E-2 TREATY INVESTOR GUIDE

How to Structure an E-2 Deal for Success

A practical guide for buyers, business brokers, sellers, accountants, and advisers navigating the immigration side of a U.S. business purchase.

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The central principle

> The purchase terms, funding, documents, timing, ownership, and operating plan should tell one clear and consistent story.

Why the deal structure matters

A buyer may be ready to purchase a business and a seller may be ready to sign, yet the transaction can still contain an E-2 visa problem. Common issues include whether a deposit is refundable, whether financing is secured by the business, whether the seller keeps ownership or control, and whether the buyer can take over before the visa is issued.

E-2 strategy should be part of the deal conversation from the start. The purchase agreement, deposit, financing, seller obligations, assets, and operating plan should be consistent with the immigration filing. Business brokers can help identify questions early and bring qualified immigration counsel into the transaction before terms become difficult to change.

Start with exactly what the buyer is buying

The purchase agreement should clearly identify the business, the assets or equity included, the purchase price, the required deposit, and when the investment becomes committed. Vague terms can make it harder to connect the investment to one specific business and transaction.

The buyer should also confirm whether another person or entity has rights in the investment and whether the documents accurately show who is making the purchase. These details can affect ownership, the flow of funds, and the buyer’s ability to direct the business.

Questions to settle before signing

- Is this an asset purchase or an equity purchase?
- What exactly is included in the purchase price?
- When and how do the funds become irrevocably committed?
- Who will own and control the business after closing?
- Will the seller, a partner, or a management company remain involved?

Make every dollar match the deal

The funding plan should be developed alongside the purchase terms, not after them. Funds may come from savings, a gift, a loan, the sale of another asset, or transfers through related companies. The evidence should show that the money came from lawful sources and explain each step before it reached the U.S. business.

Funds may move through more than one account, company, or country. That does not automatically make the transaction unworkable, but each transfer should have a clear business and documentary explanation. Bank statements, ownership records, transfer documents, corporate resolutions, tax records, and accounting records should support the same structure described in the purchase agreement.

Review financing and collateral carefully

When a buyer uses a loan, the collateral and repayment terms matter. Financing secured by the buyer’s personal assets may be treated differently from financing secured by the E-2 business itself. Loan documents, escrow instructions, the purchase agreement, and the business plan should all describe the same transaction and use of funds.

A simple ownership and money-flow chart can help the buyer, broker, seller, accountant, and immigration attorney understand a complicated transaction. The more entities and transfers involved, the more important it is to make the path of funds easy to follow.

Documents that may matter

- Purchase agreement and all amendments
- Bank and wire-transfer records
- Loan and collateral documents
- Gift or asset-sale documentation
- Corporate ownership records and resolutions
- Escrow instructions and release conditions
- Business plan and operating budget

Plan for visa-processing delays

Visa processing may not follow the commercial transaction’s timetable. Before signing, the parties should discuss whether closing depends on visa issuance, how long the buyer has to complete the purchase, whether the seller will extend a deadline, and what happens to the deposit or escrowed funds if processing takes longer than expected.

A visa-contingent purchase may still support an E-2 case when the buyer has made a real commitment, such as placing funds in escrow for release when a stated condition is satisfied. Escrow is not a substitute for careful drafting: the release conditions, deposit terms, funding, purchase agreement, and immigration filing must fit together.

If the price, purchased assets, seller involvement, or other material terms change, immigration counsel should receive the revised documents. Relying on an outdated version can create inconsistencies in how the investment and the buyer’s role are presented.

Make sure the buyer can run the business

The transaction documents should explain what the buyer will do after the acquisition. The buyer’s ownership interest, decision-making authority, day-to-day role, and ability to develop and direct the enterprise should align. A passive role can undermine an E-2 application.

The buyer should understand the consequences of an asset purchase versus an equity purchase, including contracts, licenses, permits, employees, and liabilities. Transaction and tax counsel should address those issues while immigration counsel reviews whether the structure supports the intended E-2 investment and operating role.

Staffing also deserves attention before closing. If the buyer relies on existing employees, managers, or contractors, the parties should confirm what continues after the purchase and review payroll, employment, work-authorization, and contractor records.

Questions to answer before signing

A broker, buyer, seller, and their advisers should be able to answer these questions before the purchase agreement is final:

- What exactly is being purchased?
- How will the investment be funded and transferred?
- What do the deposit and escrow terms require?
- What happens if visa processing takes longer than expected?
- Will the seller remain involved?
- Who will own, control, and operate the business?
- Which documents must be updated before funds move or the buyer takes over?

A strong E-2 deal is one in which the purchase terms, funding, documents, timing, ownership, and operating plan work together. Bringing qualified immigration counsel into the conversation early gives the parties time to identify and address issues while the transaction can still be improved.

Jessica Weiss has practiced U.S. immigration law since 1998 and advises E-2 investors on transaction structure, lawful source of funds, supporting documentation, and visa strategy.

Talk with Jessica Weiss, Esq.

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