

EB-5 FINANCING OF RESORT HOTEL CASINOS

By Glenn Light, Kade D. Miller and Karl Rutledge

In May 2011, the iconic Sahara Hotel and Casino, located at the northern end of the Las Vegas Strip, shut its doors for the last time, while the owners of the property, SBE Entertainment, in partnership with the private equity firm Stockbridge Capital Group, sought the required financing to convert the building into a new luxury boutique hotel and casino. According to the *Las Vegas Review-Journal*, the owners recently secured the last pieces of \$415 million in financing, and in approximately 18 months, a new 1,620 room property named SLS Las Vegas will be unveiled to the public.¹

Not only is this an indication of a brighter future for Las Vegas, as construction of casino properties has been at a standstill for several years, but it is also an example of a viable alternative to the traditional financing of resort hotel casinos. According to the *Wall Street Journal*, the construction of the SLS Las Vegas is being financed, in part, by the Immigrant Investor Program, known as the “EB-5 program.”² Under this program, green cards are awarded to investors who engage in a commercial enterprise that benefits the U.S. economy.

Congress created the EB-5 program in 1990 to help lift the economy out of recession. This program allocates 10,000 EB-5 immigrant visas per year to qualified individuals seeking lawful permanent resident status on the basis of their capital investment in a commercial enterprise.³ While the program initially attracted minimal attention from U.S. businesses, interest in the program grew exponentially when financial crisis again hit in 2008 and traditional sources of financing became harder to procure.⁴

Since then, numerous businesses, large and small, have used the program to raise money. More notable EB-5 projects include a project in Los Angeles that raised money for Sony Pictures Entertainment and Warner Bros., as well as another in Brooklyn that helped fund the Barclays Center, the new home of the NBA’s Brooklyn Nets.⁵ Gaming entrepreneurs and financiers in Las Vegas have also recently recognized the value of the EB-5 program and are now pursuing it as a means to finance the construction and renovation of resort hotel casinos. For instance, the *Wall Street Journal* notes that roughly 50 percent of the total financing for the SLS Las Vegas will be derived from EB-5 investors.⁶ Similarly, the Lady Luck Casino Hotel, located in downtown Las Vegas, is seeking \$120 million in EB-5 funds for a renovation and re-branding initiative.⁷

There are two ways for an investor and their qualified family members to obtain lawful permanent resident status under the EB-5

category: through the basic EB-5 program or through the regional center pilot program. With regard to the former, investors may be eligible for an EB-5 immigrant visa if they have invested, or are actively in the process of investing, the required amount of capital into one of the following for-profit business types:

1. A commercial enterprise established after Nov. 29, 1990.
2. A commercial enterprise established on or before Nov. 29, 1990, that is:
 - a. Purchased and reorganized to create a new commercial enterprise; or
 - b. Expanded by the investment to create a 40 percent increase in either the net worth or the number of employees.
3. A troubled business in which jobs will be preserved (collectively a “commercial enterprise”).⁸

For purposes of the EB-5 program, a “commercial enterprise” means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership, corporation or a holding company and its wholly owned subsidiaries, provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business.⁹

A “troubled business” is an enterprise that has been in existence for at least two years and has incurred a net loss during the 12- or 24-month period preceding the priority date on the immigrant investor’s immigration petition. The loss for this period must be at least 20 percent of the troubled business’ net worth prior to such loss.¹⁰

In addition to an investment in a qualifying commercial enterprise through the basic EB-5 program, investments may also be made under the EB-5 pilot program through an approved regional center, which is an economic unit, public or private, that promotes economic growth, improves regional productivity and job creation and increases domestic capital investment, including increased export sales. There are now more than 230 such regional centers in the U.S., and according to American Dream Fund LLC, a regional center located in Las Vegas, EB-5 pilot program investments are the vehicle being used, in part, to finance, the SLS Las Vegas.¹¹

In order for the investment to qualify, all investment funds must belong to the EB-5 investor, who must demonstrate that the EB-5 assets were obtained through a lawful business, salary, investments,

property sales, inheritance, gift or other lawful means. While investment capital generally cannot be borrowed, an exception exists if the funds are borrowed against the current market value of the EB-5 investor's personal assets that he or she has owned for at least three years prior to the date of filing. Finally, the investment must constitute a present commitment and be placed "at risk," which means the principal amount cannot be guaranteed to be returned or insured by the business.¹² Accordingly, a mere intent or prospective investment arrangement will not satisfy the EB-5 requirement.

The standard capital investment requirement for EB-5 investors in both the basic and regional center pilot programs is \$1 million. However, in order to encourage investment in economically depressed areas, the capital investment requirement for an EB-5 investor in a targeted employment area, which is either in a high unemployment area (calculated as an area with an unemployment rate that is at least 150 percent of the national average) or a rural area (areas with populations of less than 20,000) is \$500,000.¹³ In either scenario, the capital contributed by an EB-5 investor may take the form of cash, assets or debt financing secured by the assets of the investor.¹⁴

Moreover, each EB-5 investor must demonstrate that his or her capital investment will create or preserve at least 10 full-time jobs for qualified U.S. workers within two years of the EB-5 investor's admission to the U.S. as a conditional permanent resident.¹⁵

Qualified workers include U.S. citizens, permanent residents or other immigrants authorized to work in the U.S. Jobs created for the EB-5 investor, members of his or her family and any non-immigrant foreign nationals (H-1B visa holders, for example) do not qualify toward the requirement. The positions also must constitute full-time employment, which requires a minimum of 35 working hours per week.

Based on the labor-intensive nature of gaming operations, casinos are well-suited to satisfy the job creation/preservation requirement. Couple that with the high unemployment rate in the Las Vegas metropolitan area, and casino development or renovation projects in Las Vegas are ideal candidates for EB-5 financing. The EB-5 program, therefore, offers significant opportunities to foreigners seeking residence in the U.S. and to gaming entrepreneurs and financiers seeking a cost-efficient alternative route to financing gaming projects in the U.S. The immigration advantages and potential for permanent resident status serve as the primary motivation for the EB-5 investment, thereby allowing project developers to obtain capital financing at substantially lower costs than more traditional funding methods. The typical EB-5 investor is more interested in planting roots in the U.S., which they view as a desirable place to park assets, educate their children and in many cases, establish residency, as opposed to earning a return on their investment. In fact, while most investors expect at least an 8 percent annual return on their initial investment, the typical EB-5 investor is satisfied with earning a return of only 1 or 2 percent.¹⁶ Accordingly, EB-5 investments represent enticing opportunity for foreigners, and an economical financing alternative for gaming project developers.

To conclude, American businesses raised more than \$1.8 billion through the EB-5 program in the fiscal year that ended Sept. 30, 2012.¹⁷ However, only 7,641 EB-5 immigrant visas were issued in the 2012 fiscal year, leaving roughly a quarter of the annual EB-5 visa allotment unused. EB-5 financing, therefore, while underutilized, is a viable source of financing that should be explored by casinos, particularly those casinos located in high unemployment areas.

The authors invite those with questions on the EB-5 program to contact them.

1 Stutz, H "SLS, Resorts World Projects Bring New Energy to Strip's North End" Las Vegas Review-Journal (March 18, 2013) available at <http://www.reviewjournal.com/business/casinos-gaming/sls-resorts-world-projects-bring-new-energy-strips-north-end>.

2 Berzon, A & Hudson, K, "Closed Casino Banks on U.S. Program," Wall Street Journal (February 12, 2013) available at <http://online.wsj.com/article/SB10001424127887323511804578300380568358910.html>.

3 See 8 U.S.C. § 1153(b)(5).

4 Brimaldi, J, Loten, A & O'Connell, V, "Chinese Investors Get Picky Over U.S. Visa-for-Cash Deal" Wall Street Journal (March 18, 2013) available at http://online.wsj.com/article_email/SB10001424127887324445904578285863761735122-1MyQjAxMTAzMDIwMDEyNDAYWj.html?mod=wsj_valettop_email.

5 Id.

6 Berzon et al., supra note 5.

7 Id.

8 8 C.F.R. 204.6(h).

9 See 8 C.F.R. 204.6(e).

10 See Id.

11 American Dream Fund, LLC Home Page, <http://www.eb5exclusive.com/eb-5-regional-centers/directory/nevada/las-vegas-regional-center>.

12 See 8 C.F.R. § 204.6(j).

13 See 8 C.F.R. § 204.6(e)-(f).

14 See 8 C.F.R. § 204.6(e).

15 For EB-5 investments made through a regional center pilot program, the 10 job requirement can be in the form of direct or indirect full-time positions. See 8 C.F.R. § 204.6(j)(4).

16 Hanks, D "Miami Hotel Selling Green Cards, Seeking EB5 Investment Visas," The Miami Herald (February 11, 2013), available at http://www.miamiherald.com/2013/02/11/3228061_p2/miami-hotel-selling-green-cards.html.

17 Brimaldi et al., supra note 7.



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