



Can I Purchase a Regional Center or a Regional Center License? – Does the Final Policy Memorandum shed any light?

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Can I purchase a Regional Center?

At this time there are 439 USCIS approved regional centers, however not all regional centers are active. Buying and selling USCIS approved RC's some with exorbitant price tags has become a hot topic in the EB-5 arena.

While such a contract for sale may be legally binding among the interested parties, it is important to note that designation that is issued to the original applicant is non-transferable, which should be interpreted narrowly. This includes both RC ownership transfer and equity transfer. An amendment filed with USCIS is required in both scenarios.

Furthermore the Final EB-5 Adjudication Policy Memo issued on May 30, 2013 did not omit the need to file an amendment petition for a change of RC management. The Policy Memo stated that the following changes within a regional center no longer required an amendment petition: (1) industries of focus, (2) geographic boundaries, (3) business plan or (4) economic methodologies. The optional amendment filing does not include a change of Regional Center management.

In a recently issued EB-5 Regional Center Designation Letter, USCIS confirmed that "The regional center designation is non-transferable, as any change in management of the regional center will require the approval of an amendment to the approved regional center designation."

What does this mean to the prospective RC purchaser? The purchase and sale of a RC is not prohibited but before the regional center is qualified to submit EB5



petitions, an amendment is required to be filed and approved. The authors believe that even if the RC owner simply transfers a portion of equity to the new purchaser and the original RC owner maintains operational control, an amendment still needs to be filed and approved by the USCIS. For project owners who are considering purchasing an existing regional center, they may wish to reconsider the feasibility of such a venture as a regional center amendment petition has historically taken longer to adjudicate than a regional center petition.

Rent or License a Regional Center

In addition to the sale and purchase of a regional center, recently attempts in several I-924 petitions to control exclusivity and legal ownership of a regional center license have been swiftly rebuked by USCIS who have indicated that they strongly discourage this practice.

In a recently issued decision, USCIS confirmed that they have no authority to grant a license right. In this case, a regional center petitioner submitted a Licensing Agreement intended to grant a license of the regional center designation to another entity for the purpose of having the licensee's project qualify for the EB-5 program. USCIS requested legal citations or arguments supporting the regional center licensing agreement, legal authority for the regional center to grant such licensing rights, legal citations to support the delegation of the regional center responsibility to directly oversight the project company. Statutes, regulations or precedent decisions do not authorize the regional center to grant license to unrelated project companies.

In actuality, "third party" regional center operation is a common practice. Such regional centers charge the project developers a percentage of the capital raised, acting in the capacity of a third party lender. They are not the owners or developers of the projects that need funding. USCIS has not explicitly prohibited such practice.

Based on the authors' observation and experience, overseas marketing agents and individual investors have been increasingly paying attention to whether the regional center is a third party fund raiser or a direct project owner. The overseas agents and investors seem to prefer dealing with the latter. This is an interesting development as many regional centers rely on their past successes to promote future projects. The more sophisticated EB-



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5 investor appears to scrutinize each project on its own merit regardless of how many past projects the regional center has undertaken.

EB-5 policies have developed and evolved over the past few years. To provide clear and practical guidelines on the EB-5 program is an on-going process. The authors welcome efficient and effective communication between the USCIS and the practitioners. It is the goal of the stakeholders in the industry to make the EB-5 program in the United States one of the most competitive immigrant investors program in the world.

About the Authors:

Mona Shah, Esq. is the principal of Mona Shah & Associates in New York City. The firm has assisted many Regional Centers and Investors in navigating this complex, nuanced and constantly changing area of immigration law. Mona has more than 18 years of legal experience in immigration law and extensive knowledge in EB-5 law. Mona's substantial litigation background includes her representation of clients in both state and federal courts. She has handled complex immigration law appeals before the US Circuit Courts of Appeal nationwide. Before coming to the US, Mona was a Crown Prosecutor in the UK. Mona has authored and published numerous articles and a book and has spoken extensively on EB-5 both in the US and overseas.

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