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> INVESTMENT VISAS

COMPETING FOR INVESTORS ON A GLOBAL SCALE

Countries around the world strive to lure global capital onto their shores using a variety of sophisticated techniques. Those countries with high standards of living and an abundance of opportunity are natural draws for immigrants. The right of residency is something that can be leveraged to attract even more investment capital. In fact, many wealthy individuals are willing to invest sizable funds to qualify for residency and the right to enter and leave at will.

Many nations have structured visa programs to attract capital for targeted economic growth. The United States uses its EB-5 investment visa to fund projects that create American jobs. A similar program in Canada drives money to the provincial and territory level for local use. Other countries use funds generated by investment visas to infuse their financial sectors with additional capital.

This issue of *Global Perspectives* takes a spin around the world looking at investment visas, initially examining the U.S.'s EB-5 and various issues that have arisen since our last reporting on the program in April 2011.

You'll also learn about similar initiatives in Canada, the United Kingdom and Australia. Each program uses different levers to attract specific types of capital, investment and entrepreneurial skills—and each is designed to benefit various aspects of a country's economy. 🌐



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WHAT'S NEW WITH THE EB-5?

Launched in 1990 by the U.S. Citizenship and Immigration Service (USCIS), the EB-5 visa program helps the U.S. compete for international capital against other countries that offer similar programs. It is designed to attract foreign investment in projects that create jobs for U.S. citizens.

Applicants must commit \$500,000 to \$1,000,000 to a new business or project that will create at least ten jobs over a specified time period and submit a detailed business plan to be approved by the USCIS. Upon approval of the application process, an investor receives conditional U.S. residency. Permanent residency can be granted after a 2-year conditional period if the employment objectives are fulfilled.

The EB-5 visa program benefits both applicants and the marketplace:

- Investors receive conditional green cards for themselves, their spouse, and any children under the age of 21.
- U.S. developers gain access to low-cost international capital.
- Economically depressed Targeted Employment Areas (TEAs) get jobs.
- Real estate agents may also benefit because EB-5 visa holders must establish a U.S. residence, and therefore may become prospective home purchasers.

There are two main types of EB-5 visas. The Individual EB-5 requires direct investment in any for-profit of business that creates at least 10 full-time jobs for U.S. workers. The Regional Center EB-5 visa requires investment in USCIS-approved regional centers creating at least 10 direct, indirect or induced jobs per investor. The investor is usually a limited partner or member of an LLC and is free to live anywhere in the United States, and can work or not work as the investor wishes. (See the April 2011 issue of *Global Perspectives* or the USCIS website uscis.gov for more information.)

Recent Adjustments

Several steps have helped the EB-5 program manage its growth pains. In September 2012, President Obama renewed the program for a three-year period, eliminating some degree of hesitancy among potential investors with what had previously been termed a “pilot program.”

The USCIS has also reorganized its EB-5 processing unit to help it deal with a surge in applications during the recession. To tackle its processing backlog, an additional EB-5 unit was hired in Washington, D.C. and more personnel were added, which hopefully will improve wait times for approval or denial of I-526, the initial EB-5 petition.

Some of the most significant changes in the EB-5 arena resulted from a memorandum issued by the USCIS in May 2013. It clarified the USCIS' position on key issues that were causing delays and inconsistencies, and which were most likely to result in denials.



Clarifications and policy changes included the following:

- EB-5 funding may be used to replace initial bridge funding in Regional Center projects. This means that an investor can join a project after it has moved beyond its speculative pre-construction stage, reducing financial risk and the risk of the project failing to meet USCIS requirements.
- The USCIS recognized the “fund model” so that an investment in a single Regional Center enterprise can fund a portfolio of approved projects, reducing investor risk.
- The USCIS no longer requires an investor to restart the entire application process if the business plan materially changes after conditional residency has been approved, but before permanent residency is granted.

EB-5 Market Matures

In recent years the number of EB-5 visas issued has more than doubled, from 3,463 in FY 2011 to 7,641 in FY 2012. The increase has been driven by investors from mainland China, who make up more than 80 percent of EB-5 investors. Earlier this year EB-5 professionals feared the program would reach its limit of 10,000 visas per year for the first time in 2013. That did not happen, but the risk that it could raised new questions and concerns.

The market has also evolved in terms of the types of projects that utilize EB-5 funding. In the mid-2000s many EB-5 projects were run by small developers who were crowded out of the credit market. The EB-5 program gave them access to low-cost capital they couldn't find elsewhere. For example, Jay Peak, a ski resort in northern Vermont, used foreign funding in 2008 to expand its ski facilities.

Since then very large developers have begun utilizing the EB-5 program. Major hotel developers like Marriott, Hilton, Hyatt and Starwood have tapped it for large projects throughout the country. Hotels are a particularly good fit to the programs because they generate so many jobs. Now smaller EB-5 projects find it hard to compete for EB-5 investors against large ones which have a lower risk of non-completion.

Fraud and the SEC

In October 2012, the USCIS announced plans to work with the Securities Exchange Commission (SEC) in identifying and prosecuting fraud in EB-5 Regional Centers. Regional Center projects must now issue Private Placement Memos (PPMs) that follow strict SEC securities guidelines. The SEC charged two EB-5 projects with securities fraud in 2013.

In SEC v. Marco A. Ramirez, et al., the USA Now Regional Center is alleged to have solicited investors prior to receiving its Regional Center designation. Its PPM promised investors a five percent return. Further, funds that the owners should have escrowed were put to personal use. Investors received no visas from their investment in the USA Now Regional Center.

In the high profile SEC v. A Chicago Convention Center, et al., the SEC halted a project that had brought in \$156 million in overseas funds. The developer is alleged to have falsely promoted the project as the “World’s First Zero Carbon Emission Platinum LEED-certified” hotel and conference center in Chicago, and to have falsely claimed that all necessary building permits had been acquired and that it had the backing of major hotel chains including Hyatt and Starwood.

“This case received widespread media attention in China,” reports Adel Elmankabady, ALC and Principal of Georgia Center for Foreign Investment and Development in Suwanee, Georgia. “It left a bad taste in the mouths of Asian investors. They have become more cautious.”

Both cases underline the need for investors to do due diligence, and to work with experienced, well respected professionals. An Investor Alert released jointly by the SEC and USCIS states that “the fact that a business is designated as a regional center by USCIS does not mean that USCIS, the SEC, or any other government agency has approved the investments offered by the business, or has otherwise expressed a view on the quality of the investment.”



NOTEWORTHY EB-5 BLOGS

Association to Invest in the USA
iiusablog.org

For EB-5 advocacy news

Lucid Professional Writing
blog.lucidtext.com

Updates to Regional Center list, news and statistics

GreenbergTraurig EB-5 Insights
eb5insights.com

Klasko Immigration and Nationality Law
blog.klaskolaw.com/tag/eb-5

Articles by prominent EB-5 law firms

WHAT'S NEW WITH EB-5? (continued from page 3.)

Implications for Global Real Estate Agents

The EB-5 visa may be a good fit for those who seek entry to the U.S. and the opportunity to buy residential property, including individuals, couples and families who prefer to live and school their children in the U.S.; foreign nationals on long waiting lists for other visas; entrepreneurs who want to start a U.S. business; and affluent buyers who want a second home in the U.S. and more flexibility to use it.

If you have prospects who fit these descriptions, consider learning more about EB-5 visas (see sidebar on page three for resources) and expanding your professional contacts so that you are able to discuss the program with knowledge and refer your clients to experts who can advise them on next steps.

Identifying EB-5 Professionals

Applying for the EB-5 visa is a complicated process requiring an extraordinary amount of paperwork as well as due diligence on the project. The applicant needs experienced advisors with strong backgrounds in

EB-5 projects to navigate the process, including immigration attorneys specializing in EB-5 law. They can explain more about the process and current waiting times (timing may be critical to your buyer's plans).

Immigration attorneys with EB-5 experience do not have to be local. In fact, they probably won't be. Go to the websites for the American Immigration Lawyers Association (aila.org) and the Alliance of Business Immigration Attorneys (abil.com) and contact their EB-5 committees. Websites for experienced EB-5 attorneys should contain information on their specialists, publications and seminars.

Beyond the Investment

In some cases persons pursuing an EB-5 visa may be willing to make such an investment as a vehicle to achieve residency. Returns on EB-5 funding are very low compared to other investment products. The main goal is residency, which is only granted unconditionally if the EB-5 project fulfills its job creation requirements. Successful project execution is of the utmost importance.

Urge your client to hire advisors to do due diligence and to examine the soundness of the developer's business plan.

If overseas investors are looking for higher returns, they may also be able to invest in the non-EB-5 funded part of the project. "I had a client who wanted to invest more than \$500,000 which was earning one percent as EB-5 money," recalls Elmankabady. "The developer let her invest an additional \$2,000,000 in the general fund which returned 12 percent."

The EB-5 visa program is a great way to help affluent overseas buyers obtain residency and spend more time in their U.S. properties. Be prepared to suggest it where it fits, but avoid presenting yourself as an investment advisor. Caution your clients that you are not recommending any particular program and urge them to discuss the EB-5 with their attorneys and investment advisors prior to making any decisions. If you point the way to a successful transaction, these new residents will very likely tell their friends, creating opportunities for additional referral business. 🌍

THREE UNIQUE REGIONAL CENTER PROJECTS

Discovery Times Square is a new large-scale exhibition and experiential museum that used EB-5 funding during construction. As an official Discovery Channel promotional partner, its exhibitions include King Tut, Harry Potter and Titanic artifacts. DTS opened in 2013 and is the fifth most visited museum in New York City. It has generated over 590 new jobs.

The Marriott Corporation has used EB-5 funding for 14 of its recent hotel developments. Underway is a new 377-room hotel located near the Staples Center in Los Angeles expected to open in 2016. American Life Inc., a commercial property development and management company, worked with Marriott in the procurement of EB-5 funding for this and other projects. This one is expected to generate over 4,200 direct and indirect jobs in and around the hotel when completed.

The Florida Restaurant Franchise Group (FRFG) has tapped EB-5 funding for restaurant development. Three of its brands, Five Guys Burgers, VooDoo BBQ & Grill, and Twin Peaks Restaurant, are expanding in the Palm Beach Regional Center. With several EB-5 projects complete, FRFG is now in its eighth EB-5 offering and has generated over double the number of jobs required by the USCIS.



VISAS

OTHER INVESTMENT



Investment visas have become powerful tools for countries trying to attract overseas capital. These programs infuse significant sums of money into economies, support the residential and commercial real estate markets, create jobs for citizens and in some cases direct foreign capital to very specific economic sectors.

Investment and entrepreneur visas are structured to target:

- high net worth individuals,
- entrepreneurs who want to run their own businesses and have the resources and business experience to do so, and
- small but viable startup businesses that will grow into viable industries.

Many industrialized countries use permanent residency as a “carrot” to attract investors to their shores. Following is a summary of programs in four countries, each of which competes with the U.S. EB-5 visa.

CANADA

Prior to 2012, Canada’s Immigrant Investor Program (IIP) was among the least expensive and most popular investor visas in the world. The Citizenship and Immigration Canada (CIC) department became so flooded with applicants that it doubled the IIP’s investment threshold. In July of 2012 the CIC stopped accepting new applications due to a reported backlog of 85,000 applicants (investors and family members). Processing times are currently estimated at eight years.

Though the program is on hold, the government is looking at modifications. As it now stands, applicants must have a net worth of at least C\$1.6 million and be able to invest C\$800,000 in the Canadian government for five years (returnable at the end of the term with no interest) or to make a non-

refundable payment to the government of C\$120,000. The program also looks at the applicant’s educational background, business experience and language proficiency. The Canadian government controls how funds are used, directing them towards job-creating projects at the provincial and territorial level.

Canada’s latest tool for attracting wealthy foreign nationals is the StartUp Visa Program targeting entrepreneurs actively engaged in the new economy. Applicants must obtain minimum funding of C\$75,000 from angel investors and C\$200,000 of venture capital. The program hopes to attract new software companies that have made it past the incubator stage. Canada sent a delegation of angel investors and entrepreneurs to South Africa in November 2013 to actively recruit startups.

THE UNITED KINGDOM

The United Kingdom’s Tier 1 Investment Visa is aimed at wealthy foreign nationals who want permanent residency in the U.K. It offers three investment levels; the more the applicant invests, the faster they (and their spouse and children under age 18) are granted permanent residency:

£10M qualifies an investor for permanent residency after two years and for citizenship after five years;

£5M for permanent residency after three years and citizenship after five years; and

£1M for permanent residency after five years and citizenship after six years.

(continued on page 6.)



OTHER INVESTMENT VISAS

(continued from page 5.)

At least 75 percent of the funds must be invested in U.K. government bonds, share capital, or loan capital for active and trading companies registered in the United Kingdom. The rest can be used to purchase U.K. real estate or be deposited in a U.K. bank.

The Investment Visa has no language requirements, however the visa holder must spend more than 185 days per year in the United Kingdom. He or she does not have to be employed, but can find employment if desired. Processing time is currently under six months.

The Tier 1 Entrepreneur Visa is aimed at foreign nationals who want to start and run a business. The applicant must have £200,000 in liquid assets in a U.K. financial institution or £50,000 in capital from a U.K. funding source (venture capital, seed fund or government department charged with economic development). To secure the visa, applicants must score sufficient points based on funds available to invest (plus additional funds to cover living costs in the U.K.) and English language proficiency. Temporary residency is given for three years at which time evidence of job creation must be provided. An individual who creates over ten jobs or shows £5M in annual sales may apply for citizenship after five years.

AUSTRALIA

The Australian 888 Significant Investment Visa was introduced in November 2012. It targets high net worth individuals who are willing to invest at least AUS\$5 million in complying investments for a four-year period. In its first year, 65 applications were approved generating more than AUS\$325 million. The total investment represented by applications applied for in the first year, but not necessarily approved, is around AUS\$850 million.

Though the visa is intended for any wealthy foreign nationals, its name was chosen with Chinese investors in mind. (In China, the number 888 is associated with wealth.) Currently, processing time is around nine months.

The program does not require job creation. Instead its goal is to infuse capital into Australian companies and the economy, which in turn will stimulate job creation. An accepted investor who spends at least 160 days in Australia and maintains his investment over four years is eligible to apply for a permanent resident visa.

The Australian government recently broadened its eligible investment options to include certain annuity, derivative and mortgage-backed securities and bonds, equity and other Australian corporate debt. Though investments are not guaranteed, there is the opportunity to make a generous return depending on which way the economic winds blow.

Australia also offers Business Innovation and Investment Subclass 188 visas for investors and business owners who wish to establish business operations in Australia. Applicants must be nominated by state or territorial government, are selected based on their skill set and must pass a points test based on business ownership experience and net assets.

PORTUGAL

In October 2012, Portugal launched its Golden Visa Program as a fast track for non-European Union citizens to obtain a five-year residency permit. It became extremely popular very quickly because of its flexible investment requirements and the freedom it gives to travel throughout most of Europe.

There are three ways to qualify. The least expensive is to invest in property in Portugal worth at least €500,000 and maintain the investment throughout the term of the visa. Another option is to invest at least €1,000,000 in any Portuguese business or deposit the same into a Portuguese bank account. Finally, any level of investment creating at least ten permanent jobs meets requirements.

The visa is issued initially for one year and then renewed for successive two-year periods. The visa holder must spend at least seven days in Portugal in the first year, then 14 days during



each of the following two-year periods for a total of 35 days. They also must maintain their original investment in Portugal for the term of the visa.

The Golden Visa gives the holder and their immediate family the right to reside in Portugal and the freedom to travel in the Schengen area, which covers 26 European countries but not the United Kingdom. It also allows children of visa holders to study in European Schengen countries. In the first year the visa was available, 356 permits were issued bringing €222 million in new investments to Portugal.


Who applies?

As many as 80 percent of applicants to these countries' investment visa programs are Chinese citizens seeking to emigrate with their families. China now has more than a million millionaires (assets under management in U.S. dollars) and a growing number of ultra high net worth households. Wealthy individuals from Russia, United Arab Emirates, Brazil and South Africa are the next largest groups applying for investment visas around the world.






Factors to Weigh

Affluent investors look at a great many variables in choosing where to apply. The level of financial investment is just one consideration and may not be terribly important for someone who has the resources to clear even the highest hurdles. Processing times are important to many investors and they vary greatly among countries. The number of days per year an investor is required to live in the country can be critical to an applicant's decision.

There is also the issue of return on capital. Some programs guarantee to refund the original investment after a fixed number of years. The U.S. EB-5 does not make guarantees but instead requires the investor to bear at least some financial risk as well risk of failure to create enough jobs for permanent residency approval. The U.K. and Australia investments are open to market risks, with no guaranteed return.

Countries around the world are using visa programs to grab a bigger piece of the international investment pie. There are lots of twists and turns for investors looking for the right fit. Familiarizing yourself with the global competition helps you understand the factors real estate investors are considering and related implications for property searches. 

FIVE POPULAR INVESTMENT VISA PROGRAMS

					
	U.S.	Canada*	U.K.	Australia	Portugal
Program Name	EB-5 Visa	Immigrant Investor Program	Tier 1 Investment Visa	888 Significant Investment Visa	Golden Visa Program
Required Investment	\$500,000 or \$1,000,000	C\$800,000	£1 million, £5 million, or £10 million	AUS\$5 million	€500,000 (in property) or €1 million (in cash investments) or any amount that creates at least 10 jobs
Invested in	U.S. business-creating jobs	Canadian government	75% in U.K. companies or government bonds (remainder can be U.K. property or bank deposits)	Government bonds, Australian company debt and equity	Portuguese property or cash investments in a Portuguese business or bank account
Visa status	2-year conditional green card, then permanent green card	Permanent residency after 3 years	Permanent residency after 2 to 5 years	Permanent residency after 4 years	Permanent residency after 5 years

* Program currently closed to new applicants.



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INVESTMENT VISAS

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