

# SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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## Starting A Business In the United States? The Top 6 Things You Should Consider

In addition to the regular business start-up issues, foreign nationals who want to start or expand their businesses in America often find themselves trying to navigate the complicated regulatory scheme that includes immigration law, dealing with the SEC when raising capital, obtaining trademark protection, hiring staff and understanding other U.S. laws.

To assist our foreign national clients we have developed some common issues that foreign entrepreneurs looking to setup businesses in the U.S. should consider. This is not an exhaustive lists but these issues are certainly issues that we see over and over again.

### **1. If I am a foreign national and want to start a business in the U.S. do I need a Visa?**

If you plan to be in the U.S., work at the company or regularly visit the company in the U.S., the short answer is Yes. Even if you are in the U.S. on another visa, you are not permitted to run a separate business and your activities in the U.S. are limited to the visa type that you have. There are a few visa options for start-up companies including, E-2, E-B5 and L-1. To find out more about these visas click [here](#).

### **2. I have heard that in order to start a business in the U.S. I have to invest \$1,000,000 – Is that true?**

No. You can start a business in the U.S. and obtain an E-2 visa and this visa can be obtained with as little as \$50,000 investment. To qualify for this visa you must; a) start a business or buy a business that you plan to run b) invest a certain amount of money in the business. (usually not less than \$50,000 and could be much more depending on the business), c) start an enterprise that will create jobs and that is not just set up to support the investor and his/her family and, d) be a foreign national from one of the Treaty countries. As an alternative to the E-2 visa you can apply for the EB-5 visa, which does not have a nationality requirement but has a financial investment requirement of either \$1 million or \$500,000. This visa also requires the investor to create 10 full-time jobs. For the EB-5 visa you have the option of either starting your own business or making a more passive investment in something called a regional center. This Visa leads to a green card and the green card is awarded to a spouse as well as unmarried children under 21.

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### **3. Do I have to set up a business legal entity in the United States & if I do, which business entity should I set up?**

Generally speaking a foreign national should set up a business entity in the U.S. and this would either be an LLC, Corporation or Partnership. All of these entities provide what is called limited liability protection and this means that someone that sues the company cannot come after your personal assets. We advise our foreign national clients who want to start corporations to register a C. Corp or an LLC, especially those not yet resident in America. An S. Corp. can only have its shares held by U.S. citizens and resident tax aliens. Your choice of which entity to select requires a careful examination and consultation with a qualified lawyer and/or tax professional as your choice will have ramifications. You can view an article that talks more about selecting a business entity by clicking [here](#).

### **4. I will be operating in various States and perhaps even different countries - Which jurisdiction's laws do I need to comply with?**

As a general rule, you must comply with the laws of every jurisdiction where you conduct business. This means you must conduct your business in compliance with the laws of the State you are operating in, the city if applicable, federal laws and the laws of the foreign nation if you plan to solicit investors, have employees, or do business there. You cannot simply ignore the laws of a jurisdiction and often you will need legal opinions from various jurisdictions. This is especially the case if you are operating in multiple countries.

### **5. Are there any U.S. securities or corporate laws I should consider?**

If you want to raise funds in the U.S. you are required to comply with the Securities Exchange Commission's (SEC) requirements if you sell stock or any security. The term "security" is defined by Statute but most financial products that a company can sell to an investor would qualify as a security. (For example, preferred stock, convertible debt, member units, common stock, etc.) In addition to federal SEC requirements, a company that issues securities would also have to comply with State Securities regulations.

The most popular exemption from registration is found under Regulation D under Rule 506 of the SEC regulations. This exemption allows the company that is issuing the securities to file certain forms that eliminate some of the more complex SEC requirements. This exemption is the most popular exemption but limits who you can sell securities to. (you can only sell to very sophisticated investors known as "accredited

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investors”). SEC and State laws regarding securities are a very complicated area and you should seek the help of a qualified attorney.

## 6. Will I Encounter Issues if I hire Staff?

The United States has various regulations related to hiring employees and one could spend months trying to understand the Department of Labor’s policies and procedures. Issues can come up related to minimum wage, work hours, policies and procedures, discrimination, compensation, and many other issues. One question that often comes up is whether or not someone is an employee or independent contractor and many small businesses make the mistake of incorrectly classifying workers as independent contractors (and issuing a 1099) rather than properly classifying these individuals as employees.

This issue is one that the Department of Labor is currently focusing on and has recently partnered with various States to share information to catch those who incorrectly classify. In addition there is pending legislation in the Senate that deals with applying tough penalties to those who violate the IRS and department of labor rules.

One obvious advantage of the independent contractor classification is avoiding payroll taxes. The correct classification is one that is based on substance rather than form and to make this determination, the Internal Revenue Service lists a number of factors that must be considered. Generally speaking when a small business hires a worker to perform day-to-day tasks, the worker will be an employee. Given the ongoing and new focus in this area, when hiring staff, you are advised to seek out counsel from a qualified employment attorney. We refer all of our employment matters to [White & Harris](#), a law firm that specializes exclusively in employer based employment law. Click [here to find out more about White & Harris](#).

For additional legal advice contact [Scott Legal Services, P.C.](#). We offer services in a number of business areas including, Immigration, New Business set up, Contract review and development and entrepreneurial support. Call 212-223-2964 or email [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com) for a consultation.