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# Business Migration: Entrepreneur

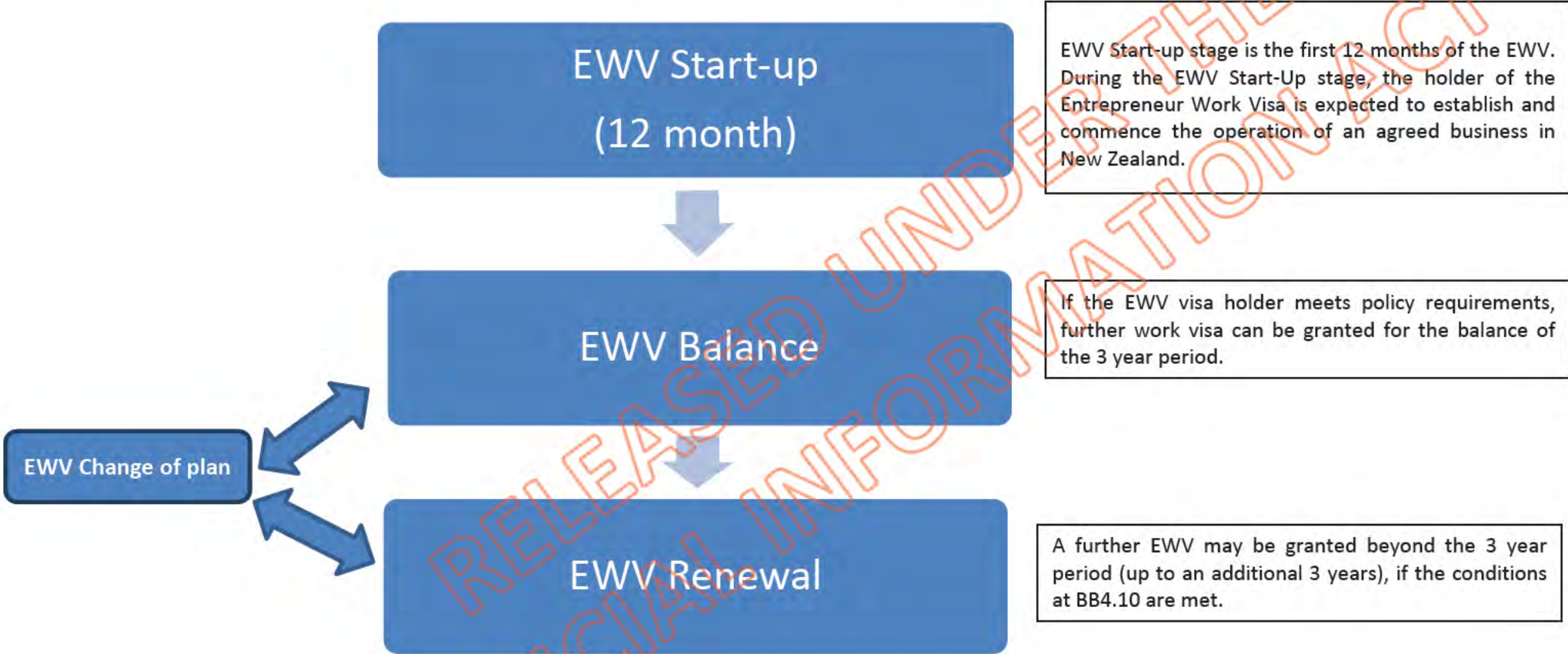
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# Entrepreneur Work Visa (EWV)

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# Process of Entrepreneur Work Visas



An Entrepreneur Work Visa may be granted for a total period of up to 3 years, encompassing an Entrepreneur Start-Up stage and Entrepreneur Balance stage.

## Objective

- The objective of this category is to contribute to economic growth by enabling experienced business people to grow or establish *high growth* and *innovative* businesses with *export potential* in New Zealand.
- A business only needs to demonstrate *one* of the characteristics - *high growth*, *innovative* or *export potential*.

## Objective – High Growth

- Immigration instructions do not specifically define what constitutes a high growth business
- It is left to the applicant to make a compelling argument as to why their business possesses high growth characteristics
- INZ as a general starting point looks at the forecasted revenue / growth and the proposed employment over a three-year period
- Other factors considered include the amount of capital to be invested, the industry and region in which the applicant is proposing to establish a business, and industry benchmarks.

## Objective – Innovative

- Immigration instructions define an innovative business as: *one that demonstrates a high probability of succeeding in discovering and applying new ways to produce more with the same quantity of inputs*
- This requires the applicant to credibly demonstrate that their business will likely produce more goods or services (in the context of their business proposal) with the same quantity of inputs
- This will usually require some sort of comparability assessment to quantify the efficiency or gain in measurable outputs.

## Objective – Export Potential

- Exporting of goods is defined under section 5 of the Customs and Excise Act 2018
- INZ will only consider goods of New Zealand origin and therefore does not count re-exported goods as exports - unless some value added activity is undertaken in New Zealand prior to exporting
- Consider how to add value
- Consider manufacturing
- Avoid *export agent* proposals where the business does not take ownership of goods.

## Business Plan

- To establish / purchase a specific business in NZ
- Must be specific to the proposed business, not a template
- Must be no more than three months old
- Include evidence to support any claims made in the business plan

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## Market Research

- SWOT analysis
- Product/ service details
- Knowledge of registration requirements if applicable, e.g. MPI or customs requirements
- Engagement with stakeholders, e.g. Chambers of Commerce, business partners
- Other examples: correspondence, quotations and/ or authorization from potential suppliers or distributors, engagement with industry groups, details of previous time spent in New Zealand
- Provide *evidence* supporting any claimed market research.

## Business location

- Explain the reason for the business being based outside Auckland
- Show there is a genuine need for the type of business in the chosen location
- Genuine business reasons for the choice of location should be shown through market research
- We must be satisfied that the company and its owner are located and working outside of Auckland. The credibility of this may be undermined where the family lives in Auckland.

## Realistic Financial Forecasts

- Detailed financial forecasts. These are assumed to be GST-exclusive unless otherwise stated
- Include relevant assumptions, e.g. shipment frequencies, sales numbers, operational timeline
- Show how prices and margins were determined e.g. correspondence with suppliers, market research
- Demonstrate how the business will financially sustain the full-time employment of the applicant and any employees
- Should be reasonable and achievable. The applicant will be expected to meet or exceed these forecasts when applying for residence.

## Capital Investment

- Provide a detailed breakdown of all proposed capital investment. These will be assumed to be GST exclusive unless otherwise stated.
- Examples of *unrecognisable* capital investment:
  - Undefined *working capital* – expenses should be specific
  - Passive or speculative investment – reserve funds or term deposits
  - Purchases for personal use – residence or vehicles for personal use
  - Wages to the applicant or family – shareholder salary.

## Capital Investment – Property Development

- Where residential property development forms part of an applicant's business plan, there are additional capital investment requirements:
  - They must be new developments
  - They cannot be renovations or extensions to existing dwellings
  - They must obtain any relevant approval / consents
  - The purpose must be to make a commercial return on the open market.
  - No one associated with the applicant may reside in the development

## Capital Investment - Waivers

- A minimum investment of NZ\$100,000 is required, unless waived
- Waivers can only be considered for businesses in science, ICT or other high-value export-oriented sectors.
- The proposal must demonstrate a high level of *innovation* or credible short-term *high growth* prospects – see EWW objectives

## Capital Investment – Funds Held in New Zealand

- Fund transfer evidence must be provided for any nominated funds originating from overseas, but currently held in New Zealand
- This will be expanded on in the *EWV – Balance* section.
- Further evidence of these funds being transferred in to New Zealand will not have to be provided during the *balance* stage.

## Nominated Investment Funds

- Nominated funds / assets must be at least equivalent to the total proposed capital investment in NZD
- Supporting evidence should show:
  - The amount and location (including account number) of any nominated funds
  - An independent valuation of any nominated asset, the addresses of nominated properties or other specific details regarding any nominated assets
  - *Ownership* and that the funds / assets have been *legally earned*



## Nominated Investment Funds - Ownership

- Funds / assets may be owned by the applicant or jointly by the applicant and partner
- If an asset is partially owned by the applicant, they may only claim the value of the portion they own
- Ownership evidence should include:
  - Funds: bank account statements in the PA's (and SA's) name
  - Property: deeds / land registration showing property ownership
  - Business : Evidence of legal shareholding.

## Nominated Investment Funds – Legally Earned

- Evidence should show how the full amount of nominated funds has been legally earned, for example:
- Personal Income
  - Individual / business income tax records
  - Bank statements showing the receipt of the claimed income, or proceeds of asset sale
- Property appreciation
  - Sale and purchase agreements
  - Invoices or deed tax records showing the original purchase amount of the property.
  - Current independent valuation of the property
  - How the funds used to purchase to property were legally earned (as per *personal income*).

## Nominated Investment Funds – Gifted Funds

- Evidence must be provided that any gifted funds have been gifted unconditionally and in accordance with local law
- Evidence must be provided that the gifted funds / assets have been *legally earned* (as per the previous slide) by the person gifting the funds / assets
- The gifted funds / assets must be based outside of New Zealand.

## Business Experience

- How much business experience is *sufficiently relevant* depends on how similar the proposed business is to the business experience
- Even if applicants do not claim points for business experience, they still need to demonstrate their sufficient relevant business experience
- Relevant self-employment means an applicant will run the same type of business that they owned and managed offshore
- Evidence must be provided covering the entire period of claimed business experience.

## Business Experience – Evidence

- Self-employment
  - Evidence of shareholding in the claimed business
- Relevant senior management experience:
  - Demonstrating the business has at least five full time employees, or turnover in excess of \$1m NZD pa

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## Business Experience – Examples of Evidence

- Company registration with date of incorporation
- Tax documents for *each year of points claimed*
- Organisational Chart
- Financials for company upon which experience claimed.
- Job descriptions and letters of reference from employers noting their responsibilities and years of employment.
- Employment Contracts
- Balance Sheets/ Cash Flow documents
- Invoices, etc.
- Personal bank statements, or individual income tax

## Points Scale (BB3.10)

- Applications must meet a minimum score of 120 points in order to be granted an Entrepreneur Work Visa. Applications not meeting the minimum score of 120 points will be declined
- Applicants must be able to demonstrate to the satisfaction of a business immigration specialist why they should be awarded the points they have claimed
- Evidence provided in other areas (business plan, business experience, financial forecasts, capital investment, employment) should show how the applicant will meet their claimed points.

## Assessment for Points

- Applications will be awarded points based on the supporting business plan and evidence. A minimum of 120 points needs to be awarded for further assessment of the application:

Areas to claim points against	Points Claimed	Points Awarded
Type of Experience	30	20
Claimed F/T Employment	10	10
Exports per year	20	20
Capital investment	30	20
Age	20	20
Outside Auckland	40	40
Unique Good or Service	0	0
<b>Claimed 150 points</b>		<b>130 Awarded</b>



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# Further Entrepreneur Work Visa (EWV - Balance)

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## Time to apply

- Towards the end of the 12 month start-up stage, but prior to the expiry of the initial EWV
- The EWV holder is expected to have transferred their funds to New Zealand and have taken reasonable steps to commenced operation of their proposed business.
- The remaining two years of the EWV can then be granted.

## Reasonable Steps to Establish and Operate the Business

- The instructions specify these steps must be *as set out in the business plan*
- Evidence of this could include things like:
  - Incorporation documents
  - Financial statements
  - GST or other tax records
  - Employment agreements and IRD returns
  - Business premises purchase or lease documents
  - Bank statements, invoices, utility invoices, contracts etc.

## Funds transfer

- Must be the investment capital *as stated in the business plan* – the specific nominated accounts or assets
- Asset sale documents should be provided alongside bank statements where funds from the sale are realised
- Bank statements, telegraphic transfer documents and / or currency exchange documents should be provided showing each account the funds have entered, starting from the nominated account and ending in a New Zealand bank statement
- Provide a flow chart showing how the funds have been transferred to New Zealand.

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# Entrepreneur Resident Visa (ERV)

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## Entrepreneur Resident Visa (ERV)

- This visa is for people who have been self-employed in New Zealand at least 6 months or two years on their Entrepreneur Work Visa (EWW) / Long Term Business Visa (LTBV) or other visa which allows self-employment
- The Entrepreneur Residence Category allows applicants to live in New Zealand permanently if they have established/purchased a business in New Zealand that meets the relevant immigration instructions
- Applicants can include their partner, and dependent children in the visa application

## Entrepreneur Resident Visa (ERV)

- There are 2 ERV Categories:
  - 6 months
  - 2 years
- Both categories require the applicant to have successfully established a business in New Zealand that realises the benefits outlined in their business plan (as agreed at EWW stage) and have operated that business for at least *6 months or 2 years*
- Both categories must also meet the rest the requirements at BH2.1.

# ERV Requirements

## BH2.1 Successful establishment and operation of a business that benefits New Zealand significantly

Principal applicants in the Entrepreneur Residence Visa Category are required to:

- a) demonstrate that they have successfully established a business in New Zealand that realises the benefits outlined in their business plan, and have operated that business for at least:
  - i. two years, and meet the requirements of BH2.1.1; or
  - ii. six months, and meet the requirements of BH2.1.5; and
- b) demonstrate that the business is benefiting New Zealand significantly (see BH4.10); and
- c) demonstrate that the business complies with employment and immigration law (see BH2.5); and
- d) demonstrate that the same or greater amount of capital (see BB3.5.10) has been invested in the business as outlined in the business plan; and
- e) meet the fit and proper person requirements set out at BM1.



## ERV 6 Months – Additional Requirements

- A faster track to residence only requiring the applicant to have been self-employed in their business for 6 months
- The applicant must also have invested a minimum of \$500,000 and created a minimum of 3 new full-time jobs for New Zealand Citizens or residents
- If the application is approved it will be subject to conditions:
  - Continue to be self-employed for a minimum of 2 years (included operation of the business under their EWW)
  - Retain the investment and maintain the new full time jobs for a minimum of 2 years
  - Evidence of the above must be provided during a later, removal of conditions application.

## Business Establishment

- Identify when the business started operating
- Provide business bank statements from all accounts, from inception to the most recent available – this is commonly missed
- Provide financial statements in line with the business' trading rhythm if this is significantly different (3-4+ months) from the financial year.
  - E.g. if the business started operating in August, provide August – July Financial Statements for all years of operation, and a financial statement aligning with the lodgement date this is significantly different (see *trading profitably*).

## Business Establishment – Other examples of evidence

- Certificate of incorporation
- Deed of lease / sale and purchase agreement for the business premises
- Full financial statements
- Business bank statements
- Business invoices
- Staff employment agreements
- Employer monthly schedules / payday filing (after April 2019) from Inland Revenue Department (IRD) including individual employee details filed
- Ministry of Primary Industries (MPI) registration
- Export documentation
- GST returns from IRD
- Agreement for purchase of the business
- Examples of marketing
- Business profile
- Supporting letters
- Business and stock photos
- Other business operating documents specific to the type of business

## Common Issues

- The main areas where applications fail to meet instructions are:
  - Capital Investment
  - Trading Profitably
  - Self-employment
  - Consistency

## Capital Investment

- The same or greater amount of capital must have been invested in the business as outlined in the business plan
- This investment *must have been from funds nominated at the EWW stage.*
- Applications are declined when the applicant cannot show that they have made a *recognisable* (see slides 12/13) investment of at least as much as they proposed in their business plan or they cannot show that they have made their investment from their *nominated funds.*

## Capital Investment – Common Issues

- Capital funds remain as passive investment in the business (they are transferred to the business accounts, but not spent).
- Funds are used for business expenses other than what was proposed in the business plan
  - INZ takes a pragmatic approach, however this can be problematic when business revenue and nominated funds are mixed in the same account
- If expenses or assets are paid for with funds from a business account where revenue has been received, it can be difficult to show that nominated funds have been used to make the capital investment. Investment will not be recognisable if the applicant cannot show it has been made from nominated funds.

## Capital Investment – Recommendations

- If asset is purchased for significantly more than what was proposed in the business plan (e.g. a business vehicle), provide additional evidence supporting the sole business use and genuine business need for this asset – if INZ is not satisfied in most cases only the amount proposed in the business plan will be accepted
- Keep nominated funds in a separate business bank account until the proposed investment has been completed
- Transfer more nominated funds than the amount of capital investment proposed in the business plan.
- Provide a breakdown of the investment, showing a list of what investment has been made, when this was made and the sum.
- Provide invoices and / or other supporting evidence

## Trading Profitably

- Not the accounting definition of net profit!
- Immigration instruction (BB6.1.40) defines Trading Profitably as:
  - a. meeting or exceeding the forecasted **annual turnover** from the original business plan, and **assessment from the points scale** at BB3.10(d); and*
  - b. making sufficient profit to enable the principal applicant to **pay themselves at least the minimum wage per annum***
- Must meet *all three* requirements in **red** to be *trading profitably*
- The business is assessed by their performance at the time the application is lodged. If they are not meeting the requirements the business' *clear potential* to meet the requirements within 12 months of lodgement is considered.



## Trading Profitably - Annual Turnover

- Most of the time this will be gross sales. For certain types of businesses (e.g. an inbound tourism business) this will be gross margin. This will be made clear at the EWV stage.
- The business' turnover is compared to forecasts from the original business plan (usually provided for years 1, 2 and 3)
- If no forecasts have been provided beyond year 3, the year 3 forecasts will be used for year 4 and beyond
- Year 1 starts when the business begins operating
- The applicant should identify when the business began operating and provide supporting evidence. INZ will generally use the commencement of the business lease / settlement date of the premises as a starting point.

## Trading Profitably - Annual Turnover Example

- For a business where the date of lodgement and start of operations match up this is very simple:
- A business started operating on 01/04/2017, the ERV application was lodged on 01/04/2019. Financial statements for 31/03/2018 and 31/03/2019 and supporting evidence (GST returns, bank statements) have been provided.

Revenue	Business Plan	Actual (as per 31 <sup>th</sup> March Financial Statements)
Year 1	\$ 220,000	\$ 180,004 (FY 2018)
Year 2	\$ 264,000	\$ 277,239 (FY 2019)
Year 3	\$ 316,800	In progress

- The business appears to be meeting it's year 2 revenue targets at the time of lodgement

## Trading Profitably – Proportional Turnover

- For a business where the date of lodgement and start of operations are significantly different a proportional approach might be taken:
- If the same business lodged their application on 30/11/2019:

Revenue	Business Plan	Actual (as per 31 <sup>th</sup> March Financial Statements)
Year 1	\$ 220,000	\$ 180,004 (FY 2018)
Year 2	\$ 264,000	\$ 277,239 (FY 2019)
Year 3	\$ 316,800	In progress
Year 3 (8 months)	\$ 211,200 (8 months)	Sales from 1/04/2019 to 30/11/2019

- As they are significantly (3-4+ months) into a new trading period at the time of lodgement, INZ will consider the most current results

## Trading Profitably – Proportional Turnover Cont'd

- Financial statements for April – November 2019 (8 months) and supporting evidence should be provided showing the business' performance at the time of lodgement.
- This will be compared to an 8 month proportion of the financial forecasts from the original business plan –  $(316,800/12)*8 = \$211,200$ .

Revenue	Business Plan	Actual (as per 31 <sup>th</sup> March Financial Statements)
Year 1	\$ 220,000	\$ 180,004 (FY 2018)
Year 2	\$ 264,000	\$ 277,239 (FY 2019)
Year 3	\$ 316,800	In progress
Year 3 (8 months)	\$ 211,200 (8 months)	Sales from 1/04/2019 to 30/11/2019

## Trading Profitably – Assessment from the Points Scale

- At the ERV stage the applicant must meet or exceed the points they were *awarded* at the EWV stage
- There are usually three areas where points are not met – employment creation, export turnover and capital investment

	Points awarded at EWV stage	Points as per actual performance (ERV)
Relevant self-employment	0	0
Other self-employment	0	0
Relevant senior management experience	0	0
New full time employment creation	30	20
Approved export business (based on annual turnover)	20	10
Unique or new products or services to New Zealand	0	0
Capital investment	50	30
Age at lodgement	20	20
Business based outside Auckland	0	0
Total Points	120	80

## Trading Profitably – Assessment from the Points Scale Cont'd

- The applicant cannot offset points to make up the difference – the point as per actual performance must be the *same* as those awarded during the EWV stage.
  - E.g. at the EWV 30 points were awarded for 3 or more full time positions and 20 points for \$300,000 export turnover. At ERV the business created 2 full time positions but made \$400,000 turnover (\$100,000 more) making up the 10 points lost in employment creation. This would not meet the trading profitably instruction:

	Points awarded at EWV stage	Points as per actual performance (ERV)
Relevant self-employment	0	0
Other self-employment	0	0
Relevant senior management experience	0	0
New full time employment creation	30	20
Approved export business (based on annual turnover)	20	30
Unique or new products or services to New Zealand	0	0
Capital investment	50	50
Age at lodgement	20	20
Business based outside Auckland	0	0
<b>Total Points</b>	<b>120</b>	<b>120</b>

## Common Issues - Exports

- Full export documentation should be provided for each shipment the business has conducted to show revenue generated from approved exports.
- Include:
  - Sale contracts and invoices
  - Purchase (stock) contract and invoices
  - Customs clearance documents
  - Certificates of origin
  - Bills of lading / airway / seaway
  - Product specific requirements (dairy export certificates, animal product registration etc.)

## Common Issues - Employment

- Employment created must be *full time* (30h+ per week), *permanent, sustained* (has happened for an extended period) and *ongoing* (still employed at the time of assessing the ERV) jobs for New Zealanders.
- Include:
  - Employment agreements outlining the roles as *full time* and *permanent*
  - Evidence of immigration status showing the roles have been created for New Zealand Citizens / residents
  - Employer monthly schedules / payday filing (from April 2019) from the IRD for all operating years of the business up to the time of assessments – showing which roles are *sustained* and *ongoing*
  - Business bank statements to verify the above.



## Trading Profitably – Profit of at Least the Minimum Wage

- Based on the current minimum wage of \$18.90ph (from 1/4/2020) and a minimum work week of 30 hours:
  - $18.90 * 30 * 52 = \mathbf{\$29,484}$
- The business just needs to be making this much net profit - it doesn't necessarily need to be paid to applicant
- A proportional calculation may be used if part way through a trading period, e.g. for a business 8 months into a new operating period:
  - $29,484 / 12 * 8 = \$19,656 =$  the 8 month proportion of the minimum wage the applicant will need to meet.

## Trading Profitably – Clear Potential

- If a business does not appear to be meeting the requirements at lodgement, they can show *clear potential* to trade profitably within 12 months of lodgement.
- This will usually be based on a business' actual performance after the application has been lodged.
- For example, if an application was lodged in April and is being assessed in November, the applicant could provide updated financial statements and supporting evidence for April to November (8 months) to show they are meeting their targets on a proportional basis – which could be considered *clear potential* to trade profitably within 12 months of lodgement.

# Self Employment

- Immigration instruction BB6.1.15 defines self-employment as
  - a. *Self-employment is lawful full time active involvement in the management and operating of a business which the principal applicant has established or purchased, or in which the principal applicant has made a substantial investment.*
  - e. *Applicants for an Entrepreneur Residence Visa (see BH) must have been self-employed in **New Zealand** in order to be granted residence under this category.*
- Reasons applications *fail* because of self-employment are:
  - Applicants fail to show that they are *full time* (at least 30 hours per week), *actively* involved in the business. The evidence provided with the application should show this.
  - Time spent in New Zealand is about 50% or less.
  - Inadequate evidence to support applicant was managing the operations in New Zealand while away.
  - New Zealand was not the centre of the applicant's business and domestic life. (Many IPT appeal decisions have asserted that to meet self-employment instructions, the centre of the principal applicant's business and domestic life must be in New Zealand).

## Self Employment – Some Examples of Evidence

- Employment agreements, lease agreements, or any other business documentation signed by the applicant
- Export documentation showing the applicant's name / signed by the applicant
- Meeting minutes or agendas
- Work logs detailing hours and tasks completed
- Emails, WhatsApp communication, or any other records of communication with staff, clients, suppliers, or other stakeholders
- Pictures of the applicant working in the business or meeting with stakeholders
- Evidence of marketing or other activities completed by the applicant

# Consistency

- Immigration instruction BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category
  - a. *An application under the Entrepreneur Residence Visa Category will be declined if:*
    - i. *the business on the basis of which the application is made was established while the principal applicant was the holder of a work visa granted under the Entrepreneur Work Visa or Long Term Business Visa Category; and*
    - ii. *the business is different from the business proposal (except for a business proposal subsequently modified with the consent of a business immigration specialist) in respect of which the applicant was granted a work visa.*
  - b. *Despite BH3.1(a) above, an application may be approved if:*
    - i. *the business that has been established would have met the requirements for a business plan under the Entrepreneur Work Visa Category; and*
    - ii. *the business that has been established required the same or a greater level of capital investment (see [BB3.5.10](#)) than a business proposal in respect of which the applicant was granted a work visa under the Entrepreneur Work Visa Category; and*
    - iii. *the applicant has relevant experience for the new business; and*
    - iv. *the business has provided a significant benefit to New Zealand equal or greater than the original business as determined by a business immigration specialist (see [BH4.10](#)).*
- If an inconsistent business meets **all four** requirements of BH3.1(b) the application may be approved even though the business they operated was inconsistent with the business plan.

## Other Issues

- If the nature of the business will deviate from the original business proposal, or the applicant needs to nominate additional funds, consider a ***change of plans*** application.
  - These are assessed on a case by case basis
  - The business must still provide the same or greater benefit as the original proposal (e.g. revenue, export turnover and employment).
  - There must be justifiable reasons to inject any additional funds
  - The applicant will be held to the *revised* business plan, agreed to during the change of plans application, rather than the original business plan at the ERV stage
- If the applicant needs more time to meet the objective from their business proposal at the ERV stage, consider a ***EWV Renewal*** – this can extend the EWV to up to 6 years.