
WHICH MISSTEPS TO AVOID IN SETTING UP A BUSINESS IN THE US?



(Sponsored article, published by French Morning Media Group) This article is based on real situations encountered in almost 30 years of professional practice as a corporate lawyer in New York, assisting corporate clients, mainly of French origin, in their efforts to set-up their businesses in the United States.

Many of these types of projects - setting up overseas subsidiaries - come to fruition in the American market and are "success stories". However, some projects do not materialize, or unravel, and fail more or less quickly. What are the mistakes or missteps to avoid?

- **Inadequate preparation of the project:** Upstream, an implantation project in the United States must be prepared carefully and, over time, should include a solid knowledge of the

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American context as well as of the specific market for a given product or service. This implies numerous on-site visits, the creation of a business plan, an exact knowledge of the steps that need to be implemented in the United States and their duration. A project must satisfy the demand of the local market. Setting up a business in the USA is an important step: there is another language, another continent, another culture, and another country in which one needs to obtain an immigration visa, and there is another legal system that is that of the "*common law*." One must know how to tailor a project to reality. In France, and in the United States, there are numerous interlocutors at the disposal of companies, with the mission not only of filtering projects, but also of assisting potential investors in the preparation of these projects, sometimes including their financing.

- **Unrealistic budget.** A setting up project is carried out with the assistance of various professional partners, including, at a minimum, a certified public accountant, a banking institution, and one or more lawyers of differing skills (business law and immigration, for example), and sometimes real estate and insurance brokers. The fees for all these professional interventions need to be taken into account at the start of a project and must be budgeted.

The services of large law firms are very costly. Smaller firms and even some independent lawyers are more economical and can provide a wider array of support services. They may, however, request payment for the time they spend in providing information and need to seek the expertise of other specialized attorneys and colleagues.

-**Lack of awareness of the omnipresence of the law in the United States.** American law, based on "*common law*," and not the civil code, is particularly complex because of the superposition of federal, state, and sometimes local jurisdictions. There are, thus, 51 different systems of court organizations, one per state, and another at the federal level. In addition, there is a marked tendency for litigation in the American culture. Finally, familiarization with the formalities and / or licenses applicable to each sector of activity is a must.

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If setting up a business is implemented by way of a domestic acquisition, then legal and financial "*due diligence*" - which aims at ensuring that the situation is consistent with that presented by the seller - is fundamental.

-Lack of follow through with US counsel on the progress of the project, once the legal entity that serves as the vehicle for the investment is formed. Because of the distance and the need to activate situations, communications, and the exchange of information in the United States are all crucial. It is at times dangerous to trust someone who is not a US lawyer to 'adapt' - for reasons of economy - contracts of French or foreign law to US law. In addition, it is essential that a US lawyer review all potential contracts that concern a US entity, before the document is signed.

-Lack of follow through with the newly formed US entity itself. During the crucial early set up time, the duration of which varies according to the companies, it is essential that the founders of a US entity devote time to the entity, with follow-ups, contacts, and regular trips to the US. This approach, albeit costly in energy, money, and time, helps prevent situations where one or more local managers may take control of the affairs of the new American entity sometimes, even through embezzlement.

A concluding note with a hint of optimism: If a project aborts or fails, it is important to keep in mind the remarkably flexible and open mindset of American business people. They will remain open to another attempt to approach the market.