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## Status of the EB-5 Regional Center Program

Last night President Obama signed legislation into law to extend temporarily the Immigrant Investor Program (“Regional Center Program”) until December 11, 2015.

Congress created the EB-5 program in 1990 to stimulate the U.S. economy. The EB-5 program, administered by U.S. Citizenship and Immigration Services (USCIS), provides a foreign investor with the opportunity to become a lawful permanent resident of the U.S. through the investment of capital in the U.S. The standard capital investment requirement is \$1,000,000, while the capital investment requirement for certain rural or high unemployment areas is \$500,000. Each EB-5 investor must demonstrate that their capital investment will create or preserve 10 or more jobs for U.S. workers in the United States.

The EB-5 program was further expanded by Congress in 1993, through its enactment of the Regional Center Program (initially known as the Immigrant Investor Pilot Program). Under the Regional Center Program, economic units known as “Regional Centers” may be established to coordinate and oversee EB-5 compliant foreign investment in defined geographic areas. Requirements for foreign investment through the Regional Center Program are essentially the same as under the basic individual EB-5 investor program except that foreign investors investing through the Regional Center Program are not required to personally manage the job creating entity, and the job creation requirements are less restrictive. In particular, an investor in the Regional Center Program may establish that it has met the EB-5 job creation requirements through proof of direct or indirect job creation. This ability to prove indirect job creation through economic models, along with the relatively low cost of capital associated with Regional Center investment pools, among other factors, has made the Regional Center Program a popular alternative source of mezzanine financing for large-scale commercial development projects.

The Regional Center Program has been regularly reauthorized by Congress on a bipartisan basis, most recently in September 2012, when Congress eliminated the “pilot” designation and extended its authorization through September 30, 2015. Only within the last year has the popularity of the Regional Center Program surged. As of September 8, 2015, USCIS had approved approximately 732 Regional Centers throughout the U.S. and the vast majority of I-526 petitions filed are affiliated with Regional Centers.



Despite its popularity, many believe that reform is on the horizon for the EB-5 Regional Center Program. A number of options have been presented including raising the minimum investment amount and limiting the number of indirect jobs that can count toward the job creation requirement, but at this time there is no consensus as to the best way forward. Many have also looked to USCIS and the U.S. Securities and Exchange Commission (SEC) for more oversight claiming that the EB-5 Regional Center Program is susceptible to fraud. The SEC, with the assistance of USCIS, has been increasing its efforts to safeguard investors by bringing more enforcement actions and freezing assets. With heightened monitoring, we can expect more developers, Regional Centers, brokers and similar participants in the Regional Center Program to come under fire. You should consult with counsel to ensure that your Regional Center is EB-5 compliant.

### **Questions or Assistance:**

If you have any questions about EB-5, please feel free to contact one of the attorneys listed on page 1 of this alert.

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