



EB5 Plus Immigration Law

*Immigration Lawyers+ for Investors, Entrepreneurs and Startups*

## **Direct Foreign Investment through the EB-5 Program: What Businesses Need to Know**

### ***EB-5 Basics***

Congress created the employment-based fifth preference (EB-5) immigrant visa category in 1990 for immigrants who invest in and manage U.S. companies that benefit the U.S. economy and create or save at least 10 full-time jobs for U.S. workers. The basic amount required to invest is \$1 million, although that amount is reduced to \$500,000 if the investment is made in a high unemployment area or rural region. When investors first make their investment, they get a “conditional” green card good for two years. At the end of that time they must prove that they have maintained their investment and have created or saved at least 10 jobs before their conditional status will be removed and they become regular green card holders.

### ***Considerations for Businesses Interested in Accepting Direct EB-5 Investments***

US-based new businesses (defined as those established after November 29, 1990) can accept foreign investors’ funds. A single investor may fund a US-based business or many investors may pool investments into a single business.

The majority of businesses seek EB-5 funding due its low cost. To accept the foreign investors’ funds, businesses must be in compliance with EB-5 regulations and provide the investor with the necessary documents for filing of the investor’s I-526, Immigrant Petition by Alien Entrepreneur. The businesses are required to place the investor’s funds at risk (there can be no guarantee of investment return), sustain the investment in the business during a certain time period (5-7 years) and create at least 10 full time jobs for each investor.

Key considerations for accepting foreign investments through the EB-5 program:

- “New” business status – establishment after November 29, 1990
- A business plan calling for at-risk investment of the EB-5 capital that will create at least 10 permanent jobs per EB-5 investor within a 2-3 year period from the date of investment
- EB-5 compliant record keeping of investment funds and employment records.

### ***How to Make Your Business EB-5 Compliant***

EB-5 Plus Immigration Law attorneys and staff can determine if financing through EB-5 investments is appropriate and beneficial for your business model. When financing through EB-5 is advantageous to a business, we will guide you in structuring your business so it is compliant with EB-5 rules and attractive to foreign investors. In this process, you would work with a team consisting of an EB-5 immigration attorney, corporate counsel and a business plan writer. You may also need services of a securities counsel. EB5 Plus will review all documents to ensure compliance with EB-5 regulations and coordinate the work of third-party professionals to prepare the business’ investment documents and business plan suitable for EB-5.