WILLIAMS MULLEN

TOP TEN (10) FAQ for Foreign Companies Establishing Business Operations in the United States

DOING BUSINESS IN THE U.S. DOESN'T HAVE TO BE COMPLICATED

06.17

Eliot Norman
Partner – Immigration/Foreign Direct Investment
T: 001.804.420.6482
enorman@williamsmullen.com

Hon. Patrick O. Gottschalk
Partner – Economic Development
T: 001.804.420.6425
pgottschalk@williamsmullen.com

WILLIAMS MULLEN
findingyes®

WILLIAMSMULLEN.COM/FDI

TABLE OF CONTENTS

INTRODUCTION

The United States is the largest and most exciting market in the world. It is a free market system which affords unrestricted access for foreign companies looking to conduct business here. It has favorable employment, tax and trade laws. It has a reliable legal system which provides a sound foundation for foreign companies to sell products and services, raise capital, locate strategic partners, conduct mergers and acquisitions and undertake public offerings here. As a major technology center, it presents unrivaled opportunities for companies in the computer, software, telecommunications, media, e-commerce and biotech industries.

This guide provides an introduction to the major business and legal issues to be considered by foreign companies in establishing business operations in the United States. It is intended as a starting point for analysis in this area, but is not intended as a definitive analysis of these issues. If the reader has questions about the topics discussed, we would be pleased to provide additional information and you are invited to contact the author or any of the other attorneys at Williams Mullen.

FAQ #1: Is there a Commonly Used Checklist for Setting up Business Operations or an Office in the United States?

We welcome you to our country and wish you prosperity and success in your business here.

A. Form U.S. entity, preferably with limited liability

- Adopt Articles of Incorporation; Bylaws; Organizational Minutes
- Appoint board of directors (1 or more persons)
- Appoint officers (president, secretary, treasurer)
- Issue shares to owners or parent corporation

B. Conduct trademark (name) search; verify that company name and important product names are not used by other parties; file trademark application to protect company name, logo and key product names

C. Reserve and apply for Internet domain names

D. Apply to Internal Revenue Service to obtain Employer Identification Number; register with state tax authorities.

- Normally parties apply for the Employer Identification Number on IRS Form SS-4, Application For Employer Identification Number
- If the signatory executing Form SS-4 does not have a social security number, however, such party must apply for an IRS Individual Taxpayer Identification Number on IRS Form W-7, Application For IRS Individual Taxpayer Identification Number

E. File local company registrations

- If a company is incorporated under the laws of one state (e.g., Delaware) and has offices in a second state, it must file registration documents in the second state referred to as "Qualification of Foreign Corporation To Conduct Business"
- Local city or county registration

F. Execute lease for office space

G. Open bank account

FAQ #1: continued

H. Obtain visas for key foreign persons who will be working in the U.S. or helping in setting up the U.S. office; comply with I-9 and E-Verify procedures for verifying the identity and work authorization of each new hire.

I. Hire initial employees; begin process for federal and state tax withholding, FICA and similar items

J. Arrange for employee health insurance and other insurance

K. Have all employees execute Employee Confidentiality Agreement

L. Consider employee compensation incentives such as incentive stock options or similar benefits (common in U.S. technology companies); adopt qualified or non-qualified stock option plan

M. Conform key contracts to U.S. law in state where office will be situated.

N. Consider filing for patent protection under business process patent laws for technology products and e-commerce processes (common in U.S. technology companies); file U.S. registrations for patents obtained in foreign countries.

FAQ #2: What are the Legal Forms for Conducting Business in the United States?

One of the most important considerations for a foreign entity in establishing a business in the United States is the selection of the form of business entity. A variety of considerations must be addressed in making this determination, including the organizational structure of any existing business, tax concerns and the type of activity that the foreign investor intends to pursue in the U.S.

Types of Entities. There are numerous types of entities used by foreign companies to conduct business in the United States, including corporations, limited liability companies, partnerships, limited partnerships and branch office operations.

Limited Liability Entity. It is advisable for the foreign company to insulate itself from liabilities which might arise in the United States. To achieve this goal, we generally recommend that foreign companies conduct their operations in the United States through subsidiaries which are limited liability entities such as corporations or limited liability companies. With such entities, liabilities which are incurred in the United States usually are retained at the entity level and do not pass up to the parent company.

Corporation. The corporation is the most common form of business entity in the United States. It has limited liability and a separate legal existence from its shareholders. A corporation is managed by a board of directors and officers. It is suitable for public or private ownership. Key organizational documents are the Articles of Incorporation and the Bylaws.

Limited Liability Company. The limited liability company has certain attributes of a corporation and certain attributes of a partnership. It is normally structured like a general partnership, but unlike a partnership its members have limited liability (in a general partnership the partners have full liability for all of the liabilities of the partnership). It is normally managed by a managing member (similar to a managing partner in a partnership), but can also be structured to be managed by officers and directors. The fundamental documents of a limited liability company are the Articles of Organization and Operating Agreement.

Preferred Type of Entity. Corporations do not have "flow through" tax treatment and hence are required to file tax returns. Limited liability companies, on the other hand, have "flow-through" tax treatment and are not required to file income tax returns; rather their parent companies must file income tax returns in the United States. Since most foreign companies do not want to file tax returns in the United States, the preferred form of entity for U.S. operations of foreign companies most often is the corporation.

Entity Selection Summary

	Partnership	Limited Partnership	Corporation	LLC Limited Liability Company
Legal Status	Separate legal entity	Separate legal entity	Separate legal entity	Separate legal entity
Liability of Members	Unlimited liability for all partners	General Partners have unlimited liability. Limited partners have limited liability	Limited liability	Limited liability
Disclosure of Identity of Owners	No disclosure	Limited partners must be disclosed in filing with Commission	No disclosure	No disclosure
Incorporation/ Organizational Requirements	No filing required. Few other formalities with respect to documents	Limited Partnership must be registered by filing of certificate of limited partnership with the Commission	Incorporated by filing with State Corporation Commission	Organized by filing with State Corporation Commission
Appointment of Registered Agent	No	Yes	Yes	Yes
No. of Members	Minimum of 2 persons; No maximum	Minimum of 2 persons; no maximum	Formed by 1 person; No maximum	Formed by 1 person; No maximum
Tax Treatment	Tax transparent	Tax transparent	Taxable entity	Tax transparent
Required Annual Disclosures	None	None - certain information must be maintained for inspection by partners	Annual return and accounts	Annual return and accounts

FAQ #3: Should We Form Our Corporation in the State of Delaware?

Jurisdiction of Incorporation. Corporations and limited liability companies can be formed under the laws of all 50 states. Most corporations are formed under Delaware law due to low franchise tax and laws which are favorable to management. A party can form a corporation under Delaware law but establish its office and conduct its business in other locations.

Qualification. If a corporation is formed in one jurisdiction (e.g., Delaware) and has offices in another location (e.g., New York) the corporation must file a short registration in the jurisdiction where it conducts business (called "Qualification to Conduct Business").

More Complex Operations In the United States. Business operations can be expanded in the U.S. through a variety of means including through the use of affiliated corporations (e.g., a second corporation in the U.S. owned by the foreign parent company), a second-tier subsidiary (a second U.S. corporation owned by the first-tier U.S. subsidiary), or similar arrangements.

FAQ #4: What Taxes will the U.S. Subsidiary Corporation Pay?

Revenue generated by a U.S. subsidiary will be subject to taxation in the U.S. The taxes will be assessed at the federal and state levels, but additional taxes may apply. These taxes will affect all aspects of U.S. company operations. The U.S. tax code poses many traps for the unwary and setting up a corporation correctly from the start can help save heartburn, time and money in the future.

The following is a brief overview of some of the taxes and considerations that may be applicable to a U.S. subsidiary or that may arise out of a U.S. subsidiary's operations.

FEDERAL TAX

Income tax. Upon the organization of a U.S. entity, that entity must apply to the Internal Revenue Service (IRS) for an Employer Identification Number (EIN) to identify itself on all reporting requirements. The federal income tax rate applicable to a corporation depends upon many factors. Federal corporate tax rates range between 15% and 39%; the statutory corporate tax rate is typically 35%, although the effective tax rate may be lower. In certain cases, an alternative minimum tax may apply at a rate of 20%.

The taxable income of a U.S. company is based on gross income, not including exempt income, and reduced by deductions. In addition, the tax liability may be reduced by credits, such as general business credits and credits for foreign taxes paid by the company on its foreign source income. Incentives may be available by way of enhanced deductions or credits which serve to reduce taxable income. For example, in the last few years, Congress has provided credits for research and development completed in the U.S. as well as bonus depreciation for the first year that qualified property is placed in service. Tax professionals are waiting to see if these provisions will be extended again.

If the U.S. company engages in cross-border transactions, additional layers of analysis will be required to determine the effects on taxable income, tax liability and reporting requirements. Additional tax planning considerations may also be available.

One case example is the decision of whether to fund a company with debt or equity. The U.S. allows tax deductions for payments of interest, but not dividends, and therefore loan funding may initially look more favorable. However, the determination of whether interest is deductible is a multistep process.

- The U.S. employs a substance over form approach in determining whether an instrument is debt or equity, looking to such factors as rate of interest, documentation, and debt leverage of the borrower. If the IRS determines that an instrument is equity, it can disallow or limit previous deductions taken for interest payments.

FAQ #4: continued

- The U.S. has thin capitalization and earnings-stripping rules in place which can serve to limit deductions for payments of interest. The interest deduction may be limited where the company has excess interest for the year and has a debt-to-equity ratio which surpasses the stated threshold. In addition, in the case of payments made to non-U.S. recipients, interest deductions must be deferred until the income is received and included in income of the recipient.

Transfer pricing. The U.S. employs transfer pricing rules to ensure that related company transactions are carried out on an arm's length basis. The U.S. company will therefore need transfer pricing analysis and documentation for intercompany transactions between the parent and subsidiary such as services, interest and sales. Absent accurate documentation and support for the payments, the IRS is authorized to make transfer pricing adjustments which could result in increases to U.S. taxable income.

Foreign Investment in Real Property Tax Act. Ordinarily, the sale of shares of a U.S. company by a non-U.S. shareholder is generally not subject to U.S. taxation. However, where a non-U.S. person owns real estate directly or through a U.S. company, sale of the real property as well as dividends from, and sale of, the company shares may be subject to additional U.S. withholding and income tax liability, as well as documentation requirements including filing of a return by the non-U.S. person.

Withholding tax. A U.S. payor is required to withhold 30% of the gross amount of certain payments made to non-U.S. persons. The types of income which can be subject to withholding include dividends, interest, rents and royalties. However, the rate of withholding may be reduced either under U.S. domestic rules or under an applicable Income Tax Treaty.

For example, 30% withholding tax will be applicable on payments of dividends and interest by a U.S. corporation to a non-U.S. recipient. The rate can be reduced, even to zero in some cases, if appropriate documentation is provided by the recipient providing evidence of the recipient's eligibility under an Income Tax Treaty and the applicable lower rate. The recipient is usually required to meet the limitation on benefits test present in many treaties which generally requires the recipient to have some form of substance in its jurisdiction of incorporation to prevent "treaty shopping." The documentation required for this purpose for corporations is the W-8BEN-E, *Certificate of Entities Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities).*

This documentation is also used as part of the Foreign Account Tax Compliance Act (FATCA). This Act is meant to target non-compliance of reporting by U.S. taxpayers with foreign accounts. However, the rules generally require documentation and identification of many U.S. source payments to non-U.S. persons.

FAQ #4: continued

STATE AND LOCAL TAXES

State and Local Taxes ("SALT") touch every facet of a business. It does not matter if you are a start-up or an established business. It does not matter if you are operating as a sole proprietorship or a multiunit company with numerous subsidiaries and divisions across state and country borders. The concept of a permanent establishment is not an issue when it comes to SALT in the United States. Treaties may provide some very narrow protection, but as a rule, states are allowed to tax businesses without consideration of where the business calls home.

States now require that a business that wants to do business within that state register for tax at the same time the business registers to do business in that state.

SALT is divided based on the type of tax imposed by the states and the local jurisdictions.

Income/franchise tax. Income/franchise taxes are imposed on the income or gross receipts of the business activity. Almost every state has a corporate income/franchise tax. While a company may have net operating losses and have no taxable income, many states provide that a minimum tax has to be paid every year. Some states allow their lower level jurisdiction (e.g., city level) impose an income based tax as well. These taxes are in addition to the state level taxes.

Each state has its own rules for calculation and payment of the respective tax with complicated apportionment and allocation rules governing how the income should be divided among the states.

Sale and use taxes. Similar to VAT (EU) or HST (Canada) taxes, these taxes are transaction taxes and are imposed on a transfer of title, possession or use of tangible personal property or enumerated services in most states. The rates vary as does the base of the tax. While there are exemptions for the imposition of the tax, these exemptions are very narrow. Proof must be shown in order to obtain an exemption and records must be maintained to retain the benefit of the exemption. These taxes are imposed both retail sales from an actual tangible place of business and on electronic commerce transactions. This includes sales of tangible personal property and intangible property, such as music and software, and services such as data storage and data processing.

Again, each state has individual rules and regulations that must be followed and each state performs separate audits to confirm compliance.

Property taxes. Property taxes are imposed at the local jurisdiction and are imposed on both real and personal property. This means that not only are the land and building values taxes but the furniture, fixtures and equipment, including computers, are tax based on a value established by that state's rules. Long term leases may also be included in the definition of property interest.

FAQ #4: continued

Local level business licenses. Most every local jurisdiction imposes some sort of tax on the privilege of doing business in that jurisdiction. It can be based on gross receipts, number of employees, or type of business. The imposition and the calculation of the tax varies from jurisdiction to jurisdiction.

Employment taxes. These taxes are withheld from the employee's wages and/or represent the employer's portion of the tax. It also includes all unemployment taxes, used by the state to pay unemployment benefits to laid off employees. These taxes are considered money held in trust for the employees and are strictly enforced.

Unclaimed property. While this is not a classic "tax," unclaimed property is aggressively pursued by the states. It basically gives the states the right to claim property that belongs to another person "true the owner" so the state can hold it in trust for the true owner until the true owner can either be located or claim the missing property. An example is an uncashed vendor check.

Withholding issues. States also impose withholding requirements for income earned within that state both on a corporate and individual level. This is especially true on pass-through entities. Refunds of the amounts withheld require tax filings within the respective states.

CAUTION

Some businesses erroneously believe that they can do business in each state without having to register and adhere to each state's tax rules and regulations. States are making use of electronic registrations on the federal level to determine what businesses are doing business in their states and are aggressively going after businesses not compliance. States are also sharing information among themselves to cross check on businesses doing work in multiple states. An audit by the states and local jurisdictions can result in large assessments, penalties and interest that has the potential of affecting EPS.

FAQ #5: What Protections Exist for Intellectual Property?

The United States has strong intellectual property laws which grant valuable legal rights to the owners of such property to restrict others from using it. These proprietary rights in technology, inventions, software, business processes, creative materials and other intangible assets can be valuable in operating a business, raising capital, and pursuing exit strategies such as an IPO or acquisition. The benefits of such laws are available to foreign parties (such as foreign companies) as well as U.S. parties. These laws are highly technical, however, and special steps must be taken to register or otherwise comply with these laws or the owner will lose his legal rights in the intellectual property.

Trademarks. Unlike civil law countries, trademark and service mark rights arise in the U.S. from using the mark in commerce in or with this country. Important additional rights are obtained by federally registering trademarks and service marks with the United States Patent and Trademark Office (the "PTO"). Checking the PTO database of federal trademark registrations (www.uspto.gov) prior to introducing new trademarks or service marks is always prudent. It is important to remember, however, that many trademarks are never registered, so more comprehensive searching will be required to determine whether the proposed use may infringe a senior user's rights.

Copyright Interests. The United States, along with almost all other industrialized countries, is a party to the Berne convention. Under the Berne Convention, copyright protection exists from the moment of creation. Works first published in the United States, or in another country that is also party to the Berne Convention, are protected under U.S. copyright laws. Important additional rights can be obtained by registering the copyright with the U.S. Copyright Office. For more information visit the U.S. Copyright Office website at www.loc.gov/copyright/.

Patents. Foreign parties must apply for patent protection with the U.S. Patent and Trademark Office in order to obtain protection under U.S. patent laws, regardless of the existence of foreign patents. Failure to apply for patents in the U.S. could result in loss of valuable legal rights in company innovations. U.S. patent law has changed such that the "first to file" rule has replaced the "first to invent" rule. Foreign companies should consult competent patent counsel regarding any U.S. patent matters.

Business Process and Business Method Patents. The United States provides for broader patent protection than many foreign countries in the area of business processes, business methods, computer-aided business operations and certain types of software. Foreign companies should consider evaluating if their business processes or software programs can be patented in the United States, even if they cannot be patented in their home countries. Again, it is important to remember the filing deadlines outlined in the paragraph above.

FAQ #5: continued

Trade Secrets. Even if a technology or process cannot be protected under patent for copyright laws, it may be protectible under trade secret laws. If proper steps are taken, the owner of the intellectual property can preclude others from using the relevant technology, designs, methods of operation or other "know how" and maintaining a proprietary interest therein. The best example of this is the recipe for Coca-Cola, which remains a trade secret after more than 100 years. Obviously, know-how will only be treated as a trade secret by the law, if the owner treats it that way. Steps must be taken to keep the information secret. Such steps usually include utilizing confidentiality agreements, confidentiality provisions in employment agreements, limiting access to such materials through the use of passwords, physically secure areas, and distribution only on a "need to know" basis, and marking materials as proprietary and confidential.

If companies coordinate their U.S. and European patent and trademark filings and comply with international treaty requirements (including certain 12 month and 6 month time limits), then they may obtain improved priority claims for their patent and trademark rights in the U.S. A thorough review of existing European rights is therefore recommended prior to arriving in the United States.

FAQ #6: What Visas Will Your Foreign Company Require To Start Up Operations In the United States?

A critical step which should be taken at the outset of any proposed project in the United States is to formulate an effective immigration strategy for non-U.S. nationals. The immigration strategy will vary depending on the nature of the project, the purpose of the entry of the non-U.S. nationals into the United States, and other factors. The fundamental underlying immigration principles which should be observed are that (1) no person can enter the United States without appropriate documentation or status, and (2) no person may engage in employment in the United States without appropriate authorization. An effective immigration strategy will address both of these principles.

Set forth below are descriptions of various types of nonimmigrant visa categories which may be obtained to enable non-U.S. nationals to enter, and, in some circumstances, be employed in the United States and some basic information regarding permanent residency. The list is not exhaustive, and focuses primarily on "business visa" categories. Bear in mind that an effective immigration strategy may require the use of more than one type of visa category at different or successive times to ultimately accomplish the objectives of a given non-U.S. national.

B-1 Visas (Visas for Business Visitors). The B-1 visa is the most commonly issued visa for business visits of short duration to the United States. B-I visas are typically issued by U.S. Consulates abroad and permit recipients to visit the United States temporarily for business purposes which do not involve gainful employment. Permissible activities include: investigating possible business opportunities, negotiating contracts, attending conferences, consulting with colleagues, and establishing initial contacts. The B-1 visa category is often used by persons seeking to visit the United States for purposes of assessing or investigating a prospective project opportunity or of coordinating the initial steps to establish an operation. Nationals of most major trading partners with the United States are permitted to enter the United States in B-1 Business Visitor status without first having to obtain a B-1 visa pursuant to a program called the "Visa Waiver Program." Under the Visa Waiver Program, non-U.S. nationals can enter the United States in B-1 status without a visa for a maximum of 90 days. Persons entering the U.S. using the Visa Waiver Program cannot change or extend their status and must depart at the end of their authorized stay.

L-1A and L-1B Visas (Visas for Intercompany Transferees). The L-1 category of visas is used to facilitate the transfer of non-U.S. nationals from qualifying affiliates abroad to establish qualifying operations in the United States for periods ranging from five to a maximum of seven years. The L-1 visa category can also be used in limited circumstances to transfer staff from abroad to qualifying "new" offices in the United States. L-1 visas enable specialized knowledge employees, managers and executives of a non-U.S. company or operation abroad to transfer to the U.S. to be employed by the U.S. parent, subsidiary, branch, affiliate of the non-U.S. company or operation. To qualify for L-1 status, the

FAQ #6: continued

employee being transferred must have been continuously employed by the foreign company abroad for at least one year within the previous three years. L-1 visas are typically issued at a U.S. Consulate abroad after a petition approval is first obtained from the United States Citizenship and Immigration Services (USCIS) in the United States. Blanket L-1 procedures can expedite the process and lower costs by permitting direct filings with the U.S. Consulates. Spouses of L-1 visa holders receive L-2 visas and can work while in such status.

E-1 and E-2 Visas (Treaty Trader and Investor Visas). The E visa category is often used by persons seeking to enter the United States to establish a new operation because the application process is initiated and completed, in many cases on an expedited basis, at a U.S. Consulate abroad and no pre- approval from the USCIS is required. An E visa permits the recipient to enter the U.S. for renewable incremental periods of between one and two years per entry under the provisions of a treaty between the United States and the foreign state of which he is a national (1) to trade principally between the United States and the foreign state (E-1); or (2) to develop and direct the operations of an enterprise in which he or his foreign employer has invested or is actively in the process of investing, a substantial amount of capital (E-2). Foreign nationals may be classified as treaty traders or investors if they have the same nationality as the entity abroad, and are engaged in an executive or supervisory capacity, or have special qualifications essential to the enterprise. The spouse of an E-1 or E-2 visa holder can obtain work authorization.

H-1B Visas (Visas for Professional Workers and Workers in Specialty Occupations). The H-1B visa category is frequently used to enable persons to enter the United States to be employed in professional or specialty occupations for periods of up to six years. Unlike the L-1 visa, no qualifying relationship need be established between the entity or operation abroad at which the non-U.S. national may be employed and the U.S. employer. To qualify for an H-1 B visa, the beneficiary must have a U.S. bachelor's degree, a foreign equivalent or equivalent qualifying experience in a specific area of study, and be coming to the U.S. to perform a position which requires a bachelor's degree in that area. The spouse of an H-1B receives an H-4 visa and cannot work while in such status.

TN Status (Status for Canadian and Mexican Trade NAFTA Professionals). Citizens of Canada and Mexico are permitted to enter the U.S. to work in certain professional positions enumerated in the North American Free Trade Agreement. TN status is valid for up to three years and can be renewed. Canadians can apply directly at the border or pre-flight inspection post. Mexican must apply at the U.S. Consulate for a TN visa.

Permanent Resident Status (Also known as the "Green Card"). The visa categories discussed above are exclusively for "temporary" entries into the United States, even though "temporary" may mean a period of several years. U.S. immigration law also permits non-U.S. nationals to seek permanent resident status, if they qualify and if they navigate through the often time- consuming process to obtain such status. Such status enables the beneficiary to reside and work permanently in the United States. Permanent resident

FAQ #6: continued

status is typically obtained through employer or family sponsorship. Employer-based cases are often initiated with the process of testing of the local labor market, known as a labor certification or PERM. An alternative EB-1 process allows multinational managers or executives to avoid the recruitment or PERM process by filing petitions and applications directly with the USCIS, thereby shortening the waiting time for Green Cards. Permanent resident status (EB-5 visa) may also be obtained by investing $1 million in a qualifying commercial enterprise in the United States (or $500,000 in certain geographic or high unemployment areas), provided with certain exceptions that the investment creates at least ten (10) full-time jobs. In addition, an annual "green card lottery" is available to nationals of countries that have low immigration levels to the U.S.

FAQ #7: What Contracts Should Be Reviewed to Assure that They Are Enforceable Under U.S. Laws?

Prior to commencing business in the U.S., a foreign company should conduct a review of its existing contracts. Key contracts should be reviewed and amended in order to be in compliance with, and enforceable under, applicable U.S. laws. If such adjustments are not made, the foreign company could lose legal rights in the U.S. In the United States the laws applicable to many business transactions are state laws rather than federal laws and many differ from state to state. Consequently foreign companies must comply with the state laws in each state in which they conduct business. Williams Mullen has attorneys who are licensed to practice in multiple states throughout the country to address this issue.

Key contracts to be reviewed include the following:

Software and other License Agreements - If the company is a recipient of a software license in a foreign country, it will need to review such contract to ensure that the license permits the company or its new U.S. subsidiary to continue using the software in the U.S. If the company has granted software licenses, it should ensure that the activities planned by its U.S. operations are not in violation of rights it has previously granted to third parties.

Sales Agreements - The form of sales agreement used by a company in a foreign country may have to be amended to comply with U.S. law. Most states in the U.S. have adopted the Uniform Commercial Code which provides for the rights and obligations of parties to sales transactions. In order to ensure that the company is selling its goods on terms favorable to it, the company's standard form of sales contract should be revised to comply with the UCC.

Non-Circumvention, Non-Compete Agreements - These agreements should be reviewed to ensure that they permit the company to carry out its planned activities in the U.S. and restrict potential competitors from competing. In particular, provisions that restrict competitors from certain actions within Europe may not be effective to limit competition in the U.S.

Stock Purchase and Other Investment Agreements - These should be reviewed to ensure, among other things, that no third party has rights to acquire shares in the newly created U.S. subsidiary. Additionally, the company may need to address whether the commencement of its U.S. business may impact any covenants or negative covenants in prior acquisition agreements.

FAQ #7: continued

Financing Agreements - Financing agreements entered into in the company's home jurisdiction should be reviewed to ensure that there is no restriction on the creation of a U.S. subsidiary or the use of corporate funds to finance such a subsidiary. In addition, if a prior financing agreement provides for the creation of security over the shares or assets of a company's subsidiaries, the company will need to create a security interest in assets of any new U.S. entity that complies with U.S. law. It is often desirable to establish new financing in the U.S. for a new U.S. subsidiary, but this must be achieved without violating the terms of existing financing arrangements.

Distribution and Agency Agreements - The company should review any existing distribution and agency agreements to ensure that any newly created distribution network or agency relationship is not in violation of the terms of any existing contracts.

Employment Agreements - The company may wish to review any existing employment contracts to ensure that there are no terms of those contracts that may be breached or that may be illegal following the transfer of an employee to the U.S. If employees are to be transferred from a foreign country and their contracts of employment are to continue, the company may wish to amend the terms to ensure that any disputes that arise will be handled in a favorable court. In addition, the company will want to assess the tax impact that the relocation may have on employees who will be deemed resident in the U.S.

Pension and other Benefit Plans - The company may need to determine whether contributions can continue to be made to existing plans in foreign country by employees resident in the U.S. and whether the company wants to start a new U.S.-based program for its employees.

FAQ #8: What Import-Export Laws Will Be Important For Your Foreign Corporation?

The United States is generally considered the most open market economy of the world, and U.S. trade policy supports free trade and a strong world trading system. The U.S. maintains a number of trade programs that enhance exports and encourages minimal import restrictions. The few import restrictions that do exist are consist mainly of tariffs and other special import programs discussed below.

Tariffs. The U.S. assesses tariffs on items imported into the United States. Under the recent World Trade Organization agreements, however, many U.S. tariffs have been reduced or eliminated entirely. The collection of tariffs is administered by the U.S. Customs Service, part of the U.S. Department of the Treasury. The applicability of a tariff on an item to be imported can be determined by reviewing the Harmonized Tariff Schedule of the United States, or by consulting a customs broker. Tariffs are generally not applicable to the import of software or other intangible products or to the performance of services.

NAFTA. Items that are of North American origin can be shipped between the U.S., Canada and Mexico duty free under the North American Free Trade Agreement (NAFTA). Special rules apply if items are shipped into the U.S. from outside a NAFTA country (such as from the European Union) and then re-exported to other NAFTA countries. Under certain circumstances, such shipments may be entitled to preferential treatment under NAFTA.

Free Trade Zones. U.S. customs laws permit the establishment of a free trade zone under which items may be imported into the United States without the payment of duties. Assembly and manufacture of finished goods may occur within the free trade zone and the goods exported to another country with payment of duties only on the value added in the United States.

Preferential Trade Programs. The U.S. maintains several unilateral preferential trade programs under which certain items from eligible countries may enter the United States duty free. The programs are designed to benefit developing countries and are the source of considerable economic benefit to companies doing business in the United States.

Antidumping Duties. Items imported into the U.S. may be subject to additional duties under U.S. antidumping and countervailing duty laws or other similar import relief statutes. Parties that intend to export to the United States should first determine whether antidumping or other similar duties may apply.

Export Laws. The U.S. permits most products to be exported without restriction. In a limited number of instances export controls are applied to products that have military application under the Export Administration Regulations and the International Traffic In Arms Regulations. In addition, certain transactions with parties from countries that are subject to U.S. embargo or special sanctions such as Cuba, Iran, Iraq, Libya, North Korea, and Sudan are prohibited.

FAQ #9: What Are The Other Relevant Areas Of Law?

Our experience in assisting foreign companies in establishing U.S. operations has highlighted the following additional areas of possible interest for such companies:

Consumer Protection Laws. Companies selling to consumers (as compared to commercial customers) will be subject to consumer protection laws administered by the Federal Trade Commission and various state consumer protection agencies. Such laws provide, among other things, for certain mandatory documents to be provided to consumers, and provide for recission rights under certain consumer contracts. In addition, it should be noted that federal rules provide consumers with a range of remedies that may be exercised where a dispute arises with respect to goods sold. Among other rights, consumers have a greater ability to withhold payment in such circumstances where payment was initially made with a credit or debit card.

Privacy Laws. While the U.S. does not have privacy laws which are as wide-ranging as the European Union, there are a number of privacy laws in effect including a requirement that parties comply with their own posted privacy policies and special privacy requirements in the banking and health care industries. It is also important for European companies to be mindful of restrictions imposed by the EU upon the transfer from Europe to the U.S. of data relating to EU citizens. In order to be able to transfer such information, among other requirements:

- the purpose for which such data may be transferred must be permitted under the law of the transferring entity and should not be incompatible with the purpose for which the data was first gathered;
- there should be adequate restrictions upon onward transfer to other data processors;
- the transferee country must provide adequate protection for personal data; and
- the subject of the data must have rights to access, rectify, delete and object to the content of the data.

In light of the foregoing, prior to the transfer of data to the U.S. subsidiary, the transferring entity will have to undertake a detailed review of the circumstances under which the transfers will be made and the procedures that will be applicable to such transfer.

The U.S. Department of Commerce, in consultation with the European Commission, developed a "safe harbor" to assist companies doing business in the U.S. to comply with the EU Privacy Directive.

Securities Laws. Companies that intend to raise capital through the issuance of securities (including stock, warrants, options and certain debt instruments) are subject to securities laws requirements such as registering the securities (unless a specific exemption applies). In

FAQ #9: continued

particular, foreign investors should be aware that the U.S. federal and state securities laws are extensive and apply to even relatively small offerings to a very limited number of people. This is particularly important for many tech and biotech companies that issue small amounts of stock to a wide variety of people during the start-up phase. The failure to comply with security laws during early rounds of financing may prejudice later larger public offerings.

Antitrust/Competition. The Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") is a U.S. statute aimed at competition issues and applies where a company (foreign or domestic) acquires a business or assets. The HSR Act requires acquiring and acquired parties to file a report with the Federal Trade Commission and the Department of Justice prior to closing certain transactions.

The HSR Act provides for a minimum "size of the transaction level" threshold which changes each year. For 2014 the minimum threshold is $75.9 million.

The HSR Act provides a 30-day period for most transactions. Beyond that, either Federal antitrust agency (the FTC or Antitrust Division of the Department of Justice) may extend the waiting period by requesting additional information from the parties, if the agency determines the proposed transaction raises competitive concerns.

Environmental Laws. Environmental laws protecting land, water and air quality have been enacted by both federal and state agencies. Regulatory agencies such as the Federal EPA (Environmental Protection Agency) and state environmental agencies have powers to impose remediation obligations and penalties that are considerably more extensive than those available to similar national and supranational agencies in Europe. While the tech and biotech companies generally do not have to comply with the large number of environmental requirements that apply to brick and mortar businesses, tech and biotech companies should be aware of the environmental obligations that apply to their particular type of research or manufacturing.

Companies entering the US market should also appreciate that liability for a prior owner or operator's contamination may be imposed on the current owner or operator of the business premises. As a result, an environmental assessment of property prior to acquisition or lease is recommended. Such assessments can be performed under the attorney-client and other applicable privileges. In addition, with proper planning, business, research and manufacturing operations can be structured to minimize the number of environmental regulations applicable to a particular facility.

Employment Laws. The U.S. employment laws are generally more flexible than in the European Union. In many instances employers can terminate employees without cause and without termination compensation (assuming no employment contract exists); however, employers are prohibited from discriminating against employees on the basis of race, sex, age, religious belief and health conditions. Termination and other dealings with employees should be conducted on a consistent basis under the provisions of the company's personnel policies.

FAQ #10: What Business Strategies Can Accelerate Your Growth in the U.S. Market?

The following are a number of strategies which can be employed by a foreign company establishing operations in the United States.

Sales and Distribution. Under this business strategy, parties manufacture their product in their home country and sell their products or services to U.S. customers, through direct sales or through sales agents, distributors, wholesalers, dealers or other intermediaries in the United States. The United States represents an enormous market for foreign companies to sell products, license software and perform services. There are numerous distributors, dealers and other sales intermediaries available in the U.S. to assist foreign companies in setting up marketing and distribution channels here.

Joint Ventures and Teaming Agreements. Under this business strategy, two or more parties conduct a collaborative effort to pursue a specific business purpose. In an "entity joint venture" the parties form a separate corporation or other entity to conduct the business of the venture. In a "non-entity joint venture" the parties contribute capital, personnel or other resources to conduct the business of the venture without the formation of a separate entity. Joint ventures and teaming agreements are a common form of business in the information technology industry for product development and major project management. These are extremely useful strategies for positioning foreign companies to become involved in major projects in the U.S. where they would otherwise not have access. In addition, U.S. companies frequently look to team with foreign companies in joint ventures to obtain access to business opportunities in Europe.

Franchise and License Agreements. Under a franchise arrangement, the franchisor grants the right to a franchisee to engage in a proprietary form of business. A franchise or license arrangement is a desirable way for a foreign company to establish and expand its business throughout the United States in a limited period of time or with a limited capital investment.

Sub-contracting. Under this type of business arrangement, a party performing a contract hires a second party to perform a portion of the contract. Like teaming agreements and joint ventures, this is a proven method for foreign companies to obtain access to major business opportunities to which they would otherwise not have access.

Manufacturing. Under this strategy, the foreign company establishes manufacturing operations directly in the United States. This could range from final assembly of components sourced in the company's home country or other countries, to full-scale manufacturing operations in the U.S. Finished products can be sold throughout the United States and, under NAFTA can be distributed on a reduced-tariff or tariff-free basis throughout Mexico and Canada.

FAQ #10: continued

Government Contracts. Under this type of business arrangement, a party sells a product or performs a service for a federal, state or local government entity. Under the Trade Agreements Act, foreign companies are now permitted to bid directly on most U.S. government contracts and to perform subcontracts thereunder. Government contracts are among the largest sources of opportunity for vendors in the Information Technology industry. The performance of government contracts are normally governed by specialized commercial laws which are significantly different from normal U.S. commercial laws.

Under The Trade Agreements Act, foreign companies from many countries are now permitted to bid directly on most U.S government contracts and perform subcontracts. Buy America Act restrictions contain "loopholes," waivers and exceptions which, with proper planning, allow foreign companies to provide products to the U.S. Department of Defense and other government agencies.

The performance of government contracts is governed by specialized commercial laws which are significantly different from normal U.S. commercial laws. Thus, foreign companies interested in this market must seek expert advice to ensure full compliance with government regulations.

Mergers and Acquisitions. Acquisitions are a proven method of establishing a major business presence in a foreign country in a short time period. A party can acquire a company through the purchase of its stock, the purchase of its assets and liabilities or the statutory merger of the two entities. Foreign companies should consider the acquisition of a U.S. company as a strategy for entering the U.S. marketplace. While this usually involves a significant capital investment, such investment is often smaller than the ongoing capital investments required to grow a business from the start.

Initial Public Offering. The initial public offering, or "IPO," is the initial sale of stock to the public in a "public offering." An IPO requires the registration of a company's stock with the U.S. Securities and Exchange Commission. Public offerings are usually conducted through an "underwriting" by a registered broker-dealer. Foreign companies can list their securities on U.S. exchanges through ADRs. In addition, U.S. subsidiaries of foreign companies can issue securities directly in an IPO to be traded on all U.S. exchanges. An IPO provides an excellent liquidity event and "exit strategy" for founders and early investors to profit from their investment in the company. U.S. stock exchanges, particularly the NASDAQ, have provided some of the highest valuations in the world for emerging technology companies.

We hope that these FAQ will be helpful to you in planning for your business investment in the United States. We would welcome you to the United States and would wish you prosperity and success in your business here. We have attached to these 10 FAQ a list of government agencies that can assist with your trade and investment plans for the U.S. market as well as information about the editors of these FAQ and Williams Mullen.

Eliot Norman
Partner – Immigration/Foreign Direct Investment
T: 001.804.420.6482
enorman@williamsmullen.com
linkedin.com/in/businessimmigrationlawyer

Hon. Patrick O. Gottschalk
Partner – Economic Development & Inbound Investment
T: 001.804.420.6425
pgottschalk@williamsmullen.com

Select USA (formerly Invest in America): selectusa.commerce.gov

Select USA seeks to highlight the many advantages the United States offers as a location for business and investment. Select USA offers initial information from the federal government for foreign companies investing in the United States. It is the best place to start within the U.S. Government if you are considering an investment in the United States. Select USA explains why America is the place for business, from a vast domestic market, to a transparent legal system, to the most innovative companies in the world. On the website of Select USA foreign companies can also find direct links to browse for Business Incentives Offered by each of the 50 States. Select USA is part of the U.S. Department of Commerce. licensed to practice in multiple states throughout the country to address this issue.

Other Government Agencies of Interest:

- United States Citizenship and Immigration Services
- United States Customs and Border Protection
- Department of Commerce - US Commercial Service
- Bureau of Industry and Security (BIS)
- State Department – Directorate of Defense Trade Controls
- Office of Foreign Assets Control
- Committee on Foreign Investment in the United States
- United States International Trade Commission
- Office of the US Trade Representative
- United States Consulates in Germany within the U.S. Department of State

From our offices in Washington, D.C., Virginia, North Carolina and South Carolina Williams Mullen provides comprehensive legal services to European, Asian and other international clients.

DOING BUSINESS IN THE UNITED STATES

For established companies we advise on government contracts and Buy America, cross-border tax planning, corporate financing, mergers & acquisitions, joint ventures, customs and international trade laws, and all other legal issues impacting international business transactions and operations.

For companies new to the United States, our *Concierge Legal Services Program* offers twelve "start-up" legal services for a fixed fee, such as incorporation, visas, trademarks, review of office leases and initial briefings on government grants and contracts, customs regulations, and United States' pro-business employment laws. See also our *Guide for Foreign Companies Establishing U.S. Operations* at williamsmullen.com/news/10FAQs.

For U.S. Exporters we offer a full range of legal services, including export controls compliance assistance and advice. For companies establishing operations overseas, we offer assistance with international corporate, tax and contract issues, and with structuring Joint Ventures and M&A. Our Global Visa Services team can help you move U.S. personnel to overseas operations by filing visitor visas or work visas for intra-company transfers, preparing expat agreements, and handling worldwide compliance issues.

We regularly handle a number of critical legal practice areas for international clients who have established subsidiaries in the United States. The following are the many ways we can assist you.

- Customs and International Trade Law: customs valuations and classifications, qualifying for preferential trade agreements, obtaining protections of WTO and U.S. anti-dumping rules
- Global Transactions: use of mergers and acquisitions as a growth strategy
- Company Formation: guidance for choosing limited liability company (LLC) or corporation, use of holding company, or whether to incorporate in Delaware or other states
- Immigration: transfers of key managers and specialists under accelerated E-2 visa programs, compliance with new I-9 and E-Verify enforcement rules, and advice on EB-5 investment visas
- International Tax: use of EU country tax treaties, find ways to minimize global taxes and efficiently repatriate profits from the U.S. to your home country
- Employment: advice on differences between EU and U.S. employment/labor laws, consider "Right to Work States" employment law advantages
- Government Contracts: use of teaming agreements and advice to European companies on how best to compete for government work, including projects involving secure or classified information
- Export Controls: counsel businesses on compliance with EAR and ITAR regulations and how to take advantage of recent reforms
- Intellectual Property: patents (including business method patents not available in the EU), trademarks, trade secrets, IP due diligence, licensing, copyrights, patent prosecution, and IP litigation in federal courts

ABOUT WILLIAMS MULLEN

Williams Mullen is a regionally based, full-service law firm with more than 230 attorneys in offices across North Carolina, South Carolina, Virginia and Washington D.C. Since our firm began in 1909, our goal has been to provide business and legal solutions to help our clients' businesses thrive.

While we excel within our mid-Atlantic footprint, our clients find that they increasingly come to us for their legal needs across the United States and internationally. They tell us they appreciate our *Am Law 200* big firm capabilities and experience without the big firm rates.

Our clients have peace of mind knowing we are responsive and act with a sense of urgency in today's fast-moving business environment. We are committed to being clear, concise and transparent in our communications. We believe in being fair in the delivery of our services from pricing to scope of work to billing practices. And lastly, we make sure that we bring a team together that is excited to understand you and your business. This is our pledge to all clients.

At Williams Mullen, we don't have offices located around the world, but we proudly offer the same quality of work that, combined with consistently excellent client service, creates a better value for our clients.

Together, we work each day on ***Finding Yes®.***

Practice Areas Include:

- Business & Corporate
- Construction
- Data Protection & Cybersecurity
- Employee Benefits & Executive Compensation
- Environment & Natural Resources
- Estate Planning: Private Client & Fiduciary Services
- Financial Services
- Government Relations
- Health Care
- Intellectual Property
- International
- Labor & Employment
- Litigation
- Real Estate
- Tax Law
- White Collar and Investigations

Industries Include:

- Alcoholic Beverage Control
- Banking & Financial Services
- Construction
- Economic Development
- Education
- Emerging Technology
- Firearms
- Government Contracts
- Health Care
- Hospitality
- Insurance Brokerages
- Long Term Care
- Manufacturing
- Retail
- Unmanned Systems

Included in *American Lawyer* magazine's Am Law 200.

Named to the 2017 "Client Service A-Team" by BTI Consulting Group.

32 attorneys and 12 practice areas ranked by *Chambers USA* in 2017.

100 attorneys in 56 categories named to the 2017 edition of *The Best Lawyers in America*©; 9 attorneys named among the 2017 "Lawyers of the Year."

68 attorneys named "Super Lawyers" and 25 named "Rising Stars" in 2017 by *Virginia Super Lawyers, North Carolina Super Lawyers* or *Washington, D.C. Super Lawyers.*

59 attorneys named by "Legal Elite" in 2017 by *Virginia Business* magazine or *Business North Carolina* magazine or *Columbia Business Monthly.*

Received National First-Tier Rankings for the firm's Banking and Finance, Environmental, Construction Litigation and Trusts & Estates practices in the 2017 U.S. News – *Best Lawyers'*® "Best Law Firms" list; Received 56 Metropolitan First-Tier Rankings.

Named a "Highly Recommended" firm in Virginia and a "Recommended" firm in North Carolina for 2017 by *Benchmark Litigation*.

One of the "2017 Best Employers in North Carolina" according to *Business North Carolina* magazine.

One of *Virginia Business* magazine's "2016 Best Places to Work."

Eliot Norman
Immigration/Foreign Direct Investment (FDI)
T: 001.804.420.6482
Cell: 001.804.721.7851
enorman@williamsmullen.com
www.williamsmullen.com/fdi

Eliot Norman has worked for many years helping Foreign Multinationals enter the USA from Asia and Europe and to expand their businesses in key high technology and advanced manufacturing markets. He specializes in immigration law and serves as outside general counsel to foreign companies to advise them on the legal strategies that can maximize their return on investment (ROI) and accelerate market growth. Mr. Norman is an International Practice Partner with Williams Mullen, a 230 lawyer national commercial law firm, with offices in Washington, D.C., Virginia, North Carolina and South Carolina. Mr. Norman is a graduate of Yale College and Boston College Law School and served with the U.S. Department of Justice before entering private practice. He is listed in Best Lawyers in America for Immigration. He speaks French fluently and obtained a Certificate from the Institut d'Etudes Politiques, Paris, France. Mr. Norman regularly travels to Europe to meet with clients concerning investment projects and operations in the United States and to speak to industry trade group and chambers of commerce.

Hon. Patrick O. Gottschalk
Economic Development
T: 001.804.420.6425
F: 001.804.420.6507
pgottschalk@williamsmullen.com

Pat Gottschalk serves as the Chair of the Williams Mullen Economic Development Team and is a member of the firm's corporate and government relations practice groups, where he focuses primarily on economic development projects, foreign inward investment transactions, joint ventures, multi-party agreements and business law issues, including mergers and acquisitions, general corporate law and financing transactions. As the former Secretary of Commerce and Trade for Virginia, Pat possesses insights on how to assist with economic development incentives, corporate law issues and project management. He has substantial experience assisting clients in accessing federal, state and local business location incentives and organizing complex joint ventures and research consortia. Pat's extensive knowledge of the complexities related to bringing economic development projects to fruition can benefit any company considering a location or expansion decision.

Anthony H. Anikeeff
Government Contracts
T: 001.703.760.5206
F: 001.703.748.0244
aanikeeff@williamsmullen.com

Anthony Anikeeff is co-chair of the firm's government contracts practice. He represents domestic and foreign companies with respect to conducting business with the federal and state governments. Mr. Anikeeff regularly advises overseas entities in establishing a U.S. presence to do business with the U.S. Government. Mr. Anikeeff has represented clients in diverse sectors such as aerospace, cybersecurity, energy, engineering, financial services, information technology, medical products and services, ground support equipment, manufacturing, military products, heavy industry, construction, security, human capital, and various services industries. Mr. Anikeeff is a frequent speaker on government contracts and has testified as an expert witness on such matters.

William J. Benos
Immigration, Corporate
T: 001.804.420.6402
Cell: 001.804.221.0073
bbenos@williamsmullen.com

Bill Benos focuses his practice on strategic legal planning for companies and individuals involved with international business. He handles cross-border economic development and investment matters, and represents clients in international and domestic corporate and commercial transactions. Bill founded the firm's Immigration Practice Group, and practices business immigration law. When assisting companies with their inbound investment and immigration activities, he provides advice on the formation and capitalization of business entities, the coordination of immigration strategy with investment plans, and related corporate and business planning. Having represented clients in mergers and acquisitions, assisted with the establishment of joint ventures, and advised companies with respect to their strategic international planning, he has a broad range of international and domestic corporate experience.

Gregory R. Bishop
Mergers & Acquisitions
C: 001.804.363.0441
T: 001.804.420.6930
gbishop@williamsmullen.com

Greg Bishop advises companies at critical junctures in their life cycles on mergers and acquisitions, formation, raising funds from private equity and venture capitalists, joint ventures and other typical and unusual issues faced by business organizations. Greg regularly counsels public and privately held entities in a variety of industries, including financial services, retail, federal government contracts, manufacturing and distribution as well as information technology, e-commerce and software development.

Greg has been recognized as a leading Corporate/M&A attorney in the U.S. by *Chambers USA* (2014-present) and by *Virginia Business* magazine as one of Virginia's "Legal Elite" (2008-present). He received his Bachelor of Business Administration degree in accounting from James Madison University and his law degree from the T.C. Williams School of Law at the University of Richmond.

Anna K. Derewenda
International Tax
T: 001.804.420.6094
F: 001.804.420.6507
aderewenda@williamsmullen.com

Unraveling the tax code can be daunting, especially when doing business internationally. Anna Derewenda has the knowledge and experience to guide you. She has provided international tax consulting and planning services to a diverse group of corporate and pass-through entities within industries including private equity, real estate, financial and insurance services, retail, manufacturing and pharmaceuticals.

Robert C. Dewar
Mergers & Acquisitions/Corporate
T: 001.804.420.6935
F: 001.804.420.6507
rdewar@williamsmullen.com

Robert Dewar focuses his practice on mergers and acquisitions, corporate finance, venture capital, private equity, secured lending and general corporate and commercial transactions, with a concentration in international transactions and the senior housing industry. During his 25-year career, he has regularly been involved in transactions throughout Europe and the United States on behalf of U.S. and European clients involving mergers and acquisitions, joint ventures, corporate finance, venture capital and private equity. Before joining the firm's office in Richmond, Virginia, Mr. Dewar practiced in Edinburgh, Scotland; London, England; and Warsaw, Poland.

Stephanie Lipinski Galland
State & Local Tax
T: 001.202.327.5094
F: 001.202.293.5939
slipinskigalland@williamsmullen.com

Stephanie Lipinski Galland has extensive legal experience in state and local taxation with an emphasis on representation before state and local taxing authorities in income, franchise, sales, use and unclaimed property controversies. She has represented clients in developing, implementing and defending tax positions in state audits. Her experience in a Fortune 500 company, as a tax partner in a national law firm and in the Virginia Department of Taxation provides her with valuable skills in all areas of taxation.

Alexander "Sandy" C. Graham, Jr.
Mergers & Acquisitions
T: 001.804.420.6458
F: 001.804.420.6507
sgraham@williamsmullen.com

Sandy Graham's practice includes mergers and acquisitions; securities and banking; venture capital transactions; real estate development; antitrust; international business transactions; representation of national and state trade associations and of non-profit organizations; and hotel development and financing.

Patrick R. Hanes
Compliance, Litigation
T: 001.804.420.6455
F: 001.804.420.6507
phanes@williamsmullen.com

Patrick Hanes focuses his practice on handling all manner of disputes that arise from business competition and regulation. His practice has included a broad base of civil and criminal litigation at both the trial and appellate levels. In addition, Patrick has substantial experience conducting investigations both in the United States and overseas. He has represented businesses and individuals in government and corporate investigations in matters involving securities and banking regulation, antitrust, conspiracy, wire fraud, tax disputes, environmental laws, and the Foreign Corrupt Practices Act.

Ryan C. Kenrick
Commercial Leases
T: 001.757.629.0636
F: 001.757.629.0660
rkenrick@williamsmullen.com

Ryan Kenrick focuses his practice on financial services and real estate matters. He is admitted to practice in the Commonwealth of Virginia and is a member of the Virginia Bar Association. In the community, he is a member of the Maison Fortune Orphanage Development and Marketing Committee and serves on the board of Midwives for Haiti.

Richard D. "Rick" Palmieri
Supply Contracts
T: 001.804.420.6499
F: 001.804.420.6507
rpalmieri@williamsmullen.com

Rick Palmieri is an Associate in the firm's Business and Corporate Practice. He can assist clients with transactions related to corporate formation and mergers and acquisitions.

C. Grigsby Scifres
Business Law, FDI
T: 001.757.473.5370
F: 001.757.473.0395
gscifres@williamsmullen.com

For more than 30 years, financial services companies have looked to Grig Scifres for responsive and efficient assistance with originating, documenting, restructuring and enforcing all types of credit facilities. He assists creditors with resolving problem loans and distressed debt, and helps businesses acquire assets from bankrupt companies. Grig also helps developers of mixed-use, apartment, hotel and headquarters projects with acquisitions, sales, construction, financing and franchise license transactions.

Robert C. Van Arnam
Software & Technology
T: 001.919.981.4055
F: 001.919.981.4300
rvanarnam@williamsmullen.com

Increasingly, a company's technology and intellectual property rights are its most significant assets. When those assets need to be protected or are threatened by litigation, Rob Van Arnam can help. Rob is an experienced Intellectual Property lawyer who focuses his practice on litigation involving patents, trademarks, copyrights and trade secrets. He is adept at understanding clients' IP assets and business goals and providing practical strategies to achieve those goals. Clients in a variety of industries, including software, firearms, telecommunications, ag-chemical, social media and financial services have used Rob to help protect and grow their intellectual property, enforce their rights and defend against suits by competitors and Non-Practicing Entities (NPEs).

Phillip L. Conner
Environmental, Greenville & Columbia, SC
T: 001.803.567.4611
F: 001.803.567.4601
pconner@williamsmullen.com

Phil Conner has represented industrial, manufacturing and corporate clients in environmental, health and safety law matters for almost 30 years. He regularly represents companies in state, federal and administrative tribunals in matters involving toxic tort litigation, appeals on environmental permits and responses to enforcement actions brought by regulatory agencies.

Jessica J.O. King
Environmental, Columbia, SC
T: 001.803.567.4602
F: 001.803.567.4601
jking@williamsmullen.com

Jessie King focuses her practice on environmental legal issues. A former chief attorney for Environmental Quality Control Division of the South Carolina Department of Health and Environmental Control (SCDHEC), she has substantial experience helping companies and individuals obtain environmental permits, perform due diligence and negotiate business transactions.

Ethan R. Ware
Environmental, Columbia, SC
T: 001.803.567.4610
F: 001.803.567.4601
eware@williamsmullen.com

Ethan Ware represents businesses and industries in environmental and health and safety legal matters. He has appeared on behalf of businesses in negotiations relating to environmental permits, in defense of environmental and OSHA enforcement actions by state and federal agencies, in defense of toxic tort lawsuits, and on behalf of industry in criminal and civil environmental actions.

OUR OFFICES

CHARLOTTESVILLE, VA
321 East Main Street
Suite 400
Charlottesville, VA 22902
T: 434.951.5700

COLUMBIA, SC
Wells Fargo Building
1441 Main Street
Suite 1250
Columbia, SC 29201
T: 803.567.4600

NORFOLK, VA
1700 Dominion Tower
999 Waterside Drive
Norfolk, VA 23510
T: 757.622.3366

RALEIGH, NC
301 Fayetteville Street
Suite 1700
Raleigh, NC 27601
T: 919.981.4000

RICHMOND, VA
Williams Mullen Center
200 South 10th Street
Suite 1600
Richmond, VA 23219
T: 804.420.6000

TYSONS, VA
8300 Greensboro Drive
Suite 1100
Tysons, VA 22102
T: 703.760.5200

VIRGINIA BEACH, VA
222 Central Park Avenue
Suite 1700
Virginia Beach, VA 23462
T: 757.499.8800

WASHINGTON, D.C.
1666 K Street N.W.
Suite 1200
Washington, DC 20006
T: 202.833.9200

WILLIAMSMULLEN.COM

Eliot Norman
Partner – Immigration/Foreign Direct Investment
T: 001.804.420.6482
enorman@williamsmullen.com

WILLIAMS MULLEN
finding yes®