

## **INVESTOR IMMIGRATION IN THE U.S.A : THE EB-5 BUSINESS IMMIGRATION LAW**

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**ABSTRACT:** *This paper examines the EB-5 immigration visa, created by the United States through the Immigration Act of 1990. The Immigration Investor Programm allows immigrants to earn their Green Card / American Citizenship by investing in American businesses. Investments range from commercial real estate to solar energy plants and could only be received by an economic unit defined as a Regional Center.*

*The paper is focusing on legal aspects of the regional centers, which are started by local U.S businessmen, sometimes in alliance with local government agencies, in order to attract investment capital for current or planned business ventures. Regional centers are involved with the promotion of economic growth, job creation and increased domestic capital investments.*

*The paper also reviews certain financial qualifications that EB-5 investors who choose to invest through a regional center with the EB-5 programm must meet. Basically, the U.S Government looks for sophisticated immigrants who qualify as "accredited investors" in order to maximize their business success. State and federal securities laws require this approach in order to protect the investment.*

*Ultimately, the paper offers a presentation of a major project "SkyRise Miami", that will create approximately 17.000 jobs, with a total economic impact during its development stage that exceeds \$800 million. It will be the tallest building in Florida, considered to become "Miami's Eiffel Tower", that will change the landscape of Miami.*

**KEYWORDS:** *Investor immigration, EB-5 program, regional center, accredited investor, SkyRise Miami project*

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## 1. THE IMMIGRANT INVESTOR PROGRAM

### 1.1 Overview

The United States remains one of the most desired destinations for migrants and investors from all over the world.

United States Citizenship and Immigration Services (USCIS) administers the Immigrant Investor Program, also known as "EB-5", created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. The EB-5 visa for Immigrant Investors is a United States visa created by the Immigration Act of 1990<sup>1</sup>.

The Immigration Act of 1990 increased the limits on legal immigration to the United States, revised all grounds for exclusion and deportation, authorized temporary protected status to aliens of designated countries, revised and established new nonimmigrant admission categories, revised and extended the Visa Waiver Pilot Program, and revised naturalization authority and requirements.

The EB-5 visa provides a method of obtaining a green card for foreign nationals who invest money in the United States<sup>2</sup>. Under this program, individuals, and their immediate family members, can become permanent residents of the US within a short period of time. To obtain the visa, individuals must invest \$1,000,000 or at least \$500,000 in a "Targeted Employment Area" (high unemployment or rural area), creating or preserving at least 10 jobs for U.S. workers excluding the investor and their immediate family.

Initially, under the first EB-5 program, the foreign investor was required to create an entirely new commercial enterprise. However, under the Pilot Program investments can be made directly in a job-generating commercial enterprise, new or existing "Troubled Business"<sup>3</sup>, or into a "Regional Center" - a 3rd party - managed investment (private or public), which assumes the responsibility of creating the requisite jobs. Regional Centers may charge an administration fee for managing the investor's investment.

If the foreign national investor's petition is approved, the investor and their dependents will be granted conditional permanent residence valid for two years. Within the 90 day period before the conditional permanent residence expires, the investor must submit evidence documenting that the full required investment has been made and that 10 jobs have been maintained, or 10 jobs have been created or will be created within a reasonable time period.

In 1992, Congress created a temporary Pilot Program designed to stimulate economic activity and job growth, while allowing eligible aliens the opportunity to become lawful permanent residents<sup>4</sup>. Under this Pilot Program, foreign nationals may invest in a pre-approved *regional center*, or *economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment*". Investments within a regional center provide foreign nationals the added benefit of allowing them to count jobs created both directly and indirectly for purposes of meeting 10-job creation

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<sup>1</sup> Public Law 101-649, Act of November 29, 1990

<sup>2</sup> U.S. Citizenship and Immigration Services. "Green Card Through Investment". Retrieved 2012-02-08.

<sup>3</sup> U.S. Citizenship and Immigration Services. "EB-5 Immigrant Investor Process". Retrieved 2012-02-08.

<sup>4</sup> U.S. Citizenship and Immigration Services. "EB-5 Regional Center". Retrieved 2011-11-17.

requirement.

USCIS maintains a list of approved EB-5 (Immigrant Investor) Regional Centers by state, but without details<sup>5</sup>. As of June 2nd 2014, there are 532 centers. The states with the highest numbers of regional centers are California (132), Florida (58), and Washington (37).

Foreign investors' use of the EB-5 program has been far less than originally anticipated by Congress (Thiele & Decker, 2010). In 2005, a *Government Accountability Office* report found that investors were not utilizing the program because of “an onerous application process; lengthy adjudication periods; and the suspension of processing on over 900 EB-5 cases—some of which date to 1995—precipitated by a change in USCIS’s interpretation of regulations regarding financial qualifications.”<sup>6</sup>

However, in 2011, USCIS began making a number of changes to the program in hopes of increasing the number of applicants<sup>7</sup>. By the end of the 2011 fiscal year, more than 3,800 EB-5 applications had been filed, compared to fewer than 800 applications in 2007 (McGeehand, 2011). With substantial improvements to the EB-5 category and increased demand each successive year, the number of EB-5 applicants has grown in popularity. The program reached capacity for the first time in August 2014 when the State Department stopped issuing EB-5 visas until the beginning of the next fiscal year, October 2014.

Approximately 10,000 visa numbers are allocated annually to EB-5 investors. USCIS reserves 3,000 EB-5 visas for aliens who invest in TEAs and 3,000 for aliens who invest in commercial enterprises affiliated with Regional Centers.

### 1.2 Targeted Employment Areas

USCIS defines a *targeted employment area* (TEA) as an area which, at the time of investment, is a rural area, not within either a metropolitan statistical area MSA, as designated by the Office of Management and Budget or the outer boundary of any city or town having a population of 20,000 or more, *OR* an area *within* an MSA or the outer boundary of a city or town having a population of 20,000 or more which has experienced unemployment of at least 150% of the national average rate<sup>8</sup>.

If the location of the proposed new business is not a TEA, the investor has the option to gather the relevant publicly available state or federal statistics on their own and submit it with their petition for USCIS to have a new TEA determination made. In California, the investor may petition the state government for designating a particular subdivision of the area as an area of high unemployment (over 150% the national average). However, this designation is not made by USCIS.

There is no centralized list of targeted employment areas. State agencies in California<sup>9</sup>,

<sup>5</sup> U.S. Citizenship and Immigration Services. "Immigrant Investor Regional Centers". Retrieved 2012-02-08.

<sup>6</sup> United States Government Accountability Office (2005), IMMIGRANT INVESTORS: Small Number of Participants Attributed to Pending Regulations and Other Factors, retrieved 2011-12-13

<sup>7</sup> U.S. Citizenship and Immigration Services (2011), A Work in Progress: Towards A New Draft Policy Memorandum Guiding EB-5 Adjudications, retrieved 2011-12-13

<sup>8</sup> "§ Sec. 204.6 Petitions for employment creation aliens." TITLE 8 OF CODE OF FEDERAL REGULATIONS (8 CFR) \ 8 CFR PART 204 -- IMMIGRANT PETITIONS. USCIS. Retrieved 2012-02-08.

<sup>9</sup> "Certified List of Targeted Employment Area (TEA) in California". California Governor's Office of Business and Economic Development. Retrieved 2012-09-05.

Florida<sup>10</sup> and Washington<sup>11</sup> maintain lists of TEAs.

### **1.3 Pre-Immigration Tax Planning**

Tax planning prior to immigration prepares the prospective immigrants to structure their assets by taking in consideration the differences in the U.S. tax system. An important point is that United States has a worldwide taxation system. All income earned by U.S. persons (citizens and residents) in the U.S. and outside the U.S. is subject to taxation by the U.S. government. Once a foreigner becomes a permanent resident, and therefore a U.S. taxpayer, any income that person generates anywhere else in the world will be taxed by the U.S. In addition, when the immigrant dies, all their assets, anywhere in the world will be subject to a 40% estate tax by the U.S. Pre-immigration tax planning helps in understanding and structuring an immigrant's assets and investments to their best tax advantage, such as removing capital gain prior to immigration, structuring ownership of passive assets to avoid U.S. income taxation following immigration, and structuring ownership of all assets to avoid U.S. estate taxation on death (Stein, 2014).

### **1.4. Citizenship**

After five years of legal residence from the date of receipt of Conditional Green card, it is possible to acquire US citizenship and to obtain a passport which gives the protection - but also the taxation - of the most powerful country in the world. There are four ways to acquire US citizenship: by birth in the United States or in US territories (Jus soli), by birth outside the US to US parents, and by naturalization.

## **2. EB-5 INVESTMENT OPTIONS**

The purpose of the EB-5 program is to stimulate the U.S. economy through job creation and capital investment by offering immigrant investors the benefits of permanent residency in the United States.

The main goal is to attract more foreign investors to fund businesses and projects in specific "regional centers" that would otherwise find it difficult to attract domestic investment based on current geographical market trends. By bringing such investment into areas of economic hardship and high unemployment, Congress hopes to stimulate job expansion, improve regional productivity, invest in infrastructure, and promote the growth of innovative new businesses.

The EB-5 Investment Visa provides flexible options to obtain a permanent resident visa. Foreign investors can invest in any type of for-profit lawful business entity. The structures of the business entity can be any of the following for-profit business categories

### **2.1 New Business Enterprise**

Any for-profit lawful business entity is considered a commercial enterprise. There are four types of sub avenues classified as new business enterprises.

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<sup>10</sup> "Florida targeted employment areas". Retrieved 2012-02-08.

<sup>11</sup> "Washington targeted employment areas"

### **2.1.1 Creating a new business**

The EB-5 program defines a ‘new’ enterprise as one that was “established after November 29, 1990.” Immigrant investors can invest the required amount of capital in a commercial enterprise that was established after November 29, 1990, provided that other criteria are met. Based on a 1998 precedent, an EB-5 investor was required to be present at the creation of an enterprise. However, this was problematic for businesses created under a partnership model. A partnership is typically formed first among the main partners and then other limited partners are sought afterwards. Because of the 1998 precedent, such limited partners could not qualify for an EB-5. In 2002, Congress overruled this decision, only requiring a petitioner to show that he or she has invested the required amount.

### **2.1.2 Buying an existing business that is restructured or reorganized**

An EB-5 investor can restructure an existing business. USCIS does not consider merely changing the legal structure of an enterprise sufficient. In *Matter of Soffici*, a 1998 decision, the USCIS Administrative Appeals Office ruled that an investor who had purchased a Howard Johnson hotel and continued to run it as a Howard Johnson hotel did not meet the requirements of adequate restructuring or reorganization of an existing business. The AAO stated that “a few cosmetic changes to the décor and a new marketing strategy for success do not constitute the kind of restructuring contemplated by the regulations, nor does a simple change of ownership.” USCIS gives the examples of a restaurant that is converted into a nightclub or a plan that adds substantial crop production of an existing livestock farm as two examples of adequate restructured or reorganized commercial enterprises.

### **2.1.3 Expanding an existing business**

An EB-5 investor can also create a “new” business by expanding an existing one. Through this avenue, an EB-5 investor must either expand the net worth of an existing business or the number of employees by 40%. If an investor chooses to increase the number of employees, he/she could be required to create more than 10 jobs, the larger the number of existing employees, the more of a burden this becomes.

### **2.1.4 Pooling**

Multiple EB-5 investors can combine their money to invest in an enterprise. All investors must infuse the required amount into an enterprise and create at least 10 jobs each. All jobs created by a pooling arrangement will be distributed evenly among investors. For example, if there are 3 investors and only 21 jobs are created, this does not mean that 2 of the investors created 10 jobs each and the third investor only created one job. It means that all three investors created 7 jobs a piece.

## **2.2 Troubled Business**

The definition of a troubled business is one that has existed for a minimum of 2 years. Furthermore, this business must have incurred a net loss for the 12 to 24 month period before you file Form I-526. This loss must be equal to at least 20 percent of the business’s total net worth.

## **2.3 Regional Center Pilot Program**

To encourage immigration through investment and to concentrate investment in specific regions, Congress directed USCIS to set aside 3,000 visas for people who invest

in a designated “Regional Center Program.” A “Regional Center” is a designation granted by USCIS on the basis of a proposal for economic growth in the particular geographic area. Approximately 90-95% of EB-5 applications submitted to USCIS fall into this category. Originally, Congress set a date for the Regional Center Pilot Program to sunset in March 2009. However, that date has been extended several times, most recently until September 30, 2015. The following are some typical Regional Center Programs: a real estate limited partnership program that offers investment in industrial properties in a specified major city, a limited partnership program that makes low interest loans to businesses in a specified major city, ownership of an 80-acre almond farm in a specified location in California.

### **3. BECOMING AND OPERATING A REGIONAL CENTER**

There are many advantages to receiving EB-5 Regional Center designation from USCIS for your business. Becoming a regional center is an attractive way for a business project to raise low interest debt, and, in some situations, equity. Raising capital via the EB-5 Immigrant Investor Program is quite unique compared to traditional sources of funding and EB-5 is an exciting and ever-evolving industry.

Nearly anyone can apply for regional center designation—no special licenses are required. The term “regional center” refers to any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment within the EB-5 program. The business models that are eligible to become EB-5 Regional Centers include governmental agencies, partnerships, corporations and any other existing U.S. commercial entity.

Perhaps the most important step of the regional center approval process is for the business organization to determine the geographic scope and economic benefit of the project. This includes determining the regional center geographic umbrella, business industry focus, corporate structure, operational business model, and required investment amount for the potential project.

### **4. LEGITIMATE SOURCE OF FUNDS**

The EB-5 regulations require the investor to prove that the invested capital was “obtained through lawful means.” Assets acquired directly or indirectly by unlawful means such as criminal activities are not acceptable forms of capital. However, in practice, this is one of many examples in EB-5 practice where USCIS ventures well beyond the regulatory requirements in insisting upon far more substantial documentation to prove lawful source of funds.

Under the EB5 rules, the immigrant’s capital can come from many different legal sources. For example, the funds can come from business ownership, sale of property, inheritance, gift, loan, or other sources.

Because there are some many ways to document lawful source of funds, there is no one specific formula or check list. Rather, the immigrant and his EB5 visa lawyer will simply use common sense when considering how best to document the lawful source of funds. Where funds are inherited, a will or trust forms are instructive. Where funds are

earned from income on an investment, stock certificates, dividend letters, and account statements are vital. Where funds were earned from income on a previous business investment, the corporate tax returns for the business, complete with evidence of payouts to the owners, should be included.

## 5. THE RELEVANCE OF U.S. SECURITIES LAWS TO IMMIGRANT INVESTORS

The EB-5 employment-creation immigrant visa category<sup>12</sup>, especially its more popular regional center pilot program<sup>13</sup>, is on the rise as a favored form of U.S. immigration for wealthy foreign nationals.

From the investor's point of view, he or she is provided with offering materials from the regional center, such as a *private placement memorandum* and *subscription agreement*, and asked to sign the subscription agreement and deposit his money usually into an escrow account or an account controlled by the regional center.

When a regional center forms a limited partnership or limited liability company in which the EB-5 investor would become a limited partner (or member, in the case of a limited liability company), the regional center is offering an EB-5 investor a security. Therefore, a regional center must comply with federal and state laws in conducting the offering of securities.

The Securities Act of 1933, as amended (the "Securities Act") defines "security" quite broadly. It includes any note, stock, bond, "investment contract" or, in general, any interest or instrument commonly known as a "security." An "investment contract" is made when a person (i) invests money, (ii) in a common enterprise, (iii) with an expectation of profit, (iv) to be earned solely from the effort of others. The U.S. Securities and Exchange Commission ("SEC") has determined that interests in a limited partnership are an investment contract, and therefore, a security.

All EB-5 investors who choose to invest through a regional center with the EB-5 program must meet some financial qualifications. Basically, the U.S. Government looks for sophisticated immigrants who qualify as "accredited investors" in order to maximize their business success. State and federal securities laws require this approach in order to protect the investment<sup>14</sup>.

All investors have to qualify as "accredited investor" as per U.S. securities law requirement.

An accredited investor is a person whose:

1. individual net worth, or joint net worth including that person's spouse, at the time of the purchase of the securities exceeds \$1,000,000;
2. individual income exceeded \$200,000 in each of the two most recent years and who expects to reach that income level in the current year; or
3. joint income including that person's spouse exceeded \$300,000 in each of the two most recent years and who expects to reach that income level in the current year.

<sup>12</sup> INA § 203(b)(5), 8 U.S.C. § 1153(b)(5).

<sup>13</sup> Authorized under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, § 610, 106 Stat. 1828; S. Rep. No. 102-918 (1992).

<sup>14</sup> Securities Act of 1933 - regulating distribution of new securities

## 6. AN OVERVIEW OF THE EB-5 GREEN CARD PROCESS

The EB-5 visa is a three-step self-petitioning process consisting of *Immigrant Petition by Alien Entrepreneur* (I-526), *Conditional Permanent Residence by Adjustment of Status* (I-485) for aliens inside the US/Consular Processing for alien's outside the US, and *Removal of Conditional Residency* (I-829).

### 6.1 Filing for Immigrant Petition (I-526)

Investors should first file Form I-526, "*Immigrant Petition by Alien Entrepreneur*", accompanied by supporting documentation and the filing fee with the USCIS California Service Center. Subsequent to the approval of form I-526, the intending immigrant needs to adjust status through an I-485 if he or she is in the U.S., or apply for an immigrant visa through consular processing if he or she is outside of the U.S. Unlike other immigrant categories, EB-5 investors may not concurrently file form I-485 with their I-526. The required form I-526 documentation must show that the immigrant investor has invested or is investing the required lawfully-gained capital in a company within the U.S., and that the investment will create full-time jobs for at least 10 U.S. workers.

There are three ways to invest in the EB-5 category: a new commercial enterprise, a troubled business, or a regional center pilot program. The filing fee for Form I-526 is \$1,500. Current processing time for I-526 is ten months. Eligibility for each avenue of investment varies.

General Evidence Includes:

- Evidence of the existence of the enterprise (such as past three years tax returns)
- Evidence of lawful capital:
  - Corporate, partnership and/or personal tax returns filed within the past 5 years;
  - Foreign business registration records or evidence identifying other sources of capital;
  - Other proof of the investor's income during previous years;
  - Certified copies of any judgments or evidence of all pending actions involving monetary judgments within the past 15 years;
  - Sales contracts if the source of funds is from the sale of a house or business;
  - Bank statements, evidence of property transferred from abroad, evidence of purchased assets, stock certificates given for investments, or loan or mortgage agreements.
- Evidence of the required investment
- Evidence of the investor's day-to-day operation of the enterprise through either management or policy (does not apply to investors in a Regional Center Program)
  - Title and description of the investor's job duties
  - If the enterprise is a partnership, evidence proving the investor-partner's management or policy-making activities.
- Evidence showing the creation of at least 10 jobs for U.S. workers or a reasonable business plan to show that it will create 10 jobs for U.S. workers
  - If investors have hired employees, I-9s forms and tax records; or
  - If investors do not currently hire employees, a business plan demonstrating that 10 U.S. workers will be hired within the next 2 years;

- If investors are in a category requiring a \$500,000 investment:
  - Evidence demonstrating that 10 jobs have been or will be created in the targeted employment area by a reasonable business plan; and
  - Statistical proof that the targeted employment area has high unemployment and a state agency's letter demonstrating that the area is classified as a "high unemployment" area.

#### *New Commercial Enterprise*

Those who invest in a new commercial enterprise must also provide proof of business organization documents or authorization to do business in a U.S. state or municipality or Articles of Incorporation.

#### *Troubled Business*

EB-5 investors must maintain at least 10 jobs for a period of two years starting from the pre-investment level. The investor should submit photocopies of tax records, a comprehensive business plan, and Form I-9 and other documents to show the qualifications of the employees.

#### *Regional Center Program*

EB-5 investors need to show that they have invested in a regional center by including a letter from USCIS attached to Form I-526 designating the regional center. Furthermore, EB-5 investors need to show that they have created at least 10 direct or indirect full-time positions or will create 10 direct or indirect jobs for U.S. workers.

## **7. EB-5 PROJECTS**

EB-5 projects are most often funded by regional centers. EB-5 investors must direct their required capital investment to a specific EB-5 project. EB-5 investments must be made in an EB-5 project that is considered to be a new commercial enterprise and that will lead to the creation of 10 fulltime jobs for U.S. workers.

Choosing a regional center and EB-5 project that meets USCIS criteria and is viable as a business is perhaps the most important step of the EB-5 process, since the investor's permanent residency is dependent on the ability of the project to create jobs and adhere to USCIS criteria.

EB-5 projects assume many different business models and operate within many different industries. Types of EB-5 projects include: mixed use retail, hotels, sports stadiums, restaurants, agricultural developments, including wineries and farms, electric vehicles, manufacturing, biotech and medical technologies, casinos, entertainment venues, convention centers, office buildings.

## **8. SKYRISE MIAMI TOWER EB-5 PROJECT BUSINESS PLAN**

### **8.1 EB-5 Project summary**

The major project "SkyRise Miami" will create approximately 17.000 jobs, with a total economic impact during its development stage that exceeds \$800 million. It will be the tallest building in Florida, considered to become "Miami's Eiffel Tower", that will change the landscape of Miami.

The SkyRise Miami Tower EB-5 Project consists of the development and operations of a striking 1,000 foot observation and entertainment tower complete with a variety of attractions. The SkyRise Miami Tower will be located in the popular Bayside Marketplace area of downtown Miami, Florida and will draw a wide range of visitors seeking a shopping, dining, nightlife, or family-friendly experience.

The SkyRise Miami Tower EB-5 Project will make an impressive visual impact from miles away and offer views of both Miami and the ocean from a variety of observation areas. Additional attractions will include the SkyRise High Club, a night club, restaurant, ballroom and private event spaces, the SkyPlunge and SkyDrop amusement rides, the SkyRise Theatre (an immersive, “dynamic flying” hang-gliding experience, featuring the landscape of Southern Florida and Miami), and retail shops. This combination of attractions is intended to appeal to many different types of visitors drawn from the population of both local residents and tourists.

The SkyRise Miami Tower EB-5 Project began in April 2014 with marina construction, including initial utilities work, followed by sitework and tower foundation construction started in May 2014 and September 2014, respectively. Vertical construction will begin in June 2015 and is scheduled for completion in September 2016. Tower finishing and equipment installation will round out construction. The total construction period will end in June 2017.

### **8.2 Total anticipated EB-5 capital investment**

The funding sources for the \$430 million are coming as follows: \$30 million from the SkyRise developer Jeff Berkowitz, up to \$110 million from other investors, and \$270 million from foreign investors seeking visas through the federal government’s EB5 program. The developer is seeking up to \$20 million in public funds, including money he had requested from the county, to pay for infrastructure work.

Through the EB-5 Program, SkyRise Miami Tower Investors, LLC intends to raise up to \$270.0 million in EB-5 capital toward the funding of the development and construction of the SkyRise Miami Tower EB-5 Project. The EB-5 capital will be contributed by 540 Immigrant Investors, who will be solicited through the EB-5 Program. The EB-5 project is within a Targeted Employment Area (“TEA”)<sup>15</sup>, which designation allows Immigrant Investors into the project to participate with a \$500,000 minimum at-risk capital investment.

The EB-5 project intends to raise and utilize up to \$270.0 million in EB-5 investor capital, which will be combined with \$30.0 million in developer-contributed equity, \$80 million in additional equity and/or government grants, and \$50.0 million of institutional debt. All investor funds will be invested to create jobs following each individual investor’s I-526 approval.

### **8.3 Industry summary**

The SkyRise Miami Tower EB-5 Project will be part of the observation tower segment of the leisure attractions industry. An observation tower is a building that is typically at least 65 feet tall and offers views of the surrounding area. Observation towers typically use their great height, when compared to other buildings in the area, to provide distinct

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<sup>15</sup> certified by the Florida Department of Economic Opportunity in a letter dated November 6, 2013

views of the region from the full 360 degree range. Observation towers often also provide other attractions or commercial services.

The observation tower segment of the leisure attractions industry can be broken down into two types. The first type of observation tower is known as a “Commercial Building.” In the observation tower segment, a Commercial Building is a building that offers observation galleries, but is primarily used for offices or other similar functions. An example of a Commercial Building is the Empire State Building in New York, NY. The other type of project in the observation tower segment of the leisure attractions industry is known as an “Observation Tower.” An Observation Tower is a building that was built primarily for the purpose of offering observation galleries. An example of an Observation Tower is the Space Needle in Seattle, WA.

The Eiffel Tower in Paris, France, which opened for operations in March of 1889, is the first-built modern structure that is classified in the observation tower segment of the leisure attractions industry. The industry segment gained traction in the early 1900s with the development of the modern skyscraper. This was epitomized by the completion of the construction of the Empire State Building in 1931. The industry segment experienced a boom during the 1960s, with the construction of four towers in North America and another four towers in Europe. It was during this decade that the Space Needle in Seattle, WA and the Tower of the Americas in San Antonio, TX were completed as part of the attractions for the World’s Fair when it came to those cities.

The industry segment continued to develop during the 1970s. The Willis Tower, then known as the Sears Tower, was completed in Chicago, IL in 1974. The CN Tower in Toronto, Canada was also completed during the 1970s. At the time of its completion, the CN Tower held the record for the tallest building in the world.

The industry segment continued to progress through the 1980s, 1990s, 2000s, and into the current decade. The ArcelorMittal Orbit, a 377 foot tower, was constructed as part of the Olympic Park in Stratford, London for the recent summer Olympic games. The tower opened in May of 2012, just prior to the games. The ArcelorMittal Orbit was constructed with the idea that it would be the lasting image for the games.

While conducting its research on the observation tower industry segment, ITPS identified the following characteristics of the market segment that are important for the successful operation of an observation tower:

- The tower must be taller than the other buildings in the surrounding area;
- Public observation galleries must be the primary attraction for visitors;
- Dining options should be available for guests;
- The tower should lease space on the structure for broadcast antennas;
- The market segment is relatively small and operations data is shared through industry associations;
- New towers should incorporate new attractions that improve upon the experience of guests;
- Towers should be designed and located to accommodate local weather patterns;
- The tower design should incorporate information pertaining to the demographics of the target market;
- Towers in the market segment typically survive economic recessions;
- If an observation tower project is properly capitalized, they generally experience

- levels of operation that provide an adequate return on investment and funds for reinvestment into the tower;
- The tower site should be visible from a distance, close to the expected guests, and provide unique views of the surrounding area;
  - The tower should be designed to handle the expected visitation, but not overly large; and
  - New towers should incorporate environmentally friendly practices into its design and operations.

#### **8.4 Site summary**

The EB-5 project site is located in Miami, which is the second largest city in Florida and the largest city in the South Florida metropolitan area. The area is served by three major commercial airports and four seaports, including the Miami International Airport, which is one of the largest airline hubs in the United States. The Miami International Airport is also the largest gateway between Latin America and the United States. Over forty million passengers traveled through the airport (both domestic and international) in 2013, making it the 12th busiest airport in the U.S. and 28th busiest airport in the world by passenger traffic. Numerous interstate highways, toll ways, state roads, and public transit systems provide transportation around the metropolitan area. A new railroad will also begin traveling between Orlando and Miami in 2015. The Port of Miami is one of the busiest hubs for cruise ships in the world. A \$1.0 billion project to connect the port to major highways is due to be completed in May, 2014.

The site for the SkyRise Miami Tower EB-5 Project is located at the Bayside Marketplace, a popular shopping and entertainment complex in Miami. None of the current leisure attractions in the area possess a size or scope similar to the EB-5 project. However, several large shopping complexes attract visitors, including tourists and affluent local residents. The site offers access to nearby urban areas and public parks, as well as several retail options.

Climate conditions at the proposed site are good for leisure and compare favorably to other sites with tower operations in terms of annual average temperature. However, a unique challenge for the

EB-5 project is that the proposed observation tower must be designed to withstand any potential hurricanes. (The SkyRise Miami Tower has been designed to withstand hurricane force winds of 186 miles per hour.) The topography of the land is flat, and the observation tower will offer excellent visibility at about 1,000 feet. The site location will also allow the observation tower to be seen from miles away.

#### **8.5 Obligations of the Immigrant Investor**

The SkyRise Miami Tower EB-5 Project has been organized, as detailed above, in such a way as to meet the requirements of the EB-5 Program. The EB-5 project managers have also commissioned an economic impact analysis and assembled other supporting documentation in order to demonstrate that each investor's at-risk funds will generate at least 10 new jobs, as is required for success under EB-5 Program requirements. Building upon these application materials provided by the EB-5 project managers, an investor must present his or her personal facts and circumstances and meet certain EB-5 Program and

offering requirements in order to subscribe to the company and achieve a favorable outcome of his or her Form I-526 petition, including:

- An investor must demonstrate that he or she has made an at-risk investment of at least \$500,000 into the new commercial enterprise;
- Investors will pay a \$50,000 fee to the regional center sponsoring the EB-5 project, which will be applied to administrative, marketing costs, and other fees;
- The investor shall be responsible for all immigration fees and costs;
- Funds may come from any legal foreign or U.S. source, including gifts, loans, executive pension funds, trusts, and divorce settlements;
- The investment must be received from the person seeking the visa, from clearly identifiable and legal funds; and
- Borrowed investment funds qualify as long as they are not secured by the assets of the target U.S. investment.

Under EB-5 Program regulations, the EB-5 immigrant investor in an EB-5 project is expected to participate in the management of the new commercial enterprise by assisting in the formulation of the enterprise's business policy, by participating in one or more of the activities permitted under the Delaware Limited Liability Company Act, and as otherwise set forth in the Operating Agreement. Investors in an EB-5 enterprise must have all the rights and duties usually accorded to members applicable under the Act. The rights of the members under the Operating Agreement are consistent with rights normally granted to members under the Act.

### **8.6 Benefits to the Immigrant Investor**

Immigrant investors who subscribe to the SkyRise Miami Tower EB-5 Project and fulfill the obligations of the EB-5 Program, as certified through Form I-526 and Form I-829 application approvals, are entitled to benefits extended to investors through the EB-5 Program, including:

- Living and working anywhere in the United States;
- No employment authorization requirement to accept employment within the United States;
- Ability to develop and run a business within the United States;
- Ability to sponsor green cards for a spouse and minor children;
- Ability to travel outside of the United States and return to the United States without a visa;
- Education benefits of permanent residents such as admission to state universities at resident costs; and
- Apply to become a United States citizen once the investor has been a permanent resident for more than five years.

Investors may also realize financial benefits associated with their capital investment into the EB-5 project. It is projected that investors will receive interest income from the EB-5 project to be paid from EB-5 project profits.

### **8.7 Economic Analysis Summary**

The economic and job impact assessment analysis report prepared by Economic & Policy Resources, Inc., (“EPR”), is the result of a significant study by the firm. EPR has considerable experience in evaluating and preparing impact assessment reports in support of EB-5 regional center applications that demonstrate the economic and job creation impacts of activities on a specific geographic area such as that of the prospective regional center. The impact study was completed using the REDYN dynamic input-output model tool—one of the generally accepted approaches employed by economic analysts for measuring job creation under the EB-5 Program.

## **9. CONCLUSION**

To summarize, The Immigrant Investor Program, also known as “EB-5,” has become an increasingly important source of investment for development projects in the United States, attracting billions of dollars to the U.S. economy and creating tens of thousands of jobs.

While the EB-5 program had a difficult start, in recent years it has emerged as a dynamic tool for promoting economic growth. Over the years, USCIS has tightened requirements for establishing the legitimacy of investments, the sources of investment funds, and how funds may be used.<sup>16</sup>

As the EB-5 program continues to grow, this program brings investors to the United States that are successful entrepreneurs, innovative and creative. The benefits that EB-5 investors contribute go beyond the initial investment and the 10 jobs they are required to provide.

Immigration reform should make The EB-5 Immigrant Investor Program permanent and strengthen and expand it as an important tool for economic development in communities throughout the United States.

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