



**SPECIALIST BUSINESS BROKERS AND ADVISORS**

## **BUSINESS MIGRATION – STRATEGIC PARTNERING**

### **Background**

There are many business migrants seeking to establish themselves in Victoria, with large numbers from the PRC in particular.

Under the Categories of a #163 or #132 Business Migration Visa, the aspiring Business Migrant (BM – hereafter) is obliged to meet certain criteria to qualify.

Initially they will seek to undertake an exploratory visit to Victoria to investigate business opportunities, particularly those that may be aligned to their business background/experience in their country of origin.

Category #163 & #132 BM's are obliged to submit a business plan detailing their proposed business venture to the State Government for formal sponsorship before they can lodge an application with the Australian Government who will undertake a range of compliance checks including identification, financial audit criteria, security, health etc before they are issued with a temporary residency visa to allow them to pursue their business goals in Australia.

In the case of BM's from the PRC, all have existing business connections in China and their Victorian business plan may revolve around setting up the import of products produced in China. In addition, this activity may be supplemented with exports of Australian items back to China.

In relation to the China market, there is emerging evidence to suggest the eventual applicant for PR may be the visa holder's spouse. The visa holder will visit the family in Victoria on a regular basis but maintain a focus on running the family business in China.

**#163 Visa - current eligibility criteria:** – (extracted from DIMIA Business Skills Entry Booklet #7 p.19 – bold/underlined sections – our emphasis!)

You need to show that:

- You have been sponsored by an appropriate regional authority of a State or Territory government:
- You are the holder of a Business owner (Provisional), a State/Territory Sponsored Business Owner (Provisional), a Senior Executive (Provisional), a State/Territory Sponsored Senior Executive (Provisional) visa, an Investor (Provisional), a



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State/Territory Sponsored Investor (Provisional) or a Business (long Stay)  
Independent Executive visa:

- **You have had, and continue to have, an ownership interest and direct continuous management, in one or more actively operating businesses in Australia for at least 2 years immediately before application is made; and**
- For each of these businesses an Australian Business Number has been obtained and all Business Activity Statements required by the Australian Taxation Office for that period have been submitted to the Australian Taxation Office and are included in the application:
- Unless the appropriate regional authority has determined there are exceptional circumstances, **you meet at least 2 of the following 3 requirements:**
  - Throughout the 12 months immediately before the application is made' your (or your and your spouse's) **main business or main businesses employed at least the equivalent of one full-time employee who is an Australian citizen, Australian permanent resident or New Zealand passport holder, and who is not a member of your family unit;**
  - Throughout the 12 months immediately before the application is made, the **net value of your (or you and your spouse's combined) personal and business assets in Australia has been at least A\$250,000;**
  - Throughout the 12 months immediately before the application is made, the **net value of your (or you and your spouse's combined) in the main business or main businesses in Australia has been at least A\$75,000;**
- In the 12 months immediately before the application is made, **your main business or main businesses together, had a turnover of at least A\$200,000;**
- Neither you nor your spouse have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia;
- You have been in Australia as the holder of one of the qualifying visas for a total of at least one year in the 2 years immediately before the application is made.

Subject to meeting this criteria (which can be subject to inspection/audit by the Immigration Department), the BM (or spouse) will then be eligible to apply for permanent residency in Australia.

**#132 Visa – eligibility criteria:** (Extracted from Department of Victorian Communities Publication: BM 132 Oct 05 – our emphasis where underlined or in brackets)

**“The State Government of Victoria is looking to attract individuals who have an exceptional commercial background who have identified a specific project they wish to establish in Victoria.**



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**To attract sponsorship, exceptional economic benefit to Victoria must be evident by way of the applicant’s proposed commercial project. The “eligible” project must have been subject to significant market viability research and be supported by a comprehensive business plan which indicates the project’s exceptional direct economic benefit to Victoria. The project value would after 24 months of operation generally be no less than AUD750,000 in regional Victoria and AUD1.5 million in Melbourne.**

**It is expected that the applicant will have visited Victoria, undertaken detailed market research and worked with the appropriate State government agency or department developing the project’s business plan. (If this is not the case please comment.)**

**The proposed project will be considered against the following criteria:-**

- I. Potential to deliver an exceptional contribution to sustainable business development within Victoria including the introduction of new/improved technology, improved business skills and contributing to competitiveness within sectors of the economy;**
- II. Potential capital investment and exceptional level of expanded trade in value added goods and services;**
- III. Potential of the business to generate or maintain an exceptional level of sustainable employment in Victoria (including employee training);**
- IV. The geographic location of the project.”**

If the applicant is able to meet this criteria a comprehensive Business Plan needs to be developed and submitted to the Victorian Government who will assess eligibility of the proposed business plan for State Sponsorship.

If the Sate Government agrees to sponsor the applicant, the applicant and their Migration Agent still needs to make a formal application to DMIA, but State Sponsorship will generally result in the applicant being granted Permanent Residency approval.

**Note: The main difference between the #132 and a #163 “roads to Permanent Residency” (apart from \$ to be invested) is the #132 applicant can qualify for PR virtually immediately (say 6 months from start to finish), while the #163 applicant needs to have their business up & running for 2-3 years prior to making their application for PR.**

**However, under either scenario, buying into an established business generally affords more surety of meeting the eligibility criteria.**



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### Current Situation

- The eligibility criteria makes it difficult for many BM's to find suitable/acceptable "stand-alone" business investments that will enable them to meet DIMIA's requirements for PR.
- Due to language difficulties and/or lack of past appropriate business experience most PRC BM's are precluded from purchasing Franchise businesses which represent a significant proportion of the businesses available in Australia.
- The Victorian government is actively promoting, encouraging & sponsoring business migration and wants to feel confident that the BM is prepared for the commercial reality of their chosen business activity.

### Rationale

- Australia has an ageing population with the average age of the owners of small businesses (Australia wide) being in their late 50's.
- It is estimated that about 50% of all small businesses in Australia will be sold in the next decade with approximately 303,000 small businesses being based in Victoria.
- For most family businesses (being the bulk of small businesses in Australia) the opportunities for succession via family are limited. Many of the children ("Y Generation") of small business owners had the benefit of good education, a professional career and good salary and hence no desire to work as hard & long as their parents did to establish and grow the business. They simply don't have any interest in taking over the family business.
- Many younger (Aussie) aspiring entrepreneurs will commence their business careers in Franchise businesses for reasons including simply because they can (they qualify with Franchisors), they are able to borrow from the banks, the perceived risks are lower (but often lower returns) and broadly, re-sale of franchise businesses is (on balance) perhaps easier given a broader buyer group and comparative sales that establish values.
- Most non-franchise businesses (there are some exceptions) sell on lower price multiples than franchise businesses due to perceived higher risks and therefore the demand for higher returns on funds employed. There are obviously other factors including non-exclusivity of product/territory (which is an attraction with



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- franchise businesses) – plus lack of detailed policies, procedures chains of supply etc that are part of a franchise package.
- In the case of non-franchise, family owned small businesses, the owner is usually a critical element of the success of the business and purchasers will demand an orderly hand-over period to ensure that the knowledge and business skills of the owner are passed on. This process is usually controlled via the business contract of sale with perhaps part of the sale proceeds being withheld, pending completion of orderly hand-over or via performance criteria and deferred payments.

### **The Opportunity (for Business Migrants)**

- BM's have the opportunity to secure a strategic investment in an existing Australian company by way of partial shareholding, at least initially.
- The investment would need to represent a significant proportion of the equity of the “target business” and depending on the size & value of the business; this may range from a 10% interest through to 99%.
- The target business would preferably be one where the BM is able to bring skills, experience or other attributes to the table and generally add value to the business.
- The investment would also need to meet the eligibility criteria for application for permanent residency. (turnover & other)
- The investment would be regulated via a formal shareholder agreement which would cover the terms applying to all aspects of managing the business and the relevant rights as well as obligations of the respective shareholders.
- The “vendor” would need to provide the incoming BM shareholder/director with appropriate indemnities in respect of past activities of the company or, if deemed necessary, a holding company structure or even new corporate entity may need to be established. This would be subject to legal advice on each prospective investment.
- The BM would have a formal agreement with the vendor in relation to respective strategies suitable to the requirements of each party.

### **The Benefits**

- The aspiring Business Migrant has the benefit of acquiring a strategic interest in an established business with a track record and thereby reasonable surety that eligibility criteria will be met.



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- The vendor is locked into the business for an agreed period and the BM is afforded time to upgrade their language and local business skills – to assimilate!
- For medium to larger businesses, the BM can tailor their executive management involvement to suit their individual circumstances.
- The BM is not solely locked into a 7 day per week business with consequent inability to travel when necessary etc.
- There is more likelihood of the BM being “matched” with an Aussie business that has some relativity to their prior business experience and consequently greater capacity to add value rather than merely afford a transfer of ownership.
- The Aussie vendors of small businesses are able to tap into a broader market for the orderly sale/succession of ownership of their businesses and hopefully a more stable price scenario.
- The BM is able to dip their foot into the water, gain insight into the business, perhaps prior to moving their level of ownership to 100%.
- Working together will hopefully also bridge the cultural gaps and build on the multicultural strengths of this country while also affording identifiable economic benefits!

### The Process

### **THE ISSUE IS WHEN! TIME AND VISA PROCESSING CAN BE A PROBLEM.**

- Migration Agent refers BM to the Business Broker with details of background, business & locational preferences, amount of funds available to invest, etc. **BM should (preferably) have a qualifying visa at that time!**
- Business Broker (BB) sources suitable investee company and provides a briefing document to the Migration Agent (MA) for discussion with the BM. The proposed investment will have usually been referred to the State Government to ascertain potential eligibility for sponsorship BEFORE being introduced to the BM and the MA.
- BB acts for vendor of target company while the MA acts for the BM and continues to look after their interests.
- BB facilitates meeting with target company, BB & MA assist with negotiations and continue to act for their respective clients.
- When agreement is reached a “Heads of Agreement” document is prepared and executed. A preliminary deposit (normally 10% of the agreed investment) is then paid. This deposit will secure the agreement but is fully refundable if all approvals are not forthcoming.



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- Business Plan is prepared based on the specific investment proposed and State Government sponsorship is managed through.
- MA at the same time progresses applications to DIMIA as well as health and audit checks.
- Shareholder agreement is prepared by Solicitor under instruction from the BB and referred to the MA & BM for review and acceptance following legal & accounting advice.
- Shareholder Agreement signed pending final approvals.
- Once State Sponsorship, DIMIA approvals etc have been secured, proceed to formal settlement.
- Note: no warranties or assurances can or will be given by the BB or MA regarding the likely success of the “investment” by the BM or ultimate qualification for PR, but investment opportunities WILL be carefully chosen.

### **Example**

- BM is found a suitable investee company and agrees to invest \$1.5m for 25% share.
- In many cases, particularly with larger businesses, most of the funds subscribed by the BM will be used to repay existing debts or fund working capital requirements. As a consequence, the business is usually able to agree to pay the BM a return on the funds invested (rate of return is generally negotiable in the 10-15% range and can be offset against dividends/distributions).
- The BM steps into an established business with a track record and some assurances regarding the likelihood the business will meet eligibility criteria (see earlier). More chance of being able to make application for PR in shorter time frame.
- Agreements provide for vendor to remain for 2-4 years with BM having option to buy remaining 75% share at value to be mutually agreed.
- The vendor has the benefit of selling their business on a staged basis, and/or recapitalizing their business and being able to maximize ultimate value through the involvement of the BM as an equity partner, initially.
- The process also allows for the very orderly transmission (sale) of family type businesses as well as time for the BM to assimilate and get to fully understand the business. The BM’s business experience/skills and networks are more readily transferable particularly where the investee business has some relativity to the BM’s background. Greater chance of making a positive contribution to the Victorian economy.
- The shareholder agreement would also cover eventualities including a situation where the BM was obliged to exit the investment, after a period, due to



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unforeseen circumstances. A formula may form part of the agreement for subsequent sell down and/or buy-back.

**Synopsis**

- This arrangement provides a sound sale strategy for the vendor and even after allowing for initial costs; provides a mechanism to optimize business value including eventual sale price – if that is the path chosen.
- The attraction of equity funds into private companies has always been very difficult and/or costly in Australia. This proposal provides a new avenue for raising capital on very cost effective terms.
- The vendor may enhance the business by electing to use the additional funds as part of a financing strategy,
- Active involvement by the BM (& associates) in the investee business has the potential to add value and extend the economic activity of the business unit.
- The proposal provides a solid opportunity for the BM to meet PR requirements.

**#132 Cases**

- **For #132 applicants “tailored opportunities” designed to fit the skills and business background of the applicant will be carefully sourced.**
- **Businesses requiring additional capital to fund growth, retirement of debt and/or access to off-shore manufacturing capabilities (accessed through the #132 investment) are typical “targets.”**

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**Further Information**

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