

EB-5 PROJECT RISK ASSESSMENT QUESTIONNAIRE FOR INVESTORS



**FOR COMMERCIAL REAL ESTATE
DEVELOPMENT PROJECTS**



PHONE: 1-800-288-9138
E-MAIL: info@EB5AN.com
EB5AN.com



PHONE: 215-825-8600
E-MAIL: info@klaskolaw.com
KLASKOLAW.com

ABOUT THE QUESTIONNAIRE

The purpose of the EB-5 project risk assessment questionnaire is to help EB-5 investors make more informed EB-5 investment decisions by evaluating the key factors that impact immigration and financial risk in EB-5 projects.

The EB-5 project risk assessment questionnaire is the result of a partnership between two EB-5 industry leaders: EB5 Affiliate Network and Klasko Immigration Law Partners. Leveraging their extensive experience working with EB-5 projects around the country and EB-5 investors around the world, these firms have closely collaborated to assemble a set of immigration and financial risk related questions that help investors quickly identify the most important aspects of an EB-5 investment so they can ask the right questions and know the best answers.

QUESTIONNAIRE INSTRUCTIONS

The questionnaire can be completed as a digital PDF file or it can be printed and completed manually in hard copy form.

Whichever method you choose, simply review and enter responses for all 32 immigration and financial risk questions for a specific EB-5 project. All the answers to the questions can be found in the project's offering documents. If you have difficulty finding the answers to any of the questions, you should contact the person or company that provided you with the information on this EB-5 project and ask for assistance. The choices for each answer are categorized as "Strong," "Medium," or "Poor" responses. Strong answers receive 3 points, Medium answers receive 2 points, and Poor answers receive 1 point.

For the Digital PDF Version of the Questionnaire

Once all questions have been answered, the results are automatically displayed in a summary table and chart on the last page of this file.

For the Hard Copy Version of the Questionnaire

After printing a hard copy of the file and following the instructions above to complete the questionnaire, you can manually total the scores for both financial and immigration risk in the summary chart. Then plot the results on the chart on the last page of the questionnaire.

TABLE OF CONTENTS

IMMIGRATION RISK		
QUESTIONS	JOB CREATION	PAGE
#1	How many jobs are required for all EB-5 investors (10 per investor), and how many jobs will the project create in total?	6
#2	How many of the project's jobs have already been created (as of the EB-5 investment date)?	6
#3	How many of the project's jobs are forecast to come from construction expenditures, and does the construction timeline last more than 24 months (the minimum requirement to count model-derived direct construction jobs)? Are there enough jobs from construction alone to satisfy the job creation requirement?	7
#4	Is the economic report compliant with USCIS standards?	8
PROJECT COMPLETION		
#5	Is all of the capital needed for the project already committed?	8
#6	Is the project construction contingent or dependent on EB-5 capital?	9
REGIONAL CENTER AND PROJECT SPONSOR CREDIBILITY		
#7	What is the background and experience of the regional center's operators?	9
#8	Is the NCE qualified to manage EB-5 investment capital?	10
#9	Do the regional center owners have an ownership stake in the EB-5 project?	10
#10	Is the regional center compliant with USCIS rules and regulations?	11
#11	Does the project have an ongoing compliance plan to protect investors throughout the life of the EB-5 investment?	12
USCIS APPROVAL		
#12	Has this project filed for or received I-924 exemplar approval with USCIS?	12

TABLE OF CONTENTS

QUALITY OF DOCUMENTATION		
#13	Does the project have a preset plan for redeploying investment funds if the EB loan is paid off before all investors have completed the two-year period of conditional residence or received I-829 petition approval?	13
#14	Is the regional center approved for the geographical area that includes the location of the project?	13
#15	Is the project in a TEA?	14
#16	Is there any guarantee of return of capital or acquisition of property or other assets?	14
QUESTIONS	QUALITY OF DOCUMENTATION	PAGE
#17	Are the professionals involved in preparing the documentation experienced with EB-5 projects?	15
#18	Is the project business plan Matter of Ho compliant and economically feasible as required by USCIS for all EB-5 business plans?	15
#19	Does the economic impact report clearly identify credible sources for EB-5-eligible job creation and determine how many EB-5 jobs the project will create for each EB-5 investor?	16
#20	Are the offering documents for the project compliant with USCIS requirements?	17
FINANCIAL RISK		
QUESTIONS	BORROWER/DEVELOPER CREDIBILITY	PAGE
#1	Who is the developer of the EB-5 project (typically the manager of the job-creating entity, or JCE)?	18
#2	Does the developer have a verifiable track record of success?	18
#3	How much development (in U.S. dollars) has the developer completed to date?	19
#4	Does the developer have established relationships with lenders?	19
#5	Who are the owners of the developer?	20
CAPITAL STACK SOURCES		
#6	Is the project fully capitalized?	20
#7	What percentage of the project is developer equity?	21
#8	Is there a senior lender/bank already committed to the project?	21

TABLE OF CONTENTS

	EB-5 INVESTMENT/LOAN TERMS	
#9	What is the initial EB-5 loan term length? Are extensions permitted?	22
#10	What is the escrow structure for the project, and how does this fit into the overall project viability?	22
#11	What event or events will trigger the start date of the EB-5 loan?	23
#12	How many times can the EB-5 loan be extended before a default?	23
#13	Is there a clear repayment mechanism at the end of the loan term?	24
#14	Who are the EB-5 fund issuers?	24
#15	Do the EB-5 fund issuers have an ownership stake in the EB-5 project?	25
QUESTIONS	ONGOING FINANCIAL REPORTING	PAGE
#16	What processes are in place to provide regular reporting to EB-5 investors?	25

IMMIGRATION RISK

JOB CREATION

1. How many jobs are required for all EB-5 investors (10 per investor), and how many jobs will the project create in total?

- Strong Answer** At least 1.5X job cushion (i.e., the project creates 20 jobs per investor rather than the required 10 jobs per investor)
- Fair Answer** Between 1.2X-1.5X job cushion
- Poor Answer** Below 1.2X job cushion

KEY

Projects that create significantly more jobs than are required per investor have lower immigration risk.

2. How many of the project's jobs have already been created (as of the EB-5 investment date)?

- Strong Answer** The project has already started to create the required jobs for investors (meaning construction money is already being spent).
- Fair Answer** The project has obtained the necessary permits and entitlements and has a clear date on which job creation or construction will begin.
- Poor Answer** The project has not started to create EB-5-eligible jobs to date, and there is no clear date on which such jobs will be created or construction will begin.

KEY

Projects that have already started to create EB-5-eligible jobs before the EB-5 investor's capital enters the project have lower immigration risk.

IMMIGRATION RISK

3. How many of the project's jobs are forecast to come from construction expenditures, and does the construction timeline last more than 24 months (the minimum requirement to count model-derived direct construction jobs)? Are there enough jobs from construction alone to satisfy the job creation requirement?

- Strong Answer** The project is forecast to create more than 15 jobs per investor from construction expenditures alone, with an expected construction timeline of more than 2.5 years, as indicated in writing by a reputable general contractor, OR the project is forecast to create more than 15 jobs per investor from indirect construction jobs alone.
- Fair Answer** The project is forecast to create between 10 and 15 jobs per investor from construction expenditures alone, with an expected construction timeline of more than 2 years, as indicated in writing by a reputable general contractor, OR the project is forecast to create between 10 and 15 jobs per investor from indirect construction jobs alone.
- Poor Answer** The project is forecast to create fewer than 10 jobs per investor from construction expenditures alone, with an expected construction timeline of less than 2 years and no written documentation for the projected construction timeline.

KEY

Model-derived direct construction jobs can be included only if construction lasts more than 24 months. EB-5-eligible jobs created by construction expenditures, as opposed to operating revenues, carry a lower immigration risk, as the job creation requirement can be satisfied as long as the project is built even if the project does not operate successfully. In short, there is little to no operational risk.

IMMIGRATION RISK

4. Is the economic report compliant with USCIS standards?

- Strong Answer** The economic report calculates jobs using the input/output method analyzing RIMS II or IMPLAN data or other USCIS-approved method and takes a conservative approach on the geographic area (no more than 1 metropolitan statistical area) where the economic impact from the project will occur.
- Fair Answer** The economic report calculates jobs using the input/output method analyzing RIMS II or IMPLAN data or other USCIS-approved method and takes an aggressive approach on the geographic area (more than 1 metropolitan statistical area) where the economic impact from the project will occur.
- Poor Answer** The economic report does not use a USCIS-approved methodology OR has errors in the job calculations, data analyzed, or any other material aspect of the report.

KEY

The economic report is the document indicating the number of jobs to be created by the project and is a crucial component for the investor's EB-5 petition. A compliant economic report uses a USCIS-approved methodology using approved third-party, verifiable, data sources and applies the data to the correct geographic area.

Project Completion

5. Is all of the capital needed for the project already committed?

- Strong Answer** All the sources of capital required have been identified and committed, and the project is already underway.
- Fair Answer** All the sources of capital have been identified, but not all sources have written commitments.
- Poor Answer** Not all the sources of capital required have been firmly identified.

KEY

Projects with all required capital already committed are safer because they will move forward with a high likelihood of completion since all required capital is available. If a project is not completed, it may not create enough EB-5 jobs for the investors.

IMMIGRATION RISK

6. Is the project construction contingent or dependent on EB-5 capital?

- Strong Answer** There is no minimum EB-5 capital raise for the project and all the capital needed to complete the project has already been committed, OR the EB-5 capital is being used to partially recapitalize bridge funding per USCIS requirements.
- Fair Answer** There is no minimum EB-5 capital raise for the project, but some of the other capital sources will need to be identified.
- Poor Answer** The project will not be able to start or be completed without all the targeted EB-5 capital being raised.

KEY

Projects that are contingent on EB-5 capital being raised to start construction carry a much higher immigration risk for EB-5 investors because there is no guarantee that all the required EB-5 investors will be found in the required amount of time.

REGIONAL CENTER AND PROJECT SPONSOR CREDIBILITY

7. What is the background and experience of the regional center's operators?

- Strong Answer** The regional center owners are professionals with institutional backgrounds and extensive investment and regional center experience across multiple EB-5 projects, the owners have no criminal record, and no other regional centers operated by the same owners have been terminated for reasons except lack of activity.
- Fair Answer** The regional center owners do not have extensive investment or EB-5 experience, and the owners have no criminal record.
- Poor Answer** The regional center owners have been convicted of crimes in the past, OR a regional center operated by the same principals has been terminated by USCIS for reasons other than lack of activity.

KEY

Owners and operators of a regional center should be experienced professionals who have a track record of successful investment transactions. They should have institutional backgrounds with no criminal convictions.

IMMIGRATION RISK

8. Is the NCE qualified to manage EB-5 investment capital?

- Strong Answer** The NCE's principals have been involved in many EB-5 projects, and there have been no denials of any of their investors' I-526 or I-829 petitions for project-related reasons.
- Fair Answer** The project sponsor's principals have been involved in some EB-5 projects, the principals have limited previous investment experience, and there have been no denials of any of their investors' I-526 or I-829 petitions for project-related reasons.
- Poor Answer** The project sponsor's principals have no previous investment experience, OR there has been a denial with respect to any of their investors' I-526 or I-829 petitions for project-related reasons, OR there have been past allegations or convictions of fraud against the NCE or any other business venture involving the project sponsor's principals.

KEY

The NCE is the company managing the investor's funds and is the issuer of the EB-5 securities purchased by investors. Having a professionally managed NCE with EB-5 immigration experience is vital to ensuring the project remains in compliance with USCIS requirements. While not always the case, the project sponsor and the regional center may be, and often are, the same principals.

9. Do the regional center owners have an ownership stake in the EB-5 project?

- Strong Answer** The regional center owners have no equity interest in the development, and the regional center/manager only has financial interest related to the EB-5 investment.
- Fair Answer** The regional center owners have a financial interest in the project (outside of the EB-5 component), but the investors are protected by an independent third-party general partner or managing member of the NCE.
- Poor Answer** The regional center owners have a financial interest in the project (outside of the EB-5 component), and there is no independent third-party general partner or managing member of the NCE.

KEY

If the owners of a regional center have any ownership in the EB-5 project this creates a clear conflict of interest, which can be dangerous for EB-5 investors.

IMMIGRATION RISK

10. Is the regional center compliant with USCIS rules and regulations?

- Strong Answer** The regional center is fully compliant with all USCIS requirements, has filed an annual I-924A form for every year required, and maintains detailed information on all sponsored investors and projects; the regional center has never received a notice of intent to terminate it; and, on request, the regional center can and does provide supporting evidence.
- Fair Answer** The regional center has previously failed to be fully compliant with USCIS requirements but currently has been in compliance with USCIS requirements for the last 2 years, with supporting evidence, and the regional center has never received a notice of intent to terminate it.
- Poor Answer** The regional center is not currently in compliance with USCIS requirements, OR the regional center cannot demonstrate through supporting evidence that it is currently in compliance with USCIS requirements, OR the regional center has previously received a notice of intent to terminate (for reasons except lack of activity).

KEY

Professionally run regional centers must be compliant with the USCIS requirements for annual reporting and keep appropriate records with respect to all investors sponsored by the regional center.

IMMIGRATION RISK

11. Does the project have an ongoing compliance plan to protect investors throughout the life of the EB-5 investment?

- Strong Answer** The project has an independent third-party providing ongoing compliance, including data tracking and legal review.
- Fair Answer** The project has provided ongoing compliance, but it will be done without an independent third-party review.
- Poor Answer** The project has not developed a plan for ongoing compliance.

KEY

Ongoing compliance and reporting of key project information, including financial accounting, construction expenditures, immigration status, and job creation status, will help protect investors and keep them constantly informed of the status of their investment.

USCIS APPROVAL

12. Has this project filed for or received I-924 exemplar approval with USCIS?

- Strong Answer** The project has received I-924 exemplar approval from USCIS OR has investors with approved I-526 petitions.
- Fair Answer** The project has filed an I-924 exemplar application with USCIS but has not yet received approval and has no approved I-526 petitions.
- Poor Answer** The project has filed an I-924 exemplar application with USCIS that was denied and has no approved I-526 petitions.

KEY

Best practice is for projects to file an I-924 exemplar application for project approval with USCIS. An exemplar approval indicates that the project meets the current requirements of the EB-5 program, and any investors who select the project are unlikely to receive an RFE, NOID, or denial on project-related issues.

IMMIGRATION RISK

13. Does the project have a preset plan for redeploying investment funds if the EB loan is paid off before all investors have completed the two-year period of conditional residence or received I-829 petition approval?

- Strong Answer** The offering documents allow for redeployment and identify a low-risk redeployment strategy.
- Fair Answer** The offering documents allow for redeployment but do not provide any details on the anticipated options.
- Poor Answer** The offering documents do not include a redeployment strategy.

KEY

Future USCIS processing times are unpredictable, and obtaining conditional resident status and later I-829 petition approval may take many years, so it is important to be sure that the EB-5 project has identified a strategy in advance for the potential redeployment of EB-5 capital in accordance with USCIS rules and regulations to maintain the EB-5 funds' at-risk status.

14. Is the regional center approved for the geographical area that includes the location of the project?

- Strong Answer** The regional center's approved geographical area includes the location of the EB-5 project.
- Fair Answer** The regional center's approved geographical area is contiguous to the county of the EB-5 project.
- Poor Answer** The EB-5 project location is outside of the regional center's boundaries, and the county in which the project is located is not contiguous to the existing approved area.

KEY

USCIS policy requires that an EB-5 project that uses indirect and induced job creation be located within the geographic area of an approved regional center.

IMMIGRATION RISK

15. Is the project in a TEA?

- Strong Answer** The project is in a single census tract with an unemployment rate exceeding 150% of the national average, and a TEA qualification report has been prepared by an independent and reputable EB-5 economist using current and USCIS-approved unemployment data, OR the project is located in a rural area according to USCIS rules.
- Fair Answer** The project is in a group of directly adjacent tracts with a combined average unemployment rate exceeding 150% of the national average, and a TEA qualification report has been prepared by an independent and reputable EB-5 economist using current and USCIS-approved unemployment data.
- Poor Answer** The project does not have a TEA qualification report prepared by an independent and reputable EB-5 economist and is not located in a rural area according to USCIS rules.

KEY

If the EB-5 project requires only a \$900K investment, it must be located in a high unemployment or rural TEA.

16. Is there any guarantee of return of capital or acquisition of property or other assets?

- Strong Answer** There is no mention of a date or amount of redemption of the investment nor any provision for the investor to receive any benefit.
- Fair Answer** The offering documents reference a redemption right at the option of the developer but not the investor.
- Poor Answer** The offering documents reference a specific redemption amount and/or date, or the investor is entitled to a benefit not available to non-EB-5 investors.

KEY

USCIS rules and regulations require that an EB-5 project keep investor capital at risk during the two-year period of conditional residence; therefore, any guarantee of return of capital or future acquisition of property or other assets is not permitted.

IMMIGRATION RISK

Quality of Documentation

17. Are the professionals involved in preparing the documentation experienced with EB-5 projects?

- Strong Answer** The professionals who completed the EB-5 project documentation are reputable and have extensive experience with EB-5 projects across the country.
- Fair Answer** The professionals who completed the EB-5 project documentation have worked on a few EB-5 projects.
- Poor Answer** The professionals who completed the EB-5 project documentation have never worked on an EB-5 project before this one, OR the professionals were previously involved in a project that ultimately resulted in I-924, I-526, or I-829 denials for project-related reasons.

KEY

The professionals (e.g., immigration lawyers, economists, securities lawyers, business plan writers, etc.) involved in assembling the set of EB-5 documents should be experienced with EB-5 projects.

18. Is the project business plan Matter of Ho compliant and economically feasible as required by USCIS for all EB-5 business plans?

- Strong Answer** The business plan is Matter of Ho compliant as certified by a reputable business plan writer experienced in the EB-5 industry and includes a separate report or section with a market feasibility study.
- Fair Answer** The business plan appears to meet the requirements of Matter of Ho but was not prepared by an EB-5 business plan writer and has a section on the economic feasibility of the project.
- Poor Answer** The business plan does not appear to meet the requirements of Matter of Ho and contains no information on economic feasibility.

KEY

EB-5 business plans are specialized documents that require appropriate disclosure as discussed in Matter of Ho. It is critical to immigration security that the business plan be clearly written, Matter of Ho compliant, and economically feasible.

IMMIGRATION RISK

19. Does the economic impact report clearly identify credible sources for EB-5-eligible job creation and determine how many EB-5 jobs the project will create for each EB-5 investor?

- Strong Answer** The economic report explains exactly how many EB-5-eligible jobs will be created and the timeline for creation. The report also includes a breakdown of exactly how many jobs will be created for each investor. The report further includes a detailed explanation of the input/output methodology used in the calculation of EB-5-eligible job creation.
- Fair Answer** The economic report contains a summary of the total job creation for the project and the sources for the job creation but fails to include information on the timeline for the jobs to occur. The report includes a short explanation of the input/output methodology used in the calculation of EB-5-eligible job creation.
- Poor Answer** The economic report includes only the total number of projected EB-5-eligible jobs and fails to include any information on (i) a breakdown of the sources of the job creation, (ii) the input/output methodology used, and (iii) a clear timeline for when the jobs will be created.

KEY

EB-5 economic impact reports must contain a clear framework of how projected EB-5-eligible jobs will be created in total and per investor. It is critical to immigration security that the economic impact report clearly explain how many EB-5-eligible jobs will be created, the timeline for their creation, and the source of their creation.

IMMIGRATION RISK

20. Are the offering documents for the project compliant with USCIS requirements?

- Strong Answer** The offering documents have been prepared by a securities attorney experienced with EB-5 and reviewed by a reputable immigration attorney experienced with the EB-5 program.
- Fair Answer** The offering documents have been prepared by an experienced securities attorney but not reviewed by an experienced EB-5 immigration attorney.
- Poor Answer** The offering documents have been prepared by a securities attorney with limited EB-5 experience and have not been reviewed by an experienced EB-5 immigration attorney.

KEY

Most EB-5 projects are private placements of securities requiring disclosure to investors in the form of a private placement memorandum or offering memorandum. The disclosures in such documents, in addition to being compliant with securities laws, must also indicate to USCIS that the project is in compliance with immigration law.

FINANCIAL RISK

BORROWER / DEVELOPER CREDIBILITY

1. Who is the developer of the EB-5 project (typically the manager of the job-creating entity, or JCE)?

- Strong Answer** The developer is a strong, financially liquid company with an extensive track record of developing this specific type of project (e.g., apartment, hotel, condominium, etc.) that has never defaulted on a loan in its history and that can easily secure senior financing on this project.
- Fair Answer** The developer has built several projects similar to this project with senior debt but has defaulted on loans in the past.
- Poor Answer** The developer has never built a project like this project and has not been able to secure other debt financing for this project.

KEY

The developer of the EB-5 project is critical because this is the company that is actually borrowing the EB-5 capital, undertaking the project, creating the jobs, and is anticipated to be able to return the capital to the NCE after the investment period. Investors should select developers with a proven track record for successfully developing projects and who will likely have the ability to repay the EB-5 loan or investment to the NCE after successful completion.

2. Does the developer have a verifiable track record of success?

- Strong Answer** The developer has built 10+ projects similar to this project, and not one of them has failed to be completed or has been taken over by the lender/bank involved.
- Fair Answer** The developer has worked on several projects similar to this project, but not all of them have been completed and sold at a profit.
- Poor Answer** The developer has never built a project like this project and is relying on EB-5 investors to fund this project.

KEY

The developer should have an easily verifiable track record that makes investors feel comfortable about the developer's involvement in the project.

FINANCIAL RISK

3. How much development (in U.S. dollars) has the developer completed to date?

- Strong Answer** The developer has completed more than \$2 billion worth of real estate development in the United States.
- Fair Answer** The developer has completed more than \$500 million worth of real estate development in the United States or has a supporting team that has completed more than \$500 million worth of development.
- Poor Answer** The developer has completed less than \$500 million worth of real estate development in the United States and does not have a strong team with extensive real estate experience.

KEY

The greater the amount of real estate development experience the developer has, the more likely the project will be well organized and the greater the chance of success.

4. Does the developer have established relationships with lenders?

- Strong Answer** The developer has borrowed \$100 million or more from various banks, often working with the same bank on more than one project.
- Fair Answer** The developer has borrowed less than \$100 million and has worked with only one bank in the past.
- Poor Answer** The developer has never borrowed money from a bank on a similar project and has relied only on equity investment capital to complete its projects.

KEY

Typically, if the developer has strong relationships with lenders/banks, it is conservative with its assumptions, and banks are comfortable lending capital to the developer to complete its projects. If no bank will lend the developer money, this is an indicator that the developer has a poor reputation.

FINANCIAL RISK

5. Who are the owners of the developer?

- Strong Answer** The principals of the developer are involved in many EB-5 projects and have extensive investment experience.
- Fair Answer** The principals of the developer are involved in only one EB-5 project and do not have extensive investment or EB-5 experience.
- Poor Answer** The principals of the developer have little experience OR have been convicted of crimes in the past.

KEY

The principals of the developer should be experienced professionals who have a track record of successful investment transactions. They should be well educated, have a long-term commitment to the EB-5 industry, and have no criminal convictions.

CAPITAL STACK SOURCES

6. Is the project fully capitalized?

- Strong Answer** All the sources of capital required have been fully committed with signed agreements, and the project is already underway.
- Fair Answer** All the sources of capital required have been identified, but the capital has not yet been funded, and the project is not yet underway.
- Poor Answer** Not all the sources of capital required have been firmly identified, and the project is not yet underway.

KEY

If a project has insufficient capital at the time of EB-5 investment, there is a chance that the project will never actually be completed or that it will be only partially completed. If the project is not fully completed, the developer may not be able to return EB-5 investors' capital since the exit strategy is unlikely to be achievable.

FINANCIAL RISK

7. What percentage of the project is developer equity?

- Strong Answer** The project has at least 20% of committed developer equity in the overall development capital stack.
- Fair Answer** The project has 10-19% of committed developer equity in the overall development capital stack.
- Poor Answer** The project has 9% or less of committed developer equity in the overall development capital stack.

KEY

Projects that have a larger amount of developer equity are more likely to be completed and provide a greater margin of safety for EB-5 investor capital.

8. Is there a senior lender/bank already committed to the project?

- Strong Answer** The project has a brand-name, national senior lender/bank that has committed to lend the project more than \$25 million OR 50% or more of the project cost.
- Fair Answer** The project has a senior lender that has committed to lend the project less than \$25 million OR less than 50% of the project cost.
- Poor Answer** The project has no lender/bank involved other than EB-5 capital.

KEY

Projects that have a committed senior lender/bank involved must undergo strict due diligence and compliance to qualify for a major multi-million-dollar loan. Senior lenders/banks are conservative institutions, so they will carefully assess due diligence for all aspects of a project before committing to lend capital; therefore, these projects tend to be safer and higher quality.

FINANCIAL RISK

EB-5 INVESTMENT / LOAN TERMS

9. What is the initial EB-5 loan term length? Are extensions permitted?

- Strong Answer** The loan term length is 5 years, and clearly defined limited extensions are available for the developer except for cases in which investors have not concluded the two-year period of conditional residence. In such cases, the loan can be extended to keep capital at risk.
- Fair Answer** The loan term length is 5 years, and the developer may take several developer-optional extensions.
- Poor Answer** The loan term length is more than 5 years, and the developer may take unlimited optional extensions.

KEY

The EB-5 loan term length will determine exactly how long the EB-5 investor capital must remain in the project. Each investor's EB-5 capital should remain invested and at risk at least until the conclusion of the individual EB-5 investor's two-year period of conditional residence.

10. What is the escrow structure for the project, and how does this fit into the overall project viability?

- Strong Answer** The project has a developer I-526 petition denial guarantee and does not use EB-5 capital until all funding is available and the project is moving forward.
- Fair Answer** There is an early release mechanism with a holdback to repay any investors with I-526 petition denial, but not all the required capital is available.
- Poor Answer** Funds are released upon I-526 submission without any holdback, without all other required capital committed, and without any developer guarantee.

KEY

If investor funds are used in the project before I-526 petition approval, there should be a clear mechanism to repay an investor if his or her I-526 petition is denied, and the funds should only be deployed in conjunction with other capital.

FINANCIAL RISK

11. What event or events will trigger the start date of the EB-5 loan?

- Strong Answer** The trigger for the loan commencement date is in line with when the EB-5 capital is available to the developer (depending on the escrow structure).
- Fair Answer** The trigger for the loan commencement date may be significantly later than when the majority of the capital is available to the developer.
- Poor Answer** The loan commencement date is determined by when the developer chooses to take the EB-5 capital out of escrow (i.e., at the developers option).

KEY

The start date of the loan will determine exactly when the loan term begins (e.g., if the start of the loan does not begin until one year after the investor's I-526 is approved, then the investor is committed to the EB-5 project for one year plus the length of the loan term).

12. How many times can the EB-5 loan be extended before a default?

- Strong Answer** The EB-5 loan can be extended only once before there is an event of default (assuming all investors have I-829 approvals).
- Fair Answer** The EB-5 loan can be extended multiple times before there is an event of default (assuming all investors have I-829 approvals).
- Poor Answer** The EB-5 loan can be extended an unlimited number of times, or it can be converted into equity in the project.

KEY

To protect EB-5 investors, a loan should have an end date that results in default if the developer is unable to repay the EB-5 investor capital by that date.

FINANCIAL RISK

13. Is there a clear repayment mechanism at the end of the loan term?

- Strong Answer** The loan has a mechanism to minimize the risk that there will not be capital available to repay the EB-5 loan—and this mechanism has been signed off on by an immigration attorney and meets the at-risk requirements.
- Fair Answer** With the projected financial performance (based on comparable assets), there will be a strong market to recapitalize the loan, or there will be significant cash flow available to repay the loan.
- Poor Answer** This is a non-traditional asset, and traditional financing sources are unlikely to provide a long-term loan to the company.

KEY

To repay a loan at the end of the period, the project must be able to get funding to recapitalize the project or be able to pay the NCE from prior cash flow.

14. Who are the EB-5 fund issuers?

- Strong Answer** The EB-5 fund issuers are involved in many EB-5 projects and have extensive investment and regional center operation experience.
- Fair Answer** The EB-5 fund issuers have had little involvement in EB-5 projects and do not have extensive investment or EB-5 experience.
- Poor Answer** The EB-5 fund issuers have been convicted of crimes in the past or have no EB-5 experience.

KEY

The issuers of the EB-5 fund should be experienced professionals who have a track record of successful investment transactions. They should have a long-term commitment to the EB-5 industry and have no criminal convictions.

FINANCIAL RISK

15. Do the EB-5 fund issuers have an ownership stake in the EB-5 project?

- Strong Answer** The EB-5 fund issuers have no financial interest in the EB-5 project (outside of the EB-5 investment).
- Fair Answer** The EB-5 fund issuers' only additional financial interest in the project is contingent on the successful EB-5 funding of the project.
- Poor Answer** The EB-5 fund issuers have a financial interest in the underlying development project beyond the EB-5 investment, and there are potential conflicts of interest.

KEY

If the EB-5 fund issuers have any ownership in the EB-5 project, except for an EB-5 equity investment, this creates a conflict of interest, which can be dangerous for EB-5 investors.

ONGOING FINANCIAL REPORTING

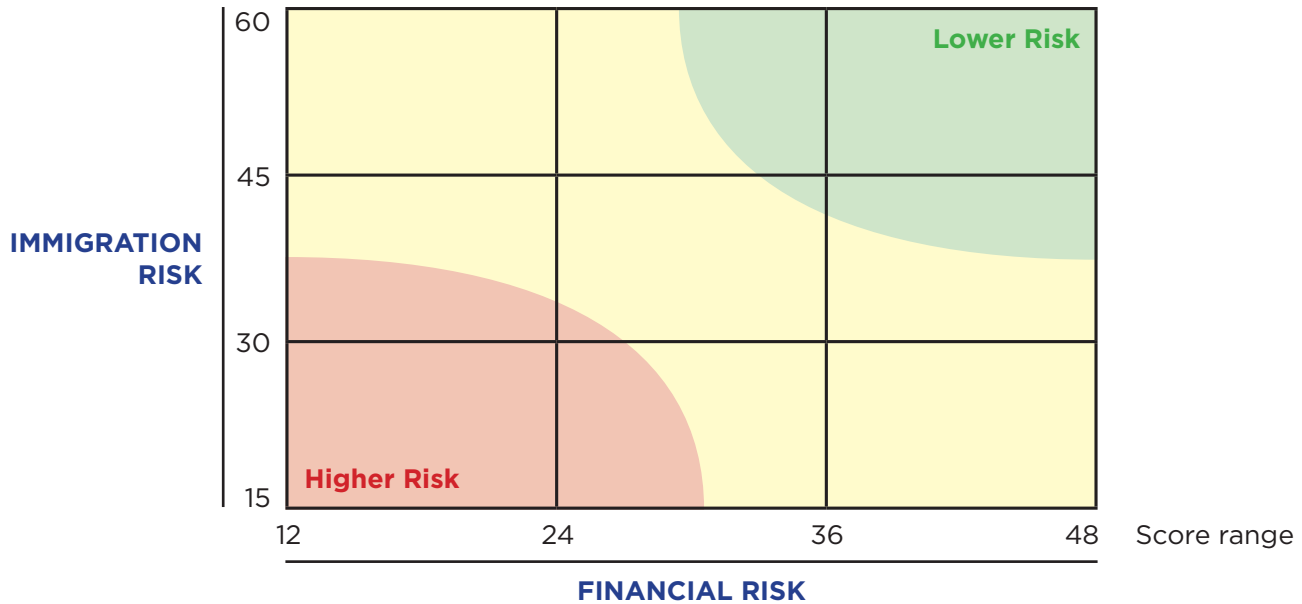
16. What processes are in place to provide regular reporting to EB-5 investors?

- Strong Answer** The EB-5 fund prepares and distributes detailed bi-annual or quarterly investment reports to all investors.
- Fair Answer** The EB-5 fund prepares and distributes detailed annual investment reports to all investors.
- Poor Answer** The EB-5 fund does not prepare or distribute investment reports of any kind to investors.

KEY

An EB-5 project should have clear reporting processes in place so that EB-5 investors are aware of the status of their investments and can regularly check their capital accounts over the investment term.

EB-5 PROJECT RISK ASSESSMENT



IMMIGRATION RISK	SUMMARY OF ANSWERS	FINANCIAL RISK
/20	Strong Answer	/16
/20	Fair Answer	/16
/20	Poor Answer	/16
	Total Responses	
	Total Points Earned*	

* Calculation: Strong = 3 points; Fair = 2 points; Poor = 1 point ★ = Selected Project

Note: This EB-5 due diligence checklist is not comprehensive. It should be used as a starting point for reviewing and evaluating potential EB-5 projects for investment. The best approach is to go through this checklist question by question, finding the answers to each question within the set of written project documents. The answers to all of these questions should be present within a project’s complete I-526 template. If you have difficulty finding the answers to any of these questions, you should contact the issuer of the EB-5 fund (usually the manager of the new commercial enterprise, or NCE) and ask for the answers to your questions to be provided in writing. This due diligence checklist is not intended as a substitute for legal advice. Investors should consult with their own legal counsel.