

Putting Together an EB-5 Team

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Topics

- Meeting the team players and having a quarterback
- Mitigating risk of failure
- Common mistakes made by projects seeking EB-5 capital
- Common mistakes made by attorneys/service providers when first starting on an EB-5 case

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- Holding providers accountable for deliverables.
 - What are the deliverables each team player is responsible for?
 1. Business Plan
 2. Econometric Study
 3. Offering Documents
 4. Filing to the USCIS



ECONOMIC ANALYSIS AND BUSINESS PLAN DELIVERABLES

1. EB-5 compliant job study (direct, indirect & induced jobs)
2. *Matter of Ho* business plan

ECONOMIC ANALYSIS AND BUSINESS PLAN– INTANGIBLES

1. Insuring work product is appropriately drafted for all audiences (USCIS, Investors, SEC, Corp Council, Immigration Council)
2. Insights into marketability of a project
3. Understanding of industry standards and role of key stakeholders
4. Relationships with regional centers and finders



MISTAKES BY PROJECTS (ECONOMIC ANALYSIS AND BUSINESS PLAN)

- Unrealistic expectations for job creation and EB-5 capital
- Weak verification of underlying business assumptions
- Not fully appreciating intended audience of deliverables
- Not fully vetting EB-5 team/not following advisor guidance
- Lack of planning for full lifecycle of project



CORPORATE / SECURITIES ATTORNEY – DELIVERABLES

1. Offering documents (PPM, LP/Operating Agreement, Subscription Agreement)
2. Corporate documents (charter documents – articles, bylaws, tax elections)
3. Finance documents (loan documents, collateral security agreements, escrow)
4. Compliance Filings (Form D, Form ADV)

CORPORATE / SECURITIES ATTORNEY – INTANGIBLES

1. Offering design - marketability/practicality/reduction of risk
2. Advising on offering structure and practical ramifications with 3rd parties
3. Securities regulatory compliance advice

COMMON MISTAKES BY PROJECTS (SECURITIES/CORPORATE)

- Inadequate preparation – underwriting, budgeting, market studies/appraisals
- Inadequate capitalization
- Cutting corners
- Cart before the horse
 - Example: Pursuing capital solutions without legal, marketing without offering documents, arranging deals without legal counsel



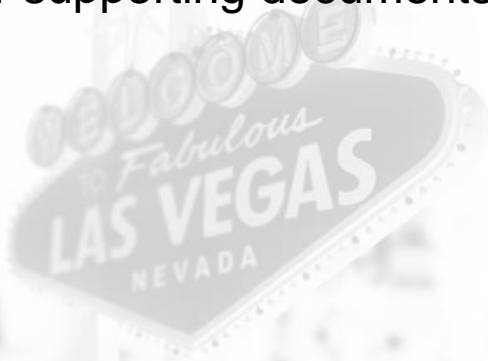
COMMON MISTAKES BY SECURITIES / CORPORATE COUNSEL

- Failure to communicate + coordinating with other teammates
- Drafting too soon
- Lack of understanding of the business aspects/practicality
- Not advising client of practical requirements of legal/business requirements (ex: equity requirements)
- Exit Strategy: Redeployment? Investment Adviser?



EB-5 IMMIGRATION ATTORNEY – DELIVERABLES

1. “Quarterbacking” the Processing: Coordination with the project and other professionals (business plan writers, economists, securities attorneys, etc.) to structure the project and prepare the filing documents. The Immigration Attorney reviews of all project documents prepared by the EB-5 team for EB-5 compliance and consistency.
2. Legal memorandum explaining the project and its compliance with EB-5 regulations.
3. Final filing package including cover letter, legal memorandum and all other supporting documents prepared and finalized by the EB-5 team.



COMMON MISTAKES BY PROJECTS

- Not involving the immigration attorney in the early stages of assembling the EB-5 team and preparing the EB-5 project documents.
- Underestimating the challenges associated with sourcing and securing EB-5 investors for the project.
- Not forming a team of EB-5 professionals that are experienced and familiar with each other.
- Not understanding the importance of good record keeping needed for annual Regional Center filings and I-829 petitions.
- Failing to keep the immigration attorney informed about changes to the project after the project documents have been completed.

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Other Considerations

- Approach to Marketing Projects
- Other Team Members
 - Escrow/Fund Administrator
 - Broker Dealer
 - Insurance
 - Agents
 - Regional Center/Finder



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