

FOREIGN INVESTMENTS HELP FUND COMMERCIAL DEVELOPMENT

By David J. Pfeffer and Andrew S. Koerner



David J. Pfeffer



Andrew S. Koerner

In the wake of the financial meltdown and subsequent signs of economic recovery, opportunities are becoming more prevalent for those looking to diversify and expand their investments. However, it continues to be exceedingly difficult for developers and entrepreneurs to secure funding from banks and other lending institutions. Lenders are still wary about taking gambles with their loans leaving many with great ideas, but limited access to the necessary funding, without the capital to jump-start a potential project. Luckily, there are various ways to acquire funding for development projects that are both available and underutilized.

Recently, Tarter Krinsky & Drogin (TKD) added a Business Immigration Practice Group to its already diverse group of practice areas. Now TKD can offer its clients in-house advice regarding international sources of funding for domestic developers and businesspeople. The Employment-Based visa program is one such tool, particularly the EB-5 visa category. In utilizing the program, real estate developers can acquire substantial funding from foreign investors with relative ease.

One of the five Employment-Based visa programs is the Immigrant Investor Pilot Program. This program enables businesses to procure funding from international investors. In order to benefit from the investor pilot program, the business or developer must apply for designation as a regional center through the U.S. Citizenship and Immigration Services. The role of the regional center is to promote economic growth by increasing export sales, improving regional productivity, creating jobs, or increasing domestic capital investment. If a developer succeeds

in achieving designation as a regional center, the potential for foreign capital investment is enormous.

Once a developer receives designation as a regional center, the developer serves as a facilitator that creates a commercially viable business idea and coordinates everything from business plans to site location to construction and the securing of tenants. A regional center applicant should be a newly formed entity, created for the purpose of taking advantage of the program, and can take various forms (e.g., an LLC, partnership, etc.). The developer does not have to own the land on which the proposed development will be sited, there is no specific size requirement for the proposed development, and there is no minimum amount of capital required before filing with the program.

Immigrants who participate in the EB-5 visa program will be able to invest in the proposed development plan. The minimum immigrant investment depends on the area in which the proposed development is to be located; it could be as low as \$500,000.

While participation in the EB-5 visa program is a substantial undertaking, TKD will guide you through the process. This program not only infuses the U.S. economy with capital, it also provides your project with funding.

There are currently 10,000 visas put aside annually for those interested in participating in the EB-5 visa program; however, only about 1,000 per year (at most) actually utilize the program. Opportunities like this are underutilized by developers who are unaware that they can likely procure substantial funding this way. More information about the EB-5 program is readily available, and developers/entrepreneurs interested in taking part in the program should research and determine whether their project will satisfy the requirements outlined above. The EB-5 visa program

is essentially a win-win proposition for everybody involved: the developer secures funding and exercises dominant control over the venture, the immigrant secures a green card and avoids a significant amount of immigration red tape, and a business that is required to produce jobs helps to reduce the country's rampant unemployment situation and improve the economy.

TKD Summer Associate Jared Wachtler assisted in the preparation of this article.

About David J. Pfeffer, Partner

David co-chairs the Construction Practice Group at Tarter Krinsky & Drogin LLP. He directs his practice toward serving the commercial real estate and construction industry, and represents commercial, institutional and residential real estate owners, operators and developers. David can be reached at dpfeffer@tarterkrinsky.com.

About Andrew S. Koerner, Counsel

Andrew is Counsel in the Business Immigration Practice Group at Tarter Krinsky & Drogin LLP. He counsels clients in all areas of immigration law and represents numerous national and international companies in their efforts to recruit and retain top multinational staff. Andrew can be reached at akoerner@tarterkrinsky.com.