

In cases with a separate job-creating entity or entities, the payment of administrative fees, management fees, attorneys' fees, finders' fees, syndication fees, and other types of expenses or costs by the new commercial enterprise that erode the amount of capital made available to the job-creating entity do not count toward the minimum required investment amount. <sup>[27]</sup> The payment of these fees and expenses must be in addition to the minimum required capital investment amount.

#### *Sole Proprietors and Funds in Bank Accounts*

A non-regional center investor who is operating a new commercial enterprise as a sole proprietor cannot consider funds in his or her personal bank account as capital committed to the new commercial enterprise. Funds in a personal bank account are not necessarily committed to the new commercial enterprise. The funds must be in business bank accounts. <sup>[28]</sup> However, even a deposit into a business account over which petitioner exercises sole control, without more, may not satisfy the at-risk requirement. <sup>[29]</sup>

#### *Escrow Accounts*

An immigrant investor's money may be held in escrow until the investor has obtained conditional permanent resident status if the immediate and irrevocable release of the escrowed funds is contingent only upon:

- Approval of the Immigrant Petition by Alien Entrepreneur (Form I-526 (<http://www.uscis.gov/i-526>)); and
- Visa issuance and admission to the United States as a conditional permanent resident, or approval of the investor's Application to Register Permanent Residence or Adjust Status (Form I-485 (<http://www.uscis.gov/i-485>)).

An immigrant investor's funds may be held in escrow within the United States to avoid any evidentiary issues that may arise with respect to issues such as significant currency fluctuations <sup>[30]</sup> and foreign capital export restrictions.

Use of foreign escrow accounts is not prohibited as long as the petition establishes that it is more likely than not that the minimum qualifying capital investment will be transferred to the new commercial enterprise in the United States upon the investor obtaining conditional permanent resident status.

When adjudicating the immigrant investor's petition to remove conditions, <sup>[31]</sup> USCIS requires evidence verifying that the escrowed funds were released and that the investment was sustained in the new commercial enterprise for the period of the immigrant investor's residence in the United States.

#### *At-Risk Requirement Before the Job Creation Requirement is Satisfied*

The full amount of capital must be used to undertake business activity that results in the creation of jobs. <sup>[32]</sup> Before the job creation requirement is met, the following at-risk requirements apply:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain;
- Business activity must actually be undertaken; and
- The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based. <sup>[33]</sup>

#### *At-Risk Requirement After the Job Creation Requirement is Satisfied*

Once the job creation requirement has been met, the capital is properly at risk if it is used in a manner related to engagement in commerce (in other words, the exchange of goods or services) consistent with the scope of the new commercial enterprise's ongoing business. <sup>[34]</sup> After the job creation requirement is met, the following at-risk requirements apply:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain; and
- Business activity must actually be undertaken. <sup>[35]</sup>

For example, if the scope of a new commercial enterprise was to loan pooled investments to a job-creating entity for the construction of a residential building, the new commercial enterprise, upon repayment of a loan that resulted in the required job creation, may further deploy the repaid capital into one or more similar loans to other entities. Similarly, the new commercial enterprise may also further deploy the repaid capital into certain new issue municipal bonds, such as for infrastructure spending, as long as investments into such bonds are within the scope of the new commercial enterprise in existence at the time the petitioner filed the Immigrant Petition by Alien Entrepreneur (Form I-526 (<http://www.uscis.gov/i-526>)).

Officers must determine whether further deployment has taken place, or will take place, within a commercially reasonable time and within the scope of the new commercial enterprise's ongoing business. <sup>[36]</sup>

### **3. Required Amount of Investment**

The immigrant investor must invest at least \$1,000,000 in capital in a new commercial enterprise that creates not fewer than 10 jobs for U.S. workers. An exception exists if the immigrant investor invests his or her capital in a new commercial enterprise that is principally doing business in and creates