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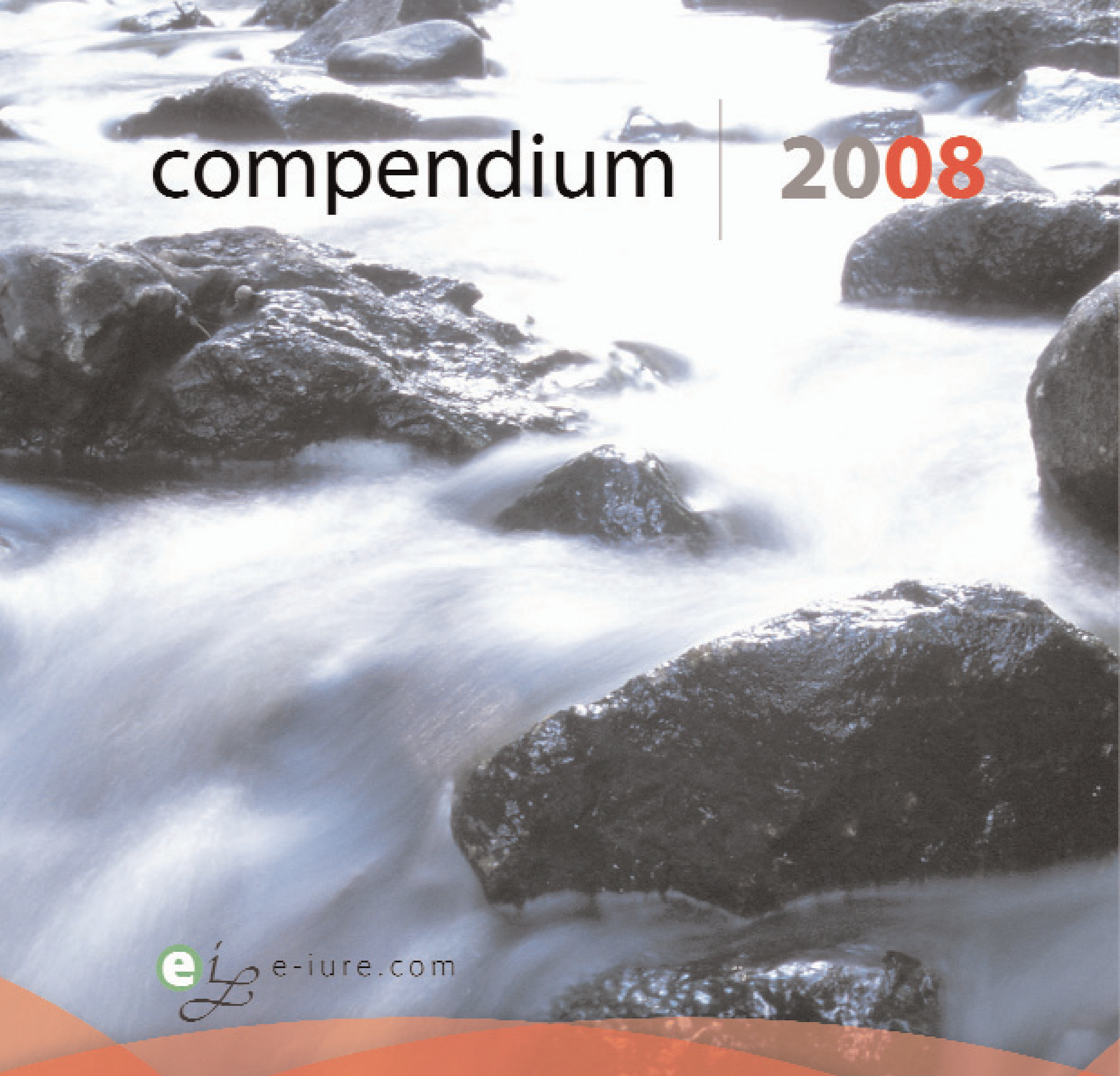

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Harris & Moure, pllc has grown quickly by providing top-flight representation to our clients on their international law and trade, corporate, real estate, litigation, arbitration, and maritime matters. A number of the world's leading law firms have selected our attorneys to assist on matters requiring expertise in overseas dispute resolution.

Our focus is on the small and medium sized business that operates internationally. About half of our work is assisting foreign companies coming in to the United States. The other half is focused on assisting American and European companies in Asia and in Russia.

Like the best international companies, we think globally and act locally. Our attorneys have handled legal matters around the world and throughout the United States. We have done this by developing close relationships with a worldwide network of key personnel, including government officials, consultants, expert witnesses, local legal counsel, and ship's agents critical to getting the job done for our clients. Our attorneys speak English, Chinese, Spanish, German, Russian, French, Japanese, and even a bit of Turkish. We have a German and Spanish licensed attorney, who assists our European clients, as well as a Russian paralegal on staff.

We recently opened offices in Shanghai and Qingdao, and one of our attorneys spends almost all his time in China. We also operate www.ChinaLawBlog.com as a source of China legal and business information for our clients and others interested in China.

USA

American corporate law is peculiar in that it is governed primarily by state law, with a few areas governed by federal law. Though federal model acts have been enacted for most types of companies, the laws of the different states vary considerably. Some states have more developed corporate laws and play a major role, such as Delaware. Accordingly, the following information can only be of general nature.

A business enterprise in the US is commonly organized in one of four ways: as a Sole Proprietorship, as a Partnership (general or limited), as a Limited Liability Company (LLC), or as a Corporation. Since most foreign companies operating in the US do so as a Corporation or a Limited Liability Company, we will focus on explaining the characteristics of these entities. Other types of companies will be illustrated briefly.

1. Corporation

Corporations are recognized as legal entities distinct from their owners or foreign parents. The foreign company is not deemed to be doing business here, is not generally liable for any of the obligations of its U.S. subsidiary and is not subject to U.S. jurisdiction. Corporations can sue and be sued, enter into contractual relations, and own property. Principal values of the corporate form of doing business are the perpetual existence, ease of transfer of shares, and limited liability. Absent exceptional circumstances, the shareholders in the corporation cannot be held personally liable for debts incurred or liability imposed on the corporation. Most states allow single shareholder corporations.

Corporations law is principally state law. It is largely statutory, but the common law is often relied upon, especially when defining the fiduciary duties of management. There is a 1984 Revised Model Business Corporations Act but it has not gained wide acceptance and the more influential states regarding corporate law, such as Delaware, have not implemented the act in their state law.

Incorporation

The basic rules for formation are substantially the same everywhere. The incorporation of a business is more complicated and more expensive than the setting up of an LLC, but relatively easy compared to most European and Asian countries.

The first step is to file the Articles of Incorporation with the Secretary of State and to pay a fee. Exactly what these papers must contain varies among the states, but at a minimum they must include the corporation's name, the number of shares the corporation is authorized to issue, the appointment of a registered agent for receiving official communications, and the incorporators' names and signatures. Every company needs to appoint a registered agent in the state of incorporation who receives official notifications. Unlike in many European and Asian countries, a corporate purpose does not need to be stated on the Articles of Incorporation.

A corporate name has to be chosen, which must contain the word "corporation," "company" "incorporated," "limited," or the abbreviations "corp.,", "inc.," "co.," or "ltd.," and be distinguishable from the name of any other business entity previously authorized or registered to transact business in the state of filing. When these papers are in the proper form, a state official will issue a certificate of incorporation. The corporation comes into legal existence upon filing of the articles or issuing the certificate of incorporation, depending on state law.

After obtaining a certificate of incorporation, the initial directors or the incorporators should hold an organizational meeting to complete the organization of the corporation. At this meeting, officers and, if necessary, directors will have to be appointed and the bylaws have to be adopted. The bylaws are a set of rules governing the internal affairs of the corporation. However, rules contained in the articles of incorporation control over the bylaws. The articles are public record, while the bylaws are not.

Capital requirements

Unlike in much of Europe and Asia, where a corporation comes into existence only after subscription payments for issued stock are deposited with a bank, a US corporation issues its stock in exchange for subscription payments made after the corporation comes into existence. It is therefore not necessary to remit funds for capital to create a subsidiary here. However, capital funds should be paid in before the business is started. Though most state laws do not require a corporation to maintain a minimum amount of capital (unlike most of Europe and Asia), if a court deems the paid-in capital of the corporation to have been too small in relation to the size of its business, the court may rule the corporation had no identity separate from the shareholders and the shareholders may become liable for the corporation's debt.

Maintaining Corporate Existence

The corporation's shareholders may also find themselves liable if a court chooses to "pierce the corporate veil" of the parent-subsidiary relationship and treat the subsidiary as if it were a branch or division of the foreign company. If this occurs, the foreign company can be liable for the actions of its U.S. subsidiary. The U.S. subsidiary must observe corporate formalities, such as maintaining a corporate minutes book and creating corporate minutes to authorize and/or memorialize important actions, contracts, or purchases. The foreign company and its domestic subsidiary must also maintain a visible separation between themselves by, among other things appropriately capitalizing the subsidiary, maintaining separate bank accounts, and by having different officers and directors for the foreign corporation and the subsidiary.

Lastly, a corporation must comply with various regulatory and licensing provisions, required by the federal government, the state government, and oftentimes the county and city governments as well.

Types of Corporations

It is generally helpful to distinguish between publicly held corporations and closely-held corporations. Both are created by state law, subject to the same basic rules, and can conduct the same types of business. They are different in terms of ownership and operation, and publicly held corporations are subject to federal regulation to a much greater extent.

Closely-held corporations, called close corporations, typically have relatively few shareholders. A close corporation cannot exceed a certain amount of shareholders, and its governance is simplified. There is usually little to no market for shares of close corporations, and shareholders often agree to restrict transfers of their stock.

2. Limited Liability Company

The Limited Liability Company (LLC) is a relatively new form of business organization in the United States, but it has become quickly very popular. LLCs often combine the best aspects of a partnership (flexibility and a reduced tax rate), along with those of a corporation (limits on liability). Like a corporation, an LLC protects its owners from liabilities that arise from the company's business, so long as the company is properly operated.

Formation

Though it is formed with many of the formal requisites of a corporation, the owners of an LLC are relatively free to structure the ownership, management and financial affairs of the company as they wish. To form an LLC, a Certificate of Formation must be filed with the Secretary of State, and an LLC operating agreement – required in some states – should be drafted, defining the rights and responsibilities of the managers and members. The LLC is managed by its members, unless the Certificate of Formation or membership agreement states otherwise. A single membership LLC is possible in many states. There are no capital requirements.

Advantages and Disadvantages

LLCs provide for very flexible management and tax structures. They also provide for limited liability of owners.

LLC member interests cannot be publicly traded, unlike shares of corporations. This limits the LLC's ability to accumulate capital from the general public and makes corporations a better choice for those planning "to go public." LLCs are generally treated like corporations for purposes of "veil-piercing", and fiduciary duties of management.

3. General or Limited Partnership

Two or more persons who co-own business for profit that have not formed an LLC or a corporation have a partnership, whether they intend one or not. An agreement to operate as a partnership can be written, but unlike a corporation or limited partnership, there is no requirement that any documents be filed with any governmental authority. A partnership agreement may be oral or even be implied from conduct. Thus, people in business together sometimes may not realize they are partners subject to all rights and obligations arising out of a partnership, including the important principal that one partner can bind the entire partnership to debts.

A partnership is an entity distinct from its partners and thus property acquired in the name of the partnership is partnership property. Each partner is required to make an initial contribution, is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits. Each partner has equal rights in the management and conduct of the partnership business.

Like the sole proprietor, partners are exposed to unlimited liability. Nonetheless, a partnership is sometimes chosen over a corporation or an LLC to avoid the complexities involved in forming and running a corporation. The partnership does not have to pay income taxes separate from its owners.

Formation

Most states have adopted The Uniform Partnership Act (UPA) to govern the formation, operation, and structure of partnerships. Much of the Act is simply a default provision if there is no other agreement between the partners. Provisions that cannot be changed are those that declare that each partner is personally liable for all of the partnership's debts and that each partner owes a "fiduciary duty" to the partnership and to the other partners.

Even though not necessary, a partnership should always have a partnership agreement. Partners may agree to almost any arrangement between them that is not illegal or contrary to public policy. For instance, the partnership's losses and income may be distributed among the partners in any way they wish, and partners can agree decision-making authority will be granted to only one or a given group of the partners.

Limited Partnership

The disadvantage of a general partnership is that each of the partners is jointly and severally liable for the partnership's debts and actions. In a limited partnership, there must be at least one general partner who has full liability, but the remaining limited partners will not be liable beyond the amount of their investment, so long as they do not participate in the day to day management of the partnership's business.

Limited partners have little control over the running of the business, which is run by the general partner or partners. Limited partners are treated as investors. Thus, a Limited Partnership is sometimes chosen by businesspeople who wish to raise capital, but does not wish to give up control over the business as would happen with a general partnership. Commercial real estate projects are often structured as limited partnerships, with the developer serving as the managing general partner und the investors serving as limited partners.

The exact extent to which limited partners can participate in the business without losing their limited liability status is often difficult to define. As a general rule, a limited partner who engages in management decisions on an ongoing basis will lose limited partner status and will be subject to unlimited liability.

Most states have adopted the Uniform Limited Partnership Act (ULPA) or the Revised Uniform Limited Partnership Act (RULPA). To form a Limited Partnership, a certificate of limited partnership must be filed with the designated state official, containing information concerning the Limited Partnership, such as the names and addresses of the partners, the amount of each partner's capital contribution, and the manner in which profits are to be shared. Limited Partnerships are required to have a written partnership agreement.

4. Other types of entities

Joint Venture

A joint venture is an entity formed between two or more parties to undertake economic activity together. The parties agree to create a new entity by both contributing equity, and they then share in the revenues, expenses, and control of the enterprise. The venture can be for one specific project only. It generally refers to the purpose of the entity and not to a type of entity. Therefore, a joint venture may be a corporation, limited liability company, partnership, or other legal structure. Only by using these entity forms will the joint venture be considered an entity distinct from its joint venture partners.

Branch Offices/Representative Offices

The opening of a branch or representative office is usually pretty easy. It is usually only necessary to register the foreign company with the competent state authority, though special licenses may be required for some industries. Branch or representative offices are far more common in Europe and Asia than in the United States where they are unnecessary to avoid onerous minimum capital requirements since there are no such requirements in the U.S. Since there are no high capital requirements in the US and since such offices do little to insulate the foreign company from liability arising from its US operations, they are very rare here.

Sole Proprietorship

To give a complete outline, the sole proprietorship must be mentioned. The sole proprietorship is a business enterprise owned solely by one individual. Small new businesses often begin as sole proprietorships because they are the simplest and least expensive to form and operate. The common identity of owner and business entails the tax advantage that the business itself does not have to pay federal income tax, while the income is reported on the owner's personal income tax return. The disadvantage is that the owner is personally liable for all of the business' debts.

5. Tax Law Issues

For tax-identity purposes, the corporation is required to pay federal taxes on its income just as an individual would. This means the earnings of the corporation are taxed twice, first on its income, and then on the dividends distributed to the shareholders. The corporation does not receive tax deductions for dividends paid to shareholders.

This double taxation of corporations creates incentives for business owners to use an S-Corporation (which is only available for resident owners), a partnership or a limited liability company instead of a corporation. The tax treatment of corporations is a federal tax issue and not a state law issue. Thus, the same exact corporate structure can be treated as either a Subchapter C or S corporation depending on the application of the federal tax laws. S-corporation profits and losses pass through the corporation and are then reported on the owner's tax return, like in General or Limited Partnerships or Limited Liability Companies, thus avoiding the "double taxation" of regular corporations.

Foreign individuals and corporations cannot make use of the S-corporation, since their members must be US-citizens. Accordingly, a corporation with a foreign shareholder will always be subject to double taxation. On the other hand, an LLC or a partnership with a foreign member is still treated as a "pass-through" entity for tax purposes, so that taxes are paid only once at the owner level. The foreign investor thus needs to consider the issue of double taxation (which might actually be preferred for investors from countries with a high corporate income tax rate) or a "pass-through" entity.

The foreign company as a member of a partnership or an LLC will be considered to be engaged in any U.S. trade or business in which the partnership or the LLC is engaged, and the branch profits tax may apply to the foreign company.

6. Choice of Location

United States companies do not need to be formed in the state in which they will be located or even where they will be conducting their business. Nonetheless, the laws of the state where the company is incorporated control issues of governance of a corporation even when all the corporation's offices and facilities are in other states. In this regard, the corporate law of the state of Delaware is very important. In addition to many tax incentives, Delaware has always tried to be attractive for incorporations by providing the greatest flexibility for corporate governance. As a result, most corporations listed on the New York Stock Exchange are incorporated in Delaware, which has produced a great number of cases decided under Delaware law and has made Delaware law very predictable. But many other U.S. states also have developed a favorable reputation.

7. Other Requirements

In addition to choosing the right legal entity, there are countless other legal requirements with which United States companies must comply, including, securing their own federal and state tax ID, securing work permits for foreign employees, meeting legal payroll requirements, and properly maintaining their books. A company doing business in a different state from its formation needs to register in the state were it is conducting its business. In addition to these requirements, the company should, among other things, take all legal steps necessary with its employees, its trademarks and other intellectual property, and its liability risks.

In general, forming a company in the United States is easier and cheaper than doing so in most European and Asian countries, but the difficulties in complying with the countless other laws means companies must always remain legally vigilant.

USA

United States Taxation is a complex system involving individuals, businesses, trusts, decendant's estates, the federal government, state government, cities and local administrative entities. Primarily, the United States federal government imposes a tax on the income of individuals, corporations, trusts, and decedents' estates. State and local governments may also tax individual and business income, business gross receipts, ownership of property, and licensing or taxation of services. Federal statutes controlling income taxing authority are located in various sections of Subtitle A of the Internal Revenue Code of 1986, as amended, including 26 U.S.C. §1 (imposing income tax on the taxable income of individuals, estates and trusts) and 26 U.S.C. §11 (imposing income tax on the taxable income of corporations).

1. Individual Income Tax

Simplifying greatly, a United States citizen is subject to taxation on his or her worldwide income, less any exclusions. Exclusions are certain types of income a taxpayer need not include in his or her gross income for tax purposes, such as employer-paid health insurance or certain business deductions. Taxable income is a person's gross income, less itemized deductions and exclusions, which includes a standard deduction for the taxpayer plus any dependants. Taxable income is then multiplied by the appropriate tax rate to arrive at the tax due. Certain "tax credits" may then be applied to lower the tax owed on a dollar-for-dollar basis.

For tax purposes, income can be divided in a variety of ways. The first division is between ordinary income (from sources such as salary or dividends) and capital gains income (from the sale of investment property). The capital gains tax rate is lower than the ordinary income rate. However, only long-term capital gains get preferential treatment; short-term capital gains (from property held for one year or less) are taxed at the same rate as ordinary income. Added complications come from various distinctions within each category. For instance, within long-term capital gains, gains on certain real estate, collectibles, and small business stock each have their own tax rates. The rules for offsetting capital losses from gains (whether capital or ordinary) add further complications. Another important distinction in types of income is income from passive activities (ownership of a partnership interest for example) versus income arising from the provision of services or labor (a salary, for example).

The United States withholds certain amounts from an individual's income for various social programs. These include social security, Medicare, and unemployment insurance. The largest of these taxes is social security, also known as FICA for the Federal Insurance and Contributions Act. The amount withheld is 12.4%, to be paid in equal amounts by an individual's employer and by the employee. This tax is paid only on earned income and only up to a threshold level (in 2006 the threshold was $94,200). Unearned income, like interest from bonds, money market and bank accounts are not subject to the Social Security tax. Self-employed people must pay both halves of the Social Security tax.

The next largest withholding is for Medicare, the federal government's health insurance program for the elderly and disabled. The amount withheld is 2.90%, to be paid equally by the individual and the individual's employer. Unlike Social Security, there is no threshold cap on the Medicare tax. As in FICA, unearned income is not subject to the Medicare contribution. The federal government also has a payroll tax to support unemployment insurance. This is 1.2% of the first $7,000 of salary, and is coordinated with state unemployment agencies in such a way that most employees are not double taxed in states that have mandatory unemployment insurance. The federal government also withholds amounts for retraining of displaced workers, but it is only 0.1% of an individual's first $7,000 of income, and is assessed only against employers.

To track individuals for income tax purposes, the U.S, government issues US citizens a social security number. If an individual is not a US citizen but has US income, they are issued an individual taxpayer identification number and are required to file an annual income tax return.

2. Taxes on Corporate Income

The federal corporate rate varies between 15% and 39%, depending on taxable income. The federal corporate income tax differs from the federal individual income tax in two major ways. First, it is a tax on net income, not on gross income, after deductions for most costs of doing business such as rent, salaries, and other costs. Second, it applies only to some businesses — those formed as corporations — and not to partnerships, limited liability companies or sole proprietorships. The federal tax is levied at three different rates on different brackets of income: 15% on taxable income under $50,000; 25% on income between $50,000 and $75,000; and 34% on income above that. Of the 3.2 million corporate tax returns filed in a recent year, more than 90% were from corporations with assets of less than $1 million. However, nearly 94% of all U.S. corporate tax revenue came from the 8.8% of corporations with assets greater than $1 million.

Because of double taxation – business income that is taxed at the corporate level and again when it is passed onto the corporation's shareholders as personal income in the form of a dividend - many US business activities are now established in "flow-through" business entities, primarily either an "S" corporation or a limited liability company ("LLC"). U.S. companies with thirty-five or fewer shareholders can elect what is called Subchapter S status. These S corporations have taxable income passed through to the tax returns of the shareholders without taxation, as in a partnership, instead of paying corporate income tax. The shareholders are then individually taxed for their share of the income passed onto them by the "S" corporation. In addition, all states now have established LLC's, which combine the organizational flexibility of a partnership with the tax "pass-through" attributes of an S corporation.

3. Other Taxes

State government is financed by a mix of sales taxes, income taxes, and/or property taxes, as well as to a lesser extent by corporate registration fees, excise taxes, and automobile license fees. This added tax burden adds, on average, an additional 10.6% to the average individual taxpayer's tax burden. City government is typically financed by value-based property taxes on real property ownership. Other city revenues are raised taxes by imposing building permit fees, business licensing, and sales taxes. Cities may also impose an income tax on individuals (such as New York City), and this tax can even be incurred when a non-resident works temporarily in the city. Most states also impose a gas tax in addition to the federally imposed gas tax. States and cities also may impose annual taxes on the privilege of owning or possessing items of personal property, such as automobiles and pleasure boats.

States also permit the creation of special assessment districts, typically for provision of water or removal of sewage, or for parks, public transit, emergency services or schools, whose boundaries may be independent of other boundaries. These districts' income may be from one or more of service assessments, property taxes, parcel taxes, a portion of road or bridge tolls, or an additional increment upon sales taxes in addition to the non-tax fees for services provided (such as metered water). Cities and counties may levy additional taxes to improve parks or schools, or pay for police, fire departments, local roads, and other services.

4. Tax Planning

Those wishing to start a US business, or those with established US businesses, should undertake a certain amount of tax planning to try to reduce their overall tax burden. For many businesses, a flow-through entity such as a LLC may reduce their federal tax burden. A company may also want to take advantage of the differing tax laws of each US state. For example, many businesses incorporate in Delaware or Nevada, where there is no individual or business income tax. This does not eliminate all state or local taxes, as these taxes arise based on activity in a jurisdiction, not on corporate domicile, but certain allocations of income may be able to be made between the state of corporate domicile and where the taxable activities arise, thus reducing the overall tax burden. Many technology based companies, for example, establish a holding company in a non-business tax state, to hold the intellectual property, and then license that intellectual property to the operational company wherever they do business, thereby shifting income to the non-tax state and reducing the tax liability of the operational company in the taxable state.

USA

Foreign investment is encouraged in the United States and, with one rather large exception, there are very few provisions distinguishing foreign companies from U.S. companies. The one large exception is those investments that may impact "national security." In addition to this, The Foreign Investment in Real Property Tax Act (FIRPTA) imposes withholding taxes on foreign direct ownership of real estate and there are some laws restricting foreign ownership of certain types of real estate, such as farm land. There are extensive reporting requirements for foreign ownership of real estate and investment in general. There are also some restrictions on foreign ownership of businesses in certain industries, such as shipping, fishing and television and radio.

1. CFIUS – National Security Issues

The Committee on Foreign Investment in the United States (CFIUS), an interagency committee chaired by the Department of Treasury, reviews and can block foreign acquisitions of U.S. companies that threaten to U.S. national security. This committee's sole mandate is national security, not economics.

Filing a notice with CFIUS of a foreign acquisition is voluntary, but because CFIUS and the President of the United States may dissolve an acquisition that harms national security at any time (even after the acquisition has been completed), foreign investors have an incentive to file. After a transaction has been filed, CFIUS conducts an initial review to determine if the foreign interest exercising control over the United States company might take action that threatens national security. If there is no credible threat to national security CFIUS does nothing further and the review process is completed. This must occur within 30 days of notice.

But if it is found that a credible threat may exist, CFIUS undertakes an investigation for an additional 45 days, after which time CFIUS must file a report with the President, who then has 15 days to decide whether to block the transaction. In practice, CFIUS uses both the 30 day review and the longer 45 day investigation to negotiate with the parties regarding changes to the terms of the acquisition that may improve the protection of national security.

2. Transfer of Dividends, Interest and Royalties Abroad

There are no restrictions on the transfer of dividends, interest or royalties abroad, though withholding taxes sometimes apply.

Repatriation Procedures and Restrictions

There are no repatriation restrictions or procedures though repatriating more than $10,000 or more in cash requires giving notice to customs.

Foreign Personnel (visas)

The following briefly describes the most common visas sought by those seeking to come to the United States on behalf of a foreign business, especially employment based nonimmigrant (temporary) visas.

B-1/B-2 Visitor Visa

For a person who seeks to enter the United States for tourism, business or medical treatment, a visitor visa is generally required. A visitor visa is a temporary (nonimmigrant) visa for business (B-1) or for pleasure or for medical treatment (B-2). B1/B2 visitors may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each.

Visa Waiver Pilot Program

If a person is coming to the U.S. for tourism or business for 90 days or less from a qualified country he or she may be eligible to visit the U.S. without a visa. Currently, 28 countries participate in the Visa Waiver Pilot Program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and Uruguay.

The investor who enters on the Visa Waiver Pilot Program is not allowed to work or study while in the U.S., and cannot stay longer than 90 days or change his/her status to another visa category.

E-1 Treaty Trader Visa

E-1 visas are available to citizens of only selected countries which have trade treaties with the U.S. and wish to come to the U.S. to carry on trade between the U.S. and their home country, including trade in services or technology. There are no quota restrictions for E-1 visas. Those countries with treaties currently in effect are: Argentina, Australia, Austria, Belgium, Bolivia, Brunei, Canada, Colombia, Costa Rica, Denmark, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Ireland, Israel, Italy, Japan, Korea, Latvia, Liberia, Luxembourg, Mexico, Netherlands, Norway, Oman, Pakistan, Paraguay, Philippines, Spain, Suriname, Sweden, Switzerland, Taiwan, Thailand, Togo, United Kingdom and Yugoslavia. Iran is a treaty trader country, however, the treaty is inoperative because of the U.S. Executive Order preventing trade with Iran. A list of the treaty countries can be found here: http://travel.state.gov/reciprocity/list of treaty countries.htm.

To qualify for an E-1 visa, the investor must be coming to the U.S. to trade on behalf of or develop and direct the operations of a business, at least 50% of which is owned by citizens of the investor's treaty country. The company may be owned by the investor or others. The 50% of the volume of international trade conducted by the U.S. entity must be between the United States and the treaty country. The investor must be a 50% owner or a key employee meaning a manager, executive or one who has essential skills.

E-1 nonimmigrants are not required to maintain a foreign residence, but they must have an intention to depart the United States and not permanently remain. E-1 visa can be issued initially for up to five years and renewed indefinitely as long as the company and the individual continue to qualify for E-1 visa. Upon each entry into the United States, E-1 visa holders are generally granted two years of E-1 status on form I-94, provided that E-1 visa is valid at the time of entry.

E-2 Treaty Investor Visa

An investor qualifies for an E-2 visa if he or she is a citizen of a country that has an investor treaty with the United States and is coming to the U.S. to work for a U.S. business supported by a substantial cash investment from nationals of his or her home country. There are no numerical limits on E-2 visa. The countries with treaties currently in effect are: Argentina, Armenia, Australia, Austria, Bangladesh, Belgium, Bulgaria, Cameroon, Canada, Colombia, Congo, Costa Rica, Czech Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Grenada, Honduras, Iran, Ireland, Italy, Jamaica, Japan, Kazakhstan, Korea, Kyrgyzstan, Latvia, Liberia, Luxembourg, Mexico, Moldova, Mongolia, Morocco, Netherlands, Norway, Oman , Pakistan, Panama, Paraguay, Philippines, Poland, Romania, Senegal, Slovak Republic, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Taiwan, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom and Yugoslavia. A list of the treaty countries can be found here: http://travel.state.gov/reciprocity/list of treaty countries.htm.

To qualify for an E-2 visa the investor must be coming to work in the U.S. for a company he owns or one that is at least 50% owned by other nationals of his home country. He or she must be either the owner or the key employee of the U.S. business meaning a manager, executive or the one with essential skills. He or she or the company must have made substantial cash investment in the U.S. business. The U.S. business must be actively engaged in trade or the rendering of services.

E-2 nonimmigrants are not required to maintain a foreign residence, but they must have an intention to depart the United States and not permanently remain. E-2 visa can be issued initially for up to five years and renewed indefinitely, as long as the company and the individual continue to qualify for E-2 visa. Upon each entry into the United States, the E-2 visa holders are generally granted two years of E-2 status on form I-94, provided that E-2 visa is valid at the time of entry.

L-1 Intracompany Transferee visa

A person qualifies for an L-1 visa if he or she has been employed outside the U.S. as a manager, executive, or person with specialized knowledge for at least one out of the past three years, and he or she is transferred to the U.S. to be employed in a position that utilizes his or her special knowledge and skills. The U.S. company to which he or she is transferring must be a branch, subsidiary, affiliate or joint venture partner of his or her non-U.S. employer. The non-U.S. company must remain in operation while he or she has the L-1 visa.

L-1 status may generally be approved for up to three years, and can be extended for up to seven years (for manager/executive) and up to five years for transferees with specialized knowledge. After the end of the maximum L-1 period of stay, an individual must reside outside of the United States for a year before becoming eligible to apply for H or L status.

USA

The most important thing foreign companies must know about United States labor law is that it consists of both federal (nationwide) and state laws, and even some local laws as well. Federal law usually takes precedence over most state and local laws dealing with workers' rights to organize. Federal law establishes a nationwide minimum wage and overtime rights for most workers, but many states and local laws provide more expansive rights. Federal law provides minimum workplace safety standards, but allows the states to provide more stringent standards. Both federal and state laws protect against employment discrimination.

It is also important to know that employment in the United States has traditionally been "at-will," meaning employees can be terminated at any time for any legal reason or for no reason at all. Discriminatory firings or firings violative of public policy are usually illegal. The courts in some states have weakened the general rule of employment "at will" by holding employees have implied contractual rights to fair treatment by their employers.

Unions

The National Labor Relations Act gives most private sector workers the right to choose to be represented by a union and makes it illegal for employers to discriminate against workers because of union membership or to retaliate for organizing campaigns.

1. Regulation of wages, benefits and working conditions

The Fair Labor Standards Act sets forth minimum wage and overtime rights for most private sector workers while allowing state and local governments to provide greater protections under their own laws. A number of states have enacted higher minimum wages and extended their laws to cover workers not covered by FLSA. The Employee Retirement Income Security Act (ERISA) establishes standards for employer provided pension and health care plans.

The Family and Medical Leave Act requires larger employers provide workers with twelve weeks of unpaid medical leave and continuing medical benefit coverage if needed for certain medical conditions of close relatives or themselves. Some states require greater protection.

The Occupational Safety and Health Act (OSHA) mandates workplace safety standards and protects "whistleblowers" who complain to governmental authorities about unsafe conditions. States may administer OSHA if their state laws are at least as protective of workers as federal law.

The Worker Adjustment and Retraining Notification Act (WARN) requires private sector employers give sixty days notice of large-scale layoffs (with some exceptions). Some states have even tougher notice requirements.

2. Employment discrimination and whistleblowers

Title VII of the Civil Rights Act bars employment discrimination on the basis of race, gender, national origin, religion or pregnancy. The Age Discrimination in Employment Act prohibits discrimination against workers over the age of 40 and the Americans with Disabilities Act covers discrimination based on disability. The Immigration Reform and Control Act provides narrow prohibitions against certain types of employment discrimination based on immigration status.

Title VII encourages states to pass their own anti-discrimination laws and most states have done so. A number of states and local governments have their own statutes that expand on federal anti-discrimination laws. For example, some states and local governments prohibit discrimination based on sexual orientation or marital status.

USA

This article presents an overview of real property law, primarily residential real property, in the United States. Though the basic concepts underlying real property law are the same throughout the United States, there is no national law governing real property sales nor is there a national land registration system. Instead, each individual state in the United States has, along with its individual counties and municipalities, jurisdiction over the land within its borders and the power to determine the form and effect of transfers of real property within its borders.

1. Forms of Ownership

All states in the United States have enacted statutes that control the degree, nature, and extent of an individual's ownership in real estate. Several types of "estates" govern interests in real property, including freehold estates, nonfreehold estates, concurrent estates, specialty estates, and non-possessory interests.

Freehold Estates

A freehold estate is an estate in real property in which an individual has the right to immediate possession of the land. The two major types of estates are "fee simple absolute" or "life" estates. The fee simple absolute is inheritable; the life estate is not.

Fee simple absolute is the most extensive interest in real property that an individual can possess because ownership is exclusively limited to the individual and his or her heirs, and assigns forever, and is not subject to any limitations or conditions. The person who holds real property in fee simple absolute controls it absolutely, except as limited by law or regulation, and can use it to build a house, hold religious meetings, build a bomb shelter, grow crops, remove trees, sell it, or dispose of it by will. The law views this type of estate as perpetual. Upon the death of the owner, if no provision has been made for its distribution, the owner's heirs automatically inherit the land.

A life estate is an interest in property that does not amount to "absolute" ownership because it is limited by a term of time, either for the life of the individual in whom the right is vested or some other person, or it lasts until the occurrence or nonoccurrence of an event. A life estate is usually created by deed and the grantee of a life estate is called the life tenant. A life tenant can use the land as can a fee owner and can dispose of his or her interest to another person. However, a life tenant cannot convey an estate greater than his or her own. Nor can a life tenant do anything that would injure the property or cause wastethat would diminish its value.

Nonfreehold Estates

Certain property interests of limited duration are termed "nonfreehold estates." They include tenancy for years, a tenancy at will, and a tenancy at sufferance. This type of estate arises primarily in a landlord and tenant relationship. In such a relationship, a landlord leases land or premises to a tenant for a specific period, subject to various conditions, ordinarily in exchange for payment of rent. Nonfreehold estates are not inheritable but are frequently assignable.

A tenancy for years must be of a definite duration; that is, it must have a definite beginning and a definite ending. The most common example of a tenancy for years is the arrangement between a landlord and a tenant, where property is leased or rented for a specific amount of time. A tenancy from year to year, also called tenancy from period to period, is of indefinite duration. The lease period is for a definite term that is renewed automatically if neither party signifies an intention to terminate the tenancy. This is a common arrangement for leasing business office space or for renting a house or apartment.

A tenancy at will is a rental relationship between two parties that is of indefinite duration and either party may end the relationship at any time. It can be created either by agreement or by letting an existing lease lapse. A tenancy at will is not assignable and is categorized as the lowest type of interest in land.

A tenancy at sufferance is an estate that ordinarily arises when a tenant retains possession of the premises without the landlord's consent. This type of interest is regarded as wrongful possession. In this type of estate, the tenant is essentially a trespasser except that her original entry onto the property was not wrongful. If the landlord consents, a tenant at sufferance may be transformed into a tenant from period to period, once the landlord accepts rent.

Concurrent Estates

A concurrent estate exists when property is owned or possessed by two or more individuals simultaneously. The basic types are joint tenancy and tenancy in common. Joint tenancy is a type of concurrent relationship whereby two or more persons acquire property at the same time and by the same instrument. A common example is the purchase of property such as a house by two individuals. The deed conveys title to each of them "in fee absolute as joint tenants." The main feature of a joint tenancy is the right of survivorship. If any one of the joint tenants dies, the remainder goes to the survivors, and the entire estate goes to the last survivor.

A tenancy in common is a form of concurrent ownership in which two or more individuals possess property simultaneously. The individuals do not own an undivided interest in the property, but rather each individual has a definable share of the property. One of the tenants may have a larger share of property than the others. There is no right of survivorship, and each tenant has the right to dispose of his share by deed or will.

Condominium and Cooperatives

Condominium ownership, allows separate ownership of individual apartments or units in a multiunit building. The purchaser becomes the owner of a particular unit and of a proportionate share in the common elements and facilities.

In cooperative ownership, the title to a multiunit building usually is vested in a corporation. The purchaser of an apartment in the building buys stock in the corporation, receiving a stock certificate and a lease to the apartment. As a stockholder, each cooperative member owns a portion of the corporation, which, in turn, owns all the units and common areas. Each tenant pays to the corporation a fixed rent, which is applied to a single building mortgage and a real estate tax bill for the entire building, as well as to all operating costs such as insurance premiums and maintenance costs.

Other Rights

Certain other rights to land are those that consist of rights of a particular user or authority to enforce various agreements as to use. They include easements, covenants, equitable servitudes, and licenses. Easements are rights to use the property of another for particular purposes. A common type of easement is the grant to a telephone company to run its line across the property of a private landowner, or to share a driveway. Easements also are used for public objectives, such as to preserve open space and conserve land. For example, an easement might preclude someone from building on a parcel of land, which would leave such property open, thereby preserving a park for the public.

These rights can arise without the permission of the property's true owner and can result in acquisition of title by the possessor under the doctrine of adverse possession. The doctrine is based upon British common law and it limits the time for recovery of property that is being adversely used by its true owner. For example, if an adjacent property owner makes a path through his neighbor's property, and the neighbor knows about this trespass and does nothing about it, the adjacent property owner may acquire title to his neighbor's property through adverse possession that will allow him permanent access across that neighbor's property.

Eminent Domain and Zoning

Federal, state and local governments have the right to acquire privately owned land through the power of eminent domain. Eminent domain is the right or power of a unit of government to take private property for public use, following the payment of a fair amount of money to the owner of the property. The theory behind eminent domain is that the local government can exercise such power to promote the general welfare for a community.

State and local governments control how real property is used through zoning. This is the regulation and restriction of real property, most commonly based on the division of land based on the character of land and structures, and then restricting its uses for purposes inconsistent with the general use of the land surrounding it. Most municipalities designate portions of land for industrial use, general business use and for residences.

2. Acquiring Title to Property

Finding the Property

Residential real estate is often purchased and sold with the assistance of a real estate broker. Brokers are most often engaged by sellers of property, in which case their duty is to obtain the highest price possible. Buyers' agents are also used, in which case their duty is to secure the property at the lowest possible price. Because Brokers usually work exclusively on commissions, a buyer or seller should engage a broker with a written contract, as often there can be disagreements on commissions.

Contract of Sale

The sales contract defines the rights and liabilities of the seller and purchaser. Under most state law, the contract must be in writing, signed by the parties involved and must contain all material terms. The specific procedures vary between the states for the signing and negotiating of a contract of sale, as well as the formalities to be followed at the closing where the actual transfer of the deed occurs.

In most states, the seller's agent generally prepares the contract using standard form contracts and presents it to the buyer's agent for negotiation. Buyer then obtains and reviews the contract, deed (to ensure seller actually owns the property), survey, title insurance policy, existing liens against the property, ascertains compliance with applicable regulations, and reviews property tax bills, fuel and utility bills, etc.

The purchaser should arrange for an inspection of the premises by a qualified home inspector. In some areas, these are licensed professionals, in some areas they are not. The contract generally provides for the apportionment of outstanding expenses at closing. Closing apportionments are adjustments to income, expenses or charges, usually to the date of closing. The expenses are generally apportioned so that the seller pays its expenses prior to closing and the purchaser pays the expenses subsequent to the conveyance of the deed. The contract is often contingent on the purchaser obtaining financing within a certain time period. If the sale involves a co-op or condominium, the contract will be somewhat different as a result of different considerations involved.

If the contract involves commercial property, many other aspects are considered such as existing leases, service contracts, ground leases, management contracts, local zoning, and employee unions. Additionally, special care must be taken to ascertain the existence of any environmental problems related to commercial property. Any persons owning real property can be held liable if hazardous substances are found on the property, whether they knew about the contamination or not. Counsel for a purchaser and/or lender should review all documentation and public records to determine if there are hazardous substances on the property and incorporate environmental provisions into the contract of sale, as well as inspecting the property prior to purchase by an environmental expert.

Title To The Property

A purchaser of real estate usually receives marketable title to real property. In most locations, a purchaser generally obtains a title examination prior to purchase to make sure the property is marketable and examine any encumbrances on the land (such as easements, mortgages, etc.), and obtains title insurance through a title company. If the purchase is financed through a bank, the bank will generally require title insurance. The total cost of a title insurance policy varies depending on several factors including, the amount insured and the searches requested.

Deed

The actual transfer of title to real property generally occurs by a deed at a closing of the purchase transaction, where it is executed, acknowledged and delivered. The principal types of deeds are quitclaim deed, warranty deed with full covenants, and bargain and sale deed. A quitclaim deed contains no warranties of any type by the grantor, including a warranty of marketability. A warranty deed with full covenants contains warranties by the grantor of right to convey the property and against unknown encumbrances as well as against title defects arising before as well as during the time the grantor has title. A bargain and sale deed contains the basic covenants against grantor's acts only. Under most state laws, a deed must be in writing, it must identify the parties and the land involved and it must be acknowledged and delivered.

Recordation

After closing, the purchaser records the relevant deed and mortgage (if any) by filing in a public recording office. This is done to protect a purchaser or lender from the subsequent rights of third parties over the real estate. Generally the recordation of contracts, deeds and mortgages occurs at the county level. Actual recording procedures and requirements change from county to county.

Financing

Purchasers of real property obtain financing from various sources. Mortgages are commonly used to finance the acquisition of real property, since the lender receives a lien on the property itself that may be enforced on the default of the purchaser. The buyer retains title to the property unless the mortgage lien is foreclosed. A mortgage loan can be structured in a variety of ways and can have fixed or adjustable rates. The loans which are obtained by purchasers of cooperative apartments are generally secured by pledges of the purchaser's stock in the entity and an assignment of the proprietary leases.

Purchase of Land by Non-Nationals

As with many issues, regulation of real property ownership by non-residents is left to the states. However, generally, any non-national may take, hold, convey and devise real property n the United States though there are some unique tax withholding issues for foreign ownership and there are restrictions on foreigners buying certain types of land (mostly farmland)

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& Moure