

Member Perspective: 8 Ways EB-5 May Change After November 21st

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After announcing upcoming changes to the EB-5 requirements in July, the USCIS stated that any applications submitted before November 21 would be subject to current regulations. The changes include the increase of investment amounts for TEA and non-TEA investments.

This resulted in a wave of affluent foreigners rushing to apply under current requirements. As November draws closer, immigration professionals and attorneys are expecting a drastic shift in the EB-5 landscape once the new regulations come into effect. Here are a few predictions.

1) Greater Focus on Investment Marketing

A major prediction is that since EB-5 requirements are changing, it will pinch the number of foreigners applying for a visa. To adapt to the lower numbers of applications, EB-5 Regional Centers will now have to develop their marketing strategy. Instead of employing an immigration marketing tactic, they'll need to rely on investment marketing.

Considering the upcoming developments, regional centers can no longer sell the prospect of immigration to candidates. The pool of applicants is expected to include more sophisticated investors who are looking for lucrative real estate investment opportunities to funnel their capital.

2) Tax Implications and Other Considerations

Now that the route to a permanent residency visa will come with a hefty price tag, foreign investors will need to consider their moves carefully. The Targeted Employment Area (TEA) investment has increased from \$500,000 to \$900,000; that's almost double. Because the EB-5 visa is conditional upon the requirement that the investment should create a set number of jobs, applicants have to analyze the projects they're looking to fund.

These investments will come with a number of tax considerations. To navigate through them carefully, applicants will need to involve chartered accountants and private bankers in a distribution alliance rather than agents.

3) More Family Office Experts and Private Bankers Will be Involved

As the investment requirement increases to account for inflation, the pool of potential applicants for the EB-5 visa will grow smaller to include a demographic of sophisticated investors. These are most likely to come from affluent families. To make sure that they're making the right investment decisions, it's likely that they'll involve family office experts.

This will occur as a result of the heavy price tags on the EB-5 visa, i.e. \$900,000 for TEA investment and \$1.8 million for non-TEA investments. Regional centers will have a hard time 'selling' the EB-5 as an investment solution or even as a pathway to permanent residency. A better approach involves discussing it with family office experts and framing it as a part of a strategy to expand the family business legacy or wealth management plan. After all, the new market for the EB-5 will remain for people who can deliver better value when investing in commercial real estate. For them, immigration is simply a side benefit and not vice versa.

4) New EB-5 Markets To Develop Across the Globe

According to experts, EB-5 markets are expected to develop in countries such as Ireland, Thailand, Malaysia, Saudi Arabia, Japan, the UK, and France. Currently, India is the leading market, with Turkey and China trailing behind. India (along with Pakistan and UAE) will continue to lead the way along with Brazil.

5) Increased Capital Controls

With so many affluent investors across the globe, one would think that despite the increase in investment requirements, there would still be a big pool of potential applicants. However, let's not forget that there may be stringent capital controls in place, which prevents them from making outbound investments from their country of origin.

In 2016, China's State Administration of Foreign Exchange, Ministry of Commerce, People's Bank of China, and National Development and Reform Commission stated that they would increase scrutiny on outbound investment. This was their way of managing capital flight effectively. Who's to say that this won't happen in new EB-5 markets that will develop?

As we've mentioned above, as more countries develop stronger economies, investors will look towards U.S. citizenship as an effective means of securing their assets. But at the same time, these countries will put strict capital controls in place to limit the number of outbound investments.

6) Additional Scrutiny on Source of Funds

Another factor to consider is that the USCIS will subject applicants' source of funds to greater scrutiny. To prove this, investors will need to be knowledgeable about local laws and how they'll have to give evidence of their investment funds.

For instance, one thing that most bankers recommend is a systemic way for investors to manage their wealth. This means that investors should keep investment funds in a separate account from the account they use for spending etc. Just like this, there are various prerequisites, making it crucial to involve a U.S. broker or dealer who's proficient in local laws.

7) Sense of Urgency in Applications

A major bombshell in the revised EB-5 rules is that the investment requirement will increase every five years or so to account for inflation. This will lead to a dramatic change in how investors will want to get the process expedited. Considering how the last requirements were put in place almost 30 years ago in 1990, applicants had a lot of time, allowing them to take months or even years to consider making the investment.

Now, however, with the clock ticking until the next time investment amounts are revised, applicants will be quick to make decisions. Immigration attorneys, regional centers, and investors themselves have to act swiftly to arrange different documents, records, and proof of assets, and immigration papers.

8) Real Estate Investments and the EB-5 Visa

Funding from EB-5 investors makes up a large chunk of real estate developers' capital stack. Regional centers will want EB-5 applicants to funnel money into commercial real estate projects, but with the new rules rolling out in late November, it's going to get more difficult for developers to secure this type of funding for projects.

To navigate through a rigorous and stringent process, foreign investors will need to move on from employing the services of unreliable agents. To make a safe investment, they'll require the expertise of a skilled U.S.-based investment banker who understands securities in the U.S. as well as EB-5 target markets.

Links

<https://www.forbes.com/sites/andysemotiuk/2019/07/07/foreign-investor-immigration-stampede--expected-as-us-eb5-investment-requirements-rise/#571d76677e3b>

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