SUBJECT-MATTER INDEX
IMMIGRATION OPTIONS FOR INVESTORS & ENTREPRENEURS, 4TH ED.

A
ABA. See American Bar Association
Academy Awards and EB-1A visas (aliens with extraordinary ability), 44
Adjustment of status, defined, 290
Administrative Appeals Office (AAO)
   business plan specificity, 55–56
decisions under Trump administration, 43–49
EB-1A visas, 43–47
funding sources decisions, 183, 185
I-526 petition, 35
L-1A visas, 55–57
NIWs, 47–49
Administrative Procedure Act (APA)
   I-526 denial, review of, 514, 517–519
I-829 denial, 567–568
indebtedness regulation, 126
notice-and-comment procedures, 616
Administrative Site Visit and Verification Program, 53
Advance Notice of Proposed Rulemaking on Changes to EB-5 Regional Center Program (ANPRM), 735–736, 754–755
Advisers Act. See Investment Advisers Act
AEDPA (Antiterrorism and Effective Death Penalty Act), 237
Affordable Care Act, 6
Aging out, 134–135, 370, 373
Aliens with extraordinary ability. See EB-1A visas
Allocation
   China, 297–300
due diligence, 405
job allocation, 405
of limited credit, 575
priority for allocation of credit, 553
project finance, 623, 624–626
risk sharing and allocation structures, 623, 624–626
American Bar Association (ABA)
due diligence, 226
gatekeeping, 244
Model Rules of Professional Conduct. See Model Rules of Professional Conduct
Resolution 300, 226, 245–246
ANPRM (Advance Notice of Proposed Rulemaking on Changes to EB-5 Regional Center Program), 735–736, 754–755
Anti-discrimination laws, 558–560
Antiterrorism and Effective Death Penalty Act (AEDPA), 237
Application for Action on an Approved Application or Petition. See I-824 petition
Application to Register Permanent Residence or Adjust Status. See I-485 petition
Arab American entrepreneurs, 1
At-risk investment
   bridge financing NOIDs, 440–441
EB-5 visas
generally, 38–39
bridge financing NOIDs, 440–441
client expectations, 136
good faith and reason, 594
guaranteed returns, 441
job creation, 439–440
NOIDs, 439–441
redemption agreements, 436–438, 708–709
redemption, 438–439, 708–709
requirement origin, 435–436
guaranteed returns, 441
I-526 petition, 94–95
I-829 petition, 38–39
Izummi, 435–442
job creation, 439–440
NOIDs, 439–441
nonpreference category, 793
project finance, 620–621
redemption agreements, 436–438, 708–709
redemption, 438–439, 708–709
requirement origin, 435–436
treaty investors, 793, 796
Attorneys. See also Client expectations
   attorney-client relationships, 174–176
   client identification information, 250–251
dual representation, 145–146, 169–170
fees, 151–152
as investment advisers, 157–167
competence, 139–142, 157–160
conflicts, 146–148, 170–173
due diligence, 159
duty to refer, 162
finder's fees, 162–164
I-526 clients, 160
litigation risk, 164–165
referral options, 165–166
professional risks, 139–155
Attorney's fees, 151–152
Australia, 829–837
   405 visas, 835–836
   410 visas, 835–836
   482 visas, 829
Business Innovation and Investment Visa Program, 829–833
   132 visas, 830
   188 visas, 830–831
   888 visas, 831–833
Business Innovation and Investment (Permanent) visas, 831–833
B-1/B-2 visas, 14, 136

Backlogs

China, 367–390
aging out, 370, 373
allocation, 298–300
alternatives, 371, 374–375
challenges, 370–375
cross-chargeability, 373
green card maintenance, 372
new client needs, 371–373
overview, 367–368
reasons to pursue despite, 373
UTMA, 373
wait times, 308, 371
consular practice, 338–339
direct EB-5 visas, 14
EB-5 visas, 297–312
allocation, 297–306
changes through legislative, regulatory, or judicial action, 311–312
client expectations, 134, 136
consular practice, 338–339
cross-chargeability, 311
demand, 298
direct, 14
family members, 310
Grenada, 311
I-526 petition, expedited processing, 308–309
India, 308, 309–310
overview, 297
planning strategies, 13–29
South Africa, 360
stiffening effect, 308
tools, 310–311
Vietnam, 308
family members, 310

Business Innovation and Investment (Provisional) visas, 830–831
Business Innovation stream, 831
business requirements, 833
Business Talent visas, 830
Entrepreneur stream, 831
holding period, 832
investment requirements, 833
Investor stream, 831
Premium Investor stream, 831
residence requirements, 832
Significant Investor stream, 831
Business Skills Program legacies, 834
Investor Retirement (subclass 405) visas, 835–836
migration rate, 836–837
overview, 829–830
Retirement (subclass 410) visas, 835–836
supporting innovation in South Australia, 834–835
Temporary Activity visas, 834–835
Temporary Skill Shortage visas, 829

B-1/B-2 visas, 14, 136

Balkans and SDNs, 235
Bank Secrecy Act, 243, 274, 656
Belarus and SDNs, 235
Bilateral investment treaties (BITs), 66
Bipartisan Budget Act (2018), 294n177
Birth certificates, 60, 386
Blockchain technology, 227
Border adjudication practice pointers for Canadians, 60–61
Brazil, 397–399
admissibility considerations, 399
funding sources, 398–399
investor profiles, 398
overview, 397
tax reporting, 398
Brexit, 840–841
Bridge financing NOIDs, 440–441
Broker-dealers
EB-5 visas
acting for accounts of others, 700–701
ancillary services, defined, 702
cease and desist actions, 704–705
civil and criminal liability, 704
civil money penalties, 704–705
as defendants in enforcement action, 705
defined, 697–702
disgorgement of profits, 705
due diligence, 702
enforcement transactions, 699–700
enforcement authority, 704–705
engaged in business, 698–699
FINRA, 703–704
investor rescission rights, 705
issuer rescission rights, 705
JOBS Act, 701–702
jurisdiction over, 702–704
penalties for violations, 704–705
private placement agents, 701–702
registration requirements, 670–671
reputation risk, 704
risks of unlicensed brokers, 706
safe harbors, 702
SEC regulation, 697–706
security, defined, 701
FINRA, 158–159
investment advisers vs., 165–166
penalties for failure to register, 670
registration requirements
EB-5 visas, 670–671
regional center-based EB-5 visas, 668–671
SEC regulation, 697–706
Business need, 16–17
Business plans
INDEX

China

EB-5 visas, 479–488
comprehensibility, 480–483
contexts, 483–486
credibility, 480–483
direct EB-5 visas, 484–485
eligibility, 479–480
Ho, Matter of, 479–488
I-526 applications, 38, 483–484, 485
I-829 applications, 485
I-924 applications, 483–484
job creation, 479–480
objectives, 479–480
regional center-based, 484–485
sample, 486–488
securities regulation, 485–486
standards, 480–483
writers, 129
ethical considerations, 150–151
I-526 petition, 38
L-1A visas, 55–56
regional center-based EB-5 visas, 129
specificity, 55–56
writers, 129

Buy American, Hire American (BAHA) executive order
generally, 51–64
India, 392
L-1A visas, 51–52, 64
lookback period, 52
policies of, 52–53
Trump signing, 43, 51, 52

C
California and high unemployment areas, 476
Canada, 823–828
2019-2021 Immigration Levels Plan, 827–828
business immigration history, 823
entrepreneur immigration challenges, 824
investor immigration challenges, 824–825
L-1 visas, 59–62
birth certificates, 60
border adjudication practice pointers, 60–61
business hours, 61
checklists, 60
fees, 61
how to apply, 60
marriage certificates, 60
NEXUS cards, 61
pilot program, 62
PIMS notification, 61
port of entry, advance contact of, 60–61
where to apply, 59
who may apply, 59
L-2 visas
birth certificates, 60
marriage certificates, 60
PIMS notification, 61
who may apply, 59
NAFTA, 73
provinces and territories, 825–827

Self-Employed Persons Program, 828
Case studies
EB-5 visas, 17–29
planning strategies, 17–29
regional center-based EB-5 visas, 749–753, 780–781
trading companies, 17–20
Vermont case study, 749–753, 780–781

CFCs (Controlled foreign corporations), 267
Checklists
case analysis, 181–182
direct owner/entrepreneur EB-5 considerations, 41–42
EB-5 visas, 41–42, 181–182, 409–413
funding sources, 201–224
L-1 visas, 60
regional center-based EB-5 visas, 409–413

Children. See also Minors as I-526 petitioners; Uniform Transfers to Minors Act (UTMA)
agining out, 134–135, 370, 373
child, defined, 134
EB-5 visas, 15
I-526 petition, 134
I-829 petition, 534
immigration through, 25
parole program, 9
U.S. citizenship of, 25

Child Status Protection Act (CSPA), 134, 307, 361, 370, 521

Chile
E-1 visas (treaty traders), 66
E-2 visas (treaty investors), 66

China
backlogs, 367–390
aging out, 370, 373
allocation, 298–300
alternatives, 371, 374–375
challenges, 370–375
cross-chargeability, 373
green card maintenance, 372
new client needs, 371–373
overview, 367–368
reasons to pursue despite, 373
UTMA, 373
wait times, 308, 371
birth certificates, 386
civil documents, 386–387
consular practice, 387–389
client understanding of project, 388
Communist Party membership, 388
dependents, 388–389
DS-230 applications, 388–389
DS-260 applications, 387–389
general procedures in Guangzhou, 387–388
I-824 petition, 389
currency exchange, 194
currency export restriction, 209
currency swap, 194–195, 385–386
E-1 visas (treaty traders), 375
E-2 visas (treaty investors), 27, 375
EB-1A visas (aliens with extraordinary ability), 374
EB-1C visas (multinational executives or managers), 16, 21, 374–375
EB-5 visas

allocation, 297–306
citizen expectations, 133–134
India compared, 393
manufacturing companies, 22–24
planning strategies, 13, 15–16
family-based immigration, 375
funding sources, 375–386
banking records, 380
business enterprise tax documents, 383
company records, 382–383
currency swap, 385–386
documentation, 185, 375–376
"11 Friends’ approach, 384–385
employment income, 378–382
enterprise business licenses, 383
gifts, 189, 383–384
indebtedness policy, 377–378
individual income tax records, 380–382
loans, 382
multiple paths, 384–385
paths of, 384–386
real estate, proceeds from sales or loans secured by, 187, 376–378
scrutiny, 386
single-path approach, 385–386
tax filing records, 185, 380–382
verification letters, 378–379
green cards, 372–373
H-1B visas, 375
Hukou household registration, 386–387
L-1A visas, 16, 23–24, 374–375
national identification cards, 386
NIWs, 375
nonlawyers, partnerships with, 174
passports, 386
PERM labor certification, 375
personal loans or gifts from individuals, 189, 383–384
real estate, proceeds from sales or loans secured by, 187, 376–378
referrals, 174
sales seminars, 176
tax filing records, 185, 380–382
UTMA, 373
Citizenship-by-investment
Grenada, 849–852
agents, 851
banking issues, 851
costs, 849–850
E-2 visa applications, 851
EB-5 visas compared, 852
family members, 850
guidance for counsel, 852
outstanding issues, 852
procedure, 850
residence issues, 851
security clearances, 850–851
timing, 850
U.S. government views, 851
vetting, 850–851
volume of applications, 851
Malta, 839–844
citizenship grant, 844
dual citizenship, 844
eligibility criteria, 841–842
fit and proper test, 841
good health, 841
Individual Investor program, 839–844
investment in bonds/shares, 842
legal basis, 841
National Development and Social Fund, 841
contribution to, 842
procedures, 843–844
property purchase or rental, 842
refusal grounds, 842–843
residence status, 842
sale of property, 843
taxation, 843
United Kingdom immigration benefits, 840–841
Moldova, 859–864
advantages, 862
business climate, 862–863
dual citizenship, 862
general information, 863
legal basis, 859–860
overview, 859
program information, 860
requirements, 860–862
taxation, 862
Montenegro, 845–848
advantages of citizenship, 847
dual citizenship, 846
due diligence, 846
general information, 847–848
legal basis, 845
overview, 845
procedures, 846
requirements, 846
taxation, 847
timeframe, 846
St. Kitts and Nevis, 853–858
application process, 857
government fees, 856
history, 854–856
Hurricane Relief Fund, 856
investment options, 855–856
overview, 854
real estate investment, 856–857
Sugar Initiative Diversification Foundation, 855
Sustainable Growth Fund, 856
CLASS (Consular Lookout and Support System), 344
Client expectations
at-risk investment, 136
China, 133–134
EB-5 visas, 133–137
informing throughout process, 135
key issue identification, 134–135
Clients
attorney-client relationships, 174–176
China, 371–373, 388
citizen-induced complications, 347–348
consular practice, 388
goals, 119–120
identification information, 250–251
suspicious client/matter report form example, 253–254
Understanding of project, 388
Communist Party membership, 209, 347, 388
Competence, duty of, 139–142
Compliance
benefits, 674
EB-5 visas, 172–173
ethical considerations, 172–173
money laundering, 247–249
regional center-based EB-5 visas, 735–760
ANPRM, 735–736, 754–755
designation approval notices, 740–741
evolution of, 736–740
forms and instructions, regulatory force of, 743
GAO reports, 744–745
Hawaii, 738
I-924 and I-924A, 742–744, 755–759
IRCU, 737–738
MMAC letter, 738–740
overview, 735–736
policy, steps to develop, 757–759
risks in creating plan, 759
robust programs, 771–772
sample audit compliance policy for investor intake, 758, 762–763
sample compliance policy for investor intake, 757, 761
self-regulation, 755–759
site visits, 768–771
termination proceedings, 746–755, 770–771, 774–782
USCIS action, 741, 744–745
security, 674
site visits, 768–771
U.S. tax laws, 286–288
Conflicts of interest. See also Ethical considerations
attorneys as investment advisers, 146–148, 170–173
consular practice, 344–345
Model Rules of Professional Conduct, 160–161
Consolidated Natural Resources Act (2008), 65n2
Consular Lookout and Support System (CLASS), 344
Consular practice, 331–348
administrative processing, 339–340
backlogs, 338–339
China, 387–389
client understanding of project, 388
Communist Party membership, 388
dependents, 388–389
DS-230 applications, 388–389
DS-260 applications, 387–389
general procedures in Guangzhou, 387–388
I-824 petition, 389
CLASS, 344
class as investment adviser, 146–148, 170–173
Client understanding of project, 388
Communist Party membership, 388
dependents, 388–389
DS-230 applications, 388–389
DS-260 applications, 387–389
eqgeneral procedures in Guangzhou, 387–388
I-824 petition, 389
CLASS, 344
client-induced complications, 347–348
clients, 388
Communist Party affiliation, 347
Criminal activity
blockchain technology, 227
broker-dealers, 704
consular practice, 344–345
criminal/arrest records, 534
drug trafficking, 225
FATF, 225–226
fraud, 345
funding sources, 196
illicit proceeds or funds, 227–233
money laundering. See Money laundering
restricted transactions, 234–242
criminially derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
laws against, development of, 225–227
money laundering. See Money laundering
PEPs, 226
restricted transactions, 234–242
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
laws against, development of, 225–227
money laundering. See Money laundering
PEPs, 226
restricted transactions, 234–242
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
laws against, development of, 225–227
money laundering. See Money laundering
PEPs, 226
restricted transactions, 234–242
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
laws against, development of, 225–227
money laundering. See Money laundering
PEPs, 226
restricted transactions, 234–242
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
laws against, development of, 225–227
money laundering. See Money laundering
PEPs, 226
restricted transactions, 234–242

Crowdfunding capital, 681–684

reporting, 242
scienter, 238–239
SDNs, 235–236
willfulness, 239
tax penalties, 287
terrorism, 225–226
virtual currency, 227

Crowdfunding capital, 681–684

overview, 681
Regulation A+, 683–684
Regulation CF2 Million ceiling, 682
Regulation D, 682–683

Cuba and OFAC, 234

Currency exchange
China, 194
documentation, 193–194
funding sources, 193–194
South Africa, 360

Currency export restriction
China, 209
funding sources, 209
India, 209, 394–395

Currency swap
China, 194–195, 385–386
documentation, 194–195, 209
Iran, 194
NOIDs, 385
RFEs, 195, 385–386
single-path, 385
USCIS, 195
Vietnam, 195

Currency transaction reporting, 243

Currency transfer restrictions, 193–195

D

D&O insurance. See Directors and officers (D&O) insurance

Denmark and E-2 visas (treaty investors), 67
Deportation or removal proceedings, 101

Derivation, defined, 32n6

Detroit, Michigan and economic recovery, 1

Direct EB-5 visas
backlogs, 14
investment too low to qualify, 26
manufacturing companies, 22–24
multinational executives or managers, 16
professional service companies, 20, 21–22
troubled businesses, 26–27

Directors and officers (D&O) insurance, 784–786

background, 784
damages and expenses, 784–785
duty of loyalty, 785
duty to defend policy, 784–785
investigations, 785
misrepresentations/misstatements, 785
non-duty to defend policy, 784
organizational changes, 786
policy structure, 785

reporting of claims, 786
sample claims, 785
self-insured retentions, 785
standard of care, 785
timing of first coverage purchase, 785

Documentation
China
business enterprise tax documents, 383
civil documents, 386–387
funding sources, 185, 375–376
corporate formation documents, 731
currency exchange, 193–194
currency swap, 194–195, 209
due diligence, 183
funding sources, 183–199
AAO decisions, 183, 185
actual sources, 185–193
business records, 185
capital, defined, 186
China, 185, 375–376
company as exchanger, 196
criminal activity, 196
currency exchange, 193–194
currency swap, 194–195, 209
due diligence, 183
earned income, 196
friends and family, 209
I-829 petition, 198–199
income tax returns, 184–185
lawfulness of transactions, 196–197, 211, 214, 218, 222
objective third-party sources, 186
origin of funds, 196
ownership of funds, 197
path, 202–210
real estate, proceeds from sales or loans secured by, 187–188, 222–224, 376–378
regulatory requirements, 184–185
RFEs, 183–199
SDN database, 184
unlawful residency status, 197–198
I-829 petition, 576–577
job creation, 576–577
"shovel ready" documents, 731–732
transactional/offering documents, 731

Dodd-Frank Wall Street Reform and Consumer Protection Act (2010), 703

DOL. See Labor Department, U.S.

Domicile, defined, 291

DOS. See State Department, U.S.

Drug trafficking, 225, 252, 397

U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 225

DS-160 applications, 62, 119, 183, 379
DS-230 applications, 388–389
DS-260 applications
China, 387–389

INDEX

consular practice, 332, 344, 387–389
DOS, 121
India, 310, 395

Dual citizenship
EB-5 visas, 16
Malta, 844
Moldova, 862
Montenegro, 846

Dual intent, 51n1

Dual representation
EB-5 visas, 169–170
ethical considerations, 145–146, 169–170
Model Rules of Professional Conduct, 169–170

Due diligence
ABA, 226
attorneys as investment advisers, 159
EB-5 visas, 401–408
approval scope, 402
business entities, 430–431
business operations, 432
considerations, 421
corporate governance, 417
ethical considerations, 433
funding sources, 416–417, 432
Ho, Matter of, 402–403
job allocation, 405
job creation, 403–405, 416
likelihood of completion and job creation, 416
NCE, background and project management, 418
NCE, capital use by, 406–408
overview, 401–402
program requirements, 415–416
project feasibility, 417–418
project site visits, 418
redemptions, 405–406
regional center review, 418
security interests, 417, 433
startups, 431–432
TEA designation, 403
updates, 418–419
funding sources documentation, 183
I-526 petition, 93, 401–408
I-829 petition, 401–408
I-924 petition, 402
investment advisers, attorneys as, 159
site visits, 418

Due process, 518

E

E visas, 5, 65, 68–69, 73

E-1 visas (treaty traders)
admission period, 87–88
as alternative to EB-5, 375
authorities, 66
BITs, 66
Chile, 66
China, 27, 375
Denmark, 67
dependents, 86–87

E-2 visas (treaty investors). See also Treaty investors

EB-5 visas, 15
employees of principal noncitizens, 69–73
executive or supervisory character, 70–71
long-term need, 73
requirements, 69–70
short-term need, 72
skills, 71–73
existing trade, 74
FCN treaties, 66
incidental activities, 86
Kosovo, 67
Montenegro, 67
nationality, 67–68
planning strategies, 14
Serbia, 67
Singapore, 66
spouses, 86–87
TECRO, 77–78
trade
defined, 73–74
domestic, defined, 76
exchange required, 74
existence of, 74
international exchange, 75
items of, 74
measuring, 76–77
measuring, 76–77
parties, 76–77
substantial, defined, 75–76
between treaty countries, 76–77
volume of, 75–76
treaty country list, 89–92
validity period, 87–88
where to apply, 88

E-2 visas (treaty investors). See also Treaty investors

admission period, 87–88
authorities, 66
BITs, 66
Chile, 66
China, 27, 375
Denmark, 67
dependents, 86–87
employees of principal noncitizens, 69–73
executive or supervisory character, 70–71
long-term need, 73
requirements, 69–70
risk requirement, 71
short-term need, 72
skills, 71–73
FCN treaties, 66
funds invested, possession and control of, 78–79
incidental activities, 86
International Entrepreneur Rule, 6
investment
ability to develop and direct business, 84–86
bona fide enterprise, 82
book value vs. market value, 81
defined, 78
franchises, 85–86
intangible or intellectual property, 81
irrevocable commitment requirement, 79–80
leases or rents, 80
marginal, 83–84

other financial transactions as, 80–82
possession and control of funds, 78–79
retained earnings, 81
risk requirement, 79
substantial, 82–83
transferred assets, 81
Israel, 67
Kosovo, 67
Montenegro, 67
nationality, 67–68
Northern Mariana Islands, 65n2
planning strategies, 14–16, 25–26
professional service companies, 21–22
Serbia, 67
Singapore, 66
South Africa, 27
spouses, 86–87
Taiwan, 365–366
treaty country list, 89–92
validity period, 87–88
where to apply, 88

E-3 visas (Australians working in specialty occupations). See also Australia
planning strategies, 14

EB-1A visas (aliens with extraordinary ability), 28–29
AAO decisions, 43–47
Academy Awards, 44
as alternative option to EB-5, 374
authorship of scholarly articles, 45–46
China, 374
collections of major significance, 45
criteria, 44
high salary, 45, 46–47
judge of others' work, role as, 46
leadership role for distinguished organizations, 46
Nobel Prizes, 44
planning strategies, 14
published material about foreign national, 44, 45

EB-1C visas (multinational executives or managers)
China, 14, 16, 21, 374–375
EB-5 visas, 16, 17–20, 63–64
foreign branch office petitioners, 58
L-1/EB-1C as alternative to EB-5, 374–375
L-1A visas, transition from, 57–59
manufacturing companies, 22–24
multinational, defined, 58n41
planning strategies, 14
position abroad, 57
professional services companies, 20–22
qualifying relationships, 57–58
scrutiny level, 59
successful entrepreneurs, 28
troubled businesses, 26–27

EB-5 visas
generally, 6
aliens with extraordinary ability, 14
allocation, 297–306
backlogs, 297–306
China, 297–306
demand, 298
legal framework, 300–302
procedural rules, 300–301
steps, 302
substantive rules, 300
tech rules, 301
waiting time, 302–306
worldwide FIFO, 301–302

at-risk investment
generally, 38–39
bridge financing NOIDs, 440–441
client expectations, 136
good faith and reason, 594
guaranteed returns, 441
job creation, 439–440
loan agreements, 641
NOIDs, 439–441
redemption agreements, 436–438, 708–709
redeployment, 438–439, 708–709
requirement origin, 435–436

B-1/B-2 visas, 14, 136
backlogs, 297–312
allocation, 297–306
changes through legislative, regulatory, or judicial
action, 311–312
China. See under China
client expectations, 134, 136
consular practice, 338–339
cross-chargeability, 311
demand, 298
direct, 14
family members, 310
Grenada, 311
I-526, expedited processing, 308–309
India, 308, 309–310
overview, 297
planning strategies, 13–29
South Africa, 360
stifling effect, 308
tools, 310–311
Vietnam, 308
beneficiary qualifications, 63
broker-dealers
acting for accounts of others, 700–701
ancillary services, defined, 702
cease and desist actions, 704–705
civil and criminal liability, 704
civil money penalties, 704–705
as defendants in enforcement action, 705
defined, 697–702
disgorgement of profits, 705
due diligence, 702
effecting transactions, 699–700
enforcement authority, 704–705
engaged in business, 698–699
FINRA, 703–704
investor rescission rights, 705
issuer rescission rights, 705
JOBS Act, 701–702
jurisdiction over, 702–704
penalties for violations, 704–705
private placement agents, 701–702
registration requirements, 670–671
EB-5 visas

IMMIGRATION OPTIONS FOR INVESTORS & ENTREPRENEURS, 4TH ED.

hold-until-approval subscription, 656–657
overview, 653–655
public policy, 662–664
regulatory and legislative proposals, 664
release upon filing, 657–659
release upon project approval with holdback, 659
release with corporate guaranty, 659–660
release with minimum raise target with holdback, 658–659
settlement, 662
subscription, 655–660
ethical complexities, 130–131, 139–155, 169–179
evidence, 37
existing businesses, purchasing issues, 34–35
F-1 visas as bridge to, 14, 136
factors, 14–15
family members, 15
Form DS-260, 119
full time jobs requirement, 38
funding sources, 31–32
good faith and reason, 593–618
at-risk investment, 594
CLPR, 593–594
distress cases, 612–617
I-829 denial, 599–602
Izummi, 605–612
job creation, 612–617
overview, 593–594
regional center cases, 613–614
removal of conditions, 612–617
sustained investment, 599–612
ultra vires regulation and policy, 612–613
green card options, 14
H-1B visas, 14
I-526 petition, 119
I-829 petition, 119, 136
immigration status, 135–136
India, 391–395
China compared, 393
client expectations, 134
planning strategies, 13, 15–16
indirect jobs, 117–118
induced jobs, 117–118
insurance considerations, 783–788
borrowers, 787–788
D&O insurance, 784–786
finders and brokers, 786–787
property insurance, 787–788
interdisciplinary character, 130
intragroup transferees, 14
investment
requirement, 116
at risk requirement, 136
TEAs, 33–34, 116, 463–478
too low to qualify, 25–26
investment advisers, 426–427, 712
investor's perspective, 119–120
Iran, 240–242
IRS, 122
job creation
at-risk investment, 439–440
business plans, 479–480
conditions, removal of, 502–504
construction-phase jobs, 498–500
direct jobs, defined, 493
due diligence, 403–405, 416
economist's report, 500–501
estimating construction-phase jobs, 498–500
estimating operations-phase jobs, 494–497
good faith and reason, 612–617
I-526 petition, 506–508
I-829 petition, 508–511
IMPLAN, 490–492
INA, 505
input-output models, 489–494
legislative history, 818–819
likelihood of completion and, 416
methodologies, 489–504
operations-phase jobs, 494–497
redeploying investments, 708–709
regional center-based vs., 117–118, 501–502
RIMS II, 490–492
tenant occupancy methodology, 496
timeframe, 504–511, 614–617
too low to qualify, 25
key issue identification, 134–135
L-1 visas, 14, 16, 17–24, 63–64
legislative history, 815–821
1982 Bill, 815–816
1989 Bill, 816–818
capital requirement, 820
conditional status, 821
IMMACT90, 818–821
investment requirement, 820
job creation, 818–819
management participation, 820
national interest, 816–818
overview, 815
purpose and means, 818
litigation to prolong adjudication, 520–521
loan agreements, 635–652
at-risk requirement, 641
conditions to advance of proceeds, 645–648
covenants, 649–651
debt service reserve, 641–642
default and remedies, 651–652
description, 638–639
disbursement account and agreement, 644–645
duration, 639–640
overview, 635–637
points fees and costs, 642–644
prepayment lock-out, 640–641
procedures for advance of proceeds, 648–649
recitals, 637–638
repayment, 641
representations, 649–651
RFEs, 636–637
warranties, 649–651
location of business, 33–34
longevity, 15
manufacturing companies, 22–24
multinational executives or managers, 14, 17–20, 21
multiple owners of business, 31–32
net new permanent employment, 35
new commercial enterprise, 34–36
new commercial enterprise, defined, 34
NIWs, 14
nonimmigrant options, 13–14
non-work options, 14
O-l visas, 14
OFAC, 122, 240
offshore exemption, 685–695
payments from enterprise to investor, 38–39
PEPs, 255–257
planning strategies, 13–29
practitioner's perspective, 129–131
preservation of option, 31–39
professional service companies, 20–22
project advice, 171–172
project compliance, 172–173
purpose, 115–118
redemption, 443–461
at-risk investment, 436–438, 708–709
"call" plans, 451–453
case examples, 448–461
dispute-triggered buy-sell provisions, 455–456
due diligence, 405–406
early loan repayment after I-829 approval, 459–461
I-526 delayed or denied, 453–461
Izummi, 444–445
JCE's right to redeem NCE's preferred equity position, 458
NCEs, 451–453
overview, 443–444
project sold, 453–455
real estate as potential distribution, 456–458
repayment after I-829 denial, 460–461
USCIS Policy Manual amendment, 445–448
withdrawal before I-526 adjudication, 448–451
redeploying investments, 707–713
Advisers Act, 712–713
at-risk requirement, 438–439, 708–709
investment advisers, 712
job creation, 708–709
NCEs, 712–713
overview, 707–710
securities, 710–713
Securities Act, 710–711
regional center-based amendment applications, 721–733
business plan writers, 129
cash derived from loans, 125–126
checklists, 409–413
corporate and securities counsel, 128
defined, 123
dual nationality, 16
economists, 128–129
equity models, 124
as general partner, 123
immigration lawyers, 126
initial proposals, 721–733
investor loans, 124–126
investor's promissary notes, 125
job creation vs., 117–118, 501–502
as licensor, 123
loan models, 124–126
manufacturing companies, 24
migration agents, 129
planning strategies, 14
principals, 126–127
professional service companies, 22
project principals, 127–128
project types, 124
role, 122–126
trading companies, 17–20
Regulation S exemption, 685–695
application, 686
availability, 686
category 1, 692
category 2, 692
category 3, 692–694
conditions, 688–691
crowdfunding and, 690–691
directed selling efforts, defined, 688–690
issuer category conditions, 691–694
offshore transaction, defined, 688
overview, 685–686
Regulation D vs., 666–667
reinvestment, 36
rural area, defined, 33n9
Russia, 349–356
background, 350
funding sources, 353–354
immigrant visa interviews in Moscow, 355
lagging numbers, 349
past convictions, 351–352
petition preparation advice, 354–355
poison-pen letters, 352
preliminary screening, 350–353
real estate sales, 352
regional centers, 350
SEC, 121–122
securities, 665–679
accredited investor requirements, 666–667
antifraud provisions, 667–670
broker-dealer registration requirements, 670–671
compliance benefits, 674
EB-5 offerings, connection with securities markets, 668
enforcement actions summary, 675–679
FINRA, 666
fraud types triggering enforcement, 668–669
general solicitation of investors, 667
Investment Advisers Act. See Investment Advisers Act
Investment Company Act, 671–673
materiality, 715–719
offering registration requirements, 665–666
penalties for antifraud violations, 668
penalties for failure to register, 666
private party legal actions for fraud, 669–670
redeploying investments, 710–713
whistleblower claims, 122, 669
site visits, 765–772
administrative, 765–768
due diligence, 418
overview, 765
South Africa, 16, 357–361
spouses, 15
strategy development, 119–120
successful entrepreneurs, 28–29
Taiwan, 363–366
background, 363–364
cutoff date, 366
E-2 visa, 365–366
foreign exchange and transfer restrictions, 365
gifts from friends or relatives, 365
real property as funding source, 364
recordkeeping, 364
regulatory systems, 364
tax systems, 364
tax considerations, 259
Teamwork required, 130
TEAs
background, 464
investment, 33–34, 116, 463–478
MSAs, 465–466
population limits, 466
"rural areas," 464–468
as temporary bridge for nonimmigrants, 14
third-party assistance, 120
timelines, 135–136
timing of investment, 35–38
TN visas, 14
traders or investors, 14
trading companies, 17–20
USCIS, 121
U.S. jobs, 63–64
Vietnam, 13, 15–16, 134

Employees
defined, 557–558
E-1 visas (treaty traders), 69–73
executive or supervisory character, 70–71
long-term need, 73
requirements, 69–70
short-term need, 72
skills, 71–73
E-2 visas (treaty investors), 69–73
executive or supervisory character, 70–71
long-term need, 73
requirements, 69–70
short-term need, 72
skills, 71–73
essential employees, 800–801
I-829 petition, 556, 558
L-1A visas, 56–57
subordinate employees, 56–57

Entrepreneurs
generally, 1–3
Arab American, 1
Detroit's economic recovery, 1
higher education, 2–3
high-tech firms, 2
I-941 Application for Entrepreneur Parole, 6
immigrant petition by alien entrepreneur. See I-526 petition
International Entrepreneur Rule, 5–11
Nashville, 2
parole program, 5–6
petition to remove conditions. See I-829 petition
Silicon Valley, 2
Somali, 2

Entrepreneurs in Residence initiative, 5
Entrepreneurs Pathways Portal, 5
Escrow accounts, 653–664
capital return, 662
capital, 661–662
drawdown account structures, 660–662
early release subscription, 657–660
hold-until-approval subscription, 656–657
overview, 653–655
public policy, 662–664
regulatory and legislative proposals, 664
release upon filing, 657–659
release upon project approval with holdback, 659
release with corporate guaranty, 659–660
release with minimum raise target with holdback, 658–659
settlement, 662
subscription, 655–660

Estate and gift taxes, 279–283
calculation, 282
citizens, 280–281
domicile, 280–281
LPRs, 279–280
planning opportunities, 282–283
rates, 282
U.S. situs property, 281–282

Ethical considerations. See also Model Rules of Professional Conduct
adverse claims, 153–154
attorney's fees, 151–152
business plans, 150–151
communications, 174–178
competence, duty of, 139–142
conflicts of interest
attorneys as investment advisers, 146–148, 170–173
consent to future conflicts, 160–161
Model Rules of Professional Conduct, 160–161
referral sources, 173–176
dual representation, 145–146, 169–170
due diligence, 433
EB-5 visas, 130–131, 139–155, 169–179
finder's fees, 152–153
foreign agents, 144n5
"full service" attorneys, 148–150
investment advice hazards, 146–148, 170–173
joint representation, 143–145
multiple petitioner representation, 145–146
nonlawyers, partnerships with, 174
professional risks, 139–155
project compliance, 172–173
project selection advice, 170–173
representing both sides, 143–145
INDEX

resources, 154–155
success fees, 151–152
third-party intermediaries, 174–176
unsettled law, 142–143
Evidence. See also Requests for Evidence
birth certificates, 60
EB-5 visas, 37
marriage certificates, 60
parole program, 7–9
Expatriation, defined, 291
Export Administration Act (1979), 237

F
F-1 visas. See International students
False statement statutes, 237, 242
Family members
backlogs, 310
children
aging out, 134–135, 370, 373
child, defined, 134
EB-5 visas, 15
I-526 petition, 134
I-829 petition, 534
immigration through, 25
parole program, 9
U.S. citizenship of, 25
China, 375
EB-5 visas, 15, 523–524
family-based immigration as alternative to EB-5, 375
funding sources, 209
Grenada citizenship-by-investment, 850
India, 310
parole program, 9–10
spouses
E-1 visas (treaty traders), 86–87
E-2 visas (treaty investors), 86–87
EB-5 visas, 15
I-829 petition, 534
marriage certificates, 60
parole program, 9–10
FATCA (Foreign Account Tax Compliance Act), 278–279
FBARs (Foreign bank account reports), 274–278, 291
FCN (Freedom, Commerce, and Navigation) treaties, 66, 789–790
Fees
attorney's fees, 151–152
Entrepreneur Parole filing fees, 6
finder's fees
attorneys as investment advisers, 162–164
ethical considerations, 152–153
Fraud Detection and Prevention fee, 60, 61
Grenada citizenship-by-investment costs, 849–850
L-1 visas, 61
loan agreements points fees and costs, 642–644
referred fees, 668
St. Kitts and Nevis citizenship-by-investment, 856
success fees, 151–152

Funding sources. See also Investments; Project finance

Filing Chart, 135
Filing fees, Entrepreneur Parole, 6
Financial Industry Regulatory Authority (FINRA)
broker-dealers, 703–704
brokers, 158–159
IARD system, 424
investment advice licensing, 170
Rule 2111, 158–159
Finder's fees
attorneys as investment advisers, 162–164
ethical considerations, 152–153
FNFEs (foreign nonfinancial entities), 278–279
Foreign Account Tax Compliance Act (FATCA), 278–279
Foreign agents, 144
Foreign bank account reports (FBARs), 274–278, 291
Foreign Corrupt Practices Act, 232
Foreign Narcotics Kingpin Designation Act (Kingpin Act), 237, 242
Foreign nonfinancial entities (FNFEs), 278–279
Foreign Terrorist Organizations (FTOs), 237
Forms. See specific form by number
Fraud
consular practice, 345
Fraud Detection and Prevention fee, 60, 61
penalties, 668
securities
antifraud provisions, 667–670
fraud types triggering enforcement, 668–669
penalties for antifraud violations, 668
private party legal actions for fraud, 669–670
Fraud Detection and National Security Directorate (Homeland Security Department), 18, 53, 737, 766
Freedom, Commerce, and Navigation (FCN) treaties, 66, 789–790
FTOs (Foreign Terrorist Organizations), 237
Full time jobs requirement, 38
Funding sources. See also Investments; Project finance
actual sources, 185–193
AAO decisions, 185
capital, defined, 186
documentation, 185–193
earnings or sale proceeds of investor's business, 189–190, 203–204
gifts, 189, 204, 214–217
indebtedness, 186
inheritance, 190–191, 205
loan proceeds, 186–189, 382
objective third-party sources, 186
personal loans from individuals, 189, 206–207, 218–221, 383–384
real estate, proceeds from sales or loans secured by, 187–188, 208, 222–224, 376–378
retirement funds, 192
securities, sale of, 191
shareholder loans, 188
SIPPs, 192
wealth accumulation, 192–193

Gatekeeping, 244–247

advisory, 201
ancestral property, 394
banking records, 380
Brazil, 398–399
business ownership, 203–204
checklists, 201–224
China, 375–386
banking records, 380
business enterprise tax documents, 383
currency swap, 385–386
documentation, 185, 375–376
"11 Friends" approach, 384–385
employment income, 378–382
enterprise business licenses, 383
gifts, 189, 383–384
indebtedness policy, 377–378
individual income tax records, 380–382
loans, 382
multiple paths, 384–385
paths of, 384–386
real estate, proceeds from sales or loans secured by, 187, 376–378
scrutiny, 386
single-path approach, 385–386
tax filing records, 185, 380–382
verification letters, 378–379
Communist Party membership, 209
crowdfunding capital, 681–684
overview, 681
Regulation A+ mini-IPOs, 683–684
Regulation CF2 Million ceiling, 682
Regulation D, 682–683
currency exchange, 193–194
currency export restriction, 209
currency swap, 385–386
currency transfer restrictions, 193–195
derivation, defined, 326
documentation, 183–199
AAO decisions, 183, 185
actual sources, 185–193
business records, 185
capital, defined, 186
China, 185, 375–376
company as exchanger, 196
criminal activity, 196
currency exchange, 193–194
currency swap, 194–195, 209
due diligence, 183
earned income, 196
friends and family, 209
I-829 petition, 198–199
income tax returns, 184–185
lawfulness of transactions, 196–197, 211, 214, 218, 222
objective third-party sources, 186
origin of funds, 196
ownership of funds, 197
path, 202–210
real estate, proceeds from sales or loans secured by, 187–188, 222–224, 376–378
regulatory requirements, 184–185
RFEs, 183–199
SDN database, 184
unlawful residency status, 197–198
EB-5 visas
generally, 31–32
due diligence, 416–417, 432
employment income, 378–382
H1F, 394
illicit proceeds or funds, 227–233
generally, 227–228
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232
scienter elements, 230–232
section 1956, 228–233
section 1957, 229–233
specified unlawful activity, promotion of, 232–233
tax evasion, 231
India, 394–395
individual income tax records, 380–382
investment, defined, 31–32
lawfulness, 31–32, 196–197, 211, 214, 218, 222
money laundering. See Money laundering
NCEs, 193–197
NOIDs, 183, 193, 195
nonpreference category, 792
OFAC countries, 209–210
path of, 202–207
RFEs, 32, 183–199
Russia, 353–354
South Africa, 358–360
totalitarian party membership, 209
taxing, defined, 32n5
treaty investors, 796–797
verification letters, 378–379
G
Gatekeeping, 244–247
generally, 244
ABA Resolution 300, 245–246
best practices, 247
customer identification, 244–245
FATF, 245–247
lawyer guidance, 246
PEPs, 245
privileged materials, 245
risk and diligence, 245
STR, 245
Gifts
China, 189, 383–384
estate and gift taxes, 279–283
calculation, 282
citizens, 280–281
domicile, 280–281
planning opportunities, 282–283
rates, 282
U.S. situs property, 281–282
funding sources, 189, 204, 214–217
personal loans or gifts from individuals, 189, 206–207, 383–384
pre-immigration tax planning, 286
Taiwan, 365
Global intangible low-taxed income (GILTI), 267
Good faith and reason
EB-5 visas, 593–618
at-risk investment, 594
CLPR, 593–594
distress cases, 612–617
I-829 denial, 599–602
Izummi, 605–612
job creation, 612–617
overview, 593–594
regional center cases, 613–614
removal of conditions, 612–617
sustained investment, 599–612
ultra vires regulation and policy, 612–613
investment advisers, 426
Green cards
abandonment, 372–373
China, 372–373
maintenance, 372
multinational executives and managers, 51–64
options, 25–26
planning strategies, 14
Grenada
citizenship-by-investment, 849–852
agents, 851
banking issues, 851
costs, 849–850
E-2 visa applications, 851
EB-5 visas compared, 852
family members, 850
guidance for counsel, 852
outstanding issues, 852
procedure, 850
residence issues, 851
security clearances, 850–851
timing, 850
U.S. government views, 851
vetting, 850–851
volume of applications, 851
EB-5 visa backlogs, 311
Guaranteed returns, 441

H
H-1B visas, 5
as alternative to EB-5, 375
China, 375
India, 392

I-526 petition
NOIDs, 392–393
RFEs, 392–393
as temporary bridge for nonimmigrants, 14
Higher education, 2–3
High-tech firms, 2
High unemployment areas, 468–478
150 percent of national average, 469–470
California, 476
data and methodology rejection, 474
determination, timing of, 477–478
DOL guidance, 474
emerging issues, 478
government or political subdivision designation, 472–474
investment location, 472
LAUS program, 470–471
New York, 476
public records, 469–472
state letter approach, 471–472
state notice and delegation process, 474–477
Texas, 476–477
USCIS policy, 472–474
Hindu Undivided Families (HUFs), 394
discovery, 518–519
due process, 518
EB-5 policy, 516–517
factors, 515–516
judicial review, 514–516
litigation strategies, 516–520
reasons, 515
record, completeness of, 515
record rule, 518–519
redemption, 519–520
settlement prospects, 516
strategies, 521–522
timing issues, 516
deportation or removal proceedings, 101
due diligence, 93, 401–408
EB-5 visas, 119
expedited processing, 308–309
form, 812–814
job creation, 96–97, 100–101, 506–508
litigation to prolong adjudication, 520–521
material changes after approval, 370–371
minors, 313–329
age limitations, 324, 370
binding contractual commitment, 315–316
choice of law, 319–320, 321–323
legal capacity, 320–323
NCE management, 323–324
parental/guardian consent, 316, 320–323
petition adjudications, 314–315
RFIs, 313–315, 327–329
signatures, 324–325
USCIS policy statements, 314–315
UTMA, 311, 316–320, 323
preparation guidance, 93–114
address and employment history, 98
agency policy, 93
analysis and drafting, 98–101
capital investment, defined, 93–95
date of initial investment, 100
deportation or removal proceedings, 101
due diligence, 93
form, 102–114
for-profit requirement, 95–96
immigration status and entry information, 98
initial case assessment, 93
investment funds source, 96
job creation, 96–97, 100–101
legal requirements, 93
management responsibilities, 97
multiple investors, 100
new commercial enterprise requirement, 95–96, 99–100
regional center based, 97–98
time of investment, defined, 99
troubled businesses, 97, 99–100
priority dates, 63
professional service companies, 20
real estate, proceeds from sales or loans secured by, 187–188
redemption, 448–451, 453–455
revocations, 519–520
UTMA, 316–320
benefits, 320
choice of law, 319–320
custodians, 317–318
parental/guardian consent, 323
I-824 petition, 101, 389
I-829 petition
approvals, 159
at-risk investment, 38–39
basis for, 534
business plans, 485
certification, 536–537
children, 534
criminal/arrest records, 534
criminal/record vaccinations, 534
denial, 565–591
Abghari, 577
APA, 567–568
capital investment as shareholder loan, 573–575
Chang, 568–569
commercial enterprise issues, 571–573
deference, 569–570
federal court action, 567–568
good faith and reason, 599–602
immigration courts, 565–566
job creation, 575–577
reopen or reconsider, motions to, 566–567
review, procedural options for seeking, 565–568
sample complaint for declaratory judgment, 578–591
Steenblik, 571
drafting, 533–537
due diligence, 401–408
EB-5 visas, 119, 136, 508–511
form, 538–548
funding sources, 198–199
JCEs, 535–536
job creation, 549–563
10 jobs per investor, 556–557
generally, 549–550
allocation of limited credit, 575
anti-discrimination laws, 558–560
calculating, 553–554, 575–576
changes in plans, 553
continuous and permanent requirement, 560–561
denial, 575–577
direct, 554–555
direct investment, 556–561
discrimination, 558–560
documentation, 576–577
drafting, 536
EB-5 visas, 508–511
employees, defined, 557–558
full-time requirement, 560
indirect jobs, 551–552
number per investor, 556–557
priority for allocation of credit, 553
qualifying employees, 556, 558
regional centers, 550–551, 555
relocation, 555, 561
requirement ultra vires, 575
revenues or expenditures, sufficiency of, 552–553
stand-alone enterprises, 556–561
sufficiency, 552–553, 554–555
tenant occupancy, 555–556
timing, 561–562, 576
troubled businesses, 561
USCIS deference policy, 552
manufacturing companies, 24
NCEs, 534–535
petitioner's statement, 536–537
preparation, 531–533
professional service companies, 21–22
redemption, 459–461
regional centers, 534–535
RFEs, 198
signatures, 536–537
spouses, 534
timing of investment, 35
U.S. jobs, 64
I-924 petition
business plans, 483–484
compliance obligations, 755–759
due diligence, 402
regional center based, 97–98, 725–732, 742–744, 773–774
termination proceedings, 746–747
timing, 135
I-924A (Supplement to Form I-924), 127, 418, 728, 742–744, 746–747, 755–759, 773–774
I-941 Application for Entrepreneur Parole, 6
IARD (Investment Adviser Registration Depository) system, 424
IARs (investment adviser representatives), 424
IEEPA (International Emergency Economic Powers Act), 236
IIUSA (Invest in USA Association), 463, 783
Illicit proceeds or funds, 227–233
generally, 227–228
criminally derived property, 233
culpable acts, 229–230
elements, 228–229
information concealment, 231–232
intent, 231–232
knowledge, 230–232
penalties, 233
proceeds of crime, 233
reporting requirements, avoidance of, 232–233
scienter elements, 230–232
section 1956, 228–223
section 1957, 229–233
specified unlawful activity, promotion of, 231
tax evasion, 231
Immigration Act of 1965, 805
Immigration Act of 1989, 603, 816
Immigration Act of 1990 (IMMCACT90)
capital requirement, 820
EB-5 legislative history, 803, 815, 818–821
investment requirement, 820
management participation, 820
NCEs, 95
nonpreference investor category, 791, 806
project finance, 619
regional center-based EB-5 visas, 721
Immigration and Nationality Act
child, defined, 134, 521
E-2 visa applications, 371
equity interest, gift or transfer of, 318
false statements, 149–150
high unemployment area, defined, 116
I-526 revocation, 528
job creation, 505, 549
labor certification, 805
Metropolitan Statistical Area, defined, 116
misrepresentations, 351
nonimmigrant, defined, 65
rural area, defined, 116
Immigration reform, 5
Immigration Reform and Control Act, 576
IMpact analysis for PLANning (IMPLAN), 490–492
Indebtedness, 126, 186, 377–378. See also Loans and loan agreements
India
adjustment of status, 395
ancestral property, 394
attorney-client relationships, 175
backlogs, 308, 309–310
BAHA executive order, 392
consular practice, 395
currency export restriction, 209, 394–395
DS-260 applications, 310, 395
EB-5 visas, 391–395
China compared, 393
client expectations, 134
funding sources, 394–395
H-1B visas, 392
HUFs, 394
I-485 applications, 310
tax system, 394
third-party intermediaries, 175
Initial public offering (IPOs)
Regulation A+ for mini-IPOs, 681
Input-output models, 489–494
Insurance considerations, 783–788
borrowers, 787–788
D&O insurance, 784–786
background, 784
damages and expenses, 784–785
duty of loyalty, 785
duty to defend policy, 784–785
investigations, 785
misrepresentations/misstatements, 785
non-duty to defend policy, 784
organizational changes, 786
policy structure, 785
reporting of claims, 786
self-insured retentions, 785
Intangible or intellectual property, 81

standard of care, 785
timing of first coverage purchase, 785
finders and brokers, 786–787
property insurance, 787–788

Intangible or intellectual property, 81

Intent to depart U.S., 68–69

Internal Revenue Service (IRS), 122

International Emergency Economic Powers Act (IEEPA), 236

International Entrepreneur Rule, 5–11
E visas, 5
E-2 visas, 6
EB-5 visas, 6
H-1B visas, 5
L visas, 5
O visas, 5

International students
F-1 student status, 14, 52, 62, 136, 321
L-1 visas, 62
unlawful presence, 345–346
U.S. income tax and, 260–261

Intracompany transferees, 14

Invest in USA (IIUSA) Association, 463, 783

Investment Adviser Registration Depository (IARD) system, 424

Investment adviser representatives (IARs), 424

Investment advisers
attorneys as, 157–167
competence, 139–142, 157–160
conflicts, 146–148, 170–173
due diligence, 159
duty to refer, 162
finder's fees, 162–164
I-526 clients, 160
litigation risk, 164–165
referral options, 165–166
broker-dealer firms vs. independent advisory representatives, 165–166
IARs, 424
redeploying investments, 712
roles, 423–428
disclosure requirements, 424–425
EB-5 investor services, 426–427
fair dealing, 426
fiduciary duty, 425–426
FINRA, 424
Form ADV, 424
good faith, 426
IARD system, 424
IARs, 424
NCE services, 427–428
overview, 423–424
recordkeeping, 424–425
registration, 423–424
RIAs, 426–428
SEC registrants, 423–424
state agency registrants, 423–424
suitability standards, 426

Investment Advisers Act (1940)
EB-5 investment projects, 665

Investment Company Act (1940)
direct investment in real estate or loan secured by real estate, 672
EB-5 investment projects, 665
exemptions from registration, 671–673
finance company subsidiaries, 673
investment adviser registration, 423
number of investors, 672
penalties for failure to register, 671
qualified purchasers, 672–673
registration requirements, 423, 671, 687

Investments. See also Funding sources; Project finance
advisers. See Investment advisers
BITs, 66
defined, 31–32, 78
E-2 visas (treaty investors)
ability to develop and direct business, 84–86
bona fide enterprise, 82
book value vs. market value, 81
defined, 78
franchises, 85–86
intangible or intellectual property, 81
irrevocable commitment requirement, 79–80
leases or rents, 80
marginal, 83–84
other financial transactions as, 80–82
ownership and control of funds, 78–79
retained earnings, 81
risk requirement, 79
substantial, 82–83
transferred assets, 81

EB-5 visas
requirement, 116
at risk requirement, 136
TEAs, 33–34, 116, 463–478
too low amount to qualify, 25–26
investment advice hazards, 146–148, 170–173
too low amount, 26

Investor and Regional Center Unit (IRCU), 737–738

Iran
company as exchanger, 196
currency swap, 194
OFAC, 234, 241
state sponsors of terrorism, 340
terrorism list, 237
USCIS denial of EB-5 applications, 240

IRCU (Investor and Regional Center Unit), 737–738

Israel and E-2 visas (treaty investors), 67

INDEX

J

Job creating enterprises (JCEs), 429–434, 458, 622

Job creation
at-risk investment, 439–440
due diligence, 403–405

EB-5 visas
conditions, removal of, 502–504
construction-phase jobs, 498–500
direct jobs, defined, 493
due diligence, 403–405, 416
economic report, 500–501
estimating construction-phase jobs, 498–500
estimating operations-phase jobs, 494–497
good faith and reason, 612–617
I-526 petition, 506–508
I-829 petition, 508–511
IMPLAN, 490–492
INA, 505
input-output models, 489–494
legislative history, 818–819
methodologies, 489–504
operations-phase jobs, 494–497
redeploying investments, 708–709
regional center-based vs., 117–118, 501–502
RIMS II, 490–492
tenant occupancy methodology, 496
timeframe, 504–511, 614–617
too low to qualify, 25
full time jobs requirement, 38
I-526 petition, 96–97, 100–101
I-829 petition, 549–563
generally, 549–550
allocation of limited credit, 575
anti-discrimination laws, 558–560
calculating, 553–554, 575–576
changes in plans, 553
continuous and permanent requirement, 560–561
denials, 575–577
direct, 554–555
direct investment, 556–561
discrimination, 558–560
documentation, 576–577
drafting, 536
employees, defined, 557–558
full-time requirement, 560
indirect jobs, 551–552
number per investor, 556–557
priority for allocation of credit, 553
qualifying employees, 556, 558
regional centers, 550–551, 555
relocation, 555, 561
requirement ultra vires, 575
revenues or expenditures, sufficiency of, 552–553
stand-alone enterprises, 556–561
sufficiency, 552–553, 554–555
10 jobs per investor, 556–557
tenant occupancy, 555–556
timing, 561–562, 576
troubled businesses, 561
USCIS deference policy, 552
IMMMACT90, 818–819

L

L-1A visas
International Entrepreneur Rule, 5
job allocation, 405
NIWs, 24, 26
recordkeeping, 38
regional center-based EB-5 visas vs., 117–118
timing of investment, 35–38

JOBS Act (2012), 122n23, 690, 701–702
EB-5 visas and, 681–683
summary chart for key provisions, 684

Judiciary Appropriations Act (1993), 736

K

Kingpin Act (Foreign Narcotics Kingpin Designation Act), 237, 242

Kosovo
E-1 visas (treaty traders), 67
E-2 visas (treaty investors), 67

L

L visas, 51n1

L-1 visas
beneficiary qualifications, 63
business type, 63
Canada, 59–62
birth certificates, 60
border adjudication practice pointers, 60–61
business hours, 61
checklists, 60
fees, 61
how to apply, 60
marriage certificates, 60
NEXUS cards, 61
pilot program, 62
PIMS notification, 61
port of entry, advance contact of, 60–61
where to apply, 59
who may apply, 59
F-1 student status, 62
international students, 62
investment amount, 63
lookback period, 62
U.S. jobs, 63–64

L-1A visas
AAO decisions, 55–57
BAHA executive order, 51–64
business plan specificity, 55–56
China, 16, 23–24, 374–375
dS-160 applications, 62
EB-1C visas, transition to, 57–59
EB-5 visas, 17–24, 63–64
foreign branch office petitioners, 58
legal authority sources, 53–54
manufacturing companies, 22–24
multinational executives or managers, 26
physical premises, 56
planning strategies, 14
L-1B visas for specialized knowledge workers, 14, 57n38, 71, 72n72, 801

IMMIGRATION OPTIONS FOR INVESTORS & ENTREPRENEURS, 4TH ED.

position abroad, 57
professional services companies, 20–22
qualifying relationships, 57–58
scrutiny level, 59
subordinate employees, 56–57
successful entrepreneurs, 28
as temporary bridge for nonimmigrants, 14
troubled businesses, 26–27
L-1B visas for specialized knowledge workers, 14, 57n38, 71, 72n72, 801

L-2 visas
birth certificates, 60
marriage certificates, 60
PIMS notification, 61
who may apply, 59
Labor Department, U.S. (DOL)
high unemployment areas, 474
labor certification, 805
LAUS (Local Area Unemployment Statistics) program, 470–471

Lawful permanent resident (LPR) status
abandonment, 284
conditional status, 284
defined, 292
estate and gift taxes, 279–280
exit tax, 263
FATCA, 278
information reporting requirements, 275–276
long-term resident status, 285–286
tax considerations, 259, 264–269
as "U.S. person," 272, 283–284
Leontief, Wassily, 490
Letters of intent for itineraries, 10–11

Loans and loan agreements
cash derived from, 125–126
China, 187, 189, 376–378, 382
direct investment in loan secured by real estate, 672
eyearly repayment after I-829 approval, 459–460
EB-5 visas, 635–652
at-risk requirement, 641
conditions to advance of proceeds, 645–648
covenants, 649–651
debt service reserve, 641–642
default and remedies, 651–652
description, 638–639
disbursement account and agreement, 644–645
duration, 639–640
overview, 635–637
points fees and costs, 642–644
prepayment lock-out, 640–641
procedures for advance of proceeds, 648–649
recitals, 637–638
repayment, 641
representations, 649–651
RFEs, 636–637
warranties, 649–651
as funding sources, 186–189, 382
investor loans, 124–126
models, 124–126
personal loans from individuals, 189, 206–207, 218–221, 383–384
real estate, proceeds from loans secured by, 187–188, 208, 222–224, 376–378
regional center-based EB-5 visas, 731
shareholder loans, 188
capital investment as, 573–575
Local Area Unemployment Statistics (LAUS) program, 470–471
Location of business, 33–34

M

Malta citizenship-by-investment, 839–844
citizenship grant, 844
dual citizenship, 844
eligibility criteria, 841–842
fit and proper test, 841
good health, 841
Individual Investor program, 839–844
investment in bonds/shares, 842
legal basis, 841
National Development and Social Fund, contribution to, 842
procedures, 843–844
property purchase or rental, 842
refusal grounds, 842–843
resident status, 842
sale of property, 843
taxation, 843
United Kingdom immigration benefits, 840–841
Manufacturing companies and EB-5 visas, 22–24
Marriage certificates, 60
Matter of. See name of party
McCarran-Walter Act. See Immigration and Nationality Act
Metropolitan Milwaukee Association of Commerce (MMAC) letter, 738–740
Metropolitan Statistical Areas (MSAs), 116, 465–466
Mexico and NAFTA, 73
Minors as I-526 petitioners, 313–329. See also Children
age limitations, 324, 370
binding contractual commitment, 315–316
choice of law, 319–320, 321–323
legal capacity, 320–323
NCE management, 323–324
parental/guardian consent, 316, 320–323
petition adjudications, 314–315
RFEs, 313–315, 327–329
signatures, 324–325
USCIS policy statements, 314–315
UTMA, 316–320, 323
Model Rules of Professional Conduct. See also Ethical considerations
attorney-client relationships, 174–175
cost to future conflicts, 160–161
dual representation, 169–170
duty to refer, 162
nonlawyers, partnerships with, 174
Rule 1.1, 157
Rule 1.4, 174–175
Rule 1.7, 160–161
New commercial enterprises (NCEs), 34–36

reporting, 242
scienter, 238–239
SDNs, 235–236
willfulness, 239
suspicious client/matter report form example, 253–254

Montenegro
citizenship-by-investment, 845–848
advantages of citizenship, 847
dual citizenship, 846
due diligence, 846
general information, 845
overview, 845
procedures, 846
requirements, 846
taxation, 847
timeframe, 846
E-1 visas (treaty traders), 67
E-2 visas (treaty investors), 67

MSAs (Metropolitan Statistical Areas), 116, 465–466

Multinational, defined, 58/41

Multinational executives or managers. See also EB-1C visas
BAHA executive order, 51–64
EB-5 visas, 17–20, 21
green cards, 51–64
L-1/EB-1C visas, 374–375
L-1A visas, 26
planning strategies, 14

N
NAFTA (North American Free Trade Agreement), 73
NASAA (North American Securities Administrators Association), 424

Nashville, Tennessee and Somali entrepreneurs, 2

National identification cards (China), 386

National interest waivers (NIWs)
AAO decisions, 47–49
advancement of proposed endeavor, 48
as alternative to EB-5, 375
benefit to U.S., 48
China, 375
criteria, 47
job creation, 24, 26
planning strategies, 14
substantial merit and national importance, 48

National security grounds for inadmissibility, 395, 842, 857

National Taxpayers Advocate, 292

National Venture Capital Association (NVCA), 6

Naturalization, defined, 292

New commercial enterprises (NCEs), 34–36

background and project management, 418
capital use by, 406–408
currency transfer restrictions, 193–195
defined, 34
funding sources, 193–197
I-526 petition, 95–96, 99–100
IMMAct90 and, 95

New York and high unemployment areas, 476

investment advisers, 427–428
minors engaged in management of, 323–324
preferred equity position, 458
project finance, 622
redemption rights, 451–453, 458
redeployment, 712–713
New York and high unemployment areas, 476
NIWs. See National interest waivers
Nobel Prizes and EB-1A visas (aliens with extraordinary ability), 44
NOIDs. See Notices of Intent to Deny
Nonlawyers, partnerships with, 174
Nonpreference investor category
at-risk investment, 793
considerations in current practice, 807–811
funding sources, 792
IMMACT90, 791, 806
legal precedent, 791–793
origins, 805–806
overview, 805
practitioners' experience, 806
North American Free Trade Agreement (NAFTA), 73
North American Securities Administrators Association (NASAA), 424
Northern Mariana Islands, 65n2
North Korea
OFAC, 234
state sponsors of terrorism, 340
terrorism list, 237
Notices of Intent to Deny (NOIDs)
at-risk investment, 439–441
bridge financing, 440–441
employment-verification letters, 379
funding sources, 183, 193, 195
H-1B visas, 392–393
income-verification letters, 379
job sharing, 576
real estate, proceeds from loans or sales of, 376–377
single-path currency swaps, 385
USCIS guidance to adjudicators, 134
verification letters, 379
Notice to Appear (NTA), 292
NVCA (National Venture Capital Association), 6

O
O visas, 5
O-1 visas, 14, 372
Obama administration and immigration reform, 5
Office of Foreign Assets Control (OFAC)
Balkans, 235
Belarus, 235
consular practice, 340–341
Crimea, 234
Cuba, 234
EB-5 visas, 122, 240
Iran, 234, 241–242
licenses, 209–210, 239–242
money laundering, 225–254
North Korea, 234
sanctions, 225–254
Specially Designated Nationals list, 184, 209–210, 235–236
Syria, 234
terrorism, 225–226
Offshore exemptions, 685–695

P
Parole program, 5–11
applications, 6–9
children, 9
evidence, 7–9
family members, 9–10
filing fees, 6
government grant or award, 9
lawful source of investment funds, 9
letters of intent for itineraries, 10–11
minimum investment or funding, 9
ownership stakes, 7
public benefit, 8
qualified investors, 7, 8–9
requirements, 7–9
role of entrepreneur in business, 8
spouses, 9–10
startup, 7
support letters, 10–11
time limits, 9
Passive foreign investment companies (PFICs), 266–267
Passports, 386
PATRIOT Act (2001). See USA PATRIOT Act
Penalties
antifraud violations, 668
broker-dealers, 670, 704–705
civil money penalties, 704–705
civil tax penalties, 288
failure to register
broker-dealers, 670
securities, 666
illicit proceeds or funds, 233
Investment Advisers Act, 674
Investment Company Act, 671
restricted transactions, 242
Securities and Exchange Act (1934), 670
tax penalties, 287, 288
PERM labor certification, 375
Petition Information Management System (PIMS), 61
PFICs (Passive foreign investment companies), 266–267
Politically exposed persons (PEPs)
accepting funds from, 255–256
defined, 255
EB-5 transactions, 255–257
FATF, 255
money laundering, 226, 245
screening as risk mitigation, 256–257
Private placement agents, 701–702
Private Securities Litigation Reform Act, 717
Professional service companies, 20–22
Project finance, 619–633. See also Funding sources; Investments
advisers and consultants, 631–632
at-risk investment, 620–621
benefits, 623–624
cash flow–based return on capital, 622–623
characteristics, 621–623
completion risk, 624–625
construction contractors, 630
corporate finance compared, 619
counterparty risk, 625
defined, 621–623
EB-5 capital, 620–621
equity partners, 629–630
governmental sponsors or partners, 630
history, 620
JCEs, 622
junior lenders, 628–629
key suppliers, 630
liability, limitation of, 622
mezzanine lenders, 628–629
NCEs, 622
off balance sheet, 623
offtake risk, 625, 630–631
operating risk, 625
operators, 631
overview, 619–620
participants, 627–632
political risk, 626
residual equity, 627–628
risk sharing and allocation structures, 623, 624–626
security packages, 626–627
senior lenders, 628
SPEs, 622
sponsors, 627–628
supply risk, 625–626
tax equity purchasers, 630
visa risk, 626
waterfall provisions, 626–627
Public charges, 346, 395
Public records, 469–472

Q
Qualified investors, 7–9, 803

R
Real estate
ancestral property, 394
direct investment in or loan secured by, 672
as funding source, 364
NOIDs, 376–377
as potential distribution, 456–458
proceeds from sales or loans secured by, 187–188, 208, 222–224, 376–378
Regional center-based EB-5 visas
property insurance, 787–788
property purchase or rental, 842
Russia, 352
St. Kitts and Nevis citizenship-by-investment, 856–857
sale of property, 843
U.S. situs property, 281–282
Records and recordkeeping
banking records, 380
business records, 185
criminal/arrest records, 534
high unemployment areas, 469–472
individual income tax records, 380–382
investment advisers, 424–425
job creation visas, 38
public records, 469–472
restricted transactions, 242
Taiwan, 364
tax filing records, 185, 380–382
Redemption
at-risk investment, 436–438, 708–709
EB-5 visas, 443–461
at-risk investment, 436–438, 708–709
"call" plans, 451–453
case examples, 448–461
dispute-triggered buy-sell provisions, 455–456
due diligence, 405–406
early loan repayment after I-829 approval, 459–460
I-526 delayed or denied, 453–455
Izummi, 444–445
JCE's right to redeem NCE's preferred equity position, 458
NCEs, 451–453
overview, 443–444
project sold, 453–455
real estate as potential distribution, 456–458
repayment after I-829 denial, 460–461
USCIS Policy Manual amendment, 445–448
withdrawal before I-526 adjudication, 448–451
I-829 petition, 459–461
NCEs, 451–453, 458
Redeployment
at-risk investment, 438–439, 708–709
EB-5 visas, 707–713
Advisers Act, 712–713
at-risk requirement, 438–439, 708–709
investment advisers, 712
job creation, 708–709
NCEs, 712–713
overview, 707–710
securities, 710–713
Securities Act, 710–711
Referrals
attorneys as investment advisers, 165–166
China, 174
ethical considerations, 173–176
fees, 668
nonlawyers, partnerships with, 174
securities, 668
Regional center-based EB-5 visas
amendment applications, 732–733
balancing factors, 773–782
broker-dealer registration, 668–671
business plan writers, 129
cash derived from loans, 125–126
checklists, 409–413
compliance obligations, 735–760
ANPRM, 735–736, 754–755
designation approval notices, 740–741
evolution of, 736–740
forms and instructions, regulatory force of, 743
GAO reports, 744–745
Hawaii, 738
I-924 and I-924A, 742–744, 755–759
IRCU, 737–738
MMAC letter, 738–740
overview, 735–736
policy, steps to develop, 757–759
robust programs, 771–772
sample audit compliance policy for investor intake, 758, 762–763
sample compliance policy for investor intake, 757, 761
self-regulation, 755–759
site visits, 768–771
termination proceedings, 746–755, 770–771, 774–782
USCIS action, 741, 744–745
corporate and securities counsel, 128 defined, 123
dual nationality, 16
due diligence, 418
economists, 128–129
equity models, 124
formation, 773–774
as general partner, 123
I-526 petition, 97–98
I-924 and I-924A applications, 773–774
IMMACT90, 721
immigration lawyers, 126
initial proposals, 721–733
actual projects, 729
business plans, 730–731
corporate formation documents, 731
designation from USCIS, 725–732
EB-5 projects, 728–730
economic reports, 731
exemplar projects, 729–730
filing, 732
geography, 725–726
history, 721–722
hypothetical projects, 729
I-924, 725–732
loan agreements, 731
operations, 726–728
"shovel ready" documents, 731–732
transactional/offering documents, 731
investment requirement, 26
investor loans, 124–126
investor's promissory notes, 125
job creation vs., 117–118
as licensor, 123
loan models, 124–126
manufacturing companies, 24
migration agents, 129
number of approved centers, 722
operation, 773–774
planning strategies, 14
principals, 126–127
professional service companies, 22
project principals, 127–128
project types, 124
regional center, defined, 723–725
role, 122–126
Russia, 350
site visits, 765–772
administrative, 765–768
compliance reviews, 768–771
data requests, 769–770
onsite assessment, 770
overview, 765
process, 769
termination proceedings, 746–755
ANPRM, 754–755
balancing test factors, 781–782
compliance obligations, 746–755, 770–771, 774–782
duty to monitor capital investment activities, 747–749
I-924A, 746–747
P-A-S-, LLC, 779–780
regulatory framework, 775–776
S-D-R-C-, 778–779
standard of care, 753–754
USCIS practice and policy, 776–782
Vermont case study, 749–753, 780–781
trading companies, 17–20
Regional Input-Output Modeling System (RIMS II), 490–492
Registered investment advisers (RIAs). See Investment advisers
Regulation A+, 683–684
Regulation D, 158, 666–667, 682–683
Regulation S, 685–695
application, 686
availability, 686
Category 1, 692
Category 2, 692
Category 3, 692–694
conditions, 688–691
crowdfunding and, 690–691
directed selling efforts, defined, 688–690
issuer category conditions, 691–694
offshore transaction, defined, 688
overview, 685–686
Regulation D vs., 666–667
Removal, defined, 293
Removal of conditions, defined, 293
Requests for Evidence (RFEs). See also Evidence
avoiding, 194
currency swap, 195, 385–386
funding sources, 32, 183–199
H-1B visas, 392–393
I-526 petition, 313–315, 327–329
INDEX

1-829 petition, 198
loan agreements, 636–637
real estate, proceeds from loans or sales of, 376–377
recent trends, 183–199
sample, 327–329
tax returns, 376
verification letters, 379

Residence, defined, 293
Resident alien, defined, 293

Restricted transactions, 234–242
generally, 234–236
AEDPA, 237, 238, 242
civil liability, 238
culpable acts, 237
elements, 236–237
false statement statutes, 237, 242
fines, 242
FTOs, 237
IEEPA, 236, 239, 242
Iran, 240–242
Kingpin Act, 237, 239, 242
knowledge, 238
OFAC economic sanctions, 234–236
OFAC licenses, 239–242
penalties, 242
recordkeeping, 242
reporting, 242
scienter, 238–239
SDNs, 235–236
willfulness, 239

RFEs. See Requests for Evidence

RIAs (registered investment advisers). See Investment advisers

RIMS II (Regional Input-Output Modeling System), 490–492

Rural areas
defined, 33r9, 466–468
legislative changes, 468
MSAs, 465–466
population limits, 466
TEA test, 464–468
use of exception, 466–468

Russia and EB-5 visas, 349–356
background, 350
funding sources, 353–354
immigrant visa interviews in Moscow, 355
lagging numbers, 349
past convictions, 351–352
petition preparation advice, 354–355
poison-pen letters, 352
preliminary screening, 350–353
real estate sales, 352
regional centers, 350

S
Safe harbors, 161, 323–324, 597, 686, 689, 692
SEC and, 700–702, 706, 717
St. Kitts and Nevis citizenship-by-investment, 853–858
application process, 857

Securities and Exchange Act (1934)
government fees, 856
history, 854–856
Hurricane Relief Fund, 856
investment options, 855–856
overview, 854
real estate investment, 856–857
Sugar Initiative Diversification Foundation, 855
Sustainable Growth Fund, 856

SDN. See Specially Designated National (SDN) database

Securities, 665–679
accredited investor requirements, 666–667
antifraud provisions, 667–670
broker-dealer registration requirements, 670–671
business plans, 485–486
compliance benefits, 674
EB-5 issuers, connection with securities markets, 668
EB-5 visas
materiality, 715–719
redeploying investments, 710–713
enforcement actions summary, 675–679
FINRA, 666
fraud types triggering enforcement, 668–669
general solicitation of investors, 667
Investment Advisers Act. See Investment Advisers Act
Investment Company Act, 671–673
materiality, 715–719
in EB-5 immigration, 718
under securities laws, 715–718
standards compared, 719
offering registration requirements, 665–666
penalties for antifraud violations, 668
penalties for failure to register, 666
private party legal actions for fraud, 669–670
referral fees, 668
regional centers, 668–671
registration exemptions, 666
Regulation D, 666–667
Regulation S, 666–667
whistleblower claims, 122, 669

Securities Act (1933)
accredited investor requirements, 666–667
antifraud provisions, 667–670
D&O insurance, 784
EB-5 investment projects, 162, 665
exemptions, 666
general solicitation of investors, 667
penalties for failure to register, 666
redeploying investments, 710–711
registration requirements, 665–666, 685, 693
Regulation D, 666–667
Regulation S, 666–667
safe harbor, 717

Securities and Exchange Act (1934)
anti-fraud provisions, 667–670
broker-dealers
defined, 697
FINRA, 703–704
interstate commerce, defined, 702
issuer rescission rights, 705
jurisdiction, 702–704
registration requirements, 670–671
D&O insurance, 784

disgorgement of profits, 705

EB-5 investment projects, 665

enforcement authority, 704

foreign securities, 703

fraud, defined, 668

interstate commerce, defined, 702

penalties, 670, 704–705

Regulation D, 158, 666–667, 682–683

rescission rights, 705

security, defined, 701

Securities and Exchange Commission (SEC)

broker-dealers regulation, 697–706

EB-5 issuers, 121–122

Self-Employed Persons Program (Canada), 828

Self-insured retentions, 785

Self-Invested Personal Pensions (SIPPs), 192

Serbia

E-1 visas (treaty traders), 67

E-2 visas (treaty investors), 67

Settlement escrow accounts, 662

Settlement of lawsuits, 516

"Shovel ready" documents, 731–732

Silicon Valley, 2

Singapore

E-1 visas (treaty traders), 66

E-2 visas (treaty investors), 66

Single-path currency swaps, 385

Site visits, 765–772

administrative, 765–768

Administrative Site Visit and Verification Program, 53

compliance reviews, 768–771

data requests, 769–770

due diligence, 418

onsite assessment, 770

overview, 765

process, 769

Somali entrepreneurs, 2

South Africa

adjustment of status, 360–361

backlogs, 360

consular processing, 360–361

currency exchange control regulations, 360

distinguishing entities, 359–360

E-2 visas, 27

EB-5 visas, 16, 357–361

economic problems, 357

funding sources, 358–360

government registration, 358

immigration to U.S., 357–358

income sources, 358–359

political corruption, 357

social instability, 357

tax mitigation, 359

transaction characterization, 359–360

trusts, 359

unemployment, 357

Specialized knowledge workers. See L-1B visas

Specially Designated National (SDN) database, 184, 209–210, 235–236, 340

Special purpose entities (SPEs), 622

Spouses

E-1 visas (treaty traders), 86–87

E-2 visas (treaty investors), 86–87

EB-5 visas, 15

I-829 petition, 534

marriage certificates, 60

parole program, 9–10

Startup visas, 5

State agency registrants, 423–424

State Department, U.S. (DOS)

DS-260 applications, 121

EB-5 visas, 121

treaty investors, 801–802

State sponsors of terrorism, 340

STR (Suspicious Transactions Reporting), 245

Student visas. See International students

Subordinate employees and L-1A visas, 56–57

Substantial presence test, 261

Success fees, 151–152

Sudan

state sponsors of terrorism, 340

terrorism list, 237

Suspicious Transactions Reporting (STR), 245

Syria

OFAC, 234

state sponsors of terrorism, 340

terrorism list, 237

T

Taipei Economic and Cultural Representative Office (TECRO), 77–78

Taiwan

EB-5 visas, 363–366

background, 363–364

cutoff date, 366

E-2 visa, 365–366

foreign exchange and transfer restrictions, 365

gifts from friends or relatives, 365

real property as funding source, 364

recordkeeping, 364

regulatory systems, 364

tax systems, 364

TECRO, 77–78

Taiwan Relations Act, 77

Targeted employment areas (TEAs)

capital investment, 93–94

EB-5 visas

background, 464

due diligence, 403

investment, 33–34, 116, 463–478

MSAs, 465–466

population limits, 466

high unemployment areas, 468–478
INDEX

Terrorism

LPR status, 259, 264–269
Malta, 843
Moldova citizenship-by-investment, 862
Montenegro, 847
90-day letter, 290
nonresident aliens, 264–279
defined, 260, 292
highlights, 268–269
IRS Form 1040NR, 265
tax rates, 264–265
PFICs, 266–267
pre-immigration planning, 283–286
abandonment of LPR status, 284
covered bequests and gifts, 286
expatriation, 284–286
IRS Form 8833, 284
LPR status, 283
mark-to-market, 286
nonresidents, 283–284
residency, 283–284
treaty override, 283–284
realization, defined, 293
recognition, defined, 293
reporting of international matters, 273–278
returns, 376
state income taxes, 279
tax evasion, 231
tax rates, 269–272
tax year, defined, 293
terms, 290–294
taxpayer identification numbers, 262n17, 262n18
"United States Person," defined, 260
India, 394

Texas and high unemployment areas, 476–477

Third parties
- assistance, 120
- banks, 278–279
- funding sources, 186
- intermediaries, 174–176

Timing
- allocation, 302–306
- backlogs, 308, 371
- D&O insurance, first coverage purchase, 785
- Grenada citizenship-by-investment, 850
- high unemployment areas determination, 477–478

I-526 petition
- adjudication, 135–136
- denial challenges, 516
- I-924 petition, 135–136
- investment, 99
- EB-5 visas, 35–38
- job creation, 504–511, 561–562, 576, 614–617
- Montenegro citizenship-by-investment, 846
- parole program, 9
- wait times, 302–306, 308, 371

TNT visas, 14

Totalitarian party membership, 209, 347

Trade
- defined, 73–74
- E-1 visas (treaty traders)
  - defined, 73–74
  - domestic, defined, 76
  - exchange required, 74
  - existence of, 74
  - international exchange, 75
  - items of, 74
  - measuring, 76–77
  - parties, 76–77
  - substantial, defined, 75–76
  - between treaty countries, 76–77
  - volume of, 75–76

Treasury Department, U.S. and consular practice, 340–341

Treaty investors. See also E-2 visas (treaty investors)
- legal precedent, 789–804
- background, 789–791
- corporate control, 798–799
- essential employees, 800–801
- executives, 800–801
- FCN treaty, 66, 789–790
- funding sources, 792, 796–797
- intent to return abroad, 802
- joint ventures, 798–799
- managers, 800–801
- marginality, 797–798
- nationality, 799–800
- nonpreference investor category, 791–793
- overview, 789–791
- post-1979 guidance, 794–802
- pre-1979 guidance, 793–794
- regulations, promulgation, 802–803
- at risk principle, 793, 796
- State Department view, 801–802
- substantiality, 792, 797–798

Walsh-Pollard, 801–802
- nonpreference investor category, 791–793, 805–811
- considerations in current practice, 807–811
- legal precedent, 791–793
- origins, 805–806
- overview, 805
- practitioners’ experience, 806

Treaty traders. See E-1 visas (treaty traders)

Troubled businesses, 26–27, 97, 99–100, 561

Trump administration
- AAO decisions under, 43–49
- BAHA executive order, 43, 51–64
- NIWs, 47–49

U

Ultra vires regulation and policy, 575, 612–613

U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 225

Uniform Gifts to Minors Act, 316–317

Uniform Limited Partnership Act, 100, 336, 430, 820

Uniform Transfers to Minors Act (UTMA)
- benefits, 320
- China, 373
- choice of law, 319–320
- custodians, 317–318, 373
- I-526 petition, 316–320
- benefits, 320
- choice of law, 319–320
- custodians, 311, 317–318
- parental/guardian consent, 323
- parental/guardian consent, 323

United Kingdom
- Brexit, 840–841
- Malta and immigration benefits, 840–841

USA PATRIOT Act (2001), 226, 244, 656

U.S. Citizenship and Immigration Services (USCIS)
- ANPRM, 735–736, 754–755
- currency swap, 195
- deference policy, 552
- EB-5 visas, 121, 240
- Filing Chart, 135
- geographic or political subdivision designation, 472–474
- guidance to adjudicators, 134
- indebtedness policy, 377–378
- Iran, 240
- NOIDs and guidance to adjudicators, 134
- Policy Manual amendment, 445–448
- regional center terminations practice and policy, 781–782

UTMA. See Uniform Transfers to Minors Act

V

Vietnam
- attorney-client relationships, 175–176
- backlogs, 308
company as exchanger, 196
currency swap, 195
EB-5 visas, 13, 15–16, 134
real estate, proceeds from sales or loans secured by, 187
sales seminars, 176
third-party intermediaries, 175–176

Virtual currency, 227
Visas. See specific types

W
Wait times, 302–306, 308, 371. See also Backlogs
Whistleblowers
   Bipartisan Budget Act (2018) and whistleblower rights,
   294n177
defined, 294
   securities law enforcement actions, 122, 669