



# A Guide to Doing Business in the United States



The Legal Network for the 21st Century

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# The World's Strongest Economy

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member law  
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personalized  
guidance and  
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issues that might  
be subject to  
federal, state  
and local laws.*

**W**ith more than 330 million residents, hundreds of thousands of businesses and the world's strongest economy, the United States is truly a land of opportunity for international investors. It's a market that provides foreign investors the ability to compete on a level playing field and take advantage of the predictability the U.S. legal system offers.

If you are considering a business investment in the United States, INBLF's member law firms can help you in many essential ways:

- Facilitating the transaction, which might involve creating a new company, such as a U.S. subsidiary or structuring a joint venture, merger or acquisition.
- Maximizing the opportunity to achieve the full potential of a U.S. investment by, for example, capitalizing on your intellectual property assets, exploring licensing or franchising opportunities, identifying appropriate real estate or obtaining necessary licenses and important tax advice.
- Managing the risks related to U.S. laws, such as the Foreign Corrupt Practices Act and laws governing employment, data protection and privacy, environmental protection and import and export activities.



INBLF's member law firms can provide personalized guidance and advice on key issues that might be subject to federal, state and local laws – a multilevel regulatory regime that is more complex than that of most countries.

Our members can also help foreign investors by coordinating with U.S. bankers, accountants, real estate brokers and other professionals, as well as federal and state government regulators.



# Step 1: Determine Your Strategy

**B**efore investing in the United States, you should determine your goals, timetable and strategy. Your goal might be to establish a U.S. office as a platform for entering the market. Or you might want to introduce an existing product or service line to the U.S. market through a licensing or franchise arrangement. Others might seek to acquire existing U.S. businesses or U.S. business assets that have steady cash flows and the potential to increase in value.

In developing your strategy, you can benefit from market intelligence that helps you identify promising opportunities and current competition and assess other risks. An experienced INBLF member firm can assist with this process, as well as conduct due diligence on prospective business partners and professional service firms.

An INBLF member firm can also help you find the most promising locations for a U.S. venture, identifying potential tax advantages and financial incentives, as well as state and local governments that can expedite approvals of business licenses, permits and other requirements.



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## Step 2: Create the Right Structure

To capitalize on U.S. market opportunities while managing the risks, foreign investors should consult with experienced business and tax attorneys from INBLF member firms to create the right structure for their investments.

*An attorney from an INBLF member firm can suggest which structure is best suited for your investment goals and timetables.*

### Corporate Law

Establishing a new venture that aligns with your goals and strategy is essential, because the wrong choice can add to the costs of doing business in the U.S. and have negative tax consequences. Fortunately, there are many options to consider, including the following:

- Open a U.S. subsidiary of your current business
- Establish a new U.S. company as a “C” or an “S” corporation, a limited liability company or a partnership
- Acquire an existing U.S. company or some of its assets
- Establish a joint venture with a U.S. company
- Purchase a U.S. franchise
- Negotiate a licensing agreement with a U.S. company for your products or services

An attorney from an INBLF member firm can suggest which structure is best suited for your investment goals and timetables. Corporate attorneys can also advise and help you implement mergers, acquisitions or shareholder-related transactions that allow you to enter the U.S. market or expand your position in it.





## Tax Law

U.S. tax laws are complex and require careful planning and analysis to minimize your potential exposures and liabilities. For example, utilizing a pass-through structure (e.g., a partnership) may result in lower overall business income tax, but it may heighten the risk that estate tax will be imposed. Balancing the various tax risks in a way that best accomplishes your goals is key.

The Tax Cuts and Jobs Creation Act of 2017 changed the landscape of the U.S. tax system in ways that will affect how inbound investors should evaluate available options for structuring U.S. businesses. This legislation contains numerous ambiguities, which for the next several years will be shaped by regulatory guidance and court decisions.



Understanding the various tax and reporting requirements imposed by federal, state and local governments is essential. For instance, some states and cities impose their own income taxes, while others do not. Additionally, there are a number of federal tax information reporting requirements specific to non-U.S. persons operating businesses in the United States.

Here are some of the issues to consider in establishing a new venture:

- Minimizing federal income tax and reporting requirements
- Avoiding federal income tax withholding requirements (for example, under a bilateral tax treaty)
- Minimizing exposure to gift and estate tax liabilities
- Adequately considering state and local income and property tax issues
- Planning for state and local sales taxes on products or services
- Developing a business structure that minimizes home country tax

In the aggregate, these rules establish a complex tax environment in which there is no one-size-fits-all answer. INBLF's member law firms can help you design a business plan that addresses the relevant U.S. tax issues in the context of your business goals and objectives.

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## Step 3: Address the Key Legal Issues

*International investors often face specific legal requirements when opening U.S. bank accounts.*

**W**hen planning and implementing a U.S. business venture, you need to understand the nation's unique business and legal environment. For instance, U.S. labor and employment laws, data privacy and intellectual property (IP) laws and real estate ownership and tenancy rules can differ substantially from legal practices in other countries.

Drawing on its growing worldwide network, INBLF's member firms can provide advice and assistance in navigating the full range of U.S. business and legal issues, including the following topics.

### Banking/Finance/Insurance

International investors often face specific legal requirements when opening U.S. bank accounts. You might have to document ownership, sources of funds and other financial parameters. INBLF member firms can advise on those requirements as well as other financial issues, such as:

- Securing equity funding for a U.S. venture
- Identifying and sourcing loans or lines of credit to support U.S. operations
- Determining appropriate insurance coverage for shareholders, properties and physical assets
- Identifying potential financial and tax incentives for job-creating business ventures

Transactions that could result in control of a U.S. business by a foreign person must be reviewed by the Committee on Foreign Investment in the United States (CFIUS) for national security considerations.

Another consideration is that in U.S. jurisdictions, directors and officers of corporations might face personal liability for certain breaches of duty, and liability insurance might be needed to cover that risk.

### Labor/ Employment Law

Attorneys from INBLF member firms can guide you through the maze of U.S., state and local labor and employment laws and assist you in complying with recruiting and hiring requirements, drafting employee contracts, preparing employee policy manuals, maintaining employee records, complying with requirements for wage and overtime payments and hours worked, pay equity matters, obligations as a





government contractor, workplace investigations to address #MeToo and a wide range of other workplace claims and other aspects of employment. Along with state and local laws, which can vary significantly from each other and from the federal law, employers must comply with federal labor laws, including the following:



- Equal Employment Opportunities (Title VII of the Civil Rights Act)
- Equal Pay Act
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Family and Medical Leave Act
- Fair Labor Standards Act
- National Labor Relations Act

Employers who fail to observe these laws may be subject to significant penalties, private lawsuits, audits and enforcement actions by government agencies.

### Immigration Law

Your business goals must be integrated with an appropriate immigration strategy. It is important to seek immigration advice in advance of completing a corporate transaction, because the chosen strategy might impose specific corporate requirements.

An INBLF member firm can guide you through the challenging U.S. immigration process. Starting early is essential since it can take six months or even longer to get visas. The U.S. Citizenship and Immigration Service (USCIS) adjudicates petitions and applications for nonimmigrant (temporary) visas and immigrant visas (permanent resident/green cards). Some visa options for investors, managers and professionals include:

- E-1/E-2 visas are for nationals of countries that have E treaties with the United States. E-1 (treaty trader) allows a U.S. company to register as an E-1 company if it is engaged in a substantial volume of trade which is principally (51% or more) between the treaty country and the United States. E-2 (treaty investor) allows a U.S. company to register as an E-2 company if it has received a substantial investment by a treaty national. Once a company is registered as either an E-1 or E-2 company, nationals of the same treaty country can get the respective E-1 or E-2 visas to work for the company in the United States.





*An INBLF firm can help you with the planning and registration process to protect your valued IP assets in the U.S. market.*

• L-1 Intracompany transfer is used to transfer managers and executives (L-1A), and employees who hold a high level of specialized knowledge (L-1B), from a company abroad where they have been working for at least one full year to an affiliated company (parent, subsidiary, branch office) in the United States. There is a corresponding green card category for multinational managers and executives under the first employment preference (EB-1).

• O-1 visa is for persons of extraordinary ability in their field who can show that they have received sustained acclaim and that they are among the very top in their field through media, publication, authored articles, essential positions with esteemed organizations and similar criteria.

• The EB-5 investor green card program allows foreign investors who make an investment into a U.S. business that creates at least 10 full-time jobs to become lawful permanent residents of the United States.

### Intellectual Property Law

Trademarks, copyrights, patents and trade secrets -- your intellectual property -- are the legal "crown jewels" of a business. Before entering the U.S. market, you as a foreign investor should:



- Identify your IP assets
- Protect them in your home country
- Search and analyze your trademarks in the U.S. market before you invest funds in the brand
- Apply to register your cleared trademarks in the U.S. on an "intent to use basis" even before you commence business here
- Use Non-Disclosure Agreements (NDAs) to explore potential business collaborations

An INBLF member firm can help you with the planning and registration process to protect your valued IP assets in the U.S. market.







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## Real Estate

If your business is going to have a physical presence, you will need to identify and secure real estate appropriate to your business plans (for example, office, manufacturing or warehouse space) and determine whether you want to lease or purchase property. If outright acquisition is the preferred route, it is important to determine what individual or entity will own the real estate.

Real estate decisions cannot be made in isolation and are often dictated by tax or environmental considerations. Experienced attorneys from INBLF member firms can help navigate these issues, from due diligence through consummation of the transaction.

The SelectUSA program of the U.S. Department of Commerce (<https://www.selectusa.gov/welcome>) provides investors with personalized introductions to state, regional and local economic development organizations, which offer a variety of incentives for investment in their communities. These incentives often include real estate-related benefits, such as property tax abatement or reduced utility costs, that could be important for manufacturing.

## Cyber-Security, Data Protection and Privacy

Legal and technological developments in these critically-important areas occur daily. Businesses entering the U.S. market - as well as those operating elsewhere while dealing with the U.S. - must understand how to identify and safeguard the company's information assets and the sensitive information they collect from their consumers.

Recent worldwide cyberattacks make it essential to understand vulnerabilities and their impact. In addition, investors need to know about U.S. federal and state laws - often industry-specific - and the new GDPR regime governing their privacy and security activities. Finally, investors should understand how effective security programs can minimize legal and financial risks from security breaches.

Attorneys at INBLF member firms expert in this area can help you understand the U.S. regulatory system for data protection and offer cost-effective ways to comply with federal and state laws in this field and safeguard your data.





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## Environmental Law

Environmental statutes and regulations affect every aspect of business in the United States. Manufacturing facilities and real estate developers must obtain multiple permits from local, state and federal environmental authorities. In addition, goods exported to the United States might be required to meet Clean Air Act standards and hazardous substance standards of various kinds.

The ever-changing regulatory landscape requires the assistance of experienced legal practitioners to provide up-to-the-minute advice on environmental regulatory trends. Current U.S. environmental regulatory programs include:

- Clean Water Act, which governs water pollution and wetlands protection
- Clean Air Act, which regulates air emissions
- Comprehensive Environmental Response, Compensation, and Liability Act to clean up contaminated sites
- Endangered Species Act, which protects endangered plants and animals and their habitats
- Resource Conservation and Recovery Act, which regulates the management of hazardous waste

Because there can be significant consequences for violating these acts, the advice of an INBLF member firm can be invaluable.



## International Trade Law

Importing and exporting operations involving the United States present a series of challenges that must be carefully addressed at the outset. Although U.S. tariffs on imports are generally lower than elsewhere around the world, recent developments have resulted in protective tariffs on certain imported goods, which can change every few years or even annually. In addition, U.S. export controls are changing frequently to impose new sanctions and restrictions.





*Knowledgeable attorneys from INBLF member firms can help with the advance identification and licensing of exports.*

Safeguard tariffs are being imposed on steel and aluminum raw materials from all countries, supplementing individual antidumping and countervailing duties for specific products from certain countries. NAFTA and the U.S.-Korea Free Trade Agreement are among the trade agreements the current administration has revised. In this changing environment, investment decisions will best be served by legal advisors with long-standing experience with trade agreements and associated customs rules.

Numerous additional requirements apply to imports of agricultural products, chemicals, pharmaceuticals and medical devices, consumer products and motor vehicles and parts. All can be met with advanced planning.

Exports from the U.S. are subject to three regulatory regimes – sanctions against individual countries, munitions controls covering articles and services and technological restrictions on advanced IT and encryption. Knowledgeable attorneys from INBLF member firms can help with the advance identification and licensing of exports.

### Cross-Border Dispute Resolution

Businesses entering the U.S. need to know how to comply with the Foreign Corrupt Practices Act (FCPA). Enacted in 1977, this law contains both anti-bribery provisions, which prohibit payments to foreign officials to obtain or retain business, and accounting provisions, which regulate the keeping of books and records and the establishment of internal accounting controls. The scope of the FCPA is broad – it extends to “domestic concerns” (U.S. persons or businesses), “issuers” (U.S. and foreign public companies listed on U.S. stock exchanges or required to file periodic reports with the SEC) and certain foreign persons and businesses acting while in the U.S. Enforcement actions are on the increase, and investigations can be costly in terms of time and money and raise complex insurance coverage issues. Early attention to this law is important, and experienced attorneys from INBLF member firms can provide valuable, cost-saving advice.





## A Seamless Global Network

INBLF (International Network of Boutique and Independent Law Firms), with more than 300 local and international member firms, provides investors with convenient access to the knowledge and experience of highly credentialed boutique law firms across the United States and Canada.

INBLF has also partnered with leading full-service law firms around the globe -in Europe, Asia and the Pacific, and Latin America- to ensure that top-flight legal services are available to clients of INBLF firms wherever the need arises.

A client of an INBLF member firm can enjoy the advantages of a global presence in all areas of the law without sacrificing the personal attention that a boutique practice offers. Our representative practice areas include:

- Admiralty / Maritime Law
- Alcoholic Beverages Law
- Alternative Dispute Resolution
- Antitrust/Competition Law
- Appeals
- Art Law
- Aviation Law
- Bankruptcy
- Business Litigation
- Charitable Organizations Law
- Civil Rights Law
- Class Actions
- Communications
- Construction
- Consumer Product Safety
- Corporate Law and Securities
- Corporate Transactions
- Court of Federal Claims
- Creditors' Rights / Collections
- Criminal Law
- Derivatives
- Drone (UAS Law)
- ERISA
- Elder Law
- Eminent Domain
- Employee Benefits
- Employee Stock Ownership Plans
- Employment Law for Employees
- Employment Law for Management
- Energy
- Entertainment Law
- Environmental Law
- Family Law / Domestic Relations
- Food and Drug Law
- Franchise and Distribution Law
- Government Contracts
- Health Law
- Hospitality Law
- Immigration Law
- Insurance Law
- Intellectual Property
- Internal Corporate Investigations
- International Full Service
- International Law
- International Trade and Customs Law
- Land Use Law
- Legal Ethics
- Marketing and Promotional Law
- National Security Regulation
- Personal Injury
- Product Liability
- Professional Liability
- Public Utility Law
- Real Estate
- Resources Law
- Securities Litigation
- Tax Law
- Technology
- Trusts and Estate Planning



INBLF (International Network of Boutique and Independent Law Firms)

In care of:

Spiegel Liao & Kagay, P.C., 388 Market Street, Suite 1300, San Francisco, CA 94111

+1.415.956.6062

info@inblf.com • inblf.com

For more detailed information about legal issues important for doing business in the United States, visit: [inblf.com/Guide](http://inblf.com/Guide) to US Business