



Overview

The EB-5 program provides foreign nationals with the opportunity to gain permanent residence and citizenship in the United States by making investments in American businesses that create jobs and help grow local economies. Since Congress enacted the EB-5 provisions in 1991, thousands of foreign investors have utilized the program, eventually becoming American citizens and in turn creating many more thousands of domestic jobs and adding Billions of dollars in Foreign Direct Investments (FDI) into the US. At the core, this program rewards foreign investors that invest either \$500,000 or \$1,000,000 (depending on the location of the target investment) with permanent residence, and even citizenship - if a number of requirements are satisfied.

Risk Requirement

First and foremost, for the investment to qualify under the EB-5 Program, the capital must be considered 'at risk', in other words, there must be a risk of loss and chance for gain. This also means the Foreign Investor bears all risks related to his investment and once approved for a conditional visa, and the investment is not successful, a portion or the entire principal can be lost and does not have to be repaid by the business. Only if the application to invest while the funds are in escrow is denied, does the principal get returned to the investor.

Job Creation Requirement

A new business must create ten full time (35 hours per week) jobs within two years, either in a direct or indirect method, depending on the type of investment. In the case of a 'troubled' or distressed business, a foreign investor can take credit for jobs preserved to count towards his requirements. In the words of the USCIS, an EB-5 investment must create or preserve at least ten full-time jobs for qualifying U.S. workers within two years (or under certain circumstances, within a reasonable time after the two-year period) of the immigrant investor's admission to the United States as a Conditional Permanent Resident.

Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.

Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.



Summary

The low cost of capital makes the EB-5 program highly attractive to American businesses, since the main reward is the green card. A nominal interest payment is required to secure this type of financing. There are immigration hurdles to clear as well as very specific parameters to navigate in doing such a complex transaction. Much of the interest payment goes toward these activities. All of the risk is assumed by the investor(s). The benefit to the economy and business is retention of, or creation of at least ten jobs.

Local Impact of EB-5

How could an existing Washington state business benefit from this type of investment capital? EB-5 capital may be used to start a new venture (project) and create ten jobs, OR an existing business could use EB-5 capital to retain jobs at risk or even expand an existing business.

The USCIS mandates that all EB-5 investors must invest in a new commercial enterprise, which has been established after Nov. 29, 1990, or established on or before Nov. 29, 1990, that is:

1. Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
2. Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs.

A 'Troubled Business' is defined as a declining business with any net loss over the past 12 to 24 months equals at least 20% of the business' net worth. The foreign investor would have to show that the number of existing employees in the troubled business are being or will be maintained at no less than the pre-investment level for a period of at least two years. This regulatory provision, while allowing job preservation in place of job creation, does not remove the statutory numeric requirement. In the case of a troubled business investment, ten jobs must be preserved, created, or some combination of the two. For instance, the investor can meet the job creation requirement by preserving the five pre-investment jobs and creating five new qualifying positions. To qualify as an investment in a restructuring or expansion of an existing business, that business must have been established for at least two years, and any restructuring or recapitalization must result in either a 40% increase in the business net worth or create 40% more jobs.

For more information and to find out if your business qualifies, please contact:

Becky Newton, Economic Development Manager, City of Lakewood
253-983-7738; bnewton@cityoflakewood.us