

## **Nine Things to Know Before Going Down The EB-5 Road**

### **Easy Money? Cheap Money?**

"EB-5 is an easy route to raising capital, with a low cost of capital." If this sounds like you, hold on to your hat, because nothing could be further from the truth.

The EB-5 program can indeed be a great source of capital, but it's not for everyone and it's not cheap. Many consultants in the EB-5 space recognize that the notion of EB-5 being easy, cheap money is the most common issue that must be clarified among EB-5 newbies. Understanding the hows and whys of EB-5 is a more in-depth process than most realize at first, so one of the best things a person can do for themselves is understand what EB-5 is not, because let's face it, if it isn't right for your company, wouldn't it be better to know right away?

For this reason, Strategic Element, publishers of The EB-5 Definitive Guide to Raising Capital, have developed a list of 10 Things to Know Before Going Down The EB-5 Road.

### **1. Job Counting**

In order to qualify for the program, a project must create ten new, full time jobs for US citizens, for each qualifying EB-5 investor who invests with you. The first question to ask yourself is whether you can create this many jobs. If you can't create them directly, there are ways to count indirect job creation. There are other exceptions to this rule as well, so it is best to be aware of all the possible ways to count jobs and then to check whether your company or project will pass this critical test.

### **2. Try to get Investors at \$500,000 each, not \$1,000,000**

This likely seems counterintuitive at first. Why on earth would somebody want to have to raise the funds they need from twice as many investors? The simple answer is this: investors know that most EB-5 investment opportunities offer below-market returns, because of the costs associated with setting up an EB-5 opportunity. As such investors want to put the smallest-possible amount of capital at risk in your investment. In order to be able to offer investors a deal at \$500,000 your regional center project must be located in a Target Employment Area (TEA).

### **3. Know if you Will be Able to Locate in a TEA**

A TEA is a Target Employment Area. Being able to locate in a TEA is the difference between being able to offer individual EB-5 investors the ability to invest \$500,000 instead of \$1,000,000 in your project. TEAs are defined as areas that have 150% of the national average unemployment or areas which are outside of metropolitan statistical areas that are larger than 25,000 people. The good news is that if you don't think you are in a TEA you could be surprised. TEA assessments can be complex and should be understood properly as soon as possible as this can make or break your offer to investors. Understand how TEAs can be assessed and speak to the right experts early on in order to know whether or not your business can qualify.

### **4. Know the Cost of your Money**

This is also an often misunderstood element of the EB-5 program. Depending on how one approaches the program, uses a team, structures their offer and targets investors can have a

significant impact on your total cost of money. Find a good resource that can outline all the different types of costs that can be involved in setting up a regional center and raising capital, then get out your spreadsheet and start working through the permutations to see if you can come up with a scenario that is both viable and cost-effective for your company.

### **5. Figure out What Your Team Will Look Like**

"I need a team?" is the first question consultants often hear when learning about EB-5. In short, the answer is yes. At least most people do. The bigger question is how much of a team you may need. Some companies have in-house counsel who may or may not be able to be a part of the project's development. Some companies may be seeking to create only direct jobs, and some initiatives may not be seeking TEA designations. These are but a few of the factors that can influence who should be a part of your team.

Then of course, comes the question of what type of team members should be hired. Like with most anything, those in the highest demand and with the most experience, command the highest fees. Is it worth it? It really depends. There are many entrepreneurs who like to have their hands and heads wrapped around every detail of projects they undertake, and for this, they are willing to work the extra hours and study the laws and so on. For the rest of us, making use of an experienced hand can help to avoid the pitfalls of the program, and EB-5 has many. Furthermore, the landscape is constantly changing as USCIS is constantly updating policy and guidance. Ultimately, working with team members who live and breathe EB-5 can serve you well.

### **6. Know What Your Capital Stack Will Look Like**

Remember that EB-5 investors may be willing to take a deal with below market returns, but this does not mean they will take any deal. Consider the EB-5 investor as you would any other investor. Specifically, in relation to your capital stack, investors want to know that they are not the only ones investing in your project. Investors want to see that you have 'skin in the game' and not only that, they want to see that other people, not just you, have faith in what you are looking to do, so they want to see other non-EB-5 investors involved as well?

How much do you and other investors need to invest? Some regional centers try to put forward only the smallest amount of money, but investors see through this. There are general rules of thumb that will apply in your case and a good resource should be able to offer you guidance in this respect. If you can't put skin in the game or get other investors to invest with you, the EB-5 program may not be right for you.

### **7. Make Sure You Know What 'Tenant Occupancy' Means**

In the Spring of 2012, USCIS issued new guidance on the viability of projects that counted job creation from among tenants of buildings that those projects were building. For example, if an EB-5 project was raising EB-5 capital to build a shopping mall where stores would be leased out to independent retailers, it used to be that the EB-5 project could claim the jobs that the retailers (or tenants) would be creating as jobs that were created by the project. The new tenant occupancy rule no longer allowed this approach, at least not overtly. But all is not lost: tenant occupancy rule does not completely disallow jobs created by tenants, but it is now a more difficult and intricate a process to do so. Know what tenant occupancy means and what you can do if you were counting on tenant-created job claims.

## **8. Understand the Investors and How You Will Reach Them**

EB-5 investors differ from most other investors you may be used to in one critical way: you have to deal with them on their turf. In a non-EB-5 investment there would be little effort made to try to do business in a way that a foreigner might be used to, because the expectation is that there is at least some knowledge of the American way of doing business. When it comes to pitching EB-5 investors, not only are you, more often than not, pitching the investors in their own country, but you have to pitch them in the way they are used to. This means understanding cultural norms, how relationships are developed and ultimately how to win trust.

Sure, there are many who can help you to bridge these gaps, and it is highly recommended that any regional center avail themselves of these services if they do not have knowledge of how to do business in a target country, but ultimately you will be the face of the investment opportunity you are offering, so appealing to investors in a way that is meaningful to them is of critical importance.

## **9. Can You Deliver?**

Reputation is everything in EB-5. make sure that you know what you are getting into and don't take a 'flyer' on giving EB-5 a shot unless you are reasonably certain of the outcome. The key reason for this is that the EB-5 program is likely to be around for some time to come and if you mess it up once you will be stuck with that reputation, effectively cutting yourself off the program in the future.

### **Knowledge is Key**

In the end having the knowledge you need at your fingertips is of utmost importance. Arm yourself with knowledge. Educating yourself with the basics and having a reference to check things against as you move forward is the key to being successful in launching and funding your EB-5 project while avoiding the many pitfalls that claim too many bright-eyed entrepreneurs each year.