

Due Diligence Questions to Ask When Seeking to Have Your Project Adopted by an Existing Regional Center

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We are often called in to speak to developers, private equity funds and other organizations that have an interest in having one or more projects adopted by a regional center. For many companies it often does not make sense to seek their own regional center designation for a variety of factors including the time and cost involved in obtaining a USCIS designation, the company's projects are geographically diverse and could not be located in a single regional center, the company does not wish to be in the "business" of being a regional center because of the administrative and compliance related obligations, etc...

As the EB-5 program continues to grow in popularity for its ability to source funds at low rates, project adoption has become more and more common. However, there are many pitfalls for the unknowing. Many regional centers are simply seeking designation in order to "sell" that approval to projects in return for exorbitant fees- often in the millions- with little provided to the project in return. Other regional centers are good faith actors and are willing to take a fee to adopt a project in return for providing the project with access to a pool of investors, conducting marketing efforts on behalf of the project and tracking investors and job creation or some other EB-5 program related services. Having experienced immigration and corporate counsel on hand to guide your organization is critical to ensuring an equitable agreement is reached and that the immigration and business objectives of both the project principals and regional center are reached.

The following list of due diligence questions can serve as a starting point when exploring the option of EB-5 project adoption.

1. What fee would the regional center take for adopting the project?
2. What are the fees associated with having the project adopted by the regional center? Do they take fees up front to review the project proposal and business plan? Do they require an equity stake in the project? Does the regional center impose a success fee once an exemplar filing or individual I-526 petitions are approved? How high is the success fee?
3. Does the regional center take any portion of the administrative fee paid by the investors?
4. Does the administrative fee include the cost of I-829 materials?
5. If the I-526 is denied can the investor recoup their administrative fees?
6. Does the regional center require that the project principals retain their immigration and securities/corporate counsel? What is counsel's experience?

7. When was the regional center approved by USCIS, and has it gone through any amendments?
8. Has the regional center received any I-924 denials on amendment or project proposal requests?
9. Has the regional center's designation ever been the subject of a Motion to Reopen?
10. Has USCIS ever issued a notice of intent to terminate or has a formal termination ever been issued for the regional center?
11. What type of infrastructure does the regional center have to ensure compliance? Ex. management software, a team of dedicated professionals employed to administer the EB-5 program, a team of outside consultants, etc...
12. Has the regional center completed any EB-5 projects?
13. What is the regional center's success rate with I-526 and I-829 petitions including approvals, denials and withdrawals?
14. Has the regional center been the subject of any Requests for Evidence or Notices of Intent to Deny? Has its projects?
15. Have any of the regional center's projects been reviewed by the AAO?
16. Has the regional center complied with the I-924a reporting requirement?
17. Is the regional center affiliated with any government entity?
18. Will the project be able to avail itself of the regional center's relationships with municipal or state officials?
19. How many years of experience does the regional center have in EB-5 projects?
20. What is the regional center's economic model?
21. Does the center work with a specific economist?
22. How much experience does the regional center's economist have in EB-5 projects?
23. How is job creation tracked by the regional center?
24. What is the regional center's system for tracking investors once they receive Conditional Lawful Permanent Resident Status through until the time that they need to file their I-829 petitions?
25. What is the regional center's area?
26. Are the job creating project and the new commercial enterprise located in a Targeted Employment Area (TEA)?
27. Does the TEA designation rely on the use of contiguous census tracts?
28. Does the regional center use an escrow account?
29. How much of the investment amount is refunded if the I-526 is not approved?
30. Does the regional center require that individual EB-5 investors use their designated counsel for filing of I-526 and I-829 petitions? Can the project designate its own counsel?
31. Has an action for securities violations/ fraud ever been filed against the regional center?
32. Has the regional center's website been reviewed to ensure SEC compliance?
33. Does the regional center provide quarterly, biannual or annual reporting of the status of the investment to the investors?
34. Does the regional center maintain direct contact with the investors?
35. Will the regional center assist the project with marketing and sourcing of investors?
36. How successful have other capital raises been? How much capital has the regional center raised in aggregate?
37. What screening process does the regional center have in place for potential investors?
38. What are the regional center's relationships with overseas migration agents/ brokers?
39. Are the regional center's U.S. based broker/ dealers licensed?
40. Does the regional center offer U.S. immigration attorneys referral fees?

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