

EB-5 Investor Program Offers Source of Funding for Franchises

Vol. 17 No. 3

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An immigration program created to encourage capital investment in the United States by foreign nationals, the “EB-5” program, has gained increasing attention from franchisors as fertile source for franchise sales.

Foreign nationals seeking permanent U.S. residency rights apply through different categories, known as “preferences.” The fifth category, for immigrant investors, is known as the EB-5 program.



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Essentially, the program requires an investment of \$1 million (which may be reduced to \$500,000, as explained below) in a new commercial enterprise that will create at least 10 new jobs in the United States during the first two years of operation. The immigrant investor must establish that the funds have been obtained through lawful sources. When these criteria are met, the investor receives a two-year conditional green card from the U.S. Citizenship and Immigration Services (USCIS). A second filing with the USCIS is made at the end of the two years to secure unconditional green card status. Through the EB-5 program, green cards become available not only for the individual investor, but for immediate family members as well.

The EB-5 program has become so popular, particularly among Chinese nationals seeking a long-term home for their wealth, that a back-log is threatened. Although there has

never been a waiting list since the EB-5 program was created in 1990, the U.S. Department of State's Visa Office is now predicting a backlog of two years or longer, based on current use of the program by Chinese applicants. No more than 10,000 immigrant visas may be granted annually to EB-5 investors. Given the number of EB-5 petitions now pending with USCIS, if approval rates remain constant, this annual quota will be exceeded in 2015, according to the Visa Office.

Franchisors that can establish contacts with immigrant or foreign national groups connected to individuals who are motivated to obtain U.S. residency may be able to tap a significant "source" for marketing franchises through the EB-5 program.

The investment can happen in two ways. First, the individual foreign national may invest directly with the franchise company. Alternatively, the individual may invest through a regional center (RC). The USCIS defines an RC as an economic entity, public or private, involved with promoting economic growth, improved regional productivity, job creation, and increased domestic capital investment.

Using an RC for franchise investment offers two important advantages:

- The franchisee/investor may count jobs created "indirectly" through the investment toward fulfilling the requirement of creating at least 10 U.S. jobs;
- The investor may qualify for green card status based on a minimum investment of \$500,000, rather than \$1 million, if the jobs are created in a targeted employment area (TEA), and most RC's are located in TEAs. (Michigan's state-sponsored RC boasts that the majority of the state qualifies for TEA status.)

The EB-5 program offers an attractive source for franchise sales. But EB-5 filings should be prepared and submitted as early as possible, given the current demand for participation in the program.

For more information on this and other immigration-related programs, *see also* Cheryl Mullin, Kimberly Kinser, and Rivann Yu, *New Kids on the Block: Awarding Franchises to Immigrant Franchisees*, 15 *The Franchise Lawyer* No. 4.
