

DOING BUSINESS IN THE USA

Maricle + Associates attorneys guide international clients through corporate governance, employment, and intellectual property decisions to establish businesses in the U.S. with ease.

FORMING A COMPANY

Once an organization has decided to establish a business in the U.S., it must decide what form that business will take. The most popular options are Distributor, Joint Venture, or Wholly-Owned Corporation, but other options include Limited Liability Company or Limited Liability Partnership.

DISTRIBUTOR

Establishing a distributorship for products is a good way to enter the market at minimal cost. Maricle + Associates counsels clients on business partnerships and cautions its clients against offering distributors an exclusive right to a product for the entire U.S. The U.S. is a large country and many distributors may not have the financial depth to effectively market products nation-wide. We recommend that our clients set realistic sales goals that will allow the termination of the relationship if expectations are not met. Generally, there are no statutory penalties for terminating a distributorship for cause.

JOINT VENTURE

A joint venture with a U.S. partner has the advantage of ensuring that management of the U.S. entity is local and in tune with the U.S. market. These relationships can be very profitable if good contracts are in place to protect both sides' interests. Most of these arrangements require the foreign partner to put up capital for the venture while the U.S. partner will want to contribute his share in the company in "sweat equity." It is important that the parties' rights and obligations in this situation are clearly agreed to in writing. Our attorneys help clients form contracts regarding responsibilities, ownership of assets and intellectual property rights, and sharing of profits. We also recommend including a mechanism for ending the relationship if necessary to avoid disputes later on.

CORPORATIONS

A corporation is the most popular choice of entity for a foreign owner because it can be easily and quickly formed.

There is no requirement for a minimum capital investment in a company at its formation. Also, a corporation may have only one shareholder.

The most important consideration for a foreign entity that is establishing a corporation is how profits from the U.S. entity will be taxed when transferred to the parent. Differing international tax laws will influence the options available. Our international tax attorneys are available to consult with our client's tax professionals to help make a decision regarding the company's U.S. structure.

Corporations typically use the following basic governing structure:

SHAREHOLDERS

- Each shareholder has one vote for each share he/she owns.
- Hence, if a shareholder owns 51% of the shares, that shareholder can elect all of the directors.

BOARD OF DIRECTORS

- The Board of Directors is responsible for appointing corporate officers and establishing general direction of business.

OFFICERS

- The day-to-day operations of the corporation are the responsibility of the company's President, Vice President, Secretary and Treasurer. Many corporations also have a Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO) and Chief Technology Officer (CTO).
- One person can serve as both the President and the Secretary/Treasurer

LIMITED LIABILITY COMPANIES (LLC)

Like corporations, there is no minimum capital investment required to form an LLC. This type of entity is managed either by all owners who are called "members" (member managed) or by a manager (manager managed). LLCs are a popular form of entity because all company profits and losses are passed directly through to the members thereby avoiding tax on profits at the corporate level. Some foreign tax authorities (Germany for example) do not recognize the LLC structure and treat the entity as if it were a corporation for tax purposes. Therefore, our tax attorneys advise international clients to consult with their tax advisors before choosing an LLC for an U.S. company.

EMPLOYMENT ISSUES

Maricle + Associates' attorneys regularly assist international clients with the various aspects of the employee relationship. When establishing a U.S. business, Maricle + Associates helps clients with:

Employment Contracts: Most non-management employees in the U.S. do not have written employment contracts, but a letter containing the hourly wage to be paid and a brief description of benefits, vacation, sick leave, etc. is common.

Hours per Week: In the U.S., full-time employees typically work 40 hours per week. Employees may work more than eight hours per day but not more than 40 per week unless they are paid overtime. For those employees who do work more than 40 hours in one week, standard overtime is 1.5x the hourly wage and holiday overtime is 2x the hourly wage.

Vacation: Vacation time is not required by law, but if vacation is offered two weeks (10 days) per year is common. Some companies offer three weeks (15 days) per year for long-serving employees, but more than three weeks is unusual.

Holidays: There are six official holidays each year, including New Years Day, Memorial Day (Last Monday in May), Independence Day (4th of July), Labor Day (First Monday in September), Thanksgiving Day, and Christmas Day. Other optional days are Martin Luther King Day, Presidents Day, the day after Thanksgiving, and Christmas Eve.

Sick Days: Like vacation time, sick days are not required by law. For those companies that offer sick days, it is common to grant employees five sick days per year.

Health Insurance: Health insurance is also not required by law, but many employers offer health insurance to stay competitive. If a company does choose to offer health insurance, all company employees must be offered the same insurance benefits. Insurance is normally offered to cover the employee only, but often the employee is given the option to purchase family coverage. Also, the employee commonly pays a percentage of the insurance cost, but again this is not required by law. It is up to employer. In addition to health insurance, dental, vision, life and disability insurance can be offered.

Wages: Wages are generally paid monthly, twice each month, or weekly, and no "13th Month" wage is paid. In the U.S., the employer is responsible for withholding taxes from wages. Payment via bank transfer (direct deposit) is becoming more common but payment by check remains the most common practice.

Eligibility: Each company must verify all employees' eligibility to work in the U.S.

VISAS

Maricle + Associates also counsels clients on the various types of non-immigrant visas that key employees will use to enter the U.S. The following are some of the most common options: