

EB-5 Options for Developers

February 11, 2013

In recent years, developers seeking to raise capital have taken a keen interest in the EB-5 “regional center” investor visa program. “Regional centers” are entities designed to use immigrant investor capital to promote economic growth in a particular geographic area. Any entity, government or private organization may apply for regional center designation by submitting a written proposal addressing each of the requirements for regional center designation. Many developers believe that creating a new regional center is the best or only option to raise capital from foreign nationals. In fact, there are three options under the EB-5 program. The best option depends upon the particular needs and plans of the individual developer. A summary of the three options, including some of the advantages and disadvantages of each, follows: **1. Establishing a Regional Center** Advantages:

- Developers can count indirect and induced employment to meet the 10 job per investor requirement.
- Developers can have individual projects within the regional center pre-approved by USCIS.
- Regional center certification may lend a certain legitimacy that helps in marketing to foreign nationals.

Disadvantages:

- Certification of a regional center may take from six months to one year.
- Preparing the application for certification is expensive; costs include hiring an economist, a business plan writer, immigration and transactional/securities attorneys; in addition, the filing fee is \$6,230.
- In addition to having the regional center certified, the developer still needs to have its individual capital investment projects approved.
- There are more than 150 regional centers already approved.
- Many regional centers have not been able to attract investors.

- New regional centers find it difficult to compete with regional centers that have been in the business for many years.
- Regional centers have ongoing administrative and filing requirements with USCIS; failure to comply could result in de-certification.

2. Having an Existing Regional Center Sponsor a Project Advantages:

- Eliminates the time and expense involved in developing a new regional center.
- The existing regional center may already have a marketing plan and structure in place and investors ready to invest.
- Developers can still seek pre-approval of their new project.

Disadvantages:

- The regional center operators will likely require a fee for their services.
- The developer must conduct serious due diligence on the regional center to avoid affiliation with a regional center that doesn't meet expectations.
- The developer may have to give up some control over the project to the regional center operators.
- The developer assumes the risk that the regional center may become de-certified.
- The regional center may need to amend its certification with USCIS to incorporate the new project, which could cause a delay.

3. Pooled Investment— Individual EB-5 Petitions Advantages:

- Avoids expense of obtaining regional center certification.
- Avoids ongoing administration of regional center.
- No delay for certification; as soon as investors are identified, the EB-5 petitions can be filed.
- No ongoing reporting requirements.

Disadvantages:

- 10 direct positions must be created for each investor.
- Pre-approval is not available.
- Marketing may be more difficult.
- USCIS prefers 10 jobs to have been already created at time of filing petitions.

- Ultimate removal of conditions depends on 10 positions existing at time of condition removal.

Related Practices

[Real Estate](#)

[Real Estate](#)

[Immigration Planning and Compliance](#)

Related Industries

[Real Estate](#)

[Real Estate](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.