



Oxford  
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# Due Diligence in Investment Migration

Best Approach and Minimum Standard Recommendations

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INVESTMENT  
MIGRATION  
COUNCIL



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THE BEGINNING 



## Report 2 (2/2)

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# Due Diligence in Investment Migration: Best Approach and Minimum Standard Recommendations



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## Acronyms

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<b>ABC</b>	Anti-Bribery and Corruption
<b>AML</b>	Anti-Money Laundering
<b>CBI</b>	Citizenship-by-Investment
<b>CIU</b>	Citizenship by Investment Unit
<b>FIU</b>	Financial Intelligence Unit
<b>IMC</b>	Investment Migration Council
<b>KYC</b>	Know Your Customer
<b>NGO</b>	Non-Governmental Organisation
<b>PEP</b>	Politically Exposed Person
<b>RBI</b>	Residence-by-Investment

## About the Report

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The Investment Migration Council (IMC), in coordination with BDO USA, LLP (BDO), Exiger, and Refinitiv, formed a Due Diligence Working Group to examine the state of play of due diligence and explore the potential for creating minimum standards across the investment migration industry. Oxford Analytica, commissioned by the IMC, has drawn on industry-wide insights to conduct independent research on these questions and produce two reports.

The first, “Due Diligence in Investment Migration: Current Applications and Trends”, provides a critical overview of due diligence processes in investment migration, assessing current due diligence practices and the imperatives for further improvements towards consistency, collaboration and more effective methodologies. The second report, “Due Diligence in Investment Migration: Best Approach and Minimum Standard Recommendations”, is more specific, suggesting minimum standards for agents, due diligence providers and governments. It is hoped that these two reports will help bridge the gap created by a lack of harmonised standards and transparency of due diligence processes in investment migration.

### About the Investment Migration Council

The IMC is worldwide forum for investment migration, bringing together the leading stakeholders in the field. The IMC sets global standards, provides qualifications and publishes in-demand research in the field of investment migration aimed at governments, policy makers, international organisations, and the public. It is a non-profit Swiss based membership organisation in special consultative status with the Economic and Social Council of the United Nations since 2019 and registered with the European Commission Joint Transparency Register Secretariat (ID: 337639131420-09).



### About Oxford Analytica

For over 40 years, Oxford Analytica has drawn on its worldwide network of over 1,400 leading scholars, former policymakers, regulators and industry leaders to provide customised and actionable analysis and advisory services to international organisations, governments and private sector institutions. Oxford Analytica approaches a single issue from multiple perspectives with a strong emphasis on analytical integrity.



### About BDO

BDO provides assurance, tax, and advisory services to clients around the globe from its 1,500+ global offices, and offers numerous industry-specific practices, world-class resources, and an unparalleled commitment to meeting its clients' needs. The Investment Migration Due Diligence practice of BDO provides strategic guidance to the Investment Migration industry in due diligence matters and offers sophisticated



due diligence and continuous monitoring technology solutions with the exceptional service its clients have come to expect. Recognised as an industry leader and Investigations Consultancy firm of the Year, BDO has a deep understanding of the issues facing Investment Migration, and the significant role that due diligence plays in the mitigation of risk for the industry.



#### About Exiger

Exiger is a global regulatory and financial crime, risk and compliance company. Exiger assists organisations worldwide with practical advice and technology solutions to prevent compliance breaches, respond to risk, remediate major issues and monitor ongoing business activities. Exiger's Immigration, Citizenship & Visa Practice has provided enhanced due diligence and consulting services to citizenship and residency by investment programmes since 2006, and is recognised as an industry pioneer and trusted leader by many of the largest and fastest growing programmes operating in the world today.



#### About Refinitiv

Refinitiv, formerly Thomson Reuters Financial & Risk business, is one of the world's leading providers of financial markets data and infrastructure, serving over 40,000 institutions in over 190 countries. Its Enhanced Due Diligence business has twenty years of experience in delivering comprehensive background check reports on individuals and entities to global Governments, Corporates and Financial Institutions. It has been a trusted partner and leading provider of due diligence checks for Investment Migration Programmes for over a decade. Refinitiv has more than 400 highly trained, certified due diligence researchers, speaking 60+ languages across 13 global offices, including Counter Fraud Specialists and Certified Anti-Money Laundering Specialists.

### Organisations interviewed

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Multiple actors working in the field of investment migration, including agents, due diligence providers and representatives of governments with Citizenship by-Investment (CBI) or Residence by Investment (RBI) programs, were invited to participate in the project and contribute the benefits of their experience and knowledge to build a comprehensive view of current due diligence practices in the industry, and also consulted about what should be the desired best practice in due diligence for investment migration programs. The two reports are based on interviews with cooperative agents and representatives of governments, and interviews conducted with the representatives of specialised due diligence providers, and an international corruption monitoring organization: APEX Capital Partners Corp; BDO; Exiger; Government of Malta; Government of St. Lucia; Henley & Partners; La Vida Golden Visas; Refinitiv; and Transparency International. In some cases, more than one interview was conducted per organisation.

## Executive Summary

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Although due diligence processes are at the core of the investment migration industry, their execution is still unequal across programme types and geographies. Instances of less robust due diligence threaten the standing of the entire industry, while the potential transnational impacts of investment migration residency and citizenship are also driving the need for minimum standards.

In this report, we explore the scope and reach of due diligence minimum standards. Such minimum standards would apply to each stage of agent-led and government-led due diligence, with the support of specialised third-party due diligence providers. This will enable a de-risking of the industry and create more trust in investment migration programmes. It will further ensure that agents mitigate their own financial and reputational risk exposure, even if some firms do not fall under anti-money laundering regulations.

A well-structured framework for due diligence procedures is recommended. There must be clear delineation of responsibilities, strong governance to ensure that all the different standards are being met, and transparency to allow for public scrutiny and to verify that due diligence processes are being followed to good effect. The proposed minimum standards would encourage agents representing applicants to be actively involved in the due diligence process. The decision to accept or reject an applicant, however, ultimately falls to governments and is determined by what they deem to be in their interests after considering the risk profile of an applicant.

The report presents four conclusions and recommendations:

1. It is widely accepted that minimum due diligence standards are required for CBI and RBI programmes, and that these standards should be the same for both. This is notwithstanding that in practice, the level of due diligence undertaken by a CBI programme is deeper than for RBI.
2. Developing these standards is the responsibility of governments, but will require extensive input from industry associations if they are to be effective.
3. Once established, both government and agent minimum standards should be clearly listed on the IMC website and on the websites of all the industry players.
4. There must be sanctions for failing to meet these minimum standards. While these should initially be imposed by trade bodies on agents, there is no supranational body with the power to hold governments themselves accountable. It remains up to governments to police themselves, although civil society actors and the media should raise awareness if governments fail to apply internationally agreed standards and accepted norms. Such political and societal pressures will remain important drivers for governments to raise the bar of the rigour and integrity of the due diligence process that underpins investment migration programmes.

## Introduction

### Aims of the report

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In our first report, “Due Diligence in Investment Migration: Current Applications and Trends”, we identified why minimum standards of due diligence are needed across the investment migration industry. In this report, we outline what these minimum due diligence standards might look like for both agents and governments, and how these two actors within the investment migration ecosystem can better collaborate with each other, and with third-party providers, to enforce those standards and share information.

This report is intended as a tool, both for those parties active within the investor migration sector and those who scrutinise it, including governments, international organisations, the media, and Non-Governmental Organisations (NGOs). Our analysis of current applications and ensuing recommendations aims to contribute to the setting of global standards on due diligence, which in turn will engender greater trust in the industry.

### Due diligence and investment migration

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Investment migration programmes enable nations to grant residence or citizenship rights to individuals in exchange for a substantial investment. As the pool of potential applicants grows, more governments see CBI and RBI as a source of capital inflows. This is leading to strong growth in the industry.

Industry growth is reflected not only in the number of applications to CBI and RBI programmes, but also in the creation of new CBI and RBI programmes. This in turn is bringing greater scrutiny from the European Union, and international institutions such as the Organisation for Economic Co-operation and Development, as well as NGOs and the media.

In part as a response to this scrutiny, many players within the industry are keen to explain and detail the level of due diligence that is already conducted on applicants. However, there is also a recognition that more emphasis on due diligence is needed, together with increased collaboration between practitioners and consistency in the risk profiling of applicants. Agreed definitions of risk categories and a standardised risk assessment framework for applicants would help to create a more consistent and efficient process. It would also clarify further the level of risk tolerance of different government investment migration programmes.

There are typically four separate stages to the due diligence process:

1. Identity verification and source of wealth checks, and screening carried out by both agents and governments through online searches and databases of global watch lists, sanction directories and lists of Politically Exposed Persons (PEPs).

2. Inquiries from governments to international law enforcement agencies such as Interpol, verification by governments of an individual's police certification with domestic law enforcement, and checking of other government-held information that may not be publicly available.
3. Government agency to government agency intelligence inquiries to obtain, for example, evidence of any previous failed visa, residence or citizenship applications.
4. Third-party enhanced due diligence by due diligence providers that have local-language research and on the ground investigation capabilities.

### **The case for minimum due diligence standards for CBI and RBI programmes**

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Although these due diligence processes are at the core of the investment migration industry, their execution is still unequal across programme types and geographies.<sup>1</sup> This is a matter of concern because a lack of effective due diligence means that governments cannot base their application approval decision on comprehensive information, which in turn limits their ability to mitigate any security, financial crime, and reputational risks. Instances of less robust due diligence meanwhile threaten the standing of the entire industry by decreasing public trust. There is therefore a need for harmonised minimum standards and practices across the industry to address these issues and to uphold the industry's reputation.

The potential transnational impacts of investment migration residency and citizenship are also driving the need for minimum standards. For example, an applicant who receives citizenship in Cyprus or Malta gains settlement rights to those countries as well as any other EU Member State. Furthermore, an applicant who receives residence in Greece or Spain gains access to the entire Schengen area. This, of course, means that the possible risks presented by the applicant exist for the EU and the Schengen area, not just for the country administering the programme through which the applicant gained citizenship or residency.

Collaboration between governments that have investment migration programmes is the cornerstone of harmonisation of standards. Specifically, improved information sharing between governments (notwithstanding increased concerns about the collection and security of personal data) is key to alleviating perceived and actual security risks related to investment migration. Improved information sharing can also lead to more efficient processes with, for example, the sharing of details regarding an applicant's previous rejection by another programme.

In designing and operating CBI and RBI programmes, there should also be a sensitivity to the concerns and demands of the global community. These largely focus on the risks posed by applicants to wider society such as tax evasion, money laundering, terrorism financing or the proliferation of organised crime, and the need to avoid a scenario in which high-risk individuals "shop around" for an investment migration programme with the least stringent requirements to provide information and submit to due diligence scrutiny.

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<sup>1</sup> Oxford Analytica, *Due Diligence in Investment Migration: Current Applications and Trends* (Oxford Analytica, 2020).

Due diligence: Roles and responsibilities

 **Know Your Customer processes and screening**  
*Actor: Agent*

- Confirm client identity
- Search databases for instances of sanctions or presence on a watchlist
- Initial assessment of the applicant's sources of funds

 **Application submitted to government**



 <b>International and National intelligence</b> <i>Actor: Government</i>	 <b>Domestic and international law enforcement</b> <i>Actor: Government</i>
Searching: Domestic intelligence, foreign partners' intelligence; local law enforcement	
<ul style="list-style-type: none"><li>• National databases</li><li>• Outstanding warrants</li><li>• Suspicion of international criminal activity</li><li>• Check for criminal record</li><li>• Check for failed visa applications, reasons for rejection</li><li>• Checking with Interpol and other agencies for information on the applicant</li></ul>	

 **Due diligence from a third-party provider**  
*Actor: Specialist due diligence firm*

Searching: On the ground, personal interviews, online databases, physical archive access

- Searches of litigation records; PEP/political exposure; regulatory issues
- Checks on trustworthiness and reputation
- Adverse media assessment
- Validation of primary documents
- Checks on disclosed and non-disclosed businesses

 **Applicant risk profile created**

 **Independent risk rating**



 **Creation of risk assessment**  
*Actor: Government*

# Minimum Due Diligence Standards for Agents

## Overview

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As outlined in the first report, “Due Diligence in Investment Migration: Current Applications and Trends”, due diligence within investment migration is conducted by agents, governments and third-party providers. Within this arrangement, it is the role of agents to initially screen candidates and present their applications to governments. As such, agents have the first opportunity to identify and reject candidates that fail to meet due diligence requirements. Whether or not agents make an adequate initial decision depends in part on the level and quality of due diligence they conduct, but is also potentially influenced by the fees that agents earn in processing applications.

As agents face a conflict of interest between the prospect of gaining a new client and the need to adhere to the highest ethical and professional standards in their screening, a minimum Know Your Customer (KYC) standard should be applied as a criterion for an agent to be permitted to file an application.

### Agents – both large and small

Agents themselves are diverse, ranging from small, one-person businesses to established players with a global presence. Industry-leading agents typically offer numerous services across different parts of their business, including:

- advising governments on how to structure and run investment migration programmes;
- marketing investment migration programmes to prospective individuals;
- supporting clients on the best options available for acquiring alternative citizenship or residence; and
- assisting in the application process (including submitting the application on behalf of the individual).

By contrast, smaller agents are more likely to focus on services directly related to applicants, such as the marketing of investment migration programmes and assisting in the application process.

While agents are effectively the first line of defence in the due diligence process, it is important to emphasise that governments, as the authorities responsible for CBI and RBI, hold the ultimate right and responsibility to accept or reject an applicant.

### The role agents play – client onboarding and submission

The initial process conducted by agents which is similar to a KYC regime, should at minimum have four primary components:

- verification of the potential client's identity;
- checking that there is no publicly available evidence of a criminal record;
- confirmation, using publicly available information or databases, that the potential client is not subject to any sanctions or on any international watch list, and whether the individual is a PEP;
- an assessment of the legitimacy of the sources of funds.

Only when the agent is satisfied that the potential client meets the above criteria should the client be onboarded and the application process begin. If at this stage additional potential risks are uncovered, but the agent is uncertain about their implications, these should be flagged during the application process. To increase the depth and breadth of the onboarding process, particularly when issues have been flagged, agents may also call upon third-party due diligence providers, though this appears to be a step taken infrequently. These providers are equipped to conduct further in-depth background and on-the-ground due diligence on the applicant and their family members and associates.

While some agents present applications themselves, fulfilling the role of intermediary between the applicant and government, other agents use lawyers as intermediaries between themselves and the government for the processing of applications. This allows for a certain distance between the agent and the government, but also increases the number of intermediaries whose responsibility and motivation for conducting due diligence on the applicant is not always well defined. This increases the risk of some due diligence requirements "falling through the gaps".

### Lack of uniform regulatory oversight and need for minimum standards

The wide range of actors who may serve as agents, including law firms, financial services companies and individuals, and the different geographies within which they operate, mean that those acting as agents are not consistently bound by the same regulations. Agents within the EU who are neither law firms nor financial services companies are currently not legally obliged, for example, to perform anti-money laundering (AML) or source of wealth checks.<sup>2</sup>

With different regulatory requirements depending on the type and location of the agent, KYC procedures vary greatly in terms of the depth of checks. Some agents may, therefore, be less rigorous in applying due diligence procedures without breaking the law, which risks bringing the entire industry into disrepute. Minimum standards are thus needed for agents as early into the process as the onboarding stage.

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<sup>2</sup> Interview with agent; Interview with NGO expert 1.

## The role of anti-money laundering procedures

A key component of the onboarding process is compliance with AML procedures to minimise the potential for financial crime.

Many governments have criminalised money laundering and have legislated the implementation of AML compliance standards. The EU in 2018 passed the Fifth AML Directive, which imposed an obligation on financial institutions, accountants, legal advisors, estate agents and others involved in financial transactions to conduct due diligence and KYC checks on individuals and institutions which facilitate financial transactions. The Fifth AML Directive also includes an explicit reference to individuals applying to CBI and RBI programmes as representing a “higher risk”, recognising the need for stricter use of AML processes for those individuals and the routine monitoring of their business and political relationships.<sup>3</sup> This has placed those individuals in the category of requiring “enhanced customer due diligence”<sup>4</sup> which includes determining their source of wealth and funds, assessing if they are politically exposed, and additional measures that Member States deem appropriate, and which might also include screening for human rights violations, and social and environmental responsibility.

AML compliance is common practice in financial services companies, including an assessment of the source of funds and of the strength of AML procedures at the institution that transfers the funds. In the investment migration industry, money laundering concerns are the primary justification for verifying the legality of the source of funds, but agents are generally not registered as entities that should be responsible for AML supervision.

The new regulatory regime instituted by the EU requires financial institutions, lawyers and accountants to consider CBI and RBI applicants as “high risk”. Nonetheless, agents that do not fall within those three categories are not formally required to follow AML guidelines, such as communicating suspicious activity to their respective national Financial Intelligence Unit (FIU).<sup>5</sup>

To counter money laundering risks, a standardised approach to due diligence would require all agents in the investment migration industry to register with their relevant local authorities for AML supervision, such as the FIU. Additionally, a standardised approach should include a process for agents to notify the respective national FIU when applicants seek to apply for CBI and RBI programmes so that financial institutions can be made aware and apply the appropriate level of financial due

3 Article 1(44) “Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU” (EU Fifth AML Directive) [2018] OJ L156/72, amending Annex III, point 1 of the “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” (EU Fourth AML Directive).

4 Para. 12 (Preamble), EU Fifth AML Directive [2018] OJ L156/45.

5 Transparency International and Global Witness, *European Getaway: Inside the Murky World of Golden Visas* (Transparency International and Global Witness, 2018) 44.

diligence. Such a process would help to fill what some civil society actors have identified as an information gap for financial institutions.<sup>6</sup>

The creation of criteria for the registration of agents could improve the application of AML processes by agents. It is important that every programme have a detailed record of who their agents are, what qualifications they hold, and what activities they undertake on behalf of their clients. For instance, the Malta Individual Investor Programme requires that all registered agents be licensed professionals, namely lawyers, auditors or accountants, which brings them under the remit of the EU's Fifth AML Directive as an "obliged entity". In addition, every agent's background is checked by the Maltese authorities: they pay a fee to register and undergo a training course, and registered agents are liable for any wrongdoing. Other programmes such as St Kitts and Nevis have similar requirements where stringent registration requirements for agents serve as an incentive for them to apply the same level of scrutiny to an applicant's funds and source of wealth in any jurisdiction in which they operate.<sup>7</sup>

Agents must also ensure that they comply with all applicable Anti-Bribery and Corruption (ABC) regulations, and conduct business in a socially responsible, honest and ethical manner. To this end, agents should ensure that all staff are trained to handle instances of potential bribery, and are aware of their obligations if they suspect instances of corruption or other malfeasance.

### **Minimum standards for each stage of agent-led due diligence**

Every programme, whether CBI or RBI, should mandate a minimum standard of due diligence for agents to abide by. This due diligence should be performed by agents prior to:

- onboarding a client;
- receiving funds from a client; and
- submission of the client's application to the relevant government authority.

A standardised and documented process of agent-led due diligence prior to these steps would help ensure that agents avoid taking as a client any individual:

- whose identity cannot be confirmed;
- who has a publicly known criminal record or has been convicted of fraudulent activity that would disqualify the individual from applying to the programme;
- who has been refused a visa for a country that has visa-free access to a country through the programme, unless it has subsequently been granted;
- who does not provide all required information and documentation;
- for whom it is not possible to verify information or resolve inconsistencies in information; or

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6 Ibid.

7 Interview with NGO expert 1.

- for whom a sufficient degree of due diligence has not been completed.

This will enable a de-risking of agents' role in the industry and create more trust in investment migration programmes. At the agent level, applying this due diligence will ensure that they mitigate their own financial and reputational risk exposure, even if some firms do not fall under the authority of AML regulations.

The minimum standard for due diligence performed by an agent can be summarised by the following steps:

### Step One: Identification and verification

The first stage of due diligence for any agent must be the independent verification of the client's identity, through address corroboration and online database tools, similar to KYC screening. Agents need to confirm the authenticity of the information that clients provide to ensure that they are who they present themselves to be. Where available, agents should do this by means of electronic identification, as described in the EU's Fifth AML Directive.<sup>8</sup> Without this step, any subsequent due diligence cannot be successfully completed.

To ensure full independence, the identification and verification of a potential client must take place before an agent enters into a relationship with the client and prior to the acceptance of any fees, including retainer fees. Should any changes be made to the information obtained following onboarding, the process should be repeated before the application is submitted to the relevant government authority. The details to be provided by the client at the outset of the relationship must include:

- full name, including any previous names and aliases;
- date and place of birth;
- nationality;
- physical address;
- occupation/business activities/name and address of business;
- banking details (account holder and bank name/location);
- beneficial owner declarations; and
- PEP identification.

The passports and passport copies of the potential client and of all family members included in the application should be provided. If applicants possess multiple citizenships, all passports should be provided. Agents must check the original

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<sup>8</sup> Para. 22 (Preamble) EU Fifth AML Directive [2018] OJ L156/47; Article 1(8)(a) EU Fifth AML Directive [2018] OJ L 156/56, amending Article 13(1)(a) EU Fourth AML Directive; Article 1(14) EU Fifth AML Directive [2018] OJ L 156/58, replacing Article 27 (2) of EU Fourth AML Directive; Article 1(25) EU Fifth AML Directive [2018] OJ L 156/65, replacing Article 40 (1)(a) of EU Fourth AML Directive; Article 1(44)(b) EU Fifth AML Directive [2018] OJ L 156/73 replacing Annex 3, point 2(c) of EU Fourth AML Directive.

documents against the copies, compare the photograph with the actual person(s), and certify that all documents have been verified.

Looking ahead, the industry could re-design the way it manages the identity verification process. Although blockchain technology is still being developed, the potential it offers for sending, receiving, storing, and certifying important documents (including passports, residency cards, utility bills, birth and wedding certificates) with a virtual digital watermark could help to streamline the KYC processes. Agents should thus keep abreast of blockchain and any other relevant technological developments so that they can make use of them as appropriate.

When undertaking the identification and verification process, an agent should also form a qualitative assessment of the client's motives for applying to a programme. An interview with the client combined with an examination of any peculiarities in the application, such as its timing or the type of planned financial investments, can help identify instances where candidates might be seeking a programme with particular benefits, for example to avoid extradition to one's country of origin. By considering these issues during the initial onboarding phase, agents can better determine the suitability of applicants.

In addition, if a candidate or their family members are nationals from a country that has been banned or restricted by the government of the programme for which they are applying, agents need to inform the applicant regarding the country's relevant policies. This can help the agent avoid issues with the candidate after an application has been submitted.

### Step Two: Screening

After the identity of the applicant has been confirmed and the motives for applying to a programme deemed to be sound, agents must screen them for risks and past behaviour. Subscription databases serve to confirm the biographic information about the applicant, including PEP identification and screening against sanction lists, and a basic adverse media check should reveal any negative information or other issues of concern regarding their background.

- Screening subjects

To be thorough and capture as much risk information relevant to the applicant as possible, this screening should include checks on:

- the applicant (including any former names, aliases or maiden names);
- any family members included in the application;
- any companies associated with the applicant or their family members;
- third party remitters (individuals and/or companies);
- beneficial owners of related companies; and
- the bank that will transmit the funds.

- Screening sources for standardised best practice

A two-step process should be applied to the screening, making use of database information (including details on sanctions) and open-source information to assess the applicant's past behaviour and ensure that the financial institution used to pay for the programme is appropriately certified. The process should be mandated by government programmes as the minimum steps that agents need to complete.

- Database search

The screening step builds on database information to check whether the individuals involved in the application are under any form of sanction. Searches within these databases should be performed on all passports involved in the application, the individual(s) names, and company name(s) of the firms the applicant(s) are associated with. Agents should maintain a date-stamped record of this search, so that it can be referred to later if needed.

- Open source material

Agents should next screen the client and any associated individuals, companies and business partners through publicly available online sources, conducting a “red flag” adverse media check to identify any significant issues or incidents of concern in the client's past. It is recommended that agents first obtain information on how to conduct open-source background research before they perform it, to ensure the techniques they use are as effective as possible. If this cannot be done in-house, agents can seek advice from third-party providers with experience in conducting such open source searches.

As a part of this process agents should also confirm that the bank used to process the financial transaction is licensed by a competent authority, most likely the country's central bank.

Information gained from these searches should similarly be saved and securely stored by the agent, to create a record of the due diligence that was conducted.

### Step Three: Risk assessment

Agents should form a risk assessment of the applicant, classifying them based upon their overall risk profile. This enables agents to have a segmented view of their applicants and set risk thresholds for when to discontinue a candidate's application. The risk profile of applicants should be updated throughout the due diligence process to account for new information as it becomes available and for new risks that might emerge.

In compiling the risk assessment, agents also need to form a judgement about whether enhanced due diligence is required, in which case it will likely be necessary to engage a third-party due diligence provider.

- Process and classification

The key element of the risk assessment is the classification of candidates into different risk categories. Based upon the findings of the screening process, agents should classify applicants as low, medium or high risk. For those seen as high risk, enhanced due diligence should then be applied during the onboarding process. For high-risk clients, re-screening and monitoring should also be applied and the onboarding decision should be reviewed and confirmed by senior management following detailed review of the risks associated with the customer, as identified through an enhanced due diligence process. It is recommended that agents communicate the client's risk profile with the authority overseeing the programme that the client is applying to.

Common variables used as part of the risk assessment process can include jurisdictional risk, client profile risk (for example, whether the applicant is a PEP and/or likely to be exposed to bribery and corruption through political associations that will not necessarily be recorded on PEP databases), and assessing the sources of the applicant's funds and personal wealth. In certain jurisdictions, the perceived risk of money laundering and other criminal activity is higher, thus increasing the risk profile of the client. The risk score should be based on the level of financial crime in the pertinent jurisdiction and the efforts being made by the relevant authorities to combat the crime.

Here, it is important that agents make use of a standardised risk assessment framework to guide the process of assessing the risks associated with the applicant. Further, it would also be good practice to keep a record of both the framework used and the assessment process itself, so that this can be audited or referenced later if needed.

- Sources of funds and wealth

Verification of the sources of funds used by the applicant to invest in a given programme is common practice across the industry. However, agents should also undertake a broader examination of an individual's sources of wealth, as illegal activities may be embedded in assets that are not used for the migration programme but would ultimately disqualify the applicant. Consideration should be given to including this broader perspective in minimum due diligence standards required of agents.

- Sources of funds

Agents must ensure that incoming funds from candidates conform to their original statements. For example, if funds were transmitted from a different bank account in the name of the candidate than originally declared, work for the candidate must halt until they have given a reasonable explanation. The reasons must be documented and held on file.

If the funds are transmitted from a third party's bank account, the agent should automatically identify the client as high-risk and perform enhanced due diligence, while also request the customer to provide further documentation. Any work

undertaken by the agent on behalf of an applicant should be halted until the client has given a reasonable explanation for the transfer of funds by the third-party remitter, and of the relationship between the client and that remitter. The client must provide the agent with all necessary information and documentation, and due diligence needs to be performed on the third-party remitter to the agent's satisfaction. Agents should also document and hold on file the reasons for the third-party remittance, keeping in line with best practices for record keeping and transparency.

- Sources of wealth

Moving beyond the source of funds, agents should also seek to ascertain an applicant's sources of wealth by assessing the client's declared sources of wealth and taking steps to reveal undeclared income streams. Examples of the information that may be retrieved during this process include: money invested in a deposit account and interest accrued; wealth originating from the sale of a property or business; inheritance; compensation payments; accumulated cash from trading profits; shares owned; assets (including real estate, luxury goods, and vehicles); divorce/alimony settlements; and information on the wealth of the client's family and its members.

Sources of wealth from higher-risk industries and economic sectors or countries should also be scrutinised further to ensure their legal origin. Candidates with unexplained wealth following the above research process should not be accepted.

- High-risk individuals

High-risk individuals, as evaluated against a standardised risk assessment framework, include:

- PEPs, or clients who have significant direct or indirect influence in government through association with PEPs, because they are deemed vulnerable to bribery and corruption.
- Applicants who may have any form of connection with corruption and bribery, sharp business practices, organised crime, money laundering, fraud, arms trafficking, conflict minerals, environmental and social irresponsibility, human rights violations, and intellectual property violations.
- That the person (or a related entity) being screened is the subject of adverse media, allegations, government investigations, or litigation, or has been convicted of any criminal activity.
- If an applicant continues to seek the agent's services after their personal application has been denied or rejected by a government authority.
- Candidates with these high-risk profiles should be subjected to enhanced due diligence. This should include commissioning an independent higher-level background verification report (see below). If enhanced due diligence cannot mitigate the risks, then an agent should end the relationship with the candidate.

- Monitoring

As a follow-up to the risk assessment process and as best practice, agents should monitor client relationships and conduct quarterly ongoing due diligence on all high-risk clients, in particular PEPs. By monitoring clients throughout the relationship, agents can ensure that their activities are consistent with their knowledge of both the client and their family members, their risk profile and the source of their funds and wealth.

#### Step Four: Enhanced due diligence

Enhanced due diligence for high-risk clients enables agents to access material necessary for a comprehensive assessment of the applicant's profile, risk exposure and sources of wealth.

Unless the agent has significant enhanced due diligence capabilities with appropriate access to sources and local language and business knowledge, enhanced due diligence should be commissioned from a reputable service provider. Each large due diligence firm has specific jurisdictional areas of strength and individual fee structures that can then be matched to the client's background by agents when selecting which firm to use.

These third-party providers combine in-depth local knowledge and language skills with technology-based due diligence, such as natural language processing. It should be noted however, that technological improvements are still of limited value in developing markets where public databases are often incomplete and not available online. Third-party providers thus usually have a physical presence in countries where applicants have spent a significant length of time, giving them access to non-digitised documents and an understanding of the local context, language and culture. This helps due diligence service providers to draw appropriate conclusions from official records, which may otherwise be misunderstood, and from local media that might be censored or otherwise controlled by or in the interests of business and political elites. Indeed, concomitant with the decline of traditional values-driven journalism, the amount of "fake news" and poorly researched and often unsourced or unverified information, and the deliberate placement of misinformation on the internet, is rising. Accordingly, an assessment of the reliability of the source of information should also be made.

The research methodologies within enhanced due diligence give agents a clearer picture of the source of wealth of an applicant, and verifies their work, professional, and residential history, as well as business and political associations, background, reputation and character. It provides agents with greater certainty over the identity, history and risk profile of high-risk individuals. This provides them with the information they need to make a decision about whether or not to proceed with onboarding the client.

## Step Five: Submission of the application and sharing of due diligence

After completing steps one-through-four as needed, agents should be mandated to submit the applicant's completed due diligence file to the relevant government programme. The submission should include the agent's initial screening, their risk assessment (high, medium or low), and if required (for high-risk candidates) the enhanced due diligence and subsequent risk assessment. The agent should provide a final sign-off stating that minimum mandated due diligence has been carried out and, according to their risk assessment framework, the applicant is suitable for consideration as a candidate to the programme.

### **Payment principles and beyond**

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When following best practice, agents should only accept funds from the personal bank account of a client: cash transactions should not occur. If there are exceptions, reasons for these should be established at the initial stage of engagement and recorded as part of the due diligence process. Funds should only be accepted from a third party if the client can give a reasonable explanation for this means of payment and for their relationship with the third-party remitter, and again should be documented. Similar identification and verification procedures must then also be carried out on the third-party remitter to ensure that they meet the appropriate financial compliance standards.

If a local bank will not accept funds transmitted from a certain country, the agent should not accept the funds through alternatives, or by layered or otherwise circuitous transactions that seek to circumvent the non-acceptance of funds. This means that agents need to be aware of the policies followed by local banks, and the reasons why they have opted not to be correspondents for particular financial institutions.

- Third-party remitters

If the third-party remitter is an individual, then the process outlined above should apply. If the third party is a company, however, then the minimum standard should include identifying:

- Company information: the legal form of the entity; its business name/trading names; business registration date and number; country of registration; registered office address/ mailing address (if different); place of business/ operations; nature and geographic scope of business activities; telephone numbers/website/email address; and banking details.
- Shareholders' and principals' information: full name; date and place of birth; nationality; residential address; and position with respect to the business of the company.

This information should be accompanied by passport/ID card copies of shareholders and principals; and a copy of either a certificate of registration/incorporation and a certificate of good standing; a legalised excerpt from the trade registry; or a company license.

- Beneficial owners

In cases where the client is not (or not the sole) beneficial owner of an entity from which funds are to be remitted, it is the responsibility of the agent to ensure that the client's transactions are consistent with the legitimate conduct of their business. It is important that the agent is familiar with the business of the client from the start of the process, and subsequently is wary of activities that seem inconsistent with the client's known business or personal affairs. Clients should always complete a form giving payment information and a declaration of beneficial ownership.

In such a situation, the client must provide information and documents confirming the beneficial ownership structure of a company involved in any related transfer of funds as set out above, and agents must conduct due diligence on all beneficial owners.

If the information the client provides raises any doubt about sole beneficial ownership, enhanced due diligence is required.

### Sanctions compliance

Agents must comply with relevant sanctions laws in all jurisdictions in which they operate. These include sanctions imposed by the United Nations Security Council and by national authorities. Further sanctions may apply to certain transactions if, for instance, a payment is made in US dollars. Complying with sanction regimes means that agents must not conduct business with or hold/receive money from an individual or a sanctioned entity; or hold/receive funds transmitted from sanctioned countries.

In this context, due diligence includes screening individuals, entities and countries targeted by sanctions by using sanctions databases. Where it becomes evident during due diligence or in any other way that a client, family member, third-party remitter, beneficial owner or associated entity is targeted by sanctions, the agent must cease any work related to the client.

### Integrity principles

Agents should always act in the best interest of all parties and stakeholders with whom they interact. Avoiding conflicts of interest applies equally to internal and external situations. An example of a conflict of interest is if an agent recommends a course of action to a client in order to increase their fee, not because it is in the client's best interest.

The industry already has several practices in place to avoid conflicts of interest. For example, third-party due diligence providers, whether they are commissioned by agents or governments, do not typically provide additional services to those entities. Similarly, third-party providers do not engage in marketing CBI or RBI programmes to potential applicants.

With regards to remuneration, agents should be paid by their clients and not by the government to which the individual is applying for residence or citizenship. Moreover, agents, as a rule, should be paid to carry out a compliant service, not to achieve a desired outcome. Similarly, third-party providers of due diligence are remunerated for the methodology, depth and integrity of their investigation, and as participants in a service process in which they remain disinterested in the outcome.

Furthermore, effective record keeping must be part of industry best practice. In addition to keeping complete and accurate financial records, agents must have appropriate internal controls in place to support the rationale for making payments to third parties. They must also declare and keep written records, or reject outright, all corporate, social or hospitality gifts accepted or offered that exceed the values stipulated in their ABC policy. There must be no attempt to conceal potentially improper payments.

In some instances, leading industry agents may offer multiple services, including both assisting clients in the application process and advising governments on how to run investment migration programmes. In such cases, there is an expectation that there is a clear and rigorously defended division between the two activities within the company.

### **Measures for non-compliance with minimum standards**

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Agents are responsible for verifying the accuracy of the information included in a client's application and asserting the client's suitability to be onboarded. While they should never knowingly submit a problematic application, agents may put forward applicants with "grey areas". In those cases, the "grey areas" must be clearly identified and articulated to the government agency. For example, a client who has been accused of wrongdoing but not convicted may still be considered for residency or citizenship. It is then the government's role to use its discretion to determine the suitability of the applicant for residency or citizenship.

Because there is no supranational body regulating the investment migration industry, it falls on governments to ensure that minimum standards are met by agents and third-party due diligence providers. To achieve such systematic compliance, lessons could be drawn from the banking sector. This sector has seen the implementation of a system of fines, bans and the imposition and monitoring of compulsory remedial compliance regimes in several countries and enforced by local authorities.

Industry associations can also play a key role in enforcing compliance. For example, they could make it mandatory for agents to sign up to voluntary guidelines as part of their membership. Such guidelines should be based on the minimum steps as outlined above. Agents who fail to uphold them could suffer considerable reputational damage that would come with suspension or expulsion from any industry association.

## Minimum Due Diligence Standards for Governments

### Overview

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As the industry has matured, several Caribbean countries have established dedicated Citizenship by Investment Units (CIUs). These are mandated to process citizenship applications and, in some cases, applications for agent's licences. CIUs, whose fundamental role is to also screen applicants, are typically hosted in the country's finance ministry.

The departments in charge of RBI programmes differ between countries. Typically, it is the mandate of either the foreign affairs ministry, the interior ministry, the finance ministry, or the economic development ministry. In the case of the US EB-5 Immigrant Investor Visa Program, it is governed by the US Citizenship and Immigration Services, which is part of the Department of Homeland Security.

### The role governments play – risk evaluation and information sharing

When an application is submitted to a CBI or RBI programme, the government should undertake its own checks on the applicant, regardless of the amount of due diligence conducted by the agent as part of the application process.

Like agents, governments should take a tiered approach to due diligence. However, the process differs somewhat, largely because governments have access to information resources that are not available to agents and third-party providers. This is primarily in the form of information collected by intelligence agencies and from government-to-government intelligence exchanges. As necessary, governments should also seek input from third-party providers to conduct enhanced due diligence.

With regards to potential risks posed by applicants, it is the government's duty to evaluate those risks. This is typically based on a risk assessment framework that is informed by the government's own risk appetite. Governments may have different thresholds on what constitutes an immediate disqualification. For example, in cases involving high-profile PEPs, the government will evaluate the candidate's suitability through benchmarks that include their own readiness to be associated with that individual.

### Communication

Many investment migration programmes are already extending the scope of their due diligence to provide government agencies with as much information as possible. However, communication and information sharing between programmes (within and between countries) remain a challenge. This is particularly an issue when an applicant is rejected by one programme and then applies to a different one. At present, there is no mechanism by which the first programme is made aware

of the subsequent application or can communicate the reason for the applicant's earlier rejection.

A mechanism for such communication between programmes is a desirable component of a standardised approach to due diligence at the government level. This would help minimise security risks and enhance transparency in the industry.

### **Minimum standards for government-led due diligence**

Minimum standards are critical at the government level, as this is where the final decision on an applicant is taken.

The establishment of minimum standards would reduce the security threats inherent to an industry that attracts a large proportion of high-risk applicants. By agreeing a set of minimum due diligence steps, the industry will also build up trust, both between government programmes and other industry stakeholders, and among external stakeholders and the public.

Based on identified best practice for CBI programmes, the following five-step due diligence process is proposed as the minimum standard for every government investment migration programme.

Step	Purpose	Tools
1	Know your customer	Open-source information
2	Legal clearance	Law enforcement reaching out to international law enforcement agencies
3	Accuracy and completeness	Government-to-government intelligence exchange
4	Coherence	Third-party due diligence
5	Risk Assessment	Standardised risk assessment framework

#### **Step One: Know your customer**

- Like agents, governments begin the due diligence process by verifying the client's identity. This is the standard KYC due diligence conducted through database checks of global watch lists, sanctions registries and PEP directories. Governments must also verify the source of funds used by the applicant for the required investment. In addition, programme officials should evaluate the individual's sources of wealth more broadly to determine whether any illegal activities may be embedded in assets that are not used for the migration programme but that would ultimately disqualify the applicant.
- Governments should conduct a qualitative assessment of the applicant's main reasons for applying for an alternative citizenship or residence status. This is to ensure that their motives are genuine (for example, to buy property or to gain the right to work).

At this first stage in the process, governments collect data on applicants from publicly available sources. Such open-source intelligence should be corroborated with primary sources whenever possible.

### Step Two: Legal clearance

The second due diligence step is to obtain clearance from police authorities. This is done by conducting thorough checks of various databases to ensure there are no outstanding warrants or other criminal proceedings against the applicant, their businesses or close family members and associates. The most rigorous investment migration programmes go through numerous stages to vet applicants. Below are some of the information sources used.

Intergovernmental organisations	Caribbean	European Union	North America
Financial Action Task Force on Money Laundering	Caribbean Community Implementing Agency for Crime and Security	EU Financial Sanctions Database	FBI Most Wanted Terrorists list
International Criminal Court	Joint Regional Communications Centre	Europol	Office of Foreign Assets Control
INTERPOL Most Wanted list	Caribbean Financial Action Task Force	HM Treasury Financial Sanctions Targets and Investment Ban	Canadian Sanctions - Terrorism
United Nations Al-Qaeda Sanctions List	Antigua & Barbuda Office of National Drug & Money Laundering Control	UK National Crime Agency	Canadian Freezing Assets Corrupt Foreign Officials
United Nations Security Council Sanctions List	Anguilla Financial Services Commission	French Ministry of Finance National Terrorism List	Bureau of International Security and Nonproliferation (US)
World Bank Listing of Ineligible Firms and Individuals	Ministry of Finance of the Commonwealth of Dominica	German Federal Cartel Office	US Sectoral Sanctions Identifications List

### Step Three: Accuracy and completeness

The third step is conducted by the government programme’s team and consists of two stages that should be completed at a minimum level.

First, the application is assessed for completeness and accuracy. This process should flag anomalies that highlight any potential risk. The team should check all accompanying documentation to ensure that it has been completed correctly and submitted in the appropriate format, correctly translated, and apostilled or notarised. If anything is missing or incorrect the application process should be halted until everything is in order.

Next, information sharing mechanisms between government intelligence agencies should be used to further confirm information about the applicant, and ascertain if any information about the applicant, their businesses, family members or close associates is subject to an intelligence service assessment of the risk profile of the applicant. This includes obtaining evidence of whether the applicant has previously had a visa application rejected or has in the past had an unsuccessful CBI or RBI application.

#### Step Four: Coherence

In this step, third-party providers should be commissioned by governments to ensure that the information gathered by the programmes is coherent. This also provides another layer of confirmation, corroboration and verification.

Third-party providers rely on in-country sources and on-the-ground resources to verify personal information and documents, conduct legal and criminal checks, compare assets such as real estate against declared wealth, check if the applicant is – or is related to – a PEP (or has close political associations that will not necessarily be apparent on PEP lists), map their business affiliations and possible ties to corruption, other financial crime and illegal or unethical conduct, and a native language adverse media check to pick up information not recorded elsewhere. Internet and social media checks can also perform a verification or corroboration function, but must be viewed through a cautionary lens due to the lack of filters applied to information before publication on these platforms.

Enhanced due diligence is conducted at minimum in all the countries in which the applicant and applying family members have resided or had a significant presence or business over the previous five years. This allows for a coherent picture of their entire personal and business network, and the risk profile that it represents.

At this stage, clarification may also be required on a specific point within the applicants' background. If this is the case, the applicant may be questioned further or known acquaintances and associates contacted.

#### Step Five: Risk assessment

After the completion of the previous steps, a full risk assessment of the applicant should now exist.

It is important to note that the risk assessment of the applicant should be a continuous process throughout the various due diligence steps, taking into account new information as it becomes available. As a result, an applicant could be categorised as a high-risk individual at any point in the due diligence process. When such information is identified by the third-party due diligence provider, the latter should be required to contact the appropriate government agency and inform them of their findings.

For clarity and efficiency, government programmes should also have a standardised risk assessment framework against which they can evaluate and categorise individual applicants.

Common high-risk categories include:

- PEPs: These individuals present unique risks to the country (and region) and their applications are typically reviewed on a case-by-case basis. PEPs are determined to be vulnerable to financial crime due to their position of power and influence. It is thus vital to ascertain the sources of funds and wealth. They can also represent a reputational risk to the programme and government

in question due to their political exposure and association with disreputable regimes. Often overlooked in due diligence PEP assessments are the risks associated with political associations. For example, a businessperson may be a close associate of a powerful PEP, but that relationship will not appear on PEP lists because the definition of political exposure is limited and, indeed, varies in different jurisdictions. Political association is best identified through media/internet searches and confidential source interviews.

- Government-prohibited persons: Government-prohibited persons are those who have been sentenced to prison terms in the past ten years for committing a crime. They also include individuals on sanctions lists, and those refused a visa with which the host country has a visa waiver agreement. In such cases, it is critical for governments to assess the applicant's motivations for applying.

### **Governance and transparency**

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As with agent-led due diligence, the minimum standards for government-led due diligence is most effective within a well-structured framework. There must be clear delineation of responsibilities, strong governance and oversight to ensure that all the different standards are being met, and transparency to allow for public scrutiny and to verify that due diligence processes are being followed to good effect.

This approach should encompass:

- the decision-making process;
- the government programme's relationship with agents, applicants and due diligence providers; and
- the transparency of information between actors and the general public.

### **Decision-making process: documentation and audit**

The decision-making process, of which due diligence is a foundational component, should become more regimented and uniform to remove discrepancies between application approvals and to optimise the use of information obtained through the due diligence process.

- Risk and reputational assessment

The development of a risk and reputational assessment framework by the government unit is critical to ensure coherence in the processing of applications. This requires a documented framework for assessing the risk posed by the applicant identified during the due diligence process. These materials and the assessment should then be logged and recorded, to allow for auditing and review. This standardisation of the risk and reputational assessment process allows all applicants to be judged through the same framework and with the same inputs, so that the risks posed by individuals can be properly compared.

- Reasoning behind the decision

From this standardised risk and reputational assessment, the reasoning behind

application decisions should become clearer and easier to document, as the security and reputational risks posed by applicants will be clearly outlined and compared against the government's established risk tolerance parameters. This will also allow for governments to identify when a nuanced approach to an application is needed, particularly when there are diplomatic or political implications but no clear grounds for rejection.

Government units should therefore make use of a risk and reputational assessment matrix to document the reasoning behind an application decision, allowing for an auditable process, and also one that avoids the inconsistent application of the rules and risk framework.

- Clear roles and responsibilities

Within the risk assessment stage, it is similarly important for programmes to document and standardise the roles and functions involved in the decision-making process, and to whom the responsibility is given for making the ultimate decision regarding an applicant.

An example of how this can work in practice can be seen in Malta, where the Individual Investor Programme Agency makes a recommendation based on the due diligence findings, but the ultimate decision is escalated to the government. Delineating responsibilities within the government-processing unit and within the government itself for making the decision regarding an application should become a minimum standard employed by CBI and RBI programmes.

- Placing integrity before speed in due diligence decision making

Governments must also take into consideration the time requirements of a thorough due diligence process, and build those into the programme structure so that applicants understand that the due diligence process takes precedence over expediency. While the publication of a general timeline for applications and the decision-making process is a useful tool to increase transparency, programmes should not limit themselves to a short or narrow timeframe in which due diligence checks should be completed.

### **Key relationships: agents, applicants, and due diligence providers**

Sound governance also depends on the management of relationships between the government and agents, applicants and third-party due diligence provider

- Relationship with agents and applicants

The responsibilities of agents to conduct themselves with integrity throughout the application and due diligence processes should be reflected in the government's responsibility to implement sufficient oversight on compliance by agents with minimum standards. The system employed in Cyprus, where agents are licensed and registered with the CIU, provides such good governance. It is further the responsibility of both the agents and the governments to educate applicants on the due diligence process.

A key component of the relationship between these actors and governments is the handling of payments, including the due diligence fee paid by applicants as part of the CBI and RBI process.

This fee, as well as the required investment for CBI and RBI programmes should be handled along in a similar manner to the requirements outlined for agents, chiefly that the financial transaction should originate from the personal bank account of the applicant, with AML checks undertaken by the respective financial institutions. As is the case for agents during the payment of applicant fees, funds should only be accepted from a third party if the client can give a reasonable explanation for this means of payment, and for their relationship with the third-party remitter.

Programmes should also improve transparency on the payment and use of due diligence fees collected from the applicant. Following the example of Antigua & Barbuda, governments should publish a schedule of the fees they collect and clarify the cost and timescale of the due diligence being conducted.<sup>9</sup>

- Relationship with due diligence providers

The relationship between the due diligence provider and the government should be clearly determined by open contracting principles. Critically, this should mean a fair and competitive tender process, but also one where price is not a primary factor, with the quality of the due diligence and the capabilities of the actors the primary means by which the provider is selected. The importance of due diligence within the CBI and RBI application process means that while open contracting principles should be respected, price cannot be allowed to undermine the quality of the due diligence.

The third-party due diligence provider must have a proven track record and the ability to demonstrate specific capabilities and skills relevant to each case. The contracting process should include written specification of the services to be delivered and a process for consistent quality assurance.

The relationship between the due diligence provider and government should span a longer time period than submission of the findings, allowing for increased communication and training. Importantly, the findings of the commissioned due diligence should be discussed between the provider and the government-processing unit to shed light on any nuances and assess the risks associated with the applicant.

Some governments (for example, Antigua & Barbuda, Granada and Malta) already have relationships with third-party providers that include ongoing training on how to conduct and interpret due diligence. With some players leading the way in this area, it is desirable that others would also establish relationships with due diligence experts and learn from them on a regular basis.

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<sup>9</sup> See official website of the Citizenship Investment Programme Unit of Antigua & Barbuda <<https://cip.gov.ag/schedule-of-fees/>> last accessed 26 November 2019.

It is similarly important that governments ensure they fully understand how the sources and research techniques applied by the provider adhere to the law and make use of all available sources of information. Due diligence providers must therefore educate governments on the information and methodologies contained within their enhanced due diligence reports, so that governments can most accurately interpret that information based upon their risk assessment framework.

### Transparency and information sharing

Collaboration between CBI programmes is currently rare in terms of application and rejection information, and while it does take place within the context of the Joint Regional Communications Centre within the Caribbean, overall sharing of rejected applicant data is limited.<sup>10</sup> Programmes should seek to address this by opening up channels of communication between themselves to share the names of rejected applicants, so that CBI programmes do not admit applicants rejected in another jurisdiction without considerable care and attention. Such a measure, however, would have to comply with data privacy rules and, specifically the EU's General Data Protection Regulation (GDPR) regarding the disclosure of personal data. Article 5(1)(c) GDPR states that the personal data to be collected and processed shall be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed."<sup>11</sup>

Information can also be shared within governments and between sovereign states and international financial institutions utilising the Common Reporting Standard infrastructure already in place. Programmes should clearly outline the due diligence content of CBI and RBI programmes, as well as the relevant roles and responsibilities of each actor.

Similarly, application numbers and acceptance/rejection rates should be made public by CBI and RBI programmes. While not all, some governments already publish detailed information on application outcomes. Among those, New Zealand publishes data on all residency by investment and other residency programmes, showing not only the acceptance and rejection rates of its RBI programme, but also allowing those numbers to be readily compared to the figures for other residency programmes it operates.<sup>12</sup> Similarly, Grenada publishes the acceptance and rejection rates for its CBI programme, matching those numbers to the expected revenue from the investment of the accepted applicants and the application fees, as well as how those revenues are earmarked for government financing.<sup>13</sup>

<sup>10</sup> Interview with Caribbean programme lead.

<sup>11</sup> "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" [2016] OJ L 119/35.

<sup>12</sup> New Zealand Ministry of Business, Innovation and Employment: <<https://www.immigration.govt.nz/documents/statistics/statistics-residents-decisions-financial-year>>

<sup>13</sup> Grenada Ministry of Finance, CBI Reporting, "Grenada: Citizenship by Investment Statistics, 2nd Quarter 2019" <[https://www.finance.gd/docs/CBIStatistics2ndQtr2019.pdf?fbclid=IwAR3Yg1h0DfWbqUyMurmVUax3ltXtw1AsgNixEu\\_rXWEk56uYiBtAZ8RDK6Y](https://www.finance.gd/docs/CBIStatistics2ndQtr2019.pdf?fbclid=IwAR3Yg1h0DfWbqUyMurmVUax3ltXtw1AsgNixEu_rXWEk56uYiBtAZ8RDK6Y)> last accessed 26 November 2019.

These can serve as a minimum standard. Applicant acceptance rates tend to be high due to the high degree of due diligence and vetting of applicants prior to the submission process, and the self-selection of particularly high-risk applicants to avoid the CBI and RBI process. Nonetheless, the publication of application acceptance rates demonstrates the appropriate use of due diligence within the risk and reputational assessment process.

### Post-decision monitoring

Applicants to residence or citizenship programmes can only be judged on their past behaviour, as future actions and behaviours cannot be foreseen. This presents a risk to all programmes by which residence and citizenship can be granted, including naturalisation, and cannot be easily mitigated. It is possible for individuals to commit fraudulent or criminal acts after being accepted to a CBI or RBI programme, despite not having a history of such behaviour. The most appropriate tool to manage this risk consists of monitoring the applicant's actions, even after the application has been accepted. The Cypriot Minister of Interior has announced that all approved applications since the introduction of more stringent vetting requirements in 2018 will be subject to continuous due diligence audits to identify any offences that may have taken place after the applicants have become citizens.<sup>14</sup>

While it is rare for citizenship to be revoked, citizenship can be withdrawn from applicants if, *inter alia*, false information has been provided or important information intentionally withheld. The Cypriot Government has more recently announced that it will withdraw 26 passports obtained through nine investment cases prior to 2018.<sup>15</sup> The change in criteria introduced in 2018, including the exclusion of PEPs; anyone previously convicted or under investigation in their own country; anyone linked to an illegal entity; or anyone under international sanctions, has led, reportedly, to follow-up checks on about 2,000 passport holders.<sup>16</sup> Other European states with investment migration programmes – Bulgaria<sup>17</sup> and Malta<sup>18</sup> – have similarly revoked citizenships, or initiated the withdrawal process, after establishing wrongdoing of citizens-investors. Monitoring applicants after they receive citizenship or residency can help highlight if any actions have been taken by the individual that do not meet the criteria of the investment programme. Natural citizens are also capable of criminal activity, so it is also possible that in these cases CBI should be held to the same set of standards once they have proven to have qualified for CBI through a rigorous due diligence process.

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14 Investment Migration Insider, "Cyprus to Conduct Retroactive Due Diligence on Pre-2018 CIP Investors" *IMI* (30 October 2019) <<https://www.imidaily.com/europe/cyprus-to-conduct-retroactive-due-diligence-on-pre-2018-cip-investors/>> last accessed 25 November 2019.

15 BBC News, "Cyprus Strips 'Golden' Passports from 26 Investors" *BBC News* (London, 7 November 2019): <<https://www.bbc.com/news/world-europe-50331697>> last accessed 25 November 2019.

16 *Ibid.*

17 The Sofia Globe, "Bulgarian Prosecutor-General requests withdrawal of citizenship of two foreign-born nationals" *The Sofia Globe* (9 September 2019) <<https://sofiaglobe.com/2019/09/09/bulgarian-prosecutor-general-requests-withdrawal-of-citizenship-of-two-foreign-born-nationals/>> last accessed 25 November 2019.

18 Yannick Pace, "Malta to Start Process to Strip Citizenship off Fraudster Convicted of Money Laundering in US" *Malta Today* (8 August 2019) <[https://www.maltatoday.com.mt/news/national/96785/malta\\_to\\_start\\_process\\_to\\_strip\\_citizenship\\_off\\_fraudster\\_convicted\\_of\\_money\\_laundering\\_in\\_us#.Xd0ryuj7Q2w](https://www.maltatoday.com.mt/news/national/96785/malta_to_start_process_to_strip_citizenship_off_fraudster_convicted_of_money_laundering_in_us#.Xd0ryuj7Q2w)> last accessed 26 November 2019.

## Conclusions and Recommendations

### Uniform standards

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Though the application of due diligence varies between programmes, many governments clearly recognise the potential industry-threatening implications of a sub-standard due diligence process. The need for minimum due diligence standards across both CBI and RBI programmes is clear. These standards should be the same across both CBI and RBI programmes, mainly because there is no systematic difference in the risk profiles of applicants to both types of programmes, meaning that the risk they pose to states and communities is similar.<sup>19</sup> This is notwithstanding that in practice, the level of due diligence undertaken by CBI programmes is more in-depth than that undertaken by RBI programmes.

### Establishing standards

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The development of standards should primarily be driven by governments, as they will be responsible for implementing and enforcing those standards within their programmes. At the same time, the industry has an important role to play in proposing standards to governments and multilateral organisations, and explaining best practices based on their own experience.

In parallel, there should be minimum standards for what agents do before they put applicants forward for consideration by governments. Industry associations, civil society actors, and EU institutions can drive the setting of standards for agents, incorporating the views of all relevant stakeholders. Adhering to the minimum standards can then become a membership requirement for associations such as the IMC.

### Transparency and communication

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Once established, both government and agent standards should be clearly listed on the IMC website and on the websites of all the industry players, including investment migration programmes and agents. This type of openness would raise awareness of the standards and make a significant contribution to addressing the industry's current perception and reputation problems.

### Enforcement

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For agents that are non-compliant, governments can ban them from submitting applicants to their programmes, and trade bodies can suspend or revoke their membership. With regards to governments, enforcement of basic standards is substantially more difficult. While for some, particularly those in the EU, there is the potential for supranational oversight, the reality is that it is up to governments to police themselves, and for civil society actors and the media to raise awareness if

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<sup>19</sup> NGO expert 1.

governments fail to apply internationally agreed standards and accepted norms. Such political and societal pressures will remain important drivers for some governments to raise the bar of the rigour and integrity of their investment migration programmes.



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