Enrico Furia

Introduction to

The U.S.A.-E.U.

Comparative Company Law

Table of Contents

- How to transact business in the States if a company is already incorporated in another State of jurisdiction.
- How to amend the Certificate of incorporation.
- The difference between "Open" and "Close" Corporation.
- Sole Proprietorships.
- The General Partnership.
- The Limited Partnership.
- Corporations.
- The Limited Liability Company.
- Incorporation documents.

Chapter IV
Incorporating in the European Union

- Incorporating in:
    - Belgium
    - Denmark
    - France
    - Germany
    - Italy
    - United Kingdom.

Preface

A work on comparative US-EU Comparative Company Law is extremely large and complex, because in this matter every single State of the Confederation and every single State of the Union, for a total of 75 states, have full autonomy and sovereign jurisdiction in company formation.

Therefore we will try to give the reader the typical aspects of the most representative states, moving from the general aspects of company formation in both juridical systems, listing then the meanings of most used terms, and all those aspects, which can affect jurisdiction in the analysed states.

In the US we'll take into consideration mostly Delaware and Virginia, the former as the first state which has introduced innovation in the legislative system of company formation, the latter such as one of the most representative middle state of the Confederation.

In the European Union we will take into consideration Belgium and Denmark as representative states of common and civil law.
Furtherly we will analyze Germany, France, the UK, and Italy, giving the topics of their rules.

The aim of this work is to bring out and make explicit for businessmen, entrepreneurs, managers and students historical and rational connection between the US and EU body of law.
It is arranged rationally, so that each matter deals in the first instance with the origin and the development of a particular case. But, where appropriate, the relationship of that case is described, and explained immediately.
The work does not cite judicial sentences, but just the theory of the author based on what rationale should be. It is too early to be fully comforted by judicial sentences in a matter that was born only a few years ago.

The practical object of this work is to give an exposition of legal terms and phrases of current use. But, as the mere exposition of a term or phrase would often be barren and unsatisfactorily, we have in many cases, especially when dealing with the legal terms of the present day, added an exposition of the law bearing upon the subject-matter of the Entry.

In this edition the opportunity of resetting the text in a more modern format has been taken, and a large number of entries have been revised.
Definitions of terms used in the commercial and business world have been added. The entries relating to global business law (Law Merchant, and Lex Mercatoria) have been expanded to include such matters as “multinational agreements”, “international arbitration”, “tax havens”, “harbour reorganisation scheme”, and “narrow channel”.

Many thanks go to the staff of IIM for seeing this work through the press.

Enrico Furia
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Chapter I
General Aspects of Company Formation.

Company and joint-venture definition.

While a person is a physical entity, a company is a juridical entity. A person is generated by the nature, while the law generates a company. A company is made of one or more persons.

The term "company" connotes that the parties are involved in a relationship governed by a common agreement defined "Bylaws", which is a set of rules containing any lawful provision for managing the company's business or regulating its affairs that are not inconsistent with the articles of incorporation.

With the company's incorporation the incorporator(s) generate a brand new juridical person, completely different from any single physical person of the incorporators.

Any body of law has its own statements of the conditions under which a company can be formed and under which the single participants to the company have to be guaranteed and informed.

Corporations, Unincorporated Associations, and Partnerships, as well as individuals, can incorporate a company. One or more incorporators may form a Corporation by filing articles of incorporation ("articles" with the appropriate institution of the incorporating State.)

Usually a company comes into legal existence upon the issuance of a certificate of incorporation. Anyway in some States the incorporators can operate under their personal joint responsibility on behalf of the company.

The relationship that binds the parties in a company is stated in the "Articles of Incorporation", a set of rules, which requires only a few provisions:

1) The name of the company.
2) The number of shares the corporation is authorized to issue or the share capital.
3) The name and address of the company's initial registered agent or representative.

However, the articles may contain any optional provision not inconsistent with law, including provisions that may be set forth in the bylaws, as well as provisions defining, limiting and regulating the powers of the company, its directors and shareholders.

Every company may engage in any lawful business unless the articles specify a more limited purpose. Likewise, every company can have perpetual duration and the same powers, similarly to an individual, to do all things necessary or convenient to carry business, unless the articles provide otherwise.

The term "joint venture" is used to describe many types of transactions ranging from a series of contractual obligations to the actual creation of a jointly owned entity by a local business, and a foreign investor. While many National Laws do not specifically recognize joint ventures as separate legal entities, several courts have recognized joint ventures as a separate type of entity.

In these cases the courts have held that a joint venture is basically a contractual relationship between the parties, and they generally applied partnership law to these relationships.

Due to the confusion on what type of entity constitutes a "joint venture", this term will not be used in this work just to denote a specific type of entity, but rather to simply indicate that the parties have established some type of relationship to work towards a common goal. Specific types of entity will be discussed where appropriate.

Let's take into consideration, for example, the following case of Virginia Statutes.

The foreign investor in the U.S., which requires only minimal assistance from an America business, or assistance for only a short period of time, generally would be best advised to enter into a

contract with an American business to provide such services. If the foreign investor wishes to establish a more long-term relationship with the American business, some type of joint venture entity should be created. If it is decided to create a joint venture entity, the form of entity, which is used, may vary. Unless the joint venture is incorporated as a separate entity, Virginia courts generally would apply law similar to partnership law to the joint venture and the parties would be well advised to take the necessary steps to formally create a partnership as the form of joint venture.

If the foreign investor is trying to insulate itself from legal and financial responsibility for business activities conducted by the joint venture, the partnership arrangement for the joint venture has disadvantages. Under principles of partnership law applied in Virginia and in most other States, the general partners of a partnership are subject to joint and several liabilities for the debts and obligations of the venture. The foreign investor can avoid such liability by becoming a "limited partner", but in so doing it must not take part in the control of the business. This generally eliminates limited partnerships from consideration as the form of joint venture entity since the foreign investor generally would want to be involved in the management of the venture to assure that its business proposals are carried out in the U.S.

Generally there are two types of joint venture entities, which are used to allow the foreign investor to participate in the management of the joint venture and insulate it from joint and several liability.

The first of these is the creation of a U.S. subsidiary corporation, which forms a partnership with the American business, or a subsidiary of the American business. The second is a corporation, which is jointly owned by the American business and the foreign investor.

Joint ventures, regardless of the form of entity chosen, should begin with the negotiation and drafting of a "joint venture agreement". There are many standard provisions which should be negotiated and include in the joint venture agreement, which should set forth the rights and obligation of the parties, a complete description of the ownership, the form of entity and the governing instruments of the entity through which the venture will be conducted, as well as a thorough discussion of the manner in which the venture and any obligation to make future contributions should be accurately and completely described.

If a joint venture entity has to be created, the partnership agreement, or articles of incorporation and bylaws, should be negotiated, drafted and incorporated into the agreement. If either party is leasing or licensing real, personal or intangible property to the venture, leases and license agreements should also be negotiated, drafted and incorporated into the agreement.

One of the major pitfalls in a joint venture relationship is the possibility of a stalemate in the event of a dispute between the parties, particularly if each party owns 50% of the venture.

To avoid this situation, the joint venture agreement should include a binding dispute resolution procedure, such as arbitration, or contain a "buy-out" or "sell-out" provision whereby one party can buy out his co-venture(s), or sell out his share of the venture. Such provisions will protect the parties in the event they develop irreconcilable differences.

The joint venture entity will be subject to the federal and state tax requirements in the U.S.

If the venture is conducted through a U.S. corporation, the corporation generally will be subject to federal and state taxes. If the venture is conducted through a partnership, taxable income, losses, deductions and credits generally will be passed through to the partners of the partnership, with the partnership itself paying no income taxes. The applicable treaty between the U.S. and the foreign investor's Country will also affect the U.S. taxes the foreign investor must pay on license payments from the venture, dividends from a joint venture corporation and other items of income. Depending upon the applicable tax treaty, withholding taxes on certain payments to the

foreign investor may be applicable. The tax consequences of the various forms of joint venture entities may play a significant role in the form of joint venture entity selected.
If the foreign investor maintains a careful arm's-length relationship between itself and the joint venture, it would, under most circumstances, be insulated from liability for the acts of the joint venture and its employees. Furthermore, under most circumstances, the foreign investor, which participates in a jointly held partnership formed as the joint venture entity, would not be subject to the jurisdiction of U.S. courts. However, there are certain types of claims, which may be raised in litigation for which it may be very difficult for the foreign investor to avoid the jurisdiction of U.S. courts. These relate primarily to the products liability area in which some U.S. courts have held the mere export of products to the U.S., whether through a wholly owned U.S. subsidiary or some other entity which is unrelated to the foreign manufacturer, could result in the foreign manufacturer being responsible for defending itself in the U.S. courts. Thus, if the joint venture involves the manufacture or sale of a product incorporating components supplied by the foreign investor, the foreign investor should maintain adequate products liability insurance regardless of the form of joint venture entity selected.

Incorporation Documents and Bylaws

Incorporation procedures are quite different in all jurisdictions, so it is hard to compare all of them at once. In this section we will try to give the reader the "ratio legis" of the incorporation, which is common to the incorporation in most jurisdictions.
Incorporating means to generate a new entity, a new juridical person that will act in the future on its own name and account.
The generation of such a new entity has to be done publicly, for everybody has to be acknowledged and informed of its formation. For this purpose every incorporation has to be registered in public registers, which witness the birth of the entity, its name, its "paternity" (incorporator(s), owner(s), shareholder(s), etc.), its purpose, its lasting, its patrimony, and its rules of operating.
So, the essential elements to incorporate a company are:

"The identity of the company"

The name of the corporation shall always be included in the Certificate of Incorporation.
The incorporator(s) must check the availability of the corporate name (or the trade mark, if it is registered by a sole trader). The name of a corporation must include an incorporation word such as "Company, Corporation, Foundation, etc. in The U.S.; S.A., or S.r.l, or S.c.r.l. etc, in France; A.G., or G.m.b.h. etc; in Germany, S.p.a., or S.r.l., etc, in Italy, and so on.
Furthermore you have to indicate the name and address of incorporators, (who can be a thir party - someone other than the owner(s), director(s) or shareholder(s) of the corporation.
In the U.S.A. notarisation is not required, and the incorporator(s), acting as attorney-in-fact and/or proxy, must sign the document. In most member States of the European Union such an act has to be notarised, and the public notary acts as the incorporator.

"The purpose of the Company"

The purpose of the proposed juridical entity must be stated generally and, if desired specifically. A suitable general statement for an all-purpose company is: "The purpose of the company is to engage in any lawful act or activity for which corporations or companies may be organized under the General Corporate Law of the State of (Incorporation).
Another all-purpose statement is "To engage in any enterprise, anywhere in the world, calculated or designed to be profitable to this company and in conformity with the laws of the States and

Countries in which business is transacted for which companies and corporations may be organized under the General Corporation Law of the State of Incorporation).

"Shares Statement" regards the aggregate number of shares, which the company shall have the authority to issue, the amount of par value of this stock, whether or not the stock has par value, or the company is authorized to issue stock, or that the company is non-stock and non-for-profit (also refereed to as non-profit).

Furthermore you have to include":

- The period of its duration which is usually as "perpetual".
- Whether or not cumulative voting of shares is authorized.
- Provisions regarding bylaws.
- Provision regarding the sale or purchase of the corporation's stock.
- Provisions specifying special voting and preferences.
- Provision limiting or denying to shareholders the pre-emptive right to acquire additional or treasury shares of the corporation.
- Provisions for the regulation of the internal affairs of the company.
- Any other provisions required to define or place parameters on the internal or external organization, financial structure or activities of the company.

- Stocks, shares, value, surplus, equities.

"Issued Stock**"** is corporate stock which has been issued, and held in the corporation's treasury or sold or distributed to shareholders.

"Common stock**"** is corporate stock, which normally entitles the shareholder to dividends if the corporation is profitable, and does not need to retain all of its earnings for its own purposes. This stock also carries voting rights unless it is classified as "Nonvoting" common stock.

"Preferred stock**"** typically entitles its shareholders to priority over other stock in the distribution of profits.
Frequently, preferred stock entitles its shareholders to dividends of a specified amount each year, which must be paid before common stock, and dividends, if any are paid.
Preferred stockholders surrender voting rights in return for priority in dividend payout.
However, they may obtain voting rights by deferring their dividends. These dividends, in turn, will accrue, adding to the overall outstanding debt of the company.

"Convertible Preferred Stock**"** carries the privileges and entitlements of preferred stock, and gives the holders the right, at their option, to convert these shares into common stock, according to a specific formula.

"Stock certificate" can represent any number of shares up to the amount authorized, as stated on the Certificate of Incorporation. The face amount can either be printed on the stock certificate, or it has a blank space to be filled in with the number of shares it is to represent by the corporate officer issuing the stock.

"Par Value**"** stock certificates carry a stated value on their face. It is the monetary value assigned to each share of stock in the charter of the corporation.
In Delaware par value stock may be issued only in return for "considerations" such as money, property or services of value at least equal to the value of the shares issued. If the purchase of the shares is with cash, the transaction is simple. If par value shares are purchased with property, an independent licensed appraiser must establish the value of the property, and the value of the shares exchanged for the property may not exceed the dollar amount of the appraisal.

If the par value shares are exchanged in return for services, such services must already have been performed, and they must be valued at the going rate for such services.

In several European Union's member States par value stock is the mandatory condition, and it is based on the value of the common stock, considering that shares can be issued in a quantity and total value corresponding to the authorized common stock. To issue more shares it is mandatory to increment the common stock.

"No Par Value" stock has no stated value in the corporate charter. Such shares may be sold for whatever the investor is willing to pay.

The majority of U.S. firms are probably incorporated with 1,500 shares of no par value common stock authorized by their original charter.

The actual market value of an established corporation that has been operating for some time has, of course, no relation to the face amount of the stock, whether it is par value or no par value stock. The more profitable the company and the more assets it accumulates and the better its prospects, the more each share of common stock tends to be worth in the marketplace.

"Corporate Security" is a share of stock, bond, note, debenture, or other financial instrument, issued by a corporation and registered as to its ownership on the books of a corporation.

"Treasury Shares" are neither shares of stock issued and subsequently acquired by the corporation and neither cancelled nor retired following such acquisition.

Such shares are included in the total number of shares issued but are not deemed outstanding for voting, quorum or dividend purposes. Treasury shares are typically utilized for sales to employees under stock option plans, for future sales to the public, for effecting corporate acquisitions or as stock dividends for shareholders.

"Capital Stock" is the total amount of stock a corporation is authorized to issue by its certificate of incorporation (also referred to as its corporate charter or articles of incorporation).

"Paid-up Capital" is the total amount paid by shareholders for their shares of capital stock.

On the balance sheet of the corporation, paid-up capital is equal to the stated value (par value or no par value) of its common stock plus what shareholders may have paid in excess of stated value.

"Capital" is the money or the other assets of value (usually stocks, bonds or other securities that can be readily converted to cash at an easily established market value), which shareholders invest in a business to enable it to operate.

The capital of an established corporation is normally defined as the contributions of the shareholders plus accumulated profits. It is the total worth of the enterprise after all liabilities are deducted.

"Stated Capital" is the sum of the par value of all issued shares of the corporation assigned par value plus other amounts that have been paid into the stated capital of the corporation.

"Capitalization" is the total value of all securities of an enterprise.

Capitalization also includes long-term debt, if any. It represents what would have to be paid to investors and long-term creditors if the business and its assets were to be liquidated.

"Net Assets" are the amount by which the total assets of a corporation; including money, securities, property, equipment, etc;, exceed its total debts.

"Surplus" is the amount by which the net assets of a corporation exceed its stated capital.

"Paid-in Surplus" is the difference between paid-up capital and the stated value of the corporate stock. It is the surplus that is created when shareholders have paid more for their stock than stated value (par value or no par value) per share.

"Earned Surplus" is equal to the profits a corporation has retained since its incorporation.

It is synonymous with "retained earnings", "retained income", and "accumulated surplus".

Earned surplus may also include portions of the surplus(es) of other corporations that may have been acquired by or merged or consolidated into the corporation.

"Capital Surplus**"** is the sum of the paid-in-surplus (if any), profit (if any) retained as earned surplus and the surplus (if any) created by a revaluation of assets, including 'good will" (upon which a value may be set).

"Operating Surplus**"** is the amount remaining at the end of a corporation's reporting period (fiscal year), following the deduction of expenses, taxes and dividends. At the end of the fiscal year, operating surplus is added to earned surplus on the corporation's books.

"Total Surplus**"** is the sum of all surpluses, including earned and capital surplus and any additions to surplus from revaluations af assets which may have appreciated or depreciated in value during the fiscal year.

"Equity**"** is the net investment which shareholders have in their corporation. It is another term for "Net Worth" which is what remains for the owners after all liabilities are deducted from assets.

Annual Fees and Taxes.

There is a minimum total fee payable to the Division of Corporation of the State of incorporation. For Stock Corporation, this initial tax is based on unauthorized capital stock.

In the U.S. the initial tax is usually based on the quantity and par value of the capital stock authorized in the Certificate of Incorporation, while in the European Union is a fix amount in several member States and related to the authorized capital stock in others.

In Europe, furthermore, a company has to be registered in the VAT Register, in the Chamber of Commerce Register, and in a few States also in the Chamber des Métiers Register. Each registration requires a franchise tax and an annual fee.

Domestic and foreign companies - Residence and domicile of a company.

A company is classified as "domestic" in the State of its incorporation. Thus, if you incorporate, for instance, in the United Kingdom, your business is a domestic company in the U.K.

A company shall be classified as "foreign" in every State other than its State of incorporation.

Thus, if you incorporate in Delaware, for example, your company is considered a foreign entity in any other U.S. state or territory, as well as in every other Country in the world.

The “Legal domicile" of a company is the State in which the company is chartered and from which it receives its authorization to operate, even though you may reside and headquarter in another State.

The “Residence” of a company is the State(s) where it operates with stability.

Domestication of a company. Residence and citizenship in setting up a company.

- How do you qualify to transact business when your company is already incorporated in another State or jurisdiction?

  Usually you submit a completed "Foreign Corporation Certificate" stating:
  - Name of the company as it appears on file with your State of original incorporation.
  - Description of the business of the company.
  - Include a certificate of existence of any other similar document.
  - Pay a fee to the State of Registration.
  - Appoint a Registered Agent or open a local branch.

Any non-United States corporation may become "domesticated" (e.g. in the State of Delaware) by filing a "Certification of Domestication" (Certification of Qualification to do Business in Delaware) and a "Certificate of Incorporation"
The Certification of Domestication must certify:

(1) The date on which, and jurisdiction where the corporation was first incorporated;
(2) The name of the corporation immediately prior to the filing of the Certification of Domestication;
(3) The jurisdiction that constituted the siege, or principal place of business, or central administration of the corporation immediately prior to the filing of the Certification of Domestication.

The Certification of Domestication must be signed by any corporate officer, director, trustee, manager or partner who is authorized to sign on behalf of the corporation.
From the date on which the Certification of Domestication is filed, the law of the State of Delaware applies to the corporation as if the corporation had been incorporated as a Delaware corporation on that date.
A qualification fee is charged by the State of Delaware.

An offshore corporation can, of course, set up a subsidiary in Delaware as a Delaware corporation, in which case the normal Delaware incorporation procedure outlined in these pages is applied.

- An individual who is a citizen and resident of another Country may organize a C-corporation, which he/she incorporates in Delaware by following the normal Delaware incorporation procedures outlined herein.
  Non-resident non-U.S. citizens are prohibited by federal tax laws from forming an S-corporation here; however, they may set up a Limited Liability Company.
- Delaware corporations, which are owned by non-resident non-U.S. citizens, or offshore corporations are subject to Delaware and U.S. Federal Corporate Income Taxes.
- A Delaware C-corporation, headquartered out of the State, with an office or plant in Delaware has to pay Delaware State Corporate Income Tax on the revenues generated by that office or plant. In effect, Delaware evaluates three types of activity in determining what portion of income will be subject to Delaware Corporate Income Tax:
  (1) Corporate sales attributable to Delaware;
  (2) Property located in Delaware;
  (3) Payroll incurred in Delaware.
  If all the products/services of the above office/plant are sold and delivered to out-of State customers, this out-of-state-headquartered Delaware C-corporation is still liable for the Delaware State Corporate Income Tax.
  Furthermore, it is not necessarily liable only on the revenues from the product/service sold and delivered to customers located in Delaware.
  A Delaware C-corporation headquartered and operating in Delaware with out-of state offices/plants have to pay Delaware Corporate Income Tax on revenues from product or services produced and sold out of State. It does have to pay no such tax if revenue comes from products or services produced out of State and sold out of State, but it does have to pay if products/services are produced out of State and sold/delivered in Delaware.

Not-for-profit companies.

In the U.S. a non for profit company is an entity which can certainly produce a profit, but cannot issue a capital stock. The fact that the owners are not to have the authority to issue a capital stock must be stated in the Certificate of Incorporation, or the Certificate may provide the conditions of membership may be stated by the Bylaws.
Not-for-profit corporations, whose statement of purpose qualifies them for I.R.S. tax-exempt status are also exempt from annual franchise or license tax on corporations. In the European Union the situation is a little bit more complicated, because in most member States we cannot set-up a nonprofits corporation, but we have to use juridical forms as Associations (registered, or not) - say - France, Italy, Spain, etc.; Stiftung - say - Germany, Austria, etc.

Chapter II
The World Trade Organization (W.T.O.) and the European Union (E.U.) rules and prescriptions

- The European Union as a body of law.
The institutional system of the European Community (EU) is difficult to classify.
The Community is much more than an intergovernmental organization: it has its own special legal status and extensive powers of its own. But the Community is not a true federation to which national parliaments and governments are subordinate in important matters. Our best course may be to leave it to future historians to find an appropriate label and simply describe it as a "Community" system.
In Europe National Governments are no more sovereign, except in company law.
In this matter national laws shall be apply, and only laws for general harmonization can be issued by the European Union.
After several treaties and sentences of the Court of Justice, we now agree that European Union is a body of law, which is pre-eminent to every national laws, even the Constitutional Law.
The European Union body of law recognizes as pre-eminent to their laws only those of the World Trade Organization (WTO).

- The General Agreement on Tariffs and Trade (GATT), and the World Treaty Organisation.
From Wikipedia we can cite: "Quote"
General Agreement on Tariffs and Trade (typically abbreviated GATT) functioned as the precursor to the World Trade Organization. GATT was created by the Bretton Woods meetings that took place in Bretton Woods, New Hampshire, in 1944, setting forth a plan for economic recovery after World War II by encouraging a reduction in tariffs and other international trade barriers. On January 1, 1948 the 23 original contracting parties signed the agreement, including the nations of Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, the Czechoslovak Republic, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, and the United States. This first version of GATT is referred to as "GATT 1947" developed during the United Nations Conference on Trade and Employment in Havana, Cuba, 1947. In 1994, GATT (or "GATT 1994") was updated with new obligations upon its signatories, with one of the most significant changes being the creation of the World Trade Organization (WTO). 75 existing GATT

members and the European Communities became the founding members of the WTO on January 1, 1995. The other 52 GATT members rejoined the WTO in the following two years (the last being Congo in 1997). After the founding of the WTO, 21 new *non-GATT* members joined and 28 are currently negotiating their membership. Of the former GATT members, only SFR Yugoslavia has not rejoined. Since FR Yugoslavia, (renamed to Serbia and Montenegro and with membership negotiations later split in two), is not recognized as a direct SFRY successor state, its application is considered a new - no**n-GATT – one.** The contracting parties who founded the WTO in 1994 ended official agreement of the "GATT 1947" terms on December 31, 1995. The GATT, as an international agreement, is similar to a treaty, and under United States law it is classified as a congressional-executive agreement. It is based on the "*unconditional most favored nation principle*." This means that the conditions applied to the most favored trading nation (i.e. the one with the least restrictions) apply to all trading nations.

Historical Roots of GATT and the Failure of the ITO

While the United States has always participated in international trade, it did not take a leadership role in global trade policy making until the Great Depression. One reason for this is that under the US Constitution, Congress has responsibility for promoting and regulating commerce, while the executive branch has responsibility for foreign policy. Thus, trade policy was a tug-of-war between Congress and The Executive Branch not always agreeing on the mix of trade promotion and protectionism. However, the United States began to experiment with the Reciprocal Trade Agreements Act of 1934 and in the hopes of expanding employment, Congress agreed to permit the executive branch to negotiate bilateral trade agreements. During the 1930s, the amount of bilateral negotiation under this act was fairly limited, and in truth it did not do much to expand global or domestic trade. Near the end of the Second World War U.S. policy makers began to experiment on a broader level. In the 1940s, working with the British government, the US issued two innovations to expand and govern trade among nations. These mechanisms were called the General Agreement on Tariffs and Trade (GATT) and the International Trade Organization (ITO). GATT was simply a temporary multilateral agreement designed to provide a framework of rules and a forum to negotiate trade barrier reductions among nations. It was based on the Reciprocal Trade Agreements Act and allowed the executive branch negotiating power over trade agreements with temporary authority from Congress and at the time functioned as a provisional, but promising trade system.

How GATT and WTO Differ

Where GATT was only a set of rules agreed upon by nations, the WTO formed an institutional body and expanded its scope from only traded goods to trade within the service sector and Intellectual Property Rights. Though designed to serve multilateral agreements, during several "Rounds" of GATT negotiations, (particularly the Tokyo Round) plurilateral agreements formed selective trading and caused fragmentation among members, while WTO arrangements are generally a multilateral agreement settlement mechanism of GATT.[1]

"Rounds" of GATT trade negotiations

The countries who signed GATT occasionally negotiated new trade agreements that all would enter into. Each such set of agreements was called a "round". In general, each of these agreements bound the members to reduce certain tariffs, with many special-case treatments of individual products, and in many cases with exceptions and modifications for each country.

1. Geneva Round (1948): 23 countries. GATT enters into force.
2. Annecy Round (1949): 13 countries.

3. Torquay Round (1951): 38 countries.
4. Geneva Fourth Round (1956): 26 countries. Tariff reductions. Strategy set for future GATT policy toward developing countries, improving positions as treaty participants.
5. Dillon Round (1962): 26 countries. Tariff reductions. Named after C. Douglas Dillon, then U.S. Undersecretary of State.
6. Kennedy Round (1967): 62 countries. Tariff reductions. This was an across-the-board reduction rather than a product-by-product specification, for the first time. Anti-dumping agreement (which, in the United States, was rejected by Congress).
7. Tokyo Round (1979): 102 countries. Reduced non-tariff trade barriers. Also reduced tariffs on manufactured goods. Improvement and extension of GATT system.
8. Uruguay Round (1986): 125 countries. Created the World Trade Organization to replace the GATT treaty. Reduced tariffs and export subsidies, reduced other import limits and quotas over the next 20 years, agreement to enforce patents, trademarks, and copyrights (TRIPS), extending international trade law to the service sector (GATS) and open up foreign investment.

It also made major changes in the dispute settlement mechanism of GATT. - "Unquote"

- **The fundamental freedoms of the GATT and E.U. Treaties, and the freedom of establishment in the USA.**

<u>- The freedom of establishment.</u>
Every worker coming from every member state has the freedom of establishing is working place in any other member state.
Therefore, based on the EU Treaties a French citizen can establish his working place in Spain, and vice-versa, for instance. So, based on the WTO Treaties, a US citizen can establish his working place in the UK, and vice-versa. While the former concept is well understood and accepted, the latter gives non problem as far as companies are concerned, while arises a lot of problems when physical persons are concerned.
In the US the freedom of establishment in any Federate State is guaranteed to every citizen resident in one of the Federate States.

<u>- The freedom of movement for workers and the bilateral treaties.</u>
Any worker has the freedom to move from a working place to another inside the EU.
Any worker has the freedom to move from a working place to another inside the WTO.
Apparently those two statements are simple and easily understandable. In practice the process dos not work so simply.

<u>- The freedom to provide goods and services.</u>
The freedom to provide goods and services is made of the following freedoms:
- The freedom of public procurements.
- Free movement of goods.
- The freedom of capital movement and payment.

The freedom of public procurements indicates in practice that a US individual or corporation can partecipate to every public procurement in any member state of the EU, and the WTO.
Apparently in theory this freedom should be easy to be guaranteed, while in practise in most cases we find a lot of excuses from public departments in inviting or accepting offers coming from "abroad".

Goods can move freely all over the world of the WTO member states. No levy or duty can be issued on this goods different that those applied by the WTO.

Capital can be moved freely in the world of the WTO. US physical persons and/or corporations can have banks accounts in Europe, China, and so on (and vice-versa). Only for criminal reasons bank accounts can be detected.

- The jurisdiction of the State of residence or domicile.
Most national body of law consider residence or domicile as the condition to their submission from those who operates and/or are in relationship with them. This rules can be applied for tax, civil and administrative purpose. Therefore if a physical or juridical person, resident abroad, contract with a client and/or supplier in a foreign countries shall be subject to its national law (if nothing different is agreed). Criminal law shall be applied only to physical persons when they act into that country or anywhere else against a born or resident citizen.

Chapter III
The incorporation in the United States of America

How to incorporate in the USA

Incorporating in the U.S.A. gives you the possibility to incorporate in one of the Union's States, following the local rules and regulations.
To give you the whole prospect of information seems to be impossible in this work, so we will basically take under consideration the incorporation rules of Delaware and Virgina and we will try to compare them with the requirements of other U.S. States and of most appropriate European Union's member States.

General Statements on Delaware and Virginia Incorporation.

*You can form a Delaware or Virginia Corporation by fax or mail without going to Delaware, by using the services of one of the several Delaware registered Agents.

*The Delaware corporate franchise tax is minimal and quite competitive with other States (only $30/year for Delaware Corporations with 3,000 shares or less at 12th May 2003). There is an additional $20 filing fee. All fees charged by the State of Delaware to corporations are kept deliberately low to attract incorporation business - a major source of revenue for the State.

*One single individual may simultaneously hold all of the executive offices and titles of a corporation, including chairman of the board, president, vice president, secretary and treasurer. Unlike States that require as many as three different individuals to hold the post of officers and/or directors, Delaware permits you to be a one-person corporation.

*A Delaware Director shield law permits corporations to shelter their directors liberally from personal liability in connection with their actions as board members.

*Delaware permits S corporations, which, with the federal tax laws of 1986, can be very advantageous.

*As of October 1, 1992, Delaware recognizes Limited Liability Companies (LLCs) and you may form an LLC in Delaware.
LLCs combine the best aspects of the corporation and the limited partnership. This form of organization protects individuals from liability (as does a corporation) and allows the participant to write off losses and actualise gains (as does a limited partnership). LLCs do not have as many restrictions as S corporations.

*Delaware has a separate court system - the Court of Chancery - to adjudicate corporate litigation plus a fully established corpus of case law and a very capable corporate Bar.
Delaware corporate laws are regularly reviewed, revised and simplified by the Delaware State Bar Association and the Delaware Legislature. Their goal is to provide a corporate legal climate conducive to the growth and profitability of the more than 245,000 companies chartered as Delaware corporations. Delaware's Court of Chancery celebrated 200 years of existence in 1992. Delaware was already perfecting its body of corporate law when all of the country west of Mississippi was still "Indian territory" or was owned or claimed by Britain, France, Spain or Mexico.

*There is no minimum capital investment required to form a Delaware corporation. Company's investment may be as low as zero.

*One may operate anonymously as the owner of his corporation if wishes - never revealing his identity to the State of Delaware. It is not needed to be a U.S. citizen or resident of the USA to set up a regular "C" (the standard common type) corporation or Limited Liability Company (LLC) in Delaware. Resident non-US citizens may form S corporations.
A corporation may be based, headquartered and/or operated in any State or territory of the United States - or in any city in any Country in the world - providing that it retains the services of a Delaware Registered Agent.

*There is no sales tax in Delaware. Whether a corporation is physically located in Delaware or not, as a Delaware corporation, purchases in Delaware are not subject to sales tax.
There is no state corporate income tax on goods or services provided by Delaware corporations operating outside of Delaware.
There is no state corporate tax on interest or other investment income.
There is no personal property tax. There are no state real property taxes, and the local real property taxes are very low.
Delaware has no ad-valorem or value-added taxes (VATs).
There are no taxes on business transactions (TBTs), which are essentially VATs that exempt retailers.
Delaware has no use tax, inventory tax or unitary tax.
There is no State of Delaware inheritance tax on stock of Delaware corporations operating outside of Delaware held by non-residents of Delaware.
There are no Delaware capital shares or stock transfer taxes.
Wilmington, Delaware, has no city sales tax.

*Corporations are permitted to pay dividends out of profits as well as out of surplus.
The director(s) of a corporation are permitted to set the sales price on any stock the corporation issues and desires to sell. Corporations may purchase shares of their stock, hold, sell and transfer them.
The director(s) may determine what percentage of the consideration received from the sale of their stock is to be considered capital.
The liability of shareholders of a Delaware corporation is limited to the value of stock held in the corporation plus the corporate tax liability, provided that the corporation has conducted its business according to all applicable state and federal laws.
A corporation may own - without limitations a stock amount or value - stocks, bonds or securities of other corporations located in Delaware or outside of Delaware as well as real and personal property. This means that a new corporation can be set up as, or later become, a corporate holding company or real estate holding company.

* A corporation can be set up to be an all-purposes corporation - to conduct multiple types of business, to manufacture and/or market any product, to offer all kinds of services, simultaneously or sequentially. All it is needed to do is to include a broad "statement of purpose" in its Delaware Certificate of Incorporation (Corporate Charter) and other corporate documents such as: "The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware". This permits a corporation, for example, to start out as a real estate holding company, add any other company's retail business to its activity and later become a manufacturer of packaged goods - all without having to alter its original documentation or file new corporate documents.

*Quarterly or annual meetings may be held anywhere (including a telephone conference call) at the option of its director(s). In lieu of such formal meetings, director(s) and/or shareholders may act "by unanimous consent".
The bylaws of a corporation may be formulated or altered anytime by its director(s).

*A corporation set up in Delaware will automatically have "perpetual existence" unless otherwise specified in its Certificate of incorporation.

* A corporation stock can be privately owned or publicly traded on any stock exchange anywhere in the world when properly registered.

*It is not required to maintain a business office address aside from the address of the Delaware Registered Agent which is required for service of process.

How to incorporate in Delaware.

*The company's representative or a Delaware Registered Agent must check the availability of company's corporate name and file an original Certificate of Incorporation. The name of the corporation (confirmed by the Delaware Secretary of State's office to be available) can be reserved by your Company's Registered Agent.

*Every corporation must have and maintain in this State a registered Agent who is a resident of Delaware and can perform all necessary State government filings and recordings, provide no-

tice of State of Delaware annual franchise tax, reporting and payment requirements, and provide a Registered Agent address in Delaware empowered to receive and process required corporate and legal documents (referred to in legal terms as "service of process").

*Your Registered Agent can provide all services requested to incorporate any company.

FEES CHARGED BY THE STATE OF DELAWARE FOR INCORPORATING.

*MINIMUM FEE:

The minimum total fee payable to the Division of Corporations of the State of Delaware is *50. For stock corporations, this initial tax is based on authorized capital stock.

*INITIAL TAX:

The initial tax is based on the quantity and par value of the capital stock authorized in the Certificate of Incorporation.

Par Value Stock:	
Up to *2,000,000	20ç per $1,000
Over *2,000,000 to $20,000,000	10ç per $1,000
Over 20,000,000	4ç per $1,000
No Par Value Stock:	
Up to 20,000 shares	1ç per share
Over 20,000 shares to 2,000,000 shares	1/2ç per share
Over 2,000,000 shares	2/5ç per share
Minimum tax:	$15
Receiving and indexing:	$25

Miscellaneous: Approximately $30, or more, depending upon length of the filing.

*AMENDMENTS AND CORRECTIONS:

Filing fees is *30 unless capital stock is increased, in which event the organization tax 4see above7 is computed upon the new authorized capital stock less the amount paid upon the capitalization previously authorized.

*ANNUAL FEES AND TAXES:

Annual report filing fee	$20

*FRANCHISE TAX:- the lesser of (a) or (b)

(a) Based on authorized shares - par or no par value:

- 3,000 shares or less	$30
- Over 3,000 to 5,000 shares	$50
- Over 5,000 to 10,000 shares	$90 plus $50 for each additional 10,000 shares or part thereof.

b) In the case of par value stock under $100, an alternative is offered based on assumed capital - found by dividing gross assets by all issued shares and multiplying quotient by such authorized par value shares; provided, however, that, if said quotient is less than the par value, such shares shall be multiplied by their par value instead of by said quotient. Rate of tax is $200 per $1,000,000.

*LIMITED LIABILITY COMPANY FRANCHISE TAX - of $100 is due June 1st, annually.

*REGULATED INVESTMENT COMPANIES:
pays on a different scale prescribed under Section 503(h), the General Corporation Law of the State of Delaware.

*Filing fees for an already incorporated "foreign" corporation (a corporation originally chartered anywhere in the USA other than Delaware), in order to qualify to do business in Delaware (Foreign Corporation certificate): $150

*Filing fee for non-United States corporation for Certificate of Domestication to become a Delaware Corporation: $210.

*No Delaware State Income Tax for shareholders who are non-resident.

*No Delaware State Corporate Income Tax for Delaware corporations headquartered and operating out-of-State.

*Your Delaware Corporation is a "domestic" corporation in the State of Delaware. It is a "foreign" corporation in every other State. You will have to register and qualify it in the State(s) within the borders of which you plan to maintain staff offices or outlets to transact business. This is not necessary if you sell through independent distributors, manufacturer's representatives, wholesalers, retailers or through mail order in such States.
To get permission to operate as a "foreign" corporation -depending on the State(s) where you wish to qualify your corporation- you have to apply either at the office of the Secretary of State, Commissioner of Commerce, Corporate Commission, Superintendent of Corporations, State Department of Assessment Taxation, Secretary of Commonwealth, Department of the Treasury, State Corporation Commissioner in such State(s).
The application that must be filed will generally have to contain the same type of information that appears in your Delaware Certificate of Incorporation.
You will be required to pay the necessary registration fees for such State(s) both at the time of application and when you receive permission to operate. You must also file an annual report in such State(s) and pay annual State taxes, if any.
You must keep your corporation books and records on file at your headquarters or home office from which you will be conducting your business.

*The annual corporate franchise tax is due on or before March 1st each year.
Corporations, which pay franchise taxes in excess of $5,000 annually, must make quarterly payments due and payable June 1st, September 1st, December and March 1st.
Your Registered Agent will forward to you notification of franchise taxes well in advance of the due dates each year and help you remain in compliance with Delaware Law.

If your corporation is a "foreign" corporation doing business in Delaware, you will likewise be reminded of the necessity to file your annual report (which can be a simple typed document) which your Registered Agent will transmit to you as soon as it is received each year.

*Any Registered Agent can prepare the application to qualify a Delaware corporation in any U.S. State(s) you wish (not offshore), for a fee.
The filing fees for this application vary from State to State.

How to qualify to transact business in Delaware if your Corporation is already incorporated in another State or Jurisdiction.

*Submit a completed "Foreign Corporation Certificate", stating.
- Name of corporation as it appears on file with your State of original incorporation.
- Description of the business that the corporation proposes to conduct in Delaware, including a statement that this business is the same as authorized by the jurisdiction of its incorporation.
- The exact language of this form is given in Delaware General Corporation Law, Limited Partnership Act and Business Trust Act, published by Michie.
- Include a copy of the Certificate of Existence issued by an authorized officer of the State or jurisdiction of the original incorporation.
- Pay a fee to the State of Delaware of $150.
- Appoint a Registered Agent for service of process.

*To amend your Delaware Certificate of Incorporation after it has been filed, such as alterations in the corporate name, the amount and classes of authorized stock, etc., a Certificate of Amendment must be filed pursuant to Section 241 (before receipt of stock payment, or non-stock corporation) of the General Corporation Law of the State of Delaware.
The Certificate of Amendment must be signed by the president or vice president and attested by the secretary or assistant secretary of the corporation. Neither notarisation nor corporate seal are required.

The juridical persons in Delaware company law

*SOLE TRADER
The Sole Trader-ship is a juridical form on which the physical and juridical person combines at a same time.
Non-residents cannot run sole trader-ship.

*THE "S" CORPORATION
An S-corporation (formerly called Sub-chapter "S" because it was named for a section of the U.S. International revenue Code enacted in 1958) is a form of incorporation that the incorporator can elect instead of incorporating or operating as a C-corporation. This S election enables the shareholder(s) of a closely held company to enjoy limited liability and other corporate advantages but avoid the penalty of double taxation that occurs when corporation income is subject first to corporate income tax, and is then taxed a second time as personal income, when corporate earnings which have already been taxed are returned to the shareholders in the form of dividends.
As of August, 1994, there were more than 1.6 million S corporations in the U.S.A.

The advantages of an s-corporation are:

- Avoidance of double taxation of corporate profits distributed as dividends.
  Earnings are not taxed at the corporate level by the I.R.S. All corporate income passes directly through to the shareholders in proportion to their individual ownership of shares in the corporation. This income is then taxed only once - at personal rates. A C-corporation must pay a federal corporate income tax. Then, any dividends which shareholders receive are taxed a second time by the I.R.S. as personal income.
- The S-corporation, itself, pays no federal corporate income taxes and is not subject to the alternative minimum tax.
- The income or losses of an S-corporation are deemed to be the income or losses of its shareholders in direct proportion to their share of ownership in the corporation.
- Capital losses of the S-corporation pass through to the shareholders who can use them to offsetother income, providing that they do not deduct as a loss any amount exceeding tueir individual investments in, or loans to the corporation. Such losses may be carried forward indefinitely if not currently usable.
- An S-corporation provides the same legal protection from personal financial liability as a C-corporation plus the same ease of transfer of ownership and perpetuity of existence, permitting it to survive its original founders and/or owners.
- You do not have to worry about having to pay federal corporate income tax on accumulated earnings. C-corporations that do not distribute their earnings for a taxable year may be subject to a tax on accumulated earnings in excess of a certain figure such as $150,000 that varies according to dividends paid and other adjustments provided for in the International Revenue Code.
- You can pay yourself as high a salary as you wish without running the risk that the I.R.S. will consider it "out of line with comparable salaries in your industry".
- If you have a one-person S-corporation, you need not be concerned about the I.R.S. deciding that you are "a personal holding company" and subject, therefore, to additional taxation.
  (This is a distinct hazard for one-person operators of some types of enterprises).
- Avoidance of double taxation of capital gains, should the corporation or any of its assets be sold.
- Stockholder employees of S-corporation may participate along with other employees (or individually in the case of a one-person corporation) in qualified retirement plans set up by the S corporation. Under the Tax Equity and Fiscal Responsibility Act (TEFRA), S-corporations, C-corporations, and partnerships are treated with few significant differences with respect to qualified retirement plans such as an HR 10 (Keogh) Plan. A Keog Plan through an S-corporation allows you to save up to 20 percent of your income, up to $30,000 per year, in a tax-deferred retirement account - a major tax benefit.
  The S-corporation can take a tax deduction for the full amount of its contribution to the plan. In the case of shareholder employees, the contribution made on their behalf must be reasonable when compared to compensation they receive. The employee (shareholder or not) is not required to include as income either the S Corporation’s contributions or the subsequent earning from the invested contributions until such time as he/she receives a distribution from the qualified plan.

- A shareholder's cost basis in S-corporation stock rises as the shareholder pays taxes on undistributed corporate income. That lowers the taxable capital gain if and when the owner sells the stock. In most cases, the saving should offset a rise in income tax rates.
- S-corporations are permitted to use the cash accounting system, which id the simplest. More that half of all small firms in the USA is taxed as S-corporations.

The limitations of S-Corporation status.

- The total number of an S-corporation's shareholders must non exceed 35.
  (However, thanks to I.R.S. Revenue Ruling 94-43, there is a way to circumvent this limitation. For example, suppose that 60 people want to form an S-corporation. Instead of forming one S-corporation, they could form three separate S-corporations, each owned by 20 shareholders, and have those corporations, in turn, form a partnership for joint operation of the business.
  This also permits S-corporations to enjoy more of the benefits of Limited Liability Companies).
- These shareholders are not permitted to be nonresident aliens. (They may, however, be resident non-U.S. citizens, estates or certain trusts. But residence in a U.S. territory or possession is not sufficient for qualification. The individual must be resident of a State of the United States.
- S-corporations must not have corporate, partnership or most trust-type shareholders. They must be either qualified individuals or the estate of deceased persons in the process of administration. Thus, an S-corporation is not permitted to be a subsidiary of another corporation.
- S-corporations may own subsidiaries but they must not own more that 80 percent of a subsidiary's stock.
- S-corporations must use the calendar year as their tax year unless an I.R.S. approved business purpose - such as a highly seasonal business - can be established for a different taxable year. For example, the I.R.S. allows a variant fiscal year if it can be demonstrated that, for three consecutive years, 25 percent or more of the corporation's gross receipts are realized during the last two months of the desired fiscal year. This fiscal year end date must be September 30 or later.
- Fringe benefits paid to shareholders who own two percent or more of the S-corporation's stock -such as medical reibursement plans and group term life insurance- are not deductible corporate expenses under the latest federal tax laws.
- While S-corporation income is exempt from corporate tax at the federal level, not all States and Territories exempt such corporations from state (or territorial) corporate taxes. States and Territories that do not recognize S-corporation tax status of S-corporations incorporated and/or operating in their jurisdiction include: The District of Columbia (Washington, DC), New Hampshire, Tennessee and Puerto Rico. These jurisdictions require S-corporations to pay state (territorial or district) taxes at C-corporation rates.
  Other States and territories that recognize S-corporation status but nevertheless require them to pay C-corporation rates include: Arizona, Connecticut, Guam, Michigan, New Jersey, New York, Rhode Island and Vermont.
  The majority of these States impose state income taxes on the shares of income of S-corporations operating in their State that pass through to shareholders who reside out-of-State. Some States, such as Minnesota, require that an S-corporation withhold state income taxes from distribution to non-resident shareholders.
  (In addition to adding to the accounting/bookkeeping workload, this might result in nonpro rata distributions which in turn could lead to an I.R.S. finding that your corporation has more than one class of stock, in which case it could cause a retroactive termination of your federal S-corporation election).

States and territories which do not impose state income taxes on the shares of income that pass through to shareholders residing out-of-State include: Arkansas, The District of Columbia (Washington, DC), Florida, Guam, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Puerto Rico, South Dakota, Tennessee, Texas, Washington, Wisconsin, and Wyoming.

Some States require filing separate S-election documentation at the state level. These include: Arizona, Indiana, Mississippi, New York, Pennsylvania and Wisconsin.

NOTE: The above information is correct as of February 1993, but it is advisory only, since any session of any State or territorial legislature may result in new or altered statutes concerning these matters. If you plan to elect S-corporation status for your corporation, you should be sure to check with the tax bureau(s) of the State(s) where you plan to headquarter and/or operate (open an office and staff it with one or more people) and obtain a copy of their latest state income tax regulations for S-corporations.

- S-corporations are permitted to have only one class of common stock; however, this class may be divided into two categories: (1) Voting shares and (2) Nonvoting shares.
- If you are converting an existing C-corporation to S-corporation status, no more than 25 percent of its gross income may be derived from "passive" sources such as rent, dividends, interest, annuity, royalties, sales or exchange of securities.

  However, if you are incorporating your enterprise from the beginning as an S-corporation, it may earn as much passive income as you wish with no limitations.
- When a C-corporation switches to S status and later disposes of an asset of C-corporation that became an asset of the new S-corporation, it must pay taxes on the "built-in-gain" it benefited by at the same time of the S election. (Because it has been unclear how assets such as product inventories should be evaluated, the I.R.S., as of February, 1992, was evaluating a proposed ruling that inventories should be appraised for tax purposes on a bulk-sale basis rather than the higher value retail price basis. This would reduce the built-in gain tax liability of the new S-corporation).

  If you have a C-corporation that has appreciable assets and plan to elect S-corporation status, you should obtain a professional appraisal of both the bulk sale (wholesale) value and retail value of such assets at the time of S election.
- With an S-corporation, shareholders are taxed on their shares of corporation earnings whether they take these earnings as divided distributions or retain the earnings in the corporation. All earnings (profits) must pass through to shareholders. In other words, even though the corporate profits for a given year remain physically in the corporate bank account -to build up working capital, for example, -and are never transferred to shareholder(s), each shareholder must nevertheless pay personal income tax on his/her share of those profits, which will be considered by the I.R.S. to be: (1) individual income and (2) paid-in-capital.

<u>In what circumstances is it particularly desirable to consider S-Corporation status.</u>

- If you already have or plan to start a one-person or closely held business or professional activity, with probable losses during the first-year/second-year start up period resulting from initil investments in equipment, doing-business materials or inventory, heavy operating expenses, low sales or other income, etc. The S election permits the pass-through of operating losses to shareholders who may have income to offset losses.
- If you have a business with a high taxable income that distributes the majority of its earnings as dividends and that has low capital spending requirements -since you cannot plough back your earning into an S-corporation. All profits of an S-corporation must be distributed to its share-

holders within 2.5 months following the end of its tax year. Otherwise, the I.R.S. will consider these profits to have been so distributed, whether they were or not, and require federal income taxes to be paid by each shareholder. The I.R.S. will further assume that this same "profit distribution" was returned by each shareholder in the form of contributions to capital.

- The Federal Income Tax Law of 1993 increased the top individual (personal) tax rate from 31 to 36 percent on taxable income over $115,000 for single people and $140,000 for married couples filing jointly. Income in excess of $250,000 for singles or couples is subject to a 10 percent surcharge, raising their "top" rate to 39.6 percent. Since some exemptions and deductions may be eliminated for high-income people, their true "top" rate can reach 44 percent.
- The federal corporate tax rate for C-corporations is 34 percent for firms with taxable income in excess of this figure. As above indicated, S-corporations are not subject to paying a federal corporate income tax.

Therefore, if you anticipate that your individual (personal) taxable income will be less than $115,000 if single, or $141,000 if married filing jointly, you should consider electing S-corporate status or forming a Limited Liability Company (LLC). However, if your personal taxable income is likely ti bump you into 36 percent bracket or higher, you might be better off forming a regular C-corporation, despite the double taxation of dividends by the I.R.S. (and the majority of State governments).

NOTE: Any company that changes its corporate status is prevent by Federal Tax Law from switching back for five years.

How is an S-Corporation set up

In the case of a corporation being formed for the first time, you must fill out and file I.R.S. Form No. 2533, prior to the 15th day of the third month of the corporation's existence.

In Delaware the effective date of incorporation is nominally the filing date; however, you can, if you wish, stipulate that your Certificate of Incorporation is not to become effective until a specifies time subsequent to the time it is filed, providing that such time shall not be later than a time of the 90th day after the date of its filing (per Section 103, Delaware Corporation Law).

In the case of an existing corporation, I.R.S. Form No. 2553 must be filed on or prior to the 15th day of the third month of your corporation's tax year.

All shareholders must sign Form No. 2553 prior to filing it.

Mail the document via registered mail to your local I.R.S. office. Your receipt will record the legal date of your election of S-corporation status and will stand up in court, should the I.R.S. later report that it never received your documentation.

Your Registered Agent can help you elect S-corporation status, and file the necessary documents, as indicated in the general section of this work.

Inadvertently lost of S-Corporate status

It is possible to loose automatically S-corporate status if you violate the I.R.S. rules. For example, you can loose it if you have 35 shareholders and one of them gives a share of stock to someone else -even a member of a family, such as a child- unless the I.R.S. decides to waive the automatic termination that results under the law.

NOTE: When a husband and wife own stock as "tenant in common" or "joint tenant", or as "community property", they are counted by the I.R.S. as one shareholder in terms of this S-corporation requirement. However, if the spouses own the shares individually, they are counted as

two shareholders -even if they also own some stock in the corporation jointly. If either spouse, but not both, owns shares individually as well as jointly, these two individuals count as one shareholder. And, if two shareholders not legally married own stock jointly, the I.R.S. counts them as two shareholders.

If you issue a second class of stock, your S-corporation can automatically become a C-corporation with corporate tax liability.
NOTE: If your S-corporation's shareholders lend too much money to the corporation, rather than investing the money in stock as capital at risk, the I.R.S. may nevertheless deem the loan to be an investment in stock and rule that stock to be of a different class than the one originally issued. Consequently, your S-corporation will be viewed as having more than one class of stock and will lose its S status. The single case in which you are allowed to have two classes of stock is when you issue both voting and nonvoting stock.

You loose S status if another corporation, partnership or certain types of trust become a shareholder. If, even without your knowledge, a share of stock should be transferred to a nonresident alien, your S-corporation could become a C-corporation, if the I.R.S. decides not to exercise their statutory permission from Congress to waive inadvertent termination of your S status.

The best way to prevent such an occurrence is to incorporate as a "Close" corporation, and to include in your corporate bylaws specific rules for stock transfer, including the notification of the president and/or treasurer and/or secretary of the name, permanent residence address and citizenship status of the purchaser of any shares of stock sold by any shareholder.
You can also state in your bylaws that your S-corporation stock "may be sold to any individual or entity, the sale to whom or which would result in the loss of S-corporation status". Or, you can simply state, "All stock held by shareholders, when offered for sale, must first be offered to the corporation and/or its shareholders who shall have the right of first refusal for a period of thirty (30) days".

The difference between an "Open" and a "Close" Corporation

An "Open" corporation provides stock that the general public can readily purchase. It may have one shareholder or a group of shareholders. The shareholder(s) owning more than 50% of the shares will control corporate policy and activities through their presence or representation, through proxies, on the board of directors.

A "Close" corporation (either C or S type), as defined by Delaware Corporations Law, is one in which all of its issued stock of all classes, exclusive of treasury shares, shall be represented by certificates and shall be held of record by not more than a specified number of persons not exceeding thirty (30).

The stock of a "Close" corporation also shall be subject to restrictions of stock transfer, such as a first-refusal option requiring that, should a shareholder elect to sell, the stock must be offered to the corporation or to any other holder of securities in the corporation. These restrictions can be defined in the original bylaws or adopted as a later amendment to the bylaws by a majority vote of the shareholders.

A typical restriction prohibits the transfer of restricted securities to non-resident aliens in order to protect and maintain a corporation's status as an S-corporation under the U.S. Internal revenue Federal Tax Code.
If you wish to elect S-corporation status, you may wish to incorporate as a "Close" corporation and include this restriction which will prevent possible automatic loss of your corporation's status (see previous page).

The "Limited Liability Company"

A "Limited Liability Company", also referred to as an "LLC", is a new class of business operating entity with legal status in certain States - hybrid between an S-corporation and a partnership. It combines the tax advantage of a partnership (avoidance of corporate income tax) with the legal safeguard of a corporation -namely the fact that owners' personal assets are not normally at risk in business-related lawsuits.
As of December 1994, 47 States, plus the District of Columbia, have passed laws governing the administration and operation of LLCs within their jurisdictions. The Pennsylvania LLC law, which has been signed by the governor, became effective February 5, 1994. The three remaining States -Hawaii, Massachusetts and Vermont - have such laws pending before their legislature.
An excellent reference that provides comprehensive guidance for setting up and administrating LLCs and converting other business entities to LLCs is a manual entitled "Limited Liability Companies: Tax and Business Law" by Carter G. Bishop and Daniel S. Kleinberger, available from Warren, Gorham & Lamont, 31 St. James Avenue, Boston, Massachusetts 02116, for US$145 plus postage, handling and applicable sales tax.

The LLC is treated as a partnership for federal tax reporting. Taxable income and losses pass through to its members (owners) in the same manner as is the case with partnerships and S-corporations.
The law allows the inclusion of liabilities of the LLC in order to increase basis for tax purposes (as in the case of partnership).
The liability of all members is limited to their investments in the LLC (unless they personally guarantee other debt incurred by the LLC).
Payment to a retiring member may be structured as an expense to the LLC.

With the single exception of requiring at least two members (owners), LLCs do not restrict the number and type of owners. The LLC, for example, is permitted to have more than 35 members. (However, there is now the 35-owner limitation and obtain advantages similar to those enjoyed by LLCs.

Corporations, non-resident aliens, limited or general partnership, estates, charitable organizations and pension plans are all permitted to be owners of an LLC.

The LLC law permits special allocations to owners of income, expense, gain and loss. It may own 100 percent of the shares of stock of another corporation, whereas the S-corporation is limited to owning 80 percent. More than one class of "membership interest" (similar to stock) is allowed.
Members may shelter capital gains by exchanging property (shares of stock, real estate, etc.) that has appreciated in value to them for a membership interest in the LLC equal to the current appraised value of their property -even though the member does not thereby obtain 80 percent own-

ership of the LLC as a result of this exchange, as is required in order to shelter capital gains under S-corporate status.
LLC owners may obtain additional tax losses from their allowable individual percentage of the company's liabilities, rather than solely through direct loans, as required in the case of S-corporations.
An LLC owner may obtain additional tax expense deductions from a special option, previously available only to partnerships, under Section 754 of the International Revenue Code.

Advantages of An LLC over a Partnership:

- Each member enjoys limited liability, as compared to the risk of unlimited liability that general partners must face in a partnership.

- Unlike limited partners, LLC owners may participate in company management without fear of loosing their protected, limited liability status.

- LLC members may be able to avoid the I.R.S. passive-loss rules and take federal income tax deductions for losses caused by the business -a benefit often unavailable to limited partners.

Disadvantages of operating as an LLC

- As indicated above, not all States recognize LLCs. Therefore, if the LLC is operated in one of these States, the owners may not have limited liability in lawsuits in such States -simply because there is no provision under their laws for such a contingency, pending the legislative passage of statutes recognizing the legal status of LLCs and regulating their activities in their jurisdictions.

- The benefits of owners-employees, such as health care or life insurance, are only partially deductible from these members' individual federal income tax returns.

- If you want to have a fiscal year different than a calendar year, a special election is required.

- An LLC cannot be formed by a single individual. Two or more members are required.

- There is a legal requirement for a Limited Liability Company Agreement among its members. An attorney competent in corporate, contract and tax law must draft it. Tax treatment of the LLC as a corporation or partnership is going to be governed by the Agreement. And, regardless of the nature of the Agreement drafted, tax treatment is completely predictable only if you obtain a Private Letter Ruling from the Internal Revenue Service on a case-by-case basis.

Advantages to a holding company of incorporating and operating in Delaware.
Corporations whose activities within Delaware are confined to the maintenance and management of their intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.), and the collection and distribution of the income from such investments

from tangible property physically located outside of Delaware are exempt from corporate taxation by the State of Delaware.
For the purpose of this statute, intangible investments are deemed to include -without limitation- investments in stock, bonds, notes and other debt obligations (including debt obligations or affiliated corporations), patents, patent applications, trademarks, trade names and similar types of intangible assets.
There are also special situations that can provide Delaware State Corporate Tax savings when forming a leasing company or liquidating a company.

Advantages to exporters of setting up and operating foreign sales corporation subsidiaries from Delaware

- A corporation that qualifies either as a Domestic International Sales Corporation (DISC) or a Foreign Sales Corporation (FSC) under the provisions of Subchapter N of Chapter 1 of the Federal International Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC or FSC is exempt from Delaware State Corporate Tax.

- The DISC is permitted under the Federal Revenue Act of 1971 to defer federal income tax on 50 percent of the export earning allocated to the DISC with the balance of the revenue taxed as dividends to the parent company.
  Under revised regulations, effective January 1, 1985, to receive this deferral, exporters must set up an offshore office.

- The tax benefits of the FSC are: (1) Exemption of federal income tax on 15 to 30 percent of export sales and (2) a "100 percent dividends received" deduction for corporate shareholders. This can generate a bottom-line tax saving of more than 15 percent. The break-even point for establishing a FSC is about $500,000 in export sales and/or taxable profits of $50,000, annually.

- The FSC is required to be a foreign (offshore) corporation, have at least one non-U.S.-resident director and maintain a summary of its accounting records at the offshore office. The FSC is often located in a U.S. possession such as the Virgin Islands, Guam, or Sampan, where hundreds of business have been organized for the specific purpose of providing the requisite services for a nominal fee.
  They may also be located in 23 foreign countries that have formal tax agreements with the USA. The FSC is typically set up as a wholly owned subsidiary of the parent company. Then an FSC election is filed with the I.R.S.
  Large FSCs (companies with more than $5 million in export sales) must hold an annual meeting of the board of directors and shareholders outside the USA. They must maintain their primary FSC bank account in a qualifying country and conduct the following disbursement through that account: accounting fees, legal fees, dividends, officers' salaries and directors' fees.
  Fscs with not more than $5 million in gross receipts during the taxable year do not have to meet the requirements detailed above, nor are they required to have offshore located management that maintains accounting records. These are known as "Small FSCs".

- You are not permitted to file an FSC election with the I.R.S. if your corporation has already elected S-corporation status, nor can you do so if your company is a partnership, unless its members are C-corporations. Your FSC may have no more than 25 shareholders, and is not permitted to issue preferred stock.

- Up to 25 exporters may jointly own a FSC, and thus share and substantially reduce the expense of compliance with the tax code. The State of Delaware pioneered the "shared FSC" in 1988, when the Delaware Development Office set up two shared FSCs in Barbados, under the Delaware Shared Foreign Sales Corporation (FSC) Program. For example, a company with $5 million in annual export sales with a profit margin of 20 percent can expect to save more than $46,000 after deducting the first-year-costs of participating in the shared FSC.

What happens if we do not pay our annual Delaware franchise tax.

If a Delaware corporation does not pay its annual Delaware Franchise Tax to the State of Delaware the State will treat it like any other tax delinquency. It becomes a debt of your corporation, and the State of Delaware becomes the creditor.

The franchise tax shall be due and payable on March 1 following the close of the calendar year, except that with respect to a corporation whose franchise tax liability for the current calendar year is estimated to exceed $5,000, a tentative return and tax shall be due and payable as follows:

(1) Forty percent of the estimated tax on June 1 of the current year;
(2) Twenty percent of the estimated tax on September 1 of the current year:
(3) Twenty percent of the estimated tax on December 1 of the current year;
(4) The reminder of the tax as finally determined together with the annual franchise tax report on March 1 following the close of the calendar year.

In the event of neglect, refusal or failure on the part of any corporation to file the annual franchise tax report with the secretary of State on or before March 1, the corporation shall pay the sum of $50 to be recovered by adding that amount to the franchise tax as herein determined and fixed, and such additional sum shall become a part of the franchise tax as so determined and fixed, and shall be collected in the same manner and subject to the same penalties.

If the tax of any corporation remains unpaid after the due dates established by this statute, the tax shall bear interest at the rate of 1.5 percent for each month or portion thereof until fully paid.

Note that under Delaware law, the shares of any person in any corporation with all the rights thereto belonging or any person's option to acquire the shares may be attached for debt or other demands. So many of the shares, or so much of the option, right or interest therein may be sold at public sale to the highest bidder as shall be sufficient to satisfy the debt or other issued thereof by the court from which the attachment process issue, and after such notice as is required for sales upon execution process.

Chapter V
The incorporation in the European Union

In most European Union member States, we can classify enterprises into two large categories:

1) - Enterprises having public juridical personality;
2) - Enterprises having private juridical personality.

To the former category we can attribute companies having public utility purpose and completely or partially owned by the Government or by any other entity or institution delegated by the Sate. The companies included in such a category are disciplined by public laws, and have a different status from any other company. (i.e. Railway, Energy, Public Transports, Telecommunications, Banks, Social Security Services, etc. have represented, and in most cases still represent, this category).
Such enterprises have no shareholder(s), or no other physical person or company as shareholder, but the State.

In the latter category we can include enterprises having or not public utility purpose, owned or not by one-or-more public institutions, and which are regulated by private laws.

Incorporating in one of the member States of the European Union gives your firms the opportunity of operating freely in each of them, as per the Treaties statement. Once you decide to settle a firm establishment (plant, operative office, sales office, accounting office) in another member State, you have to register your firm as a foreign firm.
No registration is needed for a warehouse with no separate accounting and invoicing, or for a representative office.
Registrations shall be made at least at the:

- Chamber of Commerce,
- Chambre des Métiers,
- V.A.T. Office,
- Social Security Office,

following the requirements of each member State.

We can generally classify enterprises having private juridical personality such as follows:

a) - Enterprises based on personal contribution;
b) - Enterprises based on capital contribution.
c) - Enterprises based on labour contribution;
d) - Group of enterprises.

Into the first category we can include:

- The sole trader with unlimited liability;
- The individual company with limited liability;
- The partnership with unlimited liability;
- A partnership having partners with unlimited liability and partners with limited liability.

In the second category we can include:
- The company with limited liability;
- The Shareholding Corporation with limited liability.

In the third category we can include:
- The co-operative company with unlimited liability;
- The co-operative company with limited liability.

In the forth category we can include:
- The European Group of Economic Interest (EGEI);
- The domestic consortium of enterprises;
- The foreign consortium of enterprises.

Incorporating in Belgium.
As sole proprietorship

Your activity

Certain activities or professions are chartered and regulated by particular conditions.

A special licence is requested for the following business:
- Restaurant and hotel
- Real estate agency
- Travel agency
- Road transport of people and goods
- quasi-medical professions (pharmacy)
- Commerce of foodstuffs
- Banking, financing, and insurance activity cannot be exercised in the form of sole trader-ship

You have to enquire the competent Ministry in order to be informed about procedures for setting up your business.
More than 40 businesses must to be chartered because of the establishment law, and entrepreneur is requested to have the following characteristics:

- Knowledge of management sufficient to manage an enterprise
- Professional competence related to his activity
- Practical skill
- Creditworthiness.

Exemples: electricians; coiffeur; chef de cuisine, etc.

To be informed you have to contact "l'Administration de la Réglementation du Ministere des Classes Moyennes".
The "Chambre des Métiers et des Négoces" of the competent Province will issue a certificate which states you are able to perform your business.

Furthermore, particular conditions charter intellectual professions as notaries, insurance intermediaries, engineers, and advocates.

Your nationality

If you are an E.U. national, and you wish to live in Belgium for more than three months you need to have a adjourns card delivered by the Municipality of residence. If you are entrepreneur, the professional card is not requested; if you are employer the working permission is not requested.
If you are a non-E.U. national you have to be entitled of a sejour card or a residence card, and furthermore you need to get a professional card if you exercise an entrepreneurial activity or if you are director of a company.
The professional card is strictly personal, and has a validity of 5 years, and it is renewable. I you are employed you have to be entitled of a working license.

For your professional card you can apply the City Administration of your domicile in Belgium which transmits to the Ministére des Classes Moyennes, otherwise you can apply a Belgian consulate if you are not yet living in Belgium.
For your working licence you can apply the regional office of the "Office National de l'Employ" where you have your domicile if you are a company director or manager.

Your investment

Your investment is free in Belgium.
No restriction from IBLC "Institut Belgo-Luxembourgeois du Change".
Nevertheless, you have to give details of your business to the Belgian bank charged of your funds transferement.

The juridical form of your enterprise

I) "L'Entreprise individuelle" (Sole Tradership).

Such a form is recommended when:
- you will manage your business alone
- your business needs law capital and has low risk
- your sales are low

Consequences:
- your start up cost are reduced;
- low formality in th enterprise formation;
- unlimited liability on your personal patrimony;
- attribution of the tax regime of independent worker.

II) "La Societé "(the corporation).

1) The most used juridical form to settle a company for small and/or medium size enterprises is a limited liability company, such as "la societè privée à responsabilité limitée (SPRL)", when:
- you wish to limit yours, and your partner(s)' liability;
- your financial capital is low;
- you ignore the future development of your business;
- you do not foresee to employ your savings.

Consequences:
- 2 partners at least;
- a stated capital of 750.000 B.F. (US $7,000) is requested, of which 1/3 can work after the company's registration;
- complicated formation documents and procedures;
- hard working procedures (at least a general manager, annual meeting)
- the presence of one or more comptrollers is mandatory related to the annual revenue, assets, and sales of the company;
- liability limited to the share capital;
- the tax regime of employed workers for the owner(s) having a working contract.

2) You will generate a "Societé Anonime (S.A)", when:
- you need to limit your liability to you and your associates;
- your capital need can not be satisfied by a loop of partners;
- you need to take serious financial risks foreseeing a high turnover;
- you wish that part or all shareholders will be anonymous;
- you foresee a fast growing of your business.

Consequences:
- 2 partners at least;
- a minimum stated capital of 1,250,000 B.F. (US $500,000) which have been wholly paid
- several and expansive formalities in creating the company;
- heavy procedures (council board with at least three members; one or more directors; administrators; annual shareholders meeting);
- liability limited to stated capital;
- comptrollers are mandatory relatively the the size of the company;
- company and fiscal regime of employees to the directors having a national syndicated working contract;

3) Other Companies:

- "La societé privé à responsabilité limitée unipersonnelle (S.P.R.L.U.)"
It is a personal company, i.e. generated by one only person, without any other partner(s).
The liability of its owner is limited to the stated capital, contrarily to the sole firm.

-"La societé co-operative (S.C.)".

No minimum capital is required. Liability is unlimited except in the case where partners state in their articles of incorporation (statute) that their responsibility is limited to their shared capital.
Such a juridical form responds to the needs of a business where it is not necessary an high starting capital.

-" La societé en nom collectif"
It corresponds to the US "partnership". It has its own juridical personality and it is exclusively composed of associates solidarily and unlimitedly liable.

	Entreprise individuelle	S.P.R.L.	Societè Anonime	Societè Cooperative
Number of partners	1	minimum 2	minimum 2	minimum 3
Share Capital	none	minimum 750,000 B.F.	Minimum 1,250,000 B.F.	no minimum capital required
Directors	the entrepreneur	one at least	one at least	one at least
Liability	unlimited	limited to the stated capital	limited to the stated capital	unlimited except if differently stated in the articles of incorporation.

Administrative requirements

The formation osa SPRL, or a S.A. requires:

1) the payment of the stated capital in a bank;
2) the fulfillment of the incorporation act;
which shall have the form of a notarized act, against the certification of deposited capital delivered by th bank.
3) the deposit of the notarized act to the Court of Commerce of the Tribunal;
4) the publication of the constitution act at the Register of Commerce;
5) the settlement of the company at the Register of Commerce;
6) the registration at the Added Value Office.

The main filing fees are:

- on the basis of a "S.A." with stated capital of 1,250,000 B.F., fees are some 30,000 B;F;, included:
  - registration fees at the Register of Commerce = 7,500 B.F.;
- the right of apport .5% is calculated on the stated capital = 6,250 B.F.
- the publication fees at the Moniteur Belge of 3,500 B.F.
- the notary fees, which are variable following the amount of the stated capital. On average they are 12,000 B.F.

To those fees you have to add the fees of an attorney consultancy, if any.

The social situation of your company

a) Weekly working time: 40 hours in most activities.

b) Overtime: max; 9 hours per week.

c) Vacation time a year:
- 24 days for a 6 days working week;
- 20 days for a 5 days working week.

d) Remunerated holidays in a year: 15

e) Wages: minimum salary stated by the collective national work contract;
salary remunerated on 13.85 months, included "pecule vacances".

f) Temporary contract: free lasting, non-renewable.

g) Company's affiliation:
- to the "Institut National d'Assurance Maladie Invalidité" -INAMI- (Health Service);
- to the "Caisse Générale d'Epargne et de Retraite" (Pension Service);
- to the "Caisse de Compensation pour les Allocations Familiales";
- to a medical service;
- to a fund of year holidays;
- to the "Office National de Sécurité Social" (National Social Security Office);

furthermore, the affiliation of the company to a social secretariat allows to facilitate the management of the following formalities:

- Workers protection:
  - Illness, maternity;
  - Invalidity;
  - Family allocations;
  - Working incidents and professional diseases.
  - Annual holidays;
  - Strike.

Certain fees are exclusively pertinent to workers: the family allocations, annual holidays, work incidents and professional diseases.
Social charges represent some 12% on employee's own, and some 34% on employers own.

Enrolment of a foreign worker:
European Union's people need non-working permission.
For people coming from outside the E.U. employer has to apply for a working permission at the regional bureau of "Office National de l'Emploi".
Under the agreed authorization of such Service, Municipality delivers a working permission.

The fiscal situation of your company

- Filing tax : .5% of stated capital.

- Income tax:

For a company:
- proportional and progressive tax (from 29% to 43%):
  - 29% on income less than 1 million B.F.;
  - 37% on income between 1 and 3.6 million B.F.;
  - 43% on income between 3.6 and 14.8 million B.F.;
- 41% tax applicable to:
  - income higher than 14.8 million B.F.;
  - to companies whose capital is owned for at least 50% by one or more other companies.

For a sole Tradership, or a company subject to the Income tax:
- progressive tax from 25% to 55%.

- V.A.T. (Value Added Tax):

- reduced tax: 6% and 17%;
- standard tax: 19%;
- increased tax: 25% plus additional tax 8% on luxury products;

Caution:
You need to verify whether the Countries where you are coming from has, or not, agreed with Belgium a Treaty on double tax imposition.

The incentives to your company

I. NATIONAL INCENTIVES

1) Fiscal aids:

- Exempted income tax, on a 150,000 B.F. annual income basis, when the firm employs a further worker under the condition that it employs less than 50 peoples;

- Partial exemption of filing taxes, or improves of tax deduction on investment increase, when the activity pinpoints on innovation technology;

- Fiscal advantages for a firm, which settles in an engagement area, and than in a two years lead time will employ at least 10 workers.

2) Social aids:

- reduction of patronage fee of social security for 8 trimesters if the firm engages a first worker with unlimited duration, or an unemployed, or less than 26 years worker, who has completed the training;
- payment on behalf of the firm of social fees and costs of unemployed workers engaged for economic development projects;
- reduction of patronage fee of social security for the employment of a young unemployed worker within the scheme of an agreement "employment-training".

3) Financial aids:

*Loans to unemployed workers:
- max. 569,000 B.F. personal loans to workers (with no personal guarantee) usually reimbursable in ten years with five years franchise;
- conditioned loan, because in the event of company closure, it will not be reimbursed that in the case of a complete creditor(s) satisfaction;
- loan issued to unemployed workers fully repaid (or assimilated). In counterpart they renounce to the benefice of unemployment allocations for a period of three years.

For job searchers related loans correspond to a personal anticipation equal to three years unemployment allocation.

Projects are examined by the "Comité de la Caisse Nationale de Crédit

Professionals" (CNCP) which manages the issuing of these loans.

"Le Fond de garantie" facilitates financing of company formation and guarantees financial institutions capital, interest, and fees related to credit reimbursement.

"Les Fonds de participation" can issue a loan, or get a participation.

"L'Office Belge du Comerce Exterieur" (OBCE) gives free information on the foreign markets and covers certain fees.

"L'Institut pour la Recherche Scientifique dans l'Industrie et l'Agriculture" can intervene in direct costs of a research and development project.

II: REGIONAL INCENTIVES

Each one of the three Country's Regions (Région Flamande, Région Wallone, Régione Bruxelloise) is competent to issue loans or grants to firms.
Aids vary whether you install your activity in an "engagement area", or in an "economic development area".
In the flamande region, the most considered area is overall the Campine Limbourgeoise. In the wallon region the considered area is the major part of Hainait province, and the liegiose region.

Aids equally vary in accordance with the economic sectors (such as coal, siderurgy, etc.).

1) Fiscal aids:

they are keyed to investments. The minimum investment amount considered is in general reduced for people aged less than 36 years.
The three main inventive measures are:

- 75% filing tax reduction, applied to the stated capital of a company;
- accelerated amortizations;
- estate tax exoneration in the case of a real estate investment.

2) Social aids:

An employment bonus is issued for each supplementary worker within the limit of 15 people per employer. The bonus amount, from 50,000 to 60,000 B.F. is issued in several times and it can vary from region to region.

3) Financial aids:

- Interest reduction by transferring part of interest payment of an investment credit;
- Capital bonus if the investment is funded with own funds;
- Intervention of regional development companies (SDR).

III. PROVINCE AND MUNICIPALITY AIDS:

They can propose:

- bonuses based on company formation, or job creation;
- aid to training;
- a tax reduction on personnel employed, and on power installation;
- information and support on administrative formalities.

Incorporating in Denmark.
As sole proprietorship

Your activity

Certain activities or professions are chartered and regulated under particular conditions.

A special licence is requested for the following business:
- restaurant and hotel;
- real estate agency;
- travel agency;
- road transport of people and goods;
- quasi-medical professions (pharmacy);
- commerce of foodstuffs;
- banking, financing, and insurance activity cannot be exercised in the form of sole trader.

To know more about, contact syndicates or "Industriministeriet", the Ministry of Industry.

Your nationality

If you are from a northern Country (such as Norge Sweden, Finland, Iceland) you have to be registered at the Register of Population "Folkeregistret" of the Municipality of your residence, if you will stay longer than three months.
Working permission is not requested.
If you are from a member State of the European Union (E.U.) you need no registration at all. If you wish to have danish documents, and/or if you wish to leave in Denmark, you have to be registered at the Folkeregistret.
If you are from a non-member State of the E.U., within five day from your arrival you need to get a certificate of residence by "Justitsministeriets, Direktorat for Udlaendinge" the Ministry of Justice- Directorate of Foreign People, and shall be registered at the Register of Population of your residence place.
Directors of danish companies and their comptrollers must be resident in Denmark, or have the nationality of one of the E.U. member States, except derogation accorded by the Ministry of Industry.

Your investment

Your investment in Denmark is free. If you are from a non-member State of the E.U. you have to declare your investment to the Danish Central Bank.

The juridical form of your enterprise

I) "Enkeltmandsfirma" (Sole Tradership).

Such a form is recommended when:

- you will manage your business alone;
- your business needs law capital and has low risk;
- your sales are low;

Consequences:

- your start up cost are reduced;
- low formality in the enterprise formation;
- unlimited liability on your personal patrimony;
- attribution of the tax regime of independent worker.

II. The Danish corporations.

1) "Anpartsselskab" (ApS) -The limited liability company -.

The anpartsselskab is the most utilized form of company in Denmark for small and medium size enterprises (SME), for the following needs:

- you wish to limit your liability and the one of your partner(s);
- your financial ends are low;
- you cannot target the future development of your business;
- you do not foresee to appeal to public financing;

Consequences:

- One single individual can set up the company;
- 2 associated or shareholders -except the uni personal ApS-
- a minimum stated capital of DK 80,000 and liberation of at least 50% of the capital deposited beyond such amount;
- a very soft management (directorate made minimum of one person, associated or not; board of directors of three members mandatory if the stated capital is egual or bigger than DK 300,000; annual shareholders meeting;
- a mandatory control from one or more comptrollers;
- liability limited to the stated capital;
- social and fiscal regime of salaried workers even for the directors.

2) "ApS - Unipersonnel.

- one only associated;
- minimum stated capital DK 80,000;
- limited liability.

3) "Aktieselskab" (A/S) - The Shareholding Corporation -

- when you want to limited your liability and that of your partners;

- if you have to take financial risks in front of a high turnover;
- your capital needs cannot be satisfied by your circle of partners;
- you need to appeal to public savings.

Consequences:

- minimum three incorporators;
- minimum one shareholder having three shares;
- a minimum stated capital of DK 300,000, and liberation up to 50% of the capital exceeding that amount;
- heavy management (council board of minimum three members, associated or not, directory board of more than one member, annual shareholder meeting);
- the fiscal and social regime of salaried workers for all staff and line;

4) Other companies:

"Interessentskab" -Partnership-
- minimum two associates;
- unlimited liability;
- non minimum capital requested.

"Kommanditselskab" -Partnership with shareholder(s) limited liability;
- two types of partners: partner with unlimited liability; partner with limited liability. Such a type of company does not exist in the US, while in Europe is common to France, Italy and .....

"Andelforening" -Co-operative Company-
- limited or unlimited liability depending on articles of incorporation;
- structure used overall in the agricultural sector, and from young, or job seeking workers.

French Company Formation
(in French - Constitution d'une société)

There are numerous types of company structure which are provided for by French Law, however today the great majority of trading entities in France have taken the form either of a Société Anonyme (S.A.) or a Société à Responsabilité Limitée (S.A.R.L.). T
he relatively newly introduced Société par Actions simplifiée (S.A.S.) is finding favour though with a number of foreign, particularly US, corporations which are setting up subsidiaries in France.

Whilst this list may not be held to be exhaustive, the following points might be of particular comparative interest to practitioners used to the sometimes, but not always, different provisions of many Common Law systems.

The formation of companies in France is generally considerably more complicated and time consuming than in many Common Law jurisdictions.

Subject to certain exceptions, the S.A. S.A.S. and the SARL limit the liability of their shareholders to the amount of their share holding.

There is no such thing (currently) as an off the shelf company at French Law and all types of companies require that a minimum fixed amount of share capital be lodged and temporarily frozen prior to formation.

An S.A. has a minimum of 7 shareholders, and three Directors, but the SARL has no Directors, habitually a minimum of 2 shareholders and is run by a Gérant or CEO. The S.A.S. would generally have a minimum of 2 shareholders but is not required necessarily to have a Board of Directors. The SAS is often considered to be the most flexible body in terms of corporate structure by US entities used to dealing with 'S Corporations'.

The Memorandum and Articles of Association (By(e)-laws) are far from standardised, although statute law provides for a number of heads which must obligatorily appear therein.

There are no longer any important constraints on either shareholders, or officers of a company, (be they individuals or corporate bodies), whose nationality is that of one of the member states of the European Union.

However, both de jure and de facto, there are a number of considerable obstacles which a shareholder or officer from a non E.U. country, such as the USA, will need to overcome.

French Corporate Taxation

<u>Direct taxation</u>

1. Corporation Tax

Most French limited liability trading companies, Sociétés Anonymes (SA), Sociétés par Actions Simplifiées (SAS), and a majority of Sociétés à Responsabilité Limitée (SARL), are subject to the Impôt sur les Sociétés (I.S.) being the French equivalent of Corporation Tax.

This tax is payable upon the net profits of the corporation and the rate is currently fixed at 33.33%, plus a surtax of 3%, which brings the effective tax rates to 34.33%.

A reduced rate applies to a limited number of Long Term Capital Gains.

The net taxable profit is the trading income as determined in the financial statements prepared in accordance with generally accepted accounting standards, subject to adjustments concerning inventories, reserves, capital allowances, relief for tax losses, and groups of companies.

2. Other significant direct contributions and taxes

Social security contributions are levied on gross salaries at 35 to 45% for the employer, and 14 to 20% for the employee.

Separate general social security contributions are levied on all income at a rate of generally 10% in most cases.

A specific local business tax, known in French as the Taxe Professionnelle (T.P.), is payable by all French business entities, be they companies or individual undertakings. The calculation thereof is based upon the annual rental value of their tangible assets linked to a proportionate amount of the overall salary bill, (although the component based on salaries is gradually disappearing). The average annual rate is 22%, but it varies according to the geographical location of the business entity.

International Transactions

A number of tax rules prevent or penalise indirect transfers of profit abroad, repatriation of profits originating from a Tax Haven, and fraudulent transfers of tax residence by individuals who are resident.

The legislation on transfer prices is similar to that of other European countries.

The treaty network is very much developed, with 91 countries, former Soviet Republics counting as one.

Indirect taxation

1. Value Added Tax (in French Taxe sur la Valeur Ajoutée - TVA)

Subject to very limited exceptions, all economic activity in France is subject to VAT. VAT is not an expense for the company, as input VAT can be offset against output VAT.

There are several different rates, which are currently applicable, but the standard rate is 19.6%.

The collection of VAT and the form-filling associated therewith is considered nevertheless by many to be a considerable burden upon the company, especially upon small and medium sized entities. The highest attention should be paid to VAT aspects of international transactions.

It is to be noted that EU companies no longer have to appoint a tax representative in France for most of VAT-related issues.

2. Stamp or Registration duties.

Stamp or registration duties are payable on transactions on shares, real estate, intangible assets of all business entities. They also apply to leases, donations, successions, and some specific types of contracts.

Rates vary from 1% to 15%. They are payable by the purchaser or the tenant, but payment may also be claimed from the vendor in certain cases.

French Law: Mergers & Acquisitions

Many corporations, or their professional legal advisors, about to embark on the acquisition trail in Europe, and particularly France, will undoubtedly be well aware of the following points.

1. Not the way you do business in France?
There is an apocryphal story of a deal involving an American businessman, a British businessman and a French businessman: the American was assisted by ten attorneys, the Brit by a solicitor and the Frenchman by his accountant. The point of the story is that French business deals have traditionally been influenced by accounting and tax concerns, rather than legal issues. Balance sheet warranties, providing cover against increased liabilities when compared to a given accounting statement have meant that warranties would be measured against a monetary amount viz. measured against that specific figure, is the business worth less because of subsequent events or not?
The French approach has relied on elegant mathematics. French law, too, is informed by a reliance on principles, so that a French contract will almost always be much simpler than its equivalent from a common law jurisdiction. A UK or US purchaser of a French business will be used to extensive warranties; a hundred pages would not be unusual even in a small deal. In France, obtaining warranties from a seller of a company or a business is an uphill struggle. A buyer will receive the retort that "this not the way you do business in France". Warranties and indeed legal as opposed to accounting due diligence are perceived to be Anglo-Saxon imports, another onslaught of cultural hegemony from across the water.

2. Mergers are not international
Despite EU Directives, in practice there are no truly cross-border mergers: only two or more French companies can become one. Our experience is principally of restructuring within the same group, as opposed to mergers between companies having different controlling interests.

3. The third player

US and UK deal-makers are used to negotiating behind closed doors, accompanied only by their financial, accounting and legal advisors. Often confidentiality will be paramount, particularly if one or both of the parties or their ultimate parent is listed. In France, as in certain other Continental countries, the paradigm of a two-player chess-match away from public view will often be unsettled by the presence of a third player: the works council. Any acquisition involving a target company with at least fifty employees will mean that there is likely to be a works council. The representatives of the workforce within the council cannot veto the deal, but they must be informed and consulted before any no-going back decisions are taken. And French criminal law protects the works council's prerogatives. It follows that a foreign purchaser must be aware that local French management will need to go through the information and consultation process with its obvious strains on confidentiality. A purchaser should therefore be prepared to accommodate the concerns of the employees and provide a vision of the way forward in terms of employment and working conditions. Often a prospective US or UK buyer should meet the works council or indeed the whole workforce to provide assurances about the 'social' consequences of the takeover.

4. Parlez-vous anglais?

Despite the resistance to external influences, many French deals are conducted solely in English and sometimes in German. It is possible to have all core documentation relating to a share transfer drafted in the English language, which means that an English speaking party is directly aware of the wording. Triplet & Associés is one of a relatively small circle of law firms in France able to draft and negotiate in English. French documentation is however strictly only necessary where records need to be kept (such as company minute books, share transfer forms) or where agreements need to be lodged with the authorities (such as the tax authorities or the Commercial Court in the case of the sale of a going concern or business).

5. At the interface

The European Union comprises a patchwork of national jurisdictions each of which currently has its own company law and tax law regimes. When embarking on an acquisition in France, thought should be given to the manner in which dividends and other income such as inter-company sales pass upwards through a group structure. The location of holding companies could be based either in France or in other EU jurisdictions, depending on the tax optimisation sought. Both a purchaser and a vendor will frequently need advice on how to juggle with the differing company structures in the various jurisdictions.

The acquisition or disposal of a business may also involve the sale and purchase of several companies located in different countries. The principal target may be a parent in Canada or Scotland, with one or more subsidiaries in France which are also part of the deal. The transaction will involve advisors in different jurisdictions who will need to be able understand one another. Mechanisms which work in one jurisdiction may be prohibited in another.

This type of cross-border transaction may involve financing arrangements with a bank or venture capitalist based in one country only which involve taking charges over assets or shares in another country where other parts of the group are situated. The funding institution will frequently require legal opinions in an internationally recognised form on the validity of the security put in place in the other jurisdictions.

6. Satellite agreements

Although the share or asset transfer is at the heart of any deal, frequently there will be other pendant agreements which are critical to the structure of the transaction: earn-out for key-members of the existing management to stay with the business; manufacturing or distribution agree-

ments with the vendor's group; contributions of assets prior to the share transfer with the vendor's group; mergers within the purchaser's group subsequent to the share transfer. The focus of the energies and efforts of the negotiators will be drawn by the gravitational force of the satellite agreements away from the core agreement: without the satellite agreement there will be no deal.

Banking Law - a brief overview

The field of Banking Law is extremely wide and this page attempts to address only one particular area viz. the needs of financial institutions outside France who seek information relating to security or collateral offered in regard to goods, chattels or real property in France.

1. Charge over assets of a corporation
N.B. There is no equivalent at French Law to the floating charge found in many common law jurisdictions.
1.1.Charge over shares of the corporation per se
A charge over shares is known in French as a nantissement sur actions ou sur parts sociales but its worth is self-evidently only that of the corporation at any given time.
De facto it is susceptible to giving a particular creditor only very slightly more leverage than an unsecured creditor.
1.2.Charge over assets of the corporation per se
The whole business entity may be offered as collateral, viz. this would include both tangible and intangible assets and is known in French as a nantissement sur fonds de commerce.
However, a creditor may not usually pick and choose to force the sale of a particular asset in the event of his non-payment but must instead petition for the corporation to be made subject to a Judicial Insolvency Measure (Redressement ou Liquidation Judiciaire) and thereafter to seek to have his ranking as a secured creditor recognised by the Insolvency Practitioner appointed by the Court.
1.3. Charge over a specific asset
A charge may be taken over a specific asset, such as machinery or production equipment.

2. Charges over real property
A charge over real property may be the object of a contractual agreement between the parties or may be pursuant to proceedings, which could, at least in the first instance, be an ex-parte measure.

3. Publicly available information
Information may be obtained first in regard to charges over the assets of a corporate body, and second a charge over real property from official publicly available sources in France.
The order and ranking of creditors who benefit from such a charge may also be established from the same source.

Germany Company formation and Registration

The following forms of incorporation are customary in Germany:

- A Limited Liability Company (with the suffix GMBH)
  - One person is sufficient to set up the company.
  - a minimum registered share capital ,as defined by law.- At least one quarter of the capital must actually be invested.
  - At least one quarter of the capital and no less than an amount defined by law must actually be invested.
  - Management is in the hands of one or more directors according to the Articles of the company.
  - In a company with more than 500 employees, it is compulsory to appoint a "supervisory committee".
  - The GMBH form of incorporation is the most popular in Germany, This is true as well for foreign investors who are setting up a branch in Germany.
  - The company's liability is for the amount of the capital only.

- A Stock Company (with the suffix AG)
  - A minimum of five people is required to set up the company.
  - The minimum registered share capital - is defined by law.
  - At least one quarter of the capital must actually be invested.
  - Management is in the hands of the majority of the directors.
  - The shareholders' meeting will appoint a "supervisory committee".
  - The company's liability is for the amount of the capital only.

- A Regular Partnership (with the suffix OHG)
  - All the partners are jointly and severally liable for the obligations of the partnership. - The profit from the partnership is not taxed as from a separate body. The profits of the partnership are divided among all the partners according to their shares in the partnership, other than in instances in which the partnership agreement determines otherwise.

- A Limited Partnership(with the suffix KG)
  - The liability of the partners is limited to the amount of their investment in the partnership. - At least one of the partners is liable for the obligations without any limit to the amount.

Establish a Branch or Place of Business in the United Kingdom.

Many organisations want to expand into the UK but for many reasons may not want to establish an incorporated entity in the UK. Instead they may wish to register a branch or place of business as an oversea company. Some companies receive tax breaks and government development grants by continuing to be incorporated in their home country while they attempt to establish a UK operation. What is a branch? A branch is a part of a company that is organised so as to conduct business on behalf of a company as opposed to carrying on business which is merely ancillary or incidental to the company's business as a whole. In other words, a person will be able to deal direct with a branch of the foreign company in Great Britain rather than with that company in its country of incorporation. What is a place of business? A place of business is premises where there is a physical or visible indication that the company may be contacted there, or a particular location where the company habitually conducts business from, even if there is no physical sign of the company's connection with it.
However, as the business carried on at that place is only ancillary or incidental to the company's business as a whole, it does not amount to a branch. Such activities might include internal computer processing, warehousing or simply a representative office. This work aims to help you understand some of the many things you need to think about when you are starting and running a business. You can now establish your UK branch or place of business online using our company registration agent.

UK Holding Company Formation.
Holdings Company Basics.

The UK-incorporated holding company must have owned the shareholding for a certain period of time before the disposal in order to qualify for the exemption. In short, in the two years prior to disposal, the UK-incorporated holding company must be able to show a continuous period of ownership of at least twelve months. Finally, the UK-incorporated holding company, in addition to having owned a substantial shareholding throughout the requisite continuous twelve-month period, must be either a sole trading company (and obviously where it is a pure holding company it will not be) or a member of a trading group, both throughout the requisite period of pre-disposal ownership and - crucially - immediately after the time of disposal. In terms of the investee company, it must have been a trading company, a holding company of a trading group or a holding company of a trading sub-group throughout the period beginning with the start of the UK-incorporated holding company's requisite continuous twelve-month ownership period and ending with the time of disposal, and immediately after the time of disposal. It is also worth remembering that any non-UK resident subsidiary company of a UK-incorporated holding company will be a controlled foreign company and, therefore, the controlled foreign company regime will need to be considered. This work aims to help you understand some of the many things you need to think about when you are starting and running a business.

You can now form your UK holding company online using our company registration agent. Same day company formation (holding company) for £115.00. Company formations usually completed in 4-6 hours using Companies House online new business registration services.
In the United Kingdom, you must register your business.

Bearer Shares Company Formation.
Bearer Shares Basics.

Bearer shares are legal instruments denoting company ownership. They are not the same as stock certificates, however. Usually, the legal shareholders of a limited company are those persons whose names appear on the corporation's official shareholders list, or register. These shareholders may or may not be issued a tangible stock certificate which they may possess. A common stock certificate will bear the name of the shareholder, and how many shares of stock the certificate represents. It will contain other information such as the name of the company, any par value the shares have, and most importantly, whether there are restrictions on the transfer of the shares. In addition to incorporating an ordinary company limited by shares we can provide formation & management of companies with bearer shares! Bearer shares can be converted into registered shares and vice versa. This website aim to help you understand some of the many things you need to think about when you are starting and running a business.

Italy Company formation and Registration

Forms of incorporation

As a general rule, it is possible to incorporate in Italy in one of the following forms:

* A Public Limited Liability Company (with the suffix SPA).

- There must be at least 2 shareholders (individuals or bodies).
- The company must have a minimum share capital of EUR 120,000.
- At least 30% of the capital must be deposited in a bank.
- The company may offer shares to the public.
- The company must keep a register of shareholders.
- The company may issue shares of different classes that confer different rights on the shareholders.

* A Private Limited Liability Company (with the suffix SRL.)

- The share capital is presented in quotas.
- The company keeps a "shares register" in which the names of the owners appear.
- The company may not offer shares to the public.
- The minimum registered share capital - EUR 10,000.
- One single shareholder suffices.

Partnerships

As a general rule, there are three forms of partnership:

- An unlimited partnership - The partners are liable for the transactions carried out by the partnership, without any limit in amount. All or some of the partners may serve as managers of the partnership. The following are the most typical unlimited partnerships:
  - Società semplice
  - Società in nome collettivo
  - Società cooperativa

  No capital is required for the formation of these companies.
- A limited partnership - This is made up of general partners, who have unlimited liability and limited partners whose liability is limited to the amount they invested as capital in the partnership. Only a general partner may serve as a manager of the partnership.
  The following is the most typical limited partnership:
  - Società in accomandita semplice
- Partnerships limited by shares - In principle, this is similar to a limited partnership.

The main difference is that the share of partners in a limited partnership is represented by share capital, as distinct from a limited partnership in which the partners hold quotas and not shares. The most typical corporations are:

- Società per azioni (s.pa.)
- Società a responsabilità limitata (s.r.l.)
- Società in accomandita per azioni (s.a.p.a.)
- Società cooperativa a responsabilità limitata (s.c.r.l.)