>, the investor can apply for a <b>permanent residence permit or naturalisation</b>.</li> <li>■ The following <b>documents</b> have to be provided depending on the type of investment: <ul style="list-style-type: none"> <li>○ <b>In case of investment in company:</b> recent annual account; proof from the executive director of the company that the investment is present in the company according to the plan; description of the results with regard to work creation; innovation or the personal investment of the investor;</li> <li>○ <b>In case of investment in a joint venture:</b> recent annual account of the fund; proof that the investor is partner in the fund; statement that the investment occurred in conformity to the investment plan; description of the results with regard to work creation, innovation and other</li> </ul> </li> </ul>

<sup>103</sup> Implementation Guidelines of the Aliens Act, Section B11, available at: <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<sup>104</sup> Interview with the Ministry of Security and Justice, competent authority, 9 April 2018. This is due to the fact that the person can move inside the EU without further control. Normally, such a control would have to be carried out by the town hall where the applicant is registered however they would not have the means to effectively carry out such checks.

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit
			<p>personal input by the investor.</p> <ul style="list-style-type: none"> <li>○ <b>In case of investment in a recognised fund by the Ministry of Economy:</b> proof of participation in the fund and that the investment is still available in the fund.</li> <li>○ <b>Investment in a participation fund</b> (membership NVP): proof of participation in the fund and that the investment is still in the fund.</li> </ul> <ul style="list-style-type: none"> <li>■ The <b>RVO</b> will assess once more if the investment is of added value for the Dutch economy and assess if the criteria of job creation has been fulfilled and assesses if 60% of the 10 FTEs have been created, and the remaining 40% will be fulfilled in the following two years. It will also check if the investment has been made according to the investment plan also for funds and if the investor is still a member of these funds. The RVO has to assess the investment positively so that the prolongation of the permit is granted.</li> <li>■ The <b>FIU checks again if the investor can be linked to unusual transactions.</b> Only if this is not the case the permit is granted.</li> <li>■ The <b>IND</b> checks that the initial <b>minimum amount</b> has <b>not</b> been <b>withdrawn</b> from the bank account and is invested accordingly.<sup>105</sup></li> </ul>

<sup>105</sup> The assessment is set out under the Implementation Guidelines of the Aliens Act, Section B11, Section 5.1., available at: <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>

#### 4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS<sup>106</sup>

Due diligence and security considerations	Procedure to verify due diligence and security considerations	Competent authorities and non-public bodies	Ex-post checks
<ul style="list-style-type: none"> <li>■ The investor and dependants have to declare that he/she does <b>not have a past criminal record</b>,<sup>107</sup> or has been <b>residing</b> in the Netherlands <b>illegally</b>;</li> <li>■ The investor and/or any dependant is not, or may <b>not</b> be a <b>potential threat to national security, public policy or public health</b>;<sup>108</sup></li> <li>■ Checks on <b>unusual transactions</b> are carried out by the <b>FIU</b>, which has a database of unusual transactions reported to the FIU, which can be declared suspicious.<sup>109</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ Due diligence checks are carried out <b>during the application procedure</b>;<sup>110</sup></li> <li>■ <b>Additional checks</b><sup>111</sup> may occur with regard to threat to national security, public policy or public health once the person has already been granted residency by the national Police</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>FIU</b> – checks the <b>origin of the assets</b><sup>112</sup> of the investor and whether any suspicious transaction may link to the investor. This aspect can also be checked while residing in the Netherlands.</li> <li>■ <b>IND</b> oversees the application and due diligence check.<sup>113</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ <b>No case on fraud or corruption</b> has been reported in relation to the investor's residence scheme</li> </ul>

<sup>106</sup> The country expert encountered difficulties in retrieving information (through desk research and stakeholder consultation) on due diligence measures.

<sup>107</sup> Application form for the investors' residence permit, 'Appendix', 'Antecedents Certificate', p.7, available at <https://ind.nl/en/Forms/7529.pdf>. The application form provides the person declares to never been sentenced to a prison sentence or a criminal offense for committing a crime and imprisoned; to never been ordered to perform unpaid work for committing a crime for the general utility or community service; to never been given an unconditional fine for committing a crime; to never accepted a transaction offer because of committing a crime; to never received a punishment order for committing a crime; to not currently be subject to criminal prosecution for committing a crime; to never been responsible for any of the following categories of actions as intended in Article 1F of the 1951 Refugee Convention; a crime against peace, a war crime; a crime against humanity, a serious non-political crime (e.g. murder or terrorism), or acts contrary to the purposes and principles of the United Nations (for example terrorist acts).

<sup>108</sup> No further information has been provided by the competent authority, the Ministry of Security and Justice, interviewed on 9 April 2018.

<sup>109</sup> The law (Money Laundering and Terrorist Financing (Prevention) Act (Wwft)) foresees a number of bodies that have to report any instance of money laundering and/or any suspicious transaction. The full list is available at <https://www.fiu-nederland.nl/en/to-report/do-i-have-a-duty-to-report>. According to an interview with the Ministry of Security and Justice, competent authority, 9 April 2018, the FIU also consults the money laundering intelligence unit of the country of origin/last residence of the investor.

<sup>110</sup> Due diligence with regard to the criminal past is carried out during the application procedure by the national security specialists (Police) who will check Dutch police registries and other intelligence sources, as well as Schengen police registries. The criminal past in the country of origin cannot be checked in detail within due diligence procedures. Information received in interview with the Ministry of Security and Justice, competent authority, 25 May 2018.

<sup>111</sup> Aliens Decree 2000, Section 3, Article 3.77. No additional information on what the checks regarding this criterion consist in has been retrieved through the desk research or the stakeholder consultation.

<sup>112</sup> Implementation Guidelines of the Aliens Act, Section B11, available at <http://wetten.overheid.nl/BWBR0012289/2018-01-01#Circulaire.divisieB11>.

<sup>113</sup> Interview with the Ministry of Security and Justice, competent authority, 9 April 2018. Due diligence in the application is not further specifically checked. The interviewee did not clarify how the IND specifically oversees the due diligence controls.

### III. RIGHTS GRANTED BY THE PERMITS

#### 1 RIGHTS GRANTED TO INVESTORS

The investor's residence permit grants **full access to the labour market and right to work without having to apply for a work permit.**<sup>114</sup> In case of **self-employment**, the investor could combine, for example, with an **application for a residence permit to work as self-employed.**<sup>115</sup> This is a permit to specifically exercise a self-employed activity. In the application the investor would have to **demonstrate the added value of this activity for the Dutch economy** and to **outline the project.**<sup>116</sup> If the **investor** already has a **company in another country**, then a **branch or subsidiary** of that company could be set up **in the Netherlands.**<sup>117</sup> The investor could appoint him/herself as the managing director.<sup>118</sup>

As explained above in this Report (see Section II.2), in the case of an **investment in a Dutch innovative company**, the investment can consist of the investors' **assets** but also his/her **own specific skills, experience or relations and networks** to the benefit of that company.<sup>119</sup> Hence, in that case, the investor should be **active in the business.**<sup>120</sup>

The investor benefits from the same rights as a Dutch national in accordance with the Single Permit Directive 2011/98/EU.<sup>121</sup> All rights granted to the investor stem from the equal treatment law and the principles applicable to any resident legally residing in the Netherlands<sup>122</sup>.

#### 2 RIGHTS GRANTED TO THE INVESTORS' FAMILY MEMBERS

Investor's family members also have **access to the labour market and to the benefits and rights** as the investor.<sup>123</sup> The partner has the right to work. **Children have access to the educational system.** Should the **partner** wish to carry out an activity **as self-employed**, the partner may need as well to apply for a **specific residence permit** in this case.

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<sup>114</sup> Implementing Guidelines of the Aliens Act, Section 11, Section 3.

<sup>115</sup> Implementing Guidelines of the Aliens Act, Section B 6, Section 2.5.

<sup>116</sup> Implementing Guidelines of the Aliens Act, Section B 6, Section 2.5.

<sup>117</sup> Dutch Chamber of Commerce (*Kamer van Koophandel*, KvK) website, available at <https://www.kvk.nl/inschrijven-en-wijzigen/inschrijven-bij-de-kamer-van-koophandel/moet-ik-mijn-bedrijf-inschrijven/inschrijven-buitenlandse-bedrijven/>.

<sup>118</sup> Dutch Chamber of Commerce (*Kamer van Koophandel*, KvK) website, available at <https://www.kvk.nl/inschrijven-en-wijzigen/inschrijven-bij-de-kamer-van-koophandel/moet-ik-mijn-bedrijf-inschrijven/inschrijven-buitenlandse-bedrijven/>.

<sup>119</sup> See Section II.1 of this Report. One of the three criteria that has to be satisfied to make the investment in conformity with the investor's residence scheme when investing in a company is to provide his personal skills and network to the benefit of that company, or the investment creates jobs or contributes to the company's ability to innovate.

<sup>120</sup> Implementation Guidelines of the Aliens Act, Section B11, Section 4.2.

<sup>121</sup> Alien Act 2000, Section 3, Article 9; Act on equal treatment (*Algemene wet gelijke behandeling*) Article 1 and Article 2.5 concerning nationality, Article 2.5 states: "The prohibition on discrimination on grounds of nationality laid down in this Act does not apply: a. if the distinction is based on generally binding rules or written or unwritten rules of international law and b. in cases where nationality is decisive.

<sup>122</sup> The equal treatment principle results from: Alien Act 2000, Section 3, Article 9; Act on equal treatment (*Algemene wet gelijke behandeling*) Article 1 and Article 2.5 concerning nationality, Article 2.5 states: "The prohibition on discrimination on grounds of nationality laid down in this Act does not apply: a. if the distinction is based on generally binding rules or written or unwritten rules of international law and b. in cases where nationality is decisive" – law available at: <http://wetten.overheid.nl/BWBR0006502/2015-07-01>; in combination applicable with the Fundamental Law (*Grondwet*) Article 1: "All those who are in the Netherlands, are treated equally in similar cases. Discrimination on grounds of religion, belief, political opinion, race, gender or on any ground whatsoever is not permitted"; available at: [http://wetten.overheid.nl/BWBR0001840/2017-11-17#Hoofdstuk1\\_Artikel1](http://wetten.overheid.nl/BWBR0001840/2017-11-17#Hoofdstuk1_Artikel1)

<sup>123</sup> Implementation Guidelines of the Aliens Act, Section B11, Section 3.

The investors' family members benefit from the same rights as a Dutch national in accordance with the Single Permit Directive 2011/98/EU.<sup>124</sup> All rights granted to the investor stem from the equal treatment law and the principles applicable to any resident legally residing in the Netherlands<sup>125</sup>.

### 3 OTHER BENEFITS

No other benefits were identified.

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<sup>124</sup> Alien Act 2000, Section 3, Article 9; Act on equal treatment (*Algemene wet gelijke behandeling*) Article 1 and Article 2.5 concerning nationality, Article 2.5 states: "The prohibition on discrimination on grounds of nationality laid down in this Act does not apply: a. if the distinction is based on generally binding rules or written or unwritten rules of international law and b. in cases where nationality is decisive."

<sup>125</sup> The equal treatment principle results from: Alien Act 2000, Section 3, Article 9; Act on equal treatment (*Algemene wet gelijke behandeling*) Article 1 and Article 2.5 concerning nationality, Article 2.5 states: "The prohibition on discrimination on grounds of nationality laid down in this Act does not apply: a. if the distinction is based on generally binding rules or written or unwritten rules of international law and b. in cases where nationality is decisive" – law available at: <http://wetten.overheid.nl/BWBR0006502/2015-07-01>; in combination applicable with the Fundamental Law (*Grondwet*) Article 1: "All those who are in the Netherlands, are treated equally in similar cases. Discrimination on grounds of religion, belief, political opinion, race, gender or on any ground whatsoever is not permitted"; available at: [http://wetten.overheid.nl/BWBR0001840/2017-11-17#Hoofdstuk1\\_Artikel1](http://wetten.overheid.nl/BWBR0001840/2017-11-17#Hoofdstuk1_Artikel1)



#### IV. INTERACTION BETWEEN RESIDENCE AND CITIZENSHIP SCHEMES

**After five years of residence in the Netherlands under a valid residence permit, the investor can apply for naturalisation and obtain citizenship or can apply for a permanent residence permit** (in cases where the investor does not want to obtain the Dutch nationality). The **ordinary procedure** for citizenship and permanent residence procedure is applied. The investor has to take the Dutch integration test after five years.<sup>126</sup>

Only the facilitated discretionary naturalisation could be an option to avoid to apply the integration test. Under Article 10 of the Act on Dutch Nationality,<sup>127</sup> **the Minister for Security and Justice has the possibility to grant exceptionally citizenship**. This procedure can be used only in exceptional cases as explained by the Implementing Guidelines of this Act.<sup>128</sup> One of the examples given in the Guidelines is the case of someone that **“in the context of their work for companies that are of great importance to the Dutch economy and are proved to be harmed in performing their functions as a result of not having Dutch nationality”**.

The investor has **to prove integration** by obtaining the Dutch Integration Diploma (this includes language) before applying for citizenship or permanent residence. The main difference for **investors** is that they **do not need to prove their integration until five years after** they were granted the residence permit (this includes language requirements). For other temporary residence permits this obligation has to be fulfilled after three years. The tests are carried out and granted by the Education Office (*Dienst Uitvoering Onderwijs* (DUO)).<sup>129</sup>

The **application form** has to be filled and documents that proof identity and other documents where applicable are filed with the municipality where the person resides. The municipality checks the completeness of the application and submits it for examination and approval to the IND. Additional checks could be carried out by the IND. In some cases, where the investor does not have the right to keep his nationality, may have the obligation to change nationality.<sup>130</sup> The application form for a permanent residence permit can be filled and submitted digitally via the website of the IND. The investor needs to proof residence of five years in the Netherlands (registration with the municipality) and proof to have sufficient and sustainable economic means<sup>131</sup>.

No information on statistics regarding the number or percentage of TCNs who obtained citizenship on the basis of investors' residence permits was obtained.<sup>132</sup>

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<sup>126</sup> IND website, available at <https://ind.nl/en/other/Pages/Investing-in-the-Netherlands.aspx>.

<sup>127</sup> Act on Dutch Nationality (*Rijkswet op het Nederlanderschap*), Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands, 1984, Nos. 628/629, available at <http://wetten.overheid.nl/BWBR0003738/2017-03-01> (last amended 2017).

<sup>128</sup> Implementing Guidelines on the Act on Dutch Nationality (*Handleiding Rijkswet op het Nederlanderschap 2003*), Official Gazette of 19 September 2017, No. 52202, available at [http://wetten.overheid.nl/BWBW33099/2018-01-01#Circulaire.divisie10\\_Tekst](http://wetten.overheid.nl/BWBW33099/2018-01-01#Circulaire.divisie10_Tekst).

<sup>129</sup> IND website, 'Integration in the Netherlands', available at <https://ind.nl/en/Pages/Integration-in-the-netherlands.aspx>.

<sup>130</sup> Application form for the investors' residence permit, available at <https://ind.nl/en/Forms/7529.pdf>.

<sup>131</sup> IND website explaining the application procedure available at: <https://ind.nl/onbepaalde-tijd/Paginas/Onbepaalde-tijd-na-5-jaar-verblijf-in-Nederland.aspx>

<sup>132</sup> Interview with Ministry of Security and Justice, competent authority, 9 April 2018.

## V. ECONOMIC AND FINANCIAL EFFICIENCY OF RESIDENCE PERMITS FOR FOREIGN INVESTORS

When assessing the requirements of the investor residence scheme, the **investment made should be of added value** for the Dutch economy.<sup>133</sup> If the investor invests **in a company, employment of at least 10 FTE** should be created within five years (of which **60% should be created in the first three years**)<sup>134</sup> and the investment should **lead to innovation and increased trade** of that company.<sup>135</sup> As explained above in this Report, these matters are assessed for each individual application.<sup>136</sup> The Minister of Security and Justice could hence assess after a certain period of time the overall benefit of the scheme to the Dutch economy.<sup>137</sup>

According to the Ministry of Justice assessment in 2016<sup>138</sup>, **expectations have not been met**.<sup>139</sup> The scheme had a very low uptake (four granted residence permits since start of the scheme until May 2018 (in April 2018 one new application has been handled which is likely to be approved), and in total 12 applications were lodged). In total, all four investors that were granted residence permits invested the minimum necessary amount (1, 25 million EUR). An assessment has been carried out internally by the Ministry. Interviews have been carried out by the Ministry with responsible managers in the IND and the Ministry, as well as other experts (from companies, auditors, representatives of the Chinese business community).<sup>140</sup> No information on the total number of funds was included in this assessment.<sup>141</sup> Funds are in their vast majority invested in start-ups – specifically innovative ones, aim to provide funds to companies launching new products etc.

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<sup>133</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, point (3).

<sup>134</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3*, point 1, letter (B), ‘Secondary criteria’.

<sup>135</sup> Implementation Guidelines of the Aliens Act under B11, Section 2.2, *Ad 1 en 3*, point 1, letter (B), ‘Secondary criteria’.

<sup>136</sup> See Sections II.1 and 2 of this Report.

<sup>137</sup> This information is based on the conclusions of the country expert in view of the information gathered in the Report through desk research and stakeholder consultation.

<sup>138</sup> Letter of the Minister of Security and Justice to the Dutch House of Representatives of 8 January 2016 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-134.html>.

<sup>139</sup> Interview with the Ministry of Justice, competent authority, 9 April 2018. The scheme will be again evaluated by end of the year.

<sup>140</sup> Letter of the Minister of Security and Justice to the Dutch House of Representatives of 8 January 2016 (*Brief van de Staatssecretaris van Veiligheid en Justitie aan de Voorzitter van de Tweede Kamer der Staten-Generaal*), available at <https://zoek.officielebekendmakingen.nl/kst-30573-134.html>. According to an interview with the Ministry for Justice (responsible authority) on 25 May 2018 it is rather likely that the scheme may be stopped. There is an evaluation of the 2013 legal migration reforms on-going which is likely to be finalised by the end of the year of 2018.

<sup>141</sup> NVP website, available at <http://www.nvp.nl/pagina/doi%20van%20de%20nvp/?lang=en#lang=en>. The NVP has about 85 member organisations.