

**The U.S. EB-5 Immigrant Investor
Program and Hong Kong's Capital
Investment Entrant Scheme**

by

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Biographical Information

Eugene Chow is the principal of Chow King & Associates, a Hong Kong firm specializing in U.S, Hong Kong and international immigration matters. Mr. Chow graduated with highest distinction (summa cum laude) from Pennsylvania State University and obtained his Juris Doctor Degree from Boston College Law School, where he was a full tuition scholarship recipient.

A member of the Pennsylvania and California Bars, the American Bar Association, the American Immigration Lawyers Association, the International Bar Association, the Alliance of Business Immigration Lawyers, and the International Association of Lawyers (UIA - Union Internationale des Avocats), Mr. Chow has practiced law since 1976 and has been a California Board of Legal Specialization Certified Specialist in Immigration Law since 1989.

Mr. Chow has been consistently recognized as one of the top 15 most highly regarded corporate immigration lawyers globally by "The International Who's Who of Corporate Immigration Lawyers" and has been a contributor to all 15 editions of *The Visa Processing Guide: Process and Procedures at U.S. Consulates and Embassies*. He also served as an Associate Editor for the 2004 *Global Immigration Summit Handbook*, and the 2006 edition of *Immigration Options for Investors and Entrepreneurs*, and was a contributor to the 2010 edition of the latter book. Mr. Chow is also a regular contributing author to the *Global Business Immigration Practice Guide* by the Alliance of Business Immigration Lawyers (LexisNexis Publishers), *Corporate Immigration Review* (Law Business Research Ltd.) (Second and Third Editions), as well as the recently published *Immigration Law, Jurisdictional Comparisons, European Lawyer Reference Series* (First Edition 2013) (Thomson Reuters).

Mr. Chow speaks regularly on immigration law topics internationally and is fluent in Cantonese and Mandarin. Formerly a daily columnist on immigration for the Sing Tao Daily from 1991 – 1997 and the Oriental Daily News (Hong Kong's largest circulation newspaper with a readership of 3.1 million) from 1988 – 2009, he is also the author of "*The Pathway to Immigration*", a book published in Chinese.

A native of Hong Kong, Mr. Chow's boutique firm has, for more than twenty-five years, represented business investors in securing permanent residence in the U.S., Hong Kong and other jurisdictions. The firm also represents corporate multinational clients in the transfer of key personnel into the U.S. or Hong Kong on employment visas, as well as assists individuals in the acquisition of a second citizenship to facilitate visa free travel, for tax planning purposes, or as a hedge against negative economic or political developments in their countries of origin.

Mr. Chow handled the first successful U.S. EB-5 investor immigrant visa case from Hong Kong as well as the first successful investor immigrant case from China at the inception of the program in 1991.

With the increasing numbers of American citizens interested in giving up their citizenship, the firm has also developed a niche practice in providing customized advice to Americans on the pros and cons and legal consequences of expatriation from the U.S., advising on the acquisition of a sound alternative citizenship, and liaising and strategizing with tax professionals about tax consequences. Post-expatriation, the firm continues working with expert professional contacts in various jurisdictions to service the sophisticated multi-jurisdictional immigration needs of clients in this globalized world.

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and Hong Kong's Capital Investment Entrant Scheme

In a recent CNBC News report published on January 17, 2014¹, it was reported that 64% of Chinese millionaires had either emigrated or plan to emigrate and that the United States is their favorite destination.

Citing data from Hurun (www.hurun.net), a wealth research firm which focuses on China, the report stated that one-third of China's "super rich" – those worth US\$16 million or more – have already migrated.

The main reasons wealthy Chinese give for emigrating is to provide better educational opportunities for their children, to escape the pollution and overcrowding in urban China, and for a better quality of life. A less stated reason often given in private to immigration lawyers is to diversify their risk because of political uncertainty, especially if some of their wealth might have been acquired through connections or favors from government officials who may now be in political disfavor and under attack, even if certain business advantages obtained because of "gouxi" (a Chinese cultural term roughly translated as "connections" or "relationships") does not necessarily rise to the level of corruption.

This article will examine the basic requirements of the U.S. EB-5 Immigrant Investor Program as well as the Capital Investment Entrant Scheme of Hong Kong to see why these programs are so attractive to the Chinese and perhaps instructive to other jurisdictions wooing Chinese investors.

The U.S. EB-5 Immigrant Investor Program

On November 29, 1990, the effective date of the Immigration Act of 1990, the U.S. Congress created the fifth employment-based preference immigrant visa category, popularly known as the

¹ www.cnbc.com/id/101345275

“EB-5” Immigrant Investor program, for immigrants seeking to enter the U.S. to engage in a commercial enterprise which will benefit the U.S. economy and create at least ten full-time jobs. §203(b)(5) of the Immigration & Nationality Act, 8 USC §1153(b)(5).

The amount required to be invested is US\$1 million, although the amount can be reduced to US\$500,000 if the investment is made in a “targeted employment area”. §203(b)(5)(c)(ii), 8 USC §1153(b)(5)(c)(ii). A “targeted employment area” is a rural area (an area not within either a metropolitan statistical area as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more), or an area which, at the time of investment, has experienced unemployment of at least 150 percent of the national average rate. 8 CFR §204.6(e)

There are 10,000 visas available for this category, with 3,000 reserved for those who invest in targeted employment area. §203(b)(5)(B)(i), 8 USC §115.3(b)(5)(B1)(i).

Contrary to the expectation of Congress that investors would flock to the U.S. under this program, the early years of the program saw very few people immigrating under EB-5, not only because the requirements to qualify were quite onerous, but because there were much more attractive and less expensive immigration investment alternatives to other countries, especially Canada.

To encourage more use of the EB-5 visa category, Congress established the Immigrant Investor Pilot Program in 1993 and set aside 3,000 of the allocated 10,000 visas for investors who invest within designated “regional centers”². A regional center is permitted to count indirect as well as direct jobs to meet the job-creation requirement.

² Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. No. 102-395, §610, 160 Stat. 1828, S. Rep. No. 102-918 (1992)

From Fiscal years 1998 to 2007, persons who entered the U.S. under the EB-5 investor immigrant category ranged from a low of 39 in FY2003 to a “high” of 491 in FY2007³. In FY2008, the usage increased to 1,029, further increased to 2,703 in FY2009, and to 2,764 in FY2011.⁴

The demand for visas under the EB-5 category has continued to rise each year, reaching an all time high of 6,628 in FY2012.⁵

The lack of demand for EB-5 visas in earlier years can be attributed not only to the onerous requirements of the program but the uncertainties that plagued the program when the Administrative Appeals Office (AAO) of legacy Immigration and Naturalization Service (“INS”) (now United States Citizenship and Immigration Services, “USCIS”) issued four precedent decisions in 1998 which altered previously issued guidance and substituted new and more restrictive interpretation of the law, resulting in many potential investors deciding not to go ahead with their investments⁶.

Retroactive application of the principles announced in the four precedent decisions also left many investors who had obtained conditional permanent resident status based on reliance on prior guidance and interpretation of the law stranded in the U.S. unable to remove the conditions imposed on their lawful permanent residency⁷.

³ Office of Immigration Statistics, U.S. Department of Homeland Security, “2007 Yearbook of Immigration Statistics (August, 2009)” Table 6 at p.18, available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois_2007_yearbook.pdf

⁴ Office of Immigration Statistics, U.S. Department of Homeland Security, “2011 Yearbook of Immigration Statistics (September, 2012)” available at http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf

⁵ Office of Immigration Statistics, U.S. Department of Homeland Security, “Annual Flow Report (March, 2013)” Table 2 at p.3, available at https://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf

⁶ See *Matter of Soffici*, 22 I&N Dec. 158, 19 *Immigr. Rep.* B2-25 (Assoc. Comm’r, Examinations 1998); *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm’r, Examinations 1998); *Matter of Hsiung*, 22 I&N Dec. 201 (Assoc. Comm’r, Examinations 1998); and *Matter of Ho*, 22 I&N Dec. 206 (Assoc. Comm’r, Examinations 1998).

⁷ A successful investor under the EB-5 category is granted “conditional” permanent resident status for a period of two years. Before the second anniversary of the investor’s arrival as a conditional permanent resident, the investor

While Congress did enact legislation⁸ to rectify the situation to help stranded immigrant investors hurt by the 1998 decisions, and Section 11033 of the Appropriations Act required the INS to publish regulations within 120 days of the effective date of the legislation, proposed regulations were only finally published in 2011, but have yet to result in final regulations being promulgated, leaving 581 conditional residents' cases held in abeyance for a decade or more.

The reality is that the USCIS has swept the old pending cases under the carpet and instead put all of their efforts into making a "success" of the Regional Center Program, which has substantial industry support from politicians, real estate developers, and other U.S. businesses interested in attracting foreign capital into the U.S.

Unlike the regular program, which requires the investor not only to invest the minimum amount of US\$500,000 in a "targeted employment area" or US\$1 million in a commercial enterprise which will create ten new full-time jobs and to have a policy-making role in the enterprise, either as a board member or limited partner depending on the entity structure, the Immigrant Investor Pilot Program ("Pilot Program") is more flexible as it allows the ten-full time jobs to be created indirectly or directly as a result of the investment.

The Pilot Program has been extended several times⁹, and directs the Attorney General and Secretary of State to set aside 3,000 visas each year for people to invest in "designated regional centers".

To qualify under the EB-5 program, the investor must make his/her investment through a "Regional Center", as designated by the USCIS.

must file a petition to remove his/her conditions with the USCIS along with evidence that the capital investment has been maintained during the period of conditional residency and that the ten full-time jobs have been or will be created within a reasonable time. 8 C.F.R. §216.6 (a)(4)

⁸ The 21st Century Department of Justice Appropriations Act of 2002 ("the Appropriations Act"), Pub. L. No. 107-273, 116 Stat. 1758 (2002)

⁹ Most recently on September 28, 2013, President Obama signed Senate Bill S. 3245 into law, extending the EB-5 Regional Center Pilot Program for another 3 years, until September 30, 2015, Public Law 112-176.

A “Regional Center” is defined as “an economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment”. A center seeking approval and designation by the USCIS must submit a proposal for a specific geographic region which describes how it will achieve the economic growth, etc. 8 CFR §204.6 (m)(3).

Some Regional Centers exist within Targeted Areas and allow for the reduced US\$500,000 investment, while others do not. However, merely being designated as a Regional Center does not automatically guarantee that all projects within the Regional Center’s boundaries will qualify for EB-5 status.

In addition to demonstrating that the target project is within the geographic area of the approved Regional Center, an immigrant investor still must make the required US\$1,000,000 or US\$500,000 investment (as applicable) in a new commercial enterprise or invest in an expansion/restructuring of an existing enterprise that will undertake the project, and demonstrate that the project will create a minimum of ten new full-time jobs, either directly or indirectly. To show that at least ten jobs will be created indirectly, the regional center may use economically or statistically valid forecasting tools including feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and/or multiplier tables. 8 CFR §204.6 (m)(3)

The EB-5 visa has had a surge of applicants for the past three years not only because of the rise of the Regional Center projects but also because Canada suspended its Immigration Investor Program beginning July, 2012.

Canada was extremely popular with the People’s Republic of China (“PRC”) Chinese because it had allowed passive investors with a net worth of CDN\$800,000 to emigrate by investing CDN\$400,000 into designated government guaranteed securities for a period of five years, with the government guaranteeing the return of the CDN\$400,000 after five years without interest.

Furthermore, successful investors were issued immigrant visas on an unconditional basis. While the net worth requirement was doubled to CDN\$1.6 million and the minimum investment amount to CDN\$800,000 on June 26, 2010, the program continued to flourish until its suspension on July 1, 1992 to clear up the severe backlog of applications.

According to a news report published on February 8, 2014 in the South China Morning Post (“SCMP”) which it had obtained from a Canadian Immigration Department spreadsheet dated January 8, 2013, there is a backlog of 57,308 applications lodged in Hong Kong and Beijing alone, which accounts for about 75% of the whole backlog in this investor category¹⁰.

The SCMP went on to report that the Chinese queue for British Columbia is 45,000 as of January, 2013 – about six times the combined annual applications from all nationalities to the investor immigration programs of the U.S., Britain, and the U.S. combined and would sustain the current pace of millionaire migration to Vancouver for a decade to come even if the program remains frozen to new applications.

With the suspension of the Canadian program, the U.S. became the beneficiary of the pent-up demand to emigrate even though unlike Canada, the money invested in the U.S. had to be placed at risk in a commercial enterprise and cannot be guaranteed by the government or any third party. While far less attractive than the Canadian program and despite Ottawa’s pledge to clear the backlog, some impatient investors and newly-minted millionaires decided to invest in the U.S. regional centers as they at least offered an option where the investors did not have to establish their own business but could pool their investments into Regional Center projects to make large investments that created indirect jobs.

As mentioned earlier, the burden to furnish proof of ten full-time direct jobs created was alleviated as regional center investors were permitted to demonstrate through “reasonable methodologies” such as statistical formulas and models to demonstrate a correlation between

¹⁰ South China Morning Post, Saturday, February 8, 2014, at A7.

their investment of capital with a specific business and indirect jobs created in other businesses within the greater community to satisfy the job creation requirement.

While some regional centers have prospered and many investors have successfully immigrated, there have also been some highly publicized disasters involving large regional centers which have failed financially and whose investors have failed to have their conditions removed and have lost their capital.

These include the South Dakota Regional Center which backed the Northern Beef Packers project which involved a beef processing plant processing high-quality beef from local farms and ranches which filed for bankruptcy on July 19, 2013 and left its 160 investors (who each invested US\$500,000) with little or no financial professional return and questionable immigration status¹¹.

Another large scale project, the Intercontinental Regional Center Trust of Chicago (“IRCTC”), is now the subject of an enforcement action in federal district court by the U.S. Securities and Exchange Commission (“SEC”) for securities fraud violations.

According to the SEC’s litigation press release¹², IRCTC and another company, A Chicago Convention Center (“ACCC”) had fraudulently sold more than US\$145 million in securities and collected US\$11 million in administrative fees from more than 250 investors primarily in China by falsely claiming that investors’ funds would be used to build a convention center and hotel complex and five upscale hotels and that three major hotel chains such as Hyatt, Intercontinental Hotel Group and Starwood Hotels were all participants in the project when none of the hotel chains had executed franchise agreements to include a brand hotel in the project as represented to the investors in the offering materials.

The SEC filed suit for injunctive relief and obtained an emergency court order to protect the remaining US\$145 million in investor assets as the Chicago businessman and his companies

¹¹ <http://cis.org/north/big-eb-5-project-bankrupt-south-dakota-investors-may-lose-everything>

¹² www.sec.gov/litigation/litreleases/2013/lr22615.htm

behind the project had misappropriated and spent more than 90% of the administrative fees despite their promise to return this money to investors if their visa applications were denied.

Yet, despite these scandals, the demand for EB-5 visas remains strong in China. This is because many Chinese investors are relatively unsophisticated and rely more on emigration agents in China who tend to simply recommend projects offering the highest commissions or referral fees, or who blindly follow the investment decisions of their friends and family instead of conducting due diligence themselves or through professionals. In fact, some investors with new found wealth simply view an investment of US\$500,000 as the purchase of a legal status rather than as a real investment and do not expect a return on investment so long as the capital investment is not a total loss and they do not lose their legal status.

That said, there are of course reputable and legitimate regional centers among the 440 regional centers approved by the USCIS¹³.

The attraction of the U.S. investor program is that the threshold minimum investment amount of US\$500,000 is relatively low, and, unlike other jurisdictions, it does not require the applicant to have a successful business background or to prove that the investor has acquired a particular minimum net worth through his own endeavors, and there is no English language proficiency requirement.

In addition to these factors, IIUSA, the Association to Invest in the USA, a non-profit business trade organization representing more than 130 approved EB-5 Regional Centers across the U.S. and 180 associate members including attorneys, broker-dealers, consultants, developers, economists, financial advisors, migration intermediaries, etc. has also done a very effective job representing the EB-5 Regional Center Program industry in government affairs through lobbying, advocacy, research, and industry development to give the pilot program more certainty, adopted “best practices” for the regional center industry, and in getting the message out that investment immigration benefits the U.S. economy.

¹³ For a list of the approved regional centers, see <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>

IIUSA has also become very important for capital investment projects, legal resources, and interested investors. According to one study referred to on IIUSA's website¹⁴, "Economic Impacts of the EB-5 Immigration Program 2010-2011 Report", spending associated with EB-5 investors (including investments, household, and other immigration expenses) contributed US\$2.65 billion to U.S. GDP and supported over 33,000 jobs during 2010-11. Spending by EB-5 investors also contributed US\$347 million to federal tax revenues and US\$218 million to state and local tax revenues.

According to statistics released by the USCIS, about 80% of the EB-5 visa petitions are being filed by mainland Chinese. With per county quota limitations and some 6,500 petitions filed in the fiscal year ending September 30, 2013, the State Department had warned that the quota for China this fiscal year might be reached as the 10,000 quota includes the investor as well as his/her dependents, which averages 3 – 4 applicants per family. However, visa quota retrogression did not happen because of the slow pace of processing by the USCIS.

However, assuming the steady clearing up of the backlog and continued demand, retrogression may well happen towards the end of this fiscal year for China in September, 2014.

The U.S. quota backlog and long waiting time might well discourage Chinese investment into the U.S. under the EB-5 program and create opportunities for competing jurisdictions for the Chinese investment capital.

The Hong Kong Capital Investment Entrant Scheme¹⁵ **("CIES")**

¹⁴ http://iiusablog.org/wp-content/uploads/2013/08/IIUSA-IMPLAN-AUBER-Economic-Impacts-of-EB-5-Immigration-Program_2010-2011_FINAL-David-Kay.pdf

¹⁵ Updated from an earlier article published by Mr. Chow in *Immigration Options for Investors and Entrepreneurs – Second Edition*, p 415 (AILA 2010) (copyright ©2010, Eugene Chow, All rights reserved)

The Capital Investment Entrant Scheme is a passive investment scheme launched by the Hong Kong Government on October 27, 2003, to attract investors prepared to make a substantial capital investment in Hong Kong but who do not wish to set up, join in, or run a business themselves.

Although Hong Kong is part of the People's Republic of China ("the PRC"), Article 154 of the Basic Law (Hong Kong's Constitution) provides that the Hong Kong Special Administrative Region ("HKSAR") government may apply immigration control on entry into, stay in, and departure from the Region by persons from foreign states and regions.

Thus, Hong Kong's immigration and visa policy is independent from that of China and, under the "One Country, Two Systems" policy, all PRC citizens who are Mainland residents require an exit-entry permit to enter Hong Kong unless they are in transit through Hong Kong to an ongoing destination, in which case they may be granted a stay of seven days.

Many PRC Chinese desire to settle in Hong Kong because of its proximity to China, the lack of a language barrier, and its low tax regime. In Hong Kong, PRC nationals can remain in close touch with the many business opportunities in Mainland China, and can take advantage of Hong Kong's well-established infrastructure, its free economy, and the simple and low tax regime. Hong Kong has no capital gains tax, no tax on dividends and interest income from bank deposits, no sales tax, and completely abolished estate tax effective February 11, 2006. Assessable profits of corporations are at 16.5% while the standard salaries tax, at 15%, is among the lowest in the world.

PRC nationals who are residents of mainland China are not eligible for this scheme because of foreign exchange control rules that the HKSAR Government must uphold and respect as part of "One Country, Two Systems". However, they can readily acquire "overseas" permanent residence in a country of convenience such as The Gambia in a matter of weeks and can then become eligible to apply as a Chinese with overseas permanent residency.

According to the Hong Kong Immigration Department's latest statistics, as of December 31, 2013, HK\$167,304.89 million (about US\$21,449.34 million) of new capital has been invested in the city since the inception of the program as a result of the approval of 20,649 applicants out of a total of 35,719. Financial assets such as shares and securities account for HK\$124,847.78 million (US\$16,006.12 million), with the remaining HK\$42,457.11 million (US\$5,443.21 million) invested in property¹⁶. In addition, 2,390 applicants have received notification of their "approval-in-principle" but have not yet completed their investments.

Chinese nationals with permanent residence overseas account for the largest number of applications, 31,841 of the total 35,719 applications to date. Foreign nationals account for another 2,861 applications while Taiwan residents made 531 applications.

Under the Rules for the Capital Investment Entrant Scheme, ID(E)968¹⁷, an applicant must be at least 18 years of age and prove that he or she has net assets of at least HK\$10 million to which he or she is absolutely beneficially entitled for the two years immediately preceding his or her application.

The applicant must also invest least HK\$10 million in permissible financial assets, such as equity shares in Hong Kong Stock Exchange-listed companies, debt securities denominated in Hong Kong dollars issued or guaranteed by the HKSAR government, certificates of deposits denominated in Hong Kong dollars issued by authorized institutions under the Banking Ordinance, subordinated debt, and eligible collective investment schemes (i.e. unit trusts or mutual funds) managed by a corporation licensed under the Securities and Futures Ordinance and authorized by the Securities and Futures Commission for sale to the public in Hong Kong.

Compared to the investment programs of other jurisdictions such as the US EB-5 program, the CIES of Hong Kong is extremely flexible, as a investor can choose an investment portfolio

¹⁶ Statistics on the Capital Investment Entrant Scheme, <http://www.immd.gov.hk/en/services/hk-visas/capital-investment-entrant/statistic.html>

¹⁷ Form ID(E)968, "Rules for Capital Investment Entrant Scheme-English Version", available at <http://www.immd.gov.hk/en/forms/forms/id-e-968.html>

among a wide range of permissible assets, and may switch his or her investment within the class of permissible assets at any time.

Any investments in permissible investment asset classes made six months before the entrant's submission of his or her application to the HKID, or within six months after the granting of approval-in-principle by the HKID, may be counted toward the minimum investment threshold amount.

Applicants must also have no adverse (criminal or security) record in Hong Kong or their home country and country of residence, and must be able to demonstrate that they are able to support themselves and their dependents without relying on any return on the permissible investment assets, employment or public assistance in Hong Kong.

Entrants who acquired their status by investing in specified financial assets are not permitted to realize or cash in any capital appreciation of the qualifying portfolio. On the other hand, if the value of the portfolio falls below the original HK\$10 million, no topping up is required, either. Thus, unlike the U.S. EB-5 program, there is no risk of loss of immigration status even if the investment sours and the investor is forced to select a very safe and conservative investment portfolio such as bonds. However, cash dividend income and interest income derived from permissible financial assets can be retained by the entrant and need not be 'ring-fenced' under the Capital Investment Entrant Scheme.

There is also an annual reporting requirement on the composition and value of the qualifying portfolio. Since an applicant who decides to invest in specified financial assets is required to open a designated account in his or her own name with a 'financial intermediary'¹⁸ which can be managed on either a self-directed basis by the applicant or at the discretion of the financial intermediary, any reporting requirements would be handled by the financial intermediary.

¹⁸ The financial intermediary must be an authorized institution as defined in the Banking Ordinance, a licensed corporation licensed to perform Type 1, 4 or 9 regulated activities under the Securities and Futures Ordinance or an insurer authorized to carry on Class C business as specified in Part 2 of the First Schedule to the Insurance Companies Ordinance (<http://www.immd.gov.hk/en/services/hk-visas/capital-investment-entrant/portfolio-maintenance-requirement.html>)

Hong Kong has a straight-forward and easy-to-understand investment program and has set out its welcome mat for foreign investors. Like the United States and other leading jurisdictions, Hong Kong is concerned that the source of the funds invested in Hong Kong is “clean”. However, the HKID is not fixated on tax returns and understands that many investors may have acquired their wealth through an inheritance, capital gains on investments, etc., which are not necessarily reflected in tax returns in their home countries.

Accordingly, the applicant is only required to show he or she has had uninterrupted control over at least HK\$10 million throughout the two years immediately preceding his or her application. Thus, persons who suddenly win the lottery or receive a “gift” from a benefactor will not be eligible to apply until the funds have been under their control for at least two years.

Conclusion

Many high net worth Chinese these days are, in addition to (or in lieu of) applying to the U.S. under the EB-5 program, participating in the Capital Investment Entrant Scheme in Hong Kong because of the flexibility of the program as the risks are substantially lower than that of the EB-5 program. This is because EB-5 immigrant visas are issued on a conditional basis and the investors must assume the risk of business failure of the commercial enterprise in which they have invested, prove their investment capital has been sustained during the two years of their conditional permanent resident status, and that the job-creation requirements have been met before the conditions imposed on their status can be removed. CIES investors, on the other hand, can invest in a conservative portfolio of securities or even certificates of deposits in Hong Kong dollars with Hong Kong banks under their own names and the investment can be self-directed or managed by a financial intermediary of their own choice and their status can be kept so long as their investment remains in place.

The PRC Chinese are attracted to Hong Kong as it is not only a low tax jurisdiction and a safe haven but a world-class international financial center in a strategic location ideally suited to take advantage of the trade and direct investment opportunities in China. The only disadvantage of this program is that it takes seven years of residence to qualify for the right of abode/permanent residence in Hong Kong and a HKSAR passport. However, once the HKSAR passport is obtained, the holder of such a passport can enjoy visa-free access visa-on-arrival privilege to some 140 countries.