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FACTORS TO CONSIDER WHEN STARTING A U.S. BUSINESS

The following are some of the issues, which should be reviewed with attorneys and accountants prior to undertaking business in the United States.

A. TRADEMARK.

Frequently a name is valuable and should be trademarked throughout the United States by registering it in Washington, D.C. This will involve a name search of all uses throughout the United States of the name (telephone books, state trademarks, etc.). If not used by other persons, the trademark and logo can be registered. Once registered, no one is able to utilize a trademark without permission. If the name is already being used, for example, by someone only in Los Angeles but is not registered in Washington, D.C., then it may be possible to register and protect its use throughout the United States with the exception of the area where it was previously utilized, namely Los Angeles in this example.

Filing of a fictitious name application alone does not give any ownership rights of that name to the person who registered such name. The only method of legal protection is the registration of the same with The U.S. Patent and Trademark office in Washington, D.C.

B. LEGAL ENTITY: OPERATIONS.

(1) **Choice.** To avoid a double tax called a "branch profits tax" and also to prevent disclosure of foreign financial statements in the United States and possible reallocation of profits between a foreign country and the United States by the United States taxing authorities (IRS), a separate Florida corporation, and not the foreign parent or another offshore company, is generally organized to operate the United States business. In the case of possible expansion outside of Florida into other states, the Florida corporation would either register to do business in those states (a relatively simple procedure) or most likely incorporate a subsidiary to operate in the new state so that profits in each state will be separate for state taxes.

(2) **Formation.** A Florida company is easily formed. A Florida corporation requires only one director and a President and Secretary who may all be the same person. This person and any stockholders can be foreign. Any additional number of

directors and other corporate officers can also be named, and there is no fixed number of stockholders nor is there

any minimal capital. A company can be organized with \$1.00 of capital. Organization takes only a few days, and costs are minimal.

(3) **Accountant.** There are no requirements as to having an accountant although one is usually retained to help organize the initial books and then to provide private monthly statements to the company's officers and to file the annual tax return.

(4) **Banking.** Opening a bank account for the company can be accomplished easily. Generally the banking institutions desire copies of the corporate documents, acts approving the signing personnel and some knowledge of which the persons involved with the company are.

(5) **Employees.** A company can have no employees or hundreds of employees. There are no minimum requirements. Employees have few governmental prescribed rights: they generally may be hired or fired at will without indemnification and employment is usually a matter of private agreement. Usually a clerk will have two weeks vacation, 3-5 sick days and work 9:00 A.M. to 5:00 p.m. Of course, this may vary by agreement. Usually employers also pay health insurance, which can cost between \$3,000 to \$5,000 annually depending on the plan and age of the employee. Coverage for an employee's dependents is often paid by the employee.

(6) **Immigration.** Employees must have work visas. Non-management employees will need permanent residency visas, often called "green cards". There is a large Portuguese - Spanish speaking population in Miami, and no problems should be encountered in finding highly qualified personnel. Employees from a foreign country may be transferred by means of an L-1 Visa or an H-1 Visa and if the country qualifies by treaty with the United States an E-1 or E-2 visa. The H-1 Visa is used to bring a foreign employee on a temporary or seasonal basis. This visa category is reserved for foreign employees of "distinguished ability or merit" and "professionals". In addition, a B.A. or B.S. degree from an accredited U.S. or foreign University is required to qualify for this visa. Also, the job position an employee will assume should be the type which necessitates such a degree. The L-1 visa is available for business executives who are transferred to the United States, have continuously worked in an executive position for over a year, and will come to the United States to assume a similar position in the same company, subsidiary or affiliated branch. Also the L-1 visa is issued to personnel with specialized knowledge of firm operations. E Visas require substantial investment or an import-export business with the home country.

(7) **Insurance.** The United States is a litigious society. Lawsuits are filed against companies and individuals based on many theories and actions some of which are outlined below:

A. Personal injury suffered as a result of a slip and fall or other action on your part or by your employee or agent at a place of business, on someone's property, or to their property. Damages could be based on physical injury, doctors costs, lost wages, mental distress, and at times, punitive damages may be awarded by a judge.

B. Damages as a result of discrimination at work or in business. Discrimination may be as a result of race, religion, age, sex and physical disabilities. A related cause of action is sexual harassment between co-workers and/or two individuals. A sexual harassment claim may be supported based on a joke of a sexual nature told in the office.

C. Employee liability if they are hurt in the course of their employment or if they hurt someone during working hours.

D. Malpractice liability by a professional in the course of performing services to a client.

E. Product liability as discussed in the attached article.

These risks are usually covered by insurance for your business and property. The insurance coverage's are usually workmen's compensation, liability insurance for suits initiated by third parties against you, and all risk insurance, which will protect your property against fire, storm and other casualties.

C. UNITED STATES TAXATION.

Federal & State Income taxes - In the United States, all individuals are subject to Federal income taxes at tax rates ranging from 15% to 39.6%. Individuals who are considered U.S. persons, which include U.S. citizens and resident aliens, are subject to tax on their worldwide income, while individuals who are classified as non-resident aliens for tax purposes are taxed on their U.S. source income and income that is effectively connected to the U.S. Certain types of income are subject to a flat 30% rate to individuals who are non-residents for tax purposes. Generally U.S. individuals pay capital gain taxes at a rate of 20%, while non-resident aliens are exempt from capital gain tax on their non-real estate capital gains.

A non-resident alien's status is determined based on whether an individual has a green card, and on the number of days present in the U.S. Accordingly, an analysis of whether an individual will be considered a U.S. person for tax purposes is very important, and planning ahead for a future change of status can be invaluable. It is important to note that non-resident alien status for immigration purposes is not necessarily equivalent to the individual's status for U.S. income tax purposes.

Individuals that reside in Florida are not subject to a state income tax since Florida does not impose such a tax. However, the majority of the states do impose income taxes on individuals, and many cities and local municipalities do as well.

Domestic corporations, and foreign corporations doing business in the U.S. are subject to Federal graduated tax rates ranging from 15% to 35%. A company

computes taxable income by taking their gross revenues and deducting their business expenses. U.S. corporations that pay dividends to a foreign shareholder, or other types of fixed, determinable periodic income to a foreign shareholder or other foreign person or corporation, will be required to withhold tax at a 30% rate, unless a lower tax treaty rate applies. However, distributions paid to a foreign shareholder upon the liquidation of a U.S. company would generally not be subject to withholding tax.

Corporations doing business in Florida are subject to Florida income tax at a flat rate of 5.5% on Florida taxable income in excess of \$5,000. The initial \$5,000 of taxable income is not subject to Florida income tax. A corporation will generally be subject to tax in all states that it is considered to be doing business. In addition, city and local taxes may apply in certain areas of the Country.

Payroll Taxes - The Taxable wage base subject to the social security tax is \$65,400 applied at a 12.4% rate, of which 50% is paid by the employee and 50% is paid by the employer. In addition, all wages are subject to medicare taxes at a rate of 2.9%. Like the social security tax, the medicare tax is paid 50% by the employee and 50% by the employer, but there is no wage base limit on this tax. The Federal Unemployment Tax Rate is 6.2% on the first \$7,000 of wages for each employee. This tax is paid entirely by the employer. Other state and local payroll taxes may apply, such as in Florida where wages are subject to Florida unemployment tax at a maximum rate of 5.4% on the first \$7,000 of wages for each employee. This tax is credited against the Federal Unemployment tax so that it usually does not result in an additional tax burden to the company.

Sales Tax - Florida has a 6.5% sales tax on sales of merchandise at retail, added to the invoice. Sales that are to be shipped out of the United States, are not subject to sales tax. Each state and city within the United States has its own sales tax laws.

D. OTHER – U.S. CONSIDERATIONS.

Many persons desire anonymity in their United States operations. Thus, they use Americans as their corporate officers to avoid disclosure of their own names and employ foreign corporations incorporated outside the U.S. to hold the stock of their U.S. corporations.