

BERRY MOORMAN P.C.

THE EB-5 INVESTOR VISA (GREEN CARD) SUMMARY

This FAQ is divided into two parts: Part I provides an overview of the Berry Moorman Investor Visa Program and how the Program works with the investor to obtain an EB-5 Investor Visa (green card) for the investor and his or her family.

Part II provides an overview of how the Berry Moorman Investor Visa Program may serve as a source of potential financing for a variety of investment projects or investment project management teams.

PART I: FAQ RELATED TO THE BERRY MOORMAN INVESTOR VISA PROGRAM FOR INVESTORS TO OBTAIN THE EB-5 VISA (GREEN CARD)

1. What is the EB-5 Investor Visa Program?

The Berry Moorman Investor Visa Program (the “BMPC Investor Visa Program”) takes advantage of the immigrant visa category for alien entrepreneurs known as the “EB-5 Immigrant Investor Visa,” created by the Immigration Act of 1990. In general terms, the EB-5 Visa requires an alien to “invest or be actively in the process of investing,” either US \$1,000,000 in urban settings, or US \$500,000 in rural settings, in exchange for the opportunity to obtain permanent residence (a “green card”) in the United States.

2. What are the requirements of the BMPC Investor Visa Program and the EB-5 Visa (green card)?

The BMPC Investor Visa Program and the EB-5 Visa (green card) require an alien to:

- I. Invest or be actively in the process of investing either US \$1,000,000 in urban settings, or US \$500,000 in rural settings;
- II. Ensure that the investment is active or “at risk”;
- III. Make the investment in a “new” or “existing business enterprise”; and
- IV. Demonstrate that the investment directly or indirectly results in the creation or preservation of ten full time (at least 35 hours per week) jobs for a two year period.

3. How many immigrant visas are allotted for this classification?

The EB-5 Visa is allotted 10,000 visas per year for aliens whose qualifying investments result in the creation or preservation of at least ten full-time jobs for U.S. workers. Three thousand immigrant visas are set aside for aliens who invest in areas of high unemployment or qualifying rural areas.

4. How is the EB-5 Visa (green card) different from the L-1 (Manager Transfer) or E-1/2 (Treaty Trader Investor)?

Participation in the Investor Visa Program through the services of Berry Moorman P.C. yields almost immediate Legal Permanent Resident (LPR or “green card”) status. In contrast, the E-1/E-2 Treaty Investor and Treaty Trader programs allow for non-immigrant status only (no green card). When the qualifying trade or investment ends, so does the non-immigrant status. Likewise, the L-1 (intra company transferee) is a non-immigrant classification (no green card).

5. Who may receive the permanent residency ("green card")?

An individual investor and his or her family (husband, wife and any unmarried children under the age of 21) may receive permanent residency. It is also possible for adopted children to be included in the family.

6. How long does it take for the investor and the investor’s family to receive the "green card"?

The average processing time for the EB-5 Visa (green card) is six months. The initial application and petition are usually approved in 60 days from the date of filing, with the balance of the time being required for completing other United States Citizenship and Immigration Service (“USCIS”, formerly known as the Immigration and Naturalization service (“INS”)) and Department of State forms and for scheduling the interview.

7. Are any countries excluded from eligibility?

Residents of only a few countries are excluded (e.g., Iran and Iraq). In most cases, however, if the applicant is able to leave the excluded country and has the necessary capital to qualify under the program, Berry Moorman will be able to help the applicant qualify for visa (green card) approval.

8. How does an investor apply for the EB-5 Visa (green card)?

To qualify for an EB-5 Visa, an investor, through Berry Moorman, must apply to the USCIS and submit a number of required documents including: immigration forms, personal financial information, business plans, a legal brief on qualifications under the proposed application, geographic statistics and other supporting evidence.

9. What are the benefits of a "green card"?

Each person has his or her own reason for wanting permanent residence in the United States. But the common reason is the many benefits to the individual and the family:

- The safety, education and freedom that the United States offers is superior to that of any other country in the world.

- All legal permanent residents under the Investor Visa Program enjoy the same benefits as every other U.S. resident.
- The United States is a “safe harbor” for your family as well as your personal and business investments. Any member of the family with a “green card” can enter the United States at any time and stay as long as he or she wishes.
- Investors have constant and easy access to the United States for personal, trade and business purposes.
- Investors may work, live or own their own business anywhere in the United States -- e.g., California, Hawaii, Florida, New York, Washington, Texas, etc.
- The United States has internationally recognized colleges and universities for both basic education and graduate study. As a resident, the investor can benefit from lower tuition costs. The tuition savings can easily equal the initial investment required for the Investor Visa Program.
- The cost of living in the United States is less than that of most large industrial nations.
- Consumer goods and services and housing are significantly less expensive than comparable services and goods in most other countries.
- Students may work in the United States while they attend college, and then continue to work after college. This enables the student to pay for part of his or her education and to work while attending graduate and post-graduate studies.
- Permanent residency facilitates admittance to medical school, which is often more difficult for foreign nationals.
- The United States provides many financial, social and educational entitlements, including public schools, health and medical attention, social security and education.
- After obtaining permanent residency, the investor has the ability to bring other family members to the United States after proper application. The investor can also obtain U.S. citizenship after five years.
- The United States offers economic diversity, excellent economic opportunities, a superior standard of living and a variety of climates.
- Permanent residency requires no renewal or reapplication. Other U.S. non-immigrant visas such as E-2 and H never result in permanent residency and require additional filings with the USCIS. Furthermore, U.S. immigration laws may change and prevent future approval for other types of visas where renewal of a visa is required. For this reason, a permanent visa is an important advantage.

10. How long must I remain in the United States each year?

The first requirement of any investor after receiving the visa (green card) at the United States Overseas Consular Office is to enter the United States within 180 days of visa (green card) issuance from the U.S. Embassy. The investor must then establish residency in the United States. The United States, unlike Canada, does not require the investor to have a physical presence in the United States for any given amount of time (Canada's requirement is 183 days out of each year). However, under U.S. law the investor must establish and maintain the “intent” to be a resident. Evidence of intent to reside includes opening bank accounts, obtaining a driver's license, obtaining a social security number, paying state and federal taxes and renting or buying a home. The U.S. resident may work overseas if required, based upon the nature of his or her business or profession. For those permanent residents living outside the United States, Berry Moorman recommends that

the investor and family should probably re-enter the United States no less than once every six months. The longer the investor and family are present in the United States, the less likely the government is to claim that the investor “abandoned” the United States as a permanent residence, thereby endangering his or her “green card” status. In some cases, investors may seek the issuance of a “re-entry permit,” which allows the USCIS to grant permission to remain outside the United States for as long as two years without having to re-enter the United States to maintain permanent resident status.

11. What is the difference between permanent residency and citizenship?

There are two ways to become a U.S. citizen. One is by being born in the United States or being born to a U.S. citizen. The other way is by naturalization. In most cases, the first step in becoming a U.S. citizen through naturalization is to become a Legal Permanent Resident. Five years of permanent residency is one of the basic requirements for qualifying for naturalization. A second requirement is maintaining a physical residence in the United States for 30 months during the five years prior to the naturalization petition. Once he or she is a U.S. citizen, an individual is entitled to benefits including the right to vote and to hold public offices.

12. What is the difference between "conditional" and "unconditional" visas?

Under the EB-5 Visa, an investor who is approved for the EB-5 Visa receives a “conditional green card” (which is actually pink in color). The only difference is that the “conditional "green card” must be reissued after two years. The cards are exactly the same in every other way, and offer the same rights and privileges. This process is based upon procedures established by the USCIS in other immigration contexts. For example, every marriage-based sponsorship case allows that the alien spouse initially receive a “conditional green card” for two years before the issuance of the unconditional card. The EB-5 Visa works the same way.

13. What are the tax implications of U.S. residency and the investment?

Any interest that is earned or profits on the investment that result in actual distribution of cash that are in addition to the investment may result in U.S. tax liability. In the event that taxes must be paid, they are generally minimal. It is extremely important to abide by the laws of the United States, which include not only immigration laws, but also tax laws. Berry Moorman’s tax advisors are able to provide tax related services according to U.S. law, and will refer you, upon request, to a professional tax authority in foreign jurisdictions who will help to minimize taxes as much as legally possible.

14. Who will provide the legal and business services of the BMPC Investor Visa Program?

The investor’s legal and business services will be handled by Berry Moorman P.C. Generally, we will provide all immigration and investment related services to the investor. As well, BMPC will likely handle all business and project management services for the investment project and its management team.

15. Who is the legal counsel and how do they help?

Berry Moorman will perform the following services for each foreign national investor seeking permanent residence under the BMPC Investor Visa Program, and will do so under a separate legal retainer agreement between the investor and the firm. The services listed below will be performed in the United States and abroad and will continue until the investment terminates:

- Confer with and qualify the investor and family for the U.S. EB-5 Visa (green card);
- Prepare and file with the USCIS the petition to classify the investor as an alien entrepreneur and thus qualify the investor for immigrant visa classification;
- Monitor and expedite, if necessary, the approval process at the USCIS and at the U.S. Department of State;
- Assist the investor in completing all documents forwarded from the Department of State to the investor;
- Prepare the investor and his family for the Department of State interview at the foreign consular post;
- Appear with the investor and family at the interview (upon the investor's request) with the Department of State at the consular post overseas, and assist in the interview process or appear at the interview before the USCIS in the United States;
- Assist the investor and family in entering the United States and establishing lawful permanent residence in the United States;
- Assist the investor and family in removing the condition from the permanent resident status within the last three months of the second year following the commencement of permanent residence;
- Assist the investor in exercising a "sell back", if that is the desire of the investor, and in obtaining the amount to be paid by the investment project/management team to the investor in connection with the "sell back", or with the repurchase by the investment project/management team, should either the "sell back" or repurchase be exercised; and
- Assist the investor in obtaining any financing services that may be necessary.

16. What is the "condition" placed upon the investor's visa (green card), and what happens to the visa (green card) if my investment fails?

The condition was originally based upon the immigration marriage laws in order to prevent fraud. Since the purpose of the investment is job creation, the USCIS does not want the investor to immediately withdraw his or her investment after receiving permanent residency. The law requires the investment to remain for a minimum of two years. The investments of the Investor Visa Program administered by BMPC automatically qualify since all investments have a term of at least three years. In the event the investment fails and employment is lost, there are several different methods that can be used to protect the investor. First, the laws of the USCIS that relate to the removal of the condition allow for flexibility and good faith. Thus, it may be possible for Berry Moorman to obtain the removal of the condition even though the employment is not sufficient, provided the investor has dealt in good faith.

17. How does the investor obtain the "unconditional" visa (green card)?

After two years, Berry Moorman applies to the USCIS for the investor to demonstrate that he or she has complied with the terms and conditions raised in the original EB-5 Visa (green card) application. Specifically, the investor must demonstrate that he or she has continued to make all required payments of the investment and that the requisite jobs have been created/preserved by the investment enterprise. This process was established to eliminate any visa fraud. Referring again to the marriage-based sponsorship example, the USCIS requires that before the permanent “green card” may be issued, the alien spouse must demonstrate after two years that the marriage is still valid. The BMPC Investor Visa Program/EB-5 Visa is the same. Upon demonstrating that the investment is valid, the investor and family will be issued unconditional “green cards” that contain no expiration dates.

18. What is meant by qualifying investment “capital?”

The regulations define capital as cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur. A debt will qualify as capital only when the alien entrepreneur is primarily and personally liable for the indebtedness. The regulations permit indebtedness secured by the alien's own assets to count as “capital.” This rule allows bank loans and therefore provides greater flexibility for the investor who may have assets that are being used for other personal and business purposes and are not immediately available for investment in an immigration program. The bank loan also broadens the number of investors eligible for the EB-5 Visa. Under the BMPC Investor Visa Program, an investor may meet all investment capital requirements through the use of initial cash investments complemented by a bank loan secured by the assets of the investor, should the investor require/request financing. In such cases, the investor in the Program must demonstrate to the bank a total net worth of at least US \$500,000 (for qualified rural settings) that will meet the standard requirements of the bank for financing. This may include real estate or other real property, ownership of business assets, cash, stocks, bonds and other assets located inside or outside the United States or in the country of origin.

19. What do the regulations mean by the term “invest”?

Under the EB-5 Visa regulations, an alien is required to “invest” or be “actively in the process of investing” the required capital. The mere intent of investing does not meet this requirement. However, the USCIS does allow investors to demonstrate the “commitment of the required amount” at the time of filing the immigration petition to satisfy the regulations. The BMPC Investor Visa Program requires that the investor only invest an initial percentage of the required capital -- in some cases, as little as US \$100,000 (for qualified rural settings), which remains in a legal, interest-bearing escrow account until the issuance of the immigrant visa (green card). The difference between the initial capital investment and the US \$500,000 total is satisfied through a bank loan, which can be arranged by Berry Moorman. The costs for the loan are not included in the original fees and costs and there is an additional interest expense. This procedure, as used by Berry Moorman, protects the investor and guarantees that his or her money is safe until the “green card” has been issued, as well as making the program affordable to most potential investors.

20. What is the investment return?

There are several investment options that are available through the BMPC Investor Visa Program offered by Berry Moorman. The amount of the return differs according to the amount of the initial capital that is invested, type of investment project that is offered to the investor or chosen by the investor, and the term of the investment. The investor should be cautious that the return offered by some companies may sound too good to be true. Generally, if it sounds too good, that is because there are problems and the investment is not secure but is extremely risky. The question that the investor should ask is why should a U.S. company that is financially strong seek funds overseas when great amounts of capital are available in the United States from banks, investment companies and Wall Street? Many returns that are presented by immigration companies are based upon projected returns. These projections generally never result and the investor loses his investment and potentially his "green card" status. A careful review of the history of the performance must be made.

21. Are there any financing programs available?

Because many investors have assets which are not immediately available and liquid, Berry Moorman can help investors who are able to meet the requirements of the bank to obtain a loan for part of the investment. The investor must provide the initial cash -- which may be as low as US \$100,000 (for qualified rural areas). The financing is optional, but one way or another, the investor must complete the total cash investment of at least US \$500,000 (for qualified rural areas) prior to the original EB-5 Visa (green card) application or prior to the application for the removal of the condition. If the financing option is chosen, it is arranged at an additional cost to the investor as negotiated between the investor and Berry Moorman.

22. May a promissory note qualify under the regulations as "capital"?

A properly executed promissory note is recognized as a contribution of capital because it is a receivable and capital asset of the commercial enterprise in whose favor it has been executed. Currently, the USCIS is allowing notes to extend beyond the two-year conditional period in that such instruments represent Capital which is "at risk" under the regulations. In the past, the investor has been required to put up some amount of initial cash (as little as US \$100,000 for qualified rural areas) and then finance the difference or balance with a promissory note. Promissory notes are secured by the assets of the investor. Promissory notes have been accepted by the USCIS as meeting the capital requirements of the EB-5 Visa. However, USCIS regulations may soon require all capital to be invested prior to application, or prior to application for condition removal. Because of different interpretations of the law by government officers, the safest and best approach to assure approval is to have the total investment completed as soon as possible. Berry Moorman can arrange financing to enable the investor to have the total minimum capital investment of US \$500,000 (for qualified rural areas) completed prior to the original application or prior to application for the removal of the condition.

23. When may the investor exercise the "Sell Back" to exit the investment?

A "Sell Back" is a contractual right of an investor which allows for the selling of his or her interest back to the investment project/management team, triggered by the passage of specified time or occurrence. This right is often associated with a similar option known as a repurchase right. The

repurchase right empowers the investment project/management team with the right to “buy back” the investor's interest at a specified time or event. The investment project may contain both Sell Back and repurchase rights that may be used by the parties to allow an investor to exit the investment upon the passage of a certain number of years specific to the events. The investor agreements detail the terms and conditions that initiate this right. In some cases, the investor has the absolute right to exit the investment either in 36 or 60 months, after having completed all required investments and having fully complied with every aspect of immigration law. The Sell Back and repurchase rights may be incorporated for the benefit of the investor. The Sell Back price is usually predetermined at a fair market price, and is usually sufficient to enable the investor to pay off the financing arranged after the investor completes the initial payment. The Sell Back and repurchase right are optional provisions that may be offered by the particular investment project/management team to the investor.

24. In which company must an investor invest?

The type of investment project can be determined through Berry Moorman’s internal efforts, or through the efforts and/or objectives of the individual investor. For any investment project, Berry Moorman will pre-qualify the business enterprise so that it is able to meet the requirements of the USCIS. The law specifically requires the businesses to be new, expanding or troubled and further defines the requirements for each of those categories.

25. What investment enterprises qualify under the regulations?

Under the EB-5 Visa regulations, there are three types of qualifying investments for investor visa purposes: the new commercial enterprise, the expansion of an existing business, or the rehabilitation of a troubled business. They are defined as follows:

- The “new commercial enterprise” is either the creation of an original business, or the subsequent or simultaneous restructuring of an existing business such that a new commercial enterprise results;
- The “expansion of an existing business” may qualify through the investment of the requisite dollar amount such that a 40% increase in either net worth or the number of employees results; or
- The “troubled business” investment requires the requisite dollar amount in a business which has been in existence for at least two years, and for a period of 12 to 24 months prior to the filing of the petition, has demonstrated at least a loss of profit equal to 20% of the business net worth.

A qualifying investment may utilize any one of these three types of business enterprises. However, most recently, investors have successfully utilized either the “new business” or “troubled business” situation, which qualifies for special, advantageous treatment by the regulations in terms of the job creation requirements. Prior investments have included restaurant chains, nursing homes, national hotel franchises, manufacturing companies and transportation companies. Berry Moorman will assist the investor in locating the best investments for the EB-5 Visa.

26. What is the Federally Designated Regional Pilot Center Program?

Should the individual investor request, Berry Moorman can provide many types of potential investments, including those that meet the requirements for the Regional Pilot Center. Businesses involved in the exporting of goods located in geographic areas approved as regional centers may meet the job creation requirements of the law using “indirect employment” based upon approved methodologies. The federally designated program center was approved by Congress under Section 610(c) of the Appropriations Act of 1993. In order to meet the requirements of the Regional Pilot Center law, investments focus on export businesses that are members of the World Trade Centers located in specific regions within the United States. More information on the Federally Designated Regional Pilot Center Program is available to the investor upon request.

27. What are the obligations of the investor to participate in the investment?

Under the EB-5 Visa regulations, the investor must be “active” in the management of the investment. The investor must engage in the management of the new commercial enterprise, either through day-to-day managerial control or through policy formulation. However, the regulations do specifically allow that an investor will qualify as a “limited partner” as defined in the Revised Uniform Limited Partnership Act. Berry Moorman will ensure that the investment project meets all the regulatory requirements. This passive role allows the investor to continue to engage in his or her own business without needing to participate in the investment operations. Additionally, this allows the investor to live where he or she pleases, and gives him or her the option to enter and exit the United States without any obligation to manage the investment. Most importantly, the limited partner, like the corporate shareholder is only liable to the enterprise to the extent of the agreed-upon investment. This business structure protects the investor.

28. What is an “escrow” account, and when does the investor transfer the money to this account?

An escrow account is a legal, interest-bearing account established in a bank by Berry Moorman to hold the initial deposit in trust until the completion of the EB-5 Visa (green card) processing. This type of account is commonly used in the sales of real estate, businesses and personal property. Berry Moorman, as a law firm regulated and monitored by the State Bar of Michigan, will establish an escrow account for the purpose of safely holding an investor's funds until such time as the EB-5 Visa (green card) has been approved by the overseas consulate or an office of the USCIS in the United States. Under the agreements entered into between Berry Moorman, the investor, the participating bank, and the investment project/management team, the investor's money is not authorized to be released from the escrow account by the bank until the EB-5 Visa (green card) has been approved. This process protects the investor.

29. How does the “escrow” account protect the investor against the risk of losing money?

The initial cash deposit from the investor is placed in a legal, interest-bearing escrow account by Berry Moorman. When an escrow account is established, the funds continue to belong to the investor; however, they are committed to be placed into the investment project upon EB-5 Visa approval. Berry Moorman will have an agreement with the investor that requires the funds to be released from the account only when the EB-5 Visa (green card) is issued by the U.S.

Department of State Overseas Consulate Office or the USCIS in the United States. In the event that the EB-5 Visa (green card) is not issued within 12 months of the initial filing, the bank and Berry Moorman, under specific instructions, must return all funds in the account with interest to the investor.

30. What insurance is provided?

As an established law firm, Berry Moorman’s malpractice insurance protects the investor from any fraud as tied to the scope of the firm’s legal services. The insurance policy does not guarantee to the investor the return of the original investment amount, the return of legal fees or costs incurred, nor does it guarantee the issuance of a conditional green card or unconditional green card.

31. What is the “bank assurance” and how does it protect the investment?

In some investment projects, a guarantee or assurance for the return of the investment or some fixed amount of return can be provided by the investment project. Since most investors are not familiar with the chosen investment project and its future success and profitability, many investors prefer to rely upon a third party to guarantee the investment. The third party should be financially strong. The guarantee should be readily marketable with complete liquidity to enable the investor to immediately receive the return of the investment or what is promised without having to deal with attorneys, litigation and complex financial solutions that usually result in losses and failure. A bank assurance, which may be provided by the investment project and at the request of the investor, has all of the financially strong characteristics that allow the funds to be available at the time a Sell Back is made, should a Sell Back be offered to the investor. Berry Moorman can arrange for guarantees and assurances from internationally recognized financial institutions at the option of the investor and/or the investment project/management team.

32. What is meant by “net assets”?

An investor's net assets, or net worth, can be determined from a simple calculation: the combined value of all things owned, minus the combined value of all liabilities (debts). The assets may be from any legal source, anywhere in the world:

- cash;
 - gifts and inheritances;
 - the net cash value of life insurance;
 - the value of personal property such as jewelry, art and antiques;
 - the proceeds from the sale of a business or real property (real estate);
 - the value of real property, including the family home and any additional homes;
 - the value of securities such as stocks and bonds, including stock in a family business.
- (Naturally, funds that come from such sources as smuggling or the sale of illegal drugs are not allowable.)

Verification of assets and the sources of those assets will be required. It will not be necessary to document or reveal all assets, but only enough to meet the requirements of the USCIS and the EB-5

Visa -- an absolute minimum of US \$500,000 (for qualified rural areas), in addition to legal and filing fees. The easiest proof of net worth, of course, is a bank account with actual cash.

33. Must the investor have previous business experience or education?

Under the EB-5 Visa regulations, the investor is not required to have any prior business experience. Nor is the investor required to demonstrate any minimum level of education. The only requirement for the investor is that he or she have the required net worth and initial capital. This is a significant point of difference between the U.S. and Canadian programs.

34. What can disqualify an investor from participating?

There are very few disqualifying or exclusionary events under the law. A criminal record involving crimes of moral turpitude is disqualifying, unless it can be proven that the crime was political in nature or occurred over 20 years prior to the application. A few major medical problems might also exclude an applicant, but for the most part this can be avoided if it can be proven that the applicant will be supported by others and therefore avoid being a recipient of government medical assistance. Berry Moorman can help applicants determine what waivers may be available for eligibility.

35. Can an investor apply if the investor has been rejected or terminated in the past by USCIS for an L-1, B, or other visa?

Rejection in the past does not disqualify the applicant, unless the reasons were related to immigration fraud or other major problems. The applicant, if properly represented by legal counsel, can generally receive a waiver. It is most important that all problems of a criminal or medical nature be reported to Berry Moorman in advance of application.

36. Can an investor apply if the investor is currently out-of-status (i.e., lived in the United States, but does not have a current visa)?

Out-of-status nationals are no longer permitted to apply for permanent residency from within the United States. They must first return to their country of origin and apply through the United States Embassy there. Examples of "out-of-status" individuals are students and tourists who no longer have valid visas because they remained in the United States after their visas expired. In some cases, the "out-of-status" investor may need to apply for a waiver of inadmissibility. Once the petition is approved and individual's adjustment of status application is filed, the applicant becomes legal and even qualifies for work authorization or advanced parole (permission to travel outside of the country during the conditional green card period).

37. What is meant by the requirement that the investor's assets be "lawfully gained"?

Under the regulations, the investor must demonstrate that his assets were gained in a lawful manner. This requires the investor to prove his or her net worth was obtained through lawful business, salary, investments, property sales, inheritance, gift, loan or other lawful means. The BMPC Investor Visa Program requires investors to reveal where and how they received their assets

in the amount of at least US \$500,000 (for qualified rural areas) that are used for qualifying for the program and any applicable bank loan. This may be accomplished through certificates by the investor's licensed accountants, lawyers, court records, salary statements, tax statements, real estate documents, etc.

PART II: FAQ RELATED TO THE INVESTMENT PROJECT/MANAGEMENT TEAM SEEKING FOREIGN INVESTMENT CAPITAL

1. Who are the investors?

EB-5 Visa investors include people from all walks of life; professionals, business people, persons wanting to facilitate a child's education, and retirees. EB-5 Visa investors are not required to actively manage the investment project/management team.

2. Is the EB-5 Visa investment a truly passive investment?

The EB-5 Visa regulations require involvement in management or policy making. The regulations deem a limited partner in a limited partnership that conforms to the Uniform Limited Partnership Act as sufficiently engaged in the EB-5 Visa investment project/management team. However, the Uniform Limited Partnership, adopted by most states of the United States, prohibits the limited partner from actively participating in management.

On one hand, an investor must be involved in management or policy making, while on the other hand, the investor can't. Berry Moorman resolves this contradiction by granting the limited partners the right, as a group, to oust the general partner for "cause" and to suggest or recommend issues of overall policy. Furthermore, Berry Moorman ensures that the limited partnerships comply with the Uniform or Michigan Limited Partnership Act.

3. How is the investment structured?

Each Limited Partnership controls a qualified investment business. Under the EB-5 Visa regulations, there are three types of qualifying investments for investor visa purposes: the new commercial enterprise, the expansion of an existing business, or the rehabilitation of a troubled business. They are defined as follows:

- The “new commercial enterprise” is either the creation of an original business, or the subsequent or simultaneous restructuring of an existing business such that a new commercial enterprise results;
- The “expansion of an existing business” may qualify through the investment of the requisite dollar amount such that a 40% increase in either net worth or the number of employees results; or
- The “troubled business” investment requires the requisite dollar amount in a business which has been in existence for at least two years, and for a period of 12 to 24 months prior to the filing of the petition, has demonstrated at least a loss of profit equal to 20% of the business net worth.

A qualifying investment may utilize any one of these three types of business enterprises. However, most recently, investors have successfully utilized either the “new business” or “troubled business” situation, which qualifies for special, advantageous treatment by the regulations in terms of the job creation requirements. Prior investments have included restaurant chains, nursing homes, national hotel franchises, manufacturing companies and transportation companies. Berry Moorman will assist the investor in locating the best investments for the EB-5 Visa.

The investor will purchase an interest in the Limited Partnership. The investor will become a Limited Partner. The investor’s percentage share of the Limited Partnership depends on the percentage of the investment based on the value of the project. The prospectus for each project describes the valuation methodology.

The Limited Partnership, will be managed by the general partner of the Limited Partnership. In some cases, the general partner may be another investor, or a management team. As well, the EB-5 investor also has the option to manage the qualified investment directly without the use of a partnership. In most cases, the general partner will manage the qualified investment. The Limited Partners receive their share of the income from the qualified investment. Some investors may also invest in the qualified investment for profit only without any immigration benefit.

4. What is a limited partnership?

This is best explained through an overview of the various entities available to investors.

A **corporation**, formed by filing a charter with a state government, is owned by shareholders. The corporation is taxed on its income. The shareholders are only taxed on dividends paid to them by the corporation. Shareholders do not pay tax on the corporation's income. The shareholders only risk the cost of their investment in the corporation, they bear no responsibility for the general affairs of the corporation.

A **partnership** is comprised of two or more people or entities coming together for an enterprise, without any particular state charter. The partnership does not pay tax, but passes through all items of income and loss to the partners. The partners pay tax on partnership earnings. Each partner, unlike a corporate shareholder, undertakes responsibility for the entire operations of the partnership. If the partnership were to be sued and judged liable, each partner bears full responsibility for the damages. A corporate shareholder has no such direct liability.

A **limited partnership** combines corporate limited liability with partnership taxation. The limited partnership, formed by filing a charter with a state government, consists of a general partner and one or more limited partners. The charter details the rights and powers of the limited and general partners, percentages of ownership, and distributions of profits. The general partner manages the business. As in a corporation, the limited partners are passive investors liable only for the value of their investment. As in a general partnership, limited partnership income is taxed at the partner level, not at the entity level.

A **limited liability company** is an entity that passes through income and loss to the members but offers members the same limited liability as a limited partner or corporate shareholder. You could say a limited liability company is a corporate version of a limited partnership. The limited liability company is allowed to elect whether to be taxed as a corporation or as a partnership.

In most situations, Berry Moorman will recommend the use of a limited partnership because the EB-5 Visa regulations specifically refer to limited partners, exempting them from the requirement to actively participate in the business. The regulations make no mention of limited liability companies.

5. How is the limited partner interest protected?

The Certificate of Limited Partnership will be recorded with the applicable State where the qualified investment is located. The Certificate of Limited Partnership is a public record. The Certificate refers to a Schedule A of the limited partnership agreement, which lists the names and percentage interests of the limited partners. The deed for any investment property is held in the name of the limited partnership. The deed is also of public record. This means the property cannot be sold, mortgaged or altered without complying with the terms of the limited partnership agreement.

6. Is the investment guaranteed?

No. The EB-5 Visa regulations require an "at risk" investment without guarantees or redemption rights.

7. What are the risks?

As in any investment there is a risk of total loss. Like everybody, there is the risk of the deleterious effects of acts of god, war, and market fluctuations, real estate prices, etc. Berry Moorman urges all investors to independently verify the information contained in any qualified investment prospectus.

8. How does the partnership distribute income?

Each partnership distributes profits to its investors annually. The distributions are based on the prior year's gross income net of expenses. Investors receive a profit and loss statement with each year's distribution. As well, at the end of the year the partnership issues a summary report along with Internal Revenue Service form K-1. Form K-1 details each investor's yearly income and expenses. Form K-1 is required to prepare an investor's US annual tax return.

9. What documents are prepared to process the EB-5 Visa (green card) petition?

Berry Moorman must prepare complete biographical information for each applicant and the principal investor must prove the source of the investment funds. To prove the source of investment funds, the USCIS requires five years of tax returns, five years of bank records, proof of ownership

in any businesses, financial statements for each business and business licenses. The idea is to present a track record of an honest course of dealing. If capital came from a specific transaction, such as sale of a house, inheritance or gift, the investor must prove the transaction occurred, by providing an official document, such as a closing statement or contract or other official documents. This is not an exhaustive list. Other documents may be required and vary on a case-by-case basis.

10. What issues have been problematic in EB-5 Visa cases?

Different investment models are used for each case. The most common problem area has been insufficient documentation of the source of funds. Many people try to disclose the least possible information only to have the file returned with a request for further information. It is better to provide too much information rather than too little information. In this era of terror alerts, and suspicions about money laundering, USCIS case examiners require a well-documented source of funds.

11. Where can I find a copy of the relevant law and EB-5 Visa regulations to study?

Please go to the Bureau of Citizenship and Immigrations Services web site. A direct link to investor visa information is: <http://uscis.gov>.

12. How can an investor verify that Berry Moorman is an honest and competent law firm?

Berry Moorman offers client references upon request. Investors are also invited to review our web site at <http://www.berrymoorman.com>. Further, investors may make inquiry with the State Bar of Michigan regarding our firm and our individual attorneys. Bank references are also available upon request.

13. How long does the USCIS take to process EB-5 Visa (green card) petitions?

Processing times vary from as little as a few weeks to as much as six months. Berry Moorman can't predict or promise a particular processing time. An investor should plan for the entire application process to take approximately one year.

14. What are the processing procedures?

A general outline of the application process follows:

Step 1) File a Petition for Alien Entrepreneur. This petition requests USCIS to certify the applicant and the investment as eligible for EB-5 Visa (green card) status.

Step 2) Upon approval of the Petition, (a) if the investor is already in the United States, the investor may apply for Adjustment of Status to Permanent Residence by sending an application and supporting documents to the USCIS. (b) If the investor is abroad, the investor must wait for notification from the Embassy in the investor's home country to prepare documents for the visa interview.

The purpose of the Adjustment of Status or consular visa interview is to make sure the investor is not subject to a grounds of exclusion, e.g. a criminal past, infectious diseases, etc.

Step 3) Upon approval, the investor receives a form evidencing the approval as well as a travel document. The investor will then receive the temporary (conditional) green card in the mail. If the investor is abroad, the investor must enter the US within six months of the date of the Embassy approval.

Step 4) After two years of holding the temporary (conditional) green card and maintaining the investment at risk within the qualified investment, the investor may file for removal of conditions or for the permanent green card. This procedure permits USCIS to verify that the investor has maintained the approved investment for the required two-year period.

For further information or inquires regarding the BMPC Investor Visa Program or the EB-5 Visa, qualification as an investor, investor financing assistance, or qualification as a potential investment project seeking foreign investment capital, please contact Randolph M. Wright (rwright@berrymoorman.com), Simon Edelstein (sedelstein@berrymoorman.com), or Scott D. Relf (srelf@berrymoorman.com) at Berry Moorman P.C.

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