



DOING BUSINESS IN THE USA

FOR FOREIGN COMPANIES

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Chapter 1: Introduction

1.1 Government

The U.S. is a constitution-based federal republic. Its federal government is comprised of a legislative branch, executive branch and judicial branch. The legislative branch has an elected Senate and House of Representatives. The executive branch is led by an elected President and an appointed cabinet of leaders of federal agencies administering the laws enacted by the legislative branch. The federal judicial branch is organized into districts which are further organized into circuits with the power to review the decisions of the district court judges. Ultimate review of circuit court decisions is handled by the U.S. Supreme Court Geographically; the U.S. is divided into 50 states and one federal district. The state governments mirror the structure of the federal government in that they all have legislative, executive and judicial branches. Each of the states has county (parish), city and municipal governments. The federal district is the home of its capital city, Washington. It also has 14 dependent areas. These territories may also have lower governmental bodies.

1.2 Business Environment

The U.S. is a free enterprise system, with a large quantity of natural resources and a highly educated work force. The U.S. evolved from a primarily agricultural economy in the 19th Century to a highly industrialized one for most of the 20th Century. However, in the recent past, the country's orientation has become increasingly service-based. The United States is a member of a number of international organizations including being a permanent member of the United Nations Security Council, a member of the North Atlantic Treaty Organization (NATO), a member of the North American Free Trade Agreement (NAFTA), a member of the Organization for Economic Cooperation and Development (OECD), the Asia- Pacific Economic Cooperation (APEC), the Organization of American States (OAS), and a member of the World Trade Organization (WTO). The U.S. covers a total area of approximately 3.7 million square miles. Canada and Mexico border the U.S. from the north and the south. Canada and Mexico represent the first and third largest trading partners of the U.S. respectively, due to their geographic proximity.

The U.S. has one of the largest and richest consumer markets and offers foreign companies a market for virtually all products and services. The U.S. is composed of hundreds of different geographic and Demographic consumer markets with distinct purchasing behaviors and tastes. Several states within the U.S. produce more goods and services as compared to some national economies across the globe.

Chapter 2: Business Entities

In the U.S. there are a number of factors to consider when deciding the appropriate form of business venture to enter. These factors include difficulties in initial organization, capital and credit requirements, management and control, profit and loss considerations, liability, transferability of ownership, continuity of existence and tax treatment.

2.1 Corporations

They are most common form used by businesses because of the ease of:

Establishing or dissolving a corporation, Transferring ownership, and Limiting liability to the amounts invested, unlike in certain foreign countries where corporate obligations are the responsibility of owners.

Foreign investors will find that it is quite easy to incorporate in the United States. State law controls the guidelines and restrictions for incorporation and Delaware and New York are popular among foreign investors due to their flexible laws regarding the formation and operation of corporations. Almost 40 percent of the corporations listed on the New York Stock Exchange are incorporated in one of those two states, regardless of where their headquarters are. Such corporations simply “qualify to do business” in the other states where they operate. Corporations raise capital through the issuance of stock and debt financing; the latter certainly has become very popular in recent years. Corporations must have certain levels of capital and follow some formalities in operating, such as holding regular meetings of shareholders and directors.

2.2 Partnerships

Partnerships are joining associations of two or more persons or entities formed to carry on a business for profit or to own investments. Capital is raised by investment of the partners. Liability under a partnership depends on the type of partnership that is created. Under a general partnership, each partner is liable for any and all incurred losses, whereas in a limited partnership, a limited partner generally has no say in the day-to-day operations of the business and is liable only to the extent of his investment.

2.3 Limited Liability Companies (LLC)

LLCs allow for limited liability of owners. That is, the personal liability of owners for the LLC's debts and obligations is limited to their investment, similar to corporations. At the same time, an LLC can be treated like a partnership for income tax purposes at the election of its owners. Taxation as a partnership generally means that the LLC is not taxed and that items of income, deduction and credit “pass through” to the owners from the LLC as if it were a partnership.

2.4 Joint ventures

Can be corporations or partnerships and are usually formed when two or more persons want to carry out a particular venture. Joint ventures are mainly used in situations where risk and capital requirements are very high. A joint venture can be characterized by four elements -- an express or inferred agreement among the parties, joint contributions of property and services, a sharing of profits and losses and a mutual right of control.

Chapter 3: Tax System

3.1 Federal Taxation

United States taxation of business income earned by a foreign investor can produce significantly varied results, depending upon the form, nature and extent of the investor's activities in the U.S. The following is a general overview of the potential federal tax Consequences resulting from different methods of business operation in the United States.

3.2 The Residency Rules

The United States subjects all U.S. tax residents to net progressive rate taxation on their entire worldwide income, regardless of source. Nonresidents, however, are subject to U.S. tax only on doing business in the United States. Moreover, nonresidents pay only a flat 30 percent withholding tax on most U.S.-source passive income. Finally, qualified residents of countries with which the U.S. has tax treaties can take advantage of treaty provisions to reduce, or even eliminate, U.S. taxation. Therefore, from a tax perspective, foreign individuals and corporations will generally find it advantageous to avoid U.S. tax residency.

3.3 Tax Residency for Corporations and Partnerships

Corporations and partnerships are treated as United States tax residents (that is, "domestic" entities) only if they are formed under the laws of the United States, any one of the states or the District of Columbia. Thus, investors operating in the corporate or partnership form are assured of foreign status so long as the corporation or partnership is formed outside the United States.

3.4 Tax Residency for Individuals

A foreign individual who possesses a "green card" granting him or her permanent residency in the United States is automatically a U.S. resident for federal income tax purposes. An individual who does not have a green card may also be a U.S. tax resident if he/she spends sufficient time in the United States to have a substantial Presence here. Substantial presence is calculated on a modified day-count basis.

3.5 Taxation of Nonresident Foreign Investors

In general, a foreign investor who is not a U.S. tax resident is subject to U.S. taxation only on U.S.-source income.

3.6 Sales of Personal Property

Generally, the source of gains from the sale of personal property is the tax residence of the seller. Thus, if the seller is not a United States tax resident, any gains from the sale of personal property, including corporate stock, will be sourced outside the U.S., even though the sale may take place within the U.S.

3.7 Sales of Real Property

Gain on the disposition of real property is sourced at the property's location. Thus, if the property is located in the United States, any gain from its sale would be U.S.-sourced and automatically ECI under the FIRPTA provisions.

Chapter 4: Immigrant Visas

U.S. has the most detailed Visa system that identifies individuals with their proficiencies offering numerous visas around the world. Below is the list of some visas offered to individual investors.

E-1

To qualify for E-1 classification, the treaty trader must:

- Be a national (citizen) of a country with which the United States maintains a treaty of Commerce and navigation:
- Carry on substantial trade
- Carry on principal trade between the United States and the treaty country.

E-2

To qualify for E-2 classification, the treaty investor must: Be a national of a country with which the United States maintains treaty of commerce

EB-5

Business investors who invest \$1 million or \$500,000 (if the investment is made in a targeted employment area) in a new commercial enterprise that employs at least 10 full-time U.S. workers can become conditional residents immediately and permanent residents after two years.

H-1B

The job must meet one of the following criteria to qualify as a specialty occupation: · Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position. The degree requirement for the job is common to the

industry or the job is so complex or unique that it can be performed only by an individual with a degree

L-1

To qualify for L-1 classification in this category, the employer must:

- Have a qualifying relationship with a foreign company (parent company, branch, Subsidiary, or affiliate, collectively referred to as qualifying organizations); and Currently be, or will be, doing business as an employer in the United States and in at Least one other country directly or through a qualifying organization for the duration of the beneficiary's stays in the United States as an L-1. While the business must be viable, there is no requirement that it be engaged in international trade.

Also to qualify, the named employee must:

- Generally have been working for a qualifying organization abroad for one continuous Year within the three years immediately preceding his or her admission to the United States; and
- Be seeking to enter the United States to render services in an executive or managerial Capacity to a branch of the same employer or one of its qualifying organizations

Chapter 5: Real Estate Transactions

5.1 Real Estate

Purchasing real estate in most states is not particularly difficult without an expert. The differences between states, except for how and where local land records are maintained are generally not significant. There is little regulation of real estate transactions on the federal level and, doing business in the United States except for environmental laws and the regulation of certain aspects of interstate land sales, the federal government does not interpose itself in local real estate transactions. In many states, a foreign corporation, but not a foreign individual or other foreign business entity, must file a certificate with the Secretary of State setting forth certain pertinent facts

Concerning the corporation and appointing the Secretary as its attorney for service of process. While a foreign corporation must comply with the forms of conveyance and procedures required in the state, its authority to make a conveyance is governed by the rules imposed upon it by the jurisdiction where it is created.

5.2 The Real Estate Transaction

The process of buying real estate involves three principal aspects: Negotiation, financing, and acquisition of title.

Negotiation

Typically, a company establishing a facility or investing in real estate will either purchase or lease real estate. In either case, the first Contact a company has will probably be with a real estate broker. While occasionally a buyer will hire his/her own broker, in most doing business in the United States Cases the seller engages a broker as his/her agent to market the property to prospective purchasers. The broker's fee is computed as a percentage (usually 5 to 10 percent) of the purchase price.

It is easy for the purchaser to be misled into thinking that the real estate broker has his/her best interests in mind, since he/she is the one who contacts the broker and asks to be shown the properties that are available. However, the broker is the seller's agent and in Working for the seller has an obligation to generate the highest purchase price possible.

There is nothing inappropriate about this, but it is wise to remember that, absent a special agreement, the broker works for the seller and his/her fee increases with the price. Once the buyer identifies a property that fits his/her requirements, he/she tenders a written Offer to Purchase to the seller through the real estate broker.

Oral agreements to buy and sell real estate are not enforceable. Some purchasers prefer to submit a letter of intent, which outlines the business terms. If the seller agrees to the offer, the seller will countersign the letter. Such letters of intent are usually, by their terms, not binding on either party. The offer to purchase is binding, although it often contains a condition that the parties will

negotiate in good faith a fuller, more complete contract called a Purchase and Sale Agreement that incorporates the business terms

of the Offer to Purchase. The respective lawyers for the buyer and the seller usually negotiate the terms of the Purchase and Sale Agreement. In addition to including the basic business terms (location of property, purchase price, etc.), the Purchase and Sale Agreement often contains a number of conditions to the buyer's obligation to purchase the property.

5.3 Financing

The most common sources for financing are commercial banks and insurance companies. For certain kinds of property, such as low-income housing, there may be some state or federal assistance available. A prospective lender will require a substantial amount of doing business in the United States information about both the buyer and the property in advance. The lender will ask for financial statements, tax returns and other financial records.

The lender's counsel will investigate the title to the Property and its compliance with local zoning laws. The lender will require a survey and will provide information about the property's compliance with environmental laws and regulations. If the buyer is a corporation, the lender will also require evidence that it is properly formed and has the authority to borrow and repay the money, together with a number of other documents and certificates. The loan and the promise to repay the borrowed money are set forth in a promissory note, which the buyer signs.

The principal security for the repayment of the loan is a mortgage on the real estate. Some states use an instrument called a deed of trust, but others do not. By granting a mortgage to the lender, the buyer is, in effect, conveying the property to the lender as security for the repayment of the loan. Once the debt has been repaid, the lender discharges the mortgage and relinquishes its interest in the land. If the buyer defaults in the repayment of the promissory note, the lender may foreclose on its mortgage.

After certain statutory notices are sent to the owner and anyone else having an interest in the property, the Property is sold at a public auction. Anyone who produces the required deposit may bid, and the money received at the auction is applied to the repayment of the debt. Where the high bid is not sufficient to repay the outstanding balance of the loan, there is a Deficiency, which the lender may collect by suing the owner.

5.4 Acquisition of Title

The actual transfer of title occurs at the closing. Usually the buyer, the seller, their lawyers and the lawyer for the lender all meet to put into effect the loan, the transfer of title and the payment of the purchase price.

These all occur simultaneously, since the buyer will not pay the purchase price without obtaining title to the property, the seller will not transfer the title without the buyer's paying the purchase price, and the lender will not provide the buyer the money to pay the seller unless the buyer can provide a security interest in the real estate.

Since title is actually transferred at the closing, the seller wants to be assured of payment in good funds. Therefore, the buyer must make arrangements in advance to have the funds available in the form of a certified check or a bank cashier's check in a bank account from which the money may be sent by wire transfer directly to the seller's bank account. At the closing, the seller delivers the deed, which is the document that actually transfers the title, to the buyer.

The buyer then signs the mortgage, and the lender's lawyer takes both documents to the state's registry of deeds for recording. Prior to the closing, the lender's lawyer would have made a search of records in the state's registry of deeds to confirm that the seller actually owns the land that is being sold. After the closing, the lender's lawyer completes the search and, if there have been no other transfers or liens, records the deed and the other documents.

Commercial real estate lenders now require their borrowers to purchase title insurance in connection with a loan. Prior to the closing, the lender's counsel will have searched the land records to determine who owns the property, whether there are liens that must be satisfied, whether there are any restrictions on the use of the property imposed by prior owners, doing business in the United States and whether anyone else has the right to use all or part of the property (an easement) in a way that would interfere with the buyer's intended use.

Once the lender is satisfied that there are no problems and that the buyer now owns the property, counsel will certify the title to the title insurance company. In turn, upon payment of a one-time insurance premium, the title insurance company will issue a lender's policy, which insures the priority of the lender's security interest as a lien against the real estate, and, if the buyer pays a small additional premium, will issue an owner's policy, which insures the interest of the buyer. Should the title be other than as stated in the title insurance policy, the title insurance company will reimburse the owner and the lender to the extent of their loss but not, subject to certain exceptions, in excess of the face amount of the policy.

5.5 Leases of Real Estate

A business enterprise might prefer not to tie up its funds by purchasing real estate, or the property in which it is interested may not be available for sale. The solution would be to lease the property. The parties would negotiate and ultimately sign a lengthy and fairly complicated document, a lease, which gives the tenant the right to use the leased property; provides that the landlord is entitled to receive, in return, a set amount of periodic rental payments; and defines the other conditions under which the property may be used.

If the lease is not in writing, it is not enforceable. Leases usually describe who is responsible for maintaining the property, obtaining insurance and rebuilding the property if there is a casualty loss. Simpler lease agreements, where the tenant pays rent in return for space but the landlord manages the building, are called "space leases."

A "net lease," on the other hand, is a lease where the tenant leases all or a substantial part of a building and is responsible for all costs — repairs, replacements, insurance, real estate taxes — connected with the building. The principle is that the rent is net to the landlord; that is to say, it is pure profit. Most commercial leases are for five or ten-year terms, although shorter terms are available.

The tenant often negotiates an option that requires the landlord, upon the tenant's request, to extend the term of the lease if the tenant agrees to pay a new rent equal to the fair market rent for the premises. Many leases also provide that, as part of the rent, the tenant pay a proportionate share of the building's operating costs and real estate taxes.

If the landlord is in a strong negotiating position, he may also require that the tenant pay an increase in rent each year based upon increases in the Consumer Price Index (CPI) or some other economic indicator. In many retail shopping center leases, the tenant also pays percentage rent, which is computed as a percentage of sales. In some states, if a lease is longer than a set number of years, then the tenant may need to record a notice in the registry of deeds to put third parties on notice of the tenant's Interest in the real estate.

Chapter 6: Foreign Investment

The U.S. Market offers enormous opportunities for foreign investors. Demand from 300 million people for goods and services have resulted in a trade balance in the early 21st century that currently favors foreign exporters. But the business of exporting goods and services to the U.S. can be complicated by a host of duty and tariff-related challenges that often make building or buying a business in the U.S. a better long-term decision.

The U.S. offers numerous financial incentives to build a business, and buying a business may be a cheaper Alternative. But the decision whether to buy or build a business in the U.S. also is governed by a host of factors—geographic, demographic, financial, and industrial—that need to be studied by foreign investors before making a commitment.

Buy or Build

The decision whether to buy or build a business often hinges on a number of factors, including industry maturity, financial considerations, the potential for success, internal capacity, and supplier and customer availability. For instance, if the investor is a foreign telecommunications company, it is probably faster and less expensive to buy a company that already has procured the necessary licensing and infrastructure than it is to start at the beginning.

If the investor is a foreign retailer, however, it may be easier to purchase real estate and build an operation that utilizes an existing brand and products. Whether to buy or build often is a difficult decision to weigh. The build option offers the significant advantages of business confidentiality; the opportunity to use existing technology and intellectual capital; and the ability to further build brand, product, and service recognition.

Disadvantages of the build decision include difficulty financing when there is no track record and stretching a management team beyond its regular duties.

The buy decision often allows for complete investigation of a target and the ability to negotiate a specific price and terms without concern about the cost overruns and delays that often occur with the internal build decision.

Disadvantages of the buy decision include a long, drawn-out negotiation and closing process that may sometimes collapse, and the true cost of the acquisition may be much higher than the price originally intended.

6.1 Mergers and Acquisitions

Companies use mergers and acquisitions as alternatives to internal expansion. Mergers and acquisitions take many different forms, ranging from “friendly” mergers of two companies to “hostile” takeovers of publicly traded companies. In the U.S., there are a number of securities and tax regulations governing mergers and acquisitions.

Therefore, one should seek not only financial and tax advice, but also legal advice when contemplating a merger or acquisition in the U.S. Acquiring businesses has become a major activity both globally and in the U.S. There are certain strategies and procedural matters involved in an effective acquisition process.

Those not experienced in mergers and acquisitions may need assistance from investment banking firms, business brokers, bankers, business advisers, financial consultants, valuation analysts, accounting firms, and law firms. These resources can assist in identifying potential targets, analyzing potential targets, valuing the target, evaluating the tax consequences, negotiating the Contract and integrating the target into existing operations.

6.2 Joint Ventures and Strategic Alliances

If good acquisition targets are not available, a joint venture or strategic alliance may be a viable way to enter the U.S. market. These alliances offer a way to grow and to obtain specific knowledge that would be very costly or time consuming to achieve alone.

The nature of an alliance demands cooperation and trust and is often designed to share risk. A strategic alliance is a cooperative arrangement between two or more organizations designed to achieve a shared strategic goal. There are two general types of alliances: equity-based and no equity-based.

- Equity-based alliances include Minority stock investments, joint ventures, and at the extreme end, majority investments.
- No equity based alliances tend to be governed primarily by contractual arrangements that specify the responsibilities of each party, the mode of operation of the alliance, and the considerations involved in expansion or termination.

6.3 Going Public

Some foreign companies may opt to sell shares to the public in an initial public offering (IPO) designed to raise capital to expand operations into the U.S. The advantages and disadvantages of going public in the U.S. are numerous, and a foreign company thinking about engaging in an IPO

should seek advice from an experienced financial adviser and legal counsel. Sound management is the most important characteristic if a company is to be successful in obtaining public financing.

Underwriters and the investing public look first to the quality, integrity, and experience of management as a key indicator that an investment will be protected and enhanced.

Companies with relatively inexperienced management have gone public successfully, but usually only under exceptional circumstances, such as when a company's products or services are believed to have extraordinary potential. Other important characteristics are the company's size, earnings performance, and potential for growth.

In evaluating whether the public will be interested in purchasing the securities of your company, you should review your company's sales and earnings performance over the past five years and compare them to your industry peers.

6.4 Federal and State Tax Incentives

U.S. as a Global leader in Trade has variety of incentives offered through federal, State and Local governments level which can be hard to get the best result for investors without negotiating and an excellent strategy.

The incentives programs are offered generally for manufacturing in order to create jobs in U.S. Well planned and large facilities may have tremendous incentives for instance Kia Motors has received incentive package of over \$450 million for Georgia assembly facility in other words \$150 thousand for each job created. The average Georgia's incentive number was \$125000 per job created for 3 companies Kia Motors, Baxter and Caterpillar in last 5 years, this ratio is one of the highest incentive on per employee basis in U.S.

Also U.S. receives the most foreign direct investment of any country in the world. Your incentives will depend on the state, demographics and industry.

Foreign companies considering investing in the United States often are confronted with a maze of legal, financial, and fiscal complications, including their first exposure to the U.S. tax system. The tax code includes incentives designed to encourage capital formation, attract foreign investment, and reduce the federal and state tax burdens of those qualifying for the incentives. For maximum benefit, a foreign investor should have advanced knowledge of these incentives to properly plan and execute their investment strategy.

6.5 Greenfield Investments

The U.S. is one of many countries that offer incentives for so-called "Greenfield" investments that create new production capacity and jobs, transfer technology and know-how, or lead to linkages to the global marketplace. Greenfield investments can include expansions or new facilities and often qualify for subsidized loans and other tax incentives from the federal, state, and local governments.

6.6 Government Loans

The federal government provides financial and managerial assistance to small businesses through the Small Business Administration (SBA). A small business is defined as one that is independently owned and operated and is not dominant in its field.

The SBA offers a variety of loan programs to eligible small business concerns that are unable to borrow on reasonable terms from conventional lenders. Qualifying standards for small business loans are set by the agency for each industry.

The amount of SBA guarantees and direct loans available is set annually by Congress. The SBA may not make or guarantee a loan if a business can obtain funds on reasonable terms from a bank or private source. A borrower, therefore, must first seek private financing before applying to the SBA. The SBA also licenses, regulates, and provides financial assistance to privately owned and operated small business investment companies.

These firms make venture or risk investments by supplying equity capital and extending unsecured loans or loans not fully collateralized to small enterprises, thus enabling those small firms to boost employment. SBA loans are available to foreign-owned companies that have incorporated in the us.

Chapter 7: Banking in U.S

The U.S. banking system classified into two broad groups: commercial banks and thrift institutions. Commercial banks are oriented primarily to commercial activity with corporate customers, although they do provide services to individuals. Thrift institutions traditionally have had the primary function of encouraging personal savings and home buying through mortgage lending, though their activities have expanded beyond this.

7.1 Commercial Banks

Commercial banking in the United States operates under a dual regulatory system. A commercial bank can be either federally chartered by the Comptroller of the Currency as a national bank or chartered by the state in which it will operate as a state bank. In either case, the bank is owned by its shareholders. Examples of large Commercial banks include Citigroup, Bank of America, and JPMorgan Chase & Co. National banks must be members of the Federal Reserve System. State banks are regulated by state authorities. They may elect, but are not required, to join the Federal Reserve System. National banks must have their deposits insured by the Bank Insurance

Fund (BIF), which is managed by the Federal Deposit Insurance Corporation (FDIC). State banks may have their deposits insured by the state or by the BIF. Certain capital requirements are imposed.

All depository institutions, including national banks, must maintain a reserve of a certain percentage of deposits, set by the Federal Reserve, with the Federal Reserve Bank of their district. Restrictions on the maximum rate of interest commercial banks can pay have been removed.

To attract corporations as their main customers, commercial banks generally specialize in accepting corporate demand and time deposits and making commercial loans. They also attract retail banking business by accepting savings and demand deposits and making consumer, mortgage, and small business loans. Commercial banks often have departments that make international loans and deal in letters of credit and collections. Large commercial banks are likely to be dealers in foreign exchange and may provide trust services.

7.2 Bank Holding Companies

Because the activities in which banks may engage are limited by law, bank holding companies are formed. These holding companies own stock of one or more banks and also own stock in other subsidiaries that perform activities closely related to banking as permitted by the Federal Reserve Board, such as leasing, credit card operations, mortgage lending, securities underwriting and dealing, and bookkeeping services. The holding company generally does not engage in any independent operations, except perhaps to serve as a funding vehicle for all companies in the group.

7.3 Credit Unions

Credit unions are nearly identical to thrift institutions, except that depositors are restricted to a particular constituency. Most credit unions are associated with corporations or governmental agencies, and members are usually employees of the related organization. Like thrift institutions, they promote savings among their members and provide sources of credit for them. They obtain funds by selling shares to members and through savings deposit accounts on which they pay interest. They may be chartered either by the federal government or by the state in which they operate. Credit unions are rapidly becoming full-service competitors of banks.

7.4 Export-Import Bank

Export financing is provided to domestic and foreign manufacturers by the U.S. Export-Import Bank (EX-IM Bank) (<http://www.exim.gov>). The Export-Import Bank is the official export credit agency of the United States, letting the government subsidize export financing. The Ex-Im Bank authorized \$12.1 billion in loans in 2006, supporting about \$16.1 billion of U.S. exports. It has supported more than \$400 billion of U.S. exports in its 70-plus year history. The Ex-Im Bank offers guarantees, direct loans, discounted loans, commercial and political risk insurance, and importer financing. Private-sector banks, but provides services that private companies are unwilling or unable to provide.

Chapter 8: Trade Shows

U.S. Trade shows provide Highest quality a one-stop shop where companies can meet new and existing buyers, distributors, agents and media. They also provide a great opportunity for new suppliers to test product or service offerings on the market, observe their competition and discuss trends. However, this exposure does come at a price.

Australian exporters should think carefully about whether exhibiting is the best option for their company. US buyers are aware that the majority of new exhibitors are short-lived operations that will be out of business within a year. As a result, buyers often test a company's viability by waiting to see if it returns

to the trade show a second or third year. This trend is confirmed by the many exporters who begin to make significant sales in their third year of exhibiting. If you aren't going to commit to exhibiting for several years, consider attending rather than participating.

Many trade shows will evict attendees they find trying to actively sell on the trade show floor without actually exhibiting, so concentrate on gathering market intelligence and attending seminars and networking events instead. If you do decide to exhibit, be sure to research the available trade shows to ensure they attract the sort of attendees you need, eg trade versus consumers. Most trade shows will have attendee numbers, profiles and exhibitor lists on their websites. You can easily see which events your competition or target partners are attending.

Chapter 9: U.S Franchising

Franchising in U.S as a Foreign based company might be the first step of being an international successful brand which is also more noticeable to potential franchise buyers around the world. Also U.S. has more resources available in terms of having access to capital markets where it's needed for successful franchise operations.

Chapter 10: Accounting and Reporting

In the U.S the Financial Accounting Standards Board (FASB), formed in 1973 as the private sector standard-setting body, is responsible for establishing what are known as "Generally Accepted Accounting Principles" (GAAP) for financial reporting.

The Securities and Exchange Commission (SEC) and other regulatory organizations, such as the various stock exchanges, exercise influence in the standards setting process and prescribe additional rules for affected companies, including a requirement for audited financial statements. State laws usually do not require a business to appoint independent auditors and audited financial statements are not required for US income tax filings.

Entities proposing to sell securities to the public as well as existing publicly held entities are generally required to file increasingly detailed disclosures with the SEC, including audited financial statements issued within specific time periods following quarter-end and year-end. Banks, other credit lenders and parent company management of subsidiary entities doing business in the US may also require that financial statements be audited.

Federal tax law may prescribe or permit certain accounting rules that may vary from GAAP and result in financial statements that differ from a company's tax return. These items are usually separately identified in the tax return and reconciled to the financial statements.

As required by the Sarbanes-Oxley Act of 2002, the Public Company Accounting Oversight Board (PCAOB) was created to provide registration, inspection, auditing standards and enforcement for all CPA firms providing audits of publicly owned companies listed on the US exchanges.

All CPA firms that provide attest services to public companies are required to be registered with the PCAOB. In addition, if 20 percent or more of a US company's assets and revenue are from a foreign subsidiary, then that foreign entity must also be audited by a firm registered with the PCAOB.

The principal professional accounting organization in the US is the American Institute of Certified Public Accountants (AICPA). The AICPA promulgates auditing and ethics standards for its membership, which is comprised of individual certified public accountants who obtain this licensing from their respective states.

The AICPA has also established a series of Audit Quality Centers that require member firms to adhere to rigorous quality control standards and to undergo periodic peer reviews by outside independent CPAs. Each state also has promulgated laws and regulations for the accounting profession

Chapter 11: Employment

Strong work ethic in the United States and American productivity is among the highest in the world. Reflecting the population at large, it is an exceptionally diverse workforce in terms of gender, age, race and country of origin. Hours are long, holidays are short, and people often work for many years beyond the traditional retirement age of other countries. Local economies, labor markets and the availability of skilled labor vary significantly around the United States, and conditions can change unevenly because of the diversity and dynamics of regional economies and markets. Any company considering a new venture should investigate the labor market as a part of its site selection process.

11.1 Employment Law and Regulations

In the U.S. employment laws cover almost every aspect of the employment relationship, from Hiring to firing and beyond. For example: there are rules regarding recruiting, hiring, Pay, leaves of absence, safety, taxes, immigration, whistles blowing, background checks, Testing, record retention, disclosing employee information, workplace posters, employee Illnesses, injuries, terminations, and references to prospective employers. U.S. employment rules derive from different sources.

First, there are laws passed by U.S. Congress, which are usually supplemented by regulations issued by U.S. government Agencies. These laws apply across in every state.

Second, there are laws passed by each State legislature, which are sometimes supplemented by state agency regulations. These laws apply within that state only. Within a state, counties and cities often pass their own employment laws. Finally, U.S. federal and state courts independent of the statutes have created additional employment rights. To understand its obligations under any employment law, an employer must know what the actual law provides, how the law is affected by regulations (if any), and how the courts have interpreted the law and relevant regulations. Without help from legal counsel, this task can be difficult. Some employers are subject to multiple sets of employment laws and rules. Because any geographic area may have different employment laws, regulations and cases, employers need to tailor policies and practices to the local workplace rules.

The courts usually apply the most protective employment rule when there are multiple and overlapping federal and local laws governing the same issue. For that reason, employers often do the same thing – pick the strictest standard from applicable law, so they can demonstrate their best efforts to comply. Employee rights may be increased by employers intentionally or inadvertently entering into employment contracts.

In many U.S. states, under certain circumstances employer statements, verbal or written, can become contracts binding the employer to obligations it would not otherwise have. Often, until a lawsuit is filed, the employer is completely unaware that the employee believes there is an employment contract.

Work safety

The Federal Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor¹³ inspects job sites and enforces health and safety standards through the citation of violations and issuance of abatement orders.

Social Security

Unlike the social security programs of most countries, the United States Social Security System is primarily a retirement income program serving the elderly. The system does not provide health or income security for the general population. The Social Security System provides supplementary income for retired people and their survivors, and the disabled. Under Social Security, a system of

healthcare insurance called Medicare provides hospital and medical insurance to the disabled and to persons age 65 and older. The Social Security system is administered by the Social Security Administration

Discrimination

Laws adopted by the U.S. Congress and most states make it illegal to discriminate on The basis of race, sex, religion and national origin in the hiring, treatment and promotion of employees. Individuals over the age of 40, and individuals with handicaps and impairments are also protected from discrimination. Many observers from abroad have noted that these anti-discrimination laws are more comprehensive and more actively enforced in the United States than in most other countries, so familiarity and strict compliance with the laws are essential. Individual states are increasingly active in protecting individuals from discrimination based on sexual orientation.

Privacy and harassment

Federal and state laws protect employees from intrusive invasion into their personal Lives, and provide very strong protection against sexual harassment. The standards applied in the United States are much stricter than in most other countries and the penalties for violation of protective rules are very severe. Prohibited Conduct includes oral and written communications which are sexually offensive to persons exposed to them.

Unions

As in most industrialized countries, labor unions play an important role in the United States, especially in government, manufacturing, healthcare and transportation. Union membership in 2008 accounted for about 12.4 percent of the labor force.¹⁵ This was down from 14.5 percent in 1996 and 20.1 percent in 1983.

Half of the 16.1 million union members in 2008 were in private nonagricultural industries, where they constituted 8.4 percent of wage and salary employment. The other half of union membership is in the government sector.¹⁶ Union membership in the private sector has declined substantially in recent years, but unions still exercise considerable political influence. The right of labor to organize and the rules applying to labor unions are governed by the Federal Fair Labor Relations Act and are overseen by the Federal Fair Labor Relations Board. In general, union-management relations in the United States in recent years have been marked by moderation and cooperation.

Unemployment insurance

Generally, workers who become unemployed through no fault of their own are eligible for state unemployment insurance payments. Programs are administered by the states and jointly financed by the federal and state governments. The federal participation is uniform nationally, but state participation and benefits can vary significantly.

Workers' compensation

Compensation for job-related injuries and illness is legislated and administered by the States. Programs generally are funded by employer contributions. These required contributions can vary significantly from state to state, and should be factored into site location decisions.

Vacations and holidays

Neither federal nor state laws set forth requirements for vacations, and U.S. workers generally receive less paid vacation than in other developed countries. Both vacation rights and holidays are set by the employer or agreed to by contract. Vacation policies vary by company and sector, but common practices include: one or two weeks after one year; two weeks after two years; three weeks after five or 10 years; and four weeks after 20 years. Full-time workers normally receive eight or nine paid holidays a year.

The four most important holidays of the year are July 4th (Independence Day), Thanksgiving (third Thursday of November), Christmas (December 25th), and New Years Day (January 1st).

Retirement age

The generally accepted retirement age in the United States is 70, but earlier retirement is common. Many agreements provide for retirement after a certain number of years of employment, 20 or 30 being typical.

Termination rights

Unless there is a contract or a special law to the contrary, employees in the United States traditionally have been treated by the law as “employees at will,” which means that they can be terminated at any time, with or without cause. Employees who are terminated for other than cause are eligible to receive state unemployment

insurance benefits, described elsewhere. Customarily, employers also provide workers with voluntary severance pay. Federal laws provide additional protection and assistance to employees in certain instances. For example, the Federal Plant Closings Law may require companies with 100 or more employees to give advance notice of plans

to lay off or dismiss 50 or more employees. Also, employees affected by plant relocation to Mexico or Canada may receive special consideration. In cases where employees are represented by a labor union, a contract between the union and the employer typically will stipulate rights and rules concerning employment termination.

Employee benefits

Until recently, neither federal nor state law required employers to provide medical protection. U.S. companies customarily establish voluntary employee benefit programs of their own, typically utilizing some form of insurance mechanism. These benefits are frequently referred to as “fringe benefits.”

In customary form they vary from sector to sector and region to region, and are offered as part of a total compensation package designed to attract and retain employees. In cases where employees are represented by a labor union, the labor contract typically stipulates the nature of these benefits. The most common fringe benefit offered is medical and hospital insurance. In some cases, the entire cost is paid by employers, but co-payment by employees and the use of insurance policies with deductible payments are most common.

Many companies also provide life and disability insurance coverage, pension and profit sharing plans. Listed companies frequently offer employees stock purchase and stock option plans. Since some fringe benefits are not subject to income taxation and receive preferred tax treatment, they can be important elements in developing attractive compensation packages, especially for hard-to-replace people. The situation regarding health care is now changing.

Some states have adopted established health coverage programs for residents of the states, and the administration of President Barack Obama has made the adoption of health care reform its highest priority. Foreign investors should ask advisers about the current status of the law.

Foreign employees

There is no limit on the number of foreigners who can be employed in a company operating in the United States, as long as the foreign employees have satisfied federal entry and work permit requirements. However severe penalties are in place for the employment of “undocumented aliens,” and all employers are responsible for checking such documentation.

Entry into the U.S.

Complete details on the entry requirements for various types of activities are available through U.S. Consulates everywhere and from the U.S. Citizenship and Immigration Services (USCIS).¹⁹ Workers seeking most categories of visas must receive approval from the U.S. Department of Labor²⁰ verifying a shortage of willing and able workers in the job category. Foreigners seeking to enter the United States for purposes of working and earning U.S. wages are often advised to seek the guidance of a lawyer specializing in U.S. immigration law.