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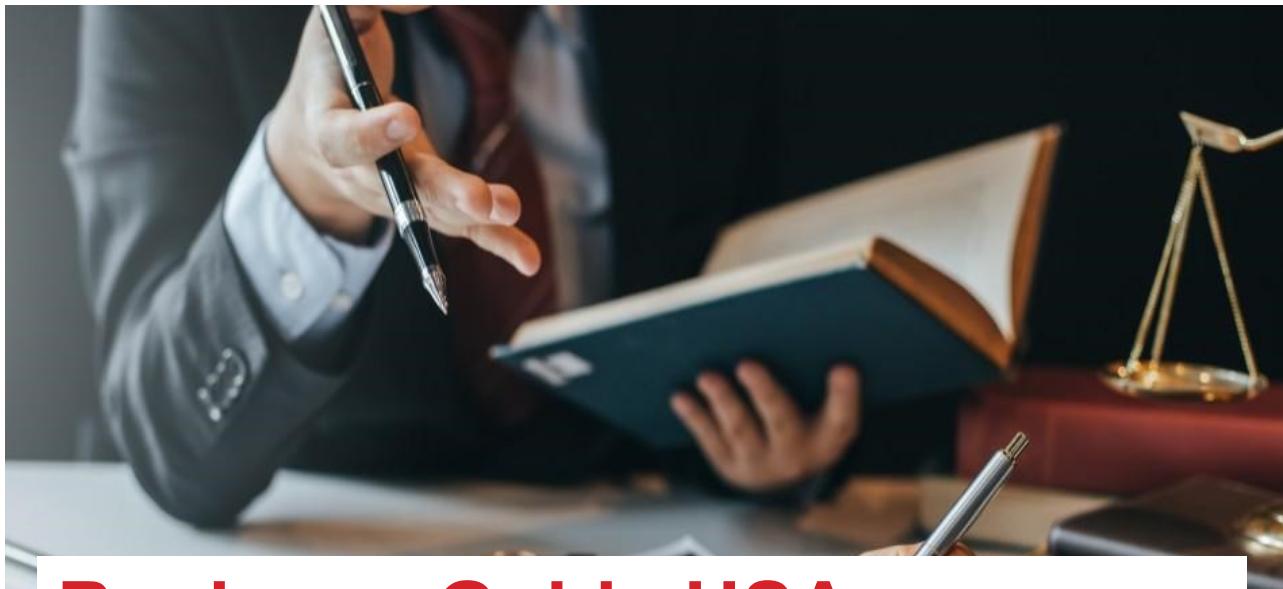
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Business Guide USA – Legal Provisions

Swiss Business Hub USA

USA Legal Provisions

Swiss Business Hub USA
New York, September 2020

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1. General Remarks

The United States is the largest economy in the world and offers great business opportunities. This document outlines some of the basics of U.S. corporate law when doing business in the U.S. Moreover, it provides an overview of trade and business-related U.S. regulations and laws. The United States has laws at the federal, state and local levels. In addition, all U.S. states have their own state regulations. Some industries are regulated by federal governments, while others are regulated by the respective state governments. In addition to industry regulation, businesses must also comply with a set of laws regulating antitrust, labor relations, environmental protection, consumer protection and civil rights.

2. Import Tariff Schedules and U.S. Trade Agreements

Items brought into the United States are subject to duty in accordance with their classification in the import tariff schedules. In today's complex trading environment, proper tariff classification can depend on a myriad of U.S. and international trade laws, regulations, rulings, and a host of other references. Finding the best classification can be complicated, especially in the case of specialized products. A quick glance at recent tariff rulings shows that the classification practices can barely keep up with the flood of new materials and product ideas now appearing in the world marketplace. Determining the correct tariff classification for an item may require technical specifications from your supplier and advice from your broker. It is also advised to conduct extensive research in the Harmonized Tariff Schedule of the United States (HTSUS), tariff rulings and other resources to ensure a seamless import process.

The complete Harmonized Tariff Schedule of the United States can be found at <https://hts.usitc.gov/current>.

Articles from specific countries are granted preferential or free rates of duty under trade agreements. The United States and Canada entered into a free-trade agreement (CFTA) on January 1, 1989. Subsequently, on January 1, 1994, the North American Free Trade Agreement (NAFTA) was implemented, which supplanted CFTA and incorporated Mexico into a tri-national trade agreement. The United States, Mexico, and Canada have reached an agreement to modernize the 25-year-old NAFTA into a 21st century, high-standard agreement. The new United States-Mexico-Canada Agreement (USMCA) came into effect on July 1, 2020 and supports mutually beneficial trade leading to freer markets, fairer trade, and robust economic growth in North America. In addition, the U.S. has passed into law several trade preference measures, including the Agreement on Trade in Civil Aircraft.

In addition, many products from developing countries are afforded duty-free entry under programs such as the Caribbean Basin Economic Recovery Act and the Andean Trade Preference Act (ATPA). ATPA was expanded under the Trade Act of 2002 and is now called the Andean Trade Promotion and Drug Eradication Act (ATPDEA). It provides duty-free access to U.S. markets for approximately 6,300 products. Most products other than those subject to the preferential or free rates mentioned above are dutiable under the most-favored-nation (MFN) rates or the Generalized System of Preferences (GSP). The remaining countries are subject to the highest rates, which apply when trade relations have not been normalized.

A listing of the U.S. treaties currently in effect can be viewed at <https://www.state.gov/wp-content/uploads/2019/06/2019-TIF-Bilaterals-6.13.2019-web-version.pdf>

3. Import Regulation, Quotas and Compliance

The importation of certain classes of merchandise may be prohibited or restricted to protect the economy and security of the United States, to safeguard consumer health and well-being, or to preserve domestic plant and animal life. Consequently, as concern over these matters shifts, import controls will likely be subjected to change. Especially in times of COVID-19, import and custom regulations are continuously adapting. The CBP website offers a weekly compilation of decisions and rulings regarding customs and related matters. The Swiss Business Hub USA can provide you with further guidance and support to ensure that your business complies with CBP rules.

Many of the prohibitions and restrictions on importation are subject, in addition to customs requirements, to the laws and regulations administered by other U.S. government agencies with which customs cooperates in enforcement. These laws and regulations may, for example, prohibit entry; limit entry to certain ports; restrict routing, storage or use; or require treatment, labeling or processing as a condition of release. Customs clearance is given only if these additional requirements are met. This customs clearance is required for all types of importation, including those made by mail and those placed in foreign-trade zones.

Shipments valued under \$2,500 USD are normally allowed to enter into the United States under an informal entry. If your products fall under Anti-Dumping or Countervailing duties, quotes or if they are regulated by the U.S. Food and Drug Administration, the goods must enter the U.S. under formal entry. When this is the case, you are required to set up an account with a Customs broker and have your import documentation prepared prior to shipping. In addition, it is also beneficial to contact the local U.S. port of entry for further import process information.

Import Quotas

Import quotas limit the amount of a commodity that can be imported into the United States. Imports to the U.S. may be subject to absolute quotas, tariff-rate quotas and Tariff Preference Levels. An absolute quota is a specified maximum quantity of a particular commodity that may be imported into the U.S. within a given time period. Currently there are no commodities subject to absolute quota restrictions. Tariff-rate quotas allow a specified quantity of a commodity to be imported during a designated period of time at a reduced tariff rate. Once a quota has been reached, goods may still be entered, but at a higher rate of duty. Tariff Preference Levels are established via Free Trade Agreements and are administered by CBP like tariff-rate quotas.

Whether a shipment is subject to a quota can generally be determined by its HTSUS classification and its country of origin. The HTS classification can be determined by contacting an import specialist at a

CBP port of entry. It is also recommended to use the CROSS database to find the latest binding rulings. Moreover, make sure to check whether your merchandise is subject to preferential treatment due to a Free Trade Agreement. For a detailed list of all commodities that are subject to tariff-rate quota or tariff preference levels, please see <https://www.cbp.gov/trade/quota/guide-import-goods/commodities>.

Import Permits

The U.S. is one of the few countries where an import permit is not required. Import permits are generally not necessary to import goods into the U.S. However, there are a few regulations to be aware of. These include U.S. import laws, informed compliance rules, import permits for specific goods as well as other business factors. Informed compliance guidelines are regularly published by CBP and importers are expected to meet CBP rules and regulations. The informed compliance publications can be found on the CBP website at <https://www.cbp.gov/trade/rulings/informed-compliance-publications>.

CBP as well as other government departments (OGD) may require a permit depending on the imported goods. These goods include agricultural commodities, arms & ammunition, commercial equipment, consumer products and precious metals. Moreover, you may also require a license from state authorities to be able to do business. It is advised to check the requirements of federal agencies and contact the local port of entry for import requirements. To see whether your import goods require a license, you can check the Guidelines from CBP or contact us if you need further guidance.

Import Documents

Within 15 calendar days of the date that a shipment arrives at a U.S. port of entry under formal entry, the following entry documents must be filed at a location specified by the port director.

- Pro Forma Invoice
 - Contains description of goods
 - Provides declaration by seller to provide products to buyer
- Commercial invoice
- Packing list
- Bill of landing / Airway bill
 - To be filled out by freight forwarder, carrier or broker
 - Not necessary for mail shipments
- Export compliance documents
 - Electronic Export Information Filing (EEI) via Automated Export System (AES)
- Commodity specific documents/licenses

These documents must be filled out, even if you do not require an import permit. Your importer number, which is your IRS business registration number, must be on all forms. It is also possible to obtain a CBP assigned number by filling out CBP Form 5106.

If the goods are to be released from U.S. Customs and Border Protection custody at the time of entry, an entry summary for consumption must be filed and estimated duties must be deposited at the port of entry within 10 working days of the goods' entry.

Compliance and Fines

In 1993, the United States Customs Modernization Act was implemented to increase voluntary compliance with custom regulation and laws. The two concepts of informed compliance and shared responsibility aim to maximize voluntary compliance and increases the CBP's responsibility to provide publicly accessible information regarding U.S. customs laws and regulation. Consequently, failure to comply with any of the relevant import laws and regulations can result in heavy fines and other significant civil and criminal penalties. These include revocation of the company's import privileges and/or potential seizure of imported merchandise. The Swiss exporter should make certain that the U.S. importer has provided the proper information to permit the submission of necessary information concerning packaging, labeling, etc. and has made the necessary arrangements for entry of the merchandise into the United States.

Furthermore, U.S. Antidumping and Countervailing Duties (AD/CVD) laws are in place to prevent dumping and subsidization, which can harm the domestic industry. If U.S. imports are ruled to be dumped and/or subsidized, the U.S. Department of Commerce will direct CBP to suspend liquidation of incoming entries and collect AD/CVD on the entries.

4. Currency Regulations & Restrictions

The monetary unit is the dollar, which is divided into 100 cents. The dollar is denoted internally by the symbol \$ and externally by the symbol US\$. The U.S. dollar is fully convertible. The United States generally does not impose exchange controls or restrictions on the flow of currency in or out of the country. Moreover, no restrictions encumber the convertibility of most foreign currencies. However, a Report of International Transportation of Currency and Monetary Instruments (FinCEN 105) must be filed with a customs officer at the port of entry or with the Commissioner of Customs in Washington D.C., if amounts exceeding \$ 10'000 in currency or other monetary instruments are transported to or from the United States on any one occasion. In addition, financial and commercial transactions with certain countries require Department of the Treasury licensing.

5. Registration Procedure for Products

All products offered for entry into the United States, including items for personal use, must be declared to U.S. Customs and Border Protection (CBP). CBP refers all FDA-regulated products to the FDA for review. The FDA regulates a wide range of products, including foods (except for aspects of some meat, poultry and egg products, which are regulated by the U.S. Department of Agriculture); human and veterinary drugs; vaccines and other biological products; medical devices intended for human use; radiation-emitting electronic products; cosmetics; dietary supplements, and tobacco products. For a detailed list of all the products the FDA regulates, please see <https://www.fda.gov/about-fda/fda-basics/what-does-fda-regulate>.

If the imported good is FDA-regulated, submission of information to the FDA is required. This includes an electronic submission of following documents:

- Commodity and subtype
- Product code
- Product description
- Country code identifying where the product was produced
- Names and addresses of manufacturer, shipper, importer, recipient
- Contact information
- Estimated arrival date and time
- FDA Affirmation of Compliance
- Quantity and value
- Additional data elements may apply for certain products

Based on the given information, the FDA will determine the acceptability of the imported articles.

Examination Process

The FDA conducts examinations or sample collections of imported goods to determine if the product is compliant with FDA standards. An examination may consist of field examination, label examination and sample collection. A label examination reviews whether the label of the good is in accordance with FDA regulations. In a field examination, the good is physically inspected and a sample of the good may be analyzed in a next step. Imported goods may be selected for sampling due to routine investigation or if there is a risk associated with the product or if there have been past violations. In either case, the importer will be informed about the product examination.

The entry process is conducted within the Port of Entry. Therefore, the FDA expects the product to be held at the port of entry until the FDA has made its admissibility decision. It is advised to keep the imported goods at the port of entry until the FDA has completed its examination. The status of entry can be checked on the FDA website using the entry number and the importer will be notified once the examination is terminated.

Actions & Enforcement

The FDA has jurisdiction over imported good at the time of entry as well as once the products are on the domestic market. This means that the FDA can take various actions regarding enforcement and compliance. At the port of entry, the FDA is authorized to examine the imported products. If the goods appear to violate FDA regulations, the importer will be informed and asked to provide evidence against

violation. Import alerts enable the FDA to allow for Detention Without Physical Examination (DWPE) of imported goods, if products have previously violated the FDA regulations. If the importer can prove that the goods comply with FDA regulations, they can still be imported.

When products are not in compliance with FDA laws, they can be refused entry into the United States. This is the case if products appear to be:

- Adulterated (i.e. contaminated, unsafe, or does not meet FDA standards)
- Misbranded (i.e. labels contain false / misleading information, or unregistered / unlisted product)
- forbidden or restricted for sale

There are also other reasons that imported goods are refused entry. For a full overview of products that have been refused, please see <https://www.accessdata.fda.gov/scripts/ImportRefusals/index.cfm>

Other actions regarding enforcement of FDA laws include seizure by CBP or FDA, civil money penalties, bond actions, state embargo, food importer debarment and prosecution.

Food Safety Modernization Act

The FDA Food Safety Modernization Act (FSMA) was signed into law by President Obama in 2011. It is one of the most comprehensive reform of U.S. food safety laws in decades. The FSMA is intended to enable the FDA to better protect public health and covers every step of the food supply chain. It focuses on the prevention of food safety problems and includes new enforcement authorities to achieve higher compliance rates regarding food safety standards. The FSMA also provides important measures allowing the FDA to hold imported foods to the same standards as domestic foods. The FSMA is comprised of several major regulations. These include preventive control rules for human and animal food, produce safety rule, foreign supplier verification program (FSVP) rule, accredited third-party certification, sanitary transportation rule, and intentional adulteration rule.

The produce safety rule was finalized in 2015 and establishes minimum standards for the safe growing, harvesting, packing and storing of produce. The regulation also introduced requirements regarding water quality, employee health and more to increase the responsibility of farmers to protect their produce from contamination. The Foreign Supplier Verification Program (FSVP) Rule is highly relevant for foreign food exporters into the U.S. The FSVP rule requires importers to ensure that their foreign suppliers comply with the relevant FDA regulatory requirements. Importers must approve a supplier by evaluating the potential hazards associated with their suppliers' food as well as evaluate the supplier's performance. In a next step, importers must implement an FSVP for each approved supplier and imported food. Importers have the choice to choose from various verification activities for each supplier and food. These include onsite audits, sampling and testing of products. It is important to note that the FDA defines an importer as the U.S. owner of a food offered for import into the U.S. If there is no U.S. owner, the U.S. agency or representative of the foreign owner is considered to be the importer.

The accredited third-party certification regulation enables the FDA to accredit third-parties to conduct food safety audits and issue relevant certificates. Certification bodies conduct regulatory audits to certify foreign facilities. The certification bodies must provide the results of the inspection to the FDA. Certification from third-party certification bodies are useful for foreign facilities, because it enables them to participate in the FDA's Voluntary Qualified Importer Program (VQIP) and enables them to meet the FDA's request of this certification, if the FDA suspects that a food could potentially be harmful to U.S. consumers.

Another regulation of the FSMA is the Sanitary Regulation Rule. This rule established requirements for shippers, receivers and carriers of food into the U.S. to ensure food is protected during transportation. The concerned parties must detail how they will ensure safe transportation by establishing a written procedure. The Intentional Adulteration Rule is relevant for all registered food facilities and requires them to implement a Food Defense Plan. This plan assesses the facilities' liabilities and identifies strategies to mitigate these vulnerabilities.

Importation of Pharmaceuticals Drugs and Medical Devices

Domestic and foreign establishments that manufacture, repack, or re-label drug products in the United States are required to register with the FDA. Domestic and foreign drug manufacturers, re-packers or re-labelers are also required to list all of their commercially marketed drug products. This information helps the FDA maintain a catalog of all drugs in commercial distribution in the United States. Drugs are

restricted from importation unless they are covered under an Investigational New Drug Exemption (IND) or by an approved New Drug Application (NDA).

Medical devices must meet FDA regulations prior to the importation into the United States. As of October 2012, changes to device registration and listing became effective. These include that all proprietary names under which a device is marketed must be reported and products comprising a device and a drug must be identified as a combination product. The type of combination product must be selected from the FDA Unified Registration and Listing System (FURLS). Moreover, all contract manufacturers and sterilizers of finished devices must register and importers must identify the manufacturers of the imported devices. Foreign entities exporting their devices to the U.S. must identify the U.S. importers of their devices. The FDA regulations also require that a device must be listed by the manufacturer, specification developer, single-use device re-processor, remanufacturer or re-packer before a foreign exporter, contract manufacturer or sterilizer can list it. Establishments in foreign trade zones must register, list and identify themselves as being located in a foreign trade zone. The Food and Drug Administration Safety and Innovation Act (FDASIA) also mandates all registered establishments to pay an annual registration user fee.

Importation of Vital Food and Medical Products during COVID-19

Many of the medical products needed to combat COVID-19 are imported to the U.S. from abroad. The FDA needs to approve the entry of these products to ensure no dangerous and fraudulent products enter the U.S. market. Due to COVID-19, the FDA has had to adjust their procedures to address the pandemic. As a consequence, physical inspections of imports have temporarily been postponed. The FDA implemented a policy stating that Food Safety Modernization Act (FSMA) supplier verification onsite audit requirements will temporarily not be enforced as long as other supplier verification methods are employed. Consequently, Foreign Supplier Verification Program (FSVP) inspections for human and animal foods have been conducted remotely. The FDA contacts the importers subject to remote inspections to inform them about the process and request electronic records. Onsite audits are expected to be resumed, once it is safe to do so and FSVPs will be updated. Moreover, the FDA will inform the public about changes to this policy.

The FDA also issued several Emergency Use Authorizations (EUA) for certain medical devices, such as respirators and vitro diagnostic equipment. These EUAs authorize the use of medical devices and products that are not National Institute for Occupational Safety and Health (NIOSH)-approved for health care professionals. The FDA has also taken steps to facilitate faster importation of personal protective equipment (PPE) from overseas.

The latest COVID-19 information from the FDA can be found on their website under <https://www.fda.gov/emergency-preparedness-and-response/counterterrorism-and-emerging-threats/coronavirus-disease-2019-covid-19#new>

Import Refusal

The FDA can refuse the importation of goods if it rules them to violate the FDA laws and regulations. Once the FDA has made this decision, the goods must be destroyed or exported within 90 days of the Refusal Notice. Reasons for import refusal include not responding to FDA Notice of Detention and Hearing within the specified timeframe and non-adequacy of submitted proposal to recondition product. The FDA will inform the importer if an import refusal is issued and the CBP will provide instructions regarding destruction or exportation of the refused goods.

6. Standards, Technical Rules and Labeling Regulations

Customs regulations state that all goods of foreign origin entering the U.S. must be legibly, indelibly and permanently marked with the English name of the country of origin unless they meet the exception requirements in the regulations. Due to the complexity of marking the country of origin for some products, it may be beneficial to request an advisory ruling or final determination from U.S. Customs and Border Protection. When marking is not feasible, such as when the article is too small or marking would in some way damage the merchandise, then the packaging or container that will reach the ultimate consumer must be labelled. Some products such as watches and clocks have special marking requirements. Articles that are not marked with the English name of their country of origin at the time of their importation into the United States are subject to additional duties.

In addition to general customs regulations, several U.S. agencies require special marking and labelling rules. These agencies include the Federal Trade Commission (FTC), the Food and Drug Administration (FDA), the United States Departments of Agriculture (USDA) and the Bureau of Alcohol, Tobacco and Firearms (ATF), the Environmental Protection Agency (EPA), the Consumer Products Safety Commission (CPSC). The FTC provides information about labelling for consumer goods. The Fair Packaging and Labeling Act (FPLA) requires all consumer commodities to be labelled to disclose identity of the commodity, the name and place of business, packer/distributor and net contents.

The FDA regulates food labelling in the United States as well as the labelling of dietary supplements, cosmetics, drugs, medical devices and animal foods. There is a Small Business Nutrition Labeling Exemption (SBNLE) in place for small businesses. Additionally, the USDA has a Food Safety and Inspection Service (FSIS), which ensures that the U.S. food supply is correctly labelled and packaged. Some products do not require pre-approval from the FSIS, while others, such as retail packages of meat, must be pre-approved by the FSIS.

The labelling of alcoholic beverages sold in the United States is handled by the ATF. To have labels approved, you must apply through the Alcohol Labeling and Formulation Division (ALFD) and fill out Form F5100.31, which can be downloaded at <https://www.ttb.gov/images/pdfs/forms/f510031.pdf>.

The EPA may require special labelling if your product contains chemicals that come under the U.S. Toxic Substances Control Act. If you are importing hazardous substances or flammable products, the CPSC may also require special labelling. For further guidance regarding labeling your products in accordance with U.S. regulations, please contact Swiss Business Hub USA.

7. Taxes: Sales Tax, Income Tax and Tax Reforms

Taxation in the U.S. is complex and ever-changing. Taxes are imposed on a federal, state and local government level. The federal tax system has multiple components. Federal taxes are levied on individual income, corporate income, social insurance and retirement payroll taxes, estate and gift taxes, excise taxes, imported goods and more. The rates of any of these taxes and the methods used to calculate them can change at any time.

In 2019, the corporate income tax is estimated to have generated \$216 billion in revenue. Corporate income tax normally only applies to C corporations and are treated as separate taxable entities. This implies that corporate income is taxed at the corporate level as well as when corporate dividend payments or capital gains are realized. For non-corporate businesses, such as S corporations and partnerships, income is passed through to the owners who pay taxes. These types of businesses are known as pass-throughs and their income is taxed once at the individual income tax rate.

In addition to the federal government, most states and many local municipalities require their residents and businesses to pay income taxes. The U.S. states of Nevada, Ohio, South Dakota, Texas, Washington, and Wyoming, do not impose any state corporate income taxes. However, some impose a gross receipts tax or franchise tax. The total amount of state and local tax a business must pay depends on many factors such as your business structure and the state tax rate. Further taxes imposed on the state level include payroll, property, sales and use, inheritance, severance, and transaction taxes.

U.S. Congress legislates the federal tax law. The Internal Revenue Service (IRS), a branch of the U.S. Treasury Department, administers the law. This administrative function includes issuing rulings and regulations to clarify the law, developing and processing tax forms, auditing tax returns, and collecting delinquent taxes. The U.S. courts rule on tax issues when there are litigated disputes between the government and taxpayers.

South Dakota v. Wayfair Ruling

An important U.S. Supreme Court ruling to mention is the Wayfair ruling in 2018. This ruling allows U.S. states to tax remote sales via their economic nexus laws. In addition, it concludes that the Commerce Clause of the US Constitution does not presuppose physical presence for there to be an obligation to pay sales tax. Prior to the ruling, states were only able to collect sales taxes from businesses that were physically present in the state. This standard still exists, but nexus laws were expanded to enable states to collect taxes from businesses based on their economic activity in the state. This includes their transaction volume and sales revenue. The U.S. Supreme Court explained that the interpretation of the Clause is no longer appropriate in the age of e-commerce. More than 40 U.S. states have adopted economic nexus laws since the South Dakota v. Wayfair ruling. Economic nexus criteria vary by state and tax. Moreover, the amount of sales tax that needs to be paid is determined by each state.

Tax Cuts and Jobs Act

In 2017, US President Trump signed the Tax Cuts and Jobs Act (TCJA). The goal of the Act is to make US business more competitive and to provide tax cuts to lower- and middle income households. The main plan elements of the TCJA regarding corporate tax are listed below.

- Reduction of corporate tax rate from 35% to 21%
- Change from global tax system to territorial tax system
 - This means that each subsidiary of a corporation pays the tax rate of the country in which it was legally established instead of the US tax rate
- Elimination of Corporate Alternative Minimum Tax (AMT)
 - The corporate AMT was intended to ensure that corporations pay minimum amount of tax by limiting certain deductions and credits
- Elimination of net operating loss carryback
 - Company with losses can no longer receive tax refund by counting losses as part of previous year's tax return
- Elimination of domestic production activities deduction
 - This deduction was intended to provide tax relief for businesses that produce most of their goods/work in the US instead of overseas
 - Replaced by the qualified business income deduction via TCJA

For more information on how the TCJA could affect your business taxes, please contact one of our trade commissioners.

Tax Aspects of Company Formation

The five general types of business taxes in the US include Income Tax, Estimated Taxes, Self-Employment Tax, Employment Taxes and Excise Tax. The choice of business form determines which of the mentioned taxes you must pay. Many tax laws regarding company formation are regulated at a state level and thus differ from State to State. However, a number of tax aspects are also regulated at the federal level. Our team at SBH USA can help you find out which taxes specifically apply to your business. Below is an overview of the main types of business taxes.

- Income Tax: All businesses apart from partnerships must file an annual income tax return. The income tax is regulated at the federal level and is a pay-as-you-go tax. This means that you pay the tax as you earn during the year, either through withholding or estimated tax payments. This means that employees have their income tax withheld from their pay. However, when a business does not pay enough tax through withholding, it may have to pay estimated tax.
- Estimated Tax: If the amount of withheld income tax does not suffice, estimated tax payments need to be made. These payments are used to pay income tax as well as other taxes such as self-employment and alternative minimum tax if applicable. Penalties are made when estimated tax payments are not paid on time or are insufficient. Sole proprietors, partners and S corporation shareholders must pay estimated tax if they expect to owe tax of \$1,000 or more when their return is filed. Corporations are expected to pay estimated tax if they expected to owe \$500 or more upon filing of their return.
- Self-Employment Tax: Individuals who work for themselves must pay Self-Employment Tax. It acts as a social security and Medicare tax for the self-employed. This applies if your net earnings from self-employment are \$400 or more and/or if you work for a church that is exempt from social security and Medicare taxes and you receive a salary of \$108.28 or more from the church.
- Employment Taxes: As a business owner, you must pay and file certain employment taxes. These include social security and Medicare taxes, federal income tax withholding and federal unemployment tax.
- Excise Tax: Lastly, there are excise taxes that may need to be paid if any of the following apply.
 - manufacture/sell certain products

- operate certain kind of business
- use certain kinds of equipment/products
- receive payment for certain services

There are various forms of federal excise taxes. These include environmental taxes, heavy vehicle taxes, fuel taxes and wagering taxes.

8. Legal Aspects

The events of September 11, 2001 reinforced the need to enhance the security of the United States. U.S. Congress responded by passing the USA Patriot Act in 2001 and the Public Health Security and Bioterrorism Preparedness and Response Act (Bioterrorism Act) in 2002. Furthermore, the U.S. Customs and Border Protection have introduced the Customs-Trade Partnership Against Terrorism (CTPAT) which engages the trade community in a cooperative way to secure the supply chain of goods entering the U.S.

The Patriot Act gives federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to further close the U.S. borders to foreign terrorists and to detain and remove those within the U.S. borders.

The Bioterrorism Act requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with the U.S. Food and Drug Administration (FDA) beginning December 12, 2003. Electronic registration via the internet is possible. The Act also requires that the FDA receive prior notice before food is imported or offered for import into the United States. Advance notice of import shipments allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies.

Participation in CTPAT is voluntary and there are no costs associated with joining the program. Moreover, a company does not need an intermediary in order to apply to the program and work with CBP; the application process is easy and it is done online. The first step is for the company to review the CTPAT Minimum Security Criteria for their business entity to determine eligibility for the program. The second step is for the company to submit a basic application via the CTPAT Portal system and to agree to voluntarily participate. The third step is for the company to complete a supply chain security profile. The security profile explains how the company is meeting CTPAT's minimum security criteria. In order to do this, the company should have already conducted a risk assessment. Upon satisfactory completion of the application and supply chain security profile, the applicant company is assigned a CTPAT Supply Chain Security Specialist to review the submitted materials and to provide program guidance on an on-going basis. The CTPAT program will then have up to 90 days to certify the company into the program or to reject the application. If certified, the company will be validated within a year of certification.

CSI addresses the threat to border security and global trade posed by the potential for terrorist use of a maritime container to deliver a weapon. CSI proposes a security regime to ensure all containers that pose a potential risk for terrorism are identified and inspected at foreign ports before they are placed on vessels destined for the United States. CBP has stationed teams of U.S. CBP Officers in foreign locations to work together with our host foreign government counterparts. Their mission is to target and prescreen containers and to develop additional investigative leads related to the terrorist threat to cargo destined to the United States.

The Lacey Act was introduced in 1900 to combat trafficking of "illegal" wildlife, fish and plants. The Farm Bill of May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products. The Lacey Act now makes it unlawful to import certain plants and plant products without an import declaration.

9. Setting up a Company

The nature of business structure is left to the 50 states. The primary business structures, which are similar in title and operation to similarly-named businesses in other countries and which are more or less uniform throughout the states, are sole proprietorship, partnerships, corporations, limited liability

companies, branches and joint ventures. A business might also be commenced through a merger or acquisition.

The 7 First Steps of Setting up a Corporation

1. *Choose an available business name*
 - Conduct US-wide name check
 - Ensure that the name complies with state corporation rules
2. *File articles of incorporation*
 - Contains name of the company & name/address of registered agent
 - Contains number of authorized shares and nominal value of shares
 - Pay relevant incorporation fees
3. *Appoint initial directors of corporation*
 - Select registered agent in the US
 - Select founding attorney to be first point of contact for US authorities
 - Issue shares to shareholders
4. *Obtain federal Employer Identification Number (EIN)*
 - Person applying must have valid Taxpayer Identification Number
 - Submit online EIN application
5. *Fill out employment forms*
 - Form I-9: Employment Eligibility Verification
 - Form W-4: Employee's Withholding Certificate
6. *Open US bank account*
 - Requires certificate of incorporation, EIN and authorization from person opening bank account
7. *Pay your business taxes*

See 50-State Guide to Forming a Corporation for more information on individual state regulations:
www.nolo.com/legal-encyclopedia/forming-corporation

Foundation of the Company: Corporate Forms

There are various corporate forms one can choose from when forming a company in the U.S. The four main forms of business entities include Sole Proprietorship, Partnership, Limited Liability Company and Business Corporation, which includes S- and C-Corporation. The table below highlights the main characteristics of each business entity form.

	Sole Proprietorship	Partnership	Limited Liability Company (LLC)	S-Corporation	C-Corporation
Formation	Simple and inexpensive. No filing necessary.	Simple and inexpensive. No filing necessary.	More expensive to form. Certificate of formation necessary.	More expensive to form.	More expensive to form.
Liability	Business owner personally liable.	Business owners personally liable	Limited liability protection. Liability only with company assets.	Limited personal liability of business owners.	Limited personal liability of business owners.
Taxation	Business owner reports profit/loss on personal tax return.	Business owners report profit/loss on personal tax return.	Choice between taxation as partnership or corporation. Additional business tax deductions available.	Business owners report profit/loss on personal tax returns. Additional business tax deductions available.	Separate taxable entity. Business owners can split profit among owners. Additional business tax deductions available.
Benefits	Less benefits than other business forms due to high liability and fewer tax deductions.	Low start-up costs and greater borrowing capacity.	Pass-through taxes. Owners do not have to file corporate tax return.	Limited liability protections, regardless of tax status. No corporate tax.	Separate legal entity. Limited liability for owners.
Disadvantages	Unlimited liability. Increased difficulty to raise capital.	Unlimited liability.	More expensive to form and operate.	More expensive to form and operate.	More expensive to form and operate. Double taxation of revenue at company and shareholder level.

10. Opening a Bank Account in the U.S.

There are several aspects to consider when opening a business bank account in the U.S. It is possible to open a U.S. business account for your business as a non-resident as long as your business is registered in the US and has an Employer Identification Number. Most banks require physical presence to open a bank account and it is rather difficult to open a bank account online. However, there are some banks that allow you to open a bank account online from abroad. In addition, there are also agencies that offer their services to help you with the process.

Below is a list of all the necessary documents and requirements needed to open a business bank account in the United States.

Required:

- Proof of registration of your business in the U.S.
- Passport copy
- Certificate of Incorporation
- Confirmation letter of your Federal Employer Identification Number (EIN)
- Proof of company address

- W-9 tax document (obtained through bank)
- Minimum deposit (required by some banks)

Nice to have:

- proof of personal address of your authorized person
- Certificates of Good Standing from the US company

There are various banking fees and charges that apply when obtaining a U.S. bank account. When opening a U.S. bank account, set-up costs are incurred. Moreover, some banks require a minimum deposit. Besides these set-up costs, monthly account handling charges and fixed fees for banking transactions also apply.

The Three Steps to Opening a US Bank Account

1. In-person visit at a bank branch
2. Submission of all required documents
3. Reply to onboarding questions from U.S. bank
 - sent via e-mail
 - Questions about company's purpose, operational structure etc.

Due to the complexity of opening a bank account in the U.S., it is advised to calculate a large timeframe for this process as it may require several attempts. Our team at Swiss Business Hub USA can guide you through the process and provide business-specific information.

11. Joint Venture Opportunities

A foreign company may form a joint venture with a company in the U.S. for a specific purpose for a particular length of time. The joint venture may be organized under partnership or corporation laws and will be taxed dependent on its predominant characteristics. A joint venture agreement should clearly describe the relationship between the parties and their respective responsibilities. The agreement also should provide for the resolution of disputes.

12. Promotion of Investment

The United States encourages foreign investment. Financial assistance can be obtained through a large banking system, venture capitalists, and the stock markets. Moreover, many local investment incentives are available. Such incentives commonly include income and real estate tax concessions, financing, and sometimes opportunities to purchase or lease operating facilities at greatly reduced prices. For the convenience of foreign investors, a number of states have established promotion offices in foreign countries. The Swiss Business Hub USA can provide further information regarding foreign investment in the U.S.

The Committee on Foreign Investment in the United States (CFIUS) is the government body responsible for reviewing certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons. Dealmakers must take into account numerous considerations when a transaction is completed and revision by CFIUS may be required. In 2018, the Foreign Investment Risk Review Modernization Act (FIRRMA) was implemented. FIRRMA addresses national security concerns more efficiently and broadens the authorities of the President and CFIUS to review investments and take action if national security concerns arise.

Foreign investors can submit a short-form declaration that notifies CFIUS of the transaction. This process is voluntary and may reduce the review period. However, in some cases, such as when a foreign government acquires a substantial interest in U.S. businesses or transactions involving critical technologies, submitting a declaration is mandatory. During the initial 45-day review period, parties must be available to respond to follow-up requests for information within three business days of the request. In some cases, CFIUS may initiate a subsequent investigation period of 45 days. In special circumstances, CFIUS may refer a transaction to the President for decision. Parties may withdraw their declaration at any time during the notice review. Voluntary declarations may be rejected by CFIUS when the voluntary notice is not complete, when parties do not respond to follow-up information requests, when there is a material change in the transaction or when material information contradicts the information provided by the parties. When CFIUS has completed all action regarding a covered transaction and finds no national security risks, the parties receive a "safe harbor" with respect to that

transaction. If the CFIUS finds that a transaction present a national security risk, the CFIUS may request parties to mitigate such risks or may refer the case to the President.

13. Entry Conditions, Work Permits, Residence Permits, Labor Law

In the United States, employment is regulated at the federal, state, and local level. The federal government regulates employment through the Fair Labor Standards Act (FLSA), the National Labor Relations Act of 1935 (NLRA), the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), the Americans with Disabilities Act of 1990 (ADA) and other legislation. The federal agencies that regulate employment are the Department of Labor, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Federal, state, and local agencies further influence business with numerous regulations. Regardless of what enterprise one might enter, one should conduct a search for all the laws which impact that specific business to avoid major oversights.

U.S. Visa Types

All visitors must have a proper visa to enter the United States. This holds, unless they are citizens of countries for whom a 90-day stay for business or pleasure is visa exempt. Those who wish to work or live in the U.S. as traders or investors must have visas authorizing such activities.

- **B-1 Visa (Temporary Business Visitor):** Visitor visas are nonimmigrant visas for persons who want to enter the United States temporarily for business. You may be eligible for a B-1 visa if you will be participating in business activities of a commercial or professional nature in the United States, including, but not limited to: Consult with business associates; Attend a scientific, educational, professional, or business convention or conference; Settle an estate; Negotiate a contract.
- **B-2 Visa Tourism:** The B2 visa is a temporary, non-immigrant US visa that permits the holder to enter the United States for a short period for travel, recreation, or family purposes, Medical treatment; participation in social events hosted by fraternal, social, or service organizations; Participation by amateurs in musical, sports, or similar events or contests, if not being paid for participating; Enrollment in a short recreational course of study, not for credit toward a degree (for example, a two-day cooking class while on vacation).
- **Visa Waiver Program:** The Visa Waiver Program (VWP) enables most citizens or nationals of participating countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. Travelers must have a valid Electronic System for Travel Authorization (ESTA) approval prior to travel and meet all requirements explained below. If you prefer to have a visa in your passport, you may still apply for a visitor (B) visa.
- **E-1 Visa Treaty traders:** This visa allows an alien to reside in the U.S. to carry on significant trade between the U.S. and the alien's own country. The trading firm for which you plan to come to the United States must have the nationality of the treaty country, meaning persons with the treaty country's nationality must own at least 50 percent of the enterprise. The international trade must be substantial, meaning that there is a sizable and continuing volume of trade. More than 50 percent of the international trade involved must be between the United States and the treaty country. Trade means the international exchange of goods, services, and technology. Title of the trade items must pass from one party to the other. You must be an essential employee, employed in a supervisory or executive capacity, or possess highly specialized skills essential to the efficient operation of the firm. Ordinary skilled or unskilled workers do not qualify. Switzerland has a treaty with the U.S.
- **E-2 Visa Treaty investors:** This visa is for citizens of treaty countries who make an investment in the U.S., or who are executives, managers, or essential employees of a treaty investor. The venture must be majority-owned by the foreign citizen or by other nationals of his country; the investment must be active (not passive such as real estate) and must be „substantial“ in relation to the nature of the particular enterprise.
- **H-1B Visa:** Workers in specialty occupations can be admitted to the U.S. under this visa. The job must require a bachelor's or higher degree, or its equivalent. While the employer does not have to demonstrate that no U.S. citizen is available to perform the job, the employer must attest to the U.S. Department of Labor that the alien will be paid either the prevailing wage for that occupation or the actual wage paid by the employer for persons in the relevant occupation,

whichever is higher. The employer must also show that the position requires a person of professional ability, and that the proposed employee has sufficient credentials. This visa is initially available for up to three years with extensions to six years possible. Includes fashion models of distinguished merit and ability and government-to-government research and development, or co-production projects administered by the Department of Defense.

- **F Visa:** A foreign student can easily obtain approval for practical training that is not available in the student's home country if he or she has attended a U.S. college as a foreign student. The time period allowed for the training will not exceed one year.
- **H-2A Visa:** For temporary or seasonal agricultural work. Limited to citizens or nationals of designated countries, with limited exceptions, if determined to be in the United States interest.
- **H-2B Visa:** For temporary or seasonal non- agricultural work. Limited to citizens or nationals of designated countries, with limited exceptions, if determined to be in the United States interest.
- **H-3 Visa:** To receive training, other than graduate medical or academic, that is not available in the trainee's home country or practical training programs in the education of children with mental, physical, or emotional disabilities.
- **L Visa:** To work at a branch, parent, affiliate, or subsidiary of the current employer in a managerial or executive capacity, or in a position requiring specialized knowledge. Individual must have been employed by the same employer abroad continuously for 1 year within the three preceding years.
- **O, P or R Visa:** U.S. immigration law authorizes a number of additional non-immigrant visas that permit work in the United States. An alien with extraordinary ability in the sciences, arts, education, business, or athletics may be eligible for the O visa. Athletes, entertainers, and other performers may be eligible for P visas. A religious worker may seek an R visa to work for a temporary period in the United States. Each visa has special eligibility criteria and time limits.
- **Q-1 Visa:** For practical training and employment and for sharing of the history, culture, and traditions of your home country through participation in an international cultural exchange program.

Please consider that due to COVID-19, immigration to the United States may be restricted. U.S. President Trump has issued five COVID-19-related proclamations to limit travel to the United States. These proclamations will remain in effect until terminated by the U.S. President. European Schengen Area Proclamation states that the entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited subject to section 2 of the proclamation. This is subject to change at any time. Before taking steps to obtain a visa under any category, one should obtain advice from a competent authority.

For the latest news and updates concerning COVID-19 travel restrictions, please see the following sites.

- <https://travel.state.gov/content/travel/en/News/visas-news.html>
- <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-2019-novel-coronavirus/>

14. Business Insurance Basics

Insurance policy is predominantly regulated on a state level and therefore varies between states. For specific information of state-specific insurance guidelines, it is recommended to seek information on their respective websites or call their telephone hotlines. In addition, it may also be beneficial to find an agent or broker to assist in finding the optimal insurance package. Many insurance companies also offer Business Owners Policy (BOP) packages, which combine coverage for all major liability and property insurance risks. Generally, most small businesses operating in the U.S. need to purchase at least the following types of insurances.

- Property insurance
 - protects all your physical business assets

- Liability insurance
 - Pays for any damages for which your business is found liable
- Business vehicle insurance
 - Pays costs to third parties in case of injury or property damage for which your business is found liable
- Workers compensation insurance
 - mandatory insurance if your business has more than a minimum number of employees (ranges from 3 to 5 depending on US State)
 - pays for medical care
 - replaces portion of lost wages if an employee is injured at work

Next to the above mentioned insurances, there are also other types of policies that your business may need, depending on your type of business. These may include the following insurance types.

- Umbrella policies
 - Protects your business against unusually high losses
- Specialized liability policies
 - Errors & Omissions Insurance (E&O)/ professional liability insurance
 - Employment practices liability insurance (EPLI)
 - Directors and officers liability insurance (D&O)
 - Business identity theft insurance
- Terrorism insurance

It is also recommended to have the following insurance policies for your employees.

- Social security
- Health care insurance
- Pension Fund (401 (k))
- Unemployment insurance

For more information regarding insurance, please contact SBH USA.

Choosing a Broker

When choosing a broker there are a few important aspects to consider. Choosing a broker with international business and European and/or Swiss customers is an advantage. Moreover, it is important to know which insurance companies your potential broker represents and whether they are local or nationwide insurance policies. Another important aspect to consider is that your potential broker provides quality customer service during and after the process of taking out insurance policies. Another aspect to take into account is whether your potential broker provides solutions for young as well as growing companies. Swiss Business Hub USA can connect you with our experts that can advise you on obtaining the optimal insurance package for your business.

15. Human Resources: The U.S. Job Market

There are various laws and acts in place to promote fair working conditions in the U.S. and it is necessary to follow the standards of U.S. employment laws. The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and youth employment standards. According to FLSA, workers are entitled to a minimum wage of \$7.25 per hour and overtime pay must be at least 1.5 times higher than the regular rate after 40 hours of work in a week. The FLSA does not require sick leave, vacations, holidays or severance pay. Equal Employment Opportunity (EEO) laws ensure that all people have the right to work on the bases of merit and ability, regardless of their race, sex, disability, nationality or age. Regarding workers' benefits, there are mandatory benefits and voluntary benefits on a federal level. However, individual US States may require additional benefits.

Required benefits:

- Social Security, Medicare and Federal Insurance Contributions Act (FICA)
 - Federal payroll tax used to fund Social Security and Medicare
 - Both employer and employee required to contribute to funds

- Unemployment insurance
 - Assists workers who lose their jobs
- Worker's compensation insurance
 - Gives financial support to people unable to work due to workplace injury/illness
- Health insurance
 - For companies with 50 or more full-time employees
- Family and medical leave
 - Employees are eligible for up to 12 weeks of job-protected, unpaid leave during 12-month period for family or medical reasons

Recommended benefits:

- Paid vacation and disability insurance
- 401(k) retirement savings plans
- Education assistance
- Wellness programs
- Child care assistance

Hiring Process in the US

In order to hire individuals in the U.S., you must obtain your EIN. Subsequently, you must set up records for withholding taxes. These include federal income tax withholding, federal wage and tax statement and state taxes. For the federal income tax withholding, prospective employees must complete Form W-4 to obtain an Employee's Withholding Certificate. Form W-2 needs to be filled out by your business for every new employee. Lastly, you must also fill out the withholding form on the state level.

After you have hired an employee, it is important to report it to the state employment agency and obtain workers' compensation insurances. It is required by most states to get an insurance policy for their employees. It is also recommended to establish a compensation plan for official holidays, vacation and sick leave. Your company must also choose a payroll method, plan respective payments and coordinate with the IRS regarding withholding payroll tax.

Right-To-Work and Union States

Depending on which business location you choose in the United States, it is also important to know that some states are unionized, while others passed right-to-work law. In union states, employees in certain sectors are required to be dues-paying members of unions. Labor unions promote higher wages and provide worker protection. However, they require fees and make it more difficult to terminate or promote workers. As a result, 28 U.S. states have passed right-to-work laws, which make labor union membership not mandatory. This enables increased financial freedom and hold unions accountable. However, it may also diminish unions' power and make workers more vulnerable as they don't have the union's protection.

16. Procedures for Collecting Payment

There are debt collection agencies with networks allowing them to act all over the United States. The Collection Agency Services can be found under <http://www.collectionagencyervices.net/>.

17. Sources of Information and Links

- Swiss Business Hub USA: www.s-ge.com/en/company/swiss-business-hub-usa
- Small Business Administration: www.sba.gov
- Customs and Border Protection: www.cbp.gov/xp/cgov/trade/basic_trade/
- Department of the Treasury, Internal Revenue Service: www.irs.gov/
- U.S. Citizenship and Immigration Services: www.uscis.gov/portal/site/uscis
- U.S. Department of State, Visa Services: http://travel.state.gov/visa/visa_1750.html

18. SBH USA Export Team



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Please note that the information in this document is compiled from various different legal and public sources and is only a loose compilation of the basic legal provisions in the US. Swiss Business Hub USA strongly recommends to always seek professional legal advice when doing business in the U.S. market.