

Answer:

- a. ***Evaluate the broker-dealer's capabilities.*** Determine if the broker-dealer has the capabilities that the EB-5 offering requires – regulatory and compliance services; due diligence; and/or capital raising. Ask for references from the broker-dealer's current and former clients, and follow up.

Consideration: As of this writing, relatively few broker-dealers have significant experience with EB-5 offerings specifically. If a broker-dealer lacks EB-5 experience, conduct an evaluation of the background and experience of the broker-dealer's management team by requesting references demonstrating prior experience with raising capital for private securities offerings in general, particularly those involving sales to non-U.S. investors.

- b. ***Investigate the broker-dealer's regulatory history.*** All SEC-registered broker-dealers must be members of and are regulated by FINRA. FINRA provides anyone the opportunity to review the detailed regulatory history of both the broker-dealer firm and its individual registered representatives at a website called [BrokerCheck Online](#). This site provides a wealth of information, including:

- a. the date of the broker-dealer's formation and timeline of registration;
- b. the securities-related activities the broker-dealer is approved to engage in (e.g., a broker-dealer must be approved to conduct sales of private placements to solicit investors for a typical EB-5 private offering);
- c. the number and types of securities registrations of each individual registered representative (i.e., broker), and whether such registrations are active, inactive or suspended;
- d. which U.S. states the firm and its registered representatives are registered in, which is important to verify that both the firm and the broker(s) representing the EB-5 offering are registered in the state(s) or territory(ies) in which the offering is to be conducted; and
- e. any disclosures for the firm or any of its registered representatives (e.g., regulatory sanctions, customer complaints, other reportable events) and the details associated with such disclosures.

- c. ***Engage experienced securities counsel.*** Issuers and IIUSA members should engage experienced U.S. securities counsel in connection with the engagement of a broker-dealer. Hiring a broker-dealer provides certain regulatory protections and assistance to comply with U.S. securities laws for the preparation, solicitation and processing of private investments into EB-5 securities offerings. However, broker-dealers do not provide legal advice or any other legal services relative to U.S. securities laws.

- d. ***Understand the broker-dealer's foreign relationships.*** Issuers and IIUSA members should determine whether and how a broker-dealer intends to engage with unregistered/unlicensed foreign agents and/or finders. This analysis should include determining how such foreign agents and/or finders will be compensated and, in cooperation with securities counsel, evaluating the nature and extent of the broker-dealer's supervisory practices with respect to the sales activity of such unregistered foreign agents and/or finders.

III. Best Practices for Engaging with Foreign Migration Agents

Migration agents play a prominent role in the marketing of EB-5 investments in many foreign countries. For example, IIUSA works closely with the Exit & Entry Associations with jurisdiction over different Chinese provinces to facilitate understanding of applicable Chinese law among IIUSA members and other EB-5 program stakeholders, and to exchange information and ideas. Based on this experience at the Association level, as well as the experience of Best Practices Committee members and IIUSA members generally, the Committee has approved the following best practices specifically related to interactions between IIUSA members and foreign migration agents. These best practices are intended to be in addition to and read in conjunction with the general best practices applicable to all intermediaries set forth above.

1. Question: What are the steps to verify required licensing in a foreign country?

Answer: In some countries, “immigration consulting” – which may include the marketing of EB-5 investments – is a regulated industry. For example, Chinese law requires firms that provide immigration consulting services obtain a license commonly referred to in English as an “Exit & Entry Service Agent Business Permit.” The Chinese term for this license is 因私出入境中介机构经营许可证.

- a. Such licenses are granted by municipal or provincial authorities, depending on where in China the agent maintains its office(s) and intends to provide immigration consulting services. Licensed migration agencies must obtain a separate license for each Chinese jurisdiction (i.e., the applicable provincial or municipal authority) in which it will conduct immigration consulting business, and to display the license in each applicable office. Before engaging the services of a migration agent, IIUSA members should verify that the agent is properly licensed in each jurisdiction in which services will be rendered.
- b. Applicable regulations governing migration agents may require such agents to obtain a separate license for each foreign market in which the agent will be active. For example, to provide consulting services in connection with EB-5 immigration, an agent must be licensed by the relevant Chinese authority to provide migration consulting services with respect to the United States. Accordingly, it is important that IIUSA members confirm that each agent with which they engage has obtained this specific license.

- c. Obtain a copy of each applicable license and retain it in your files. If a license is valid for a particular period of time, follow up to confirm the intermediary's renewal of the license as needed.
- d. The regulations governing such licenses, issued by the PRC Ministry of Public Security, can be found online [here](#) (Chinese language only).
- e. The laws of each country must be carefully reviewed to ensure local as well as US compliance.

Consideration The activities of migration agents in marketing securities are normally of a nature that, if conducted within the United States, would require registration as a broker-dealer.

2. Question: Do foreign migration agents need to register as broker-dealers?

Answer: The SEC follows a policy not to require broker-dealer registration of foreign firms that engage in activities related to the sale of U.S. securities exclusively to non-U.S. persons outside the United States. Foreign migration agents that have no U.S. presence (such as by maintaining an office in the United States) and who conduct no activities related to offerings of securities while physically present in the United States are not required to register as broker-dealers under this SEC policy. However, some migration agents conduct some level of activity in the United States. No definitive pronouncement from the SEC or any court has indicated which activities conducted while migration agents are physically in the United States are permissible and which would be sufficient to require broker-dealer registration.

Consideration: IIUSA members should always consult with legal counsel about compliance with securities laws, including the specific facts and circumstances surrounding the activities of foreign migration agents involved in the offer and sale of their sponsored projects.

3. Question: Does it matter if the foreign migration agent conducts business in the United States?

While no definitive pronouncement from the SEC or any court has evaluated the activities of foreign migration agents in the context of the requirement for broker-dealer registration, members of the SEC Staff have commented publicly about related questions. For example, during an April 3, 2013, EB-5 stakeholder meeting hosted by USCIS and the SEC, a staff member of the SEC's Division of Trading and Markets explained that the SEC has approached broker-dealer status and registration on a territorial basis. He then elaborated that if a person is physically in the United States and performs the activity, "regardless of what activity, regardless of whether it involves foreign investors and is done outside the country, that's within the territory, and therefore the registration hook is there." These comments were made subject to the standard disclaimer always given when SEC staff members speak publicly that the views expressed were the personal views of the SEC staff members and did not necessarily reflect the views of the commission or colleagues on

the SEC staff. Nonetheless, the Committee believes these comments should be taken seriously in evaluating securities law compliance when dealing with foreign migration agents.

4. Question: What should a Regional Center do to ensure compliance with U.S. securities laws when working with a foreign migration agent?

The Committee recommends that IIUSA members explain clearly to foreign migration agents what statements to potential investors are appropriate and inappropriate.

- a. The starting point for this conversation is typically a strong statement that agents are not authorized to make any claims about the offering that are inconsistent with the written offering materials approved by the issuer. U.S. securities laws make it unlawful, in connection with any offer or sale of securities, to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.
- b. As noted in Section I.2. above, the statements made by foreign migration agents to potential investors may be attributed to the issuer of the securities and expose the issuer to SEC enforcement actions and claims by investors for rescission of their investments.
- c. The Committee reminds issuers of EB-5 securities and IIUSA members to speak with experienced U.S. securities counsel in connection with developing a program to help ensure that foreign migration agents make only accurate and measured claims concerning EB-5 investments and that such claims are consistent with the written offering materials.