

U.S. Market Entry Steps

BEFORE Organizing a Legal Entity in the United States

1 Product Evaluation and Adjustment for the U.S. Market

- compliance with relevant regulatory requirements: Consumer Products Safety Commission (CPSC), Food and Drug Administration (FDA), professional licensing, Underwriters Laboratories (UL), etc.
- hire permitting consultant(s) to evaluate applicable standards and assist with compliance and registration

2 Tax and Accounting Evaluation

- choice of U.S. legal entity is generally a function of tax efficiency, not liability concerns
- transfer pricing analysis (U.S. and home country)
- design of intra-group pricing model that avoids “exit” taxation by home country authorities
- expat issues (including harmonization of U.S. social security and similar payments with home pension scheme)
- U.S. federal, state, local tax compliance
- evaluate proposed capital (debt / equity) structure
- home country tax issues: transfer pricing, transfer of “customer base” or IP, profit repatriation
- home country estate tax planning for owner(s) of foreign parent

3 Legal

- trademark protection
- patent freedom-to-operate analysis (when advisable)
- customs classification and optimization
- immigration / visa: begin the process 3 – 4 months before transferred employee(s) are to arrive in the U.S.
- organize U.S. subsidiary (usually under Delaware law) and “qualify to do business” in other State(s) as required, generally before there will be people, inventory or other property, or premises in the U.S. and before starting the visa application process

4 Insurance

- “product liability” program for U.S. and rest of world, covering both the U.S. entity and the home country parent and other worldwide entity(ies)
- commercial general liability, D&O, auto, and other insurance for the U.S.
- sign-off by insurer(s) on indemnification, product recall and similar contractual obligations in the U.S.

AFTER Organizing a U.S. Legal Entity

1 Legal

- terms and conditions of sale and/or frame supply contract with customer
- distribution / sales representative contracts
- contract(s) with suppliers
- employment law set up (employee handbook, employment offer letter, employment agreement(s) if required, form of NDA / nonsolicitation / noncompetition agreements)
- periodic immigration / visa renewal
- annual and ongoing corporate formalities (filings in Delaware and where qualified to do business, annual Board / shareholder minutes and any other consents / minutes as required)
- lease for warehouse / offices / facilities
- obtain U.S. employer identification number (EIN)
- compliance with export control, Foreign Corrupt Practices (FCPA), data privacy, ITAR, and similar regulatory schemes

2 Tax / Accounting

- Federal, state, local tax compliance and filing of appropriate tax returns
- U.S. and home country tax returns for employees brought over to the U.S.
- support services agreement between foreign parent and U.S. legal entity
- register with State and local tax, employment, unemployment insurance and other agency(ies)
- file form BE-13 relating to U.S. investment by foreign parent
- Department of Labor and other similar registrations with various States and municipalities

3 Insurance

- set up customary and appropriate U.S. employee benefit programs (health insurance, payroll processing, 401(k), flexible spending accounts, etc.)
- obtain worker's compensation insurance
- obtain and display various signs and posters required by OSHA and similar regulations

4 Other

- establish separate U.S. bank account for U.S. entity
- "site selection" evaluation for optimal location of U.S. entity
- incentives negotiations (if appropriate or relevant)
- obtain local "business license(s)"
- engage a commercial real estate broker for site search

For more information, please contact:

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