EB-5 Sponsors: Capital Redeployment Can Raise Questions and Increase Litigation Risks

Two years after the U.S. Citizenship and Immigration Services (USCIS) adopted Policy Manual changes addressing requirements for the redeployment of capital contributions of EB-5 investors until the end of their two-year period of conditional permanent residency, it has not provided any further guidance on these issues. EB-5 sponsors have been left to navigate this uncertain terrain using their own best judgement.

EB-5 sponsors and their advisors now seek to establish a method for redeployment of EB-5 capital that will satisfy USCIS guidelines, U.S. securities laws, EB-5 investors, and all of the other parties who collectively have an impact on the investment of EB-5 capital. In some cases, EB-5 investors have threatened — or actually filed — actions against new commercial enterprises (NCEs) as a result of the approval process and/or selection of the reinvestment.

An article I wrote for the NES Financial blog addresses some of the questions that arise when EB-5 sponsors make redeployment decisions, including:

- Should EB-5 investors be asked to approve a redeployment?
- Why not have EB-5 investors approve every redeployment decision?
- What process should be made to make a reinvestment decision that demonstrates protection of the interests of the EB-5 investors?
- Should EB-5 investors be permitted to receive repayment, rather than their funds rein vested?

I also offer some thoughts on how to address the inherent risks of the redeployment process. Read the article here.

— Cathy Holmes

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