How to set up a Subsidiary in the USA
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A subsidiary is a company that is fully- or mostly owned by another company. Very often, when an existing company wants to expand its operations into another country, it will set up a new subsidiary in that country. (See my article: http://usa-corporate.com/articles/05052005.pdf). Technically, the process of setting up a subsidiary is extremely simple, since a subsidiary is nothing more than one company owned by another. After the new company is formed, all of the shares are issued to the existing company and a subsidiary relationship exists. Naturally, if this was all that was required, there would be no need for an article like this. The assumption here is that the reader is not from the United States of America, and is interested in setting up a company to carry out a business purpose in the USA, and the parent company is a small to midsize firm.

One option is to take the easy way out: to use a consulting service like ours to help you analyze your needs, find appropriate resources, such as legal and accounting help that is familiar with companies of your size and budget, find an appropriate location, set up operations, recruit employees, assist with visas and immigration, and generally help get the company started quickly and earning a faster return on investment. Whether using a consultant, or handling all the details in house, an understanding of the steps involved will make your life easier. This article explains the process of setting up a subsidiary in the United States.

First, a clear idea of (1) what the parent company does and (2) what the subsidiary will do is required. Ideally, a business plan should be put together to ask the critical questions: Why is there a subsidiary, and what will it do (marketing, sales, distribution, operations, back office, research and development, manufacturing), who will run it (locally recruited management, or will the parent company send management), how much capital is required and how long will it take for the subsidiary to become profitable, how much capital is available (investment capital from the parent company, loans from the parent company, bank loans, raising venture capital, going public on NASDAQ, American Stock Exchange or New York Stock Exchange), how soon will it be expected to be operating, how important are economic incentives, how regulated is the industry, and how does all this fit in with the other priorities of the parent company.

These questions are the starting point for an analysis of the many options available. If the parent company sells luxury goods, and the subsidiary is being set up to allow the company to add "New York" or “Beverly Hills” to a list of global cities that the company operates or sells in, then the further requirements will be minimal: an address and phone number, maybe a receptionist. However, If the subsidiary will be operating a bank, a national cellular telephone network or manufacturing jet engines, then of course the capital requirements and regulatory hurdles will be much greater.

The business plan will organize the answers to these questions into a roadmap that the subsidiary’s management and advisors can follow, to quickly and effectively get the subsidiary started and measure its progress. The business plan should not be a rigid container that will prevent the subsidiary (or parent) from learning and adapting as time goes on. Instead the plan should act as a tool to let management know how well the company is progressing, and whether adjustments should be made.

Secondly, now that management has a clear idea of what to do, it is time to assemble the legal and accounting team to come up with the appropriate options for best location, best type of entity to use and what jurisdiction to incorporate it in, drafting the incorporation documents, bylaws or operating agreement, determining whether to buy or lease real estate, determining what permits will be required (if any), setting up a bookkeeping system, deciding whether to use local managers and directors or getting the appropriate visa for foreign management to come. (See our article about immigration visas at http://usa-corporate.com/articles/05172005.pdf)

The type or types of legal assistance that the subsidiary will need varies considerably. A mid-sized firm might not need all the frills (and expenses) of a 1000+ lawyer firm for its day to day legal work, and a small-sized subsidiary can almost certainly conserve a lot of funds and use a small-but-experienced boutique law firm that specializes in international law.

The capitalization of the firm and whether it intends to go public will also affect the type of law firm needed. A smaller sized firm that is privately held and financed will not need the same legal help as a firm that seeks to get listed on a public stock exchange.

Where to incorporate and where to be located are actually two different matters. Each State, as well as the District of Columbia and the US possessions such as Puerto Rico, Guam and the Mariana Islands, has its own laws regarding the incorporation and governance of business entities. A company does not have to be incorporated in the jurisdiction where it is located; therefore a company is free to pick the jurisdiction that has the laws most favorable to it. The State most favored by large corporations is Delaware, because the Delaware laws tend to be favorable to management decisions, it has a special court (Court of Chancery) which deals with only with business cases and has very consistent court rulings. A subsidiary can be incorporated in Delaware, then registered to do business in any State where it will do business.

The issue of management is significant, since the subsidiary must decide whether to use local managers or foreign managers. Local management would be assumed to be familiar with local needs as well as local resources, but may not be familiar with the parent company's corporate culture, priorities, strategy and long-term goals. Foreign managers will not only have to learn to adapt to local ways, find reliable and appropriate professional resources and perhaps also overcome language barriers, they also will need to apply for work visas. An immigration assistance firm, or immigration law firm, can help with the applications for the appropriate visas for the manager as well as the manager's family.

Many foreign firms coming to the USA have neglected to look beyond this point, because they have relied on the foreign branch of a US law firm to help them get started. While this is convenient, and can appear to be a fast and easy way to get started, quite often the law firm does not know the appropriate support firms in areas like marketing, business planning, employee recruiting and other areas. The firm's US offices may not have the time or motivation to do more than cursory assistance in non-legal matters, as the staff will be more concerned with billable hours. Therefore, management arrives in the US and realizes that startup process has barely begun.

Third, management will need to consider marketing, public relations, lobbying and other methods of getting the company's message across to the appropriate audience. A marketing team familiar with the opportunities and pitfalls of the local and national market should be developed and the marketing plan put together. A sales office will likely be needed, including a sales manager capable of recruiting qualified sales staff and working with the marketing department. To further their marketing efforts, a good public relations firm can help to give the firm a positive image and aid the advertising effort. Furthermore, depending on the nature of the business, many foreign firms should consider hiring a lobbying firm to look out for their interests in the capital of any State they are operating in, as well as in Washington, DC. If a firm has taken advantage of special state incentives, for example, a lobbying firm can alert the firm to sudden changes in state government policies or legislative priorities.

At the same time, the operations of the company must be set up, in order to carry out the business and marketing plans. Locating the business units should be carefully thought out, depending on the objective. Management needs to set the priority of location from possibly conflicting needs: should the business be located

- Close to customers, perhaps in a big city or a particular State or region?
- Close to similar businesses, to draw on synergies (e.g. Silicon Valley for electronics)

- Where labor and land costs are low, for manufacturing?
- Near universities and research centers, for cooperative projects with educational and governmental organizations?
- Near centralized distribution areas, so that products can be easily, quickly and cheaply distributed throughout North America?

Furthermore, perhaps the subsidiary should set up different operations in different locations, for example setting up its headquarters in a large city but setting up the actual manufacturing plant in a lower-cost area.

Human resources, the staff that will carry out the business and marketing plan, is another critical component. T the objectives of the subsidiary, the available labor near the site of the business and the budget of the company will all have an impact on the hiring process. For foreign managers, it is almost certainly better to rely on a professional employment agency that is familiar with the needs of a company like theirs than to try to directly advertise and recruit personnel.

In summary, there are three main stages of setting up a US subsidiary: assessing the situation and putting together a plan of action, putting together the management team and its advisors, then executing the plan. In a nation as vast as the United States, it is very complicated to come with a perfect plan, but at the same time there are so many viable options to choose from that as long as management has the flexibility to make changes and corrections, the company should off to a successful start.