Utilization of EB-5 Investment Capital in Real Estate Development Projects

By Chad M. Poznansky, Lisa S. Sauer / May 21, 2015

The Immigrant Investor Program, more commonly known as the "EB-5 Visa Program," has increased in popularity since its creation in 1990. The program was originally created to stimulate the U.S. economy through job creation and capital investment by foreign investors. Little used until the late 2000's when a clarification was made which stated that temporary construction jobs may be counted toward the 10-jobs-per-investor requirement, real estate developers have been turning to EB-5 as a low cost source of equity. Generally, EB-5 funds are used to replace funds in the capital stack that would ordinarily be deemed traditional or preferred equity or mezzanine capital. Although many developers resort to EB-5 financing for the pricing advantage, there are other benefits such as non-recourse liability and flexibility in terms and structure.

EB-5 financing has funded many large scale real estate projects, including Related Companies' Hudson Yards which raised over $600 million in foreign investment funds, SLS Las Vegas Hotel and the Four Seasons Hotel in New York. However, smaller projects are also utilizing EB-5 as an attractive, alternative source to financing. Fifield Companies has turned to EB-5 financing in its new development in the River North area of Chicago. Gorman and Company, Inc. has used EB-5 financing in portions of its redevelopment of the Pabst Brewery in Wisconsin.

In order to qualify for an EB-5 Visa, an investor must invest at least $1,000,000, or $500,000 for a project in a Targeted Employment Area, in an enterprise that will create at least 10 new full-time jobs for U.S. citizens and legal residents within two years of the investor's admission to the United States.

A "Targeted Employment Area" or "TEA" is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate. A rural area is any area outside a metropolitan statistical area (as designated by the Office of Management and Budget) or outside the boundary of any city or town having a population of 20,000 or more according to the decennial census.

In 1992, Congress strengthened the EB-5 program by allowing the designation of EB-5 Regional Centers to pool EB-5 capital from multiple foreign investors in United States Citizenship and Immigration Service (USCIS) approved economic development projects within a defined geographic region. The Regional Centers can be publicly owned, privately owned or be a public-private partnership. The Regional Centers use economic models to demonstrate that job creation targets have been achieved. All investment offerings made by EB-5 Regional Centers are subject to U.S. Securities laws as well as state securities laws. Investments made through these Regional Centers allow for less restrictive job creation requirements than a direct EB-5 investment. Investments through Regional Centers count indirect or induced job creation.

More than 80% of the EB-5 funds are coming from Chinese investors. Last year, 10,000 visas were available under the EB-5 program and all 10,000 were issued. This represents approximately $2-3 billion of capital per year. Most of the investors invest in programs located in TEAs and the investor's family members are counted against the 10,000 visa limit. In 2013, the EB-5 program contributed approximately $3.5 billion to the U.S. Gross Domestic Product and supported over 41,000 jobs.

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If you have any questions about the subject matter of this e-alert, please contact Chad M. Poznansky at cpoznansky@clarkhill.com | 312.985.5531 or Lisa S. Sauer at lsauer@clarkhill.com | 312.985.5532.