

## EB-5 Regional Centers & Project Finance: Using EB-5 Capital in lieu of Mezzanine Capital

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The EB-5 program — which was created in 1990 but has grown in popularity since the recession — allows overseas investors to obtain a green card in exchange for providing a minimum of \$500,000 in financing for qualified projects. The explosive growth of the EB-5 program has caught the attention of real estate and project developers nationwide. Developers have been using the program to establish so-called [EB-5 Regional Centers](#), which are essentially entities, approved by the United States Citizenship and Immigration Service ("USCIS") that allow a developer to raise capital from foreign immigrant investors for a specific project or projects. The total capital raised per project has ranged from \$1,000,000 to over \$300,000,000. As the use of EB-5 Regional Centers has expanded, the structure of EB-5 Regional Centers and underlying investments has also increased in complexity—which has allowed EB-5 capital to be used in increasingly diverse types of projects.

Of course, at the outset, it is critical that any contemplated EB-5 financing meet the stringent requirements set out by USCIS for the program. The details of the program, and the differences

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between EB-5 financing through a Regional Center, are discussed in prior posts, [here](#) and [here](#) (each post includes downloadable PDFs, as well).

### EB-5 Financing as an Alternative to Real Estate Mezzanine Capital

A potential, and increasingly popular, use of EB-5 funds in Real Estate finance is as a source of capital in lieu of traditional mezzanine loans. In the context of real estate finance, mezzanine loans are typically used by developers as a source of supplementary financing for development projects. Unlike a traditional mortgage, real estate mezzanine loans are collateralized by equity (such as stock or other ownership interest) in the development company rather than the property itself. To account for the higher risk, lenders of mezzanine capital typically charge interest rates and fees that range between 12-20%, a substantial cost for the developer.

This is where EB-5 financing shines - EB-5 cost of capital is one of the primary reasons the program has become very popular with developers. EB-5 financing, whether structured in a debt or equity model (more on EB-5 financing structures, [here](#)), typically cost around 1-2%. For example, in a debt model, an EB-5 loan from the foreign investor would carry an interest rate of 1%--significantly lower than traditional mortgage-backed loans, and exponentially lower than the cost of mezzanine financing.

### EB-5 Financing in Leveraged Buyouts

In a leveraged buyout ("LBO"), mezzanine capital may be used in conjunction with other forms of financing and equity as part of the capital stack to fund the purchase price of a company being acquired. In LBOs, Private Equity firms or an acquiring company often use mezzanine capital to lower the amount of capital invested. Since Private Equity firms typically have higher target rates of returns than a mezzanine lender, use of mezzanine loans may increase the rate of return on an investment. EB-5 Financing in the context of LBOs could replace the mezzanine loan in a capital stack and significantly enhance the rate of return on an investment or acquisition. For example, in an LBO, if the capital stack of a purchase includes \$50 million in mezzanine financing, at a cost of 15% to the borrower, using a simple interest rate calculation, the cost of capital to the purchaser is at least

\$7.5 million. The significant cost of a mezzanine loan may have the effect of not only reducing the value of an LBO target, but also greatly diminishing the rate of return on an investment.

Similarly to Real Estate finance, use of EB-5 capital in an LBO can have significant advantages. For example, in the above scenario, if the LBO uses EB-5 capital in lieu of its mezzanine financing, the cost of capital would be around 1-2%, or between \$500,000 to \$1,000,000 in a \$50 million capital raise--that is a savings of over \$6,500,000. In other words, using EB-5 capital just increased the return on the investment by an additional \$6,500,000!

### Making EB-5 Financing Work: Bridge Loans

Assuming the underlying project meets the requirements of the EB-5 program, many project developers or companies are still reluctant to use EB-5 financing simply because of the length of USCIS processing times. Although USCIS has made significant strides over the past few years to address that issue, the fact remains that structuring an EB-5 financing takes a significant amount of time. It may take anywhere from 6 months to 2 years before a developer is able to have funds from an EB-5 financing at its disposal. The delay in access to these funds can prove fatal to a project.

However, the growth in EB-5 financing market has the creation of spurred specialized loan companies that address this very issue. There are now several companies that provide specialized EB-5 bridge loans which allow a developer access to all or some of its anticipated capital. Moreover, in its latest Policy Memorandum, USCIS has specifically indicated that such financial arrangements are allowed in the EB-5 context. In a [May 20, 2013 Adjudications Policy Memorandum](#), USCIS stated:

"It is acceptable for the developer or the principal of the new commercial enterprise, either directly or through a separate job-creating entity, to utilize interim, temporary or bridge financing – in the form of either debt or equity – prior to receipt of EB-5 capital. If the project commences based on the bridge financing prior to the receipt of the EB-5 capital and subsequently replaces it with EB-5 capital, the new commercial enterprise still gets credit for the job creation [arguably the main requirement of the EB-5 program] under the regulations....Developers should not be precluded from using EB-5 capital as an alternative source to replace temporary financing simply because it was not contemplated prior to obtaining the bridge or temporary financing."

The increasing popularity and exponential growth of the EB-5 market has expanded the possibilities in which EB-5 capital can be used. More than ever before, EB-5 capital can be used in a variety of flexible financing structures to fund increasingly diverse projects. The key to successfully raising EB-5 capital is proper planning with the assistance of attorneys and professionals who, not only have expertise in Securities, Corporate, Immigration and, if applicable, Real Estate Law, but are also well-versed in the unique requirements the EB-5 program. Finally, proper and extensive due diligence and risk analysis on the underlying project and the overall financing should also be completed contemporaneously.

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*If you would like more information about the EB-5 Visa or Regional Center development and investment offerings, please contact Wassem M. Amin, Esq., at [wassem@dharlawllp.com](mailto:wassem@dharlawllp.com).*