



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

OP 9

Investors

OP 9 Investors

Updates to Chapter	1
1. What this chapter is about	2
2. Program objectives	2
3. The Act and Regulations	2
3.1. Forms required	3
4. Instruments and delegations	3
5. Departmental policy	5
5.1. Promoting the investor class overseas	5
5.2. Holding business immigration seminars	5
5.3. Supplying promotional material	5
5.4. Pre-application counselling and promotion	5
5.5. Obtaining relevant information (A11)	5
5.6. Interviews	5
5.7. Interviewing dependants	6
5.8. Compliance with provincial and territorial guidelines	6
5.9. Cost recovery fee and right of permanent residence fee (RPRF)	6
5.10. Request to change class	6
5.11. Effect of changing categories on cost recovery fees	6
5.12. Releasing information to provinces and territories	6
5.13. Requesting and reviewing documentation - general (A16)	7
5.14. Processing priority	7
5.15. Applying procedural fairness	7
5.16. File retention and disposal	7
5.17. CAIPS records	7
6. Definitions	7
6.1. Audits	7
6.2. Compilation engagements	7
6.3. Financial statements	8
6.4. Financial statements: balance sheet	8
6.5. Financial statements: income statement	8
6.6. Full-time equivalent	9
6.7. Immigrant Investor Program (IIP) promissory note	9
6.8. Immigrant Investor Program (IIP) Subscription Agreement	9
6.9. Investor	9
6.10. Review engagements	9
7. Procedure: Assessing investors' eligibility	9
7.1. Role of federal officials	10
7.2. Forms	10
7.3. Ensuring that the applicant has all necessary documentation to make the application	10
8. Procedure: Assessing eligibility – selection criteria	10
8.1. Does the applicant meet the regulatory definition of investor?	11
8.2. What is business experience?	11
8.3. What is a qualifying business (R88)?	11
8.4. Calculating percentage of equity	12
8.5. What is the time factor?	13
8.6. What should be included in a personal net worth statement?	14
9. Procedure: Handling payment of investment	14
9.1. Ensuring the applicant has the intent to make or has made an investment of \$400,000	14
9.2. Depositing CDN \$400,000	14
9.3. Redemption of investment	15
10. Procedure: Making the eligibility decision	16
11. Procedure: Assessing investors – applying the selection criteria	16
11.1. Reviewing specific documentation	17
11.2. Business balance sheet and business income statement (financial statements)	17
12. Procedure: Making the admissibility decision	20

OP 9 Investors

12.1. Substitution of evaluation 20

13. Procedure: Investors destined to Quebec..... 21

14. Procedure: Refusals..... 21

Appendix A Refusal letter – Investors - Applications received pre-April 1, 1999 21

Appendix B Refusal letter – Investors – Definition or insufficient points 22

OP 9 Investors

Updates to Chapter

Listing by date:

Date: 2008-08-08

The manual has been updated throughout to reflect that policy responsibility and administration of the investment component for the Investor Program is the responsibility of Permanent Resident Policy and Programs Division, Immigration Branch

Section 5.3 has updated links.

Section 8.3, What is a qualifying business?, has been amended to provide instructions on how to assess entrepreneur or investor applicants' "business experience." Officers are now required to consider the aggregate financial information of more than one business.

Section 8.4, Calculating percentage of equity, has been added.

Section 9.3 has minor clarifications.

OP 9 Investors

1. What this chapter is about

This chapter outlines the broad objectives of the Business Immigration Program. It focuses specifically on procedures used at missions abroad to process investor foreign nationals.

The Business Immigration Program includes three classes of foreign nationals:

- entrepreneurs;
- investors;
- self-employed persons.

The chapter reviews:

- the regulatory definitions;
- selection criteria; and
- operational issues.

Procedures related to federal skilled workers are contained in chapter OP 6. Procedures related to entrepreneurs and self-employed foreign nationals are discussed in chapter OP 8.

2. Program objectives

The principles of the Business Immigration Program are in keeping with the overall objectives of the *Immigration and Refugee Protection Act* (A3) and specifically those in A3(1)(a) and (c).

The Program's objectives are:

- to promote economic development and employment by attracting people with capital, business acumen and entrepreneurial skills;
 - to develop new commercial opportunities and to improve access to growing foreign markets by "importing" people who are familiar with those markets and their special requirements and customs;
 - to support provincial and territorial economic objectives.
-

3. The Act and Regulations

Sections of the Act applying to business foreign nationals

Provision	Act and Regulations
Right to come into Canada	A18, A19, A20
General principle of admissibility	A12(2)
Application for visas	A11, A12(2)
Obligation on officer to impose conditions	A14, A14(2)(d), A32(d)
Authority for an official of a province to impose conditions	A9(1)(d)
Authority for interviews by designated officer	A11(1), A15, A16
Authority to prescribe conditions	A14(2)(d)

OP 9 Investors

Specific Regulations applying to entrepreneurs, investors or self-employed foreign nationals

Provision	Act and Regulations
Definition of:	
Investor	R88
Business Experience	R88
Full-time job equivalent	R88
Net assets, net income, net worth	R88
Percentage of equity	R88
Qualifying business	R88
Selection criteria, investor	R102
Authority to issue visas	A11
Points, investor and entrepreneur	R78, R79, R81, R103, R104
Foreign nationals to the province of Quebec	R96(b)
Selection criteria - experience factor (entrepreneurs and investors)	R103
Substitution of evaluation	R109
Minimum points to pass Investor	R108(2)

3.1. Forms required

Form title	Form number
Application for Permanent Residence in Canada	IMM0008EGEN
The Guide for Business Applicants and the Business Immigration Application Form http://www.cic.gc.ca/english/applications/business.html	IMM4000

4. Instruments and delegations

A16(1), A16(2)(a)	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R88(1) "Agent"	Not to be delegated
R88(1) "entrepreneur"	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R88(1) "entrepreneur selected by a province"	Not to be delegated
R88(1) "investor"	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer

OP 9 Investors

	Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R88(1) "investor selected by a province"	Not to be delegated
R88(1) "self-employed person selected by a province"	Not to be delegated
R91	NHQ - Director, Permanent Resident Policy and Programs
R93(1)	NHQ - Director, Permanent Resident Policy and Programs
R93(2)	NHQ - Director, Permanent Resident Policy and Programs
R94	NHQ - Director, Permanent Resident Policy and Programs
R102(1)	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R105(2)	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R108(1)	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R109(1)	Designated Immigration Officer Temporary Visa Officer Immigration Control Officer Foreign Service Immigration Officer Senior Foreign Service Immigration Officer Deputy Program Manager Program Manager Satellite Office Immigration Program Manager
R109(2)	Program Manager Satellite Office Immigration Program Manager

OP 9 Investors

5. Departmental policy

5.1. Promoting the investor class overseas

Officers, as operational exigencies allow, may encourage individuals to apply as investors in a variety of ways. This section outlines steps and activities officers may undertake to promote business immigration overseas.

5.2. Holding business immigration seminars

Where potential demand warrants, business immigration seminars may be held to:

- provide information about the program;
- field questions from those in attendance; and
- clarify the roles and responsibilities of the federal government and the provincial governments.

5.3. Supplying promotional material

Application information: The Guide for Business Applicants and the Business Immigration Application Form can be found on the Citizenship and Immigration Canada (CIC) Web site at <http://www.cic.gc.ca/english/pdf/kits/guides/4000ESap.pdf> (Simplified Application Process) or <http://www.cic.gc.ca/english/pdf/kits/guides/4000E.PDF> (Regular Application Process) or can be obtained at visa offices abroad.

Other promotional material may be available from the provinces or other agencies.

5.4. Pre-application counselling and promotion

Officers are well placed to provide objective information about the investor program to applicants and third party representatives and are encouraged to take an active promotion and marketing role. This approach is subject to operational constraints.

Promotional efforts should familiarize potential applicants with the services offered by provincial governments to business foreign nationals. Where feasible, officers should coordinate their promotional efforts with those of provincial government representatives who may also be active in this field.

5.5. Obtaining relevant information (A11)

The onus is on the applicant to produce all relevant information in support of their application.

The applicant is expected to provide original supporting documentation or certified copies as part of the application. If copies are provided with the application, originals must be produced at interview if requested.

The applicant will need to provide certified translations in English or French, and an interpreter, as required. The interpreter must be a professional, and neither a friend, relative, employee, lawyer nor consultant of the applicant.

5.6. Interviews

Under the IRPA Regulations, members of the business foreign nationals class may or may not be called to an interview. This puts them on a par with other classes of foreign nationals:

- where the documentation submitted with the application clearly establishes eligibility, and you are satisfied it is authentic, waiving the interview may be appropriate;

OP 9 Investors

- where it clearly establishes that the applicant is not eligible, officers must refuse.

5.7. Interviewing dependants

Officers may require the dependants' presence if their presence is necessary for the purpose of assessing the application. This applies whether or not they will accompany the principal applicant to Canada. Members of a family do not have to be interviewed at the same time and place.

A15 authorizes officers to interview the principal applicant and any dependants at the visa office or at any other appropriate location. There are no limitations upon what is considered appropriate, but the officer should have reasons for requiring the presence of dependants at an interview.

As always, all statutory requirements (including medical, criminal, security, truthfulness and proof of relationship to the dependants) must be met before a visa may be issued.

5.8. Compliance with provincial and territorial guidelines

Officers are obliged to apply the regulatory definition of investor and not the policy choice of the federal or provincial government.

Some provinces or territories may have developed other definitions for use within their jurisdictions. These reflect provincial or territorial priorities, experience and knowledge of local conditions. However, they are not requirements under *the Immigration and Refugee Protection Act* and Regulations and do not have the force of law.

Officers should encourage successful applicants to take advantage of the post-right of entry counselling services that some provinces or territories may offer.

5.9. Cost recovery fee and right of permanent residence fee (RPRF)

The cost recovery fee is payable at the time the application is made and is not refundable. The cost recovery fee must only be charged for persons who intend to immigrate to Canada.

The RPRF is only refundable, upon request, to applicants who do not obtain permanent resident status. RPRF is also only for persons who intend to immigrate to Canada.

Successful applicants who decide not to use their visas must return them to the visa office in order to obtain a RPRF refund. Unsuccessful applicants should be informed as part of the refusal letter that they are entitled to a RPRF refund. The visa office that finalized a case is responsible for processing any related RPRF refund if the RPRF has been paid.

Non-accompanying dependants do not pay these fees even though they must undergo statutory processing.

5.10. Request to change class

Applicants are assessed in the class applied for.

An applicant may not change foreign national classes. R90(2) requires investor applicants be assessed against R88 and to be refused if not a member of the investor class.

Following the selection decision, there is no provision to change class within the program after the visa is issued.

5.11. Effect of changing categories on cost recovery fees

In the current regulatory package, there is no provision to change categories.

5.12. Releasing information to provinces and territories

Requests for information from the provinces and territories should be accommodated, subject to the provisions of the *Privacy Act* and *Access to Information Act*.

OP 9 Investors

A number of provinces have negotiated Memoranda of Understanding to facilitate the exchange of information. Permanent Resident Policy and Programs Division manages this.

5.13. Requesting and reviewing documentation - general (A16)

Officers may request documentation to support the applicant's application. The documentation requested should primarily provide evidence about the applicant's financial position and previous business experience. Prior business experience is a prerequisite.

5.14. Processing priority

Officers should accord the same processing priority to business foreign nationals as to other categories of foreign nationals. Applicants must understand that their application will not receive special consideration because they may have chosen to be represented by a lawyer or consultant. Lawyers and consultants representing business applicants should comply with the same standards applying to third party representatives in any other kind of foreign national case.

5.15. Applying procedural fairness

When the officer has concerns about eligibility or admissibility, the applicant must be given a fair opportunity to correct or contradict those concerns. The applicant must be given an opportunity to rebut the content of any negative provincial assessment that may influence the final decision.

The officer has an obligation to provide a thorough and fair assessment in compliance with the terms and spirit of the legislation and procedural fairness requirements.

5.16. File retention and disposal

The records of successful investors must be retained for three years from the date of visa issuance. Records of refused applicants must be retained five years from the date of final disposition

5.17. CAIPS records

The visa office should make its microfilmed or CAIPS records available to inland offices upon request, subject to the *Privacy Act*. Information from the visa office may assist in determining whether there has been any misrepresentation on the application for permanent residence.

Permanent Resident Policy and Programs Division at NHQ has access to CAIPS. The Division will review case notes from time to time, following contact with a province or a mission.

6. Definitions

6.1. Audits

The objective of an audit is to express an opinion as to whether the financial statements present fairly, in all material respects, the financial position in accordance with generally accepted accounting principles. This is the highest form of assurance. The auditor performs the audit with an attitude of professional scepticism and seeks reasonable assurance whether the financial statements are free of material misstatement.

6.2. Compilation engagements

Compilation engagements are engagements in which a public accountant receives information from a client and arranges it into the form of a financial statement. The public accountant is concerned that the assembly of information is arithmetically correct; however, the public accountant does not attempt to verify the accuracy or completeness of the information provided.

OP 9 Investors

In Canada, it would be unusual for a small private business to have an audit. The *Canadian Business Corporations Act* requires an audit if sales exceed \$10,000,000 but even in that case, if the company is closely held, it can waive the audit requirement.

6.3. Financial statements

A complete set of financial statements generally includes:

- balance sheet (see Financial statements: balance sheet, section 6.4)
- income statement (or Statement of Income and Retained Earnings), (see Financial statements: income statement, section 6.5);
- statement of changes in financial position; and
- notes to the financial statements.

6.4. Financial statements: balance sheet

Any asset or liability which will be converted into cash within one year is defined as current and the difference between current assets and current liabilities provides some indication of a company's liquidity and solvency.

The balance sheet provides a snapshot in time (usually at the business's year-end). Assuming that the information provided is accurate, it provides an indication of the assets available to conduct business operations and an indication of the scope of operations.

The balance sheet's accounting equation is liabilities (the money supplied by creditors) plus the owners' equity (money supplied by owners) equals the assets (the total money invested in the company) as shown in the following table.

Balance sheet accounting equation

This	Plus this	Equals this
Liabilities	Owners' Equity	Assets
the money supplied by creditors	money supplied by owners and retained earnings	the total money invested in the company

A series of balance sheets can reveal the soundness of the company's structure.

When reviewing the balance sheet, it should be remembered that it is based on historical transactions. As a result, it discloses a book value that may not correspond to the market value of an enterprise.

Note: Fixed assets will be recorded at historical cost less an estimate for depreciation which may not bear any resemblance to fair market value. This is especially true with land since fair market value may be many times the original cost.

6.5. Financial statements: income statement

The income statement measures a company's sales (revenue), expenses and earnings over a specified time period, usually one year. It provides an indication of the scope of operations (along with the balance sheet).

The income statement is a good indicator of a company's financial performance. Earnings and trends in earnings are the best indicators of a company's financial well-being. Changes or trends in financial position should indicate whether the company is growing or declining.

The income statement should help the officer determine the company's net book value (if the business were to be sold, how much would it realize?) and the number of its employees (from the wage and salary expenses).

OP 9 Investors

In some cases, small businesses may only be able to produce an income statement generated specifically for tax purposes.

6.6. Full-time equivalent

Full-time equivalent means 1950 hours per year of paid employment and may consist of either one person working full-time, or several people working the equivalent of a full-time position.

6.7. Immigrant Investor Program (IIP) promissory note

The promissory note is the physical equivalent of the debt obligation referred to in the Regulations. The promissory note is provided to the investor by CIC, on behalf of the provinces, as evidence of their \$400,000 investment. Investors are required to present their promissory notes to Permanent Resident Policy and Programs Division at the indicated redemption date for repayment.

6.8. Immigrant Investor Program (IIP) Subscription Agreement

The IIP Subscription Agreement sets out the operation and administration of the program within the context of the regulatory framework and is a legally binding contract.

6.9. Investor

An investor is an foreign national who:

- has business experience;
- has a legally obtained net worth of at least \$800,000;
- indicates in writing to an officer that they intend to or have made an investment of CDN \$400,000.

Personal net worth statement

The personal net worth statement includes both business and personal assets and liabilities of the applicant as well as those of the spouse or common-law partner.

6.10. Review engagements

Review engagements are distinguishable from audits in that the scope of review is less than that of an audit and therefore the level of assurance provided is lower. A review consists primarily of enquiry, analytical procedures and discussion related to information supplied to the public accountant by the enterprise with the limited objective of assessing whether information being reported on is plausible within the framework of appropriate criteria.

7. Procedure: Assessing investors' eligibility

The following sections outline procedures officers will follow to assess investor applications. The sections are set out as follows:

Pre-Application Counselling, see Section 7.2

Assessing Eligibility - Selection Criteria, see Section 8

Making the Eligibility Decision, see Section 10

Making the Admissibility Decision, see Section 12

Issuing the Immigrant Visa, see Section 12.1

OP 9 Investors

Investors Destined to Quebec, see Section 13

Refusals, see Section 14

Handling Payment of Investment, see Section 9

7.1. Role of federal officials

With the exception of Quebec, the provinces and territories are not directly involved in the selection process. There are, however, federal-provincial agreements that allow specific provinces to nominate foreign nationals who have investment experience. The federal government has exclusive responsibility for selecting foreign nationals in the investor category. A number of provinces may, in the future, enter into agreements that would allow them to select investors.

Roles and responsibilities in processing Quebec cases

The *Canada-Quebec Accord* gives Quebec authority to select investors and to operate its own Immigrant Investor Program (IIP). R96 provides regulatory authority.

Investors in Quebec's IIP must intend to settle in the province of Quebec and must obtain a Certificat de sélection (CSQ) as proof of their selection by Quebec.

7.2. Forms

Schedule 6, together with the IMM 0008EGEN, provides a snapshot of the applicant's financial status and business experience. Missions may need to tailor additional forms that are location specific.

Pre-Application Counselling

As operational exigencies allow, the officer should provide information to the prospective investor prior to receiving the application. The officer, for example, could:

- discuss with the applicant the possibility of an exploratory visit to Canada; and
- ensure the applicant has all the documentation required.

Encouraging exploratory visits

The *Immigration and Refugee Protection Act* encourages investors to make exploratory visits to Canada and grants six assessment points for doing so.

7.3. Ensuring that the applicant has all necessary documentation to make the application

Officers should ensure that:

- in addition to the usual counselling material, the information package given to a prospective applicant includes clear information on what supporting documentation will be needed to assess an applicant's ability to meet the definition;
- applicants are asked to submit a version of the Personal Worth Statement and Business Applicant Summary with their application.

8. Procedure: Assessing eligibility – selection criteria

To be approved as an investor, the applicant must:

OP 9 Investors

- meet the regulatory definition of an investor; and
- comply with the selection criteria for the investor category.

This section outlines the elements an officer must consider to determine whether the regulatory definition of investor is met.

8.1. Does the applicant meet the regulatory definition of investor?

R90(2) mandates the refusal of any application where the applicant does not meet the regulatory definition of investor. If it is clear that an applicant does not meet the definition, no further analysis is required.

The officer determines whether the applicant meets the regulatory definition, which consists of three distinct criteria. The investor must:

- have business experience;
- have a legally obtained net worth of at least \$800,000; and
- provide a written statement to an officer that they intend to make or have already made an investment of \$400,000.

Investors must pay CDN \$400,000 to the Receiver General for Canada before a visa can be issued.

8.2. What is business experience?

The Regulations set out three clear criteria that must be met for the applicant's business experience to be satisfactory to an officer:

- qualifying business;
- time;
- role.

8.3. What is a qualifying business (R88)?

A qualifying business is defined as a business:

- which is not a business for deriving investment income (interest, dividend, or capital gains); and
- for which documentary evidence of the applicant's participation in the business must be provided for at least two of the following attributes:

Attribute	Equity	Multiplied by:	Equal or greater than
1	Percentage of equity controlled by applicant	Number of full-time jobs (equivalents)	2 full-time job equivalents
2	Percentage of equity	Total annual sales(\$)	\$ 500,000
3	Percentage of equity	Annual net income(\$)	\$ 50,000
4	Percentage of equity	Net assets	\$ 125,000

In the past, officers were instructed to assess each business in which an applicant holds a percentage of equity, and if no **single** business could satisfy the requirements, then the definition of "qualifying business" was deemed to have not been met.

OP 9 Investors

However, in *Thomas v. MCI* (FCC 2006), the judge held that visa officers commit a reviewable error when they fail to consider the **aggregate** financial result from all of an applicant's businesses.

Therefore, when assessing an Entrepreneur or Investor applicant's "business experience," where applicable, visa officers should consider the **aggregate** financial information of more than one business. This can be done using the same calculation—the percentage of equity held by the applicant/spouse multiplied by the variables concerned (annual sales, net income, full-time equivalents and net assets). However, when determining whether the applicant has managed a "qualifying business," the sum of these calculations for all businesses will be the figure compared against the minimum thresholds found in R88(1).

It is anticipated that the majority of Investor and Entrepreneur applicants will rely on a single business or, in the case of Investor applicants, choose to declare management experience in order to demonstrate "business experience."

Given the potential workload implications, such aggregate assessments should be made only where they are clearly relevant to the selection decision, such as a decision to refuse the applicant.

Example:

An applicant owns a percentage of equity in three businesses with the following characteristics:

	<u>Company A</u>	Applicant's Share	<u>Company B</u>	Applicant's Share	<u>Company C</u>	Applicant's Share	Total: (A) + (B) + (C)	Minimum Required by R88(1)	Min. Met?
% of Equity	33%		50%		25%				
Sales	\$ 75,000	\$ 24,750	\$200,000	\$ 100,000	\$500,000	\$ 125,000	\$249,750	\$ 250,000	X
Net Assets	\$ 56,000	\$ 18,480	\$125,000	\$ 62,500	\$250,000	\$ 62,500	\$143,480	\$ 125,000	√
Net Income	\$ 12,000	\$ 3,960	\$ 45,000	\$ 22,500	\$ 50,000	\$ 12,500	\$ 38,960	\$ 50,000	X
FTEs	3	1	4	2	4	1	4	2	√

As this example illustrates, the definition of "qualifying business" is not successfully met by any one business on its own. However, when one considers the aggregate total for the applicant's share of sales, net assets, net income and full-time equivalents in all three businesses, the definition is met.

8.4. Calculating percentage of equity

In order to determine the percentage of equity controlled by an Investor applicant (and their spouse, where applicable) it may be necessary to look beyond the legal or de jure control of shares in the qualifying business.

In certain circumstances, legal control of a portion of the qualifying business' equity may rest with another individual—but may still be considered part of the applicant's percentage of equity. For example, in jurisdictions where the law precludes non-citizens from legally controlling a majority

OP 9 Investors

interest in a business, other documents may exist, such as trust or licensing agreements, that better reflect the effective or de facto control of the business.

In many of the Gulf States, non-citizen applicants legally own 49% of the capital stock of a corporation, with agreements stipulating full control over the assets, obligations and profits of the corporation in return for a small licensing fee to the Gulf national or 51% shareholder. In such a scenario, the equity percentage for the "qualifying business" calculation would be 100%.

Where there are serious concerns that such documents or agreements were produced **solely** for the purposes of satisfying Immigration requirements, an officer must be satisfied that the applicant has not engaged in an artificial transaction [R89]. However, these agreements should always be considered within the local context, as the legal environment in certain countries can make them a necessity for a non-citizen operating a business.

8.5. What is the time factor?

For the applicant's business experience to count, it must have been accumulated during at least two years in the five-year period before the date of application or decision. What role must the investor have played?

The investor's role in the business must have been either:

a) management and control of a percentage of equity of the qualifying business as shown in the following table. (There is no minimum percentage of equity requirement and the investor must provide documentary evidence for at least two attributes out of four.)

Attribute	Percentage of equity controlled by applicant		
	100 %	50 %	33.33 %
Employment	2	4	6
Total Annual Sales (\$)	500,000	1000,000	1,500,000
Annual Net Income(\$)	50,000	100,000	150,000
Net Assets at Year-End	125,000	250,000	375,000

Or

b) management of five full-time job equivalents (each job equivalent is 1,950 hours of paid employment per year). The management experience must be in business.

Assessing net worth and provenance of funds concern

The Regulations anticipate that an applicant would have to establish ownership and valuation of the assets. Concerns over the provenance of funds are addressed in both the IRPA and the Regulations. Officers have authority to require evidence to establish admissibility and the power to reject an applicant for failing to discharge the obligation.

Personal net worth statement

The Regulations set out a requirement for a minimum net worth of \$800,000, although there is no requirement for a minimum amount to be transferred to Canada. Net worth is critical to the assessment of business intent and ability.

A16(1) imposes the obligation on applicants 'to answer truthfully' and 'produce ... all relevant evidence and documents' reasonably required by the officer. A11(1) requires that a visa may only be granted if the officer 'is satisfied that the foreign national is not inadmissible and meets the requirements of the Act.'

OP 9 Investors

The new Act also provides broader grounds and less onerous conditions to reject applicants. A40(1)(a) provides for the rejection of applicants for misrepresentation of a material fact, namely "for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act." A41 provides officers authority to find applicants inadmissible for "an act or omission which contravenes directly or indirectly a provision of this Act." The new legislation provides officers with the tools to reasonably require evidence to establish admissibility A16(1) and subsequently to reject the applicant when not satisfied of their admissibility A11(1) or else when provided false material information such as control and ownership of the business and net worth A40(1)(a). Similarly, officers may refuse applicants under A41 for any act or omission.

In addition to broader legal authorities, the Act provides a wide context for officers to examine business applicants. Net worth is required of both entrepreneurs and investors, enabling officers to consider its provenance for both categories. Similarly, the similar definition of business experience provides a context for officers to examine, in detail, the business operations of both. The requirement to evaluate business experience and net worth, and the onus on the applicant to document each requirement ostensibly provides the means to satisfy concerns about provenance of funds and past business behaviour.

8.6. What should be included in a personal net worth statement?

Schedule 6 is submitted with the application. This captures the personal net worth statement of both business and personal assets and liabilities for the applicant and spouse, common law or conjugal partner.

Officers should:

- review this document to satisfy themselves as to the completeness, valuation, ownership, existence and presentation of the component assets and liabilities;
- require applicants to provide documentation to support the value of assets referred to on this statement (bank statements, property valuations, etc.);
- funds tied up in jointly owned businesses, real estate, stocks, antiques or jewellery may not be available for transfer to Canada;
- funds may be in non-convertible currencies;
- exchange controls may restrict movement of capital to Canada.

9. Procedure: Handling payment of investment

9.1. Ensuring the applicant has the intent to make or has made an investment of \$400,000

The officer must ensure that a direct payment of CDN \$400,000 has been made to the Receiver-General for Canada. Before visa issuance, the officer must receive verification from CIC in Ottawa.

9.2. Depositing CDN \$400,000

Applicants can make their \$400,000 investment anytime after an application has been submitted; however, payment will not be required until immediately prior to visa issuance when all other immigration matters have been resolved. Visas will not be issued prior to such payment.

The wire transfer form allowing applicants to wire their \$400,000 directly to CIC in Ottawa is on the CIC Web site.

OP 9 Investors

Citizenship and Immigration Canada
Revenue Accounting
Jean Edmonds Tower North
4th Floor, 300 Slater Street
Ottawa, Ontario
Canada
K1A 1L1

Arrangements to finance the \$400,000 investment are the applicant's responsibility.

CIC will confirm receipt of any such arrangements directly with the lender. Again, all correspondence should clearly note the applicant's complete name, immigration file number, and the Canadian visa office where the application is being processed. This is critical to ensure the investment is quickly and accurately linked to the immigration application.

If the IIP promissory note is to be pledged as collateral, applicants must arrange with the lender to notify CIC at the address above.

Signing the IIP Subscription Agreement

The Subscription Agreement can be found at the CIC Web site or may be obtained at visa offices abroad. Two copies of this document must be signed and submitted along with the \$400,000 payment.

The Subscription Agreement also sets out the operation and administration of the program within the context of the regulatory framework.

As a legally binding contract, applicants must read it carefully and indicate acceptance by signing two copies and sending them to the address above.

CIC in Ottawa will execute the Subscription Agreement and return one copy to the applicant.

The debt obligation or promissory note, which advises investors of the provincial distribution of their \$400,000 and redemption date will be sent to the investor or his designated lender upon allocation to the provincial funds.

Verification of investment

CIC-NHQ (Permanent Resident Policy and Programs Division) will advise the visa office once payment has cleared, so that the case can be finalized and visas issued to investors and their dependants.

There are no refunds after visa issuance.

If an investor wishes to withdraw the application before visa issuance, they should immediately inform the visa office and CIC in Ottawa. If a visa has not been issued, CIC will return the \$400,000 to the applicant within 90 days of the request. In the event an investor has made an investment and a visa is refused, investors will be advised and their investment will be refunded within 90 days of a request for refund.

9.3. Redemption of investment

Investors will be repaid by CIC in Ottawa. The date of repayment depends on the date CIC receives the investment and is 30 days after the maturity date provided for on the Investor's Promissory Note. At the earliest, this will be in five years, two months and at the latest, five years, three months from the date of receipt.

OP 9 Investors

10. Procedure: Making the eligibility decision

Based on a review of the above elements of the application, the officer will either determine that the applicant:

- is not eligible and refuse the case; or
- meets the regulatory definition and proceed to examine the case according to the selection criteria.

11. Procedure: Assessing investors – applying the selection criteria

This section outlines the procedures an officer must follow in assessing an applicant against the selection criteria for investors, once the regulatory definition has been satisfied.

The officer must assess the applicant against the selection criteria for investors by examining the applicant's business and financial background.

If an officer is satisfied that the applicant meets the regulatory definition of investor, the applicant is assessed on a selection grid.

The applicant will require 35 points out of a maximum of 100 available, as determined by the Minister.

The following grid outlines the criteria against which to assess the applicant and the points to be awarded.

Investors: Selection factors and maximum points

Business experience*	Maximum 35
Five years business experience	35
Four years business experience	30
Three years business experience	25
Two years business experience	20
* within five years preceding date of application. Any additional experience gained in the period prior to selection decision is to be counted.	

Age	Maximum 10
21 49 years of age at time of application	10
Less 2 points for each year of age over 49 years or under 21 years	

Education	Maximum 25
Doctorate or Master's Degree + 17 years full-time or full-time equivalent studies	25
3-year Trade Certificate or LLB or Medical Degree + 15 years full-time or full-time equivalent studies	22
Bachelor's Degree or 2-year Trade Certificate + 14 years full-time or full-time equivalent studies	20
Bachelor's Degree or 1-year Trade Certificate + 13 years full-time or full-time equivalent studies	15
1 year post-secondary + 12 years full-time or full-time equivalent studies	12
Secondary school education	5

Official Languages	1st language	2nd	Maximum 24
---------------------------	---------------------	------------	-------------------

OP 9 Investors

		language	
High Proficiency	16	8	Maximum 24
Moderate Proficiency	8	8	Maximum 16
Basic Proficiency	2	2	Maximum 4
No Proficiency	0	0	

Adaptability	Maximum 6
Business exploration trip to Canada within 5 years of application	6
Participation in designated joint federal-provincial business immigration initiatives	6

Total	Maximum 100
--------------	--------------------

Note: This point system does not apply to persons who are selected under the Quebec Program. Under the terms of the Canada-Quebec Accord, Quebec selects its own business foreign nationals.

11.1. Reviewing specific documentation

Officers should begin their assessment by examining documentation submitted by the applicant to determine the applicant's business experience. Relevant documents include:

Business Immigration Application Form

- personal net worth statement
- business balance sheet
- financial statements
- corporate employee payroll (list)

These documents provide an accounting of the applicant's assets and liabilities and help the officer to determine whether the applicant has the required business experience.

11.2. Business balance sheet and business income statement (financial statements)

For the purposes of assessing the applicant, the most important statements are the balance sheet and income statement.

Officers should:

- consider the performance of the business over time. Financial statements for the previous five years should be provided for comparative purposes. Previous business failures do not in themselves signify the refusal of an application, but should be thoroughly explained by the applicant;
- review the income statement to verify the completeness, measurement, occurrence and presentation of the component revenue and expenses.

Note: When reviewing the income statement, keep in mind that it is based on transactions. Particularly in the case of a small enterprise, it is advisable to look at the individual components and not simply the net income. For example, business valuers normalize income by considering how much has been expended by the owner in salaries and how much would be a reasonable salary to pay an employee to do the same job. An owner may not charge any salary at all and as a consequence may show considerable net income or alternatively allocate a large amount to salary expenses and show very little net income or even a loss for tax purposes. It would therefore be in order to inquire as to the number of employees and the amount of salary expenses which can be attributed to the owner.

OP 9 Investors

Integrity of financial statements

Officers must carefully consider the integrity of the financial statements provided.

In Canada, there are essentially three levels of assurance that a public accountant can provide to the users of financial information:

- audits;
- review engagements; and
- compilation engagements.

The majority of small companies or companies which do not have to report to a bank or other creditors will just get a compilation when they get their tax returns professionally prepared.

Most countries have a similar range of reporting engagements. In particular, if there has been a British influence in the past (i.e., Hong Kong), the standards will be very close to ours.

When the veracity of the documentation is in doubt, the officer should:

- first request further documentation. In the absence of suspicious circumstances, it will ordinarily be appropriate to accept financial statements which have been reported on by a reputable external accountant. Most small businesses are extremely unlikely to have been audited.

Reviewing other documentation

Officers should review other supporting documentation as necessary. This documentation may include:

- corporate income tax returns;
- personal income tax returns;
- minute books;
- share certificates;
- municipal permits, business licenses, etc.;
- payroll lists;
- sales taxes;
- property deeds, land registrations, appraisals, etc.

Corporate income tax returns

Officers may examine tax returns including information on:

- owners and directors;
- related parties;
- profit for income tax purposes;
- duration of operations.

OP 9 Investors

Note: Net income (per the financial statements) and taxable income (per the tax return) will differ as a consequence of the different treatment of certain items such as depreciation. However there should be a reconciliation to explain the difference.

Note: It would certainly be cause for concern if it appears that different information is being presented for the purposes of financial statements and tax reporting (two sets of books).

Inability to produce tax records would be a cause for concern, as would a pattern of insufficient profit to at least provide for the cost of living of the applicant and their dependants.

Officers may encounter cases where they suspect some degree of tax evasion. In such cases, the officer should be guided by the principle that it is the applicant's responsibility to discharge the onus of proof and that this is best done through the provision of objective documentation.

Personal income tax returns

Officers may wish to review:

- proprietor's profit and loss;
- supporting financial statements.

Minute books

Officers may also review:

- shareholders' register;
- shareholders' resolutions ;
- minutes of meetings ;
- articles of incorporation.

Share certificates

A review of share certificates may also provide indication of ownership.

Municipal permits, business licences, etc.

Officers may wish to review municipal permits, business licences and other similar documentation, which should show the type of business organization.

Most business undertakings are conducted either as proprietorships, partnerships or corporations (legal entities organized for specific purposes with limited liability).

As a general rule, most small businesses start as proprietorships or partnerships and evolve into corporations as the level of business activity expands.

Most businesses must be registered or licensed. The business registration certificate shows in whose name a business is registered. Though it may not indicate who owns or operates the business, it may give the business address and indicate whether the business is a sole proprietorship, a partnership or a corporation.

Payroll records

With rare exceptions, payroll records are essential when determining eligibility for this class of applicants.

OP 9 Investors

Sales taxes and property deeds, land registrations, appraisals, etc.

Officers may:

- request a one-year record of bank deposits to verify their long-term ownership;
- request property deeds or bank letters to verify ownership of property or stocks, amounts of outstanding mortgages and banking facilities used.

Property appraisals are an extra expense to the applicant and should only be requested if the property value given by the applicant is questionable and this assessment is critical to total net worth.

General ledger, cash book or bank statements

Officers may request supporting accounting records in some circumstances.

12. Procedure: Making the admissibility decision

If the applicant meets the requirements of the selection criteria and the regulatory definition of investor, the officer will:

- proceed to verify that the CDN \$400,000 investment has been received by NHQ;
- ensure that all other requirements (medical, security, etc.) are met; and
- issue the permanent resident visa.

12.1. Substitution of evaluation

R108 and R109 provide authority to issue or refuse a permanent resident visa in specific cases regardless of the points awarded. R109 applies if, in the officer's opinion, there are good reasons why the points awarded do not reflect the chances of the foreign national and their dependants becoming economically established in Canada. Substitution of evaluation (positive or negative discretion) may be used for economic reasons (i.e., involving the ability to support oneself).

Note: The officer must obtain the concurrence of a second officer. In 1995, the Supreme Court confirmed that this discretionary authority is restricted to successful establishment in the economic sense.

Issuing the permanent resident visa

NHQ will verify receipt of an investor's \$400,000 payment by e-mail to the applicable post. On visa issuance, the post must inform NHQ by return e-mail.

This is important because the majority of investors use facilitators who provide financing and are eligible for a \$28,000 commission that is paid at time of visa issuance. It also informs the participating provinces that the investment is now irrevocable.

In cases where payment has not been made and all immigration requirements (medical, criminal, security, etc.) have been met by applicants and their dependants, the visa office will notify the principal applicant, in writing, and request payment within 30 days of notification.

OP 9 Investors

13. Procedure: Investors destined to Quebec

Investors destined to Quebec are selected by Quebec Immigration officials and must obtain a *certificat de sélection du Québec* (CSQ) as per R96(b) before a federal officer may consider their application.

If there are no indications of a possible refusal on statutory grounds (concerns about possible criminality or concerns related to security, medical questions or relationship issues), the interview may be waived.

14. Procedure: Refusals

Investor applicants who cannot meet the definition must be refused as per R90(2). Most refusals are based on the regulatory definition. For example, the applicant may not meet the business experience threshold. Beyond that, the applicant may not meet the legally obtained minimum net worth standard (see provenance of funds Section 11 above). Finally, in rare cases, the applicant, while eligible, may not meet the selection criteria as per R102.

An applicant described in any of the inadmissibility sections will be refused.

A person who applies as an investor is assessed in that class and accepted or refused. Officers are not required to assess a failed investor applicant as an entrepreneur or self-employed or in any other class.

Where information is later presented that should have been disclosed at the interview and might have at that time led to a positive decision, the officer should invite the applicant (in the absence of special circumstances) to submit a new application and pay a new cost recovery fee.

The refusal letter must clearly state all the reasons for refusal in detail. (For sample refusal letters, see appendixes.)

Appendix A Refusal letter – Investors - Applications received pre-April 1, 1999

INSERT LETTERHEAD

Our Ref.:

INSERT ADDRESS

Dear:

I have now completed the assessment of your application and I have determined that you do not qualify for immigration to Canada as an investor.

Subsection 362 of the *Immigration and Refugee Protection Act Regulations* states that:

If, before April 1, 1999, a foreign national made an application for an immigrant visa as an investor and signed any document referred to in clause 1(v)(iii)(A) of Schedule X to the former Regulations, as that Schedule read immediately before that date, or, in the case of an investor in a province, either applied for a selection certificate under section 3.1 of *An Act respecting immigration to Québec*, R.S.Q., c.I-0.2, as amended from time to time, or applied for an immigrant visa as an investor, and signed an investment agreement in accordance with the law of that province, the relevant provisions of the former Regulations respecting an applicant for an immigrant visa as investor, an approved business, an investor in a province, a fund manager, an eligible business, an approved fund, a fund, an escrow agent, a privately administered venture capital fund or a government-administered venture capital fund continue to apply as they read immediately before April 1, 1999 to all persons governed by their application before that date.

Subsection 2(1) of the *Immigration Regulations, 1978*, defines an investor as an immigrant who:

(a) has successfully operated, controlled or directed a business, (b) has made a minimum

OP 9 Investors

investment in the sum of \$(**enter the appropriate investment amount based on the province**) as described in subsection 2(1) of the *Immigration Regulations* since the date of the investor's application for an immigrant visa as an investor and c) has a net worth, accumulated by the immigrant's own endeavours, of at least \$500,000.

You do not meet the definition of investor because (**insert reasons why applicant does not meet any or all of the above criteria (a), (b) or (c)**)

Subsection 9(4) of the *Immigration Act* provides that where a visa officer is satisfied that it would not be contrary to the Act or Regulations to grant landing or entry to an applicant, that officer may issue a visa if, in his or her opinion, that applicant meets the requirements of the Act and the Regulations. You do not meet the requirements of the Act and Regulations for the reasons explained above. I am therefore refusing your application.

If the applicant has paid the ROLF, add:

The Right of Landing Fee that you have paid is refundable. (**Add as appropriate**) You will receive a cheque from the (**choose as appropriate**) Embassy/High Commission/Consulate within a few weeks. (**or**) Please contact the Canadian (**choose as appropriate**) Embassy/High Commission/ Consulate in _____ for information concerning the method of reimbursement and the date at which you can obtain the refund.

Thank you for the interest you have shown in Canada.

Yours sincerely,

Officer

Appendix B Refusal letter – Investors – Definition or insufficient points

INSERT LETTERHEAD

Our Ref.:

INSERT ADDRESS

Dear:

I have now completed the assessment of your application and I have determined that you do not qualify for immigration to Canada as an investor.

If application was received between 1 January 2002 and 28 June 2002, OR was received before 01 January 2002 but no selection decision was made before 31 March 2003, please add:

Your application was received on (DATE). Pursuant to subsection 361(3) of the *Immigration and Refugee Protection Regulations*, it was therefore assessed under the provisions of the *Immigration and Refugee Protection Act and Regulations*.

Subsection 12(2) of the *Immigration and Refugee Protection Act* states that a foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

Subsection 90(1) of the *Immigration and Refugee Protection Regulations, 2002*, states that for the purposes of subsection 12(2) of the Act, the investor class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically

OP 9 Investors

established in Canada and who are investors within the meaning of subsection 88(1). Subsection 90(2) states that if a foreign national who makes an application as a member of the investor class is not an investor within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.

If the applicant does not meet the definition of an investor, add:

Subsection 88(1) of the *Immigration and Refugee Protection Regulations, 2002*, defines an investor as a foreign national who (a) has business experience; (b) has a legally obtained minimum net worth of at least \$800,000; and (c) indicates in writing to an officer that they intend to make or have made an investment.

If applicant lacks business experience, add the following three paragraphs:

Subsection 88(1) of the Regulations states that “business experience”, in respect of an investor, means

the management of a qualifying business and the control of a percentage of equity in the qualifying business for at least two years in the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, or

the management of at least five full-time job equivalents per year in a business for at least two years in the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application.

Subsection 88(1) defines “qualifying business” as a business – other than a business operated primarily for the purpose of deriving investment income such as interest, dividends or capital gains – for which, in each of any two years in the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, there is documentary evidence of any two of the following:

that the percentage of equity multiplied by the number of full-time job equivalents is equal to or greater than two full-time job equivalents per year;

that the percentage of equity multiplied by the total annual sales is equal to or greater than \$500,000;

that the percentage of equity multiplied by the net income in the year is equal to or greater than \$50,000; and

that the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000.

“Percentage of equity” is defined in subsection 88(1) as

in respect of a sole proprietorship, 100 per cent of the equity of the sole proprietorship;

in respect of a corporation, the percentage of the issued and outstanding voting shares of the capital stock of the corporation controlled by the foreign national or their spouse or common-law partner; and

in respect of a partnership or joint venture, the percentage of the profit or loss of the partnership or joint venture to which the foreign national or their spouse or common-law partner is entitled.

If applicant does not have sufficient net worth, add:

Subsection 88(1) of the Regulations defines “net worth” as, in respect of the foreign national and their spouse or common-law partner, the fair market value of all their assets minus the fair market value of all their liabilities.

If the applicant has not made an investment, add:

Subsection 88(1) of the Regulations defines an investment as a sum of \$400,000 that is paid by the investor to the agent for allocation to all approved funds in existence as of the date the

OP 9 Investors

allocation period begins and that is not refundable during the period beginning on the day a permanent resident visa is issued to the investor and ending at the end of the allocation period.

(Choose one or more:)

You have not satisfied me that you have business experience because **(add reasons)**. **AND/OR** You have not satisfied me that you have a legally obtained minimum net worth of at least \$800,000 because **(add reasons)**. **AND/OR** You have not indicated in writing that you intend to make or have made an investment because **(add reasons)**. As a result, you do not meet the requirements of subsection 90(1).

Subsection 11(1) of the Act states that a foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. Subsection 2(2) specifies that unless otherwise indicated, references in the Act to "this Act" include regulations made under it.

Following an examination of your application, I am not satisfied that you meet the requirements of the Act and the Regulations for the reasons explained above. I am therefore refusing your application.

If the applicant meets the definition but does not obtain sufficient points, add:

I am satisfied that you meet the definition of an investor. Subsection 102(1) of the Regulations sets out the factors to be considered in determining whether a foreign national, as a member of the investor class, will be able to become economically established in Canada. The factors for applicants in the investor class are age, education, proficiency in the official languages of Canada, experience, and adaptability. The assessment of your application follows:

Factors	Points assessed	Maximum points possible
Age		10
Education		25
Proficiency in official languages		24
Experience		35
Adaptability		6
Total		100

Although you meet the definition of an investor, you have obtained insufficient points to qualify for immigration to Canada because **(add reasons that applicant has insufficient points)**. The minimum number of points required is **35** units. As a result, I am not satisfied that you have the ability to become economically established in Canada.

Subsection 11(1) of the Act states that a foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. Subsection 2(2) specifies that unless otherwise indicated, references in the Act to "this Act" include Regulations made under it.

Following an examination of your application, I am not satisfied that you meet the requirements of the Act and the Regulations for the reasons explained above. I am therefore refusing your application.

If the applicant has paid the ROLF, add:

The Right of Landing Fee that you have paid is refundable. **(Add as appropriate)** You will receive a cheque from the **(choose as appropriate)** Embassy/High Commission/Consulate within a few weeks. **(or)** Please contact the Canadian **(choose as appropriate)** Embassy/High Commission/ Consulate in _____ for information concerning the method of reimbursement and the date at which you can obtain the refund.

Thank you for the interest you have shown in Canada.

OP 9 Investors

Yours sincerely,

Officer