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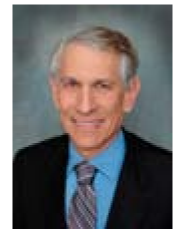
EB-5 PROGRAM INFUSES FOREIGN CAPITAL INTO U.S.



Ronald Fieldstone

The EB-5 program has generated a unique opportunity for real estate developers and operators to supplement traditional financing sources and provide debt funding to projects and businesses that otherwise qualify under United States Citizenship and Immigration Services (USCIS) guidelines.

The program provides needed capital, job creation and the migration of wealthy foreigners to the U.S. To date more than $3 billion of capital has been funded under the program. The program involves the investment of $500,000 of capital (or $1 million if the reduced investment amount is not applicable) in a commercial enterprise whereby 10 direct and indirect jobs that last for a period of at least two years are created. The typical transaction involves the formation of a limited partnership or limited liability company where foreign investors pool their funds to make a loan to a real estate project that is typically secured either by a first or second mortgage or mezzanine-type financing on the project.

Virtually every type of real estate product has been utilizing EB-5 capital throughout the U.S., with a concentration in the states of California, New York, Florida and Texas. A substantial majority of the investors come from Asia, with China leading the way and accounting for an excess of 70 percent of the investors, with South Korea second at about 10 percent of the investors. There is now a strong push to obtain investors from India, Latin America and the Middle East.

In order to meet the competitive demand for investor capital, it is my opinion that the three main factors in the evaluation process include:

1. The amount of money being invested by the developer in the project, with typically a minimum equity investment of 25 percent of the total project cost

2. The quality of the developer group and its prior track record in similar type projects.

3. The quality of the project itself and whether it includes identifiable brand names or special situations, such as nationally branded hotel chains or operators of other real estate projects.

Significant real estate funds and developers nationwide are jumping on the bandwagon and seeking EB-5 capital to fund, in part, both standard and mega projects. This can involve offerings as small as $10 million and as large as around $200 million.

A developer of a national brand hotel in Manhattan recently used EB-5 funding to provide 70 percent first-mortgage financing on a $140 million project. Another example includes the construction of a large $650 million office and retail tower in mid-town Manhattan where EB-5 financing was subordinate to the first-mortgage financing and, in effect, provided low-cost mezzanine financing to the developer. The capital raise was supported by the fact that the developer had more than $200 million of equity in the project that was subordinate to investor capital, thus supporting the safety of the loan.

An international real estate developer in Texas is also utilizing EB-5 funding as a second mortgage or mezzanine loan to develop a national brand hotel and convention center on the outskirts of a large metropolitan area.

The EB-5 program is set to expire on Sept. 30, 2012, although the Senate unanimously approved legislation to extend the program for an additional three years. The House is expected to approve the bill in mid-September, which the President will then sign into law.

— Ronald Fieldstone, Esq., is a partner of Arnstein & Lehr's Miami office. He has more than 30 years of experience specializing in corporate/securities and taxation law.