

**CANADIAN IMMIGRATION FOR INTERNATIONAL INVESTORS AND
ENTREPRENEURS IN THE CURRENT GLOBAL ECONOMY**

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Introduction

There has been a worldwide upheaval in both international banking and real estate. However, Canada has remained somewhat more stable than other parts of the world. This is due to the nature of the rules and regulations that surround and protect our banking and mortgage industries.

Generally Canada is somewhat more conservative with regard to our investment environment. This extends to Canada Immigration's Investor and Entrepreneur categories. The programs that Canada Immigration offers are reviewed regularly in order to ensure that they are being operated appropriately. The variety of business immigration programs, along with excellent socialized health care, urban safety and a high quality of life make Canada an ideal option for investor and entrepreneurial immigrants.

Canada's immigration programs can be broken down into the Federal categories and the Provincial categories. Under the Federal immigration scheme, business immigrants can be qualified as Investors, Entrepreneurs or Self Employed applicants. Investors and Entrepreneurs will be discussed below. Each province has recently devised its own Provincial Nominee Program with various categories that may be applicable to an investor or entrepreneur. The Province of Quebec has jurisdiction over its own immigration laws, regulations, and programs

A. Canada's Federal Business Immigration Program

The laws and regulations that govern the Federal Business Immigration Programs emanate from the *Immigration and Refugee Protection Act*¹ and the corresponding *Immigration and Refugee Protections Regulation*². There is an investor category and an entrepreneur category.

Applicants applying in the investor category must meet the following criteria:

- Demonstrate business experience
- Have a minimum net worth of C\$800,000 that was obtained legally
- Make an investment of \$400,000CND with the government

More specifically, "business experience" is defined as having at least 2 years of business experience in the past five years. The two years of experience must be comprised of one of the following:

- i. two one-year periods of experience in the management of a qualifying business³ and the control of a percentage of equity⁴ of the

¹ *Immigration and Refugee Protection Act*, S.C. 2001, C.27 [hereinafter, *IRPA*]

² *Immigration and Refugee Protection Regulations*, SOR/2002-227 [hereinafter *IRPR*]

³ *IRPR*, supra note 2 at s.88(1)

"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.

⁴ *Ibid.* "percentage of equity" means

- qualifying business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a decision is made on the application; or
- ii. two one-year periods of experience in the management of at least five full-time job equivalents per year in a business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a decision is made on the application, or
 - iii. a combination of a one-year period of experience described in subparagraph (i) and a one-year period of experience described in subparagraph (ii).

The investments are overseen by Citizenship and Immigration Canada. At the conclusion of a 5 year period, the \$400,000 investment is returned without interest.

Once an applicant demonstrates that they are able to meet the basic investor definition, they are also required to demonstrate that they can achieve 35 points on the basis of the following criteria:

Selection Criteria	Maximum Points
Education	25
Business experience	35
Age	10
Ability in English and/or French	24
Adaptability	6
TOTAL	100

As 35 points are awarded for business experience, it is a given that a suitable applicant will obtain enough points.

In contrast to the Investor category which does not require any active involvement in the investment, the Entrepreneur category provides opportunities for immigration to Canada for applicants with a desire to open, establish and run an enterprise. An entrepreneur must attain a minimum of 35 points based upon the government's selection criteria and meet the definition of having operated a "qualifying business".

An "entrepreneur" is a foreign national who has business experience, a minimum net worth of \$300,000 and the intention and ability to establish a qualifying Canadian business. The entrepreneur must control 33 1/3 % or more of a qualifying business and provide active and on-going management of the business. The entrepreneur's business must create one full-time job for a Canadian citizen or permanent resident, aside from the entrepreneur and his or her family members. The entrepreneur must meet these

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- (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;
 - (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.

conditions for a period of at least one-year within 3 years after the day on which the entrepreneur becomes landed in Canada. Proof of compliance and reporting to Citizenship and Immigration Canada are required at intervals of 6 months (for the purpose of reporting residential address) and between 18 and 24 months after landing to provide evidence of efforts to comply with the conditions.

To prove that a “qualifying Canadian business”⁵ has been established, the entrepreneur must provide evidence of two of the following:

- the percentage of equity multiplied by
- a) the number of full-time job equivalents is equal to or greater than 2 full-time job equivalents per year
 - b) the total annual sales are equal to or greater than \$250, 000
 - c) the net income in the year is equal to or greater than \$25,000
 - d) the net assets at the end of the year is greater than \$125,000

In 2008, there were a total of 11902 investor and entrepreneur immigrants to Canada, including their family members, under the Federal Investor and Entrepreneur business immigration programs. There were 22418 Provincial Nominee Immigrants, including family members, for all provincial nominee programs inclusive of the business categories, but exclusive of a Quebec Immigration programs.⁶

B. Provincial Nominee Programs for Investor and Entrepreneurial Immigrants

Each province is entitled to set its own criteria in attracting immigrants based on its economic and labour needs.⁷ Therefore, not all provinces have a program geared towards Investors or Entrepreneurs. The provinces that do have such programs are Manitoba⁸, New Brunswick⁹, Newfoundland/Labrador¹⁰, Ontario¹¹, Prince Edward Island¹², Saskatchewan¹³, the Yukon¹⁴, and British Columbia¹⁵.

1. In **Manitoba**, qualifying business applicants must meet the following criteria:

- Minimum personal net worth: C\$350,000;
- Minimum amount of equity investment in Manitoba of C\$150,000;

⁵ *Ibid.*

⁶ Citizenship and Immigration Canada, Facts & Figures 2008 – immigration Overview: Permanent and Temporary Residents, 2009-05-29. http://www.cic.gc.ca/english/resources/statistics/Fact_2008/01.asp, 04-JUN-2009.

⁷ IRPA, supra. note 1 at s.9(1), 15(2), 20(2) & IRPR, supra. Note 2 at s.87(1) & (2).

⁸ Provincial Nominee Program for Business, Government of Manitoba, <http://www.gov.mb.ca/ctt/invest/pnp-b/index.html>, 23-JUN-09.

⁹ Provincial Nominee Program – Business Plan Applicants, Government of New Brunswick, <http://www.gnb.ca/immigration/Information/businessapplicants-e.asp>, 23-JUN-09.

¹⁰ Immigrant Entrepreneur Category, Newfoundland and Labrador Canada Provincial Nominee Program, Office of Immigration and Multiculturalism, Department of Human Resources, Labour and Employment, <http://www.nlppp.ca/entrepreneur.html>, 23-JUN-09.

¹¹ Opportunities Ontario: Investors, Ontario Immigration, <http://www.ontarioimmigration.ca/english/PNPInvestors.asp>, 23-JUN-09.

¹² Prince Edward Island Provincial Nominee Program, The Government of Prince Edward Island, <http://www.gov.pe.ca/immigration/index.php3?number=1014385>, 23-JUN-09.

¹³ Entrepreneurs, Immigration, Government of Saskatchewan, <http://www.immigration.gov.sk.ca/entrepreneur/>, 23-JUN-09.

¹⁴ Yukon Business Nominee Program, Government of Yukon, <http://www.economicdevelopment.gov.yk.ca/general/ynp.html#ent>, 23-JUN-09.

¹⁵ Provincial Nominee Program: Business Immigrants, Government of British Columbia, <http://www.aved.gov.bc.ca/provincialnominee/businessimmigrants/welcome.htm>, 23-JUN-09.

- Demonstrated business experience or a minimum of three years experience in a senior management role of a successful company. In a partnership situation the applicant must have a minimum of 33.3 shares and play an active management role in the business;
- Conducted an exploratory visit to Manitoba to investigate business opportunities; and
- Manitoba's quality of life for a minimum of seven days.

If a business application is approved by the province of Manitoba, the applicant is required to make a C\$75,000 CAD cash deposit to the government of Manitoba, guaranteeing the establishment or purchase of a business in Manitoba. The cash deposit is refunded when the total investment is made and the intended business is established according to the business plan that was submitted to the province.

2. The province of **New Brunswick**'s plan states that in addition to meeting the evaluation criteria, an applicant must also attain 50 points on the province's business points system. Other considerations include: previous management experience with proven success as a senior executive and/or business owner within 3 out of the 5 past years; possession of business skills that are relevant to the business that will be pursued in New Brunswick; and, a knowledge of French or English that is sufficient to understand and communicate with the New Brunswick officials in the course of an interview. A successful applicant will be required to demonstrate that they have sufficient funds to finance the first phase of the planned business venture without third party assistance and to support their family for a period of up to two years. The personal net worth requirement varies depending upon the nature of the proposed business venture. The New Brunswick Business Plan applicant must participate in the business in an active managerial role and commit to settling permanently in New Brunswick. A signed declaration of intention to live and work in New Brunswick is required, as is a mandatory 5 day exploratory visit.
3. In **Newfoundland/Labrador**, there are opportunities for immigrant applicants who intend to be self-employed and wish to start a new business or purchase an existing business. The category is known as Immigration Entrepreneur. Individuals applying under the Newfoundland/Labrador PNP must take up residence in the province. Priority will be given to cases that fall into industries noted on the provinces Strategic Sector List¹⁶ and a pre-assessment must be submitted prior to the actual application. Individuals applying as Immigration Entrepreneurs must meet the following requirements:
 - a) Possess a minimum of 5 years of senior managerial or direct entrepreneurial experience in a business similar to the one proposed for Newfoundland/Labrador
 - b) Possess a minimum net worth of \$450,000 CAD, including liquid assets of at least \$350,000 CAD

Immigrant Entrepreneurs in Newfoundland/Labrador must be prepared to make a minimum direct investment of \$200,000 CAD in equity in order to establish a new

¹⁶ Knowledge based industries; manufacturing; natural resources; agriculture & agrifood; healthcare; tourism; creative & cultural industries; fisheries.

enterprise or purchase an eligible existing business. The applicant is required to sign a Performance Agreement setting out the terms of the investment required and submit it along with \$100,000. An exploratory visit and submission of a business plan are also required.

4. The relevant program for international investors and entrepreneurs in **Ontario** is called the Investors stream. It is an ideal category to consider for companies establishing or expanding operations in Ontario. In order to initiate this type of application, an interested investor should contact the Ministry of Ontario that is relevant to their industry. For instance, an investor with expertise in Information Technology may get in touch with the Ministry of Research and Innovation. If the relevant Ministry endorses the proposed investment, an Investment Endorsement Form, along with the endorsed business proposal is forwarded to Opportunities Ontario, the government entity responsible for overseeing the Ontario Provincial Nominee Program. At minimum, the investment must be \$3,000,000 and create at least 5 net permanent full time positions for Canadian citizens or permanent residents in Ontario. It is not intended that this is a passive investor program, in opposition to the Federal Investor Program.

The number of foreign individuals that can make application under an approved Investment Endorsement Form is dependent upon the number of jobs that will be created for Canadians. Below is the schedule outlining the number of foreign applications that can be received on the basis of the extent of job creation by the investment as of this writing.

Number of jobs created as a result of the investment	Number of jobs created for Canadian citizens or permanent residents located in Ontario	Number of nominee positions investors can request
6	5	1
8	6	2
10	7	3
12	8	4
14	9	5
16	10	6
26	15	11
36	20	16
46	25	21
54+	29+	25

The foreign applicants that are eligible to submit an application as a Nominee resulting from an Investment Endorsement must be working in a skilled occupation;

be coming to Canada to work on a full time basis; and receive a wage the is consistent with Canadian labour standards. In addition, the applicant's presence in Canada must be necessary to the long term success of the investment.

5. At this time, the province of **Prince Edward Island** has an Immigration Entrepreneur Provincial Nominee program. Temporarily, the Immigrant Partner Category which is also relevant to international investors and entrepreneurs has been suspended.

To be eligible in the Immigrant Entrepreneur Category, applicants must meet the following criteria:

- possess a minimum net worth of \$400,000
- invest a minimum of \$200,000 to establish a new enterprise or purchase a minimum of 33% of an existing business
- provide a business plan
- provide a \$100,000 business investment deposit, which is held in escrow and returned to the applicant after one year's residency and the establishment of the business
- provide \$25,000 in escrow with the Government of PEI as a good faith deposit. This is returned after applicant has resided for one year in PEI.
- suitable age, education, language skills and transferrable management skills.

The business in which the Immigrant Entrepreneur is involved must be established or purchased within 2 years of becoming a permanent resident. Prior to filing the case, a pre-assessment must be filed and subsequent to that, the Immigrant Entrepreneur is required to make an exploratory visit of 3 to 5 business days, upon receiving an invitation to do so.

6. The **Saskatchewan** Provincial Nominee Program also has a category for Entrepreneurs. In order to be eligible, the applicant must have a minimum of 3 to 5 years of business ownership or senior management experience, in addition to a net worth of \$250,000 CAD. A 5 day exploratory visit is required and then the applicant must submit a Business Proposal. At minimum, the applicant must have a verifiable investment of \$150,000 CAD that will go into starting a new business or buying an existing business outright. The applicant must intend to own at least 33.3% of the business. If the ownership percentage is less than 33.3%, then an investment of \$1,000,000 is required. Regardless of the percentage ownership or the amount of investment, active day-to-day management of the enterprise is required. A deposit of \$75,000 into a trust account is needed, as is a signed Performance Agreement that is based upon the Business Proposal submitted.
7. The **Yukon**, maintains an Entrepreneur category included amongst their Provincial Nominee offerings. Although the business can be established in any sector, as in Newfoundland/Labrador, there are priority sectors,¹⁷ and specific sectors such as retail have been designated as non-priority, unless the related product would provide significant benefits to the Yukon. An eligible business may be a new business or based upon the purchase of an existing business. The business plan that is submitted must identify all benefits to the Yukon.

¹⁷ Manufacturing; Value-added Processing; Forestry; Tourism Products, Attractions, Services and Facilities; Energy; Mining/Mineral Development; Agriculture ; Cultural Industries; Film and Video Production; Information Technology

In order to be eligible as an Entrepreneur under the Yukon scheme, a prospective applicant must:

- invest a minimum of \$150,000 CDN equity into a Yukon business;
- have a personal net worth of \$250,000 CDN;
- demonstrate knowledge and understanding of the Yukon and its economy;
- have reasonable communication skills; and
- be able to demonstrate that they have the necessary experience and education to follow through on the business plan.

8. The province of **British Columbia** also has provincial nominee programs geared to business immigration. This is the most expansive of the provincial nominee programs for business immigrants. There are three available categories: Business Skills, Regional Business and Strategic Projects. The requirements for each program are contrasted below and pertain to the establishment of an eligible business –

	<i>Business Skills</i> (personal investment in an eligible business anywhere in B.C.; aside from the principal applicant a key staff member may be a co-applicant)	<i>Regional Business</i> (personal investment in an eligible business outside of Vancouver or Abbotsford)	<i>Strategic Projects</i> (for foreign controlled companies establishing an eligible business with the entry of up to 5 foreign managerial/professional/technical staff as applicants)
Investment Required	\$400,00	\$200,000	\$500,000
Job Creation for Canadians or Permanent Residents	3	1	3 for each applicant put forward by company
Ownership Interest	33.3% of the equity	33.3% of the equity	Minimum equity investment of \$500,000 and incorporate a Canadian subsidiary or register an extra-provincial company to operate the business
Level of Participation	Active and on-going participation in day to day management and direction	Active and on-going participation in day to day management and direction	Establish or purchase and expand an eligible business in BC
Background Requirements of Applicant	• Possess skills necessary to establish and operate a viable	• Possess skills necessary to establish and operate a viable	The foreign applicants must be essential senior personnel who can

	business in BC •legally obtained personal net worth of \$800,000 •sufficient unencumbered personal funds to make the investment •viable business proposal	business in BC •legally obtained personal net worth of \$400,000 •sufficient unencumbered personal funds to make the investment •viable business proposal	establish/expand or operate the business
Signed Commitments to the Province of British Columbia	Performance Agreement and, if seeking “fast track” ¹⁸ nomination, a Deposit Agreement	Performance Agreement and, if seeking “fast track” nomination, a Deposit Agreement	Performance Agreement

For the purposes of the provincial nominee program in British Columbia, an eligible business is a business that is operating in order to earn profit from active income that is generated through the provision of products or services. The business in question must have a strong potential for long term commercial viability and should have potential to create significant economic benefits to the province in the following sectors:

- manufacturing/processing
- exports
- tourism
- research development/technology

Alternatively, the business can help in developing new approaches to traditional business; transfer of skills and technology; or service an underserved market. Business immigrants providing proposals pertaining to expanding business with the Asia Pacific region, using wood infested with the Mountain Pine Beetle or contributing to its related community economies, partnering with First Nations or involving alternative energy/clean technology/information technology/new media/life science will receive priority. That being said there are also a significant number of excluded business including but not limited to bed and breakfasts, pawnbrokers, real estate development and pornography. In the Vancouver and Abbotsford Area, convenience stores, video stores, gas stations, dry cleaning and most franchise operations are excluded.

¹⁸ The Fast Track option offers immediate nomination for permanent residence, if a conditionally refundable \$125,000 CAD deposit is provided to the Province of British Columbia. The deposit will be refunded (without interest) when the terms and conditions of the Performance Agreement and Deposit Agreement are met.

C. Quebec's Business Immigration Program

As mentioned at the outset, the Province of Quebec has its own jurisdiction over its immigration laws, regulations, and programs that are governed by *An Act Respecting Immigration to Quebec*¹⁹.

For the Quebec entrepreneur program, in order to be eligible an applicant must have:

- legally obtained net assets of at least C\$300,000
- at least two years' full time experience running and managing a profitable business with at least a 25% ownership stake within the 5 year period preceding the application.

An entrepreneurial applicant can file an application on the basis of creating or acquiring a business that he/she will manage or participate in the management on a daily basis. The applicant and/or his/her spouse must control 25% of the equity with a value of at least \$100,000. Alternatively, an entrepreneur and/or his/her spouse can acquire a 25% interest in a business with a value of \$100,000 and be involved in managing or participating in the management on a daily basis. The province of Quebec also considers factors such as age, background training, language skills, knowledge of Quebec, any steps taken to acquire a Quebec business and the applicant's ability to carry through with the proposed business.

For at least one of the 3 years following becoming a permanent resident, the applicant must demonstrate that a business has been created or acquired, that he/she holds a 25% capital equity valued at \$100,000 and participates in the daily operation of the business. Further, the business must permanently employ a Quebec resident who is not a family member for at least 30 hours per week.

The Quebec investor program is very similar to the Federal Investor program as it is based on a 5 year investment of \$400,000 that is guaranteed by the province of Quebec. In order to be eligible, the applicant solely or with his/her spouse, must demonstrate a legal obtained net worth of \$800,000 and have appropriate management experience in a business that employed two full time staff. The management experience must have been accrued over 2 years within the past 5 year period.

Conclusion

The breadth and scope of programs in Canada available to the international investor or entrepreneur is impressive. With investment categories that ranging from \$150,000 to \$3,000,000, there are options available for smaller business people and large corporations. Net worth considerations for some programs are variable depending on the venture proposed and up to \$800,000 for the low involvement Federal or Quebec investor options. Opportunities are diverse, as is Canada's cultural and physical landscape.

¹⁹ *An Act Respecting Immigration to Quebec*, R.S.Q., c.I-02.

Appendix 1 - Map of Canada

