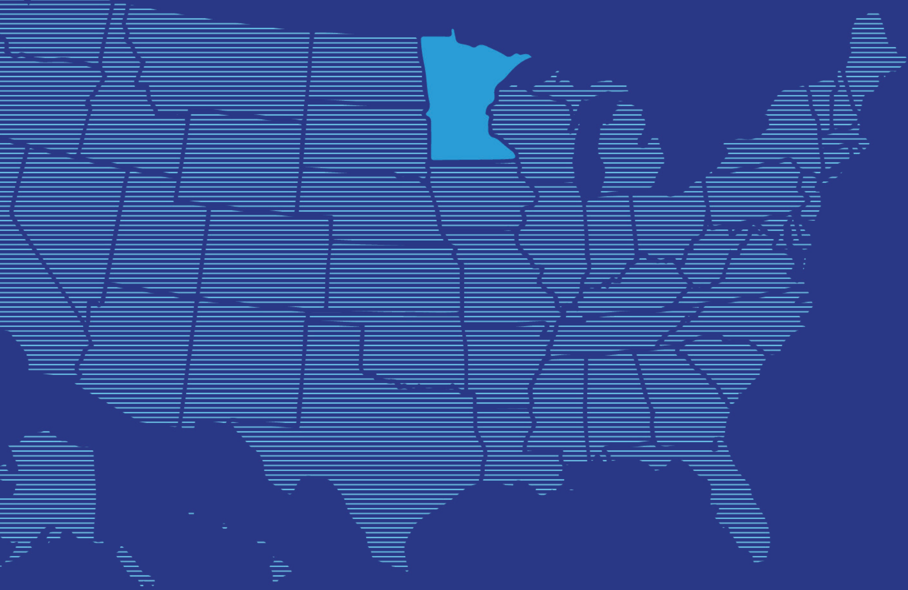

Larkin Hoffman

BRINGING YOUR BUSINESS TO THE UNITED STATES

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INTRODUCTION

Larkin Hoffman works with many global companies in Minnesota and throughout the United States. For nearly seven decades, we have assisted organizations in establishing and expanding a wide variety of businesses ranging from manufacturing and medtech, to restaurants and real estate. This guide will address some of the common questions you may encounter while bringing a business to the United States and, hopefully, help you avoid pitfalls and unwanted outcomes.

Our firm is happy to call Minnesota home. Minnesota offers a strong economy, an educated workforce, a supportive business environment, and a high quality of life, making it an attractive location for business. The state has a strong culture of innovation, a high concentration of Fortune 500 companies, and a vibrant startup ecosystem.

Minnesota's diverse economy spans a wide range of industries such as agriculture, manufacturing, technology, healthcare and financial services. This diversity provides a stable economic environment and multiple opportunities for businesses to thrive. We have a supportive business environment with a government that is proactive in helping businesses succeed. This includes offering various incentives, grants and tax credits to businesses.

INTRODUCTION

Our state has a highly educated workforce providing businesses with access to skilled labor and strong infrastructure in place, including a robust transportation system, reliable utilities and high-speed internet access. We consistently rank high in quality-of-life indices which include access to healthcare, education and recreational activities. This high quality of life helps Minnesota to attract and retain a talented workforce.

Minnesota's central location in the United States makes it an ideal hub for businesses that need to transport goods and services across the country. It is also very convenient for managing matters in multiple legal jurisdictions. Compared to other states, Minnesota has a relatively low cost of doing business including competitive utility rates and affordable real estate. Finally, we have a strong global presence with many businesses operating internationally.

In addition to Minnesota having a diverse economy, supportive business environment, an educated workforce and a high quality of life, we have a strong historical and cultural connection to Norway!

BUSINESS **CONSIDERATIONS**

Your company started with an idea and has built a brand and value through hard work. Preserving your business's reputation for innovation and success while expanding to a new market is a balancing act. It involves maintaining the quality and essence of your product or service while adapting to the local needs and preferences. We understand your focus will be on your business:

Understanding the U.S. Market: Researching the demand for your product or service and understanding the customer needs, preferences and behaviors, as well as the competitive landscape.

Hiring Local Talent: Hiring local talent to collaborate with your existing team may help you better understand and adapt to the local market. It can also help you build relationships with local businesses and organizations.

Maintaining Quality: Quality is key to preserving your reputation for innovation. You will be taking appropriate measures to ensure that the quality of your products or services remains high and consistent.

Building Strategic Partnerships: Building strategic partnerships with local businesses or organizations may help you quickly establish a presence and gain credibility in the U.S. market.

Implementing a Robust Marketing Strategy: Creating a robust PR and marketing strategy to build awareness and credibility in the U.S. market may involve a combination of traditional and innovative marketing efforts.

Acquiring or Leasing Real Estate: Establishing your company here may involve putting operations on the ground. You may need offices and facilities for creating and distributing your product.

Customer Service: Providing excellent customer service to build trust and loyalty among your U.S. customers may involve setting up a local customer service team or providing customer service through various channels such as phone, email, or social media.

All these essential functions require careful consideration of the legal matters that apply in local, state and federal jurisdictions. We are here to guide you through the maze of legal challenges.

LEGAL **CONSIDERATIONS**

We assist companies from Norway and around the world to successfully establish their presence in the United States. Becoming familiar with the intricacies of the U.S. legal system can be challenging, given the vast differences in regulatory frameworks, business cultures and legal requirements. Here is a brief overview of some key areas of business law that will need to be considered:

Entity Selection and Formation: Determining the most suitable business entity type (e.g., corporation, limited liability company, partnership) for the company's goals and needs. Each entity type has its own advantages, disadvantages, tax implications, and legally required structure.

Federal, State, and Local Regulations: Understanding the specific requirements of the state in which your business plans to operate (e.g., Minnesota). This includes obtaining the necessary licenses and permits, as well as understanding local tax obligations.

Employment Laws: Becoming familiar with federal and state employment laws. This encompasses areas such as wages, workplace safety, employee rights and visa/work permits for any employees coming from Norway.

Taxation: Understanding the tax obligations for foreign companies operating in the U.S. This includes federal taxes, state taxes, sales taxes, and potentially other local taxes.

Intellectual Property Protection: If the company has trademarks, patents, copyrights, or trade secrets, it will need to ensure these are protected under U.S. law.

Contracts and Agreements: Ensure that any contracts or agreements the company enters into satisfy U.S. law and protect the company's interests.

Real Estate and Zoning Laws: If the company plans to purchase or lease property, it will need to understand local real estate and zoning laws.

INTELLECTUAL PROPERTY

Every business owner knows the importance of value, margins and competitive advantage. While these aspects of a business can be achieved in many ways, managing intangible assets and intellectual property is a key undertaking. Making a profit is vital to maintaining a sustainable business, which can be enhanced by careful consideration of a businesses' intellectual property strategy.

Recent studies have suggested that intangible assets of companies in the S&P 500 currently account for approximately 80-90% of total assets. These intangible assets include your company's intellectual property, such as inventions, designs, artistic works, literary works, images, computer code, know-how, business strategies, market knowledge, etc. Various tools exist to protect these intangible assets, including patents, trademarks, copyrights and trade secrets. Developing a strong intellectual property strategy that effectively uses these tools can provide you with a distinct and unique advantage over your competitors and provide valuable differentiation in the marketplace.

It is imperative to take necessary steps to protect your intangible assets, which may require filings with government agencies, or may require implementing internal safeguards to maintain value. For patents and trademarks, filing an application with the United States Patent and Trademark Office (USPTO) is a necessary first step in obtaining protection. However, the subsequent steps are often more complicated. The USPTO will examine your application (both patent and trademark) and determine whether your application is available for protection. During this process, it is advantageous to signal your rights to others, for example by marking products as "patent pending" or using a trademark designation in connection with a selected trademark.

Just as it is important to protect a company's intangible assets, avoiding the risk of infringing the intellectual property rights of third parties is paramount in deriving value from your intangible assets. When selecting a trademark, it is critical you conduct a search to identify potentially conflicting marks. Likewise, conducting a "freedom-to-operate analysis" prior to releasing a product can prevent undesired patent litigation.

After taking steps to identify and protect your intellectual property, businesses need to continually align intellectual property strategy with their overall business activity and goals. In certain situations, your business may want to license its technology to encourage adoption across an industry. In other situations, an enforcement action is more appropriate to stop a competitor from copying intellectual property. Regardless, your intellectual property strategy should work in concert with business goals to sustain your company's competitive advantage in the long run.

REGULATORY AND COMPLIANCE **MATTERS**

The United States consists of 50 separate states and several territories, each with its own jurisdictional framework. In addition to federal agencies, within each state there are additional political entities, i.e., counties, cities, and townships. These different jurisdictions can have laws, regulations, and ordinances that can affect businesses differently. This section provides a non-exhaustive list of common sources of laws and regulations in the United States:

Federal Jurisdiction:

- **United States Patent and Trademark Office (USPTO):** The USPTO handles filing and processing of patent and trademark applications to provide nationwide protections for intellectual property.
- **Food and Drug Administration (FDA):** The FDA regulates the manufacture and sale of food and beverages, medical devices, drugs, and cosmetics. Depending on the product, registration, listing, or approval from the FDA may be required.
- **Employment Law:** There are federal laws regulating employment relationships, including minimum wage and overtime pay requirements (, non-discrimination in the workplace, and interactions between employers and employee trade unions.

State Jurisdictions:

- **Registration:** A business must register in each state in which it does business. Registration is typically done with the state's Secretary of State or similar agency. Similarly, state laws govern how a business (e.g., a corporation, a limited liability company, a partnership, etc.) must be organized and governed.
- **Licensing:** States often require licenses for certain types of businesses, including drug manufacturing, professional services (engineering, architecture, medical/cosmetology), alcohol and cannabis-related businesses, and businesses that produce emissions or environmental waste.
- **Employment Law:** In addition to federal laws, most states establish laws and regulations governing employers and employees. These can include standards related to non-discrimination and disability accommodation, workplace safety, vacation and sick leave, pay and overtime, and other requirements. State employment laws can be more restrictive than federal laws but cannot excuse businesses from complying with federal law.
- **Grants and Tax Credits:** States may offer grants or tax credits for businesses seeking to relocate. These often require meeting certain minimum investments, minimum wages, and employment goals.

County and City Jurisdictions:

- **Employment:** Cities and counties may also adopt regulations and laws governing employers and employees, which may be more strict than state and federal rules.
- **Zoning and Land Use:** The use of land is typically regulated by cities and counties. It is important to confirm that proposed business activities are allowed at a certain location. Industrial and manufacturing uses are often subject to more stringent limitations.
- **Licensing:** Cities and counties often require licenses for certain types of businesses, including the sale of alcohol and cannabis-related products.
- **Grants and Tax Credits:** Cities and counties may offer grants or tax credits for businesses seeking to relocate to their jurisdictions. These often require meeting certain minimum investments, minimum wages, and employment goals.

LITIGATION

The U.S. legal system has a reputation of producing frequent and costly lawsuits. However, our experience is that with appropriate precautions, the risks of lawsuits is manageable, and many companies operate for years in the United States without ever becoming a party to legal action.

Preventative Measures:

- **Contracts:** Verbal agreements, “handshake deals,” and high-level term sheets may seem sufficient, until unexpected events occur and disputes result. Your business benefits from having well-drafted contracts that allocate risk, set expectations, and specify dispute resolution procedures.
- **Insurance:** Obtaining the right insurance can help ensure that if a claim occurs, your business has coverage for liability and defense costs (court and attorney fees) incurred as the result of a lawsuit.
- **Corporate Structure:** The creation of a U.S. subsidiary can help shield an international parent company from liability and simplify some aspects of operation across borders.
- **Legal Compliance:** The United States has a patchwork of national, state, and local laws, and it is important to get advice from experienced professionals about local legal requirements applicable where you will operate within the United States.

When preventative measures are not enough:

Sometimes, despite the best preparations, commencing litigation is necessary. Lawsuits in the United States can be brought in federal court, state court, or through binding arbitration.

- Federal courts are found in all 50 states, the District of Columbia, Puerto Rico, and other U.S. Territories. Judges in federal courts are selected by the President of the United States and appointed for life. Federal courts hear disputes involving certain national laws (including copyright, trademark, patent laws, and certain employment discrimination laws), as well as disputes between residents of different states if they meet certain criteria. Federal courts are very formal and have strict rules about how lawsuits must proceed. Cases may be decided by a judge, or by a jury of randomly selected U.S. citizens.
- State courts are managed by each individual state. Judges in state courts may be appointed by governors or legislatures or elected by voters. Each state’s courts have jurisdiction to hear disputes that have a connection to that state – for example, the dispute arose within the state, or one or both of the parties is located within the state. Like federal courts, state courts are very formal and have strict rules about how lawsuits must proceed, but the rules vary from state to state.
- Arbitration is a less-formal process in which parties agree to have a neutral decision maker resolve their dispute. Parties must agree to use arbitration but can agree in advance that any disputes will be resolved by arbitration and specify what rules will apply to the arbitration proceeding. Unlike a court proceeding, the parties will jointly select the arbitrator that will resolve their dispute. After hearing all of the evidence, the arbitrator will issue a decision, which can then be “confirmed” in a state or federal court through an expedited process. There are no juries in arbitration proceedings.

REAL **ESTATE**

If your company intends to have a physical presence in the United States for employees, manufacturing, or distribution, there are several aspects to consider and depending on your intended operations.

Leasing

- **Considerations:** Important considerations for leasing space include term and renewal, your proposed use, termination circumstances, and costs imposed on you as the tenant such as taxes, common area maintenance (CAM), communal expenses, and utilities.
- **Insurance:** Many leases will require tenants to have insurance to protect the leased space.

Development/Construction

If your business is seeking to develop a facility to operate in the United States, the considerations will be different than leasing.

- **Permitting and Approvals:** The permitting and approval process will depend on the jurisdiction and type of facility. At a minimum, you will need to evaluate building permits, zoning approvals, and environmental permits (if applicable).
- **Contracting:** If you are developing a facility or property for your company's use, it will be important to have contracts documenting your agreement with the architect and any contractors involved.
- **Acquisition of Property:** Prior to acquiring property, it is important to ensure that you have a clear purchase agreement and title insurance to ensure that the seller has the authority to sell you the property you intend to acquire.

Zoning

- **Zoning Approval:** Prior to signing any lease or acquiring property, it is important to confirm that the proposed use/activity is allowed. This may require additional public hearings before the local planning commission or City Council.
- **Industrial Uses:** Certain types of industrial or manufacturing uses are more strictly regulated.

Land Ownership

- **State by State Restrictions:** Some states restrict the sale of certain types of land to foreign corporations or citizens. These typically only apply to agricultural land and adjacent to sensitive land (e.g., military installations, critical infrastructure, ports, etc.), but some states have broader restrictions.

EMPLOYMENT

The United States offers significant flexibility to employers in setting the terms of an employment relationship. While there are federal, state, and local laws that apply to employment, even “employee-friendly” states have far fewer regulations and worker protections than most European countries such as Norway. This section identifies some of the significant features of United States employment law.

At-Will Employment. The default rule in the United States is “at-will employment.” This means that either the employer or the employee can terminate employment at any time, with or without notice, and with or without justification. Exceptions exist, for instance, when a contract eliminates the presumption of at-will employment.

Discrimination and Retaliation Laws. Federal and state employment laws prohibit adverse employment actions (such as terminations, demotions, or harassment) against employees due to protected characteristics, such as gender, age, race, religion, or health conditions, or in retaliation for exercising legal rights. Employment laws require employers to provide reasonable accommodations for employees with disabilities.

Employee Leave Laws. Employers are not legally required to provide employees with vacation or holiday time, though most employers choose to offer some amount of paid time off to employees. Federal laws and many state laws require employers to provide paid or unpaid time off to employees to address certain medical or family needs or to complete military service. **Health Care and Retirement Benefits.** The United States does not have universal health care for all residents. As a result, most employers in the United States choose to offer employer-subsidized health insurance to their full-time employees. It is also rare for employers in the United States to offer defined-benefit pensions to employees. Instead, most employers allow employees to defer a portion of their salary into individual retirement savings accounts.

Labor Law and Unions. Federal laws protect employee rights to cooperate and organize with each other regarding the terms and conditions of their employment, and to form a union to negotiate the terms and conditions of employment with employers.

Non-Competition Agreements and Trade Secrets. Some states allow employers to require employees to agree not to work for competitors or solicit customers after the termination of employment, while others prohibit or sharply limit the practice. Employers commonly require employees to sign confidentiality agreements. Federal and state laws provide protections for confidential trade secrets and may prohibit employees from keeping and using confidential information qualifying as a trade secret after the termination of employment.

Independent Contractors. Workers in the United States may also be classified as “independent contractors” instead of regular employees if certain criteria are met. Many employment laws do not apply to independent contractors, but misclassification can result in significant penalties.

VISAS AND **IMMIGRATION**

The United States has a complex visa and immigration system. In general, foreigners wanting to travel to the United States can obtain visas in two broad categories:

Temporary Visits

Those wishing to temporarily visit the United States, but not permanently move here, can obtain a short-term visa. A short-term visa may allow a length of stay of only 90 days, or several years depending on the type and eligibility. Some short-term visa programs have caps on the number that can be issued each year, limiting their availability and utility. However, an individual that enters the United States on one type of visa may be eligible to convert their visa to another type after arriving.

Visa Waiver Program: Many countries, including Norway, participate in the Visa Waiver Program that allows temporary visits of 90 days or less without obtaining a visa. Certain eligibility requirements must be met. The visa waiver program does not allow employment within the United States.

B Temporary Visitor Visa: A Business (B-1) or Tourism (B-2) visa allows short term stays in the United States. Applications and an interview are required. B-1 visas have an initial duration of up to 6 months and can be extended in some cases to up to 1 year. Temporary visitor visas do not allow employment within the United States.

Temporary Worker Visas: The United States offers a variety of temporary worker visa programs, all with different eligibility requirements.

- **L Visa:** Available for intracompany transferees, an L visa may work well for businesses looking to temporarily transfer executives and skilled employees from their home country to the United States set up a new office in the US. L visas allow an initial stay of up to one year (3 years in some instances) and can be extended in some circumstances.
- **H-1B and H-2B Visas:** Temporary worker visas are available if a business can establish that there are not enough U.S. workers who are able, willing, qualified, and available to perform certain temporary work. The length of stay permitted under these visas varies.

Permanent Immigration

It is more difficult to obtain an immigrant visa that allows permanent residence and work in the United States. Immigrant visas are available for certain professionals and highly skilled workers, as well as entrepreneurs who invest significant sums of money to open or expand businesses within the United States that create new jobs. Family-based immigration is also possible if an immediate family member is a United States citizen or permanent resident. If you are considering permanently immigrating to the United States, a consultation with an immigration law advisor is necessary to discuss your unique situation.

Useful Resources:

The United States Citizenship and Immigration Services website offers a helpful overview of the different visa types, requirements, and benefits:
www.uscis.gov/working-in-the-united-states

OUR **TEAM**

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DISCLAIMER: This guide is based on regulations and guidance in existence at the time the guide was prepared. All such information is subject to change. This guide is not intended to constitute legal advice.