

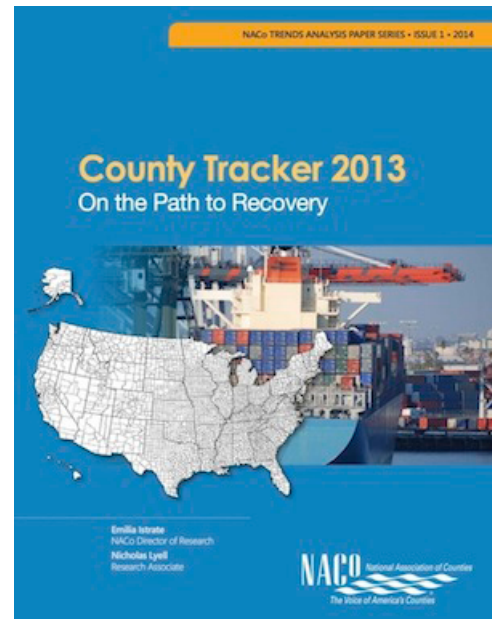
## The Source for News and Information on the U.S. EB-5 Visa Program

JAN/FEB 2014



Minister of Finance Jim Flaherty and Prime Minister Stephen Harper enter the House of Commons on budget day on Parliament Hill in Ottawa on Tuesday, February 11, 2014. THE CANADIAN PRESS/Patrick Doyle

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## CONTACT

Michael Gibson,  
Managing Director  
Registered Investment Advisor  
CRD #157403  
michael@usadvisors.org  
LinkedIn @EB5Info  
Facebook  
cell : 305.978.1108  
office : 239.465.4160  
Skype: usadvisors.org

Kris Stell, Managing Editor  
kris@usadvisors.org  
Skype: eb5news1

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EDITOR'S LETTER

by KRIS STELL  
Managing Editor



**This issue of EB-5 News** starts the year off with news of the cancellation of the Canadian Investment Visa Program, which had a backlog of over 60,000 applicants. EB-5 News wanted to find out what the EB-5 industry thought about this cancellation; the survey results start on page 8.

An interesting take on a possible future in funding avenues is explored in the bitcoins article on page 15. In fact, the world's first bitcoin ATM has already opened in Canada, so it might be here sooner rather than later.

Key trends of Chinese investment in the U.S. for 2013 are analyzed in the article starting on page 19, which are food, energy and real estate. The 2013 County Tracker report on page 22 is an economic analysis of America's county economies, which are the fundamentals of the U.S. economy.

Page 30 has part 2 of Michael Gibson's interview with EB-5 Investment Report. Here he covers the evolving role of regional centers and Chinese immigration brokers, and offers good advice on being responsible in the EB-5 industry.

Kris Stell  
Managing Editor  
EB-5 News





# Canada Cancels Its Investment Visa Program

The Canadian Immigrant Investor Program (CANIIP) was established in 1986 to enable qualified investors to obtain permanent resident status in Canada, yet the heavily criticized program was cancelled by the government on Feb. 11 as part of the 2014 budget. The program allowed wealthy foreign investors to apply for permanent residency in Canada if they had a minimum net worth of 1.6 million Canadian dollars (\$1.5 million) and invested 800,000 Canadian dollars in the form of a multi-year, interest-free loan to the government.

By comparison, the U.S.'s EB-5 Immigrant Visa Program requires an investment of \$1 million or \$500,000 in a high unemployment or rural area.

As reported in Canada.com's article about the cancellation of the program, the reasoning behind Canada's decision is in the budget documents: "In recent years,

significant progress has been made to better align the immigration system with Canada's economic

needs. The current immigrant investor program stands out as an exception to this success."

The piece further states, "Critics, including Employment Minister Jason Kenney, have said the program is little more than a cash-for-visa scheme that fast-tracks permanent residency for those who can

cough up \$800,000 which is actually just a loan that's returned in five years. It's also not much compared to other countries, which have set thresholds as high as \$1.6 million."

## A Little History

By 2010, the decades-old Canadian program had become one of the most popular in the world and one of the least expensive. It was briefly suspended that year while the qualification requirements were doubled. Once the new changes came into effect, it reopened in December 2010.

In July 2012, the program stopped accepting new applicants in order to clear a huge



Minister of Finance Jim Flaherty and Prime Minister Stephen Harper enter the House of Commons on budget day on Parliament Hill in Ottawa on Tuesday, February 11, 2014. THE CANADIAN PRESS/Patrick Doyle

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**Investor road to Canada hits a dead end with immigrant program's closing**  
IAIN MARLOW - ASIA-PACIFIC CORRESPONDENT  
The Globe and Mail  
Published Tuesday, Feb. 11 2014, 10:35 PM EST  
Last updated Tuesday, Feb. 11 2014, 10:53 PM EST

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Even among those who immigrated to Canada through the federal government's immigrant investor program, the initiative was viewed as a flawed, inefficient way to lure wealthy entrepreneurs who could benefit the economy.

backlog of approximately 60,000 pending applications, about 70 percent of them from China. Estimated time to process the applications was around six years. The application fees paid will be refunded as these applications will not be processed now.

An article in *The Globe and Mail* cites one businessman as saying that the eight-year process was a destabilizing time in which he, his family and his Chinese investment management firm were prohibited from making long-term plans involving Canada. He had applied so his daughter could go to university here, but she completed a postgraduate degree while they waited.

He further states, "I think it is a good decision to cancel the program. It is so painful for applicants to wait for the result. Instead, Canada should have a more efficient program to attract investor-immigrants."

A *Financial Post* article gives this interesting detail on the Canadian program:

"A story in the *South China*

*Morning Post* found there are 45,000 wealthy Chinese immigrants, with a combined worth of at least \$12.9-billion, waiting to get into Canada under the program. The number of applicants is six times higher than the number for similar programs run by the U.S., Britain and Australia, the newspaper said."

"There is also little evidence that immigrant investors as a class are maintaining ties to Canada or making a positive economic contribution to the country," the government said, adding immigrant investors pay significantly lower taxes over a lifetime than other categories of economic immigrants.

## Economic Impact

An article in *CNN Money*

states that the government decided to scrap the program after finding it provided little economic benefit.

"For decades, it has significantly undervalued Canadian permanent residence, providing a pathway to Canadian citizenship in exchange for a guaranteed loan

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**B.C. property market hazy after 'millionaire visa' scrapped**  
Tens of thousands of applications from wealthy investors scrapped after two years on hold  
CBC News Posted: Feb 11, 2014 6:33 PM PT Last Updated: Feb 11, 2014 8:41 PM PT

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Real estate and immigrant investors: 2/23

Real estate agents in Vancouver say property prices could take a hit, after Canada scrapped a program which allowed wealthy immigrants to fast-track the visa process.

The Immigrant Investor Program, launched in 1986, offered visas to business people with a net worth of at least \$1.6 million who were willing to lend \$800,000 to the Canadian government — for investment across Canada — for a term of five years.

Latest British Columbia News  
• 24 new police officers to crackdown on crime in Surrey  
• Chris Alexander says Canada's doors still open to rich Chinese



that is significantly less than our peer countries require," the Canadian Ministry of Finance wrote in its 2014 budget report. "There is also little evidence that immigrant investors as a class are maintaining ties to Canada or

making a positive economic contribution to the country." An article in *CBCNews – British Columbia* quotes West Vancouver real estate agent Clarence DeBelle who receives offers from mainland China for luxury property,

is now concerned the end of the investor program will have an impact on the local economy and the high-end housing market. "Most of the buying is coming from Chinese immigrants who are wealthy, so if we make it difficult for them to come into this country, we have killed 80-90 percent of the buying in West Vancouver."

Immigration lawyer Richard Kurland agrees. "When you suddenly stave off the intake of literally hundreds of millionaires in the Vancouver property market, prices can only go one way and that's down," said Kurland.

The *CBCNews* article further quotes Tom Davidoff with UBC's Sauder School of Business, who says the market is driven by other things like low interest rates and the local and global economies. "Given that in the last couple of years, we haven't seen the market cool off, it's hard to believe that freezing the investor market is going to kill even the high-end in Vancouver," said Davidoff.

A *BC Business* article states that senior economist Robin Wiebe with the Conference Board of Canada conducted a statistical analysis last year that showed a correlation between China's economic health, such as a rising GDP, and Vancouver's housing market. In all the speculation leading up to the budget, Wiebe says he heard no indication that the government was going to scrap the program, but thinks the local market can't help but be affected by fewer

investors buying up Vancouver real estate.

The CANIIP will be replaced by two pilot projects: an immigrant investor venture capital fund and a business skills program. However, wealthy investors can still come to Canada through the Start-up Visa Program, which encourages immigrant entrepreneurs to partner with private sector organizations to invest in local start-ups, or the Canadian Experience Class, which fast-tracks residency requests for people who have already lived and worked in Canada. ■

*See our industry reaction to the cancellation of this program starting next page.*

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## How Canada's new immigration rules could slow high end real estate sales

GARRY MARR | February 12, 2014 | Last Updated: Feb 12 6:55 PM ET  
More from Garry Marr | @DustyWaller



A survey from Re/Max of 16 Canadian markets found sales of what it called "upper end homes" higher in 75% of markets. In Vancouver, where a luxury home is classified as being worth \$2-million and up, had a 36% increase in sales from 2012 to 2013.

Gary Kurland/Paradea News File

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Canada's luxury housing market has already been impacted by changes to immigration policy and could be in for rougher times as foreign investors are lured to the United States.

CIBC Deputy chief economist Benjamin Tal said now that the federal budget released Tuesday has closed a loophole offering a shortcut to wealthy investors, he thinks it could have an even greater impact on housing markets in Vancouver and, to a lesser extent, Toronto.

"They basically had stopped the program," said Mr. Tal, about the Immigrant Investor Program which fast-tracked permanent residency for people who could come up with \$800,000. The money ultimately served as a interest-free loan to the government that was paid back to the immigrant in five years.

**Cabinet rift opens after Flaherty backtracks on Conservatives' key income-splitting policy**



"I know what our campaign commitments are and I stand by those commitments," Tony Clement said. Echoed Jason Kenney: "We

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## Vancouver Real Estate Hit by End of Immigrant Investor Program

Petti Fong | FEB 12, 2014

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Image by: MAG Marketing

**Feds drop program that they argue "undervalued Canadian permanent residence," but real estate agents worry how it might affect housing sales**


Vancouver real estate prices may not plummet but they are expected to take a hit now that the federal government has officially dismantled the Immigrant Investor Program.

The program, launched in 1986, allowed overseas residents with cash and a willingness to invest in Canada a shortcut into receiving their immigration papers. Experts say the program bolstered the Vancouver housing market with money largely from wealthy Chinese investors.

**FEDERAL BUDGET**

## Federal budget: Government dumps immigrant investor, entrepreneur programs

Quebec investor stream remains unaffected



A Canada Day citizenship ceremony in Montreal on Monday, July 1, 2013. PHOTO: THE GAZETTE / JOHN KENNEY

**Tobi Cohen**  
Published: February 11, 2014, 4:00 pm  
Updated: 6 days ago

OTTAWA – The federal government is eliminating once-and-for-all the much-maligned immigrant investor and entrepreneur streams, refunding applications for 66,000 individuals at a cost of \$2 million.



by KRIS STELL  
Managing Editor

# Industry Reaction to the Cancellation of the Canadian Investment Visa Program

**N**ow that Canada, as of February, has cancelled its Investment Visa Program, we asked U.S. attorneys and service providers involved with the EB-5 Immigrant Visa Program for their thoughts on how this might effect the United States' program, what lessons could be learned, and what might have went wrong.

We received varied responses, here's their answers:

## Question 1: What if any impact do you see the cancellation of the Canadian Investment Visa Program having on the U.S.'s EB-5 program?



"The cancellation of the Canadian program will make the U.S. EB-5 program more attractive. Rich Chinese will still have a way to get Western Hemisphere residence." – *Edward R. Litwin, Litwin Law*



"I don't think it will have much impact: the backlog for this program was so long (estimated as about seven years based on last-published processing times), anyone who tried to get into this program was taking a big risk in the first place and it was therefore not that appealing to most. For those who had no other options it was probably worth a try, but not a high priority as a 'best path' to Canadian citizenship. Most immigration lawyers that I know of in Canada were discouraging their clients from bothering with this program in its last iteration." – *Philip Cohen, Strategic Element Consulting*



"The cancellation will have a major impact on U.S. EB-5 program, it will re-direct investor interest to the U.S." – *Brian Su, Artisan Business Group, Inc.*



"I think the cancellation of the Canadian program will lead to increased interest in the EB-5 program, particularly among Chinese investors since the vast majority of participants in the Canadian program were Chinese. However, per country quotas could be imposed soon on Chinese investors which could cause the already long EB-5 process to become longer for Chinese nationals. If that happens, that could make the EB-5 a harder sell for Chinese nationals. There were apparently more than 40,000 Chinese waiting on investor visas. The U.S. quota of 10,000 is just a fraction of that." – *Greg Siskind, Siskind Susser PC*



"I anticipate there shall be interest in the EB-5 program from these unfortunate applicants. The Canadian program required applicants demonstrate a minimum net worth, however, access to financing and its popularity under the Canadian program would indicate that some of these applicants may not have the minimum \$500,000 to invest under the EB-5 program." – *Reza Rahbaran, Rahbaran & Associates*



*Kuck Immigration Partners*

"It will greatly exacerbate the wait impending backlog for Chinese nationals, which was certainly going to be a least a year long, and now, with increased interest in the U.S. EB-5 program, could stretch the wait time to several years." – *Charles Kuck, Kuck Immigration Partners*



"The implosion of the Canadian immigrant investment visa program can have a positive impact on the United States EB-5 Program." – *Boyd Campbell, Boyd F Campbell LLC*



*Salvatore J. Picataggio, Beshara Professional Assn.*

"There is already such a high demand for participation in the EB-5 program, so it may not make much of a noticeable difference. I have rarely heard from potential clients that they were deciding between the U.S. and Canadian programs." – *Salvatore J. Picataggio, Beshara Professional Assn.*



*Prashant Ajmera, Prashant Ajmera & Associates*

"EB-5 number will increase compared to last year. Chinese agents will now promote EB-5 more aggressively. In 2004, when we introduced EB-5 to agents in Canada, they were not interested in EB-5 as commission was very low and Canadian program was risk-free." – *Prashant Ajmera, Prashant Ajmera & Associates*



*Brandon Meyer, Meyer Law Group*

"This might help redress the balance between overly strong migration brokers on China and regional center project developers. If the migration agencies have to place thousands of investor candidates in quick order, this diminishes their bargaining power in shaking down the EB-5 projects for referral fees, equity kickers, etc." – *Brandon Meyer, Meyer Law Group*



"This could be a mixed blessing for the U.S. EB-5 program, at least in the short term. I think the rather obvious positive side is that the Chinese investors who are already in

the middle of the Canadian process are generally likely to continue their quest to relocate somewhere. Again, the most obvious choice is the United States. I say that because their choice of Canada is an indication of their inclination to immigrate to the Western Hemisphere. Their original capital will also become unencumbered, so they will have cash readily available that had been tied up in the Canadian program."

"On the other hand, the alleged reason for the cancellation of the Canadian program was to "eliminate a large and longstanding backlog of applications." Therefore, it is reasonable to assume that, whether the Canadian government processes those applications forward (which they are not going to do) or processes them backward (returning deposits to program applicants and close their files), it is going to take quite some time to complete either task. For that reason, I do not see a near-term tsunami of EB-5 investors hitting the West Coast. Nonetheless, should Canada take an inordinately lengthy amount of time to implement a new program, the number of Chinese seeking to participate in the EB-5 program could increase substantially."

"It is also important to note that the EB-5 program puts their investments at risk. The Canadian program did not. None of us can know how significant that was in those Chinese investors choosing Canada over the U.S. in the beginning. It could have been significant to all of them. We need to remember that the number of applicants for the EB-5 program may not be as much of an issue in our case as the U.S. limitation on the number of visas we are willing to issue. Which also leads me to speak to our own bureaucratic backlog with processing EB-5 applications. That alone has the power to make the question a moot point." – *Dr. Gregory Finkelson, American Corporate Services, Inc.*



Canada's immigrant investor program, along with that of Australia, have both been far more popular than the U.S. EB-5 program at an international level for a number of reasons, not the least of which is that the U.S. program requires an "at-risk" investment while the others assure that if a person invests, they WILL get residency, irrespective of any business success metrics. But there are other reasons which suggest this latest decision on Canada's part will push more investors towards the U.S. and EB-5: recent media coverage in both Australia and Canada have focused on an increasing distaste for migration, particularly from



China. While the issue certainly does not smack of the violent xenophobia witnessed in recent years in Europe (esp. Germany and Greece), it is clear that both Australia and Canada have put away the welcome mat for foreign investors." – *Jose E. Latour, Esq., EB-5 Public Relations*



There is a pent-up demand for wealthy Chinese to emigrate to western countries. Therefore, these investors will now actively look to the well-established EB-5 program in the United States for relief." – *Ronald R. Fieldstone, Arnstein & Lehr LLP*



"None – the Canadian program stopped accepting applications some time ago and people who wanted to leave China and come to North America were already coming to the U.S. Most of those who were to invest in Canada and can't do so now, will probably invest in the U.K." – *Margo Chernysheva, MC Law Group*



"The termination of the Canadian Immigrant Investor Program brings new opportunities as well as a challenge to the U.S. EB-5 Program. Upon termination, more than 75,000 pending applicants' funds will be returned to the investors, totaling more than 800,000 Canadian dollars each. The grand total being around US\$30 billion dollars which, theoretically, could be available for direct foreign investment. These investors are likely to choose other destination countries to place their investment."

"We believe that the U.S. is the top choice because of the vitality of the economy, superiority of the education and simply the proximity to Canada. Seventy percent of the pending applicants in the Canadian program are from China."

"Anyone already dealing with the migrant agencies in China, knows that most, if not all agencies handle Canadian Immigration, along with EB5, this includes the larger first tier agents. In conversations with migrant agencies over the years, we are often told that many investors would prefer the U.S., but have chosen Canada because the return of the investment money is guaranteed, the health system also guarantees medical treatment and often because that investor already has rela-

tives in Canada. Other than this, the Canadian program is much older and more well-known – it began in 1986. The commissions for the brokers were also higher than what was received from the U.S."

"If the said Chinese investors will invest in EB-5 Program in the U.S., undoubtedly EB-5 visa regression for Chinese investors will be more likely. We feel that this is an excellent opportunity to promote immigration reform and increase the existing quota."

"In addition, the available investment funds from the Canadian program may change the landscape of EB-5 marketing. In the past week, Mona Shah & Associates have been approached by several agents from mainland China, Hong Kong, India and Canada for possible transfers of their investors to the EB-5 program. EB-5 regional centers and project owners usually need to budget large amounts for traveling expenses to attend overseas expos, seminars and meetings and to pay high commissions to the agents, the sudden windfall of investors from the Canadian program may change the method and process of EB-5 fund raising." – *Mona Shah, Mona Shah & Associates*

#### Question No. 2: Are there any lessons to be learned from the closing of the Canadian Investment Visa Program?



"Any such program needs to have an economic benefit to the hosting country. Canada's economic benefit was tenuous at best and it appeared that the Chinese and other nationalities were 'buying' residence. The U.S. program, on the other hand, has a direct economic benefit by requiring the employment of at least 10 people." – *Edward R. Litwin, Litwin Law*



"Not really, in my opinion. The closing of the program was a political move and it is very likely that it may be replaced with another program at some point. Given that the Canadian economy was not as badly affected in the most recent economic downturn as the U.S. economy was, job creation was not as high a priority. If it was, I would not be surprised to see the government come up with some program more like the EB-5 program." – *Philip Cohen, Strategic Element Consulting*



"Based on the Canadian government reports, the program investors are not the type of investors they are intended for, many investors returned back to their native countries after they secured the Canadian legal residency and never intended to conduct further business or investment in Canada." – *Brian Su, Artisan Business Group, Inc.*



"The Chinese program involved making a five year interest-free loan of about \$750,000 to a provincial government in Canada. I'm not sure that Canadians could see the benefit of that type of investment nearly as much as, for example, a program like the EB-5 program in the U.S. which is mainly focused on job creation. And while I'm not excited about putting limits on how many visas can go to any particular country, that 99 percent of the Canadian investor visas were going to Chinese was probably also of concern given that many policymakers who would feel more comfortable with an investor program that had some more diversity." – *Greg Siskind, Siskind Susser PC*



"This further exemplifies the principles upon which the EB-5 program was created, where funds are invested in businesses and not with the federal government. Where funds create jobs, not just balance sheets. The efficiencies of business will always seek to maximize returns for investors and thereby lead to longevity of the business. The Canadian program was unable to be more than a source of alternative finance for the Canadian government." – *Reza Rahbaran, Rahbaran & Associates*



"The Ministry of Citizenship and Immigration in Canada confirmed in a statement that the existing federal Immigrant Investor and Entrepreneur Programs provide limited economic benefit to Canada."

"The Canadian Program has the following criteria:

- A minimum of 2 years of business or management experience acquired over the last 5 years.
- Have a net worth of at least 1.6 million Canadian

dollars, equivalent to approximately \$1.5 million USD. The assets do not need to be liquid-able. Qualified assets include: bank accounts, stock-exchange portfolios, real estates, company's value, etc.

Deposit 800,000 Canadian dollars, equivalent of \$750,000 US dollars, for 5 years, without interests, with the Government of Quebec or Canada. The investment is guaranteed by the government.

If the investor does not want to freeze the assets of 800,000 Canadian dollars for five years, the investor can obtain a loan from a Canadian financial institution. This loan will cost a total amount of approximately 190,000 Canadian dollars in interest and administration fees.

"The EB-5 Program is designed to stimulate the U.S. economy through job creation and capital investment by foreign investors. What creates jobs? Modern economic theories conclude that jobs are created by investment when an opportunity exists. Opportunity is created by innovation and demand. EB-5 Program increases the capital expenditure with the objective of increasing or creating the capacity for producing goods or services. The US EB-5 Program needs to clear out the backlog and become more transparent, efficient and effective." – *Mona Shah, Mona Shah & Associates*



"Nothing in life is permanent, especially if it is Canadian! Actually, the reality on the ground in Canada is that the politics of the program got in the way of it functioning properly. We have to avoid that happening in the U.S." – *Charles Kuck, Kuck Immigration Partners*



"Direct government participation in an immigrant investment visa program is a liability. Government rarely does things well." – *Boyd Campbell, Boyd F Campbell LLC*



"It seems that public perception played a large role in the cancellation of the program. The EB-5 program's focus on job creation and the at-risk requirement of investments (that is, the return is not and cannot be guaranteed) could keep the American public in favor of the program." – *Salvatore J. Picataggio, Beshara Professional Association*

(continues next page)





"The U.S. government needs to regulate regional centers and other stakeholders. Stop giving regional center status as there are too many."

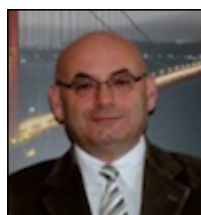
"The Canadian federal government failed to make sure of funds they received under investor program. Compare to this Quebec Government that made good use of the investment fund. Also, between 2002-08 the federal government of Canada accepted investor files under a simplified process (just a three-page form and visa fees to be paid to get in line) and hence countries like India received more than 1,000 investors filing in six months. China received more than 40,000 files. I believe one of the main reasons to close the program for NOW is to return these files to applicant who would not have qualified in the first place."

"Another thing to learn is decide the file in 12 months or less. Businessmen will not wait for several years to get immigration. They have many other options."

Also, the U.S. government should work out a strategy to make sure funds coming in to the U.S. can be safe." – *Prashant Ajmera, Prashant Ajmera & Associates*



"A 'no-risk' program, which does little to force its participants to engage in productive economic activity or develop ties to the country runs the risk of debasing its country's citizenship by allowing people to use the program as a means of obtaining a passport for a 'rainy day.'" – *Brandon Meyer, Meyer Law Group*



"One of the biggest problems with government is that policy makers all too often do not count the costs of the programs that they birth. When a woman becomes pregnant, she and her husband do not plan just for the ensuing nine months. They plan for the next 18 to 20 years. Our government – indeed, all governments – should plan far into the future just as the expectant family does. We are already learning the primary lesson that the Canadians have learned. There is much more to process than there are resources allocated to processing it. My question would not be 'What have we learned?' It would be 'What are we going to do

about what we have learned?"

"The EB-5 program represents a golden opportunity for both the U.S. economy and the Chinese EB-5 investors. It is truly a win-win program, but if the processing remains as stagnated as it has been, neither the U.S. nor the Chinese investors will reap the full potential and benefits of the EB-5 program." – *Dr. Gregory Finkelson, American Corporate Services, Inc.*



"Hard to say, but given the continued flagrant violation of U.S. securities regulations by most Chinese migration agents and by many U.S. project promoters, EB-5 is hardly treated with trust in China. I expect that those projects with a legacy of integrity, whether large or small, will continue to draw investors from China at a strong rate. But the big winners could be the passport programs from St. Kitts or the very popular Portuguese and Greek residency programs currently in the market." – *Jose E. Latour, EB-5 Public Relations*



"Each U.S. program must be individually evaluated to determine the level of risk. There is a high degree of variation in the risk profile in the EB-5 projects. Therefore, it is critical that the investors and their agents conduct adequate due diligence in order to mitigate the risk of the investment. There are several very credible U.S. projects that are worthy of consideration." – *Ronald R. Fieldstone, Arnstein & Lehr LLP*



"The program in Canada was structured differently – no risk, no commitment, no real contribution necessary – here in the U.S. – too much commitment, too much risk – so no comparison." – *Margo Chernysheva, MC Law Group*



"Nothing is for certain, it can always go wrong. The 65k Canadian applicants (plus those 'in the wings') should immediately review U.S. EB-5 filings, or if not suitable, E-2 alternatives." – *Gary S. Wolfe, The Wolfe Law Group*

### Question No. 3: What do you see as having gone wrong with the Canadian program?



"There was no objective standard to see if the program was really working (e.g. 10 new jobs). Also, once the focus is on being able to 'buy residency,' the program will fail." – *Edward R. Litwin, Litwin Law*



"The government seemed to indicate that they were not happy with the fact that many immigrants who took advantage of the program did not actually end up living in Canada. More importantly, they indicated that the program did not meet the government's 'objectives.' It's hard to say that something or other went wrong with the program without a more definite indication from the government of what motivated them to shut it down. Those of us on the sidelines often felt that the program did not accomplish much in terms of strengthening the country or otherwise leveraging the capital and/or abilities of immigrant investors. It was more like a way for the government to sell the equivalent of government bonds to foreign investors in exchange for immigration." – *Philip Cohen, Strategic Element Consulting*



"The Canadian program may not have done enough job on investor screening so that some ineligible candidates went through the program." – *Brian Su, Artisan Business Group, Inc.*



"I don't think of it as something 'going wrong.' It was a government-run program, and the government changed. That is why it is so important to have bi-partisan support of the program in the U.S." – *Charles Kuck, Kuck Immigration Partners*



"The Canadian government realized that some of the private investment projects had failed or were going to fail and that it (the government) was liable for investor losses." – *Boyd Campbell, Boyd F Campbell LLC*



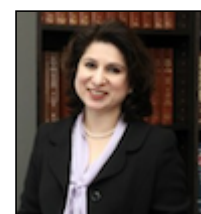
"They didn't seem to control the program very well, whereas USCIS is continuing the review policy and work towards fairness for both investors and U.S. projects. This dedication to quality control will help the EB-5 program in the long run." – *Salvatore J. Picataggio, Beshara Professional Association*



"The requirements for participation were too lax, therefore becoming a strict 'visa for dollars' arrangement." – *Brandon Meyer, Meyer Law Group*



"It was too easy and no risk to receive the Canadian residency through this program so no appreciation." – *Margo Chernysheva, MC Law Group*



"Generally speaking, government-sponsored projects are less efficient due to the bureaucratic procedures and political risks. This is really evident in the case of the Canadians.

• There is very little "new" money coming into Canada. Almost all initial investments made through the program come from loans from Canadian banks to provincial governments.

• No Long-Term Economic Contribution: Most immigrant investors are not making a long-term positive economic contribution to Canada. The immigrant investors are less likely than other immigrants to stay in Canada over the medium to long term. They report employment and investment income below Canadian averages and those of most other economic immigrants. Over a 20-year career, an immigrant investor pays about \$200,000 less in income taxes than a federal skilled worker and almost \$100,000 less in taxes than one live-in caregiver.

• Little Capital Actively Invested: The amount capital actively invested in economic development initiatives has been limited. The requirement for provinces to guarantee repayment of the investments after five years limits their ability to invest funds into more high-risk initiatives that tend to reap greater rewards for Canada in terms of true innovation and job creation. In the past



15 years, less than half of the Immigrant investors' funds are actively invested in the Canada.

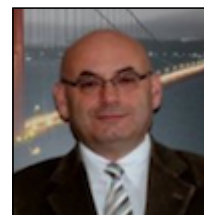
• **EB-5 Program as a Comparison to the Canadian Program:** The EB-5 program in the U.S. has avoided all of the vices that caused the termination of the Canadian program. In the EB-5 program, the investors invest cash or "new money" into the mostly privately owned new commercial enterprise. The investment is placed "at risk" and the return of the funds cannot be guaranteed in any form. The funds are invested into job creating and economic development initiatives.

**Job Creation and Money at Risk:** The very elements that have caused investors to be cautious of EB-5 have actually proved to be an advantage. Engaging the private sector by placing new capital at risk has undoubtedly boosted the economy. It is our belief that even if Canada implement an EB-5 styled investment program, it still may not give Canada the desired results. This is because the economy and population of Canada just cannot compare to the US." – *Mona Shah, Mona Shah & Associates*

#### Some Closing Thoughts



"Remember: the ONLY immigrant investor shut down in Canada was the national one; most if not all of the Canadian provinces continue to have their own investor visa programs!" – *Jose E. Latour*



"Perhaps my greatest concern is that we, meaning the U.S., get our EB-5 program operating with much more efficiency and integrity. We cannot afford to offer an incentive like EB-5 to foreign investors and then allow months to pass with little or no progress in bringing their investment to fruition. Developers cannot afford to wait on EB-5 processing while they are trying to move forward expeditiously on their projects. And we can ill-afford to allow scamming of investors through EB-5 to continue. How the government addresses these issues is up to them. In the meantime, my focus will continue to be to help people involved in all aspects of the EB-5 program become highly successful." – *Dr. Gregory Finkelson*

"The U.S. took a better approach by making this a



'job creation' visa. It put money into our economy and created definite jobs. The problem is that the regional centers may undermine the concept a bit, since sometimes the jobs that are created are not definite, but only identified on paper." – *Edward R. Litwin*

A great big THANK YOU to everyone who responded to our survey. ■

#### The Source for Information on the U.S. EB-5 Visa Program

# EB5

# info.com

EB-5 Regional Center Project analysis, risk ratings and due diligence  
*Inform your client, protect your practice*

## Could Bitcoins Fund EB-5 Investments?

Digital currency may be outlet to evade China's strict capital controls as it gains in popularity and use.

Introduced in 2009, the bitcoin is rising in popularity and use worldwide.

This "crypto-currency" is an open source peer-to-peer payment network that uses cryptography to secure funds. Funds can be instantly transferred person-to-person via the Internet without going through a bank or clearing house, you can use them in every country, your account cannot be frozen, and there are no prerequisites or arbitrary limits. Payments are processed with either no fees or very small fees, which gives merchants wishing to avoid credit card fees an incentive to accept them. Notable vendors include OkCupid, Reddit, WordPress, and Chinese Internet giant Baidu.

According to the bitcoin website, it is free from the highs and lows of inflation, interest rates and market fluctuations and its value is determined by the number of bitcoins in circulation, a number that is capped at 21 million. Currently there are about 11 million bitcoins in existence.

However, because bitcoin isn't backed by a mint, transactions are not subject to the same regulations as other currencies. While every single transaction made using bitcoin is posted publicly, the identity of the user remains anonymous – a protection many like while on the other hand it also makes it hard to track perpetrators in the case of theft. Unlike traditional currencies, this one doesn't have a reserve but relies on the honor system and is traded on the Web.

#### How Does it Work?

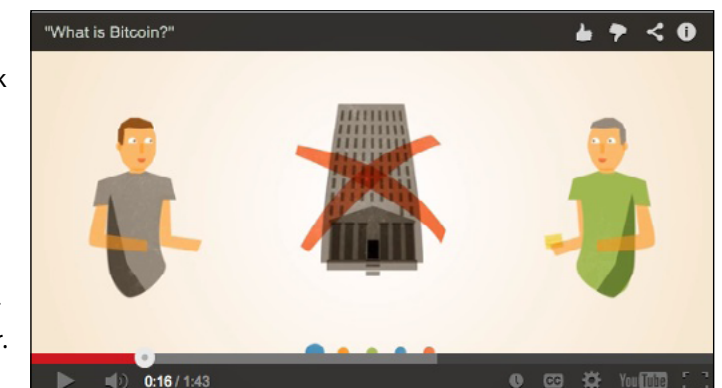
Bitcoins are generated all over the Internet by anyone running a free application called a bitcoin miner. "Mining" requires a certain amount of work for each



block of coins. This amount is automatically adjusted by the network so bitcoins are always created at a predictable and limited rate. Earned bitcoins are then stored in a digital wallet and verified by a "miner."

To receive a bitcoin a user must have a bitcoin address – a string of 27-34 letters and numbers – which acts as a kind of virtual postbox to and from which the bitcoins are sent. There is no registry of these addresses, people are anonymous when making a transaction.

These addresses are in turn stored in bitcoin wallets that are used to manage savings. They operate like privately-run bank accounts with the proviso that if the







data is lost, so are the bitcoins owned.

### Gaining Worldwide Acceptance

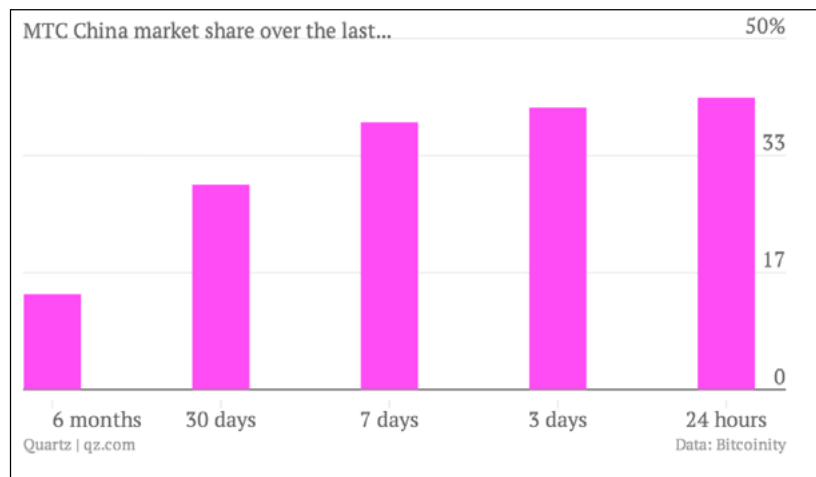
Bitcoin's popularity and use is growing. The world's first bitcoin ATM went live in a downtown Vancouver shop in October 2013, allowing people to exchange cash for the digital currency. Approximately 20 businesses in Vancouver now accept bitcoin.

In November, British billionaire Sir Richard Branson's commercial flight company Virgin Galactic announced it started accepting the digital currency for its Virgin Galactic flights to space. And on November 28, University of Nicosia, Cyprus' largest private university, said it will start accepting Bitcoin for tuition fees – the first university to do so.

Various bitcoin exchanges have been set up around the world, with MtGox being among the most prominent. In early November however, BTC China overtook Mt. Gox and Bistamp to become the largest bitcoin exchange site globally, handling 34 percent of global bitcoin transactions over the previous seven days, according to data from Bitcoin.org, a website that tracks bitcoin exchanges.

The virtual currency has been quickly adopted in China, where BTC China is said to be the most active globally and has become the biggest player in the biggest bitcoin market in the world. Bitcoin's use in China has been attributed to it being an effective way of reliably getting money out of the country.

The FBI has said that it recognized this virtual currency offered "legitimate financial services" but added they could be "exploited by malicious actors." In 2012, The Economist reasoned that Bitcoin has been popular because of "its role in dodgy online markets", and in October 2013 the FBI shut down one such service, Silk Road, which specialized in illegal drugs (whereupon



the FBI took control of approximately 1.5% of all bitcoins in circulation). This caused a 20 percent decline in bitcoins but the currency rebounded quickly and surpassed previous levels. On Nov. 17, the price of a single bitcoin climbed from \$490 to \$569 — a 16% increase — and had reached a new high of \$608 by Nov. 18 in Asia.

On December 5, Bloomberg reported that bitcoin prices plunged to \$875 at 6:02 p.m. Shanghai time on BitStamp, an Internet-based exchange where the currency is traded for dollars, euros and other currencies. They closed at a record high of \$1,132.01 on Dec. 6. On the Mt.Gox exchange, the currency traded at \$901, down from the high of \$1,240. Prices dropped to as low as 4,521.1 yuan on BTC China, after rising as high as 7,050

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yuan.

China now makes up more than 50% of the world's daily bitcoin turnover, according to the data site Bitcoinity.

### Bitcoin Appeal

On Dec. 11, 2013, *The New York Times* ran an article explaining the popularity of bitcoin in China. "Bitcoin's appeal to Chinese investors is manifold. The currency experienced a major spike in value in July shortly after being the subject of overwhelmingly favorable reports on CCTV, China's state-run television station, and People's Daily, the main Communist Party newspaper. The currency received a further boost in October when the Chinese search engine Baidu, which commands more than 80 percent of the Chinese search market, announced a plan to accept bitcoins as payment for its online security and firewall services.

"Last week, a real estate developer in Shanghai declared that it would accept bitcoins as payment for housing units in the city's Pudong district. The company, Shanda Tiandi, posts bitcoin exchange values daily outside its office. This raises the possibility that China's high-net-worth investors could try to use bitcoins to circumvent strict investment caps on the property market. "Analysts say that there is a deeper and more contentious reason for China's bitcoin boom. The popularity of the digital currency has been linked to the fact that China's citizens are unable to trade the renminbi as freely as people in other countries trade their own currencies. Beijing keeps a close grip on the renminbi, concerned about potential disruptions to the economy that could result from sudden outflows or inflows of funds.

### Bitcoin Scandal in China

The NYT article also reported on a recent scandal, the largest bitcoin scandal yet:

"On Oct. 26, the website of Global Bond Limited, a Chinese exchange platform for bitcoins, the booming digital currency, suddenly went dead. Then, without warning, GBL's roughly 500 remaining investors were kicked out of the company's official QQ group, a social media platform that the company was using for investor relations. By nightfall, the scale of the swindle was made public – 25 million renminbi, or \$4.1 million – making it one of the largest bitcoin fraud cases since the currency's inception four years ago." ([http://](http://sinosphere.blogs.nytimes.com/2013/11/17/bitcoin-scandal-reflects-popularity-of-virtual-currency-in-china/?partner=rssnyt&emc=rss&_r=0)

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**The New York Times**  
Tuesday, December 10, 2013

WORLD U.S. N.Y. / REGION BUSINESS TECHNOLOGY SCIENCE HEALTH SPORTS

**Sinosphere**  
Dispatches From China

November 17, 2013, 5:05 pm 5 Comments

**Bitcoin Scandal Reflects Popularity of Virtual Currency in China**  
By ADAM CENTURY

On Oct. 26, the website of Global Bond Limited, a Chinese exchange platform for bitcoins, the booming digital currency, suddenly went dead. Then, without warning, GBL's roughly 500 remaining investors were kicked out of the company's official QQ group, a social media platform that the company was using for investor relations. By nightfall, the scale of the swindle was made public – 25 million renminbi, or \$4.1 million

George Frey/Getty Images

[sinosphere.blogs.nytimes.com/2013/11/17/bitcoin-scandal-reflects-popularity-of-virtual-currency-in-china/?partner=rssnyt&emc=rss&\\_r=0](http://sinosphere.blogs.nytimes.com/2013/11/17/bitcoin-scandal-reflects-popularity-of-virtual-currency-in-china/?partner=rssnyt&emc=rss&_r=0))

GBL only opened its doors in May. Red flags were ignored, such as being located in Beijing while stating it was in Hong Kong and lacking an official company email address and license to provide financial services. It was invested in anyways, demonstrating the popularity of the currency.

This fraud doesn't seem to have had much impact on China's fondness for bitcoins. On Nov. 18 two related venture capital firms invested \$5 million in BTC China, and the value of bitcoins surged to an all-time high, due in part to Chinese demand.

### China Bans Bitcoin Transactions

But how long before Beijing turns an eye toward a currency that is explicitly designed to evade government control?

An article on Quartz.com tried to answer this question: "The Chinese government is in the progress of rolling out financial reforms that could eventually allow Chinese investors to freely trade renminbi and make offshore investments. Bitcoin, however, threatens to short-circuit these gradual changes. Chinese bitcoin holders could conceivably use bitcoin to speculate on foreign currency and put their investments offshore.

"The U.S. Federal Reserve Bank of Chicago concluded in a research paper earlier this month that bitcoin "is free of the power of the state, but it is also outside the



protection of the state." However, the scrutiny of the state — be it the U.S., China, or anywhere else — is steadily increasing."

The Dec. 5 *Bloomberg* article titled 'China Bans Financial Companies From Bitcoin Transactions' states that China's central bank has barred financial institutions from handling bitcoin transactions in a move to regulate the virtual currency after an 89-fold jump in its value sparked a surge of investor interest in the country. The People's Bank of China said financial institutions and payment companies can't give pricing in bitcoin, buy and sell the virtual currency or insure bitcoin-linked products, according to a statement on the central bank's website.

"Bitcoin plunged more than 20 percent to below \$1,000 on the BitStamp Internet exchange after the People's Bank of China said it isn't a currency with "real meaning" and doesn't have the same legal status. The public is free to participate in Internet transactions provided they take on the risk themselves, it said."

"The ban reflects concern about the risk the digital currency may pose to China's capital controls and financial stability after a surge in trading this year made the country the world's biggest trader of Bitcoin, according to exchange operator BTC China. Bitcoin's price jumped more than ninefold in the past two months alone, prompting former Federal Reserve Chairman Alan Greenspan to call it a "bubble."

"The concern is that it interferes with normal monetary policy operation," said Hao Hong, head of China research at Bocom International Holdings Co. in Hong Kong. "It represents an unofficial leakage to the current monetary system and trades globally. It is difficult to regulate and could be used for money laundering. I think the central bank is right to make this move."

#### EB-5 Use of Bitcoins?

To date we here at EB5News.com have yet to hear of an EB-5 project being funded with bitcoin. But with an open global market, the possibility is there as investors look for easier ways to invest. However — buyers beware!

"Bitcoin prices are unsustainably high and the virtual money isn't currency," Greenspan

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Currencies News

## China Bans Financial Companies From Bitcoin Transactions

By Bloomberg News · Dec 5, 2013 5:25 AM ET · Comments Email Print

China's central bank barred financial institutions from handling Bitcoin transactions, moving to regulate the virtual currency after an 89-fold jump in its value sparked a surge of investor interest in the country.

Bitcoin plunged more than 20 percent to below \$1,000 on the BitStamp Internet exchange after the People's Bank of China said it isn't a currency with "real meaning" and doesn't have the same legal status. The public is free to participate in Internet transactions provided they take on the risk themselves, it said.

Dec. 4 (Bloomberg) — Former Federal Reserve Chairman Alan Greenspan comments on Bitcoin. He spoke during an interview with Trish Regan on Bloomberg Television's "Street Smart." (Source: Bloomberg)

said in a Bloomberg Television interview from Washington on Dec. 4. "It's a bubble. It has to have intrinsic value. You have to really stretch your imagination to infer what the intrinsic value of Bitcoin is." ■

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28 November 2013 Last updated at 10:19 ET

## James Howells searches for hard drive with £4m-worth of bitcoins stored

James Howells: "When I went up to the landfill site yesterday my first thought was 'I've got no chance'"

A Newport man has been searching a landfill site in south Wales hoping to find a computer hard drive he threw away which is now worth over £4m.

Related Stories

Back in November, James Howells made the news as he searched for a hard drive with \$7.5 million worth of bitcoins on it that he'd thrown it out. The drive had sat in a drawer for years and contained 7,500 bitcoins he'd received in 2009.

# Chinese FDI in the US: 2013 Recap and 2014 Outlook

Keys trends analyzed are food, energy and real estate.

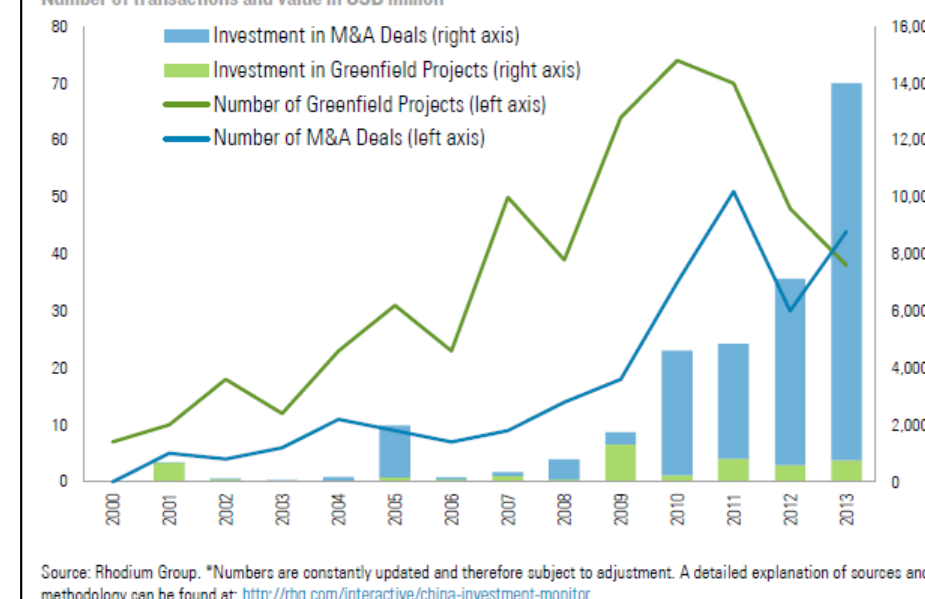
Chinese investment in the United States doubled in 2013, driven by large-scale acquisitions in food, energy and real estate. Private firms are now dominating capital inflows, accounting for more than 80% of transactions and more than 70% of total transaction value. We expect Chinese interest in US assets to remain strong in 2014 because of aggressive economic reforms in China, a more liberal policy environment for Chinese outbound investors, and a positive outlook for the US economy. This study by Thilo Hanemann and Cassie Gao of the Rhodium Group recaps the key trends of Chinese investment in the US in 2013 and outlines our view for 2014.

#### KEY TRENDS IN 2014

**1. More transactions, bigger deals:** After a 36% drop in transactions in 2012, the number of Chinese US deals trended up again in 2013. We count a total of 82 investments, split between 44 acquisitions and 38 greenfield projects (though the number of greenfield investments will likely be upward-revised in coming months). At the same time, the average size of projects increased, lifting the total deal value to a new record high of \$14 billion, double the amount of the previous year (Figure 1). The top six transactions (Smithfield, Nexen US, Mississippi Lime JV, Chase Manhattan Plaza, General Motors Building, Wolfcamp Shale) account for more than 80% of total combined value.

**2. Food, energy and real estate were the big-ticket**

**Figure 1: Chinese FDI Transactions in the United States, 2000-2013**  
Number of transactions and value in USD million

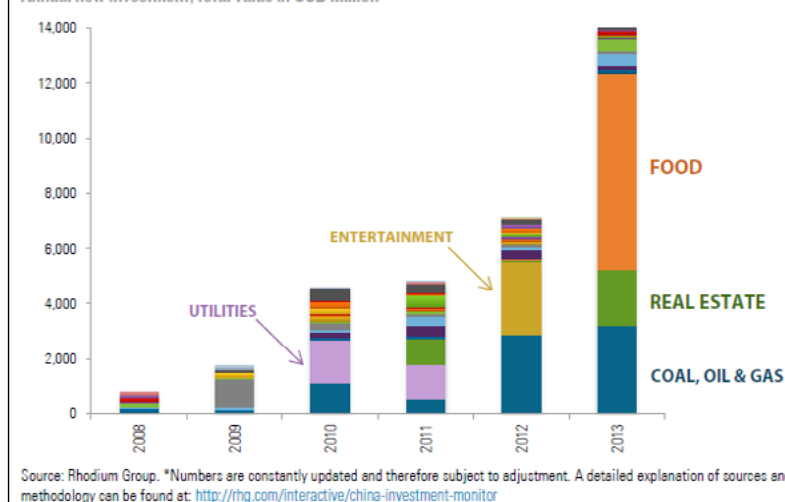


**items:** Previously not a major recipient of Chinese capital, the food sector was the top target in 2013 due to the \$7.1 billion Smithfield takeover (Figure 2). Investment in the unconventional oil and gas boom continues to be a major driver of Chinese FDI in the US, with projects worth \$3.2 billion concluded in 2013 (including CNOOC's acquisition of Nexen's US operations, Sinopec's Mississippi Lime joint venture with Chesapeake, and Sinochem's stake in the Wolfcamp Shale). Commercial real estate became a hot sector in 2013 with 18 investments worth \$1.8 billion, among them projects in San Francisco (LUMINA), Los Angeles (Sheraton Gateway), New York (GM building, Chase Manhattan Plaza) and Detroit (Detroit Free Press and David Stott buildings). Chinese interest in advanced manufacturing, services and consumer products continued to be strong, but the deals were mostly small and medium in size. Big winners in 2013 were healthcare and biotech (Complete Genomics, Saladax, Zonare) and new energy (A123, Mia-Sole, Global Solar, Satcon, Ralls). The RHG China Invest-



**Figure 2: Chinese FDI Transactions in the US by Industry, 2008-2013**

Annual new investment, total value in USD million



Source: Rhodium Group. \*Numbers are constantly updated and therefore subject to adjustment. A detailed explanation of sources and methodology can be found at: <http://rhg.com/interactive/china-investment-monitor>

ment Monitor provides a detailed breakdown of all deals in 2013 by industry and geography.

### 3. Private firms now dominate Chinese capital inflows:

Private firms have always accounted for the vast majority of investments in the US – on average, more than 70% in the past five years – but their share in total investment value remained comparably small, given the dominance of state-owned firms in capital-intensive sectors like energy or utilities. In the past two years, private investors have taken on more medium and large-sized deals, while activity by state-owned firms has declined, remaining mostly limited to energy and a handful of manufacturing and service industries such as aviation or telecommunications. In 2012, private firms for the first time accounted for more than half of total transaction value (59%). In 2013, private firms and entrepreneurs accounted for 87% of transactions and 76% of total value (Figure 3).

### 4. Chinese firms are becoming significant contributors to local economies:

2013 was a milestone for

employment provided by Chinese firms in the United States. According to our count, Chinese-owned companies provided more than 70,000 full-time jobs in the United States by the end of 2013, a more than 8-fold increase compared to 2007 (around 9,000 jobs). The most significant acquisitions were Smithfield (which employs 37,000 workers in the US), A123, Nexen, MiaSole and Complete Genomics. Many existing Chinese firms in the US increased local hiring in 2013, including Lenovo, Huawei, Cirrus, Blu LNG and International Vitamin Corporation. Chinese investors are also ramping up community outreach and philanthropic efforts; for example, Dalian Wanda Group gifted \$20 million to the Academy of Motion Picture Arts & Sciences.

### 5. Most failures or divestitures are related to commercial factors, not politics:

National security screening remains an important consideration for Chinese investors, and recent data show that filings with the Committee on Foreign Investment in the United States (CFIUS) have increased along with growing number of deals (Figure 5). In 2013, several high-profile transactions were impacted by national security complications, including the sale of Nexen to CNOOC, the sale of A123 to Wanxiang, the takeover of Smithfield by Shuanghui, and the failed takeover of Hawker Beechcraft by Superior Aviation. However, most Chinese firms were able to successfully navigate through the CFIUS process or find mitigation solutions. Looking at all abandoned Chinese acquisitions and divestitures in 2013, plain vanilla commercial factors were the most important reasons for failure, including disagreements over terms and price (Lenovo-IBM x86 server assets, CDB-Lennar), concerns about commercial viability on the buy side (Dongfeng/Geely-Fisker), difficulties with financing (Chinese consortium-ILFC), legal complications (Sinovel exit), or industry down-cycles (Suntech shutdown).

### 2014 OUTLOOK

1. Chinese reform agenda further increases commercial OFDI rationale: The growth of Chinese investment in 2013 and previous years was mostly driven by changing commercial realities in the Chinese marketplace. The aggressive reform package unveiled after the Third Plenum will further expand the rationale for Chinese firms to go global. The linchpin of President Xi Jinping's new reform program is letting the market allocate resources, which will affect the pricing of many input factors. With rising costs and a

stronger yuan exchange rate, Chinese firms must adjust their business models, moving up into higher value-added products and down the value chain to capture margins closer to consumers. Going abroad is key to this adjustment. Offshoring low-value-added activities to other countries, acquiring brands and technological capabilities, and directly serving customers in overseas markets all require FDI. Another major driver for China Inc. to go abroad is to strengthen competitiveness at home, and this pressure will only increase if the government follows up on its promises to improve conditions for private firms and open up new industries to foreign investment.

### 2. Firms will have more freedom to invest overseas:

There are also strong signals that Beijing will speed up the liberalization of the outward FDI policy environment. Private-sector Chinese companies in particular currently face a complicated approval process for outbound investment, which often involves multiple bureaucratic entities with different interests and priorities. This process delays decisions, increases deal risk and puts Chinese firms at a disadvantage in competitive bidding processes. The reforms laid out in Beijing would eliminate some of these hurdles, leaving the decision of whether to make direct investments abroad in the hands of businesses. In December, a notice by the State Council indicated that China will cut back the role of the National Development and Reform Commission in the OFDI approval process, an important first step towards a more liberal and less bureaucratic regulatory environment.

### 3. The US continues to be an attractive place for China's new generation of outbound investors:

With its large market, educated workforce and world-leading technology and brands, the United States has strong appeal to the next generation of Chinese outbound investors.

The bipartisan budget deal and a positive medium-term outlook for the US economy are further bolstering the attractiveness of the US as investment destination in 2014. And while company valuations have gone up due to loose monetary policy, M&A deal-making activity has only grown moderately from post-crisis levels. A less aggressive M&A environment is positive for Chinese buyers, as their lack of experience and the burdensome approval system in China limits their readiness to compete head-to-head with domestic or other foreign firms for US assets.

### 4. Several political risks threaten a positive 2014 OFDI outlook:

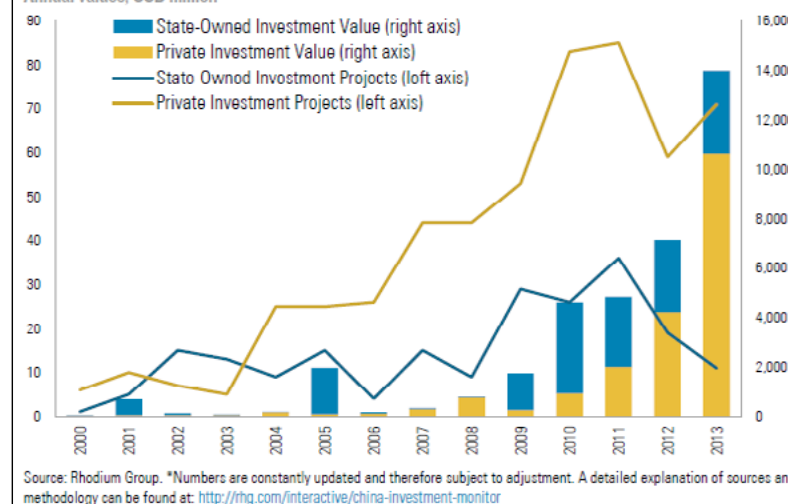
For one, China's economic and political reforms contain elements that could negatively affect overseas investment in some circumstances. Capital discipline on state-owned enterprises imposed through higher dividend payments and market-driven interest rates may reduce their outward investment and create volatility, particularly in energy and metals. A second risk is that Beijing chokes back on capital account liberalization out of fear of a major crisis on the road to re-balancing. Structural reforms, including financial sector opening and capital account liberalization, are risky, and in case of instability, China may take steps to reverse the recent course of more openness to overseas investment. New rules for individuals to report their overseas holdings could also lead to more caution, particularly in connection with a stricter line against corruption and tax evasion.

On the US side, national security remains an important factor in deal-making, and a shift toward technology assets further complicates the screening process. Moreover, the debates in 2013 have shown that the idea of an expansion of investment screening from a narrow national security focus to a broader "net benefit" test

including economic considerations is still favored by some in Congress. The pace and seriousness of Beijing's attempts to address some of the distortions in which existing concerns are rooted, including interest-rate, industrial-policy and market-access reforms, will determine the direction of this discussion going forward. The progress in negotiations over a US-China BIT and particularly Beijing's readiness to improve market access for US firms in China will also be an important indicator for sentiment in the US towards Chinese investment and thus political deal risk in the United States outside of CFIUS. ■

**Figure 3: Chinese Direct Investment in the US by Ownership, 2000 - 2013**

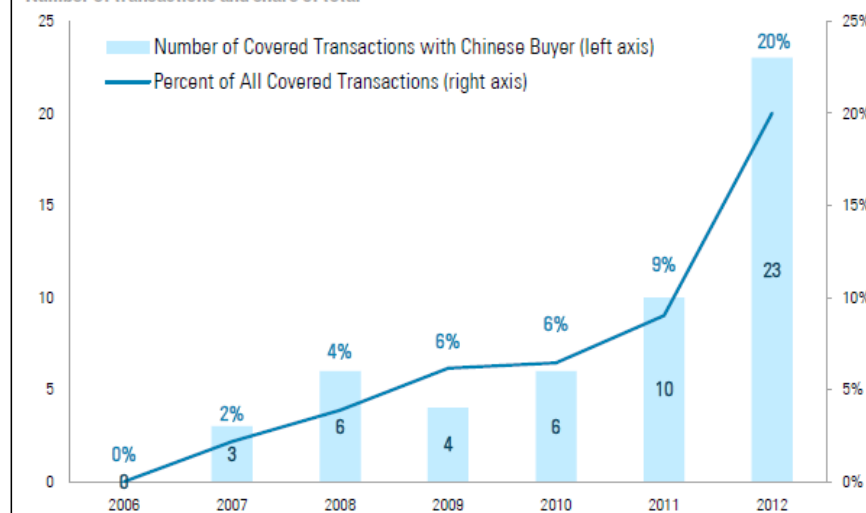
Annual values, USD million



Source: Rhodium Group. \*Numbers are constantly updated and therefore subject to adjustment. A detailed explanation of sources and methodology can be found at: <http://rhg.com/interactive/china-investment-monitor>

**Figure 5: CFIUS-Covered Transactions Led by a Chinese Buyer, 2006-2012**

Number of transactions and share of total



Source: CFIUS Annual Report to Congress, Public Version.



# County Tracker 2013: On the Path to Recovery

The National Association of Counties has produced an economic analysis of America's county economies, which serves as a reminder that the U.S. economy happens on the ground, in the over 3,000 counties that provide the basis for county governments. As fiscal tightening continues to limit the scope of state and federal investment, it is becoming imperative for states and the federal government to work with counties to maintain the fundamentals of the U.S. economy — county economies.

The report was compiled by Emilia Istrate and Nick Lyell of the National Association of Counties.

The year 2013 was a year of growth for county economies. In aggregate, the economic output (GDP) of the 3,069 county economies grew by 2.3 percent, while jobs expanded at a 1.7 percent annual rate. The housing market was on the rebound, with median home prices gains soaring above 11 percent in 2013. This was more than double the long-term rates, which indicated a strong pace of the housing market recovery. The labor force started to grow at higher rates in 2013 than in the previous years, leading to slowly declining unemployment rates. (see table 1)

Findings

An analysis of annual changes of four economic performance indicators — economic output (GDP), employment, unemployment rates and home prices — between

2012 and 2013 across the 3,069 county economies reveals that: Growth continued in 2013, but the recovery is still fragile in some parts of the country. Across all regions, county economies registered at least modest growth in economic output (GDP), jobs and home prices and drops in unemployment in 2013. About half of U.S. county economies had no recession or recovered their economic output (GDP) lost during the recession by 2013, most of them in the South. About 800 county economies, mostly

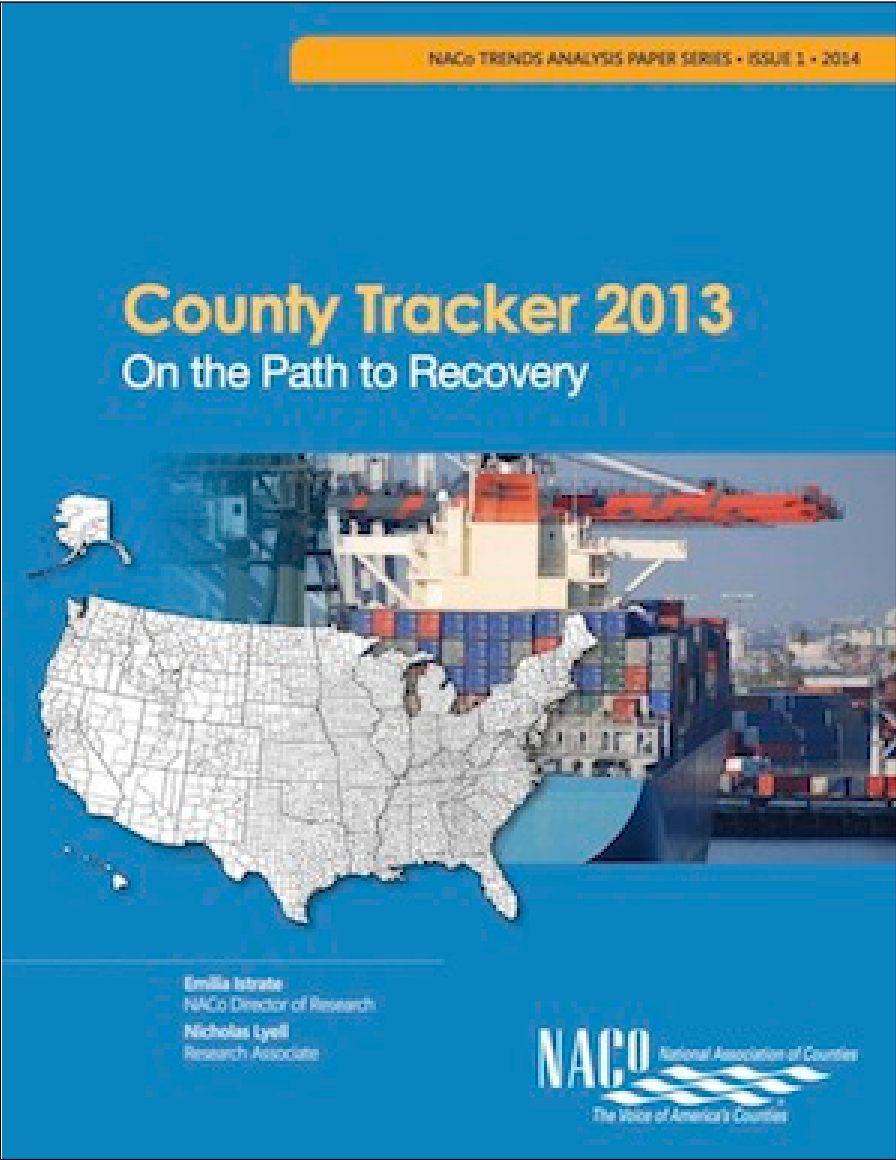
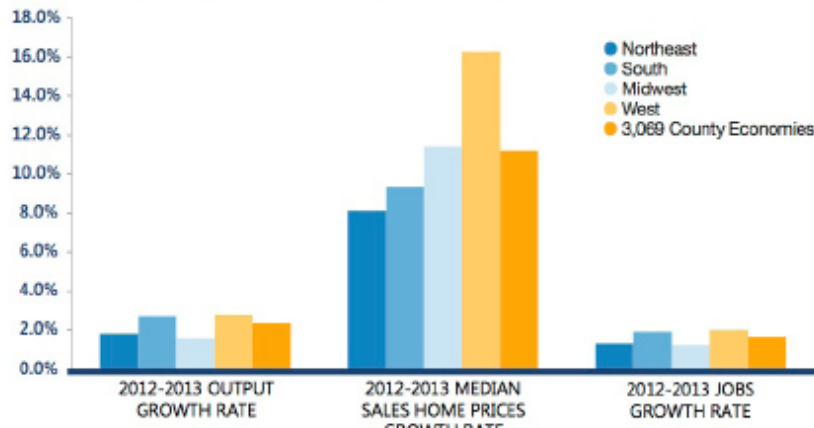


TABLE 1. The Performance of the 3,069 U.S. County Economies in 2013, Recession and Recovery

Economic Indicator	2012–2013 Change	2013 Value	Peak Year	Trough Year	Annualized Growth Rate, Recovery	Annualized Growth Rate, Recession
Economic output (GDP)	2.3%	\$13.2 (TRILLIONS)	2007	2009	2.2%	-2.0%
Jobs	1.7%	136.2 (MILLIONS)	2007	2010	1.5%	-1.7%
Median Home Sale Prices, average	11.2%	\$125 (THOUSANDS)	2007	2011	8.0%	-4.6%
Unemployment Rate, average	-0.5 pps	7.2%	2007	2010	-.7 pps	1.4 pps

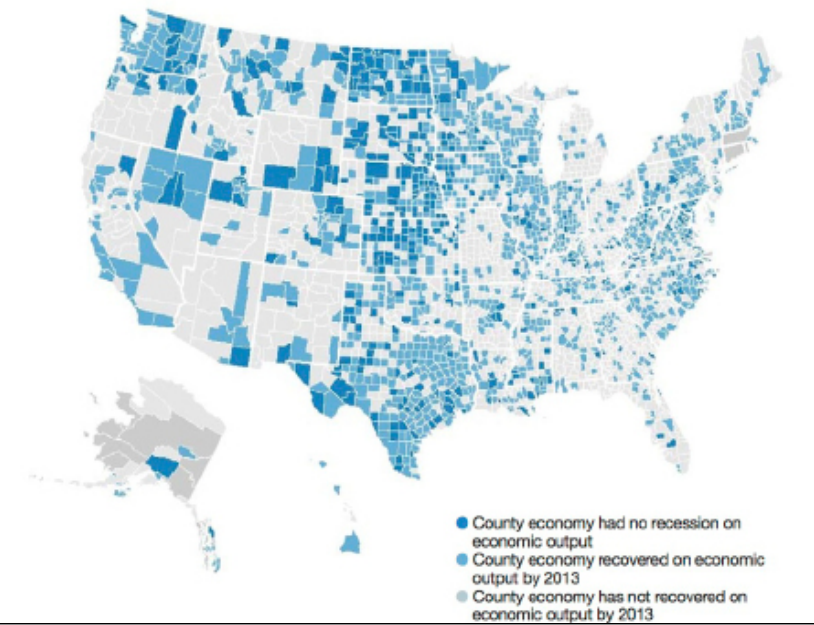
Notes: Annualized growth rates represent annual average changes for unemployment rates.  
Source: NACo analysis of Moody's Analytics Data

FIGURE 1. Regional Aggregates of County Economies, Growth Rates, 2012-2013



Note: Changes in the unemployment rate are not displayed in this graph as they are measured in a different scale (in percentage points) than growth rates.  
Source: NACo analysis of Moody's Analytics data

MAP 1. Economic Output (GDP) Recovery Rates in County Economies, 2013



in the South and Midwest, had no drops in employment or were above their pre-recession levels in 2013. The housing sector witnessed the largest increase in recovery rates between 2012 and 2013 among all the indicators analyzed. Only 54 county economies, mostly in the Midwest, reached their pre-recession unemployment levels. (see fig. 1)

About half of the U.S. county economies had no recession or recovered their economic output (GDP) lost during the recession by 2013. Among them, almost 400 witnessed no declines in GDP, a large share being small Midwestern county economies. Southern county economies represented 44 percent of the county economies with no recession or recovered economies, followed by Midwestern county economies. (see map 1)

Large Counties

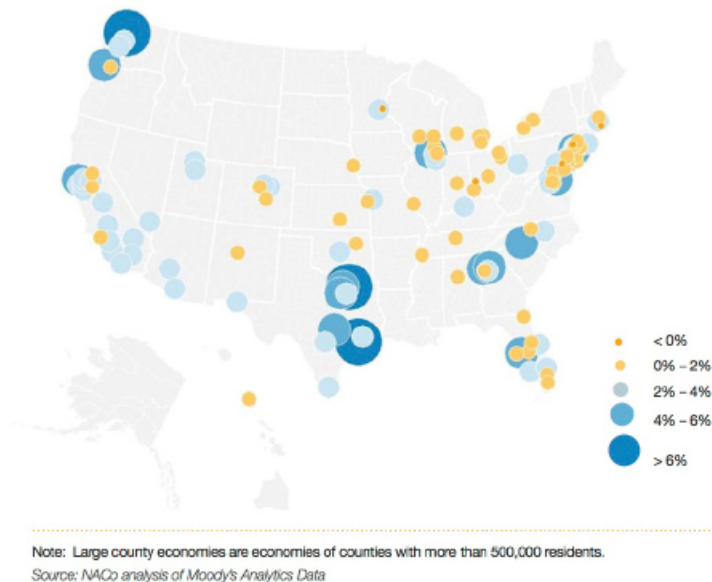
Large county economies were at the core of the recession and the recovery. Only 4 percent of the 3,069 county economies, the 122 large county economies — in counties with more than 500,000 residents — delivered around 58 percent of the county economies' output (GDP) growth and a similar share of the added jobs over the recovery. Even though the recession hit these county economies the hardest, they showed the fastest rates of recovery in terms of economic output (GDP), jobs, and unemployment. (see map 3)

Medium Counties

Employment in medium-sized county economies was more stable during the recession, but had a mixed record in 2013. About half of medium-sized county economies — in counties with populations between 50,000 and 500,000 residents — had shorter and/or shallower job recessions than the national average, more than any other group of county economies. The majority of medium-sized county economies registered job growth in 2013, but employment remained the same or declined in 23 percent of the mid-sized



MAP 3. Economic Output (GDP) Growth Rates for the 122 Large County Economies, 2013



residents — had no recession or fully recovered across all four indicators by 2013, the most among all groups of county economies. One small county economy managed to escape the latest U.S. recession altogether. The housing market downturn was mild in small county economies, with more than half not going through home price declines or already returned to pre-recession home price levels by 2013. Twenty-eight (28) percent of small county economies were still in recession or on the path to recovery in terms of economic output (GDP), employment, the unemployment rate and home prices. (see map 5)

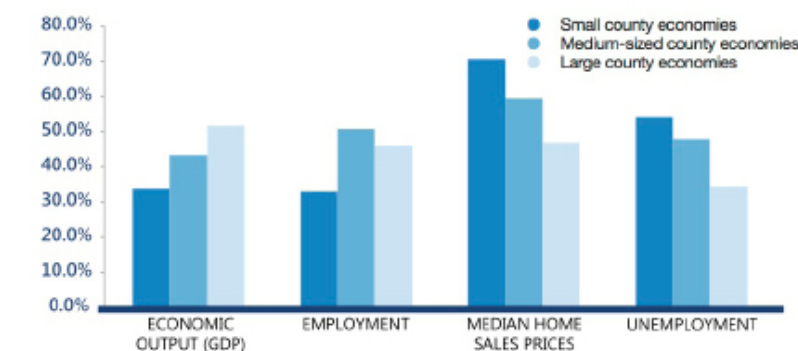
Almost 70 percent of U.S. county economies are in counties with less than 50,000 residents. Almost half of all jobs in agriculture (48 percent) are located in small county econo-

group. (see fig 4)

The 820 medium-sized county economies represent one of the most varied groups of county economies. Thirty-nine percent of all county residents live in a medium-sized county and three quarters of all these counties are in metropolitan areas. The bulk of U.S. manufacturing jobs, about 43 percent, are found in medium-sized county economies.

By 2013, the recovery in small county economies covered the entire scale of potential outcomes. Twenty-seven (27) small county economies — in counties with less than 50,000

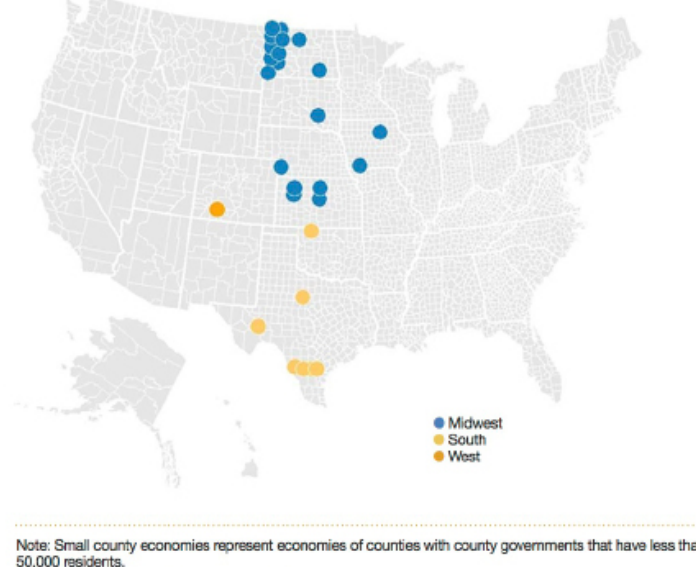
FIGURE 4. Share of County Economies with Shorter and/or Shallower Recession than the Average for the 3,069 County Economies, 2013



Notes: Large county economies are economies of counties with more than 500,000 residents. Medium-sized county economies represent economies of counties with county governments that have between 50,000 and 500,000 residents. Small county economies represent economies of counties with county governments that have less than 50,000 residents.

Source: NACo analysis of Moody's Analytics Data

MAP 5. 27 Small County Economies that Had no Recession or Fully Recovered Across the Four Indicators by 2013



mies. Two-thirds of this category registered expanding economic output (GDP) and jobs and almost all of them had rising home prices.

Overall this analysis of county economies shows a diverse landscape of recovery. Growth continued in 2013 but at varying degrees across the county leading to differences in economic recovery. See the entire report at: <http://www.naco.org/research/Pages/county-tracker.aspx>. ■

# American Mayors Go East To Recruit Chinese Investors

**A Dec. 7, 2013 article in *The Economist* explains how more and more mayors of American towns are courting Chinese companies in order to get investment money for their towns.**

The article begins in rural Thomasville, Alabama, a town with a population of fewer than 5,000, 60 miles from the closest interstate.

"This October, though, its mayor was spotted sitting in a pipe-factory canteen in Dalian, a city in north China, eating lunch with the factory's owners. Sheldon Day was there to drum up investment. Two years ago he convinced another Chinese company, which makes copper tubes, to build its first American factory in the county next door. The plant will create around 300 jobs when it opens next year. Mr Day wants more."ing the recession by 2013, most of them in the South. About 800 county economies, mostly

The article goes into details on how mayors such as Day are traveling into China to tell potential investors how welcome they would be back home.

## Americans in China

In 2007, on average, an American mayor touched down every two months. By 2013, it was one every 10 days. In October that average rose to one every three days as mayors from Kokomo, Indiana to Portland, Oregon flew in to sell their cities.

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**America and China**

## Choose me! No, me!

**Mayors go east to set out the store**

Dec 7th 2013 | NEW YORK | From the print edition

THOMASVILLE, Alabama seems as far away from China as you can get. Fewer than 5,000 souls live there, and it sits more than 60 miles from the closest interstate highway. This October, though, its mayor was spotted sitting in a pipe-factory canteen in Dalian, a city in north China, eating lunch with the factory's owners. Sheldon Day was there to drum up investment. Two years ago he convinced another Chinese company, which makes copper tubes, to build its first American factory in the county next door. The plant will create around 300 jobs when it opens next year. Mr Day wants more.

He plays up his town's smallness. "If you want attention to your company, some real bang for your buck, Thomasville is on your side," he declares. If an investor were to set up in town, he could walk into the local grocery and a granny would give him a pat on the back. "The community has been very supportive—they've accepted our Chinese friends with open arms."

Charles Sumner

The courting of China happened back in 2008 when America's economy slumped and Chinese investment grew. According to the Bureau of Economic Analysis, Chinese direct investment into America rose by an average 71 percent a year between 2008 and 2012 (see also the recently released *Foreign Direct Investment* report on page 19). In addition, city efforts are often backed by state incentives, such as tax credits or worker-training programs for firms opening a factory.

*continues next page*



## Getting China's Attention

More and more of America is getting in on the act. After all, according to the FDI report, the United States is the world's largest recipient of direct investment, and helping investors choose where to invest is big business. States the article:

"The battle for Chinese attention is fierce. Aaron Brickman, SelectUSA's deputy director, explains that American cities are competing for projects not only against each other, but against cities in Canada, Australia and Europe. Other mayors are also racking up air miles — Boris Johnson, the mop-haired mayor of London, recently charmed locals in Beijing by riding a bicycle and cracking Harry Potter jokes.

"Among American mayors, ambitions vary. Some are just starting to dip their toes in the water. Jill Swain, the mayor of Huntersville, North Carolina, made her first trip in May after she saw what these efforts had done for Alabama towns. Others have grander visions. San Francisco, which has attracted 30 Chinese firms since 2008, wants a critical mass of them to make the city the first choice for Chinese companies setting up American offices. In 2011 Chicago's then-mayor, Richard M. Daley, announced that he wanted to make his city the most "China-friendly" in America. Carl Brewer wants his city, Wichita in Kansas (where Cessna is based), to help supply parts for China's general-aviation industry. Wichita set up a Beijing office in October, and plans another in Xian. Reciprocal delegations have been lined up for next year.

"There are political risks in these efforts. Some mayors have come under fire for spending too much on travel. Voter-disapproval deters others. The mayor of Farmer City, Illinois, cancelled his plans after residents expressed anger at the idea of using city money to woo foreign businesses. Chad Auer, a mayor in a right-wing bit of Colorado, had to take to YouTube to explain that when Richard Nixon went to China in 1972, it turned out to be worth his while.

"For that reason, mayors often tend to lag a little behind business sentiment in their state. One business delegation from Alabama, that was visiting China recently, said they would welcome investment in the state by Huawei, the Chinese mobile-phone-equipment-maker that is constantly being accused by officials in Washington, DC of cyberspying. Even in his enthusiasm, Mayor Day of Thomasville would not go as far as that." ■



Chinese mobile phone equipment maker Huawei would be welcomed in Alabama.



Sheldon Day (left), mayor of Thomasville, Alabama; Jill Swain(second from right), mayor of Huntersville, North Carolina; and Mike Schmitz (right), mayor of Dothan Alabama, take a photo after signing a memorandum of understanding with Wei Xiaoquan, mayor of Langzhong, Sichuan province. Provided to China Daily.



## This article is not

a recitation of the statutory and regulatory requirements of the EB-5 program. It is assumed that the reader is at least familiar with the basic requirements or where to find them in the Immigration and Nationality Act (Section 203(b)(5) and in the regulations (8 C.F.R. 204.6).

There are some things that work well in the world of EB-5 processing and adjudications; it seems that at least some of the leadership in the agency are committed to improving the program in terms of efficiency, integrity and predictability.

USCIS Director Alejandro Mayorkas is one of those leaders and he is an outspoken advocate of the program. He appears to be genuinely interested in engaging stakeholders, attorneys, project developers and others who work in this field daily, or who would like to do so. As the director has said, we need to improve efficiency, integrity and predictability in the EB-5 Program.

Here are three possible improvements ("program enhancements" in government speak) that can and should be implemented in those three areas.

• **Efficiency.** To make

# How the USCIS Can Improve the EB-5 Program



the program more efficient, the USCIS needs to allocate the necessary resources to decrease EB-5 processing times. The latest processing time report from the California Service Center ("CSC"), which is the only office that processes EB-5 petitions, shows that it is processing I-526 petitions filed before March 16, 2012. This is unacceptable and it is, or should be, an embarrassment to the USCIS.

Prospective investors and developers have a hard time believing that I-526 adjudication will take a year or longer. On the same report, the shortest petition processing time at the CSC is two weeks for an extraordinary ability nonimmigrant and an athlete, artist or entertainer nonimmigrant. The longest processing time, not including I-526 petitions or im-

migrant petitions affected by immigrant visa number backlogs, is five months, for religious worker petitions, which require an actual site visit from a USCIS investigator or contract investigator on USCIS's behalf. I-526 petition processing time must be reduced because it is incredibly



Current processing times of EB-5 petitions are unacceptable.





**USCIS Director Alejandro Mayorkas**

unfair when compared with other types of petitions.

If the USCIS does not plan to implement premium processing of I-526 petitions any time soon, then it should take steps to ensure that the move later this year of EB-5 case processing from the CSC in Laguna Niguel, CA to the new EB-5 Program Office in Washington, D.C. results in expeditiously reaching its processing time goal of three months.

This goal will require hiring and training new adjudicators and authorizing whatever resource allocations will best work to quickly and dramatically reduce the wait time for adjudication of these petitions.

A truly efficient EB-5 program has no room for taking over one year to adjudicate an I-526 petition.

• **Integrity.** There have been news articles galore covering the EB-5 fiasco that resulted from a scam in Chicago. Such unfortunate events hurt the EB-5 program in different ways. The USCIS suffered because it appeared as if the agency was unaware of the scale of the fraud and it was unable to protect investors and unable to protect the integrity of the program. The EB-5 stakeholders suffered because news of the scam reached potential investors quickly and spread like wildfire; some inaccurate and misleading information accompanied this panic, and it created further uncertainty and doubt in the minds of potential investors.

The reality in the EB-5 world is that such scams are quite rare, though they do exist. Most of the regional centers are either inactive or do not have current projects that they are promoting. The remaining established

regional centers have good track records, they are not defrauding anyone, they have projects that at least comply with the EB-5 law and regulations, and they do not present any significant danger of someone running off with the money.

The USCIS and its Fraud Detection and National Security (FDNS) unit do a relatively good job in policing the EB-5 landscape. Also, the Securities and Exchange Commission is working in a cooperative arrangement to further protect the integrity of the EB-5 program.

All parties involved, the USCIS, EB-5 stakeholders, and the other U.S. government agencies involved, share a common interest in protecting the integrity of the EB-5 program. The private bar, along with EB-5 associations, can do a lot of self-policing by monitoring the websites, the overseas marketing and other activities of their peers. The USCIS can do a better job of finding and stopping those “bad apples” that threaten the whole bunch of legitimate, creative, and successful projects promoting foreign investment and job creation in the U.S.

• **Predictability.** Over the past few years, the USCIS has engaged in a curious and exasperating “hide the ball” exercise of policymaking through issuance of Requests for Evidence (“RFEs”). If not policymaking, then certainly the USCIS has not been forthcoming with respect to its policy or interpretation of the law and regulations on certain EB-5 issues. In some respects, this is not the agency’s fault; the EB-5 law and regulations are very generic and there are a lot of “gaps.”

Two major examples of this curious behavior are the concepts of “material change” and the “tenant occupancy” model of job creation. Other than causing many sleepless and restless nights for EB-5 practitioners and their regional center clients, it was not clear what the USCIS hoped to accomplish in this exercise. Instead of issuing a clear policy memorandum to the public, the USCIS would raise these novel issues in RFEs and leave petitioners and EB-5 counsel scratching their collective heads trying to figure what policy was behind the request.

Thankfully, this process seems to have subsided or least tapered a bit, until the next hot button issue is raised in this manner. The May 30, 2013 release of an EB-5 adjudications policy memorandum is to be applauded and hopefully, the USCIS will do more in 2014 to focus on improving predictability. ■

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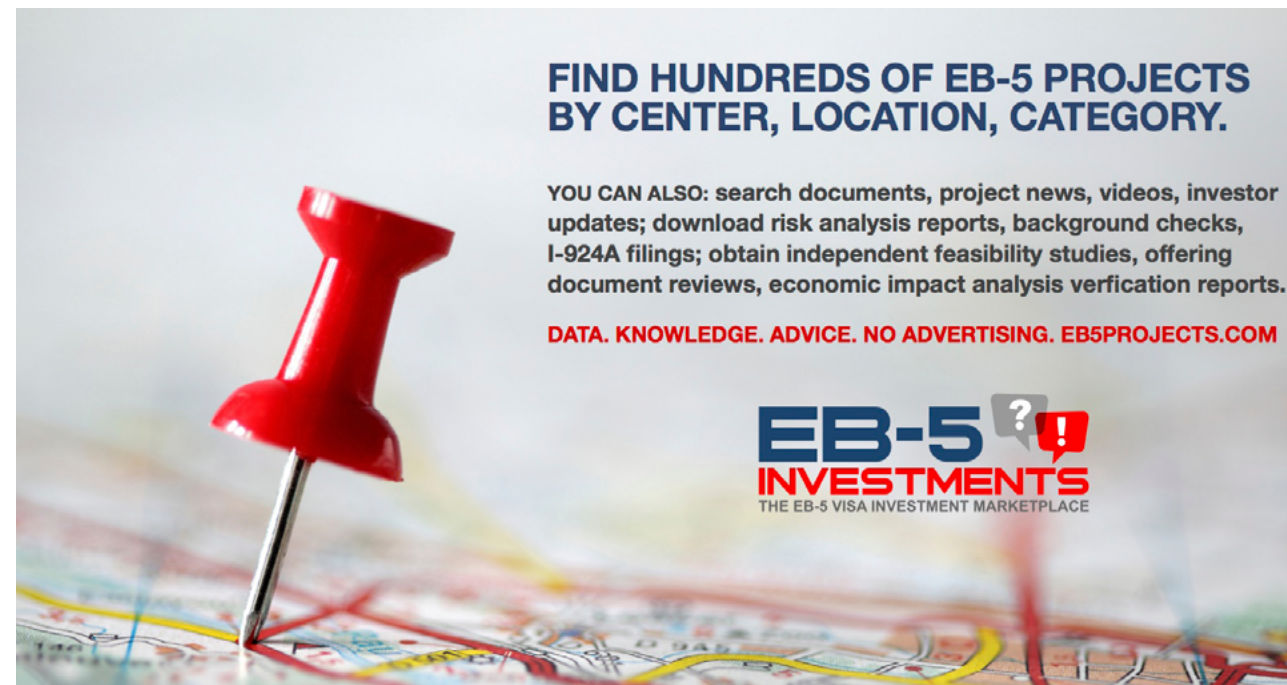


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# EB-5 Investment Report Interview with Michael Gibson

Part 2 of an interview with an industry expert covers Chinese immigration agents and the role of regional centers.

**U**S Advisors.org's Michael Gibson discusses the latest hot topics in the EB-5 industry during his interview with *EB-5 Investment Report Magazine's* Aimee Rios.

## Gibson's Background

Before founding US Advisors, Michael Gibson was with Citicorp Capital Markets. He helped manage risk for the bank, manage risk for clients and did a lot of large-project funding for some very large, sovereign states.

After leaving Citibank in 2006, he discovered the burgeoning EB-5 program and its projects. At the time, there were only 13 regional centers, and maybe four or five different projects in the market; no investment report, no trade associations, no EB-5 conferences. He discovered that the business plans were a nightmare, if they even had any.

This experience showed Gibson that the EB-5 program is a fantastic program for developers raising capital and for the investors to get their green card, but he also saw there was a huge lack of information. As a result he formed U.S. Advisors as a way to facilitate the flow of information, the risk analysis, the due diligence, not only for the investors but for the attorneys who are seeking guidance on which projects were out there and how safe the projects were to accomplish their goals.



U.S. Advisors' Michael Gibson, left, during an interview with EB-5 Investment Report's Aimee Rios.

Fast-forward from 2007 to 2013, which has seen the industry mature tremendously and is approaching close to 400 regional centers. At any point in time in the market, there's probably between 30 to 50 projects being offered, all different sizes, shapes, different asset classes, different industry groups, and the problem is, there's just simply no one source for information. U.S. Advisors has set itself up to be that source by launching EB5Projects.com, a central processing place so people can find out information about the different projects.

*Part 2 of the interview with Rios continues now:*

## Chinese Immigration Brokers

"Now it's our understanding that the larger Chinese immigration brokers maintain active offices in the United States. Are these types of immigration brokers who have offices in the U.S. possibly violating U.S. security laws?" asked Rios.

"Again, we cannot give guidance because we're not on the regulatory side, but if you go through some of the case law and the SEC's No Action Letters, it becomes quite clear, at least to me, that people who are residing in the U.S. and operating and doing business to affect the securities' transactions absolutely should be registered.

"I don't think there's any gray area. It would be up to the regulators to decide if the migration agents who have offices in the United States if they're violating securities law, but this is again where I think the onus is on the issuer. I think for the person who is raised, the developer or the regional center, or the issuer who wants to raise capital, what I would do is try to be as conservative as possible in my practices.

"I think by engaging with a foreign migration agent you may have a Reg S offering in place, meaning the activity occurs offshore. That's probably fine. And as long as it occurs offshore you're probably in a safe harbor. But I think by that migration agent having an office in the United States and having persons who are compensated in some form, I think that that would then again perhaps violate the Reg S exemption.

"And we come into the whole point of do you need to do that? I think you can do capital raises without engaging with firms who have U.S. representatives," Gibson said.

"Michael, you have previously expressed concerns about how Chinese immigration brokers seem to be very attracted to EB-5 offerings. Can you tell us what the function of a Chinese immigration broker is and what their role is with respect to potential EB-5 investors?" asked Rios.

"The role of the Chinese migration agent is basically to raise capital. They're the intermediary between the U.S. issuer or developer and the Chinese investor. And in this case China, they're the largest market. They account for over 80 percent of the capital raised in the market, but there are agents elsewhere. There are agents in China, Russia, Brazil. They're not as well developed so we'll focus on China.

"The migration agents actually started off as issuing just visas. Their primary function as I understand was to issue visas to foreign countries. Primarily they're travel agents. I mean, I think they're licensed as travel agents, so they're not financial experts, and we've seen that recently. They really don't understand the complexity of these transactions.

"What has happened is they facilitated the issuance of the visa information from the investor to the immigration attorneys who would then file the I-526.

"Now their role has evolved over time into where they are actually now pretty formidable investment



banks. They actually get to dictate which U.S. projects get funded and which don't. So their role is primarily what we would look at in the United States as broker/dealer. They are effectively, for all practical purposes, a broker/dealer.

"Now they're operating offshore and the way they're operating is slightly different because unlike in the United States where all the fees need to be disclosed to the investors, overseas apparently there is no such requirements.

"They're going to the investors, they're telling them these are safe securities, these are the promises. There's discussion of under-the-table redemption guarantees, which are illegal.

"The whole point is they are a highly motivated sales force. Some of them have offices in all of the provinces. They may have more than 100 staff. The presentations are second to none. Some of these occupy huge space in the best hotels in China. They have a huge staff of very smart, friendly sales persons, and their goal really is to introduce these projects to the Chinese market, to their clients who are the investors.

"Our concern is that there isn't full disclosure of all the material information that they need to know. So we've seen cases in the United States where EB-5 projects are undergoing either litigation, don't have all their permits issued, there is some material obstruction to the project being developed and this information is not being disclosed to the investors. That would be number one.

"Number two would be that the fees disclosure, the fees paid to these migration agents are not also disclosed. Now that didn't used to be a problem a few years ago in 2007/2008. The average fee was about 15 to 20, \$30,000 and that was taken from the administration fee that is charged up front. Over time, because the projects have grown in size and the need to raise capital has in-



creased both in size and the velocity, these projects are having to get funded in sooner, in shorter and shorter time intervals. What has happened is the agents have started to charge more and more.

"So now in a typical arrangement they will charge all of the upfront administration fee, which would range between \$40,000 to \$60,000, and in addition they will charge points on the loan or the debt arrangement. The way that would work is that the developer would be charged a fee, let's say eight percent. They investor would be typically given one percent. So there is a seven point spread, some of that would go to the regional center and other parties and then the rest would go to the migration agent.

"In some cases we're seeing a compensation package of front-end and back-end fees of over \$150,000 per \$500,000 investment, which I can guarantee you none of the Chinese investors are aware of."

#### Regional Centers Paying Fees

"Just for discussion purposes, let's say the regional center pays \$150,000 to a Chinese immigration broker. That sounds like a lot of money. Could this payment have a negative impact to proposed EB-5 business enterprises, and what happens to the financial feasibility?" asked Rios.

"I don't think they would affect the feasibility of the project. The project itself is really in its own silo, so whatever the asset that's being developed. I think the success is going to be based more on the business plan and the adoption of that asset into the local market.

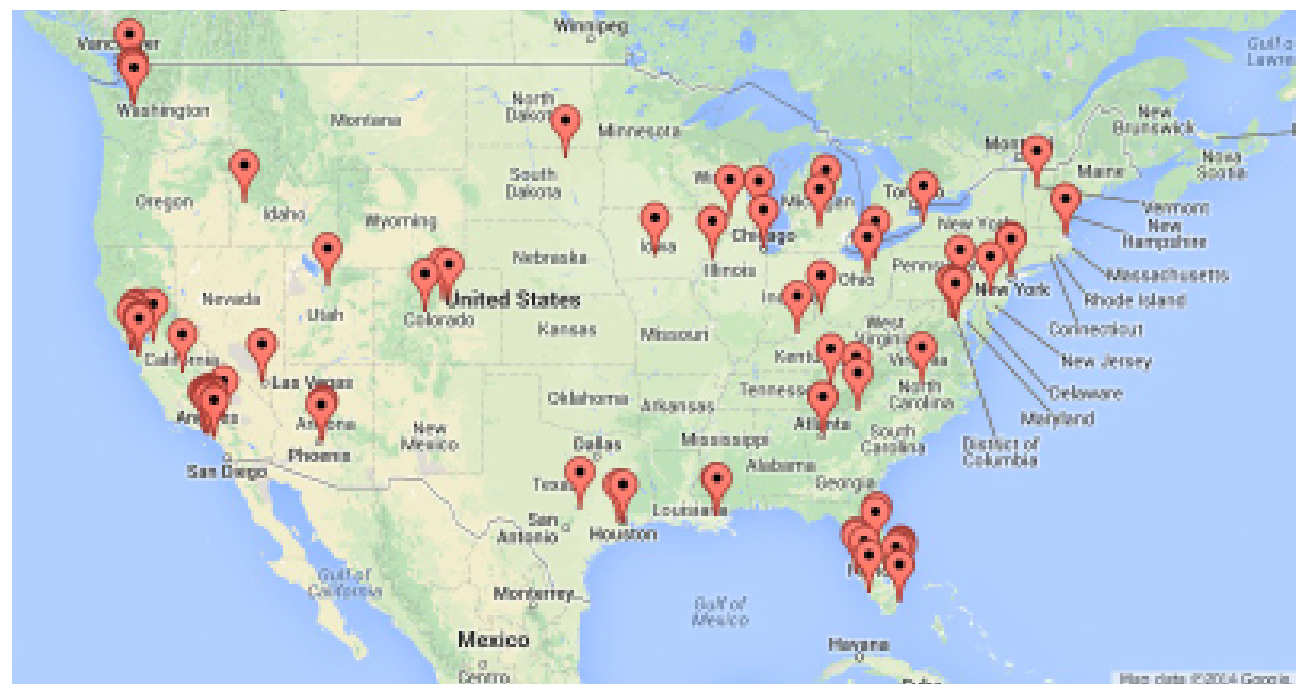
"If it's a hotel, if there's demand for hotel rooms in that market, I think that the project will do very well.

"It really depends on the micro, the macro conditions, the need for the asset. If it's a commodity extraction, for instance an oil, natural gas, or gold, or even milk, that's another commodity, if there's demand for the asset, for the product, then I think the job creation will occur and the eventual exit should occur with, regardless of any fee commission.

"Where we see the problem, and we actually don't really care what the fees are that are paid to the agents. I mean in some cases the agents work quite hard doing seminars and marketing, and I know they spend a considerable amount of resources to get the investors into these projects. We don't actually have a problem per se with the fee arrangement. Our issue is with the disclosure of that compensation agreement to the client.

"I think the reason that is material or important in our view is that by not disclosing that, the clients think, the investors think that the agents are their friends and that they're doing this because they have their well-being in mind. We know from the study of ethics and markets going back millennia that when you have such a large compensation in front of a person, they're going to be highly motivated perhaps not to disclose any potential issues to the client.

"The issue becomes with such a large fee in place – imagine if somebody was paying you \$150,000 and you knew of some inherent problems in the program or in the project, or in the asset, or in the market, how motivated would you be to tell this potential client?



LOCATION OF EB-5 VISA REGIONAL CENTERS

"I think the problem is without disclosing these fee arrangements the investors are not aware that this significant amount of motivation might dissuade this migration agent from giving them full and complete disclosure on all of the material aspects of the investment."

#### Role of Regional Centers

"We thought one of the main purposes of EB-5 capital was to provide low cost capital to be invested in U.S. businesses. Are these types of payments to Chinese immigration brokers being disclosed by regional centers to their EB-5 investors?" asked Rios.

"I'm going to say the role of the regional center itself has evolved over time. Where we used to see just a few years ago the regional center was the owner/operator/developer/general partner in the development of the asset, nowadays that's not so common. Typically, we see the regional center becoming itself a marketing agent if you will.

"There may be some securities questions as to the role of these regional centers. For instance, very popular in the program right now is the 'rent-a-center concept.' For developers who do not have a regional center but they want to claim the indirect construction or other jobs from the activity, they may partner with a regional center, and these regional centers are typically charging fees for the amount of capital that they will raise because these developers have no connections offshore. They don't know anybody in China or anywhere else in the world for that matter.

"A typical arrangement under this rent-a-center concept would involve people from the regional center going overseas engaging with the migration agents and other finders to source the capital. And in return the U.S. persons who operate the regional center are paid a fee.

"And I think again, we can look at that and question whether that is a success-based fee. Do these people need to be registered either as brokers, which I think some would consider that broker activity, or as investment company, or investment companies under the Investment Company Act?

"The role of the regional center has evolved from where they were owning and operating the asset to now where they're simply marketing or renting out their center, leasing their center. And beyond the securities questions I think again, we come to the issue of the fees. I think if the center were to disclose to the investors that we are paying these migration agents such large fees, the investors might themselves question how honest and open the regional center is about any issues that it may have.



**Michael Gibson**  
Investment Advisor, Risk Analyst  
USAdvisors.org

"So again, the problem that we're seeing, it's not the size of the commission, it's the lack of transparency regarding who is getting paid. The reasons why they're getting paid so much, the motivation may dissuade material information from ending up in the hands of the foreign nationals," explained Gibson.

#### Foreign Migration Agents

"If our understanding is correct, back in 2011 you started questioning the business practices of larger immigration brokers," said Rios.

"I don't want to place so much emphasis on the foreign migration agent. They have their role, which is to raise capital. They're paid a fee. Some may argue is it too much, is it too little? I don't think that's really the core question. I think the core question is are these migration agents conveying to their clients all of the material information necessary to make this very important investment decision. I think that's the core question.

"My sense is because of the size of the fees they are not. They are not motivated to disclose all of the potential material information that would be required. I think there is the breakdown of the system.

"Unfortunately for the U.S. developers, they need these agents, these finders, to be able to raise the capital. Most U.S. developers do not have any external contact, so they have no resources to raise the capital on their own.

"We recognize the role of the agent. I think the question is one of transparency in being fair to the investor. In this case what we see is because of the size of the fees, we feel that the investors are not getting all of the due care that they should be. And this may ultimately cause problems for the developer, because as



we discussed earlier if it was found during the course of events if there is a denial of the I-29 or if there is a failure to return principal back to the investors, I think the investors will be unhappy and they may turn to litigate.

"When they litigate it may come out that they were told certain things that were not true, or led to believe some things that may have not been accurate. I think ultimately this will not cause problems for the migration broker. The migration broker is not in the United States. They would not probably be subject to any action.

"The problem, the burden of proof as to whether certain marketing or actions were committed is going to fall to the U.S. issuer and probably the regional center. At that point there would be some discovery. I think in the course of events if it turns out that there is a forensic audit and they are finding that these huge fees were paid, the investors may say we did not know that 30 or 40 percent of the fees generated from this investment went to foreign persons and I think that's fairly material. We want our money back.

"Again, from our standpoint it's not a necessary issue to avoid. I think by being up front with the investors and saying, yes, we are, we do not have the ability to raise capital in your country. We have hired these third-party finders and we are paying them this fee. By disclosing that fact you then eliminate the issues at the end should there be some sort of litigation where the investors say we were never told of this. That could be seen as a material fact not being disclosed. By simply doing that simple letter of disclosure to the investors, that would eliminate a lot of the problems for the issuers down the road," explained Gibson.

#### Regional Centers and Brokers Practices

"Going forward, what would you recommend as a best practices policy payments made by regional centers to immigration brokers?" asked Rios.

"If I had a crystal ball here and looked into the future, what I would see is there is going to be more scrutiny of the industry. There's going to be more scrutiny by regulators, both from USCIS and the SEC, as well as the state regulators. But beyond that, I think there is going to be more scrutiny as more projects fail. This is like any other market, projects are going to succeed and some projects are going to fail.

"We're going to have a few more Chicagos that fail (see part I of interview), and I think it will then invite more mainstream scrutiny from either the media or perhaps even from Congress. We're not at that stage yet. There is time for the industry to institute some best practices, learn from other segments of the capital markets that do a much better job of disclosing all the material information.

**"My viewpoint on this is to err on the side of being more conservative, doing more transparency, more disclosure to the clients, because ultimately that puts them in a safe harbor."**

"In the private equity world it took years, but now you can see that these safeguards, these investor safeguards are instituted in almost every offering.

"We're seeing now with the passage of the Jobs Act an increased interest in other sources of private equity funding through crowd sourcing or crowd funding. And the SEC is very heavily involved in crafting what the investor protections are going to be.

"Unfortunately, in our industry for years it has been primarily unregulated. USCIS did not really have much concern for the way the securities were issued or marketed, and the SEC and state regulators were not concerned either. I think with this Chicago action we are now seeing that there is going to be more scrutiny, more what we call in Florida more sunshine on this industry. The issuers have to say well we can't do things the way we used to do a few years ago. We would go to China and just make all these agreements and nobody would know about it, and that was not a problem.

"Going forward you're going to have investors who are not going to have a happy outcome. They're going to engage with litigators. They're going to do a process of discovery, and if they find some issues were not disclosed, it could be the fee issue or it could be another issue, if they find that these were not disclosed to the investor, I think it leads to problems for the issuer.

"My viewpoint on this is to err on the side of being more conservative, doing more transparency, more disclosure to the clients, because ultimately that puts them in a safe harbor."

#### Using Non-Registered Brokers

"Michael, last question. What could be the legal consequences, particularly from the SEC, to a regional center and their investors that use Chinese immigration brokers who also operated within the U.S. and that did not register as securities broker?" Rios asked.

"Again, the role of the immigration attorney in this industry has also changed. What we used to see a few years ago was that by and large the immigration attorneys would have clients walk in their office – and at that point there were only a handful of projects to select from.

"They would use what they had information on and they would say, perhaps this is a short list of projects which we know are in the market. We may or may not give recommendations on the viability of them, but some of these may have what they call a suitable track record, meaning they have 526 and 829 approvals.

"That has evolved over time into where the regional centers again, because they are under such intense pressure to raise capital for their developers, they have used this source of funding, if you will, the immigration attorney community network, they have gone to them and said if you send us your clients we will pay you a fee in return.

"This came at the same time in which the recession occurred, 2008/2009, so a lot of immigration attorneys were losing business from their traditional sources, the NIVs, the non-immigrant fund, the Hs, the Es, and Ls, and Os, which had declined with the downturn in the economy. For an immigration attorney, it's a very attractive prospect where they can receive a fee as high as \$60,000 for simply referring a client to this regional center.

"That leads potentially to problems down the road for them should that investment fail. What could happen is then if the project fails the client, the investor would turn in the discovery process and say my immigration attorney not only recommended this project to me acting as an investment advisor, but they also collected a fee for doing so, acting in dual capacity, serving both the issuer and the investor.

"I think apart from the ethical, legal, bar issues with dual representation, from a securities standpoint then they could be seen as acting as unregistered investment advisors promoting investments to their clients, and secondly, being compensated. So whether or not some people might argue this is, was a one-off activity and they could be considered perhaps just a finder, I think the problem then arises if they were compensated in the agreement and the project fails, the relief being sought would be not only for the commission that was paid but perhaps for the full investment, plus all of the other issues, if they are facing removal.

"Remember in EB-5 there's only four possible outcomes, and three of those are negative for both the investor and perhaps potentially for their attorney. The first one is great. They get their green card and they get their money back. But the other three, either they don't get their green card or they don't get their money back, or a combination of the two would be problematic.

"In the case where the attorney received a fee, a finder's fee, very clearly that would establish them in my eyes as an agent of the issuer or the regional center. I think as such they would be treated a lot differently than if they were simply giving legal advice as to the immigration options.

"Over the last few years we've seen a substantial number of attorneys who have crossed over, if you will, from giving simple legal advice to now counseling issuers, regional centers, and actually even going offshore to promote projects to foreign nationals and being compensated in the process.

"And certainly from a regulatory standpoint one would have to be concerned, because a lot of this activity is going now beyond the framework what they were admitted to the bar to do, which was to give legal advice. Now they are acting more in the role of the capital formation, the capital raising, giving investment advice to their clients and acting as agents or finders for the issuer.

"There's a lot more securities issues that they have now become involved with without the protection of the insurance, which would cover them for the legal liability.

"For the immigration community there should be concerns. Certainly the SEC stakeholders' conference call was a good source of information so that the immigration attorneys who may not have been aware that by telling my clients this is a good investment and being compensated for it, I am now acting as an investment broker and investment advisor.

"Now having heard that conference call with all the different divisions, it should serve as good guidance going down the road how they want to craft their practice to avoid potential future problems should their clients be involved in a project that eventually fails to meet one of the two critical conditions," said Gibson. ■

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