



**EINBINDER
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Legal Considerations for Doing Business in the US

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Type/Form of Entity

- Creating new entity in the U.S.
 - Corporation (S Corp status), LLC, Partnership/Joint Ventures
 - State filings – formed at state level
 - Where – state law differ
 - Tax questions – Ask Robert
 - Control of entity – Minority Rights
 - Governance of Business
 - Shareholder/operating agreements
 - Bylaws for corporation
 - Set the rules you need
 - Follow them

Establishment of Business

- Starting a new entity or acquiring existing business
 - Corporations etc.
- Acquiring existing business or subsidiary of foreign corp.
 - Foreign entities typically set up a 100% owned subsidiary
 - It can be partially owned
 - Relevant federal foreign investment control laws:
 - Securities Exchange Act of 1934, the Hart-Scott-Rodino Antitrust Improvements Act, the International Investment and Trade in Services Survey Act

Types of Business Industry

- Restrictions and regulations on foreign investment and control in certain industries
 - Federal regulations – example industries regulated for foreign investment and control:
 - National security and defense
 - Nuclear power
 - Maritime industries
 - Airlines
 - Media and communications
 - Banking
 - State regulations and restrictions
- Regulations on manufacturing, distribution and sale of certain good
 - Products Liability
 - E.g., children’s toys; The Consumer Product Safety Improvement Act (federal law) makes it illegal for anyone to sell children’s toys, books, clothes or jewelry and certain other goods if the items contain more than trace levels of lead or phthalates.

Location in the U.S.

- Authorizations to do business in certain locations
 - If creating a new entity, in which state will that entity be formed?
 - Where will the principal office of the entity be located?
 - Depends on the type of business
- Real estate needs based on location
 - Offices leases
 - Warehouse leases
 - Foreign Trade Zones
- State-specific (sometimes city-specific) regulations and restrictions based on business' industry

Personnel

- Labor laws in the U.S./State
 - National Labor Relations Act – union activity
 - Non-discrimination
 - ADA or state law
 - Title VII

Personnel

- Immigration
 - Who qualifies to work in the U.S. The individual needs to be:
 - US citizen
 - Green card holder
 - On a work visa
 - For example:
 - L-1 VISA is a visa document used to enter the United States for the purpose of work in L-1 status. It is a non-immigrant visa, and is valid for a relatively short amount of time, from three months to five years, based on reciprocity schedule. With extensions, the maximum stay is seven years.
 - To qualify for a L1 visa the employee, which can include business owners, must have worked for a subsidiary, parent, affiliate, or branch office of the US company outside of the US for at least one year out of the last three years. One of the benefits of the L1 visa is that there is no quota.
 - Generally, if the employee is in the US, on a visa, for less than six months then the employee is not subject to US income tax.
 - Nationality or residence requirements
 - E.g., E1 Treaty Trader Visa; E2 Treaty Investor Visa

Personnel

- Employment agreements
- Employment at will
- Discrimination issues
- Confidentiality agreements
- Post-employment non-competition clauses
 - Scope and geography
 - Legitimate business purpose
 - California
- Termination without cause; termination for cause

Intellectual Property

- Filing for registrations in the U.S.
 - Copyright
 - Trademark
 - Patent
 - Domain names
 - Trade secrets
 - Federal law Trade Secrets Act
 - State laws
 - Right of publicity and right of privacy

Intellectual Property

- How to protect IP
 - Federal law
 - Copyright protection
 - Trademark protection
 - Searches
 - Registration
 - Timing
- Infringement of third-party rights
- Licensing of IP
- Protect or lose protection

Franchising in the U.S.

- Federal Laws
 - FTC Franchise Rule
 - Trademark
 - Control
 - Fees
- State registration
 - Thirteen state regulate/similar to FTC
 - More than 20 have applicable laws
- Structuring a Franchise in the U.S.
 - IP business
 - Operating company
 - Franchising entity
 - Manufacturing/products
- Licensing versus franchising

Insurance

- For the business:
 - General liability
 - Business property
 - Business interruption
 - Cybersecurity
 - Workers' compensation

- For the business's personnel
 - Medical benefits
 - Disability benefits

Litigation and Arbitration

- Understanding key differences between US dispute resolution and home country dispute resolution
 - State and Federal Court system
 - ADR – Arbitration or Mediation
 - Who pays attorneys fees and court costs
 - Procedures – strict rules
 - Timing



THANK YOU!



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