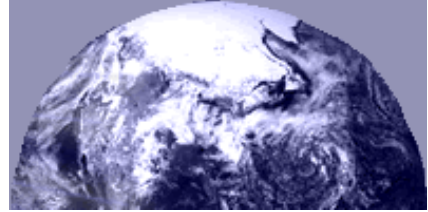


Thompson Immigration Law Associates

Providing U.S. & Global Immigration Solutions
to Businesses Around the World



U.S. Investor Visa Portfolio For Small and Large Investors

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(Practice Limited to Business Immigration Law)

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1 FIRM OVERVIEW

Thompson Immigration Law Associates is a global business immigration law firm located in Bellevue, Washington. Thompson Immigration handles all immigration needs generated by corporations and professionals for both the United States and other countries around the world.

1.1 FIRM SUMMARY

Thompson Immigration is owned and led by P. Robert Thompson. Mr. Thompson is a seasoned attorney with 20 years' experience as both a trial lawyer and a global business immigration attorney with experience with over 30 countries.

Thompson Immigration was established in 2002, in the middle of the last IT "market adjustment" when many immigration law firms who focused on the IT industry were downsizing or going out of business. Despite the existing market conditions, Mr. Thompson was able to maintain and expand an employment-based law firm. This is because of Mr. Thompson's entrepreneurial spirit and his ability to think "outside the box". This ability is best demonstrated by the fact that Thompson Immigration utilizes visa categories that are not commonly used by other immigration lawyers.

This same spirit has kept Thompson Immigration successful during the current "economic readjustment".

1.2 OBJECTIVES

Thompson Immigration's objectives include:

- To provide the highest level of service possible so as to set the standard for what companies from around the world expect from a top business immigration law firm.
- To exceed customer's expectations with regard to the timeliness and responsiveness of the firm.
- To develop a relationship with clients that will allow clients to feel comfortable that their and their employees' immigration needs are being met in the safest manner possible, while still maintaining the business goals and needs of the company.
- To provide educational services to clients in the form of immigration updates and free seminars to minimize the chance that clients will commit an error that will expose itself or its employees to liability.

Immigration law is 50% law and 50% human nature. Immigration matters must be presented in a manner that is persuasive, yet easily understood by the immigration or border officer who is reviewing the application. If an immigration officer cannot understand an application, (s)he will be inclined to deny the application.

1.3 SERVICES PROVIDED

Thompson Immigration handles all types of business visa or work permit issues to all regions of the world, including:

- Short- and long-term business visas for moving employees across international boundaries.
- U.S. investor visas for both immigrants and nonimmigrants.
- U.S. intra-company transfer visas between existing and newly-established multinational corporations.
- U.S. work permits and other “professional” visas (such as H-1B visas).
- Permanent residency green card applications for foreign workers who wish to remain indefinitely in the U.S. or other countries. This includes permanent residency applications for foreign nationals who marry U.S. citizens.
- Naturalization applications for foreign nationals wishing to become U.S. citizens.
- Defense of companies against law suits brought by the government or employees alleging violations of U.S. immigration laws.

1.4 CLIENT SUMMARY

Thompson Immigration has a broad range of corporate and professional clients, including:

- Individual investors and business owners.
- Small to multinational corporations.
- Professionals seeking to work or establish a business within the United States.
- IT Technology firms.
- Manufacturing companies.
- Architectural and other design-oriented firms.
- Hospitals and medical practices.
- Dental practices.
- Import/export companies.
- Private utility companies.

1.5 COMPETITIVE EDGE

Thompson Immigration's competitive advantage is based on numerous factors, including experience, specialization, use of cutting edge technology and adaptability.

1.6 EXPERIENCE

Robert Thompson brings to Thompson Immigration 20 years' of experience as both a trial lawyer and a business immigration lawyer. Mr. Thompson graduated from the George Washington National Law Center in Washington, D.C., the 12th best law school in the United States. He then practiced eight years in Washington, D.C., one of the four toughest markets for lawyers in the United States for some of the largest law firms in the United States, before moving to the Seattle, Washington, area.

Mr. Thompson worked for the Federal government promulgating regulations for the U.S. Environmental Protection Agency. He also has seven years' experience as a trial lawyer and environmental lawyer; but has practiced exclusively business immigration law since 1996.

This combination of governmental experience, litigation and business immigration experience has served Thompson Immigration’s clients well. Thompson Immigration approaches each immigration filing like it is a paper trial, presenting information to government agencies in a manner that reflects a client's needs in the best light possible. This is especially important when dealing with government employees and immigration officers at ports of entry who are not lawyers. *This approach is one reason why other attorneys regularly refer clients to Thompson Immigration or utilize our services in an “of counsel” capacity.*

1.7 SPECIALIZATION

Thompson Immigration has specialized its practice in one field of immigration law; namely, business immigration law. This fact is a critical distinction for clients who are seeking immigration counsel. The reason is that very few immigration law firms specialize in business immigration.

U.S. immigration law is a complex and ever-changing field of law. Indeed, many of the regulatory policies enacted by the Citizenship and Immigration Services and other immigration agencies are not promulgated through a formal rulemaking process, but rather through policy memos that are not published. By limiting its practice to business immigration, Thompson Immigration can assure its clients that it is knowledgeable about every new issue arising in this complex field of law.

Most immigration law firms handle every aspect of immigration into the United States, including family-based immigration, asylum cases, refugee cases, and essentially any other type of case that walks in the door.

On the other extreme is the large corporate law firm that has only one or two immigration attorneys on staff. These attorneys rarely practice immigration law on a full-time basis, and oftentimes practice immigration law only as a courtesy to the firm’s large corporate clients. As such, it is difficult for them to keep up with the myriad changes that occur on a monthly and even weekly basis in the immigration field. Those large firm attorneys that do practice immigration law on a full-time basis generally provide limited services to one or two large corporate clients.

This leaves a small percentage of immigration lawyers that specialize in business immigration. Of these, most do not have litigation experience. Moreover, there are only a handful of lawyers in the entire United States that handle immigration matters to countries other than the United States.

1.8 USE OF CUTTING EDGE TECHNOLOGY

Thompson Immigration has always used cutting edge technology in its practice, and continues to “push the envelope” in this area. Thompson Immigration was one of the first law firms in the United States to effectively use the Internet as a marketing platform.

Other examples of how Thompson Immigration is using cutting edge technology include:

- Most of Thompson Immigration's communications are handled electronically. This includes the use of electronic questionnaires (or “Data Information Sheets”) and the transmittal of immigration forms and supporting documents in a secure electronic format. Because of this, there is little or no time delay or extra cost associated with Thompson Immigration's communications with either its U.S. or overseas clients.

- Because Thompson Immigration could not find any commercially available immigration forms software that provided the flexibility desired, Thompson Immigration developed its own software platform from which it prepares all of its clients' immigration forms.
- Through its proprietary software system, Thompson Immigration can prepare customized Data Information Sheets that fit the specific needs of each client. In fact, some clients use these Data Information Sheets as a way to ensure that foreign candidates have valid immigration status before hiring them.
- Thompson Immigration has invested heavily into mobile technology. Using this technology, Mr. Thompson can answer telephone calls and emails, and connect to the Internet from anywhere, even in places that do not have WiFi access. He can also prepare documents, and connect and even operate his office computer from anywhere in the world. This allows Mr. Thompson to work on client matters no matter where he is located.
- Thompson Immigration will shortly start making video updates and video seminars which can be viewed by clients at their convenience either on line or on their mobile phones.

1.9 ADAPTABILITY

Another aspect of Thompson Immigration that is fairly unique among law firms is how Thompson Immigration adapts its practice to its clients' needs and desires. Thompson Immigration is constantly seeking new ways to modify how its practice is run so it can provide better service to its clients in what we like to consider as an informal "partnership" between Thompson Immigration and its clients. Some examples of specific operational changes that were made at a clients' request include:

- Doing away with a telephone receptionist and having attorneys answer their own telephones.
- Installing a telephone system in which all calls not answered by the office line are automatically transferred to an individual's cell phone.
- Incorporating daily messages on Mr. Thompson's answering service so that clients are aware if Mr. Thompson is in meetings or is otherwise unavailable on any given day.

Thompson Immigration's goal is to be just as convenient to work
with whether we are located next door or around the world.

1.10 FIRM MANAGEMENT

1.10.1 MANAGEMENT BACKGROUND

Thompson Immigration is a sole proprietorship established under the laws of the State of Washington. The principal of Thompson Immigration Law Associates, P. Robert Thompson, Esq., has been a practicing attorney since 1989. He has practiced exclusively business immigration law since 1996. Mr. Thompson is one of just a handful of U.S. attorneys who is experienced in global immigration matters. Mr. Thompson has handled business migration matters to over 30 countries.

Mr. Thompson received a Bachelor of Science degree in Chemical Engineering from the University of Maryland in 1982. After working in the chemical industry for three years, Mr. Thompson went to law school at the George Washington National Law Center, in Washington, D.C. This law school was ranked as the 12th best law school in the United States. Mr. Thompson worked full-time while attending law school at night. During this time, Mr. Thompson worked on Capitol Hill as a lobbyist on forestry issues. He also spent two years with the U.S. Environmental Protection Agency drafting regulations regarding existing chemicals in the chemical industry.

After graduation, Mr. Thompson worked for eight years in the Washington, D.C. area as a trial lawyer and environmental lawyer. In 1996, he joined a small immigration firm and fell in love with the practice of immigration law. He has practiced business immigration law exclusively since that time.

In 1998, Mr. Thompson convinced a Midwest law firm to open a West Coast office in Seattle. Mr. Thompson managed this office until 2002, when he bought out the office and started Thompson Immigration Law Associates.

Mr. Thompson is a member of numerous immigration and business/trade associations, including:

- American Immigration Lawyer's Association.
- District of Columbia Bar.
- Maryland State Bar.
- International Who's Who of Entrepreneurs.
- National Register's Who's Who of Executive and Professionals.
- Society of Human Resource Managers.
- Northwest Recruiters Association.
- Northwest Entrepreneurs Network.
- World Trade Center.
- Foundation for Russian American Economic Cooperation.
- Trade Development Alliance of Greater Seattle.

1.10.2 FIRM STAFFING

Thompson Immigration keeps its overhead (and consequently its legal fees) low by utilizing staff on an "as-needed" basis across the United States. This takes advantage of the time zone differences for keeping work moving forward quickly. Thompson Immigration also has working relationships with other attorneys who can assist when a large influx of work is received, or when Mr. Thompson is out of the office for an extended period of time. Such flexibility allows Thompson Immigration to maintain sufficient capacity to adapt to any work load.

2 U.S. IMMIGRATION – WHO REGULATES WHAT?

The United States has one of the most structured and detailed immigration codes in the world, with many government agencies regulating various parts of the immigration process. U.S. immigration laws are implemented by the following government agencies:

- U.S. Department of Justice:
- Immigration and Naturalization Service (INS) (now the USCIS and related agencies).
- U.S. Department of Homeland Security:
 - Citizenship and Immigration Services (CIS or USCIS).
 - Immigration and Customs Enforcement (ICE or USICE).
 - Customs and Border Protection (CBP or USCBP).
- U.S. Department of State.
- U.S. Department of Labor.

Thompson Immigration practices primarily before the U.S. Citizenship and Immigration Services, the U.S. Department of Labor and the U.S. Department of State.

2.1 WHAT IS THE DIFFERENCE BETWEEN A "VISA" AND "STATUS"?

A "visa" or "visa stamp" is issued by the U.S. Department of State at a U.S. Embassy or consulate. A visa allows a foreign national to *enter* the United States. This is because the State Department has jurisdiction everywhere outside of the United States. In other words, a foreign national with valid nonimmigrant status may exit the United States at any time. However, he or she may not re-enter without a valid State Department visa stamp.

Nonimmigrant "status" is what a foreign national receives when his or her nonimmigrant petition is approved by USCIS. This status is only valid within the United States. This is because the USCIS only has jurisdiction within the United States. In other words, if a foreign national has valid nonimmigrant status, he or she may remain in the United States for the duration of that status without having to worry about obtaining a visa stamp from the U.S. State Department.

A foreign national's I-94 card determines how long an individual may remain in the United States. This card is completed by a foreign national when they enter the United States, and is stamped with the appropriate visa type and duration of stay on the actual card by the immigration officer at the port of entry. It is important to note that the I-94 card controls over all other immigration documents issued by the USCIS – including an individual's "official" status approval.

There are a few exceptions to the rule with regard to needing a visa stamp to enter the United States. Specifically:

- If a foreign national travels to either Canada or Mexico for less than 30 days, the foreign national may use his or her I-94 card as a re-entry document.
- For prospective immigrants (*i.e.*, for those foreign nationals who have filed to become a permanent resident or green card holder), a visa is not required to re-enter the United States so long as the individual has been issued an "advance parole" travel authorization from the USCIS.

3 U.S. NONIMMIGRANT INVESTOR VISAS (E-2 VISAS)

One of the most flexible business visas available to the United States is the E-2 nonimmigrant investor visa. This visa can be used by anyone from 76 different countries who wish to invest in the United States by opening a business. Some of the benefits of this visa include:

- The E-2 visa can be used by individuals or multinational corporations.
- For corporations, the E-2 visa is more flexible with regard to bringing in employees than the L-1B intra-company transfer visa.
- Contrary to common belief, the investment can be minimal so long as the investment is in an active, operating company (*i.e.*, you cannot use an E-2 visa for passive investments, such as real estate investments).
- Newly-graduated college students can use the E-2 visa to open a company and remain in the United States. This is essential if the number of H-1B work visas runs out as they have for the last several years.
- You can continue to renew your visa and remain in the United States for as long as your investment remains economically viable. *As such, there is no limit on how long you can remain in the United States on an E-2 visa.*
- The actual investor can operate the business (*i.e.*, you do not have to hire U.S. workers to run the business).

3.1 GENERAL REQUIREMENTS

In order to qualify for an E-2 investor visa:

- The investor must be a national of a treaty country.
- The investment must be “substantial” (*i.e.*, it must be sufficient to ensure the successful start up of the enterprise within five years). As such, the amount of the investment need not be large in many circumstances (*see the “Misconceptions” discussion below*).
- The investment must be a “real operating enterprise”. Speculative or idle investment, such as real estate investments, does not qualify.
- The investment may not be “marginal”. This means that the company must generate more income than is required to provide a living for the investor, the investor must have an alternative source of income other than the company, or the company must economically benefit the United States by creating new jobs for U.S. workers.
- The investment must be made using the investor’s personal funds or loans secured with the investor’s personal assets. Loans secured with the assets of the investment company are not allowed.
- The investor must be coming to the U.S. to direct or actually operate the company. If the applicant is not the principal investor, he or she must be employed in an “executive”, “managerial” or “essential skills” employee. Ordinary skilled and unskilled workers do not qualify for E-2 status.

3.2 MISCONCEPTIONS ABOUT THE E-2 VISA

There are a number of misconceptions about the E-2 visa category. Many people (and even attorneys) believe that a minimum investment of \$50,000.00 USD is required to qualify for an E-2 visa. This is not true. An example in the U.S. government’s regulations discusses a \$50,000.00 investment. However, this is just an example. The actual standard is that sufficient funds must be invested to ensure the likelihood that the business will be successfully established within five years. This can be a much smaller investment than \$50,000.00. For example, a graphic designer need not invest nearly as much money to successfully establish a company than someone who is purchasing a retail business.

The E-2 nonimmigrant visa it is also oftentimes confused with the EB-5 “million dollar” investor green card process. These are not the same visas and do not require the same level of investment.

3.3 CONTROLLING INTEREST

In all E-2 cases, it must be shown that a treaty country national “directs and develops” (*i.e.*, controls) the E-2 company. This can be shown either through ownership or by managerial control of the company. For example, if a treaty national owns more than 50% of an E-2 company, then that treaty national, by definition, controls the company. However, if a treaty national owns 50% of an E-2 company with a U.S. citizen or permanent resident, then neither party has a controlling interest in the company. In this case, it must be shown that the treaty national has managerial control over the company.

If a treaty investor (individual or business) has control of an E-2 company through managerial control of the company, the “controlling interest” requirement is met. However, the controlling owner will have to satisfy the U.S. government that the investor is in the position of developing and directing the business. This is more difficult to accomplish in a 50:50 ownership relationship. For this reason, Thompson Immigration generally recommends that the foreign owner of an E-2 company own at least 51% of the company.

3.4 THE E-2 VISA PROCESS

Unlike most nonimmigrant visas, a foreign national seeking to enter the U.S. on an E-2 treaty investor visa is not required to obtain prior approval from the U.S. Citizenship and Immigration Services (“USCIS”). They can apply directly to a U.S. Embassy in their home country. However, if an E-2 candidate is in the United States, he or she will typically apply with the USCIS and then file for an E-2 visa stamp at the U.S. Embassy in their home country. It is important to note that an applicant’s home country is the only country where an E-2 investor may apply for an E-2 visa.

For new companies, the initial E-2 visa is usually valid for two years. For financially established companies, the E-2 visa is valid for five years. This means that once a company is financially viable the investor need only renew his or her E-2 visa every five years; with each entry into the United States being valid for two years. Moreover, there is no limit to the number of times an E-2 visa can be renewed, so long as the company still qualifies as an E-2 company. As such, a foreign investor can remain in the United States their entire career without any upward limits.

3.5 “ESSENTIAL SKILLS” EMPLOYEES

An E-2 visa is also available for treaty country employees who have special qualifications that make their work at the E-2 company “essential” to the efficient operation of the U.S. enterprise. The determination of whether an employee is an “essential skills” employee in this context requires the exercise of judgment. It cannot be decided by the mechanical application of a bright-line test. By its very nature, essentiality must be assessed on the particular facts in each case. In assessing the specialized skills of an employee and their essentiality, the government will consider the following factors:

- The degree of proven expertise of the employee in the area of specialization;
- The uniqueness of the specific skills;
- The length of experience or training with the company;
- The function of the job to which the employee is destined;
- The salary such special expertise can command; and
- The availability of U.S. workers.

3.6 E-2 FAMILY MEMBERS

The spouse and unmarried minor children of any E-2 visa holder may be admitted as an E-2 dependent nonimmigrant. Such family members must make a separate filing with the USCIS and/or U.S. Embassy or consulate to obtain E-2 status. *A very significant benefit of the E-2 visa process is that the spouse of an E-2 visa holder is authorized to work in the United States.* Any E-2 family member may attend school.

3.7 E-2 TREATY COUNTRIES

Albania	Costa Rica	Latvia	Slovak Republic
Argentina	Croatia	Liberia	Slovenia
Armenia	Czech Republic	Lithuania	South Korea
Australia	Ecuador	Luxembourg	Spain
Austria	Egypt	Macedonia	Sri Lanka
Azerbaijan	Estonia	Mexico	Suriname
Bahrain	Ethiopia	Moldova	Sweden
Bangladesh	Finland	Mongolia	Switzerland
Belgium	France	Morocco	Taiwan
Bolivia	Georgia	Netherlands	Thailand
Bosnia & Herzegovina	Germany	Norway	Togo
Bulgaria	Grenada	Oman	Trinidad & Tobago
Cameroon	Iran	Pakistan	Tobago
Canada	Ireland	Panama	Tunisia
Chile	Italy	Paraguay	Turkey
Columbia	Jamaica	Philippines	Ukraine
Congo	Japan	Poland	United Kingdom
(Brazzaville)	Jordan	Romania	Yugoslavia
Congo (Kinshasa)	Kazakhstan	Senegal	
	Kyrgyzstan	Singapore	

4 INVESTMENT-BASED PERMANENT RESIDENCY (EB-5 “MILLION DOLLAR” GREEN CARDS)

4.1 GENERAL REQUIREMENTS

A foreign national can obtain permanent residency in the United States (*i.e.*, a green card) if it can be shown that the prospective immigrant is a major investor in a new commercial enterprise or troubled business within the United States. This is the so-called EB-5 "million dollar" green card (even though most times investors need only invest \$500,000.00).

An investor green card is unique in that there is no job offer requirement for the prospective immigrant. Rather, the qualifications are based upon the amount of investment that is being made by the prospective immigrant. To qualify for immigrant investor status, a prospective alien investor must meet each of the following requirements:

- The investor must invest or be actively in the process of investing from \$500,000.00 to \$1.0 million in capital (depending on where the investment is located);
- The required amount of capital must be placed "at risk" for the purpose of generating a return on the investment;
- The capital invested must have been obtained through lawful means;
- The enterprise must benefit the U.S. economy by creating 10 full-time jobs or by protecting existing jobs in a troubled business;
- The investment must be made in a "new commercial enterprise" or a "troubled business"; and
- The investor must be engaged in the management of the enterprise, either by managing the day-to-day activities of the company or through policy formulation.

4.2 THE AMOUNT AND LOCATION OF THE INVESTMENT

The amount of capital that must be invested in order to qualify for an investor green card depends upon the location of the investment. In most areas, a prospective immigrant investor must invest \$1.0 million to qualify for an investor green card. However, the U.S. Citizenship and Immigration Services ("USCIS") can raise this amount to as high as \$3.0 million for "high employment areas", or lower it to \$500,000.00 for "targeted employment areas".

"High employment areas" are defined as those parts of a metropolitan statistical area that:

- Are not targeted employment areas; and
- Have unemployment rates significantly below the national average.

A "targeted employment area" is defined as:

- Rural areas (*i.e.*, areas outside of a metropolitan statistical area or outside of a city or town with 20,000 or more people); or
- Areas that are experiencing unemployment rates of at least 150% of the national average.

4.3 THE DEFINITION OF DIFFERENT TYPES OF BUSINESSES

A qualifying investment must be made in a "new commercial enterprise" or in a "troubled business". A "commercial enterprise" is defined to include any activity formed for the ongoing conduct of business, including a sole proprietorship, partnership, holding company, joint venture, corporation, business trust, or other entity which is publicly or privately owned. A "new commercial enterprise" can be established:

- By creating an original business which the foreign investor actually established;
- By buying and reorganizing an existing business; or
- By investing in an existing business without reorganizing or reincorporating the business if the infusion of capital results in a substantial change in the existing business. Such a substantial change must consist of at least a 40% increase in the net worth of the company, the number of employees, or both.

A “troubled business” is defined as a business that has been in existence for at least two years, and which has incurred a net loss of at least 20% of the company’s net worth.

4.4 TYPES OF CAPITAL THAT CAN BE INVESTED

The term “invest” is defined as the contribution of “capital”. “Capital” is defined as:

- Cash;
- Cash equivalents, such as certificates of deposit, treasury bonds or other instruments that can be readily converted into cash;
- Equipment;
- Inventory;
- Other tangible property; or
- A loan, mortgage agreement, promissory note, security agreement or other evidence of the investor’s borrowing or other form of indebtedness.

4.5 THE DEFINITION OF “AT RISK”

The investment of capital is “at risk” for the purpose of generating a return on that capital if there is an actual or active process of investing. As such, an actual commitment of the required amount of capital is required, such as:

- The deposit of monies in the commercial enterprise’s business accounts;
- The purchase of assets for use by the commercial enterprise;
- The transfer of assets from abroad for use by the commercial enterprise;
- The transfer of monies to the commercial enterprise in exchange for shares of stock; or
- A loan, mortgage agreement, promissory note, security agreement or other evidence of the investor’s borrowing or other form of indebtedness.

4.6 THE “JOB CREATION” REQUIREMENT

One of the most important requirements that must be met to obtain an investor green card is that the commercial enterprise must benefit the U.S. economy by creating at least ten full-time positions for U.S. workers. This includes U.S. citizens, permanent residents or other immigrants who are lawfully authorized to be employed in the United States. Such employment does not mean nonimmigrants or the foreign investor’s immediate family members.

An exception to this rule is if the investment is made in a “troubled business”. Investments in a troubled business do not have to create ten new jobs. Instead, the foreign investor must show that the number of existing employees is or will be maintained at the pre-investment level.

4.7 THE "SINGLE SHAREHOLDER" SITUATION

A single foreign investor may establish a new commercial enterprise or invest in a troubled business. However, such an investor does not place his or her capital "at risk" merely by depositing funds into a corporate account. This is because the foreign investor is the sole shareholder or owner of the commercial enterprise. As such he or she exercises sole control over the commercial enterprise's activities, including whether the commercial enterprise's funds should be used to create new jobs (as required) or returned to the investor. Because of this, some meaningful act must occur during the commercial enterprise's pre-operational stage before the USCIS will agree that the invested capital has been placed at risk.

For example, it must be shown that some actual business activity has been undertaken, such as leasing office or warehouse space, purchasing inventory or office equipment, or entering into contracts or negotiations with suppliers and customers.

4.8 THE "MULTIPLE INVESTOR" OR "POOLED INVESTMENT" SITUATION

Multiple investors may establish a new commercial enterprise provided that each investor seeking to immigrate has invested or is actively in the process of investing the required amount of capital, and each individual investment results in the creation of at least ten full-time positions for U.S. workers.

If multiple investors are investing in an existing business that will not be reorganized or reincorporated, whether each individual investor's investment must result in at least a 40% increase in the net worth of the company depends upon the time of the investments. If a single contribution is made by multiple investors, then the entire pooled investment is examined to determine whether the investment will result in a 40% increase in the net worth of the business. However, each contributor must still show that his or her investment will result in the creation of at least ten full-time jobs for U.S. workers. In those instances in which multiple investors make separate contributions to a commercial enterprise over a period of time, then each investment must satisfy both the 40% growth requirement and create ten full-time jobs for U.S. workers.

If multiple investors invest in a "troubled business", then the job requirement is changed from the creation of ten new full-time jobs to maintaining the same number of jobs that existed prior to the investment.

4.9 THE USE OF LOANS OR OTHER FORMS OF INDEBTEDNESS

Many investment plans implemented in the 1990's were deemed improper for investor green card purposes involved pooled arrangements and the use of loans or other forms of indebtedness. It was determined that many of these plans did not require the requisite amount of capital be invested, or did not truly place this capital "at risk".

Under new USCIS standards, a foreign investor's personal guarantee on loans secured by the commercial enterprise being invested is not sufficient to transform such a debt into the petitioner's personal debt. For loan proceeds to be considered "capital", and for the indebtedness to be considered an investment, the investor must be personally and primarily liable for the indebtedness, and the assets of the commercial enterprise cannot be used to secure the debt. This is because an investor's theoretical exposure to potential liability is not the same as an actual commitment of a specific amount of funds. This is also why a foreign investor cannot receive guaranteed payments from a commercial enterprise while he or she owes money to the commercial enterprise. Such guaranteed returns on capital, regardless of whether the business is making a profit, is

considered to be identical to a bond or other debt arrangement in which the company promises to pay interest payment on capital loans made to it by the foreign investor.

The new standards also disallow many, but not all, types of “redemption” or “sell-back” agreements. For example, agreements that give a foreign investor the right to have the commercial enterprise purchase his or her interest in the company at a minimum price is no longer permitted. This is because the foreign investor’s contributions cannot be considered to be “at risk” if they are guaranteed to be returned regardless of the success or failure of the business. However, the new standards do not preclude these types of agreements if the commercial enterprise agrees to repurchase the investor’s shares at the fair market value following the removal of the conditions on the foreign investor’s residence. This is because these types of agreements still place the foreign investor’s capital at risk since he or she may lose all or part of his/her capital investment if the fair market value of the investment has fallen at the time of the repurchase. It must be noted, however, that such investment plans are still looked at very closely by the government. This is because such arrangements suggest a preconceived intent to abandon the commercial enterprise as soon as lawful permanent resident status is obtained.

Promissory notes can also be used to invest in a commercial enterprise. However, almost all of the required payments must be due on the note and actually completed within the two-year period of conditional residency. Failure to do so would make the investor ineligible to have his or her conditional residency status removed. This is because the investor would not have invested the required amount of capital, which is a prerequisite to having his or her conditional residency status removed (*discussed below*).

Many past arrangements used escrow funds in which the required capital investment was held by a third-party escrow holder and released to the new commercial enterprise once the investor’s green card was obtained. Under many of these arrangements, the escrow holder would return the money to the foreign investor if the green card was denied. In this way, the foreign investor’s investment was made contingent upon the investor’s ability to obtain his or her green card and enter the United States to oversee his or her investment. The government determined that many of these arrangements did not truly place the required capital at risk. This is because the funds were not committed to the commercial enterprise and could be diverted from the job creation purposes which are essential to obtaining an investor green card. However, as with promissory notes and other financial arrangements, escrow funds can still be used, but only if certain restrictive language is included in the agreement.

4.10 THE REMOVAL OF CONDITIONAL STATUS

When a foreign investor obtains permanent residency through the investor immigrant (EB-5) process, the investor's permanent residency is conditioned upon the foreign investor maintaining an ongoing, employment-creating enterprise for at least two years. Once this two year period is completed, the investor immigrant must petition the USCIS to remove his or her conditional status or be placed in removal (*i.e.*, deportation) proceedings. An investor's permanent residency can also be terminated by the USCIS any time during the two-year conditional residency period if it is determined that:

- The new commercial enterprise was established for the sole purpose of taking advantage of U.S. immigration laws;
- The new commercial enterprise was never established;
- The foreign investor never invested the required amount of capital;
- The foreign investor failed to sustain the new commercial enterprise or the investment of capital; or
- The foreign investor obtained his or her investment capital through illegal means.

An application to remove the conditional residency must be filed within 90 days of the second anniversary of the grant of conditional resident status. If the investor fails to file the petition, the investor will be placed in removal proceedings. An investor who fails to file a timely petition to remove conditional residence also begins to accrue unlawful presence for purposes of the 3/10-year bar as of the date the investor's conditional status expired. Under this bar, an alien who is unlawfully present in the United States for a period of more than 180 days who voluntarily departs the United States before the commencement of removal proceedings are inadmissible for a period from three to ten years from the date of departure (depending upon the length of unlawful presence). However, any accrued unlawful presence is eliminated if the USCIS accepts a late filing for the removal of conditional status or if an immigration judge restores the investor's lawful status.