



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# IP 7

## Entrepreneur Program

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## **IP 7 Entrepreneur Program**

### **Updates to chapter**

**Listing by date:**

**Date: 2006-01-11**

Changes were made to reflect the transition from Citizenship and Immigration Canada (CIC) to the Canada Border Services Agency (CBSA). The term “delegated authority” has been replaced by “Minister’s delegate” where appropriate and new information on removal order stays has been added to section 12.

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### 1. What this chapter is about

This chapter describes the in-Canada immigration functions as they relate to the entrepreneur class of foreign nationals. Entrepreneurs are one of the economic classes.

This chapter provides guidance on inland procedures that relate to entrepreneurs after they have been admitted to Canada. It is intended primarily for use at inland and regional offices.

For procedures relating to the selection of entrepreneurs overseas, please see Entrepreneur and Self-Employed (OP 8).

For procedures relating to the admission and granting of permanent residence to entrepreneurs, please see Port of Entry Examinations (ENF 4).

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**Note:** Under the *Immigration and Refugee Protection Act (IRPA)*, conditions are imposed overseas and the port of entry provides counselling.

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### 2. Program objectives

The Entrepreneur Program supports the economic objective in A3, which aims to contribute to a strong and prosperous Canadian economy across all regions of Canada.

The intent of the Entrepreneur Program is to encourage and facilitate the immigration of qualified business persons from abroad who will make a positive contribution to the country's economic development. They are expected to apply their capital and know-how to Canadian businesses which create jobs for Canadians and permanent residents of Canada.

Entrepreneurs and their family members are granted permanent residence under specific conditions that are monitored by Citizenship and Immigration Canada (CIC).

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### 3. The Act and Regulations

The *Immigration and Refugee Protection Act* and its accompanying Regulations came into force on June 28, 2002. They replace the *Immigration Act* of 1976, known as the "former Act", and the 1978 Regulations.

**Table 1: Legislative references, which relate to the Entrepreneur Program**

<b>For more information about:</b>	<b>Refer to:</b>
Objectives: support a strong Canadian economy, benefits of immigration shared by all regions	A3(1)(c)
Selection of economic foreign nationals	A12(2)
Regulations may prescribe conditions by class	A26(d), A32(d)
Permanent resident must comply with conditions	A27(2)
Permanent resident who fails to comply with conditions is inadmissible	A41(b)
Inadmissibility report	A44(1)
Members of entrepreneur class	R97(1)
Conditions of permanent residence	R98(1)
Entrepreneur must meet conditions within specified time	R98(3)
Entrepreneur must provide evidence of compliance	R98(4)
Reporting requirement	R98(5)
Family members subject to conditions	R98(6)
Entrepreneurs selected by provinces	R99
Selection criteria	R102

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Points for experience	R103
Points for adaptability	R104
Requirements for family members	R106
Selection by visa office	R108
Transitional provisions for economic classes	R361, R363

### 3.1. Forms required

The forms required are shown in the following table.

**Table 2: Forms**

Form Title	Form number
Information Memorandum to Citizenship Registration	IMM 0705B
Entrepreneur Monitoring Checklist	IMM 5164B
Mail-In Card for Entrepreneurs	IMM 5215B
Application to Cancel Conditions – Entrepreneur ( 1976 Act & IRPA)	IMM 5344B
Entrepreneur Counselling and Monitoring Guide, 1976 <i>Immigration Act</i>	IMM 5348E
Entrepreneur Counselling and Monitoring Guide, IRPA	IMM 5479E
Entrepreneur Monitoring Report, IRPA	IMM 5486B

## 4. Instruments and delegations

The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness designate persons or classes of persons to carry out any purpose or provision cited in *the Immigration and Refugee Protection Act*. These designated authorities are known as delegations and they stem from A6(1) and A6(2). They are further described by the Instruments and are housed in IL 3.

The instruments specify authorities geographically and are to be read regionally, nationally or internationally in accordance with the physical location of the officer.

To identify specific delegations and designations see IL 3. For the purposes of this chapter, refer specifically to the following references:

A15(4)

A16(1) and A16 (2)(a)

A189

R88(1)

R91

R93(1) and R93(2)

R94

R98(4) and R98(5)

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### 5. Departmental policy

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#### 5.1. Active and ongoing management

In order to satisfy the requirement for active and ongoing management of the Canadian business, the entrepreneur must be actively involved in management decisions through involvement in the operations of the business on a continuing basis.

The officer should judge each case on its own merits. The entrepreneur is not required to be present every day

Passive investment in real estate, stocks, bonds or other securities, or other investments made primarily with the hope of capital appreciation, would, in itself, not satisfy the requirement of active and ongoing management.

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#### 5.2. Outstanding conditions

Conditions of permanent residence for an entrepreneur and family members:

- remain in effect until cancelled by an officer;
- require the entrepreneur to comply with the conditions within a three-year period from the date permanent residence was granted.

The entrepreneur must meet the conditions for a period of at least one year within the period of three years after the day on which the entrepreneur becomes a permanent resident.

Before the expiry of this period, the entrepreneur is required to provide evidence of compliance.

After the expiry of this period, if a final decision regarding the entrepreneur's conditions has not been made, the entrepreneur is said to have outstanding conditions.

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#### 5.3. Cancelling conditions of permanent residence

Conditions are imposed on all entrepreneurs including the requirement to furnish evidence of compliance [R98(4)].

The Application to Cancel Conditions (IMM 5344B) is the formal mechanism available for entrepreneurs to have their conditions of permanent residence cancelled.

Officers should counsel all entrepreneurs who have satisfied their conditions to complete an Application to Cancel Conditions. If the family members were granted permanent residence with conditions, they should be included on the application.

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#### 5.4. Enforcement

Enforcement, or the threat of enforcement, should not be used in a coercive manner. Efforts should be taken to identify ways the entrepreneur can meet the conditions and avoid the need for enforcement action.

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**Note:** Enforcement should be a last resort.

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Conditions are contravened only after the time set out for compliance has expired.

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#### 5.5. Promoting business immigration

Subject to operational priorities, officers may be able to provide objective information about the Entrepreneur Program to applicants and third-party representatives. Again, subject to operational pressures, officers will occasionally be able to take an active promotion and marketing role.

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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 provincial government representatives.

Officers may encourage individuals to apply as entrepreneurs in a variety of ways. For more information, see section 5.2 and section 5.3 above.

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### 5.6. Supplying promotional material

One example of promotional material is “*Applying for Permanent Residence Business Class Applicants*”, which is available on the Citizenship and Immigration Canada (CIC) Web site <http://www.cic.gc.ca/english/applications/business.html>. This guide explains the entrepreneur, investor and self-employed classes and application procedures. It is a standard source of written counselling information on the Business Immigration Program from the federal government. Other promotional material is available from National Headquarters, Business Immigration Division.

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### 5.7. Provincial programs

Officers are obliged to apply the regulatory definition of “entrepreneur.” There are, however, provincial nominee programs that may select persons who have a business background and are not subject to the federal “entrepreneur” definition.

The provincial nominee programs reflect provincial or territorial priorities, experience and knowledge of local conditions.

Several provinces also offer business seminars which provide information about the immigration process as well as the business culture in Canada. The provinces encourage qualified foreign business people to visit the province and provide assistance to those who wish to immigrate and resettle.

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### 5.8. Pending Applications Submitted before January, 2002 and Transitional Classes

According to R361, all active applications under the federal economic classes that were submitted before January 1, 2002, shall be assessed according to the selection criteria of both the previous *Immigration Regulations*, 1978 and the *IRP Regulations*. These cases are to be assessed first under whichever regulations appear most favourable to them and then, if unsuccessful, under the remaining regulations.

In addition, R109.1 to R109.5 create transitional economic classes, including Transitional Entrepreneurs and Transitional Self-employed Persons. The transitional classes are composed of two groups of applicants whose cases have been closed but who will be eligible to submit new applications (including Economic Classes – Business immigrants, IMM 0008, Schedule 6) before January 1, 2005. These cases are assessed first under whichever regulations appear most favourable to them and then, if unsuccessful, under the remaining regulation. The two groups of eligible applicants are:

- applicants who originally applied before January 1, 2002 under the federal economic classes and who were refused, for any reason including statutory grounds, between April 1, 2003 and June 19, 2003; and
- applicants who originally applied before January 1, 2002 under the federal economic classes and who withdrew their application, for any reason, between January 1, 2002 and October 31, 2003.

Conditions will be imposed on entrepreneurs under the former *Immigration Act* or *IRPA*. However, because the conditions under the two acts differ, visa officers must clearly specify the regulations under which they accept each applicant in this category. In addition to their CAIPS notes and coding requirements, visa officers should indicate on the applicant’s *Confirmation of*



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*Permanent Residence* form (IMM 5509B) either: "T&C'S TO IMPOSE UNDER FORMER REGULATIONS" or "T&C'S TO IMPOSE UNDER IRPA." This will serve not only to inform officers at the port of entry, but will also provide an official notice to the applicant.

### Coding Conditions in CAIPS

At the moment, CAIPS will automatically generate coding 70 for entrepreneurs, which is the code referring to conditions imposed on entrepreneurs under the former *Immigration Act*. For those (entrepreneurs or their family members) who need medical surveillance in addition to their specific EN2 conditions, coding 72 or 73 will be printed automatically on the Confirmation of Permanent Residence form.

However, since CAIPS will automatically generate codes relating to conditions described in the former *Immigration Act*, **visa officers must change the coding for conditions selected under IRPA**. The coding should be 74 (instead of 70) and 75 or 76 (instead of 72 or 73) if medical surveillance conditions apply in addition to the EN2 conditions. Officers should be sure to enter 75 or 76, in addition to the EN2 conditions, only for the person who needs medical surveillance in addition to the EN2 conditions.

To make the change in coding, visa officers will enter the appropriate codes at the time they enter the final decision at the end of the process.

See RIM-03-078 and RIM-03-079A for further information.

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### 5.9. Releasing information to provinces and territories

Provinces and territories may wish to be kept informed of visas issued to business foreign nationals destined to their area. A number of provinces have negotiated memoranda of understanding (MOUs) to facilitate the exchange of information.

The MOUs allow CIC to provide certain personal information regarding applicants destined to the province, on a monthly basis. This information allows the provinces to assist entrepreneurs before and after arrival.

The Business Immigration Division at NHQ manages this process.

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## 6. Definitions

To see definitions in the Act and Regulations, click on the appropriate section. The definitions in R88 are in alphabetical order.

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### 6.1. Active and ongoing management

- "active" management means causing action or change;
- "ongoing" management means continuing.

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### 6.2. Business experience

In respect of an entrepreneur, "business experience" means a minimum of two years of experience consisting of two one-year periods of experience in the management of a qualifying business and the control of a percentage of equity of the qualifying business during 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 [R88].

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### 6.3. EMIS: Entrepreneur Monitoring Information System

- an information system on entrepreneurs (see How EMIS is used, section 7.6 below);

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- contains application and permanent residence information on entrepreneurs granted permanent residence in Canada;
- one of CIC's Personal Information Banks (PIB).

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### 6.4. Employment

Any activity for which a person receives or might reasonably be expected to receive valuable consideration.

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### 6.5. Entrepreneur

An entrepreneur

- has business experience;
- has a legally obtained net worth of at least \$300,000; and
- provides a written statement to an officer that they intend and will be able to meet the conditions referred to in subsections R98(1) to R98(5).

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### 6.6. Entrepreneur selected by a province

An "entrepreneur selected by a province" means an entrepreneur who

(a) intends to reside in a province the government of which has, under subsection 8(1) of the Act, entered into an agreement referred to in subsection 9(1) of the Act with the Minister whereby the province has sole responsibility for the selection of entrepreneurs; and

(b) is named in a selection certificate issued to them by that province.

*(entrepreneur sélectionné par une province)*

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### 6.7. Full-time job equivalent

1,950 hours of paid employment [R88].

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### 6.8. Limited partnership

A limited partnership is a partnership with general partners having joint and several liability and limited partners with liability limited to the extent of their investments. By definition, participation as a limited partner does not meet the active and ongoing management requirement and, therefore, cannot be used by entrepreneurs to meet their conditions.

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### 6.9. Mail-in card for Entrepreneurs (IMM 5215B)

- included in Entrepreneur Counselling and Monitoring Guide (IMM 5479E);
- to report to CIC within six months, giving address and phone number, etc.

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### 6.10. Net assets

The assets of the business, minus liabilities, plus shareholder loans from a foreign national who is making or has made an application for permanent residence and their spouse or common-law partner [R88].

To determine whether the net asset requirement has been met, the balance sheet, which is a snapshot of the financial position of a business at a given point, is reviewed.

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Assets include everything of value owned, e.g., cash, accounts receivable, land, buildings, inventory, supplies, prepaid expenses, and possibly intangible assets such as goodwill, trademarks, copyrights, etc.

Liabilities include obligations to other businesses such as accounts payable, or to individuals such as shareholder loans.

Owners' equity represents the net of these two and is generally comprised of the capital stock of the owners of the business and retained earnings. Retained earnings represent the reinvestment of earnings in the business that are carried forward each year.

Table 3 is an example of how net assets are calculated.

**Table 3: Calculation of net assets**  
**Balance Sheet as of December 31, 2001**

<b>Assets</b>	
<b>Current assets</b>	
Cash	\$25,000
Accounts receivable	\$20,000
Inventory	\$50,000
Prepaid expenses	\$5,000
<b>Total current assets</b>	<b>\$100,000</b>
<b>Fixed assets</b>	<b>\$95,000</b>
Goodwill	\$5,000
<b>Total fixed assets</b>	<b>\$100,000</b>
<b>Total assets</b>	<b>\$200,000</b>

<b>Liabilities and owner's equity</b>	
<b>Current liabilities</b>	
Accounts payable	\$10,000
Income taxes	\$5,000
<b>Total current liabilities</b>	<b>\$15,000</b>
Shareholder's loan	\$100,000
Bank loan	\$30,000
<b>Total liabilities</b>	<b>\$160,000</b>
<b>Shareholder's equity</b>	
Capital stock	\$500
Retained earnings	\$39,500
<b>Total shareholder's equity</b>	<b>\$40,000</b>
<b>Total liabilities and shareholder's equity</b>	<b>\$200,000</b>

In this example, the entrepreneur meets the net asset requirement of \$125,000 based on assets minus liabilities of \$40,000 plus \$100,000 of shareholder's loans.

### 6.11. Net income

After-tax profit or loss plus remuneration to a foreign national who is making or has made an application for a permanent resident visa and their spouse or common-law partner [R88].

Net income means after-tax income or loss plus remuneration to the entrepreneur and their spouse or common-law partner. The income statement reflects the profitability of a business entity. Table 4 is an example of how net income is calculated.

**Table 4: Calculation of net income**

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Total sales for the year	\$300,000
Less returns	\$8,000
Net sales	\$292,000
Cost of goods sold	\$132,000
Gross profit	\$160,000
Operating expenses	
Management salary	\$50,000
Payroll wages	\$40,000
Rent	\$10,000
Selling expenses	\$30,000
Total operating expenses	\$130,000
Income before taxes	\$30,000
Income taxes	\$10,000
Net income	\$20,000

In this example, the net income is \$20,000.

However, any remuneration to the foreign national and spouse or common-law partner, including a wage, salary or management fee, is added. In this case a management fee of \$50,000 was paid to the sole owner of the corporation. This is added to the net income after tax of \$20,000 = \$70,000. Using this formula, the entrepreneur who is a 100% shareholder of the corporation would meet the requirement for net income. (Based upon the above example, this entrepreneur would also meet the attribute for sales).

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### 6.12. Net worth

In respect of an entrepreneur, “minimum net worth” means \$300,000.

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### 6.13. Ownership of a qualifying Canadian business

“Ownership of a qualifying Canadian business” means

a business operated in Canada by an entrepreneur other than a business operated primarily for the purpose of deriving investment income, such as interest, dividends or capital gains -- for which there is in any year within the period of three years after the day the entrepreneur becomes a permanent resident documentary evidence of any two of the following:

- (a) 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;
- (b) the percentage of equity multiplied by the total annual sales is equal to or greater than \$250,000;
- (c) the percentage of equity multiplied by the net income in the year is equal to or greater than \$25,000; and
- (d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000 [R88].

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**Note:** Business Immigration Section has a template available for calculating a Qualifying Canadian Business.

**Note:** In all cases, the entrepreneur must have at least a 1/3 ownership.

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### 6.14. Percentage of equity

“Percentage of equity” means

- (a) in respect of a sole proprietorship, 100 per cent of the equity of the sole proprietorship controlled by a foreign national or their spouse or common-law partner;

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

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

*(pourcentage des capitaux propres)*

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### 6.15. Qualifying business

A “qualifying business” means a business -- other than a business operated primarily for the purpose of deriving investment income such as interest, dividends or capital gains -- for which, during the year under consideration, there is documentary evidence of any two of the following:

(a) 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;

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

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

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000 [R88].

*(entreprise canadienne admissible)*

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### 6.16. Qualifying Canadian business

A “qualifying Canadian business” means a business operated in Canada by an entrepreneur -- other than a business operated primarily for the purpose of deriving investment income, such as interest, dividends or capital gains -- for which there is in any year within the period of three years after the day the entrepreneur becomes a permanent resident documentary evidence of any two of the following:

(a) 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;

(b) the percentage of equity multiplied by the total annual sales is equal to or greater than \$250,000;

(c) the percentage of equity multiplied by the net income in the year is equal to or greater than \$25,000; and

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000 [R88].

*(entreprise canadienne admissible)*

See definition in R88 and Appendix C for minimum requirements.

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## 7. Procedure: Monitoring entrepreneurs: General guidelines

Officers at inland CICs are responsible for monitoring entrepreneurs and assessing compliance with conditions, with the assistance of regional business immigration program specialists and Business Immigration, Selection Branch, at NHQ.

The following procedural guidelines cover:

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- forms to be used by the entrepreneur, section 7.1;
- forms to be completed by the officer, section 7.2;
- monitoring compliance, section 7.3;
- client contact with an officer, section 7.4;
- how the Entrepreneur Monitoring Information System (EMIS) is used, section 7.5;
- documenting entrepreneur cases: first steps, section 7.6; and
- processing the mail-in card, section 7.7

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### 7.1. Forms to be used by the entrepreneur

The kit titled "Entrepreneur Counselling and Monitoring Guide" includes:

1. Entrepreneur Counselling and Monitoring Guide (IMM 5348E);
2. Mail-in Card for Entrepreneurs (IMM 5215B);
3. Entrepreneur Monitoring Guide, IRPA (IMM 5486B);
4. Application to Cancel Conditions - Entrepreneur (IMM 5344B).

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### 7.2. Forms to be completed by the officer

- Entrepreneur Monitoring Checklist (IMM 5164B)
- A44(1) report.

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### 7.3. Monitoring compliance

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**Note:** The onus is on the entrepreneur to provide evidence of compliance.

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In order to determine if the conditions have been met, the officer should ask the entrepreneur to address how the business satisfies each element of the conditions.

The transition provisions require that entrepreneurs selected under the 1978 Regulations meet the conditions prescribed by those Regulations. Entrepreneurs selected under IRPA will have to meet the "qualifying Canadian business".

See definition of "qualifying Canadian business" in section 6.16 above.

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### 7.4. Client contact with an officer

An entrepreneur, or representative, must contact an officer by:

- mail-in card;
- telephone;
- letter;
- fax;
- in-person visit; or

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- a representation to the Minister or NHQ.

### 7.5. How the Entrepreneur Monitoring Information System (EMIS) is used

EMIS is used to identify and monitor entrepreneurs. EMIS contains application and permanent residence information on every entrepreneur admitted to Canada. Some of the information in EMIS is downloaded from the Computer Assisted Immigration Processing System (CAIPS) and the Field Operational Support System (FOSS), on a monthly basis.

Inland CICs should contact the EMIS Coordinator, Business Immigration Division, Selection Branch, Ottawa, to obtain a copy of the EMIS User Guide, to ascertain the name of the EMIS team representative (or Business Immigration program specialist) in their region, or to request a training session. The EMIS Coordinator can also confirm that staff have the current version of EMIS installed on their desktops.

Table 5 shows how EMIS is used by inland CICs, regional Business Immigration program specialists, the Business Immigration Division, Selection Branch, Ottawa, and the provinces.

**Table 5: How EMIS is used**

Designated personnel	Function performed/System usage
Staff at inland immigration offices	<ul style="list-style-type: none"> <li>• Manually enter monitoring, business information and enforcement activity into EMIS, except in smaller CICs that do not have access to EMIS (Business Immigration Division staff enter data for them).</li> <li>• Monitor an entrepreneur's compliance with their conditions of permanent residence.</li> </ul>
Business Immigration program specialists	<ul style="list-style-type: none"> <li>• Use EMIS for statistical analysis.</li> </ul>
Business Immigration Division, Selection Branch, NHQ	<ul style="list-style-type: none"> <li>• Perform data entry for smaller CICs that do not have access to EMIS.</li> </ul> <p>Significant data include:</p> <ul style="list-style-type: none"> <li>• the amount of money invested in a Canadian business;</li> <li>• jobs created, jobs retained; and</li> <li>• the number of entrepreneurs who have complied with the conditions of permanent residence.</li> </ul>
EMIS Coordinator	<ul style="list-style-type: none"> <li>• Contact person for CIC, regional officials and the provinces.</li> <li>• Share information with the provinces under the terms of a negotiated agreement or MOU.</li> <li>• CD-ROMs are shipped on a monthly basis to those provinces that have entered into agreements.</li> </ul>
Provinces	<ul style="list-style-type: none"> <li>• Use the information to contact entrepreneurs, promote their province and provide counselling.</li> <li>• Use the information for statistical analysis.</li> </ul>

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**Note:** The automated information is normally kept for eight years. EMIS currently contains the records of entrepreneurs granted permanent residence from January 1, 1994, to date.

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### 7.6. Documenting entrepreneur cases: first steps

The following steps should be completed:

- check FOSS and update if necessary;
- create a file, or update an existing one;
- request a file transfer if the entrepreneur was destined to another region;
- update EMIS or complete an Entrepreneur Monitoring Checklist (EMC - IMM 5164B - available on CIC Explore);
- forward the completed EMC (IMM 5164B) to the EMIS Coordinator in Business Immigration Division, Selection Branch;
- record on file details of any consultations with others or contact with the client; and
- bring forward the file for the next monitoring period.

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### 7.7. Processing the mail-in card [R98(5)(a)]

The entrepreneur must send the mail-in card to the local inland CIC identified in the monitoring kit within six months from the date of granting of permanent residence, providing contact information.

When mail-in cards are received, the officer should review the mail-in card for proper completion as follows:

- **Box 1** identifies the entrepreneur.
- **Box 5** identifies residential address. A post office box or the address of a consultant is not sufficient.
- **Box 9** shows the signature of the entrepreneur; not a representative.

If the mail-in card is properly completed, the officer should:

- create or update client's file;
- update EMIS or complete an Entrepreneur Monitoring Checklist (EMC) and forward it to the EMIS Coordinator in the Business Immigration Division, Selection Branch (SSM);
- update FOSS; and
- acknowledge, in writing, receipt of the mail-in card (see Appendix B). The acknowledgement may be in the form of a welcoming letter from the CIC office to ensure that contact is established with the entrepreneur. The welcome letter may also provide additional information about the program, conditions, provincial information, and contact information that may be useful for the entrepreneur.

If the mail-in card is incomplete, the officer should

- retain it on the file and request the missing information in writing;



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- verify with the entrepreneur that the address on the card is a residential address. If not, obtain the proper address and update the client's file. A business address, if available, should be recorded;
- update EMIS or complete an Entrepreneur Monitoring Checklist (EMC) and forward it to the EMIS Coordinator in the Business Immigration Division, Selection Branch (SSM).

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### 8. Procedure: Monitoring and reporting

The following sections outline requirements and procedures for monitoring and reporting.

The client is invited to the CIC office to attend a counselling session and report on their progress toward meeting the terms and conditions. There are two main reporting periods to monitor:

- the first, within six months from the granting of permanent residence;
- the second, between 18 and 24 months from this same granting date.

#### **First monitoring period: Six months**

After processing the mail-in card, the officer should request an interview with the entrepreneur. A letter should be sent to the entrepreneur explaining the reason for the interview and outlining what the interview is intended to do. The interview will allow CIC to counsel the client on the terms and conditions of the program. It will provide the client with feedback on progress to date and information about the services that are offered by CIC offices as well as various services offered by provincial partners.

#### **Second monitoring period: 18 - 24 months**

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#### 8.1. Completing the Monitoring Report [R98(5)(b)]

The CIC office should contact the entrepreneur and request an interview, outlining in the letter the purpose of the examination and the type of documentation the client is expected to bring (e.g., a passport) to support the claims of compliance with the terms and conditions (see sections 9.4 and 9.5 below).

The entrepreneur should:

- have completed research and established a qualifying Canadian business;
- report to a CIC or any other place specified in writing by an officer, between 18 and 24 months from the date permanent residence was granted, providing evidence of efforts to comply with the conditions imposed;
- provide documentary evidence of:
  - ◆ administrative information on the business;
  - ◆ ownership particulars;
  - ◆ business sector information;
  - ◆ operations - how the business is being run;
  - ◆ financial details;

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- ◆ status of ownership, role, and incremental employment.

The officer should:

- provide entrepreneurs with feedback on their progress in complying with the conditions;
- counsel the entrepreneur accordingly if their efforts are unlikely to meet conditions or if the entrepreneur seems reticent to start or continue a business;
- caution the entrepreneur that failure to comply with all of the conditions within the three-year statutory period may result in enforcement action;
- document all efforts to comply on the client's file;
- update EMIS or complete an Entrepreneur Monitoring Checklist (EMC) and forward it to the EMIS Coordinator in the Business Immigration Division, Selection Branch.

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### 8.2. Addressing outstanding conditions

If there are conditions still not met after the three-year period, the officer should:

- request the entrepreneur to report to the CIC as soon as feasible to determine if the conditions have been satisfied;
- if conditions have not been satisfied, assess the efforts the entrepreneur has made to satisfy them and determine whether there are any extenuating circumstances contributing to the entrepreneur's failure to comply.

If contact information is not available, the officer should check FOSS and proceed as follows:

- enter a "Watch-for" (code 01) on the FOSS Status Entry - NCB screen, to be retained on FOSS for a minimum of five years or until the entrepreneur has been located (whichever comes first). It should read:

"Entrepreneur with outstanding conditions - obtain current Canadian address and telephone number - update FOSS - request to report at the nearest CIC within one week."

- prepare an A44(1) report and recommend inquiry action;
- update EMIS or complete an EMC and forward it to the EMIS Coordinator in the Business Immigration Division, Selection Branch. This action will complete the file until the entrepreneur is detected through the FOSS "Watch-for" or voluntarily reports.

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### 8.3. Tracing entrepreneurs

If the entrepreneur does not contact a CIC, the officer should:

- attempt to locate the entrepreneur in order to provide counselling and to review the enforcement implications. The following sources may assist in locating entrepreneurs:
  - ◆ CRS (Citizenship Registration System);
  - ◆ local telephone directory;
  - ◆ Internet;

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- ◆ telephone company information services;
  - ◆ provincial counterpart;
  - ◆ motor vehicle bureau;
  - ◆ credit bureau checks;
  - ◆ Canada Post tracer system;
  - ◆ city hall property registration;
- document all efforts to locate entrepreneurs on the client's file;
  - update EMIS or complete an EMC;
  - forward EMC to the EMIS Coordinator in the Business Immigration Division, Selection Branch.

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### 9. Procedure: Compliance with conditions in R98

Entrepreneurs are required to comply with the following conditions:

(a) the entrepreneur must control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 per cent;

(b) the entrepreneur must provide active and ongoing management of the qualifying Canadian business; and

(c) the entrepreneur must create at least one incremental full-time job equivalent in the qualifying Canadian business for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

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#### 9.1. Proof of ownership of a qualifying Canadian business

For further information about what constitutes a qualifying Canadian business please see the following definitions:

- ownership of a qualifying Canadian business, section 6.13 above;
- qualifying business [R88], section 6.15 above;
- qualifying Canadian business [R88], section 6.16 above; and
- Appendix B: The minimum requirements for a qualifying Canadian business.

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#### 9.2. Proof of a minimum of one-third (1/3) ownership

For further information about what constitutes a minimum one-third ownership, please see the definition of “ownership of a qualifying Canadian business”, section 6.13 above.

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#### 9.3. Proof of providing full-time employment

For further information about what constitutes full-time employment, please see the definition of “full-time job equivalent” in section 6.7 above.

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### 9.4. Evidence accepted for proof of active and ongoing management

An entrepreneur may provide the following as evidence of active and ongoing management and ownership:

- city/municipal business licences (registration);
- trade licences
- vendor's permits
- business incorporation documents;
- partnership agreements;
- loan/business agreements;
- agreements of sale and purchase;
- articles of incorporation;
- shareholder's report and minute book;
- shareholder's certificates;
- financial statements;
- federal/provincial sales tax licences (GST & PST registration numbers);
- Canada Revenue Agency taxation number (RCT No.);
- cancelled cheques;
- lease or ownership of a business premise(s);
- receipts and invoices for equipment, leasehold improvements, vehicles, and inventory;
- statement of net worth;
- deeds, land registrations, etc.;
- insurance policies;
- photos of the interior and exterior of the business.

For more information, please see the definition of “active and ongoing management” in section 6.1 above.

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### 9.5. Evidence accepted for proof of management

The entrepreneur may provide the following supporting evidence to demonstrate that they are managing the business:

- letters from partners attesting to the entrepreneur's role and responsibilities;

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- evidence of business contracts, registrations and purchase orders signed by the entrepreneur;
- business correspondence signed by the entrepreneur;
- partnership agreements; and
- proof of involvement in significant business decisions (e.g., a major role in hiring of employees).

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**Note:** If the officer is unable to assess the entrepreneur's role in the management of the business from the evidence presented, an interview or on-site visit may be appropriate.

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For further information please see Appendix C - Management and control of qualifying Canadian business.

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### 10. Procedure: Reviewing the monitoring report

The officer should:

- determine whether a counselling interview is needed;
- determine whether a site visit is appropriate;
- inform the entrepreneur of the assessment and clearly state concerns, giving them an opportunity to respond to concerns, and specify place, date and time for the next interview, if required;
- refer the entrepreneur to provincial officials or to agencies willing to assist;
- update EMIS or complete an EMC;
- forward EMC to EMIS Coordinator in the Business Immigration Division, Selection Branch.

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#### 10.1. Sample questions for assessing entrepreneur's role in the business

The following sample questions may be helpful in assessing the entrepreneur's role in the business:

- Where is the location of your business?
- What is the nature of the business?
- Over what period did the business operate?
- What is the legal structure of the business?
- Is your business incorporated/registered?
- Do you have partners?
- Are you an officer, director or sole proprietor or do you have some other arrangement?
- When was the business formally established?

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- When did the business commence active operations?
- How much did you invest in the business?
- Does your business have any municipal or trade licences?
- Is the business listed in trade publications, advertisements, etc.?
- Are you licensed to collect PST and GST?
- How often does your company remit payments for employer health tax, worker's compensation, GST, PST, CPP, EI, income tax, etc.?
- Do you have full control over your business? If so, have you delegated decision-making responsibilities to subordinates?
- What is your formal participation in management decisions?
- Do you share in residual profits?
- Do you determine your own remuneration (salary/draws)?
- Do you have signing authority on bank accounts?
- What banking arrangements have been made - commercial accounts, lines of credit?
- Are there dedicated premises, staff, financing for the business?
- Are you responsible for the day-to-day operations?
- What are your plans for the future of the business?
- Do you have direct supervision of employees?
- Are you supervised in any way?
- Did you leave Canada during the time you ran the business?
- Did you have other income during the period you ran the business (in particular employment income)?

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**Note:** The Canada Revenue Agency requires corporations to file their tax returns within six months of the end of each taxation (fiscal) period.

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### 10.2. After compliance with conditions

If the entrepreneur can furnish evidence of compliance with all of the elements of the conditions, they should submit an Application to Cancel Conditions (IMM 5344B).

The officer must then approve or refuse the application.

### 10.3. Residency Requirement:

As a best practice and to ensure fairness, it is recommended that the officer is required to advise the entrepreneur before the examination (on whether terms and conditions had been met) that the

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officer had information that the applicant had not met the residency requirement under A28. At the very least the officer should advise the applicant beforehand that the examination (on terms and conditions) will also include a determination of whether residency requirements have been met.

This would give the applicant notice of any concerns the officer may have about compliance with residency requirements and enable them to address these concerns at the examination and make any submissions including any relevant considerations regarding humanitarian and compassionate factors / best interests of the child that might overcome any alleged breach of these residency requirements.

The CIC officer carrying out an examination on whether an entrepreneur has met the terms and conditions and (if connected to this determination) whether residency requirements were also met, will have to inform a CBSA officer of the applicant's failure to meet these admissibility requirements by writing an A44 report.

---

### 11. Procedure: Processing an Application to Cancel Conditions

An entrepreneur who has provided evidence of compliance with conditions should submit an Application to Cancel Conditions (IMM 5344B).

The officer should:

- review the application;
- inform the entrepreneur of the decision.

If the application is approved, the entrepreneur will require proof that conditions are cancelled.

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**Note:** This proof will facilitate procedures should the entrepreneur re-enter Canada or apply for citizenship. It will also give the entrepreneur the assurance that they have satisfied the conditions.

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The officer should follow these steps:

- counsel entrepreneurs to:
  - ◆ complete an Application to Cancel Conditions if they have complied with conditions;
  - ◆ include any family members who were granted permanent residence with conditions.
- review the application;
- request any documentation or information that may be necessary for the purpose of assessing the application;
- review the application and determine if further information is required in order to assess the application;
- if so, request it in writing, specifying a reasonable deadline for receipt of this information.

If no response is received, the officer:

- should send a follow-up letter and caution the entrepreneur that failure to furnish evidence of compliance could result in refusal of the application and possible enforcement action;
- may request that the applicant appear for an interview.

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### 11.1. Approval of an application

An officer may approve an application to cancel the conditions if an entrepreneur has satisfied the conditions of permanent residence.

If the conditions have not been satisfied, the officer should consider whether the entrepreneur has made substantial, verifiable efforts to comply and if there are any extenuating circumstances. The officer should consider all the facts of the case and request additional supporting evidence as deemed necessary.

The officer should document in writing on the file the decision to approve the application and the assessment of the compliance with the conditions and any extenuating circumstances.

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### 11.2. Cancelling the conditions

The officer should:

- confirm in writing that the conditions have been cancelled (see Appendix D);
  - update FOSS;
  - update EMIS to indicate the final decision or complete an EMC and forward it to the EMIS Coordinator at NHQ;
  - close the file.
- 

### 11.3. Refusal of an application

If an officer refuses an application before the expiry of the compliance period, the officer should:

- advise the entrepreneur to reapply for consideration at a later date;
  - prepare a report if the entrepreneur has not satisfied the conditions and there is sufficient evidence to support non-compliance;
- 

**Note:** Refer to the ENF 5 Manual for further procedures on preparing 44 reports.

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- document the decision to refuse the application, in writing, on the file as well as the assessment with respect to compliance with the conditions and any extenuating circumstances;
  - update EMIS.
- 

## 12. Procedure: Enforcement process: Reports required

An officer should prepare a report in the case of an entrepreneur who does not comply with conditions [A44(1)]. A report is required in the following cases:

- where any of the reporting requirements were not met;
- where the business conditions were not met and the three-year period has expired;
- where information is available that an entrepreneur obtained permanent residence by misrepresentation [A40(1)(a)].



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**Note:** Any other violations such as criminal convictions, before or after permanent residence, must be reported as appropriate.

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The officer may delay preparing the report until sufficient positive information (as opposed to merely the lack of information) has been gathered to indicate that any of the conditions have not been met. Once this information has been gathered, however, a report must be made

If it is determined that an entrepreneur is making efforts to comply with the business conditions, but is late in reporting, the officer will record the violation(s) on the file. After final assessment of the case at the end of the three-year period, this violation and any others should be included in a report.

### **Writing A44 reports for non-compliance for residency.**

The Admissibility Branch advises that officers may write A44 reports when they have information leading them to believe that, on a balance of probabilities, the entrepreneur has not complied with residency obligations. See section 10.3 above.

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### **12.1. Entrepreneurs indicating non-compliance after first reporting period**

If, at any time after the first reporting period (18-24 months), an entrepreneur indicates that they have no intention of complying with the conditions, the officer should:

- have the entrepreneur complete a statutory declaration. The declaration should confirm the entrepreneur's status, acknowledge the conditions imposed, confirm that the entrepreneur does not intend to comply with the business conditions and the relevant reasons;
- provide counselling, as the entrepreneur may, before the three-year period expires, decide to establish a business;
- prepare a report stating that the entrepreneur has knowingly failed to comply with the condition to show evidence of efforts to comply during the particular reporting period.

The preparation of the report may be delayed for some months after the three-year period expires without prejudicing the case. The report would be based on the fact that the entrepreneur has not established a satisfactory business within the three-year period.

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### **12.2. Report for entrepreneurs who have left Canada without relinquishing their Confirmation of Permanent Residence**

In cases where a business has not been established, the entrepreneur has left Canada without relinquishing their Confirmation of Permanent Residence and the person's whereabouts are known, the officer should complete a report and recommend referral to an admissibility hearing.

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### **12.3. Procedures before completing the report**

Before completing a report, an officer should:

- check FOSS for information regarding the entrepreneur;
- verify EMIS for the entrepreneur's present location;

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**Note:** If EMIS is not available, the officer should contact the EMIS Coordinator at the Business Immigration Division, Selection Branch.

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- verify with the Canadian Police Information Centre (CPIC) or with local police officials in order to determine if the entrepreneur has been convicted of any criminal offences or if there are any outstanding charges;

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- if a business has been set up, conduct an on-site visit to verify its operation.

If a recommendation for an admissibility hearing is appropriate, the officer should:

- attempt to locate the entrepreneur;
- if successful, arrange an interview to discuss all aspects of the case;
- request that the person complete a statutory declaration on their understanding of the conditions imposed and whether these were respected;
- if, after the interview, a recommendation for an admissibility hearing is still appropriate, advise the entrepreneur that a report will be prepared and the case referred for a final decision;
- provide the entrepreneur with a copy of the report.

If the entrepreneur cannot be interviewed, and if sufficient evidence is on file to support the contravention, the officer will prepare a report *in absentia*.

Officers should evaluate each case on its own merits.

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### 12.4. How to complete the A44(1) report

Officers should complete the report as follows:

- refer to the ENF 5 manual;
- state the facts and support each element of the allegations with evidence.

**Table 5: Evidence required for each of the case elements**

Case elements	Evidence required
Permanent resident	Confirmation of Permanent Residence
Not a Canadian citizen	Confirmation from Citizenship
Conditions imposed	Conditions acknowledged and agreed to in signed letter at visa office prior to visa issuance
Conditions contravened	May include: <ul style="list-style-type: none"><li>• statutory declaration of officer reporting on interview or on-site visit;</li><li>• statement of entrepreneur;</li><li>• business records;</li><li>• economic information from the province or other source.</li></ul>

The officer must have sufficient evidence to establish the allegations without relying on the testimony of the entrepreneur or other witnesses.

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### 12.5. Information required in the body of the report

The officer should use the FOSS codes for the appropriate section of the legislation. The "Remarks" portion should include:

- a statement that the entrepreneur is not a Canadian citizen;

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- the date and place permanent residence was granted;
- the conditions that were contravened;
- how the conditions were contravened; and
- any reportable convictions determined from CPIC or local police.

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### 12.6. Reporting allegations

The officer should include all the allegations for which a member of the Immigration Division might reasonably find the person described. As a report requires only that the officer have information "indicating" that the person is described, overwhelming proof is not required.

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### 12.7. How to complete Part II - the narrative (highlights) report

The officer should complete a narrative memorandum (highlights report) to accompany the report.

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**Note:** The officer should refer to local/regional procedures for the form to be used. The information on both forms must be typewritten.

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The report should include an analysis of all the circumstances in support of the recommendation for or against an admissibility hearing. Information on the following should be included:

- the conditions which were contravened;
- efforts, if any, to establish, purchase or invest in a satisfactory business;
- degree of compliance achieved;
- reasons for failure to comply;
- any counselling provided;
- any information from provincial authorities;
- details of assessment overseas/CAIPS notes;
- information obtained from other sources, e.g., on-site visits;
- reasons for significant delay in submitting the report after the expiry of the three-year period, if relevant; and
- any other mitigating circumstances.

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**Note:** With the exception of the rationale section, the information in the highlights report should be objective and factual and not be slanted in favour of a decision one way or the other.

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This highlights report should reflect any concerns over the accuracy of the information obtained. Evidence which is uncovered during investigation may diminish the credibility of statements made by the entrepreneur.

It is important that all the allegations of the case be explained and supported by the necessary background documents. Officers should always attach the best available document, originals if possible, or certified true copies.

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If the entrepreneur cannot be located or does not agree to be interviewed, indicate in the narrative the reasons the interview was not conducted and outline the steps taken to locate the person.

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**Note:** The officer must complete an A44(1) report for each of the family members, as they are subject to the principal applicant fulfilling their conditions. Only one narrative report is needed. It should include the case history of all the family members.

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Officers should refer to local/regional procedures on forwarding the narrative report and the A44(1) report to management for review.

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### 12.8. Recommendations for or against an admissibility hearing

The report may recommend an admissibility hearing for the following reasons:

- Non-Compliance with business conditions: consider whether the entrepreneur made substantial, verifiable efforts to comply and the degree of compliance achieved.
- Possible misrepresentation: request information from the visa office as soon as possible to assist in determining whether there has been any misrepresentation on the application for permanent residence (overseas files may be destroyed three years from the date of visa issuance).
- Lack of compliance and limited efforts to comply: if three years have elapsed, the entrepreneur has not complied with the requirements and it is clear that the person had opportunities to establish or purchase a business, but did not make reasonable efforts to do so.

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**Note:** The officer may recommend against an admissibility hearing in the A44 report, in cases where the conditions were only partially met, but where entrepreneurs have acted in good faith and have made reasonable efforts to meet the conditions but did not succeed for reasons beyond their control.

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As with any report, all the circumstances of the case are to be considered. Negative factors such as criminal activity, misrepresentation, reliance on public assistance, extended absences from Canada which are unrelated to the business, or bad faith in dealing with the Department may warrant referral to an admissibility hearing in a borderline case. Mitigating factors may result in a positive decision in a case where an admissibility hearing would otherwise have been directed.

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### 12.9. Delegation of authority

Officers should enclose a copy of all the evidence available for use at the admissibility hearing with the report when it is submitted to the delegated authority.

Officers should refer to delegation of authority with respect to referral to an admissibility hearing.

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### 12.10. Recording and communicating the decision

The officer should record the decision in FOSS and EMIS on whether an admissibility hearing is warranted.

If EMIS is not available, the officer should complete an EMC and forward it to the EMIS Coordinator.

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### 12.11. New information

While the report is under review, an entrepreneur may make additional efforts to comply and provide evidence of same in the hope of influencing the decision on the report. Both favourable or unfavourable information may be received from other sources.

Where the information is relevant to the admissibility hearing decision and is not just a repackaging of existing information, it should be forwarded for consideration.

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An individual who is facing an admissibility hearing may establish a business after the three-year period. Although in violation of the conditions, consideration should be given to discontinuing enforcement action if it is clear that the entrepreneur is serious about establishing and operating a business, as required under the program.

If it appears that a business has been set up after the three-year period solely for the purpose of avoiding the continuation of enforcement action and would not likely continue after the conditions were cancelled, continuing enforcement action would appear warranted.

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### 12.12. Process when admissibility hearing is recommended after completion of the report

If an admissibility hearing is recommended, officers should:

- enter an NCB lookout on FOSS (if entrepreneur cannot be located);

If a referral to an admissibility hearing is signed, officers should:

- attach a brief note to a photocopy of the original IMM 0705B, clearly marked "Follow-up" and send it to Citizenship without delay;
- copy the Business Immigration Branch at NHQ. Responsibility for this will be assigned on a regional basis.

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### 12.13. Process when an admissibility hearing is not recommended

If a referral to an admissibility hearing is not made, officers should:

- notify Citizenship in writing;
- advise the entrepreneur in writing that no removal action will be taken and that their status as a permanent resident is not affected by their failure to meet conditions.

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### 12.14. Removal order stays

If the Immigration Appeal Board stays a removal order (A66 A68) of a permanent resident in the Entrepreneur Class and imposes additional conditions (by virtue of R251), the case is referred back to CIC for monitoring. CIC will then monitor *both* the entrepreneur conditions and the R251 conditions which are imposed as a result of the stay of removal.

R251 states the following;

If the Immigration Appeal Division stays a removal order under paragraph 66(b) of the Act, that Division shall impose the following conditions on the person against whom the order was made:

- (a) to inform the Department and the Immigration Appeal Division in writing in advance of any change in the person's address;
- (b) to provide a copy of their passport or travel document to the Department or, if they do not hold a passport or travel document, to complete an application for a passport or a travel document and to provide the application to the Department;
- (c) to apply for an extension of the validity period of any passport or travel document before it expires, and to provide a copy of the extended passport or document to the Department;
- (d) to not commit any criminal offences;
- (e) if they are charged with a criminal offence, to immediately report that fact in writing to the Department; and
- (f) if they are convicted of a criminal offence, to immediately report that fact in writing to the Department and the Division.

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### 13. Procedure: Monitoring and reporting: Roles and responsibilities

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#### 13.1. Officers

The functions of an officer at an inland office may include:

- examining entrepreneurs who have been referred at the port of entry;
- completing the procedures for the granting of permanent residence (if applicable);
- counselling entrepreneurs and their family members on complying with conditions;
- referring entrepreneurs to provincial officials, local chambers of commerce and other government and non-government organizations for business counselling, as appropriate;
- determining whether the entrepreneur has met the reporting requirements;
- assessing the entrepreneur's efforts to comply with the conditions of permanent residence within each reporting period;
- determining compliance with conditions;
- accepting or refusing to cancel conditions;
- taking appropriate enforcement action in non-compliance cases;
- preparing A44(1) reports and making recommendations with respect to inquiry action; and
- maintaining and updating record systems.

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#### 13.2. Supervisor of officers

Functions of a supervisor of officers, with respect to the Entrepreneur Program, include:

- providing officers with guidance on all aspects of the Entrepreneur Program;
- monitoring the processing of all entrepreneur cases;
- monitoring officers' decisions on compliance with conditions; and
- reviewing recommendations on A44(1) reports on entrepreneurs and determining the next course of action.

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#### 13.3. Manager of an inland CIC

Functions of the manager of an inland CIC, with respect to the Entrepreneur Program, may include:

- assuming responsibility for the delivery of the Entrepreneur Program in the CIC;
- providing statistical and other information/recommendations as required to RHQ;
- allocating resources to the delivery of the program;

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- exercising delegated authority on A44(1) reports (where applicable); and
- referring cases as appropriate to RHQ for concurrence.

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**Note:** The Minister's delegates at Citizenship and Immigration Canada will review all reports written by CIC officers and have the authority to either issue removal orders or refer the reports to the Immigration Division.

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### 13.4. Regional headquarters

The role of the regional Business Immigration Coordinators, with respect to the Entrepreneur Program, is as follows:

- coordinating all regional business immigration activities;
- monitoring decisions of the CIC to ensure compliance with program requirements;
- providing guidance on contentious cases;
- advising the NHQ Business Immigration Branch of contentious cases;
- assisting NHQ in developing policy and regulatory changes; and
- liaising with provincial officials, the media and members of the public on the program.

### 13.5. National headquarters

The role of the Business Immigration Division, Selection Branch, at NHQ includes:

- managing the delivery of the program to the field;
- developing policies and recommending regulatory changes;
- providing guidance and direction on overall program delivery for the field;
- developing, implementing and carrying out the ongoing activities of the Entrepreneur Monitoring Information System (EMIS);
- developing methods for the review and evaluation of Business Immigration processes and procedures to ensure their consistency with law and policy;
- providing operational reports for the public, the Minister, other government departments and for use by other branches and/or regions;
- depending on the issue, liaising with Hearings and Detentions, Inland Enforcement Branch, CBSA NHQ, or Legislative and Regulatory Policy, Admissibility Branch, CIC NHQ, to follow up on and review cases in the inquiry/appeal process; and
- updating the immigration program and policy manuals and assisting in the preparation of training materials for officers.

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### Appendix A Acknowledgement of conditions of permanent residence

This letter is signed at visa offices prior to issuance of visa. See OP 8, Entrepreneur and Self-Employed.

Entrepreneur's letter of acknowledgement

To Canadian Embassy/High Commission/Consulate in

[Name of Country]

Reference: File No. B -

I [name of entrepreneur] have applied for a permanent resident visa as a member of the entrepreneur class.

I intend and have the ability to meet the conditions referred to in section 98 of the *Immigration and Refugee Protection Regulations*, namely that, after I become a permanent resident in Canada, I must:

- control a percentage of equity of a qualifying Canadian business equal to or greater than 33 1/3 percent;
- provide active and ongoing management of the qualifying Canadian business;
- create at least one incremental full-time job equivalent in the qualifying Canadian business for Canadian citizens or permanent residents, other than for myself or my family members;
- meet these conditions for a period of at least one year within a period of three years after I become a permanent resident;
- provide to an officer evidence of compliance with the conditions within the period of three years after the day I become a permanent resident;
- provide to an officer, not later than six months after the day I become a permanent resident, my residential address and telephone number; and during the period beginning 18 months after and ending 24 months after the day I become a permanent resident, evidence of my efforts to comply with these conditions.

I also acknowledge and understand that all of my family members are subject to the condition that I meet the above conditions.



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### Appendix B The minimum requirements for a qualifying Canadian business

The minimum requirements to be met by a qualifying Canadian business for the purpose of removing conditions vary based on the degree of ownership.

The following chart sets out the minimum requirements, in increments, for a qualifying Canadian business. The entrepreneur must provide acceptable documentary proof of meeting two of the four attributes in the chart. The total of the applicant's and spouse's ownership should be reflected in the calculation.

Ownership								
Attribute	100%	90%	80%	70%	60%	50%	40%	33 1/3%
Jobs	2.00	2.22	2.50	2.86	3.33	4.00	5.00	6.00
Sales	250	277	312	357	416	500	625	750
\$	000	778	500	143	667	000	000	000
Income	25	27	31	35	41	50	62	75
\$	000	778	250	714	667	000	500	000
Assets	125	138	156	178	208	250	312	375
\$	000	889	250	571	333	000	500	000

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**Note:** All financial amounts are in Canadian dollars.

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#### How to calculate the minimum requirements

To calculate the minimum requirements, officers will take the reciprocal of the ownership percentage and multiply it by the jobs amount or sales amount or income amount or assets amount.

Ownership is often expressed as a percentage.

To calculate the reciprocal of a percentage, officers will first convert the percentage to a fraction and then invert the fraction.

For example, if an entrepreneur owned 79% of a company they would own 79/100 of that company. The reciprocal is therefore 100/79.

While a 100% owner has to create \$250,000 in sales, someone who owns 79% of a company must create \$250,000 X 100/79 or \$316,455 in sales.

Simpler percentages can easily be calculated. For example, someone with 50% (1/2) ownership would require twice the sales; someone with 33 1/3% (1/3) ownership would require three times the sales.

The entrepreneur must also create at least one full-time job equivalent for a Canadian citizen or a permanent resident other than the entrepreneur and their family members.

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### Appendix C Management and control of qualifying Canadian business

Entrepreneurs must manage and control at least one-third of a "qualifying Canadian business" over one year. To establish whether a business qualifies, the entrepreneur must provide acceptable documentary proof that the business meets any two of the four attributes identified in the following chart. The table demonstrates various percentages of ownership and the required attributes.

Ownership			
Attribute	100%	50%	33.33%
Employment	2	4	6
Sales (\$)	250,000	500,000	750,000
Net Income (\$)	25,000	50,000	75,000
Equity (\$)	125,000	250,000	375,000

A minimum of one-third (1/3) ownership is required [R98].

The entrepreneur may establish a sole proprietorship (100%). The entrepreneur may also choose to establish a partnership (two or more persons who operate a business as co-owners by voluntary legal agreement). The partnership may be in the form of a general partnership (all partners carry on the business as co-owners and all are liable for the business' debts). A limited partnership may also be formed (one or more general partners and one or more limited partners, however, the entrepreneur cannot be one of the limited partners). A third partnership option is a joint venture (two or more people form a temporary business). The entrepreneur also has the option to form a corporation (liability separate and apart from its owners). If a partnership or corporation is formed, the entrepreneur must have a minimum 1/3 (33 1/3%) ownership.

Entrepreneurs meet the condition if they:

- form a sole proprietorship (100%), which would meet the definition of control;
- are a partner, along with their spouse (not including other family members), and their combined ownership is equal to or greater than 33 1/3%.

**Example:** A partnership is formed with four individuals. The entrepreneur owns 25%, the spouse owns 25%, and the remaining 50% is divided between the other two partners. The entrepreneur would meet the requirement - the entrepreneur's 25%, plus 25% from the spouse would be greater than 33 1/3%.

If a corporation is formed and shares are issued, the entrepreneur again would be required to meet the minimum ownership requirement. Shares issued to the entrepreneur and the spouse could be combined, but must be equal to or be greater than 33 1/3%.

#### Employment

Full-time job equivalents are used in two completely separate and independent calculations:

1. to calculate whether the percentage of equity multiplied by the number of full-time job equivalents is equal to or greater than two full-time job equivalents for the purpose of determining whether a Canadian business qualifies or not; and
2. to determine whether the entrepreneur has created at least one incremental full-time job equivalent for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

In each case, full-time job equivalents can be made up of any combination of paid employment, whether full or part-time. Services provided outside the context of employment (i.e., contracted services, professional fees, etc.) do not qualify.

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**Note:** All employers in Canada are required to keep adequate payroll records and produce a paid employment reconciliation in the form of a T-4/T4A Summary.

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The calculation for No.1 above includes any paid employment, including the entrepreneur, spouse, family members, etc., and is subject to the percentage of equity calculations.

The calculation for No. 2 above takes into account only incremental full-time job equivalents for Canadian citizens or permanent residents other than the entrepreneur and their family members and is not affected by what percentage of equity the entrepreneur controls. In other words,, the business must create one incremental full-time job equivalent regardless of what share the entrepreneur owns.

Documentation to determine employment requirements includes:

- payroll records;
- cancelled payroll cheques (proof of remuneration);
- source deductions remittances (CPP/EI/income tax);
- year-end T4/T4A Summary with attached copies of T4s and T4As;
- employment insurance report on earnings for employees (Record of Employment);
- financial statements;
- compensation, dental and health plans, etc.

### **Sales**

Sales may include sales of products or, in the case of the rendering of services, what is more commonly referred to as revenue or gross revenue.

The income statement is the primary source for determining sales, but corroborating documentation can include:

- sales invoices;
- provincial sales tax returns;
- G.S.T.; and
- federal and provincial tax returns.

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### Appendix D Confirmation letters - Terms and conditions met and cancelled

#### Confirmation letter under 1978 Regulations

To: Client's Address

CIO File Number

Visa Number

EMIS Number (if available)

Dear Sir/Madam:

This refers to your admission to Canada as a permanent resident under the entrepreneur category and the monitoring which has been conducted on your business.

As you are aware, the following conditions pursuant to sections 23.1(1)(a) to (d) of the former *Immigration Regulations, 1978* were imposed upon your admission to Canada:

Within two years, you must:

- establish, purchase or make a substantial investment in a business or commercial venture in Canada so as to make a significant contribution to the economy and whereby employment opportunities in Canada are created or continued for one or more Canadian citizens or permanent residents other than yourself and your dependants;
- participate actively and on an on-going basis in the management of that business or commercial venture;
- furnish evidence of efforts to comply with the terms and conditions imposed; and
- report to the nearest Canada Immigration Centre within a period of not more than two years after the date you obtained permanent resident status to furnish evidence of compliance with the conditions imposed.

This letter is to advise you that these conditions imposed upon you, and your family members, for admission to Canada are cancelled. I suggest that you keep this letter with your Confirmation of Permanent Residence as a permanent record.

I wish you continued success in Canada.

Sincerely,

#### Confirmation letter under *Immigration and Refugee Protection Regulations*

To: Client's Address

CIO File Number

Visa Number

EMIS Number (if available)

Dear Sir/Madam:

This refers to your admission to Canada as a permanent resident under the entrepreneur category and the monitoring which has been conducted on your business.

As you are aware, the following conditions pursuant to section 98 of the *Immigration and Refugee Protection Regulations* were imposed upon your admission to Canada:

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For a period of at least one year within three years of becoming a permanent resident, you must:

- control a percentage of the equity of a qualifying Canadian business equal to or greater than 33 1/3 percent;
- provide active and ongoing management of the qualifying Canadian business;
- create at least one incremental full-time job equivalent for Canadian citizens or permanent residents, other than you and your family members;
- provide to an officer your residential address and telephone number, within six months of becoming a permanent resident, and evidence of your efforts to comply with the conditions within 18 to 24 months of becoming a permanent resident; and
- provide to an officer evidence of compliance with the conditions within a period of not more than three years after the date you became a permanent resident.

This letter is to advise that you have successfully met the conditions imposed upon you and your family members for admission to Canada. The conditions are cancelled. I suggest that you keep this letter with your Confirmation of Permanent Residence as a permanent record.

I wish you continued success in Canada.

Sincerely,

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### Appendix E Table of entrepreneurial conditions

Entrepreneurs and their

family member(s) processed under the *Immigration Act*, 1976, will have one of these conditions listed on their permanent resident document(s):

- 70 - The terms and conditions provided for in paragraphs 23.1(1)(a) to (d) of the *Immigration Regulations*, 1978, as set out in the Acknowledgment of Conditions form.
- 72 - The terms and conditions provided for in paragraphs 23.1(1)(a) to (d) and 23(1)(a) of the *Immigration Regulations*, 1978, as set out in the Acknowledgment of Conditions form.
- 73 - The terms and conditions provided for in paragraphs 23.1(1)(a) to (d) and 23(1)(a) and (c) of the *Immigration Regulations*, 1978, as set out in the Acknowledgment of Conditions form.

Entrepreneurs and their family member(s) processed under the *Immigration and Refugee Protection Act* will have one of these conditions listed on their permanent resident document(s):

- 74 - The conditions provided for in section 98 of the *Immigration and Refugee Protection Regulations*, as indicated on the Acknowledgment of Conditions form.
- 75 - The conditions provided for in sections 98 and 32(a) (medical surveillance) of the *Immigration and Refugee Protection Regulations*, as indicated in the Acknowledgment of Conditions form.
- 76 - The conditions provided for in sections 98 and 32(a) and (b) (medical surveillance and proof of compliance) of the *Immigration and Refugee Protection Regulations*, as indicated in the Acknowledgment of Conditions form.