

Immigrant investors brace for rising tides with no control

The EB-5 Regional Center program, which allocates 10,000 visas annually to foreign investors and their relatives in exchange for investments of \$500,000 or more, has been in existence for almost 30 years.

Despite its long history, little is known about its inner workings and the turbulence bubbling beneath the surface.



Julianne Opet

Most know the program as a “cash for visa” arrangement, a moniker that overlooks the increasing challenges to costs to investors.

The program requires eligible investors to commit capital to a U.S. enterprise and sustain it at risk

for several years, and demonstrate their investment resulted in the creation of at least 10 permanent, U.S. jobs.

If successful, investors and their families can become lawful permanent residents, but the benefits are not one-sided. EB-5 funding is responsible for many well-known private developments and even public infrastructure projects.

However, the process is only becoming more difficult for investors, while developers have found ways to continue enjoying the benefits of the program without incurring the same transactional and opportunity costs.

This is in part because developers can set the terms of private EB-5 offerings in a way to limit the impact of changing immigration policies and set the tone for investors to follow.

For example, as the EB-5 program became increasingly popular among foreign investors, notably from China, the number of available visas lagged woefully behind. The result was a massive backlog



PHOTO/ALEX SKOPIJE

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that severely delayed the receipt of immigration benefits.

Compounding the issue are delays in adjudication of investor petitions by the U.S. Citizenship and Immigration Service, the agency that administers the EB-5 program.

GUARANTEES, HOLD-BACK ACCOUNTS

In response, private offering terms that once held investor funds in escrow until approval of immigrant petitions now release funds upon time of filing to free up EB-5 capital for use by developers almost immediately.

Projects have also chosen to use developer guarantees or hold-back accounts to return capital in the event of petition denial, but only if that denial is a result of a defect in the project's eligibility rather than an issue specific to investors, and, even then, on a best efforts basis.

While these adaptations increased the risk profile for investors, whose funds may be disbursed to projects long before petition approval, the commitment by projects

to refund denied investors was enough to satisfy investor concerns.

In return, developers have been able to continue to make use of EB-5 capital without feeling the pangs of a sluggish visa process.

IN A QUANDARY

But the early release of capital presented a new problem. Many projects could complete construction long before EB-5 investors finished their immigration processes.

This produced an odd result whereby the two-year period during which investors were required to sustain funds at risk no longer lined up with the time that EB-5 funds were invested in the project.

Meanwhile, developers prepared to repay EB-5 loans and investments on schedule were unable to do so out of fear that repayments would be a disqualifying factor for investors under immigration rules.

REDEPLOYMENT

However, developers were able to resolve that issue, too, using vehicles to redeploy investor capital while they wait on investors

to complete the immigration process.

In response, USCIS updated its policy to formally sanction such redeployment.

And while EB-5 stakeholders expressed frustration with the policy's abject ambiguity on how such capital is redeployed, the change was largely a positive one for developers who frequently have other projects in the pipeline that can make use of redeployed EB-5 capital.

MUCH HIGHER THRESHOLD

The latest hurdle facing EB-5 investors includes new regulations promising to dramatically increase investment amounts required to qualify.

If that happens, which seems likely, several questions remain:

■ Will investors from other countries in emerging EB-5 markets fill the void left by their vibrant Chinese counterparts?

■ Will higher investment amounts simply mean that projects require less foreign investors to complete their capital stacks?

■ Or, conversely, will new investors be in short supply such that only the most attractive and investor-friendly projects will survive?

END OF THE ROPE?

Perhaps the new regulations will be felt deeply enough by developers to galvanize them to action in harmony with other stakeholders.

Or perhaps they will simply find novel ways to adapt to an increasingly hostile EB-5 market.

But the latest silence from the Chinese market is deafening – and unprecedented – indicating investors may have reached a limit on what they're willing to tolerate in exchange for a visa.

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Picking a vendor? Common ground, trust, proven record

Vendor relationships are some of the most important you'll have in business.



Murtaza Jaffer

At times, even choosing a supplier can be overwhelming. So, before you start, consider these important criteria:

■ KNOW YOUR NEEDS

This is first and foremost. Before beginning the vendor selection process, you must understand your

needs. Take the time to write down your needs in detail.

■ COMMON UNDERSTANDING

Your vendor should take the time to get a true understanding of your business and its unique needs.

This requires frequent visits and communication, especially at first. Make sure you choose a vendor who believes in the

importance of this.

■ BUDGET

Obviously, cost is a significant factor in selecting a compatible supplier. Determine the maximum amount you are comfortable spending on the project.

In discussions with potential vendors, be clear and firm about your budget. The right vendor will be straightforward and up front whether it can work within that budget.

■ KNOWLEDGE AND KNOW-HOW

Select a supplier with a proven record for success. You'll be relying on it to provide the best service, advice and expertise.

Your vendor should be confident in its skill level and industry knowledge and exude professionalism.

■ COMMITMENT

The length of time you'll be working together is a major factor in selection. If the relationship will be short, simply because of the nature of the need, then the process will be much simpler.

However, the goal of most vendor relationships is to be able to work together long term. Switching suppliers is costly and time consuming. Take your time choosing one you feel you can stick with through the years.

Also, consider a vendor that can still meet your needs as your business grows.

■ TRUST

Trust is critical in your relationship with vendors. Honesty, integrity and trust are the cornerstone of a successful, mutually beneficial relationship.

Choose a vendor who is as open as possible, and don't be afraid to ask a lot of questions. A vendor should be pre-



ILLUSTRATION/VOVANIVAN

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pared (and happy) to answer all of them.

One last note: Choose a vendor with a similar mentality for business as yours. The vendor should share a similar outlook on customer service, ethics and communication.

Most importantly, take your time, do your research and ask for referrals from colleagues you trust.

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