Greater Phoenix Economic Council

#GreaterPHXtogether

Foreign Direct Investment Toolkit

Updated as of June 2022

This toolkit was produced in partnership with GPEC's International Leadership Council.

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Table of Contents

Greater Phoenix Arizona, USA

Anchoring the state of Arizona, Greater Phoenix is one of the largest and fastest-growing regions in the United States. Arizona has taken giant strides over the years to remain pro-business by keeping business taxes low, improving business tax credits and economic development programs. Greater Phoenix is where companies go to scale because the operating environment and geographical location offers great opportunity.

A major metropolitan area, Greater Phoenix's strategic Southwest location offers easy connectivity to multiple market hubs, including quick access to California, Texas and Mexico. As of 2021, Greater Phoenix was home to more than 4.9 million people. The region is expected to grow to approximately 7.3 million residents by 2050. That means Greater Phoenix is projected to outpace the U.S.' population growth rate about three times over.

Greater Phoenix's workforce is fueled by some of the best colleges and universities in the nation. The region is populated with a pool of young and diverse talent due to the abundance of recent college graduates and roughly 200 people who move here each day. With a workforce expected to grow by 22 percent in the next decade, the region remains on a positive growth trajectory. By 2025, Arizona's Board of Regents aims to increase annual degree completions (bachelor's and graduate) at major state universities to more than 56,000.

Fortunately for international businesses, the market in Greater Phoenix is primed for growth and is very knowledgeable in helping companies that are considering foreign-direct investment in the U.S. select the best location to foster success. Our organization, the Greater Phoenix Economic Council (GPEC), is a nonprofit organization that represents Maricopa County – the fourth largest county in the U.S., 22 cities and towns, and more than 190 privately held investors. Since 1989, GPEC has helped more than 940 businesses across the world with market and cost-comparison analysis, workforce data, connections to key Arizona political and business leaders, and site selection assistance – all at absolutely no cost to businesses.

GPEC operates with the business executive in mind, which is why we've created this international toolkit. Led by our International Leadership Council, this toolkit provides advice from some of the best experts in their respective fields. With information on how to access capital, form strategic partnerships with universities, and purchase land in Arizona, our toolkit provides everything you need to know about expanding your business to the U.S. and Greater Phoenix.

Greater Phoenix is one of the **largest and fastest-growing regions** in the United States.

The region is expected to grow to approximately **7.3 million residents by 2050.**

Greater Phoenix is projected to **outpace the U.S.' population growth** rate about three times over.

Contact us for relocation or expansion assistance:

001.800.421.GPEC (4732)
or email: info@gpec.org

GPEC Services

The Greater Phoenix Economic Council (GPEC) provides confidential, expert support to companies by streamlining real estate searches, connecting executives to decision-makers and providing access to world-class talent – all as complimentary services.

GPEC's business development, research and marketing teams provide customized services that demonstrate how this region can reduce operational costs and add value to your company.

Operating Cost Comparison

» Perform annual operating cost comparisons across major markets.

» Analyze real estate, labor, utilities, taxes and incentives.

Regional Labor Market Data

» Provide current wage rates, labor force and skill levels based on occupation and industry.

» Analyze labor force availability data and create custom drive time analysis.

» Connect with local employers for HR insight.

Site Selection Assistance

» Aggregate a comprehensive listing of value-based assets, unique buildings and shovel-ready sites.

» Provide easy property search by size, location, price, zoning and more.

Economic Impact Analysis

» Evaluate project's economic impact and community benefit.

» Prepare geospatial analysis.

Connectivity To Key Resources

» Introduce your company to community college, university and key workforce assets.

» Coordinate with state and local regulatory authorities.

» Connect you to business leaders within the region.

Public Relations Assistance

» Draft a press announcement and coordinate quotes from key stakeholders on behalf of the client.

» Press announcement distribution to media outlets.

» Support and coordination for ribbon cutting and grand opening events.

Our Partner Network

GPEC partners with several agencies and communities from around the state to promote Greater Phoenix and draw businesses to the region:

- **Arizona Commerce Authority (ACA):** The ACA is Arizona's economic development agency that works to grow and strengthen the state's economy. They do so by using a three-pronged approach: Recruit out-of-state companies to expand their operations in Arizona, work with existing companies to grow their business in Arizona and beyond, and partner with entrepreneurs and companies to create new jobs and businesses in targeted industries. The ACA, led by Arizona Governor Doug Ducey, consists of representatives in both the public and private sectors, including the state's Senate President, Speaker of the House and three public university presidents.

- **Maricopa County:** Maricopa County is one of the largest counties in the U.S., boasting a population of more than 4.5 million as of 2021. Located in Greater Phoenix, Maricopa County is the cultural and economic hub of Arizona. The County's mission is to provide regional leadership and fiscally responsible public services so residents can enjoy living in a healthy and safe community. GPEC works closely with Maricopa County to implement economic development strategies and support companies looking to expand or relocate to the region.

- **Greater Phoenix Municipalities:** In addition to Maricopa County, GPEC partners with 22 cities and towns in the region, working closely with the mayors and economic development teams. Together, we promote and strengthen the region's assets, and encourage others to expand their business to Greater Phoenix. While close in proximity, each community also has its own set of attributes, attractions, restaurants, schools and events that bring residents together.

- **Chambers of Commerce:** The Arizona Chamber of Commerce, Greater Phoenix Chamber of Commerce and several other local chambers serve cities throughout the region. Chambers work closely with existing companies on policies to help foster their success, business and retention programs, and education on a variety of business-related topics. Some chambers even coalesce (such as the seven chambers of the East Valley Chambers of Commerce Alliance) to better promote and attract business to the region.

- **Private Sector Investors:** Approximately 60 percent of GPEC's funding comes from privately held companies in Arizona. These investors provide counsel to GPEC on topics including real estate, banking, law, construction, emerging industries, education, technology, etc. Many of GPEC's investors contributed to this toolkit to guide international companies as they conduct due diligence around business expansion or relocation. They are available to provide guidance on a variety of topics related to foreign-direct investment.

Chapter 1: United States at a Glance

1.1: U.S. Overview

The United States of America consists of 50 states and Washington, D.C., a federal district. The country's total area is 3.7 million square miles (9.8 million square kilometers). It is the third-largest country in the world, in terms of land area and population. Due to its size, the U.S. has diverse climate and geography.

1.2: U.S. Population

As of 2020, (the most recent year for which high-quality data from the American Community Survey is available) the U.S. population was about 326.6 million people, growing at approximately 0.6 percent per year. The U.S. has one of the most diverse populations in the world: 60.1 percent of residents are white, 18.2 percent are Hispanic, 12.2 percent black and 5.6 percent Asian. Approximately 13.5 percent of residents were born outside of the U.S. About 50 percent of the population born outside of the U.S. is from Latin America, 31 percent from Asia and 11 percent from Europe.

The median age in the U.S. is around 38 years old, with 62.5 percent of the population within the typical working age range of 15 to 64.

1.3: U.S. Government

The U.S. is a federal republic consisting of three levels of governments: federal, state and local. It is a representative democracy – meaning the citizens elect people to represent them rather than directly participating. The federal level has three branches: Executive, Judicial and Legislative. The Legislative branch consists of the Senate and the House of Representatives, both of which influence federal law and the budget. Each state elects two senators, and the number of representatives for the House varies by state – always adding up to 435 House seats.

The Executive branch of the federal government administers and enforces federal law. The president is a part of the executive branch and has the power to veto bills before they become laws as well as to appoint people to administer federal law. This position also appoints the federal court justices. The president is elected to a four-year term and cannot serve more than two terms. He/She is elected by direct vote of the Electoral College, an indirect system that apportions votes to the states and District of Columbia (Washington, D.C.).

The Judicial branch interprets laws and overturns those it finds unconstitutional. The highest court in the U.S. is the Supreme Court, which consists of a chief justice and eight associates. The justices are nominated by the president and confirmed by the Senate; once confirmed, the justices can serve for life unless they retire or resign. The Supreme Court has ultimate jurisdiction to review court cases in all the other federal courts and all state courts on issues involving federal law.

1.4: Economy

The United States has the largest gross domestic product (GDP) worldwide. In Q1 2022,[1] the U.S. GDP was $24.4 trillion.

The most recent estimate of the U.S. labor force in April 2022 was at about 163 million people. Total non-farm employment in the U.S. is 151 million. The nation's largest industries by employees are government (federal, state and local, including public education), health care, social assistance and retail. Together, these industries account for about 35.4 percent of the workforce. Another 6.1 percent of the workforce is employed in the manufacturing industry.[2]

The United States exported $241.7 billion worth of goods and services in Q1 2022. The largest volume of exports went to Canada, Mexico, China, Japan and Germany.[3] In 2021, top exports included chemicals, computer & electronics products, transportation equipment, machinery except electrical, oil and gas.[4] The U.S. imported products valued at nearly $3.9 trillion annually.[5] Major importers to the U.S. include China, Mexico, Canada, Japan and Germany.[6] Computer & electronics products, transportation equipment, chemicals, machinery except electrical, and electrical equipment, appliances and components were the top products imported to the U.S. in 2021.[7]

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[1] FRED Economic Data
[2] EMSI 2022 Q2
[3] U.S. Census – Top Trading Partners
[4] ITA TradeStats Express
[5] FRED Economic Data
[6] U.S. Census – Top Trading Partners
[7] ITA TradeStats Express

Chapter 2: Introducing Arizona

2.1: Brief History

Arizona officially became the 48th state in the union on February 14, 1912. From statehood until the end of World War II (WWII), Arizona was rural and its economy was primarily supported by agriculture. I. During WWII, the federal government moved aerospace and defense assets from California to Arizona for national security reasons and state policymakers acted to ensure this industry would remain in the state after the war ended. A proactive state government, led by some of the state's most historic leaders like Carl Hayden, Barry Goldwater, John Rhodes, Paul Fannin and others, worked to make Arizona a business-friendly state with a unique quality of life. Their efforts created an attractive place for businesses and residents. In 1950, the City of Phoenix had a little more than 100,000 residents. Today, it is the capital of Arizona and the fifth largest city in the U.S., boasting more than 1.6 million people.[8]

Legislators continued to make Arizona attractive for business throughout the 1950s and 1960s by lowering taxes, investing in education institutions and promoting opportunities for doing business in the state. The investments came to fruition as Arizona became a hub for aerospace and defense companies, and their research and development activities. The same effort that helped foster the development of the aerospace industry was used to build Arizona's strength in semiconductors. These efforts still benefit the state today by supporting a growing, advanced technology cluster. Arizona's growing portfolio of large technology companies include Avnet, Freeport-McMoRan, General Dynamics, Go Daddy, Honeywell Aerospace, Insight Enterprises, Intel, JDA Software Group, Microchip Technology, NXP Semiconductor, ON Semiconductor, Raytheon Taser International and hundreds more.

Over the last few decades, Arizona's semiconductor talent and corporate base grew to include clusters in high-tech electronics, IT, renewable energy and personalized medicine. Today, Arizona continues to attract people from all over the globe who are looking to grow their business in a thriving metropolitan market.

2.2 Location & Geography

Arizona is the sixth largest state by total land size in the U.S. It is bordered by California to the west, Nevada to the northwest, Utah to the north, New Mexico to the east and Mexico to the south.

The state offers easy access to hundreds of major domestic and international markets. Greater Phoenix boasts 17 airports, punctuated by the bustling Phoenix Sky Harbor International Airport, one of the country's top 15 hubs for air traffic. The airport is located within a day's drive to tens of millions of people in the Southwest.

Arizona offers a low-risk environment for natural disasters. The state is not susceptible to earthquakes, hurricanes, floods or tornadoes. Much of the southern part of the state is covered by desert, including the Sonoran and Mojave Deserts. The state's three largest cities – Phoenix, Tucson, and Mesa – are in the desert regions. The northern part of the state is higher in altitude and has a climate that is predictable and continental with cold, snowy winters. The state's climatological diversity provides year-round opportunities for outdoor activities. This includes visiting the Grand Canyon National Park or one of our 24 other national parks; historic sites; snow skiing at resorts near Tucson, Flagstaff, and in Northeastern Arizona; hiking, boating, rock climbing and more. Arizona's more than 300 days of sunshine annually and mild winters are also a major draw to visitors and new residents.

[8] U.S. Census

Chapter 3: Greater Phoenix Overview

3.1: Location In Arizona

Phoenix is the capital city of Arizona. Situated in the south-central region of Arizona, it is surrounded by 33 municipalities; six Native American nations and communities; three counties and a number of unincorporated communities that make up Greater Phoenix, spreading over 17,000 square miles of natural and man-made environments. This area is the most heavily populated in Arizona and represents 75.1 percent of the state's economy.

3.2 Population

With already 4.9 million people, Greater Phoenix's population is expected to grow to 6.5 million people by 2040.[9] That means we're outpacing the national rate more than three times over. Between July 2019 and July 2020, nearly 89,000 people from around the world moved to Greater Phoenix. The region's population is young too – with a median age of 36.9, it is younger than the national median age of 38.2.

3.3: Government

The political system in Arizona mirrors that of the federal government – consisting of Legislative, Executive and Judicial branches. The Legislative branch has a 30-member Senate and a 60-member House of Representatives; each legislative district is served by one senator and two representatives. Legislators serve a two-year term and are limited to four consecutive terms in one chamber. The legislature sets state law and budget.

The Executive branch in Arizona consists of the governor, secretary of state, state treasurer, attorney general and superintendent of public instruction. These individuals may serve for two consecutive terms. Arizona is one of seven states that do not have a position of a lieutenant governor.

- Governor: the top position in the state and may approve or disapprove of every bill passed by the state legislature
- Secretary of State: the leader of the office that keeps official records for the state; the secretary of state is also the acting governor when the governor is absent from the state
- State Treasurer: the chief financial officer for the state, managing the state's finances
- Attorney General: submits and defends lawsuits on behalf of the state and issues formal legal opinions
- Superintendent of Public Instruction: oversees the public education system in Arizona

In addition to those positions, the state also has a Corporation Commission. Arizona is one of only 13 states with an elected commission. As in other states, the Corporation Commission oversees public utilities and grants or denies rate adjustments. However, in Arizona, the Commission oversees the process of companies incorporating or registering to do business in the state. The Commission also registers and oversees security offerings.

The other branch is the Judicial branch, which is the court system in Arizona. The Superior Court of Arizona is a statewide trial court. The state Court of Appeals has the jurisdiction to review trials and decisions appealed to them. The state Supreme Court is the highest court in Arizona, often reviewing cases from the lower courts. This court has five justices: a chief justice, vice chief justice and three associate justices.

At the local governmental level, there are several counties and municipalities within each state. Each of the counties in Arizona are led by a county Board of Supervisors, consisting of three to five members; Maricopa County has five supervisors. The Board of Supervisors guides the work of the county manager who oversees the operations of the county.

Municipalities are a smaller component of local government that includes cities and towns. Cities and towns govern areas such as planning, economic development, public works, parks and recreation, and housing. Each municipality elects a council and a mayor to influence direction of the city and to pass ordinances. Many cities and towns have a city manager that runs the day-to-day operations.

3.4: Economy

About 75.1 percent of the state's gross product is concentrated in Greater Phoenix. The gross domestic product (GDP) of Greater Phoenix recently measured $281 billion, ranking it 14th among all metropolitan areas in the U.S.[10]

Employment in Greater Phoenix has nearly doubled over the past 25 years. The latest total non-farm employment in the region is 2.3 million people.

The professional and business services industry is the largest industry sector in Greater Phoenix, boasting about 17 percent of the total employment. Government (including federal, state, and local employees, as well as public education employees) is also a major industry in Greater Phoenix, with about 11 percent of total employment. Healthcare employs 13 percent of the local workforce and retail employs 11 percent. Hospitality, manufacturing, finance and insurance, and construction each employ more than five percent of the workforce.[11]

Within the manufacturing industry, Greater Phoenix has a strong concentration in the high-tech sector. Major employers include Intel, Honeywell, Boeing, General Dynamics, Microchip Technology, ON Semiconductor and NXP Semiconductor. There are thousands of suppliers in Greater Phoenix that support these companies.

Greater Phoenix is home to many Fortune 500 companies including Freeport-McMoRan, Avnet, Carvana, Republic Services, Insight Enterprises, Taylor Morrison Home and onsemi. High-profile companies such as GoDaddy, Apollo Group, Swift Transportation, Knight Transportation, Fender and U-Haul are also headquartered in the region.

Other well-known employers in Greater Phoenix include Wells Fargo, Bank of America, JP Morgan Chase, American Express, Charles Schwab and many other financial and insurance industry brands. Greater Phoenix is also home to more than 1,000 foreign-owned international companies.

3.5: Technology and Innovation

Greater Phoenix has long been a center for technology and innovation. The region's modern economy, built on semiconductor and aerospace industries, includes world-class companies like Intel, On Semiconductor, NXP Semiconductors, Boeing, Honeywell and others to the region. Greater Phoenix's educational assets have provided a strong talent pipeline and research capabilities that have sustained these industries for decades.

In addition to being a high-tech center for mature industries, the region is home to one of the most entrepreneurial climates for emerging technologies in the country. Greater Phoenix is 14th in the rate of new entrepreneurs, and Inc. Magazine ranks Phoenix among the top 10 cities for tech startups.

New industries are emerging due to the region's high-tech base, university-driven research, and entrepreneurial spirit. Some of the region's burgeoning high-tech clusters include clean technology, information and communications technology and personalized medicine.

Greater Phoenix's universities play a major role in developing technology and driving innovation. Arizona State University (ASU) is the region's flagship public research institution. ASU's original approach to research, education and entrepreneurship has earned it the top ranking for Most Innovative University by U.S. News & World Report for six consecutive years.

ASU ranks 18th in total research expenditures among institutions without a medical school, and 18th in engineering expenditures ahead of UCLA, Caltech, and Princeton University.[12] ASU flagship's institutes, among many, include:

- Biodesign Institute - Looking to address today's critical global challenges solutions in health care, sustainability and security
- Julie Ann Wrigley Global Institute of Sustainability - Finding practical solutions to environmental, economic and social challenges in an urbanizing world
- Flexible Electronics and Display Center - Advancing flexible displays, sensors and electronics systems. Part of the advanced materials and manufacturing efforts within MacroTechnology Works.
- LightWorks - A multidisciplinary effort to leverage ASU's unique strengths in solar-electric energy, sustainable fuels and products, and energy and society.

Greater Phoenix is also home to a number of medical education and research centers including:

- Phoenix Biomedical Campus - Allied health program created by the University of Arizona College of Medicine - Phoenix and Northern Arizona University
- Arizona State University and Mayo Clinic Alliance for Health Care
- Midwestern University
- A.T. Still University

The market is anchored by top healthcare and treatment institutions such as Mayo Clinic, Banner MD Anderson Cancer Center, Cancer Treatment Centers of America as well as Dignity Health and its nationally renowned Barrow Neurological Institute.

3.6: Education

Arizona’s talented workforce stems from a continuous pipeline of graduates, many who begin kindergarten in Arizona and go on to earn a post-graduate degree here. For the thousands of people who move here each month, Greater Phoenix offers a diverse school system with multiple options for elementary, secondary and post-secondary education.

Primary and secondary education

There are more than 300 high schools, 150 middle schools and 700 elementary schools in Greater Phoenix. Parents have options for either public, charter, and private primary (kindergarten through eighth grade) and secondary (grades 9 through 12) schools for their children. Generally, children attend the public school closest to where they live. However, Arizona’s policies tend to favor school choice, and this gives parents the option to send their kids to a different public school, or enroll them in a charter or private school.

Greater Phoenix has recently experienced impressive growth in the amount of charter schools. A charter school is a publicly funded independent school established by teachers, parents, or community groups under the terms of a charter with a local or national authority. Arizona’s charter schools account for some of America’s top-ranked public schools.

Community colleges

Community colleges provide technical training and education to prepare students for entrance into careers or to complete bachelor’s degrees at universities. The Maricopa Community College District (MCCCD) is the largest network of community colleges in the U.S. It includes 10 colleges in Greater Phoenix, along with two skills centers, and numerous education centers focused on meeting the needs of the business community and the Maricopa County community.

Maricopa Corporate College was established to quickly develop and implement training solutions for new and existing Arizona businesses based on specifically identified needs.

Together, the community colleges in Maricopa County offer roughly 500 occupational programs (degrees and certificates), about 200 academic associate degrees and more than 18,000 courses. These colleges are the largest provider of healthcare workers and job training in Arizona, making them a significant resource for the business and healthcare industries.

Universities

Greater Phoenix is home to several major colleges including:

- **Arizona State University (ASU):** With four campuses across Greater Phoenix, ASU is the number one producer of bachelor's degrees in the U.S. It has more than 135,000 students enrolled and offers more than 350 undergraduate degree programs, as well as programs for master's level and Ph.D. level work.
  Ranked in the top tier of national universities by U.S. News & World Report, ASU is home to some of the best business and engineering programs in the U.S. and produces top labor talent. The school produced more Fulbright scholars from 2021 to 2022 than schools such as Penn State, Dartmouth and USC.

- **ASU's W.P. Carey School of Business:** The W.P. Carey school at ASU consistently receives high global rankings in business education. In 2021, it was ranked ninth in executive MBAs and the online school was ranked 15th in online EMBAs.

- **University of Arizona (UArizona):** With its main campus located south of Greater Phoenix in Tucson, UArizona also has a major presence on Downtown Phoenix's biomedical campus, including the University of Arizona College of Medicine and College of Pharmacy.

- **A.T. Still University (ATSU):** Home to the world's first osteopathic medical school, ATSU is a multidisciplinary healthcare educator providing graduate and professional programs in osteopathic medicine, dental and health sciences. Its unique educational model combines high-quality education and commitment to community service by partnering with Community Health Centers, a cornerstone of the University's clinical training initiative.

- **Midwestern University:** Midwestern University offers programs in health sciences, osteopathic medicine, pharmacy, optometry, veterinary and dental. Its approach includes extensive hands-on experience in outstanding clinical rotations geared toward a compassionate perspective toward patients and a twenty-first century healthcare practice.

- **University of Phoenix (UOPX)**: UOPX has more than 30 years of experience in online education and is one of the largest universities for online education in the country. This college has students in more than 200 locations and in countries around the world.

- **Grand Canyon University (GCU):** GCU is a premier private, Christian university in Greater

Phoenix that offers a variety of degree programs including business, education, nursing and other healthcare professions, arts and science, theology, fine arts and production, and doctoral studies.

3.7 Infrastructure

Greater Phoenix has 17 airports including:

- **Phoenix Sky Harbor International Airport:** The thirteenth-busiest airport in the country. It provides more than 1,200 daily flights[13] and served more almost 39 million passengers in 2021.
- **Phoenix-Mesa Gateway Airport:** The second largest commercial service airport in the region has a 48-acre aircraft parking apron and three extensive runways capable of accommodating any cargo aircraft in the world. It is a convenient and inexpensive solution compared to other traditional air cargo ports for wide-body aircraft that fly nonstop to Asian and European destinations.[14]

Modern infrastructure and continuous investment in transportation creates a region that is easy to navigate. Greater Phoenix also has a light rail and bus system (including express and commuter buses), rail terminals with trailer and container capabilities, and a sophisticated highway system including interstate routes that stretch to Los Angeles, the Midwest, Mexico, and many other large markets. In fact, a company can reach about 37 million customers within a one-day drive. This in-market connectivity allows for access to a large labor pool.

The region is also serviced by two rail systems, Union Pacific and Burlington Northern Santa Fe, allowing companies to transport goods efficiently.

3.8: Quality Of Life

In a state that's just over 100 years old, Greater Phoenix is among the nation's largest and fastest growing metropolitan areas. Greater Phoenix is a place where it's easy to be new and experience growth quickly.

About 200 people move to this region each day. Residents here have access to year-round sunshine, desert and mountain landscapes, educational assets (from K-12 to higher education), six professional sports teams, and a thriving arts and culture scene. When you expand your business to this region, not only does your business benefit from expanding here, but so do you. Greater Phoenix offers an array of amenities and attractions expected of bustling urban and suburban regions. Meet friends for lunch at an award-winning pizzeria; catch an Arizona Cardinals football game; go to one of the many museums and theatres after work; and visit the plethora of independently owned restaurants, bars and other local businesses on the weekend.

Greater Phoenix residents can also reach pine trees and snow skiing within a two-hour drive or go fishing at one of the many lakes in and around the region. In 2019, Arizona hosted 46.8 million overnight visitors, and approximately a quarter of visitor spending in the state was generated by international travelers.

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[9] ACS 2018 5-Year Estimate for the Phoenix-Mesa-Scottsdale MSA; Maricopa Association of Government

[10] FRED St. Louis Fed series. MSA 2018 GDP; U.S. Bureau of Economic Analysis

[11] U.S. Bureau of Labor Statistics

[12] https://asunow.asu.edu/20191122-asu-news-asu-7th-national-research-ranking

[13] Federal Aviation Administration – 2021 Passenger Boarding and All-Cargo Data

[14] P-MGA Airport Master Plan Executive Summary

Chapter 4: Investing in the United States

4.1: Process Overview & Considerations

Local businesses annually invest millions in Greater Phoenix. In this chapter, you will learn about the process of making investment decisions as well as the specifics of Greater Phoenix's local market conditions.

Site selection process

The first step in relocating or expanding a business is evaluating various geographic markets to determine the best location to achieve strategic goals. Companies sometimes work with site selection consultants to assist in this decision. This "due diligence process involves analyses of local labor and real estate markets; state and local tax policies; operating costs; proximity to other markets; transportation costs; quality of life, and more. After extensive research executives from companies will visit contending markets to view real estate options and meet with local leaders. At these meetings, it is important to establish relationships with local firms and meet with companies already doing business in the region. The process continues until a company selects the location and feels that its requirements have been met.

Important site selection criteria:

1) Availability and cost of skilled labor
2) Supply chain
3) Proximity to major markets and customers
4) Research institutions
5) Accessibility of transportation infrastructure – highway, rail, airport, etc.
6) Available land and buildings for expedited timetables
7) Occupancy or construction cost
8) Energy availability and costs – leading companies to reshore
9) Right-to-work state
10) Corporate Tax Rate

Evaluating the labor market

The primary driver in most U.S.-based site selection projects revolves around the supply, skill depth and cost of the labor force. The critical nature of the labor equation increases as the project's skill requirements increase. While a manufacturing operation or distribution center's location selection may be driven by supply chain considerations, the second most important criterion is access to skilled, affordable labor. Office-related projects – such as headquarters, IT centers, shared services operations or call centers – are almost exclusively driven by the labor equation. For these employee intensive operations, the labor costs typically make up between 70 and 80 percent of the facilities' overall operating costs. For operations requiring highly specialized jobs, such as software engineers or unique health care skills, skill depth may take precedence over labor costs, but labor criteria strongly influences the location decision.

Examples of primary labor criteria:

- Labor force size
- Growth rates
- Unemployment rates (by sector, if available)
- Industry density
- Skill attributes and density
- Educational attainment levels
- Proficiency of non-English language capabilities
- University programs and graduation rates
- Prevailing wage rates for relevant positions
- Employment competition and saturation rates
- Recent market activity (such as expansion and downsizing activity)
- Turnover rates
- Applicant flow
- Workforce longevity and scalability
- Union vs. non-union presence

Assessing infrastructure

It is important to assess both the transportation infrastructure and the market's physical infrastructure. Critical areas such as freeway access and airport access must be examined by the company in order to make sure the location meets their needs. Rail and port access can be important as well.

Important physical infrastructure factors to consider include water, wastewater, electric power, natural gas and fiber optic availability. Sites should be evaluated based on infrastructure access to the site and capability of the infrastructure.

Zoning must also be considered when choosing a site. Zoning sets the standards that apply to land and buildings within the city. Cities and towns follow a general plan that designates which sites are appropriate for use and compatible with surrounding areas. Companies should also consider if the site they have chosen is zoned appropriately for the facility's use. If the preferred site does not have suitable zoning, the company must apply to have the site rezoned. This is a three-to-six-month process to determine if the new zoning is compatible with the surrounding area.

Measuring accessibility

Today's increasingly global, high-tech, time-sensitive economy requires highly efficient intermodal systems, with airports serving as a key transportation link. Air transport access for both products and people are crucial for growing export-oriented enterprises. Measure the availability of direct and one-stop flights, flight times and airport efficiency.

Acquiring real estate

International investors like to invest in the U.S. because of its strong private property rights, independent judiciary, growth-oriented tax law and liquid capital markets. A recent survey conducted by the Association of Foreign Investors in Real Estate found the U.S. remains the strongest investment market among foreign investors because if its stability and security as well as providing the best opportunity for capital appreciation.

Foreign ownership legal conditions: Foreign nationals face very few restrictions to acquiring, owning or transferring real property in the U.S. Although the U.S. government generally does not restrict foreign ownership of real estate, foreign investors should be aware of several federal statutes, including but not limited to the following statutes.

The **Foreign Investment in Real Property Tax Act** collects income tax from foreign investors that transfer real property in the U.S. Generally, a buyer who purchases real estate from a foreign investor must withhold a tax equal to 15 percent of the amount paid for the property. The law applies whether or not the foreign investor holds title to the property individually or through a business entity.

The **International Investment and Trade in Services Survey Act** creates reporting requirements for foreign investors who own or control 10 percent or more of a U.S. business enterprise. A business enterprise includes any business entity and any ownership of real estate, whether or not the foreign investor holds title to the property individually or through an entity. The law exempts any investment under $1 million, is less than 200 acres or is real estate intended for personal use.

U.S. citizens are prohibited from transacting with any individual or entity on the **Specially Designated Nationals List (SDN List)**, which is published by the Office of Foreign Asset Control. The SDN List includes individuals and entities connected with certain foreign governments, as well as individuals or groups connected with terrorism and narcotics trafficking. Real estate purchase agreements typically require the foreign investor to represent that they are not on the SDN List.

There are many potential tax issues that foreign investors should consider when acquiring property in the U.S. For example, a foreign investor should consider any tax treaty in place between the U.S. and the investor's country of domicile in deciding how to structure any real estate transaction.

Purchasing process: When purchasing a commercial property, a typical inspection or feasibility period in a commercial purchase contract takes 60 to 90 days. This can take longer if the property's use is changed requiring a zoning change or other regulatory approval by the appropriate governmental body.

Typically, a commercial real estate representative will assist with the site search, and an attorney will then assist with the commercial property purchase transaction. The attorney will negotiate and prepare the purchase contract, review property and title documents, and assist with the feasibility investigation and closing, including the review of final title insurance commitment and endorsements. Closings are most often completed through an escrow agent.

Financing: Commercial loan terms vary, depending upon the value of the property compared to the amount of the loan and the creditworthiness of the buyer. Unlike residential loans that have terms as long as 30 years, commercial loans frequently mature in five, seven or 10 years. Loans are available from a variety of sources depending upon the property and borrower. Some lenders may require a full or partial guarantee depending upon the particular facts.

Assessing regulatory environment

All states issue federally mandated operating permits which are legally enforceable documents that apply to companies with significant air emissions or high levels of sensitive elements in wastewater.

Additionally, in counties and cities throughout the country, building permits are required for new construction, adding onto pre-existing structures and major renovations. This process generally includes an inspection process during and after construction to ensure compliance with local, regional and national building codes. The inspections and permitting process can vary greatly between markets and should be evaluated if your project includes a construction period.

4.2 Greater Phoenix Market Conditions

Below are some details specific to the local market conditions in Greater Phoenix. Overall, it is a growing, thriving market that has prepared for and is open to new businesses and new ideas. The information below touches on some of the region's offerings. GPEC can provide a more detailed analysis of the market and confidential support as you consider expanding into the U.S.

Labor market

Greater Phoenix has a growing labor market that can meet the needs of companies moving their operations to the region. In the previous decade, Greater Phoenix's labor market grew by a quarter million people, and this number is expected to continue growing. Approximately 20 percent of the population in the metro area has a bachelor's degree, and 12 percent of the population has a graduate or professional degree. The cost of labor here is less expensive than most other large, metropolitan markets with the median wage more than $45,570. Arizona is a right-to-work state, which means employees are not required to join or pay dues to a union. Greater Phoenix's workers compensation rates and unemployment insurance rates are among the best in the country.

Real estate

In Greater Phoenix, it is very feasible to purchase land, purchase an existing building, lease an existing building or build a new building.

We currently have an industrial inventory of more than 398 million square feet. The region is constantly adding new industrial space to keep up with market demand.

The average quoted lease rate for industrial space varies by location. Submarkets in the West Valley asking rents are less expensive than areas in the East Valley and North Phoenix, due to the large swaths of available and affordable land. Average rents vary from below $7/SF to $15/SF.[15]

The region's office inventory is about 193 million square feet. Office buildings are classified into three categories: A, B and C.

- **Class A** buildings are generally the newest buildings with the most amenities offered and are the most expensive.
- **Class B** properties are generally a little older but can provide a good value as the cost per square foot is less.
- **Class C** buildings are usually the oldest with fewer amenities but provide a substantial cost savings. The difference between the three categories is around $5 per square foot.

The average office rent in Phoenix is about 21% percent less than the National Index and the discount relative to West Coast markets is even greater. San Francisco's average rent is about 2.2 times that in Phoenix and Los Angeles' is about 50 percent higher.[16]

Land is available for development should your company want to design a facility to meet its specifications. Parcels of all sizes – up to hundreds of acres – are available in Greater Phoenix. For example, the region has a significant number of shovel-ready sites available to fit your needs. These sites are zoned with utilities available to the site and where construction can commence immediately. You can work with our organization, as well as site selection, consultants to find the right parcel for your business.

Foreign ownership: We do not impose restrictions on the foreign ownership of real estate. A foreign investor may take title to property in Arizona individually through a trust or through a business entity. Investors that acquire real estate in Arizona often create a new business entity under Arizona law that takes ownership of the property, such as a corporation, limited liability company or limited partnership. The Arizona Corporation Commission can provide more information on creating a corporation or limited liability company.

A foreign investor may also take title to Arizona property through an entity incorporated in another state or country. To qualify to do business in Arizona, the entity must register with the

Arizona Corporation Commission. The entity must also appoint a statutory agent to receive service of process in Arizona and designate a known place of business in the state. An out-of-state entity that is not qualified to do business in Arizona cannot file a lawsuit in any Arizona court.

Regulatory environment

GPEC community partners, including 22 cities and towns and Maricopa County in Arizona, offer a 90-day-or-less permitting process. Many of them may offer a quicker turnaround. In fact, the City of Phoenix offers both 24-hour inspections and 24-hour permitting through certified vendors.

Utilities

Resource management authorities have been planning for the state's water and energy future for decades. In fact, unique measures ensure we'll have ample resources for years to come. For example, more than 3.6 million acre-feet of water has been stored underground for future use meeting municipal and industrial demands for about four years. These business-minded utilities provide Arizona with cost competitive energy, water and gas.

Energy

Arizona Public Service (APS) and Salt River Project (SRP) are two utilities in Greater Phoenix that provide electricity to businesses and residents. They are ranked as top business service providers by J.D. Power & Associates. The cost of electricity will depend on the service territory where your company locates, whether it is a commercial or industrial operation, electricity use, and demand the company will need. When meeting the utilities, they will establish your rate by assessing your net consumption and your load profile (load factor). Utilities disclose the cost of electricity in tariffs. Most of the electricity comes from a reliable base of nuclear, natural gas and coal resources.

The region's fuel mix includes:

- 43 percent natural gas
- 28 percent nuclear
- 15 percent renewable
- 13 percent coal-fired
- 1 percent hydroelectric pumped storage, petroleum, biomass

GPEC can provide comparative analysis of the cost of utilities to companies that are considering moving to the market. Additionally, we can facilitate meetings between the utility providers and your company.

Water: Water providers in Greater Phoenix have been planning for developing water suppliers for more than 100 years. **SRP** operates and maintains seven dams and 250 high-capacity groundwater wells that deliver 260 billion gallons of water annually to municipal and agricultural users. In addition, the **Central Arizona Project (CAP)** is a 336-mile-long system of aqueducts, tunnels, pumping plants and pipelines, and is the largest single resource of renewable water supplies in Arizona. They move more than 1.5 million acre-feet annually from the Colorado River and Lake Havasu to residents in the Phoenix and Tucson metropolitan areas.

Water costs in Arizona are relatively inexpensive and rank among the lowest in the Western U.S. SRP and CAP are water wholesalers, and there are many private and municipal water retailers. When meeting the city, they will establish your rate by assessing your gallons-per-day usage, water pressure requirements, use of potable or grey water and piping size requirement. As with energy, we can provide a comparative analysis of water costs at varying usage rates to companies considering investing in Greater Phoenix and other markets.

Gas: Southwest Gas is the region's sole provider of natural gas. The company provides natural gas service to nearly 1.9 million customers in Arizona, California and Nevada.

Telecom: Telecommunications needs of residents and business are serviced by more than 60 fiber, telecom, broadband and wireless providers. Robust fiber network with dependable telecom infrastructure for the region are anchored by major providers like including **CenturyLink, Cox Communication and Google.**

Local taxation

Your actual tax burden will depend on several factors. Taxes such as income tax, sales tax and property taxes should be considered when making a location decision.

There are two main forms of income tax in Arizona: personal income tax and corporate income tax.

Personal income tax is assessed on the employees in the company. Arizona has a relatively low personal income tax that ranges from 2.55 percent for incomes under $27,272 to 2.98 percent for those with income above. Income taxes are only assessed at the state and federal level, not at a city or county level.

Corporate income tax is charged on the taxable income of the business. The percent of income that is taxable is determined based on a formula that factors in payroll, property and sales in Arizona compared to those factors company wide. The current rate is 4.9 percent.

Sales tax is assessed on purchases made by a company, usually at the point of sale. There are special exemptions on sales tax available, including the purchase of equipment for use in manufacturing. The current sales tax rate for the state is 5.6 percent and Maricopa County's is 0.7 percent. Rates vary from city to city in Arizona but are generally around two percent on your purchases.

Property taxes are levied on the value of the property and serve to support services in the cities, the county and local school districts. The state offers aggressive depreciation schedules on personal property (i.e., equipment, computers, furniture) to reduce property taxes. Currently, the average effective tax rate for commercial property is approximately two percent of the total value of the property. Greater Phoenix residents also pay property taxes, but the average effective tax rate is only one percent of the total value of the property.

Incentive programs

Qualifying companies can benefit from incentives in Greater Phoenix. The total value of incentives depends on the number of jobs created here, average wage of the job created, total size of the facility and capital that will be invested by your company (including purchase price and/or construction cost of the building, land costs, and the value of equipment and personal property).

Companies locating in Greater Phoenix may qualify for a variety of programs, such as:

Income tax credits: These programs offset the company's income tax liability. Most programs allocate funding based on the number of jobs created or capital invested. For example:

- $9,000 of corporate income tax credits over three years per qualified job
- Refundable tax credits of 10 percent of capital investment or $20,000 per qualified job

Property tax reduction: Programs such as the **Foreign Trade Zone (FTZ)** and **Military Reuse Zone (MRZ)** allow a company to reduce its property tax liability for a specific amount of time if the company meets necessary import/export and industry requirements. Most companies can also reduce their property value for tax purposes down to 2.5% of the original cash value.

Research and development credits: Companies that invest in research and development activities may qualify for credits of 24 percent for qualified expenditures to offset tax liability.

Discretionary, performance-based grants: The Arizona Competes Fund provides funding for corporations needing assistance with offsetting public infrastructure, job training or job relocation costs. The funds are highly competitive and awarded based on the merits of the project.

[15] Costar Industrial Market Report

[16] Costar Office Market Report

Chapter 5: How to Start & Grow a Company in Greater Phoenix

5. 1. How to Set Up a New Business

Choose a business entity

The U.S. has no federal company law and the rules regarding the formation, operation and dissolution of business entities because they are defined by the state where the business entity is formed. You have your choice of several different types of business entities that you may establish.

Corporation: A corporation is managed by a board of directors and owned by shareholders. The corporation is a separate legal outfit from its directors and shareholders, who may not be held liable for the debts and obligations of the corporation if corporate formalities are observed. To achieve and maintain limited liability, a corporation should be adequately capitalized. However, the non-U.S. parent of the company may not be immune from product liability claims in the U.S.

A corporation must have officers as well as directors, but the roles may overlap. In general, a president, chief financial officer and secretary must be appointed by each corporation. There are no nationality requirements imposed on management.

A corporation and its shareholders are generally subject to double taxation, at both corporate and shareholder levels, but certain corporations may make an "S" corporation election, which results in the corporation being treated similar to a partnership in that the corporation's taxable profits and losses are passed on to shareholders. However, note that an "S" corporation may not be owned by non-U.S. persons.

Limited Liability Company (LLC): An LLC is a hybrid between a corporation and a partnership. Its owners benefit from limited liability which means that the owners are not liable for the debts and obligations of the LLC. Unless it elects otherwise, an LLC is treated like a partnership for tax purposes and combines certain advantages of both entities. An LLC is managed by its managers and owned by its members, each of whom has limited liability. However, an LLC may elect to be taxed as a "flow through" or a corporation. In contrast to most corporations, all financial benefits accruing to shareholders need not do so in direct proportion to the share ownership. Instead, the

LLC's operating agreement may describe how profits, losses, and distributions will be allocated, which may differ from strict ownership percentages.

General Partnership: A general partnership is owned and managed by its partners, who are personally liable for the debts of the partnership and is "flow through" for income tax purposes.

Limited Partnership (LP): A limited partnership is managed by certain partners – called general partners – and owned by all partners. The partners who do not participate in the control and management of the partnership are called limited partners. Their liability is limited to the amount of their investment in the partnership. Unless otherwise elected, a limited partnership is "flow-through" for tax purposes.

Limited Liability Partnership (LLP): In most states, a general partnership and a limited partnership may elect to be limited liability partnerships. An LLP essentially provides the same liability protection for its owners as an LLC. An LLP allows each partner to actively participate in management affairs. Unless otherwise elected, an LLP is "flow-through" for tax purposes.

Joint Ventures: "Joint venture" is a general term used to indicate a relationship between parties participating in a common enterprise. It describes an arrangement in which two or more parties decide to form a new business together or contribute portions of an existing business or other assets to a joint enterprise. The term does not describe a form of legal entity. Joint ventures can be formed using a corporation, LLC, LP or general partnership. Issues to consider when forming a joint venture include the scope of the venture, required capital contributions (both initially and at later intervals), respective responsibilities of the entities involved, sharing of profits and losses, decision-making and the breaking of deadlocks, and mechanisms for dissolution and distribution of assets. However, direct participation in a joint venture or "cooperation" agreement may expose any non-U.S. owner to liability for the venture's obligations and liabilities.

"Branch" Only: A foreign business' first steps into the U.S. market are often through sales, distribution or licensing arrangements. Some businesses choose to commence U.S.-based operations by opening a U.S. branch that is simply an extension of the non-U.S. company's headquarters. An U.S. branch may be easily established; a non-U.S. company simply registers as a foreign corporation in the state or states where the business will be conducted, which typically involves filing a form and paying a modest fee. However, a significant disadvantage of establishing a U.S. branch is the non-U.S. parent company may be exposed to liabilities of the U.S. branch, including the possibility of a full audit by the U.S. Internal Revenue Service. Using a U.S. branch office potentially permits U.S. start-up losses to be applied against the home office's income. However, U.S. tax laws generally impose a tax on U.S. branch profits in a similar manner to how a corporate subsidiary is taxed. Distributions of profits from the branch to its home office are also taxed as dividend distributions.

Business name

Before you form your business entity, you should confirm the availability of the proposed business name. This is done at the state level, but you should note the availability of a name does not exclude it from infringing the intellectual property rights of third parties. An organization may conduct business using a name other than its registered name, provided that such "fictitious" name or trade name is registered with the applicable secretary of state or in the county where its principal place of business is located and in which business is carried out under that name.

Tax elections

At the time your business entity is formed with the state government, your newly formed entity must also obtain a federal employer identification number (EIN) from the U.S. Internal Revenue Service. This EIN number will be used in all tax-related filings, including filings on the state and local level.

Governance

As a separate matter from the state and tax filings to establish the entity itself, a business will want to establish clear procedures regarding how the entity will be governed and operated. In a corporation, these internal rules are generally set forth in its bylaws and with a shareholder's agreement. In a limited liability company, the owners are generally in an Operating Agreement. Partnerships have Partnership Agreements and joint ventures have a Joint Venture Agreement. These documents also set forth procedures for meetings; voting; internal financial, accounting and record-keeping matters; notice requirements; and provisions regarding the dissolution, winding up and liquidation of the entity.

An organization should consider the level of control that its foreign parent company/affiliate will exercise in contrast to how much authority and operational control is exercised locally. Foreign parents of U.S. entities should use caution in structuring relationships with their U.S. subsidiary entities to avoid potential "piercing of the corporate veil" by courts in litigation. In certain circumstances where the parent entity controls the U.S. entity's operations, there may be some risk that a court here could consider the foreign parent to be the "alter ego" of the subsidiary and expose the parent company to liability for claims made against the U.S. entity.

5.2 How to Access Capital

When expanding to Greater Phoenix, you'll want to establish a banking relationship with an Arizona bank that has international banking capabilities. Specifically, one with service related to multi-currency loans and deposits, international treasure management, and account balance reporting. When you access capital, here are three different ways to help grow your company:

How to utilize angel investment

An angel investor is an individual who provides capital for a business startup usually in exchange for ownership equity. A small number of angel investors form angel networks to share research and pool their investment capital. Foreign startup companies and early-stage growth ventures looking to enter the U.S. market through Arizona should use the following check list:

First, determine where your business is in the seven lifecycle stages of a startup or early-stage company:

1. Research
2. Ideation/prototyping
3. Validation
4. Commercialization
5. Scale/growth
6. Sustainability
7. Exit

Next, align your company's lifecycle stage with your goals for U.S. market entry. Do you want to:

» Determine the size of market available to your innovation in the U.S. market?

» Understand the competitive head winds in the U.S. market for your innovation?

» Identify a clearer understanding of how your product or service or solution will be used in the U.S. market by American consumers?

» Consider accessing capital in the U.S. to enter the market

» Tap into U.S. talent (management, workforce, etc.) to help your company enter the U.S. market?

Then, align your lifecycle stage and goals with the resources available in the market:

» Research, ideation and prototyping stage:
  - Utilize services from Arizona Commerce Authority (ACA); ASU's Furnace Technology Transfer Accelerator program; incubators like SeedSpot or Center of Entrepreneurial Innovation (CEI); and nonprofit co-working space providers.
  - Any of these resources can provide basic services, such as workspace, mentoring, and other free services to help further shape your concept before validating it and/or forming a business around it.

» Validation stage:
  - Utilize services from nonprofit accelerators or for-profit organization that provide rapid prototyping, user validation, and other product and service commercialization services.
  - Groups like these can provide free, fee-based, or equity-based concept- and business-validation services for entrepreneurs in order to move into the market and begin securing seed funding.

» Commercialization, growth (scale), sustainability and exit stages:
  - Utilize services from for-profit commercialization experts like Tallwave; or venture capital firms like the CKS Advisors, Angel Capital Association, Canal Partners, Grayhawk, Diamond Ventures, etc.
  - Groups like these provide either venture capital or a combination of services and capital to help Arizona entrepreneurs successfully fund their seed, iterative and, sometimes, reiterative rounds.

Tallwave, an Arizona-based startup founded in 2009, became the nation's first "commercializor" for startups and early-stage growth ventures. This includes global companies that have shown interest in exploring market opportunities in the U.S. Tallwave is the only known commercializor in the country of all the resources mentioned above. Unique among incubators, accelerators, and venture capital firms, Tallwave provides all of the services and capital resources.

Arizona is an attractive place for global entrepreneurs to commercialize their ventures for scale and sustainability, and to maximize the value they're building. Foreign investors work with firms like GPEC and Tallwave to connect to entrepreneurs and minimize investment risk.

How to engage a venture capital firm or investor

Venture capital (VC) is best suited for early-stage companies in the technology space. Venture capitalists consistently seek opportunities to generate a return on investment eight to 10 times their original investment from companies in which they invest. To determine which companies to invest in or include in their investment portfolio VCs abide by specific investment criteria and strategies. This varies based on industry, products and services, geography, internal rates of return (IRR), stage of development, etc. Technology companies usually provide such ROI potential and do not qualify for traditional bank debt.

One of the most important considerations in seeking venture capital is synergy with your company. There are many VC funds in the market, but each venture capitalist will have different philosophies and investment parameters. Seek out VCs within your industry vertical that fit your capital needs. For example, an established VC is likely less interested in a $3 million round than a $15 million round.

A VC partner will see about 250 business plans per year and invest in one or two. As such, the best way to contact a VC is through a personal introduction. Unsolicited emails are usually dismissed. Be prepared before initiating communications or interactions with any potential investors because second chances are rare. When submitting a summary of the investment opportunity, it is important to cover the following components:

- Value proposition: Problem that is solved by your product or service
- Defensibility: Barriers to entry, intellectual property
- Business model: Unit economics or ability to make money
- Market size: Projected in annual revenue in the next four to five years
- Management: Experience and cohesiveness
- Business plan: Go-to-market strategy and financial projections

The VC will conduct due diligence on your company after you submit a summary or give a presentation. Likewise, you should conduct your own due diligence on the VC. You should understand their domain expertise, resources and the value they bring to the table. With the right fit, the VC partner can help create significant value at the end of your journey.

How to prepare an initial public offering (IPO)

One method for a seasoned company to gain access to additional and robust capital is to engage in an IPO. For many emerging companies, an IPO is the preferred exit strategy for early-stage investors and founders to ultimately realize the return on their initial investment by selling all or part of their ownership to the public capital markets in the U.S.

IPOs are usually limited to those companies that have a proven track record of healthy financial condition and results of operations. Following an IPO, the reporting company's stock (equity) is considered registered under the rules and regulations of the United States Securities and Exchange Commission (SEC). They can trade freely in the public market, often on a national securities exchange such as the NYSE or NASDAQ.

Preparing the right IPO strategy involves a thorough assessment of whether a company is prepared to operate as a public company subject to SEC reporting. The IPO process and the resulting compliance requirements involve substantial up-front and ongoing time and costs, such as the Section 404 requirements relating to internal controls over financial reporting. Prior to the IPO process, the company must assemble a working group that includes the management team, board of directors, legal counsel, auditors, a registrar and transfer agent and an investment bank. All such advisors and consultants should be carefully evaluated in advance to determine if they have substantial experience with the IPO process. Their role in underwriting the IPO is critical to its ultimate success.

This working group must evaluate the following key issues when choosing a market:

- Market size
- Regulatory requirements of both the SEC and relevant securities exchange
- Regulations that require structural changes to the company
- Likelihood of success
- Any scaled disclosure requirements available to emerging growth companies
- Impact of an IPO on existing shareholders

IPOs require extensive cooperation and coordination among members of the working group to complete its public disclosure documents, which generally include a long-form registration statement to be filed with the SEC (e.g., a Form S-1 and Prospectus), with a registration statement including audited financial statements.

The IPO process will also involve:

- Various agreements between the company, underwriters, registrar and transfer agent, and shareholders
- Various internal documents (charter amendments, board and shareholder consents, lock-up agreements and certificates of legal opinions)

- Intensive legal and financial due diligence- including preparation of opinions from legal counsel and the auditors

Once the IPO is completed, the company becomes a reporting entity with ongoing periodic filing obligations and substantial compliance requirements related to, among other things, SEC rules and regulations.

5.3 How to Form Strategic Partnerships

Partnerships with universities

Universities provide an excellent pool of talent, research and connections that can expand their internal capacities, making them more successful in their respective fields. An effective partnership with a university should be led by a precise corporate strategy, rather than ad-hoc individual initiatives. Working through the university economic development offices allows a company to identify the right stakeholders in the university and structure their relationships to effectively capitalize on opportunities.

For example, Arizona State University is redefining the 21st century research university as a knowledge enterprise with its solutions-focused approach to research, entrepreneurship and economic development. The U.S. News & World Report recently named ASU the #1 most innovative college in the nation for the seventh year in row. The Office of Knowledge Enterprise Development supports entrepreneurial ventures and established businesses through a variety of unique services. ASU's economic development, corporate engagement, technology transfer and entrepreneurship programs are headquartered at SkySong the ASU Scottsdale Innovation Center. SkySong is a mixed-use development linking technology, research, education and entrepreneurship to position ASU and Greater Phoenix as global leaders in the knowledge economy.

Public institutions, like Arizona State University, University of Arizona, and the Maricopa Community Colleges, are subject to federal and state laws that govern certain relationships. For example, vendor relationships are subject to state procurement laws.

In addition, the region's research institutions partner with companies to develop or license intellectual property. The partnership can entail working on a basic research problem, commercializing a technology, or licensing existing university technologies. Each collaboration has a framework to help govern the relationship.

Industry-sponsored research partnerships, where more than one project is likely to be undertaken, can be governed by "master research agreements." These agreements govern all research activities supported by the sponsor without the necessity of renegotiating important terms and conditions for each new project or task, including publication, confidentiality, intellectual property, indemnification, publicity, rights and procedures to terminate the project, and insurance, warranties, liability, governing law, and other items necessary for contracts. Once a master research agreement is fully executed, all project-specific information is combined into an addendum, called a "project specification" or "task order." The addendum is attached to the master research agreement and contains the following specific items: scope of work to be conducted, budget, compensation, schedules, milestones, deliverables, co-funding information, and background intellectual property.

Companies may also commercialize technologies using **university developed intellectual property.** Generally, this interaction is covered under a license agreement, negotiated on a case-by-case basis. Each negotiated agreement includes the following elements:

- License fees –depends on the market value of technologies
- Equity – institutions will likely expect to receive equity in start-up companies based on their technology
- Patent reimbursement – fee reflects the cost incurred to patent technology
- Development period – plans that outline development milestones are required. Projects with long development horizons use development plans to reduce license fees on high-risk projects because milestone payments are contingent on development progress.
- Royalties – fees paid when products or services utilizing technology are sold; a minimum royalty is also likely
- Consortia also provide an option to engage with universities on research projects. Consortia group companies are governed by the appropriate legal agreements for all companies to benefit from the results of the research.

Establish distribution partners

Depending on your industry, there are several ways to enter the U.S. market. For example, producers of fast-moving consumer goods will often seek help from a large retailer, such as

Walmart or Target, to gain significant market share and shelf space. For similar retailers, as well as major grocery chains, you should have a promotion plan.

Major corporations like Boeing, Honeywell and Intel typically work with distributors on supply chain. If you want to work with them, you will need to work with the distributor and the customer to make sure the good meets specifications and is competitively priced. Many distributors carry entire lines of items, and it may benefit your company to fit in with similar offerings. Incidentally, companies such as Honeywell will resell items to its extensive customer base.

Distributors such as Cardinal, McKesson, and Owens & Minor control major parts of the healthcare market. Similarly, companies wishing to address the food business are advised to utilize food brokers and dedicated distributors as gateways to these markets. Contracts with appropriate terms and pricing, as well as promotional support, are critical to appeal to these firms.

Arizona has a long-established capability for handling goods to and from Mexico, especially fresh produce. There are large warehouses and exchanges – as well as very reputable customs brokers and freight forwarders – that specialize in moving goods and selling to both the Mexico and U.S. markets.

Greater Phoenix also has several large purchasing organizations based in the region. In particular, Avnet, the world's leading electronics distributor, is headquartered in the city of Phoenix. Mining giant Freeport-McMoRan also has headquarters in Phoenix. Other noteworthy companies that make purchasing decisions through Greater Phoenix groups include Intel, Honeywell and Henkel USA.

Incubators and Accelerators

When a startup or early-stage company is formed, it will need leadership, strategic introductions, networking opportunities, access to capital and basic support services Incubators and accelerators are a great resource for emerging companies with these needs.

Incubators can be for-profit or nonprofit, private or public companies, and provide access to an external leadership team. Some incubators in Greater Phoenix include AZ TechCelerator in Surprise, ASU's SkySong in Scottsdale, Chandler Innovations, AZ Disruptors in Scottsdale Airpark, MAC6 in Tempe, Seed Spot in Phoenix and LauchPoint in Mesa.

An accelerator seeks to find and select early-stage companies to assist with training, strategic leadership, and mentorship through targeted programs or competitions. Venture capitalist investors frequently provide these programs as they try to learn more about the founders of an early-stage business, their business model and the company's potential.

The most effective incubators and accelerators focus on a specific industry or niche market. Some incubators and accelerators charge a fee for their services, while others seek ownership in the early-stage company in exchange for the assistance they provide. The amount of equity that an incubator or accelerator might expect depends on the stage of the company and nature of the assistance being provided. Emerging companies should perform their own due diligence on an incubator or accelerator before involving the incubator or accelerator in their business plans and leverage equity in exchange for assistance.

Prior to working with an incubator or accelerator consider:

- The industry it caters/promotes
- Capital raised for clients
- Desired exit goals for clients (IPOs, sale of business, etc.)
- Ability to assemble effective boards and management teams for clients

Partnerships and joint ventures

In the U.S., joint ventures are common in the manufacturing sector and increasingly in the service industries as businesses look for new, competitive strategies. A joint venture is a contractual business undertaking between two or more parties based on a single business transaction that specifies intent, mutual responsibilities, limitations and goals. Individuals or companies choose to enter joint ventures to share strengths, minimize risks, and increase competitive advantages in the marketplace. Regulators in the U.S. Justice Department and the Federal Trade Commission routinely evaluate joint ventures for violations of Antitrust Law. In addition, injured private parties may bring antitrust suits.

Joint ventures are especially attractive to companies that wish to enter foreign markets that require affiliation with an existing, local partner. Unlike in a merger or acquisition setting, the entities managing a joint venture continue to operate their own companies separately and form or choose a separate structure to operate their joint venture.

For instance, a joint venture may be established by two entities choosing to form a new entity (such as a limited liability company) owned by both parties. Alternatively, a joint venture could take the form of an entity investing in another entity's subsidiary, or separate startup entity. A joint venture could take the form of a contractual agreement that allocates costs, responsibilities and liabilities in their common endeavor.

In a joint venture, each party may contribute value to the arrangement in the form of financing, intellectual property, market access or other assets. They do so to capture a market or business opportunity while distributing the costs and risks between the parties. Similar to a merger, each participant in the joint venture should engage qualified consultants and advisors in order to assess potential risks and viability of the proposed transactions and relationship. They should also perform due diligence on the other entity and the proposed structure.

Many joint ventures are formed as limited liability companies where unique aspects of the operation are identified in detail rather than deferring to local law to control. The parties prepare an initial non-binding term sheet (or memorandum of understanding) and eventually enter into separate contractual arrangements. This can include an operating agreement dictating ownership rights of each party, exclusivity agreement, intellectual property (IP) assignments, services or distribution agreements, and confidentiality and non-competition agreements. Depending on the nature and scope of the joint venture, the parties should consider antitrust issues that may arise, accounting for those prior to commencing operations together.

Acquiring a company

An acquisition could involve purchasing a majority or all of the outstanding stock of a target company, this move gives you ownership control of the existing target company. In other cases, you will just purchase the assets necessary to develop a strength in the company without assuming ownership of the target company.

When considering how you to acquire a company, several factors should be considered. For example, one advantage of a stock purchase is the target company is essentially handing over the keys to a fully intact company, including its employees, facilities and intellectual property. In an asset purchase, your company will need to choose which assets to bring into its operations and document such acquisitions to various IP assignments and employment agreements. An asset purchase may be more desirable because the acquiring company can limit the liabilities of the target company and limit the risks associated with acquiring an existing company.

Merger and acquisition transactions can take many forms and structures. These transactions occur when participants find value in a new combination or acquisition, advance the synergy of the staff or accelerate an enterprise.

There is a distinction made between (1) a merger, where one or more legal entities is combined or restructured into a new entity in connection with the purchase of the target business, and (2) an acquisition, where one entity (A) purchases a majority or all of the outstanding stock of the target company (which would provide ownership control of the existing target company), or (B) purchases identified assets (and assumes identified liabilities) of the target company.

Arizona law permits an entity to acquire another entity by consolidation, stock or asset acquisition. When a merger takes effect, the existence, title to property, liabilities, court or administrative proceedings, shares, and other securities merge into the surviving entity. Arizona requires board approval of a merger plan or share exchange. In some cases, the board is required to submit the plan to its shareholders for approval. Foreign entities may merge with an Arizona entity, provided the transaction complies with the law of both jurisdictions. The plan of merger or exchange must be filed with the Arizona Corporation Commission to become effective. Mergers and acquisitions are also subject to federal and state antitrust laws.

If a shareholder of a private entity disagrees with (or dissents from), a sale or disposition of the corporation's assets or a merger of the corporation with another corporation, the shareholder may require the corporation to purchase their shares. If the corporation and the dissenting shareholder cannot agree on a value for the shares, the corporation must engage a court in determining the shares' value.

5.4 How to Find Qualified Employees

Arizona has an extremely competitive workforce in regard to training, quality and availability of workers while maintaining one of the lowest costs for labor in the nation.

In Greater Phoenix, Arizona State University, Maricopa Community Colleges, Grand Canyon University, University of Arizona, Northern Arizona and University of Phoenix are among more than 40 higher learning institutions that prepare the region's workforce. The universities and community college system are a great network to find qualified employees.

Additionally, there are several popular job fairs and places to post vacant positions as well as several staffing agencies that assist companies with hiring. Many communities in the region offer recruitment support to employers. For example, ARIZONA@WORK provides free services including recruitment and screening, train new and existing employees, as well as offer layoff aversion resources and transition strategies.

Staffing agencies

Many staffing firms offer a Recruitment Process Outsourcing (RPO) model. When businesses hire a staffing or RPO staffing firm, they can screen resumes and recommend qualified candidates. The company then starts the interview process, performs final screening and background checks, and manages the overall hiring process.

Another option is to seek outside assistance with a staffing or executive search firm. These firms can handle a majority of the recruiting process.

Additionally, using contract personnel can help staff your company quickly without the commitment and expense of hiring employees directly on your payroll. Contract employees are employed by the staffing firm and billed per hour. Rates vary depending on expertise of the staffing firm, length of time they are employed by the firm, types of positions being filled and number of positions needed.

You will want to find a firm well versed in your industry and hiring needs.

Chapter 6: Human Resources & Employment Law

6.1: Compensation

Minimum wage

The minimum age is the lowest wage most employers must pay per hour. States can set their own minimum wage as long as they exceed the Federal minimum wage. The minimum wage in Arizona is $12.80 per hour. For tipped workers, such as wait staff at restaurants, Arizona's minimum wage is $9.80 per hour.

Salaried employees

Most employees doing post-graduate work are provided an annual salary. An average work week is 40 hours per week. Salaried employees are provided a designated annual salary whether the employee works more or less in any given week. Benefit packages include vacation time, medical insurance and retirement plans vary on a case-by-case basis. A salaried employee is not necessarily exempt from federal overtime and minimum wage laws.

Executive compensation: Management employees, or executive personnel, have basic benefits supplemented by executive compensation arrangements. This includes nonqualified plans, stock-based arrangements and notional equity arrangements.

Nonqualified plans: This plan plays an important role as a tax and retirement planning tool for executives. Nonqualified plans are not subject to many of the requirements of ERISA and the Code that apply to qualified plans. Such plans can provide benefits to executives without providing corresponding benefits to non-executive employees. Two of the most common forms of nonqualified plans are excess benefit plans and deferred compensation plans.

Excess Benefit Plans: This plan provides an executive with a supplemental pension equal to the difference of the pension the executive would have received under the employer's qualified retirement plan.

Deferred compensation plans: This plan allows covered executives to avoid current income tax by deferring current compensation for a specified period or until retirement. Interest on the deferred amounts during the deferral period may be credited to the executive as an added benefit. To avoid adverse tax consequences and ERISA regulation, nonqualified deferred compensation plans are not funded or secured.

Stock-based Arrangements: In this arrangement, the executive has the right to acquire the employer's stock, or to receive compensation based upon the performance of the stock. The executive has an incentive to work more diligently for the company's success. Among the most common forms of stock-based arrangements are stock options, restricted stock, restricted stock units and stock appreciation rights.

Stock options: A stock option permits the employee to purchase shares of the stock from the employer at a fixed price. This option permits the employee to share in the appreciation of the stock while avoiding the risk of depreciation in value. The two types of stock options include incentive stock and nonqualified stock.

- **Incentive stock options (ISOs):** ISOs are creations of the Code and must satisfy the Code's requirements. One requirement is the exercise price of the option (the amount payable by the employee to acquire the stock) cannot be less than the fair market value of the underlying stock on the date of the grant of the ISO. Also, an ISO must be exercised within 10 years after the date of grant.

  The principal benefit of an ISO is the tax treatment available to an employee. An employee is not taxed either at the time of the grant of an ISO or at the time of the exercise of the ISO, unless the employee is subject to the special alternative minimum tax. If the stock acquired upon exercise of an ISO is held for a mandated holding period (the later of two years from grant and one year from exercise) any gain to the employee from the sale is capital gain. No deduction is available to an employer in connection with an ISO unless the employee sells the ISO stock before the holding period.

- **Nonqualified stock options (NQSO):** NQSO is any option that does not qualify as an ISO. As a result of state and federal tax and securities laws, NQSOs tend to have common features. Typical NQSOs permit the employee to purchase stock at a fixed price for a specified period at a price equal to or greater than the fair market value on the date of grant. Most NQSOs cannot be exercised until a specified period has expired and most expire upon termination of employment, with the exception of death, retirement or disability.

  The employee's tax treatment under an NQSO is not as favorable as under an ISO. Although the employee is not taxed upon grant of an NQSO, the employee will realize taxable ordinary income at the time of exercise of the option equal to the difference between the fair market value of the stock at exercise and the exercise price. In the event of a subsequent sale, the exercise price paid by the employee, plus and the income recognized by the employee equals the employee's "basis" in the stock. Any amount realized on a subsequent sale in excess of the employee's basis is taxable at capital gain rates.

Deductions are not available to an employer issuing an ISO. However, an employer issuing an NQSO is entitled to a deduction upon the employee's exercise of an NQSO equal to the amount of income includible by the employee.

- **Restricted stock:** This employer stock is issued to an employee for the performance of services. Restricted stock is subject to transfer and forfeiture restrictions on the employee's stock ownership rights. For example, the employee's ownership of the restricted shares may be made contingent on continued employment by the employer for a specified period. Restricted stock is issued to an employee without cost to the employee or at a significant discount.

  An employee is not subject to tax on restricted stock until the stock restrictions lapse. When the stock restrictions lapse, the employee realizes ordinary income in an amount equal to the excess of the fair market value of the stock, over the amount, if any, paid for the stock. Any appreciation in the stock occurs after the restrictions lapse is eligible for capital gains treatment upon a subsequent sale.

  An employee can elect to be taxed immediately upon the receipt of the restricted stock by filing a special notice with the IRS within 30 days of the stock grant. In such case, the employee realizes ordinary income equal to the excess of the fair market value of the stock on the date of grant over the amount, if any, paid for the stock. Any appreciation in the stock occurring after the date of grant is then eligible for capital gains treatment.

Restricted Stock Units (RSU): RSUs are awards that represent a promise to transfer shares of company stock if certain criteria are met. Restricted stock units are typically issued to an employee without cost to the employee. Once the vesting period is over, restricted stock units may be settled in stock or in cash. An employee who has been granted an RSU is typically not entitled to dividend, voting or other shareholder rights until the shares are vested and transferred to the employee. Restricted stock units are not subject to taxation until the underlying shares vest and are delivered. The employee is taxed on the market value of the shares of stock at the time the shares vest. Any appreciation in the stock that occurs after the restrictions lapse is eligible for capital gains treatment upon a subsequent sale, if the holding requirements are met.

Stock Appreciation Rights (SAR): SAR is a right to be paid an amount equal to the difference between the value of an employer's stock share on the date the SAR is granted, plus the value of that share on the date the SAR is exercised. SARs are sometimes granted in conjunction with stock options and require the underlying option be exercised as a condition for the exercise of the SAR. Payments under SARs can be made in cash or in employer stock. The tax treatment of SARs is generally the same as the tax treatment of NQSOs.

Notional Equity Arrangements: Notional equity arrangements or "phantom equity" arrangements, provide an employee with a contractual right to receive a payment in the future that tracks the value of an employer's stock. These arrangements allow an employer to grant awards reflecting the economic benefits of stock ownership without requiring the employer to issue actual shares of stock to its employees. If used correctly, notional equity arrangements can create an ownership culture similar to that of the award of actual stock in the form of options and restricted stock. Notional equity arrangements have historically been used by private companies that do not want to grant stock ownership rights to their employees.

Section 409A of the Internal Revenue Code: This imposes a series of very technical and restrictive requirements on nonqualified deferred compensation plans. Section 409A regulates the timing of payment and deferral elections, form of payment, as well as the ability to accelerate payment and make subsequent deferral elections. The failure to satisfy the requirements of Section 409A can lead to adverse tax consequences for employees including, but not limited to, additional tax of 20 percent on the amount deferred under the noncompliant plan.

Section 409A reaches far beyond the commonly recognized forms of deferred compensation plans. Employers adopting the following need to ensure arrangements comply with Section 409A of the Code.

- Excess benefit plans
- Deferred compensation plans
- Employment agreements with severance pay
- Change in control agreements
- Severance agreements
- Discounted stock options/SARs,

- Notional equity,
- Other arrangements providing a legally binding right to compensation that will be paid in the future

Section 162(m) of the Internal Revenue Code: This places a $1,000,000 limit on the amount of compensation a publicly traded employer can deduct in any one year for compensation paid to the employer's chief executive officer and any of the employer's three most highly compensated executives (excluding the chief financial officer). This limitation does not apply to compensation that qualifies for the "performance-based compensation" exception to the limitations on the deduction of compensation imposed by Section 162(m). Publicly traded employers operating in Arizona should consider adopting a performance-based compensation program to take advantage of the performance-based compensation exception to the limitation on deductions imposed by Section 162(m) of the Code.

6.2: Labor Regulations

Employment law

Employers in the U.S. historically have significant discretion in employment matters including hiring, discharge and working conditions. In recent years, legislation has increased workplace regulation. New legislation addresses equal rights for employees in a variety of protected classes including protected work leave rights for employees, wage and hour laws, and other issues. The following provides a brief overview of regulations impacting employers in Greater Phoenix.

At-Will Employment: Employees in Arizona are employed on an "at-will" basis. This means the employer or the employee may terminate the employment relationship at any time, for any reason, with or without cause, with or without notice. The at-will employment doctrine is further strengthened by the Arizona Employment Protection Act. This allows employers or employees to terminate the employment relationship at any time for any reason unless there is a written contract to the contrary. To overcome the presumption the employment relationship is at-will, the contract must be signed by both the employee and the employer or set forth in an employee handbook identified as a contract or signed by the party to be charged. Under this law, implied contracts are not enforceable.

The Act also limits “wrongful discharge” suits based on public policy. The employee must base the claim on a specific Arizona statute or the state constitution. The Act also protects whistle blowers against termination in retaliation for a refusal to violate Arizona law.

The Act limits remedies in some areas. If the statute provides for a specific remedy, a successful plaintiff may receive no more than that remedy. An employee may not base a claim on the statute to obtain a greater award than the one contained in the statute itself. This includes damages for emotional distress, humiliation, or punitive damages in a discrimination action. These damages can be awarded in a proper case. The Act also shortens the statute of limitations for wrongful termination. To pursue a claim, the employee must file suit within one year of termination.

Restrictive covenants: “A restrictive covenant – whether a covenant not to compete or an anti-piracy agreement – is enforceable so long as it is no broader than necessary to protect the employer’s legitimate business interest. The burden is on the employer to prove the extent of its protectable interest.” Hilb Rogal and Hamilton Co. v. McKinney, 190 Ariz. 213 (App. 1997). Such restrictive covenants can include non-compete, non-solicitation, and/or non-disclosure provisions. Restrictive covenants must be supported by consideration in order to be legally enforceable. In Arizona, continued employment of an otherwise purely “at will” employment relationship may be such consideration. Demasse v. ITT Corp., 194 Ariz. 500, 984 P.2d 1138 (1999); Mattison v. Johnston, 152 Ariz. 109, 730 P.2d 286 (App.1986).

A non-compete is designed to prevent an employee from leaving an employer and then working for a competitor or creating their own competing business. In any event, in order to be enforceable, among other things, a non-compete must be reasonable in terms of duration and geographical scope. Bed Mart, Inc. v. Kelley, 202 Ariz. 370, 45 P.3d 1219 (App. 2002).
A non-solicitation or “anti-piracy” provision is designed to present an employee from leaving and subsequently soliciting or pirating the former employer’s customers and/or employees for the benefit of a competing or rival business.

Some restrictive covenants are written to prohibit competition or solicitation during the term of the employment relationship. Unless otherwise agreed, an employee has a legal fiduciary duty not to compete with his employer during their employment relationship.

A non-disclosure provision is designed to protect an employer’s confidential, proprietary, and/or trade secret information from being misappropriated by an employee during or after their employment.

Courts in Arizona abide by the blue pencil rule, which means they cannot "add terms or rewrite provisions" of restrictive covenants in employment agreements, but will sever unreasonable terms if the agreement remains grammatically sound. Valley Medical Specialists v. Farber, 194 Ariz. 363, 372, 982 P.2d 1277, 1285 (1999); Varsity Gold, Inc. v. Porzio, 202 Ariz. 355, 359, 45 P.3d 352, 356 (App. 2002) ("By simply authorizing a court to rewrite unreasonable restrictions, an employer may relieve itself of crafting a reasonable restriction with the added benefit that departing employees may adhere to an onerous covenant.")

Discrimination

Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991: Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. The prohibition applies to all elements of the employer-employee relationship, including hiring, firing, wages, promotion, and transfer. Title VII applies to every employer that has 15 or more employees engaged in any business affecting interstate commerce.

Title VII is enforced by the federal Equal Employment Opportunity Commission ("EEOC"). Employees or job applicants can file charges of discrimination with the EEOC or the Arizona Civil Rights Division ("ACRD"). The EEOC or ACR itself may also file charges against an employer on behalf of employees or job applicants. Following an investigation and attempts at resolution, the EEOC, employees, or job applicants may file a suit against the employer. Remedies available include compelled employment, reinstatement, back pay, compensatory damages, punitive damages and equitable relief, and attorneys' fees. Employees are entitled to a jury trial.

Age Discrimination in Employment Act: The ADEA protects individuals who are at least 40 years of age from employer age discrimination with respect to hiring, firing, wages, promotions, transfers, and other terms, conditions, or privileges of employment. The ADEA applies to any employer engaged in business affecting interstate commerce with 20 or more employees. An exception permits age discrimination when age is a "bona fide occupational qualification" reasonably necessary to the normal operation of the employer's business. Selection of a younger employee over an older one is permitted if reasonably based on factors other than age.

Age discrimination claims must be filed with the EEOC or the Arizona Civil Rights Division ("ACRD"). Thereafter, the EEOC, ACRD, employees, or job applicants can file suit against the employer. Remedies available include compelled employment, reinstatement, back pay awards, liquidated damages, and attorneys' fees

The Rehabilitation Act: The Rehabilitation Act prohibits employers from discriminating against "qualified handicapped persons" and requires employers to take affirmative steps to provide employment opportunities to handicapped persons. Employers subject to the Rehabilitation Act are federal contractors, subcontractors and recipients of federal financial assistance.

A "qualified handicapped person" is a handicapped person who can perform a job. The employer must make reasonable accommodations to the person's handicap, unless doing so would cause the employer undue hardship. A "handicapped person" is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities. Examples of handicapped persons are persons suffering from blindness, heart disease, paraplegia or epilepsy. Many factors such as size of the company or type of business influence accommodations the employer needs to make for handicapped employees.

Americans with Disabilities Act of 1990 (ADA) and its amendments: The ADA prohibits discrimination against "qualified individuals with disabilities." The prohibition extends to hiring, firing, wages, promotions, transfers, and all other terms, conditions, or privileges of employment. A "qualified individual with a disability" is someone who meets the definition of a "qualified handicapped person" under the Rehabilitation Act. The ADA applies to an employer engaged in a business affecting interstate commerce that has 15 or more employees. The ADA is enforced by the EEOC. Rights of action and remedies under the ADA are similar to the remedies under Title VII described above.

The ADA was amended in 2008 by the Amendments Act and is now known as the ADAAA. One of the central purposes of the Amendments Act is to expand the definition of disability, which Congress criticized as having been too narrowly construed by the Supreme Court. The practical effect of the Amendments Act and interpreting regulations is more individuals will qualify as disabled and will be entitled to reasonable accommodations at the workplace. Moreover, the broad coverage of the Amendments Act increases the number of employees protected under the ADA, thereby increasing the likelihood of litigation if companies are not complying with the statutory requirements.

The focus of the ADAAA is on whether discrimination occurred, not whether an individual is disabled. The practical effect is that employers should, in almost all instances, move right into the interactive process as most employees will be able to establish an actual disability or record of a disability. Moreover, the regulations reiterate an individualized assessment is required to determine whether an impairment substantially limits a major life activity. Human resource representatives are encouraged to meet with employees and discuss why they may be struggling at work and begin the interactive process to determine if a reasonable accommodation might help, assuming the employee is disabled. Companies should ensure these conversations, and all efforts to provide reasonable accommodations, are documented in writing and maintained with their employees' confidential medical files.

Equal Pay Act: The Pay Act prohibits discrimination in employee wages on the basis of sex. It requires employers to pay equal wages for work at a single site of employment requiring equal skill, effort, and responsibility, regardless of sex. Differences in wage rates are permissible if caused by operation of a seniority system, merit system, system that measures earnings by the quantity or quality of production, or any other system based on factors other than sex. The Pay Act applies to any employer with two or more employees. The Pay Act is administered by the EEOC. The EEOC or the employee may file a lawsuit to enforce the provisions of the Pay Act. Remedies include back pay awards, damages and attorneys' fees.

Section 1981 of the Civil Rights Act of 1870: Section 1981 prohibits discrimination based on race or membership of an ethnic group. Any employer, regardless of size, engaged in business affecting interstate commerce is subject to Section 1981. Unlike Title VII, a job applicant or employee is not required to file a charge with the EEOC before suing the employer for a violation of the statute. Courts have found Section 1981 applies to at-will employees. Remedies under Section 1981 include requiring employment, back pay, compensatory damages, punitive damages and attorneys' fees.

Genetic Information Nondiscrimination Act: GINA was signed into law in May 2008. The law prohibits genetic discrimination in employment and health insurance. Title II of GINA applies to employers, labor organizations, and joint labor-management committees and prohibits employment discrimination based on the genetic information of an employee or the employee's family members.

- Under GINA, it is unlawful for an employer to fail, refuse to hire, or refuse to discharge an employee, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because of the employee's genetic information.
- Under GINA, it is also unlawful for an employer to request, require, or purchase genetic information with respect to an employee or an employee's family member, with six limited exceptions.
- Regardless of whether an exception applies, genetic information cannot be used to discriminate against an individual with respect to employment, benefits or otherwise disclosed in violation of GINA's confidentiality requirements. If an employer acquires genetic information, the information must be treated and maintained as part of the employee's confidential medical records. The information must be treated as a confidential medical record as well as maintained on separate forms and medical

files. This is consistent with the requirements under the Americans with Disabilities Act ("ADA") regarding the maintenance and treatment of medical information.

Arizona Civil Rights Act: The Arizona Act mirrors the federal civil rights laws and applies to Arizona employers with 15 or more employees. A claimant may pursue identical claims under Title VII and the Arizona Act simultaneously. The Act's prohibition against sexual harassment applies to employers with one or more employees and is thus more encompassing than Title VII.

Wage Payment Laws

Fair Labor Standards Act (FLSA): The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full- and part-time workers in the private sector and the federal, state, and local government. Under the FLSA, employers must not pay employees less than the minimum wage.

Under the overtime provisions of the FLSA, most employees must be paid one and a half times their regular rate of pay for all hours worked in excess of 40 hours per week. There are exceptions to the overtime standards for employees including executive, administrative, professional, certain computer personnel, outside sales employees, and highly compensated employees. The Department of Labor may bring an action against an employer to compel compliance with the FLSA. Employees can sue for unpaid wages, liquidated damages, injunctive relief and attorneys' fees.

Davis-Bacon Act: This act requires employers contracting with the federal government to pay their employees a special minimum wage, or prevailing wage rate for corresponding classes of employees on projects of a similar character. Failure to pay the required "prevailing wage can result in termination of the underlying contract and back pay obligations. If the contract is canceled and the work is completed by another contractor, the employer may be liable for any excess costs incurred by the government.

Walsh-Healy Act: This act mandates a special prevailing minimum wage that must be paid to employees supplying goods to the U.S. government. Enforcement and sanctions are similar to those under the Davis-Bacon Act. An employer in Arizona is required to designate at least two days each month as fixed pay days, not more than 16 days apart. Discharged employees must be paid all wages due within three working days of the date of discharge or by the end of the regular pay period in which they are discharged, whichever is sooner. Employees who quit must be paid all wages due by the end of the regular pay period in which they terminate. Violations can result in employer liability of three times the amount of wages due.

Leave Laws

Family and Medical Leave Act (FMLA) of 1993: The FMLA applies to workers who have been employed at least 12 months for an employer with at least 50 employees (either at one location or separate worksites within a 75-mile radius).

It provides eligible employees to 12 weeks of unpaid leave during a 12-month period in the following circumstances:

- To care for a newborn or adopted child
- Due to the employee's serious health condition
- To care for a spouse, child or parent with a serious health condition
- In an urgent situation regarding the employee's spouse, children or parent who is a covered military member on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation exists
- To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the service member.

When the leave expires, the employee is entitled to be restored to the same or equivalent position with equivalent pay, benefits, and other conditions of employment. The employer must continue the existing health insurance coverage during the leave but can recover the premiums if the employee fails to return to work.

Uniformed Services Employment and Reemployment Rights Act (USERRA): USERRA requires employers to grant employees unpaid time off to fulfill temporary military obligations. It also requires employers to rehire individuals who leave work to serve full-time in the U.S. Uniformed Services for up to five years. USERRA also prohibits discrimination against individuals who apply for, perform or have performed in a uniformed service. In addition to re-employment, covered employees have seniority rights, pension rights, and the right to continued health insurance coverage. Except in certain circumstances, employees must notify their employer in advance of the need for military leave and reapply for employment after their service. Damages recoverable for violation of USERRA include re-employment, lost wages and benefits, liquidated double damages for "willful" violation, and attorneys' fees.

Workplace Drug Laws

Drug-Free Workplace Act: The Drug Act requires federal contractors and grantees to implement anti-drug programs. Employers are required to provide information to employees regarding the dangers of drug abuse in the workplace. If an employee is convicted under a criminal drug law for a violation that occurs at the workplace, the employer must notify U.S. authorities. The employer must also impose sanctions against the convicted employee or require the employee to complete a drug abuse or rehabilitation program. The Drug Act does not require drug testing of employees.

Arizona Drug Testing of Employees Act: While the Drug Testing Act does not require or prohibit employee drug screening, it grants legal protection to employers who conduct drug or alcohol impairment tests that conform to the requirements of the Act. Compliance protects the employer from liability for actions taken in good faith relating to positive test results, failure to test or detect a specific drug or condition, or the elimination of a prevention or testing program.

Arizona Medical Marijuana Act: Arizona voters passed the AMMA in 2010. AMMA provides expansive workplace protections to employees who are prescribed medical marijuana. The provisions in A.R.S. § 36-2813 protect applicants and employees who are prescribed medical marijuana from discrimination. In 2020 Arizona voters passed the Smart and Safe Arizona Act which legalizes the sale and consumption of marijuana for recreational use for adults 21 years of age and older. This legislation does not affect the workplace protections of the Arizona Medical Marijuana Act for medical marijuana users.

Safety Laws

The Occupational Safety and Health Act: OSHA imposes a duty on employers to provide employees with a safe and healthy workplace. OSHA requires all employers to keep the workplace safe from hazards causing, or likely to cause, death, serious physical harm, or illness. In some hazardous situations, an employer can be ordered to shut down its operations.

Mine Safety and Health Act: MSHA prescribes standards governing working conditions of employees employed in mining operations. Sanctions for violations of MSHA are similar to the sanctions imposed under OSHA.

Arizona Occupational Safety and Health Act: Arizona OSHA states an individual state may assume responsibility for safety and health within its jurisdiction, provided that the state has a federally approved Arizona OSHA plan. Arizona has assumed responsibility for workplace safety in the state in accordance with standards set by the U.S. Labor Department.

Unionization

The unionization of employees can affect an employer's discretion in employment matters. Briefly examined below are ways in which unions are recognized, the effect of union recognition, and the impact on unionization of Arizona's right-to-work law. Also discussed is the impact when a business is sold upon collective bargaining with unions and upon existing union collective bargaining agreements.

Union Recognition: Unions generally obtain recognition through one of two means: voluntary recognition by the employer or an election under the supervision of the National Labor Relations Board (NLRB). In a voluntary recognition, an employer generally agrees to a "card check" by an impartial third party to verify that most employees wish to be represented by a union. A card check is an examination of union authorization cards or other document signed and dated by employees indicating their desire to be represented by the union. In recent years, this avenue to union recognition has become more common in certain industries.

More often, an employer will refuse to recognize the union and declare its doubt of the union's claim of majority status. The employer is entitled to place the burden on the union to prove the union's claim of support by an uncoerced majority of employees. In response, the union or an employee will file a petition with the NLRB seeking an NLRB-conducted election by secret ballot. The NLRB petition must be supported by a showing of interest of at least 30 percent of the employees in an appropriate unit of employers. The showing of interest is usually made by union submission to the NLRB of authorization cards signed and dated by the requisite percentage of employees. If there is a petition supported by the required showing of interest, the NLRB will schedule a hearing to address the NLRB's jurisdiction and the status of the parties.

Effect of Union Recognition: Once a union has achieved recognition, the employer is required to collectively bargain with representatives of the union as to wages, hours, and other terms and conditions of employment. The employer must bargain with representatives of the union, which then exclusively represents all employees in the bargaining unit. After union recognition, an employer cannot negotiate with employees about the union.

Impact of Right-to-Work Laws: Arizona is a right-to-work state, which means employees are not required to join a union or pay dues to a union as a condition of employment.

Effect of union or bargaining agreement upon successor employer: If employees of a business are represented by a union, the issue may arise of whether the successor employer must bargain collectively with the union or whether they must abide by the terms of an existing agreement.

The buyer of a business is not bound by the seller's union contract or required to bargain collectively with an existing union. Unless there is substantial continuity of workforce between the successor employer and the predecessor employer.

Employee Benefits

Although cash wages are the primary form of compensation for services, various non-cash benefits are usually a significant part of employee total compensation. Employee benefits are subject to significant regulation under U.S. law. The Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code) are the principal federal statutes governing employee benefits.

ERISA is a comprehensive regulatory scheme. Under ERISA, employers must meet reporting and disclosure requirements, including annual reports to the U.S. Department of Labor, the agency that administers the regulatory scheme. ERISA also imposes minimum standards on certain types of plans to assure that basic benefits are provided to employees, rather than being confined to executive employees.

The Internal Revenue Code: The Code's impact on employee benefit plans is primarily through requirements imposed as a condition of obtaining favorable tax treatment. Failure to satisfy the Code's requirements can result in loss of employer tax deductions for plan contributions made by the employer or employer deductions for costs of plan benefits paid by the employer. Violations of the Code can also result in the loss of favorable tax treatment for employees as to receipt of benefits from a plan and the taxation of an otherwise tax-exempt trust.

Impact of state law: ERISA generally preempts state laws that relate to employee benefit plans. However, state insurance laws, as they apply to insured plans, are expressly exempted from preemption under ERISA. Accordingly, insured employee welfare benefit plans (but not self-insured plans) are subject to Arizona's laws regulating insurance, including laws requiring that specific benefits be provided by medical plans.

Medical Plans: The availability of employer-provided medical benefits remains an important part of employee compensation. Medical coverage can be provided by an employer through insured and self-insured plans, health maintenance organizations, preferred provider organizations, and medical reimbursement arrangements.

Health Care and Education Reconciliation Act of 2010, also known as the Health Care Reform Act, has significant implications for employer group health plans. For example, all plans must provide coverage for children to age 26, eliminate pre-existing condition exclusions, eliminate annual and lifetime limits on essential health benefits, and prohibit the retroactive rescission of coverage. Non-grandfathered plans are subject to additional requirements.

Qualified retirement plans: Retirement benefits can be provided through a wide range of qualified plans. A retirement plan is considered a qualified plan if it satisfies detailed Code requirements. A number of favorable tax consequences result from status as a qualified plan. An employer is entitled to a current deduction for contributions made to such a plan. Employees are not taxed on their plan benefits until benefits are received. The trust established under a qualified plan to receive contributions is not taxed on its earnings, which permits tax-free compounding of interest. Three of the most common types of qualified retirement plans are profit- sharing plans, Section 401(k) plans and defined benefit pension plans.

Profit-sharing plans: Under a profit-sharing plan, employer contributions can be contingent on the employer's profits. More likely, the employer is permitted to make contributions in its discretion, whether or not the employer makes a profit. Contributions made by an employer are allocated to individual accounts established for eligible employees. Upon retirement or other termination of employment, an employee is entitled to the amounts allocated to the employee's profit-sharing plan account balance.

Section 401(k) plans: A 401(k) plan is a profit-sharing plan under which employees make pre-tax contributions that are exempt from income tax until the employee takes a distribution from the plan. Plans may also allow employees to make after-tax Roth contributions, which are included in taxable income when made. Roth contributions and earnings are not taxed when distributed if they are part of a "qualified distribution." Employee contributions, whether pre-tax or after-tax, may be matched by tax-deductible contributions from the employer.

Defined benefit pension plans: Under a defined benefit pension plan, an employee is promised a fixed pension at retirement, the amount being determined by the employee's salary, years of employment or both. The employer is required annually to contribute an amount to fund pension benefits.

Chapter 7: Immigration Law for Employees & Investors

In order to enter the U.S., a foreign national requires a visa. Visas are either temporary (non-immigrant visas) or permanent (immigrant visas). Depending upon the type of visa, a visa holder may be allowed to work, attend school, obtain specialized training, take a vacation, receive medical treatment, or remain indefinitely. To enter in either category, an individual will need to be sponsored by a U.S. company or person in a specific visa category. Immigration, Corporate and Tax counsel should be consulted prior to the filing of any petitions with U.S. Citizenship and Immigration Services (USCIS).

7.1: Employment-Based Immigration

In most cases an individual will first enter the U.S. using a non-immigrant visa to establish a business or as an employee for a U.S. company. A nonimmigrant visa may generally be obtained within a matter of weeks or months.

This section provides an overview of some categories most commonly used by U.S. businesses, international companies, and individuals seeking employment authorization either on a temporary or permanent basis.

Non-Immigrant Visas

Treaty Trader (E-1) or Treaty Investor (E-2). The E visa is a nonimmigrant visa for traders and investors. The E visa category is based on treaties between the U.S. and certain foreign countries that are intended to encourage trade and investment. The E visa is available only for citizens of countries that have entered the requisite treaty with the U.S. The U.S. has treaties with over 40 countries permitting nationals from those countries to own a business or be employed in the U.S. by a business that conducts a substantial volume of trade between the U.S. and the person's country of citizenship.

The U.S. E visa sponsor must be of the same nationality as the individual seeking the E visa. If the U.S. sponsor is not of the same nationality as the E-1 visa candidate, then the sole proprietorship must be an enterprise or organization at least 50% owned by people in the U.S. with the nationality of the treaty country. If the ultimate owners are themselves U.S.

Citizens or Legal Permanent Residents in the U.S., then the company will be considered a U.S. company for E visa purposes and will not qualify.

E visas are valid for an initial period of two years with unlimited two-year extensions. However, all E visa holders must maintain the intent to leave the U.S., which means E visa holders may not simultaneously obtain a green card.

Treaty countries include Japan, South Korea, Israel, Canada, Mexico, Australia, most European countries, the Republic of China (Taiwan) and India. See other available countries at http://travel.state.gov/content/visas/en/fees/treaty.html.

E-1 Treaty Trader: The E-1 non-immigrant visa may be issued to individuals employed by U.S. companies engaged in a substantial amount of trade principally between the U.S. and the treaty country. The includes the owners and executives of the company. The trade may consist of material goods, services or technology. The visa applicant must be either a manager or executive (including an owner), or an individual who has essential skills. Items of commercial trade include goods, services, international banking, insurance, transportation, tourism, technology and journalism. As a condition of the E-1 visa, the Treaty Trader may not change their business or work for someone else. The trade between the U.S. and the national's country must be significant and continuous and must consist of over 50 percent trade between the U.S. and the foreign national's country.

E-2 Treaty Investors: The E-2 non-immigrant visa may be used by foreign nationals investing substantial capital in a U.S. business. The E-2 requires the foreign national or company abroad to continue or start investing a substantial amount of capital in a U.S. enterprise. An E-2 applicant must intend to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

H-1B Visas – Temporary Professional Workers: The H-1B visas are temporary employment visas that allow the visa holder to work in the U.S. for a particular employer and a specified period of time. Every year, the U.S. issues 65,000 new H-1B visas to skilled professionals with the equivalent of a bachelor's degree and an additional 20,000 H-1B visas to those who hold a master's degree. H-1B visas are valid for three-year periods and may be renewed once.

Requirements for H-1B Visas:
H-1B visa holders may also bring their family members with them on H-4 visas. The spouse and children under 21 years of age are not permitted to work but may attend school.

L-1 Visas – Intra-company Transferees: The L-1 visa category is intended to facilitate international business by permitting the transfer of non-U.S. managers and specialized personnel into the U.S. by companies with operations in the U.S. and abroad. There are two types of L-1 visas: L-1A visas for executives and managers; and L-1B visas for "specialized knowledge personnel."
Main requirements for L-1 visas:

- The employee must have worked abroad in either (a) managerial or executive position, or (b) position performing services entailing "specialized knowledge;" and must be coming to work in the U.S. in one of these capacities
- The company for which the employee worked abroad must be either the parent, branch, subsidiary or affiliate of the employer for whom the employee will be working in the U.S.
- The employee must have worked abroad for that company for one continuous year within the three-year period immediately preceding the filing of the petition for the L-1 visa
- The employee must be qualified, in terms of education and experience, for the position
- The employee must intend to leave the U.S. at the end of the authorized period of stay
- The company in the U.S. and the related company abroad must continue doing business in the U.S. and in one foreign country during the entire period of the transfer

For individuals who own a business outside of the U.S. and already have affiliated U.S. operations or want to expand operations to the U.S., the U.S. enterprise can function as the U.S. employer sponsor. In this context, individuals may enter the U.S. with temporary nonimmigrant visa status (L-1A visa) and then pursue their legal permanent residence in the EB-1C immigrant visa category discussed below.

Visa Validity Periods

The chart below identities some of the most common categories and the period of stay authorized in the categories. Most of these temporary visa categories also have corresponding dependent visas available for the spouse and children (21 year or younger) of the principal visa holder.

Class	Initial Stay	Extension of Stay
E-1	Two years	Up to two years per extension. No maximum number of extensions, with some exceptions.

E-2	Two years	Up to two years per extension. No maximum number of extensions, with some exceptions.
E-3	Two years	Up to two years per extension. No maximum number of extensions, with some exceptions.
H-1B1	Up to three years	Increment of up to three years. Total stay limited to six years.
H-1B2	Up to three years	Increment of up to three years. Total stay limited to six years, with some exceptions.
H-2A and H-2B	Same as validity of labor certification, with maximum of one year.	Same as validity of labor certification (increments of up to one year). Total stay limited to three years.
H-3	Special Education Training-up to 18 months. Other Trainee-up to two years	Special Education Trainee-total stay limited to 18 months. Other Trainee-total stay limited to two years.
L-1A	Coming to existing office-up to three years. Coming to new office-up to one year.	Increments of up to two years. Total stay limited to seven years.
L-1B	Coming to existing office-up to three years. Coming to new office-up to one year.	One increment of up two years. Total stay limited to five years.
TN	Up to three years.	Up to three years per extension. No maximum number of extensions, with some exceptions.

Immigrant Visas (Green Cards)

EB-5 Visas: The EB-5 program presents foreign national investor-entrepreneurs and their qualifying dependents with an attractive opportunity to live and work permanently in the U.S. They can do so through investment and participation in either a new U.S. commercial enterprise or an existing "troubled" U.S. business. The EB-5 category's most attractive features include the fact that for most nationalities there is no waitlist for a visa number, it is not tied to employment with a specific employer, and the foreign national maintains geographical and employment mobility. An investor may either directly invest in their own business venture or choose to make their investment in a project being offered through a U.S. Citizenship and Immigration Services (USCIS) designated regional center. The U.S. government does not guarantee or endorse specific projects, even those offered through a regional center. Individuals must invest or be in the process of investing $1,800,000 or $900,000; create full-time jobs for at least 10 U.S. workers; and serve in a management capacity (e.g., day-to-day operations, board member, limited partner, etc.).[17]

When approved for an immigrant visa under this category, the investor is initially granted a two-year conditional permanent residence. The investor must submit a petition remove the conditions 90 days before the two-year anniversary. At that time the investor will need to document and verify that the EB-5 funds and investment were maintained in the business and the required jobs created. When the petition to remove conditions is approved, the conditions will then be removed.

EB-1 Visas: The EB-1 immigrant visa is available to applicants with an extraordinary ability, are outstanding professors/researchers, or are multinational managers or executives. Each of the three categories have its own requirements.

To qualify **Extraordinary Ability** category, the applicant must demonstrate extraordinary ability in the sciences, arts, education, business or athletics through sustained national acclaim. The applicant can establish this by demonstrating three of the following 10 criteria or evidence of a one-time achievement (including Oscars, Pulitzer prizes, Nobel Prizes, Olympic medals.)

The 10 criteria include:

- National awards
- Memberships in associations requiring outstanding achievement
- Major trade publications about the applicant
- Evidence the applicant has been a judged others' work
- Acknowledged original contributions to the applicant's field
- Major publications of the applicant's work
- Exhibitions of the applicant's work

- Performance in a lead role in distinguished organizations
- Have a high salary
- Commercial success in performing arts

Under the **Outstanding Researcher** category, the applicant must have a job offer in the U.S. The applicant must demonstrate international recognition for outstanding achievements in an academic field. The applicant must have at least three years of experience in teaching or research in an academic area, and must be entering the U.S. to pursue tenure, tenure track teaching, or a comparable research position at a university or other institution of higher education.

This is accomplished by demonstrating two of the following six criteria:

- Receipt of major awards
- Membership in associations requiring outstanding achievement
- Other people's publications about the applicant's work
- Participation as a judge of others' work
- Original research or academic contributions
- Authorship of scholarly articles or books

Under the **Multinational Manager** category, the applicant must have a job offer and a qualifying employer must sponsor them. To qualify, the applicant must have worked outside of the U.S. for three years and with the sponsoring employer for at least one year in an executive or managerial capacity. The employer outside of the U.S. must have been an affiliate of the U.S. sponsor.

EB-2 and EB-3 Visas: The EB-2 immigrant visa requires an employer to sponsor the application. To obtain the EB-2 visa, the employer must obtain a labor certification from the United States Department of Labor proving there isn't an American worker qualified to perform the position or a waiver of the certification must be obtained.

The **advanced degree** category requires proof of an advanced degree (bachelor's degree plus five years of experience, a master's degree plus three years of experience or a doctorate degree). This category also requires that a U.S. citizen could not otherwise fill the position.

The **exceptional ability** category requires proof that the applicant has exceptional ability in the arts, sciences or business. A waiver of the labor certification can be obtained if the applicant is coming to the U.S. to perform a job of great national importance.

The EB-3 immigrant visa requires an employer to sponsor the application. To obtain the EB-2 visa, the employer must obtain a labor certification from the U.S. Department of Labor proving there is not a U.S. worker who is more qualified, willing and available to perform the job. There are three categories for eligibility. The skilled worker category requires the applicant to be a skilled worker with at least two years of experience in their skilled trade. The professional category requires the applicant to have a bachelor's degree and applying for a job that requires a bachelor's degree. The unskilled workers category requires the applicant to be an unskilled laborer for a full-time position.

7.2: Family-Based Immigration

Another way to obtain permanent residence, also known as obtaining a green card, is through the family-based immigration process. An individual may apply for a green card if they are an immediate relative of a U.S. citizen, a family member of a U.S. citizen in certain preference categories or a family member of a green card holder.

Immediate relative of U.S. citizen

U.S. immigration laws permit U.S. citizens to petition for their immediate family including their spouse, unmarried children under age 21 and parents (if the citizen is over age 21). These immediate family members take priority and do not have to wait for their visa number to be drawn to receive their green card. There are unlimited visas available under this category.

Family member of U.S. citizen

The U.S. immigration laws also permit a U.S. citizen to sponsor distant relatives and immediate family members that do not qualify as an Immediate Relative of U.S. Citizen. These distant relatives are placed into "family preference categories," with the eligible relatives including unmarried children over the age of 21, married children of any age, and siblings (if the U.S. citizen is over age 21). There are substantial wait times for these categories ranging from seven to 24 years, depending on the country of origin.

Family member of green card holder

The U.S. immigration laws permit a permanent resident to apply for a green card for their family to encourage family unity. Qualifying family members include the permanent resident's spouse and any unmarried children regardless of age. There are substantial delays under this category. The spouse and unmarried children under age 21 can expect a delay of two to three years. The unmarried children over age 21 can expect a delay of eight to 20 years.

7.3: Diversity Visas

As a special exception to the family and employment-based visa programs, the U.S. government makes an additional 50,000 diversity visas available. These visas are drawn from a random selection of applicants who are from countries with low rates of immigration to the U.S.

To be eligible, the applicant must satisfy the proper education, work or other requirements. Each entrant must have the equivalent of a high school education, or two years of work experience in an occupation requiring two years of training or experience. Those born in any territory that has sent more than 50,000 immigrants to the U.S. in the last five years are not eligible to receive a diversity visa.

The 50,000 visas are allocated among several geographic regions including Africa, Asia, Europe, North America, Oceana, and South America (Caribbean). The visas are distributed among the regions, with the region sending the least amount of people to the U.S. receiving the most diversity visas. No country in any region can receive more than 3,500 visas. The chances of obtaining a diversity visa are low, ranging from 0.5 percent to 5.5 percent depending on the region and the number of applicants.

7.4: B-1, B-2 and Student Visas

There are several short-term and student visas that permit people to travel to the U.S. to attend business meetings, vacation, or attend school. These are all non-immigrant visas.

B-1 and B-2 Visas

Under the B-1 visa, foreign nationals may come to the U.S. to participate in business activities, including business meetings, conventions, contract negotiations, training, and business transactions. Other activities may qualify including settling an estate. These visas may also be used to travel to the U.S. to identify investments and trades eligible for EB-5 immigrant visas, E-1 and E-2 non-immigrant visas.

To be eligible for a B-1 visa, the foreign national must demonstrate the following:

- Legitimate purpose for their trip
- A plan to leave after a specific amount of time
- They have money to fund activities in the U.S.
- They have a residence in their home country

Student visas

There are several student visas available to those who wish to enter the U.S. to obtain an education. The most common is the F-1 visa. The F-1 visa permits foreign nationals to enter the U.S. to obtain an academic education. Under the F-1 visa, foreign national must be full-time students at an accredited college, university, high school, primary school or language training school. The education must result in a degree, diploma, or certificate, and the school must be authorized by the U.S. government to accept foreign students.

The M-1 visa is similar to the F-1 visa, but it is used by foreign nationals entering the U.S. to obtain a vocational education. Under both the F-1 and M-1 visas, the foreign national has restricted work authorization.

The J-1 visa is an exchange visa used to educate the foreign national in the U.S. so they can use their education in their home country. Under the J-1 visa, the government designates a sponsoring institution that pays for the foreign national's education. Each exchange program has its own requirements, and some programs require the foreign national to return to their home country for two years after completing their education. Each exchange program determines whether the J-1 visa holder may work in the U.S. while obtaining their education.

7.5: I-9 and E-Verify

I-9 Basics

The 1986 Immigration Reform and Control Act (IRCA) requires all U.S. employers to verify the identity and work authorization or eligibility of all individuals, whether U.S. citizens or not, hired after November 6, 1986. Employers are required to do this by completing the Employment Eligibility Verification Form I-9 for all employees.

IRCA also prohibits employers from discriminating against any person on the basis of national origin or citizenship status in hiring, discharging, recruiting or referring for a fee, assignment, compensation, or other terms and conditions of employment.

The I-9 Employment Verification process cannot be used to pre-screen employees and the obligation to review documents is not triggered until a person has been hired. The Department of Homeland Security defines "hired" as "the actual commencement of employment of an employee for wages or other remuneration." The employee must complete Section 1 or the I-9 Form by the date of hire.

E-Verify is a voluntary computer system provided to employers by the USCIS. This system allows employers to electronically verify the employment eligibility of newly hired employees. To process their employment, the employer submits information provided on the Form I-9 into the E-Verify online system.

E-Verify then checks that information against the Social Security Administration and the Department of Homeland Security databases. If the submitted information matches, the case will receive an Employment Authorized result. If the information does not match, the case will receive a Tentative Nonconfirmation result.

An employer's failure to verify employment eligibility, and to properly complete and retain I-9 Forms subjects the company to stiff penalties, including imprisonment, asset forfeiture, etc. Further, executives, officers, managers, supervisors, key employees, and accountants are liable personally for civil and criminal penalties for I-9 related errors and unlawful employment eligibility verification practices.

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[17] US Citizenship and Immigration Services

Chapter 8: Taxation

8.1: General Structure of U.S. Tax System

Income and other taxes are imposed by both the federal government and the state governments and, in some cases, municipalities.

Corporations are subject to federal income tax as well as state income taxes in many states. Employers and employees must pay social security tax. The U.S. does not have a value-added tax (VAT) system, but almost all U.S. states impose sales taxes.

The tax administration agency in the United States is the Internal Revenue Service (IRS).

8.2: Business Taxation

Type of tax system

Profits are taxed at corporate income tax rates in the year earned and taxed again when received by shareholders. Shareholders are taxable at rates applicable to their status. Dividends are not deductible from the taxable income of the paying corporation.

Taxable persons

Legal entities subject to corporate income tax include corporations, associations, joint-stock companies, insurance companies and banks. Domestic corporations are taxable on their worldwide income. Income is broadly defined to include all income of any type and from any source. A flat tax of 21 percent is applied to all corporate income.

Corporations that make a valid Subchapter S election are treated as "pass-through" entities. Partnerships are also treated as pass-through entities. Income is taxed at the shareholder/partner level and is not taxed at the corporate/partnership level.

Foreign corporations are subject to U.S. taxation if they are engaged in business in the U.S. or derive income from U.S. sources. Additionally, the after-tax income of foreign entities' U.S.-based operations are subject to a Branch Profits Tax of 30 percent if they are not re-invested back into the U.S. business or branch of operations.

Taxes on capital

Net worth tax is not imposed in the U.S. at the federal level.

If you own real estate in Greater Phoenix, you will not be taxed at the federal level. Your real estate taxes will be imposed by the local municipality or the county where you live. Tax rates and methods for assessing the value of property vary from jurisdiction to jurisdiction.

Corporations are subject to tax on capital gains. The tax rates that apply depend on how long assets are held and how much income is generated. Capital gains made on assets held less than a year are taxed the same as ordinary income. Capital gains made on assets held longer than a year are taxed at 0, 15, or 20 percent based on income generated. Capital losses are subject to special rules.

Incentives

You may be eligible for tax incentives including credits for certain types of activities (such as research and development), deduction for qualifying domestic production activities, and various provisions to accelerate the benefits of depreciation.

Foreign tax credit

Foreign income taxes may offset your U.S. income tax on taxable income, to the extent the U.S. tax is allocated to foreign-source taxable income and additional conditions and limitations are satisfied.

Tax returns and assessment

Tax returns for Partnerships and S-corps are due on or before the fifteenth day of the third month following the close of the taxable year. An automatic six-month extension can be granted if you file an extension request with the IRS before the initial due date of the return and if you pay the properly estimated amount of tax owed at that time.

Tax returns for C-corps and Sole Proprietorships are due on or before the fifteenth day of the fourth month following the close of the taxable year. An automatic six-month extension is granted if the partnership files an extension request with the IRS before the initial due date.

You are required to pay the full amount of tax owed for the year on or before the due date of the tax return (without extensions). In addition, your company will be required to make estimated tax payments on a quarterly basis during the year equal to 25 percent of the required annual payment. Your organization will have access to optional safe harbor methods for determining your quarterly estimated payments (i.e., annualization approach).

State corporate income taxes

Corporate income taxes are imposed by almost all U.S. states and some municipalities. Although the rules for computing the tax base differ from state to state, the tax is normally computed on the amount of the overall income of the corporation allocated or apportioned to the taxing jurisdiction. State and local corporate income taxes are deductible from gross income for federal income tax purposes.

The maximum rate of income tax currently imposed in Arizona is 4.9 percent.

8.3: Individual Taxation

General

U.S. citizens and residents are taxed on all income from whatever source received including wages, salary, business income and investment income. All types of income, except for capital gains, are combined and taxed at the same rates. Ordinary income tax is levied on a graduated scale with a maximum federal income tax rate of 37 percent as of 2022. Capital gains are subject to special tax rates.

Individuals are subject to federal income tax, estate tax and gift tax.

Taxable persons

U.S. citizens and residents are subject to taxation on their worldwide income. Foreign nationals are subject to U.S. income tax if they become U.S. residents or if they derive certain types of income from U.S. sources.

Foreign nationals are treated as U.S. residents if they are lawful permanent residents of the U.S. (U.S. green card holders) or if they meet a substantial presence test. Exceptions apply to individuals in exempt categories (i.e., foreign government-related individuals, students, teachers and trainees) and to individuals with a closer connection to a home in a foreign country.

Taxable period

Taxpayers compute their income tax liability using the calendar year or a fiscal year for their company.

Tax returns and assessment

The U.S. uses the self-assessment system whereby all taxpayers are required to complete a tax return and compute their own tax liability. Your personal tax return is due on or before the 15th day of the fourth month following the close of the taxable year. An automatic extension of six months is granted if you file an extension with the IRS before the initial due date of the return and if you pay the properly estimated amount of tax owed at that time.

Payment of tax

The full amount of tax owed for the year is required to be paid on or before the due date of the tax return without extensions. In addition, you are required to make estimated tax payments on a quarterly basis during the year in an amount equal to 25 percent of the required annual payment. Special safe harbor provisions are available based on your prior year tax liability.

Capital taxes

Capital gains: Gains from the sale of capital assets held for more than 12 months (long-term capital gains) are subject to a reduced rate of tax.

Capital losses: Capital losses may be deducted only against capital gains. Capital losses in excess of capital gains can be deducted against ordinary income up to an annual limitation amount of $3,000. Capital losses in excess of this amount may be carried forward indefinitely.

International taxation

Taxes on income and capital gains: Foreign corporations are subject to U.S. federal income tax on income that is effectively connected to the conduct of a trade or business in the U.S. The permanent establishment standard does not apply under U.S. domestic law but does apply for tax treaty purposes.

Disposition of U.S. real property: Foreign corporations and non-residents are subject to tax by the Foreign Investment in Real Property Tax Act (FIRPTA) on the disposition of real property and interests in real property located in the U.S. The income or gain from the disposition is treated as if it were effectively connected with a U.S. trade or business.

FIRPTA applies to interests in real property held directly and of interest in a U.S. real property holding corporation (USRPHC). A USRPHC is defined as a domestic corporation with 50 percent or more of its total fair market value of real property and business assets consisting of interests in real property located in the U.S. The tax is collected by means of withholding. A domestic corporation will not be treated as a USRPHC if, for the five-year period preceding the date of disposition, it has not held sufficient U.S. real property interests to meet the definition.

Taxes on capital: Net worth tax is not imposed in the U.S. at the federal level. Foreign corporations owning property in the U.S. will be subject to real estate taxes in the local municipalities and counties where the real property is located.

Partnerships with foreign partners: Foreign corporations are subject to withholding tax on their allocable share of the effectively connected taxable income of a partnership that is engaged in a trade or business in the U.S. The withholding tax is collected by the partnership. It is not the final tax liability and can be claimed as a credit on the tax return filed by the corporation.

Transfer pricing: Section 482 of the Internal Revenue Code (IRC) authorizes the IRS to make transfer pricing adjustments in transactions between commonly controlled entities if the price set by the parties is not at arm's length. I.R.C. section 482 applies to organizations owned or controlled by the same interests. In order to prevent evasion of taxes or to clearly reflect the income of the parties, the IRS is authorized to allocate income, deductions, and other tax items between commonly owned or controlled organizations. In the case of transfer or license of intangible property, the income from the transfer must be "commensurate with the income attributable to the intangible."

Chapter 9: Banking

9.1: The U.S. Banking System

Unlike banks in many countries, U.S. banks are not government-owned and managed. They provide deposit facilities for the general public, provide loans for businesses and individuals, and perform various financial services. The only major governmental banks that actively participate in the banking system are the 12 Federal Reserve banks, which function as a central bank and have policies determined by the Board of Governors of the Federal Reserve System.

The U.S. banking system can be classified into two broad groups: commercial banks and thrift institutions. Commercial Banks are primarily used by corporate customers for commercial activity, but do provide services to individuals. Thrift institutions encourage personal savings and home buying through mortgage lending, as well as other activities.

Commercial banks

Commercial banking in the U.S. operates under a dual regulatory system. The bank is owned by its shareholders. Examples of large commercial banks include Citigroup, Bank of America and JPMorgan Chase & Co. National banks must be members of the Federal Reserve System.

State banks are regulated by state authorities. All depository institutions, including national banks, must maintain a certain percentage of deposits (determined by the Federal Reserve) with the Federal Reserve Bank of their district.

To attract corporations as their main customers, commercial banks specialize in accepting corporate demand, and time deposits, as well as making commercial loans. They also attract retail banking business by accepting savings and demand deposits, as well as making consumer, mortgage and small business loans.

As of June 2021, there were 68 banking organizations in Arizona operating over 1,200 bank branch offices throughout the state. The banks in Arizona include large international/national banks such as JP Morgan Chase, Bank of America, Wells Fargo, BMO Harris Bank and BBVA, as well as numerous states or regional banks.

9.2: Establishing A U.S. Bank Account

In order to establish a bank account in the U.S., you must disclose some general information. To comply with the United States Patriot Act, banks in the U.S. are required to gather information that allows them to sufficiently identify their customers.

General information a bank may require includes:

- Client's legal name
- Doing business as (DBA) name if applicable
- Legal entity type
- Incorporation documents such as Articles of Incorporation/Organization; By-Laws and/or Operating Agreement(s)
- Physical and mailing address
- Tax ID
- State of organization and year established
- Country of primary domicile (parent headquarters) and country of primary business (revenues)
- Country of nationality and country of assets
- Business License, when applicable

Equity ownership:

- If Public: Exchange country, exchange, symbol
- 100 percent wholly owned subsidiary

Annual revenue:

- Revenue type
- Source of capital

Individual information and ownership information generally needed

Primary contact information:

- Name
- Date of birth
- Citizenship
- Government identification number – (e.g. Social Security, Tax ID, Passport, etc.)
- Residential address
- Contact information: email, phone, fax

Authorized account signers:

- Name(s)
- Title
- Phone
- Email

Ownership information (needed for both Direct and Indirect Beneficial Owners):

- Principal type (individual or non-individual)
- Principal name (indirect or direct)

Cash management needs and activity

Details of cash activity:

- Volume and amount of cash deposits and how it relates to business
- Volume and amount of cash withdrawals and how it relates to business

ACH (Automated Clearing House) activity:

- Volume and amount of ACH transactions and how it relates to business
- International activity and countries where ACH transaction will be sent

International wire activity:

- Volume and amount of international wire transactions and how it relates to business
- International activity and countries where wire transactions will be sent

Documentation needed

- Articles of incorporation
- Form W-9: Request for taxpayer identification number and Certification
- Certificate of incumbency
- Proof of address
- Photo identification
- Certificate of good standing
- Banking Resolution

9.3: Cash Management

Cash management in the U.S. involves all products and services a bank offers in order to allow for collection, handling and usage of cash. A Demand Deposit account, or checking account, is typically the center of cash management services. In addition, various products or services are offered depending on the needs of the organization or individual. Cash management also comprises the movement of money domestically and overseas using electronic funds transfers.

Cash management

- Traditional and electronic account services
    - » Payables and receivables
    - » Lockbox services
    - » Check image capture
    - » Desktop image scanning
    - » Account reconciliation

- Foreign exchange
    - » Spot and hedging solutions
    - » Desk and online platforms to initiate trades
    - » Multi-currency deposit Accounts
    - » International ACH services

- Liquidity
    - » Solutions to maximize value of operating cash
    - » Solutions for increasing yields on reserve cash

- Commercial cards
    - » Minimize purchase order, invoicing and vendor payment costs
    - » Identify cost-saving opportunities
    - » Leverage online reporting capabilities
    - » Manage budgets effectively

Electronic funds transfer (EFT)

EFT is the system you may use when you give your bank account number and routing information to someone owed money. That party will then transfer money from your account. EFT is also the system used in some payments made through a bank's online bill payment service. An EFT payment is an electronic personal check, whereas a wire transfer is similar to an electronic cashier's check.

In the U.S., EFT transfers are often called "ACH transfers" because they take place through the Automated Clearing House.

Foreign exchange: For qualified entities, foreign exchange services provide currency exchange rate risk management strategies used to hedge cash flows, facilitate cross border transactions or create new avenues for profit.

9.4: Credit Solutions

A wide variety of credit solutions are available from financial services providers. Below are some common examples:

Lines of credit

A line of credit can help provide a flexible source to fund working capital. Lines of credit are typically repaid from your business' operating cash flow (i.e., the collection of receivables) and can either be revolving or non-revolving lines of credit.

- A revolving line of credit lets your business borrow, repay and borrow again up to the original amount committed by the lender throughout the life of the loan.
- A non-revolving line of credit lets your business borrow an amount either in a lump sum or an amount disbursed over time. Credit availability increases by the amount of the repayment.

You can use a line of credit to:

- Fund seasonal changes in inventory and receivables
- Take advantage of vendor discounts
- Meet unexpected cash needs

Term loans

Term loans are a lump-sum disbursement with payback over a specified period. They may be used to finance equipment or for a change in ownership, a new business acquisition or other long-term needs of your company.

A term loan can help you:

- Strengthen your competitive position by obtaining the equipment and assets you need to grow or operate more competitively

- Increase your working capital to help your rapidly growing business
- Maximize profitability through a structured term loan where repayment schedule matches cash flow available to repay debt.

Asset-based financing

Asset-based lending can help your company leverage the value of its assets to meet financial needs. Financing structures can include term loans and revolving lines of credit.

Trade financing

Trade finance is funding provided to buyers or sellers during the course of a transaction for the purposes of improving working capital and cash flow. Financial institutions provide funds in the form of loans or discounts at an advance rate that is a percentage (up to 100 percent) of the value of the transaction and an interest rate.

Letters of Credit (L/C): You can improve cash flow in the U.S. or other country by using import, export, standby or prepaid letters of credit.

Documentary Collections: Expedite international trade processing and reduce sales and transfer costs of funds and goods.

Short-Term Export Financing: Increase the credit available for short-term export financing in your asset-based credit line by including uninsured foreign accounts receivable in the borrowing base.

Medium-Term Export Financing: If you are a U.S. exporter, you can offer overseas customers attractive loan terms and significantly reduce non-payment risks. This export financing covers most non-project-related loans for capital equipment exports.

Export-Import (Ex-Im) Bank Working Capital Guarantee Program: Accelerate overseas sales payments for your export business. Get international trade financing on your foreign account receivables or inventory, including work in progress. This pre-export working capital financing program is offered through the Export-Import Bank of the United States.

A variety of other credit facilities are available, including business credit cards and loans offered in conjunction through the Small Business Administration; equipment finance; real estate finance; bankers' acceptances; and sophisticated capital markets solutions.

U.S. Small Business Administration ("SBA") Export Working Capital Working Capital Program: For eligible entities, the Export Working Capital (EWCP) loan provides advances for up to $5 million to fund export transactions from purchase order to collections. The loan proceeds can be used for:

- Financing for suppliers, inventory, WIP, or production of export goods or services
- Working capital to support foreign accounts receivable during long payment cycles
- Financing for stand-by letters of credit used as bid, performance bonds or as down payment guarantees

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9.5: International Money Transfers

There are a variety of services for companies in the U.S. making payments to suppliers or transferring funds to affiliates in other countries. The choice of transfer method depends on the urgency of the payment, relationship between the parties and country where the recipient is located.

Wire transfers: Wire transfers can be made to most countries around the world and ensure timely delivery and certainty of payment. Transfers can be made from a bank or from other online services. This is the fastest and safest way to transmit money around the world for one-time or repetitive overseas payments.

Global ACH: To facilitate bulk payments, increase control over cash flow and reduce the cost of moving funds, ACH can be an attractive alternative. Payments are processed and received by the beneficiary in local currency. Depending on the country, settlement time varies between one and four days.

Foreign currency drafts: A foreign bank draft is a check denominated in a foreign currency that is drawn against funds deposited in a foreign bank. These drafts clear locally in the beneficiary's home country and can be printed from the U.S. or beneficiaries can print them locally.

International Request for Transfer (IRFT): This service provides you with the ability to initiate wire transfers from your financial accounts held with foreign banks around the world. The service is commonly referred to as SWIFT MT101, and also allows you to repatriate funds to a U.S. dollar or multicurrency account.

Global remittances: Primarily used by consumers, global remittances allow you to transfer funds to recipients in another country where they can either receive the funds at designated locations or have money deposited into an account at the receiving institution.

Chapter 10: Importing to/Exporting from the United States

In today's expanding worldwide marketplace, companies have discovered the many advantages and benefits of importing and exporting.

The U.S. is the largest importing country in the world with imports of foreign goods and services exceeding $3.9 trillion (Q1 2022 annualized). Companies only selling to their domestic market are limiting growth potential by not tapping into the world's consumer market, which is worth more than $46.9 trillion. Importing raw materials, parts, components or finished goods from foreign countries allows U.S. companies to take advantage of lower as well as cost-saving opportunities provided by international trade agreements and duty deferral programs.

Companies considering new international operations should familiarize themselves with the basic import and export requirements under U.S. law, and seek guidance from various government agencies, law firms, consultants, and international trade service providers that will assist you in successfully navigating international trade.

The following provides some basic guidance for companies considering imports and exports.

10.1: Imports into the United States

In order to begin importing raw materials, parts, components and finished goods into the U.S., companies should first determine how they will physically bring the goods into the U.S. Although some companies choose to handle the entry process on their own, the majority of importers utilize customs brokers. Customs brokers are licensed by U.S. Customs and Border Protection (CBP) but are not employees of CBP. In order to engage a customs broker, an importer will need to execute a Customs Power of Attorney. This authorizes the broker to file required entry documentation with CBP, as well as facilitate the importation and entry of foreign merchandise into the U.S. on the importer's behalf. It is important that importers monitor and review the activities taken by the brokers on their behalf because importers are responsible for any errors made by the customs broker in the entry of their goods.

For import transactions valued over $2,500, importers must post a cash deposit with CBP or obtain a surety bond. A surety bond provides a guarantee that the importer will pay duties, fees or taxes owed and obey all U.S. Customs rules and regulations. The bond is submitted to the CBP Port Director at the port where the company will be entering its goods using Customs Form 301.

Importers are expected to exercise "reasonable care" over their import operations and take steps to ensure accurate information is timely submitted to CBP—usually by the customs broker. The information that is declared to CBP includes:

- Tariff classification and applicable rates of duty of their imported goods
- Valuation of the goods
- Calculation and payment of the applicable duties, fees and taxes to CBP
- Country of origin of the goods
- Quantities of goods actually received in the U.S.

In addition, products should be marked and labeled with country of origin prior to their arrival in the U.S. Records and documents relating to a company's import transactions should be maintained for five years from the date of importation. Importer Security Filings need to be timely filed with CBP by the customs broker prior to the cargo's landing at the foreign ports of export. The importer should take steps to ensure all documentation and administrative requirements unique to these programs are satisfied.

CBP's website contains information regarding the U.S. import requirements. They have also published a series of Informed Compliance Publications providing guidance on the use of customs broker, tariff classification, valuation, country of origin, marking rules, use of free trade agreements, special trade programs and duty deferral programs. http://www.cbp.gov/trade/rulings/informed-compliance-publications

Greater Phoenix has a significant number of experienced law firms, consulting firms, financial institutions and other organizations that are knowledgeable on U.S. import requirements. Agencies such as the U.S. Commercial Service and the Small Business Administration have experienced counselors on staff to assist companies new to international trade.

Here are some additional online resources that can help companies exploring import opportunities:

- American Association of Exporters and Importers (AAEI): www.aaei.org
- Global Chamber: www.globalchamber.org
- National Customs Broker and Forwarders Association (NCBFAA): www.ncbfaa.org
- Small Business Administration (SBA): www.sba.gov
- U.S. Customs and Border Protection (CBP): www.cbp.gov

Ports

There are 10 ports of entry in Arizona: Douglas, Lukeville, Naco, Nogales (Service Port), Phoenix (Service Port), San Luis, Sasabe, Scottsdale Airport (User Fee Airport), Tucson and Phoenix-Mesa Gateway Airport (User Fee Airport).

The Phoenix Service Port (Port Code: 2605) is a CBP location with a full range of cargo processing functions including inspections, entry, collections and verification. The port is located at 3002 E. Old Tower Road, Suite 400, Phoenix, AZ 85034. Its operational hours are from 8:30 a.m. to 4:30 p.m. (Mountain Standard Time) from Monday through Friday. The general phone and cargo phone number for the Phoenix Service Port is (602) 914-1400. The passenger processing phone number is (602) 392-4400.

You can visit the CBP website for more information on importing: https://www.cbp.gov/contact/ports/az.

10.2: Exporting from the United States

The vast majority of exporters utilize the services of freight forwarders or couriers to facilitate their export shipments and ensure that Electronic Export Information (EEI) filings are submitted to the U.S. government through the Automated Export System (AES). In order to engage the services of a forwarding agent or courier, the exporter will be required to execute an Export Power of Attorney that will authorize the agent to handle its export shipments and make the government filings. The U.S. exporter is responsible for any errors made by its forwarding agent or the courier.

Once an exporter has engaged a forwarder or courier, they should seek to understand the U.S. export rules that apply to products and export transactions. For example, U.S. exporters should first determine which U.S. government agency exercises authority over its proposed exports such as:

- Exporters that deal in defense articles or services identified on the U.S. Munitions List are subject to the State Department's International Traffic in Arms Regulations (ITAR).
- Exporters that deal in commercial or dual-use goods (items that have both military and civilian applications—such as laptop computers) are subject to the Commerce Department's Export Administration Regulations (EAR).
- Determining which agency and set of regulations applies to the exporter's activities will ensure the company is operating under the appropriate set of rules.

Companies should be aware of how their products are classified, which is a key factor in determining whether an export license is required prior to shipment. For goods that are subject to the ITAR, companies should know the specific USML Category that applies to their products. Similarly, for goods subject to the EAR, companies should know whether their items are classified under a specific Export Control Classification Number (ECCN) or as EAR99. Schedule B Codes or the tariff classifications that apply to the product should also be ascertained. This information must be reported in the exporter's Electronic Export Information (EEI) filings when they are required.

Exporters must also determine if the need to obtain a license from the U.S. government prior to shipment. Export licenses are required in the following situations:

- Export classification of the commodity
- Specific end-users and other parties to the transaction
- Country of ultimate destination
- Intended end-use of the commodity itself

Companies should screen all parties in their export transactions to ensure they are not inadvertently working with parties that restricted by the U.S. Commerce, Treasury and State Departments. They should also screen their transactions to confirm the destination countries are not embargoed or sanctioned countries, as well as confirm the end-use of the products does not involve any prohibited proliferation-related activities.

In addition to the U.S. rules for exporting, U.S. companies should consider the requirements for entry of their goods into the foreign customers' countries. Every country has its own import laws and regulations with entry and documentary requirements that vary widely such as:

- Admissibility of certain products into the foreign country
- Tariff classification of the goods
- Valuation or basis of appraisement of the imported goods
- Marking and labeling requirements
- Rules of origin
- Product safety, testing and quality standards
- Invoicing, certificate of origin and other documentary requirements
- Whether any import licenses or permits are required for entry

Following these requirements will prevent the likelihood of the goods being detained or seized by the foreign customs authorities, as well as insulate the foreign customers from the assessment of fines and penalties by the customs authorities.

Companies engaging in overseas operations should take stock of their anti-bribery and anti-corruption policies and procedures, as well as the requirements of the Foreign Corrupt Practices Act (FCPA). The FCPA prohibits the making of corrupt payments (or giving anything of value) to foreign officials to influence their actions or secure an improper business advantage. Publicly traded companies are prohibited from maintaining false or inaccurate records, and from failing to implement formal accounting controls. U.S. companies should identify potential FCPA risks in each region or country where they will be conducting business, perform due diligence investigations of potential third-party agents and overseas business partners, ensure their contracts contain adequate FCPA provisions, and establish formal compliance policies and procedures.

The websites of the following U.S. government agencies provide extensive information regarding U.S. export requirements:

- American Association of Exporters and Importers (AAEI): www.aaei.org
- Commerce Department's Bureau of Industry and Security (BIS): www.bis.doc.gov
- Commerce Department's Census Bureau: www.census.gov
- Commerce Department's International Trade Administration (ITA): www.trade.gov
- Department of Justice (FCPA): www.justice.gov/criminal-fraud/foreign-corrupt-practices-act
- Global Chamber: www.globalchamber.org
- ITA's Export Solutions: www.trade.gov/export-solutions
- National Customs Broker and Forwarders Association (NCBFAA): www.ncbfaa.org
- Office of Foreign Assets Control (OFAC): www.treasury.gov
- Securities and Exchange Commission (FCPA): www.sec.gov/spotlight/fcpa.shtml
- Small Business Administration: www.sba.gov Society of International Affairs (SIA): www.siaed.org
- State Department's Directorate of Defense Trade Controls (DDTC): www.pmddtc.state.gov/ddtc_public
- U.S. Commercial Service: https://2016.export.gov/arizona/eg_us_az_028116.asp
- U.S. Customs and Border Protection (CBP): www.cbp.gov

Agencies such as the U.S. Commercial Service and the Small Business Administration have offices in Phoenix and throughout Arizona staffed by experienced counselors to assist companies new to exporting. Greater Phoenix has a significant number of experienced law firms, consulting firms, financial institutions, and other organizations that are knowledgeable on the U.S. export requirements and eager to assist new companies in their expansion into foreign markets.

Foreign Trade Zones

Companies who choose to locate in a Foreign Trade Zone (FTZ) are eligible for benefits that can save the company millions of dollars per year. Foreign Trade Zones are secure areas under supervision of the U.S. Customs and Border Protection (CBP) that are considered outside of the customs territory of the U.S. at which special CBP procedures may be used. You may move foreign and domestic merchandise into an FTZ for storage, assembly, manufacturing and processing, all without the payment of dues and other import restrictions until you decide to bring the goods into the U.S. market.

Arizona is one of only two states in the nation with the ability to lower real and personal property taxes up to 72 percent for FTZ-qualified companies. Greater Phoenix has three FTZs in Phoenix, Mesa and Maricopa County. Companies locating within a certain distance of these FTZs may apply to be considered in a subzone. GPEC has assisted several companies with FTZ paperwork and qualification. Numerous companies have already taken advantage of FTZ benefits in Greater Phoenix including ST Microelectronics, Intel, Conair, Abbott Laboratories, PetSmart, Microchip Technologies, RRB Beverage Operating, Honeywell and Sub-Zero.

Transportation

If you need assistance with the transportation of goods, you should seek assistance from the National Customs Brokers and Freight Forwarders Association of America (NCBFAA).

Headquartered in Washington, D.C., the NCBFAA represents more than 1,000 member companies in international trade, including the nation's leading freight forwarders, customs brokers, ocean transportation intermediaries (OTIs), non-vessel operating common carriers (NVOCCs) and air cargo agents.

The NCBFAA currently has 15 members in Greater Phoenix. See the full list and contact information of the Arizona member companies at the appendix in the back of this toolkit. For more information on the NCBFAA, visit www.ncbfaa.org.

Chapter 11: Legal Considerations

Patents

Obtaining a Patent: Patent protection can be obtained in the U.S. for a newly invented process, machine, manufacture, design or composition of matter. Securing and maintaining patent rights in the U.S. consists of three main phases:

Phase I is the strategy and drafting phase in which an application for patent is planned and drafted in view of the state of the art and commercial objectives of the client. Disclosure materials are prepared in consultation with the inventors and then are sent to a patent attorney. The inventor and/or company will provide the patent attorney a description of the invention, examples of the invention and test results relevant to the invention. The attorney may conduct an optional search to help define the state of the art. The client and inventors then collaborate with the patent attorney to draft the patent application.

Phase II is the prosecution phase in which the patent attorney has a dialog with the U.S. Patent and Trademark Office regarding the merits of the patent application. The dialog concerns the patentability of the invention and technical aspects of the application for patent.

Phase III is the maintenance phase, in which annuity payments are made to keep the patent rights in force. Keeping a U.S. patent in force requires paying escalating maintenance fees at three and a half years, seven and a half years and 11.5 years after issuance of the patent.

Enforcement of patent rights: Patent owners may enforce their patents in a U.S. District Court or, in some cases, before the International Trade Commission. In addition, parties accused of infringement may bring a preemptive action in federal court seeking a judicial declaration that patent rights are invalid or unenforceable, or the conduct of the party does not infringe the rights of the patent owner.

In Federal Court, patent owners can be granted injunctions prohibiting the defendant from practicing the patent or monetary compensation. Monetary compensation is intended to compensate the patent owner for lost sales or to provide the patent owner a reasonable royalty. Where there is infringement of design patents, the plaintiff may recover the infringer's profits. In cases where the court finds the acts of infringement were egregious, the court may triple the monetary damage amount and award attorney's fees to the patent owner.

Federal courts can order an injunction at the beginning of an action if the patent owner can show it is likely to succeed in the action and will be irreparably harmed by the infringement. Courts are more likely to issue a permanent injunction when the infringing party is an acknowledged competitor of the patent owner. A defendant in a federal court action can challenge both infringement and validity of the patent. Actions in federal court can last years and be costly by the time a final judgment is reached.

Proceedings in the International Trade Commission usually reach closure more quickly than federal court actions but are limited in scope. The International Trade Commission cannot award damages or enjoin infringement but can issue an order excluding the importation of infringing articles. Many patent owners will proceed before the International Trade Commission when their main competitors are importing infringing items from overseas.

Final decisions by both federal courts and the International Trade Commission regarding patent rights can be appealed to the Court of Appeals for the Federal Circuit. Although parties can petition for review to the U.S. Supreme Court, federal review is discretionary and not common.

Trade secrets

Obtaining a trade secret: A trade secret is generally defined as a formula, pattern, device or other information used in one's business that gives the business an opportunity to obtain an advantage over competitors who do not know or use it. Each state in the U.S. promulgates its own laws on what is considered a trade secret. However, there are three factors that are common to all such definitions. A trade secret is information that is:

- not generally known to the public
- confers an economic benefit on its holder (where this benefit must derive specifically from its not being generally known)
- the subject of reasonable efforts to maintain its secrecy

Examples of trade secrets include, but are not limited to:

- **Employee know-how -** including special and general skills, and knowledge acquired under proprietary and confidential circumstances
- **Financial information -** including pricing information, bidding practices, marketing plans and pricing policies
- **Business processes -** including manufacturing methods, machines, designs, blueprints, specifications and technical data

- **Client information -** customer lists, contact information, payment history and preferences

If sufficiently protected, trade secrets can extend indefinitely and may provide an advantage over patent protection, which lasts for a specific period of time.

Enforcement of a trade secret: Trade secrets are not disclosed to the public. Trade secret protection only applies if owners disclose trade secret information, including the use of technological and legal measures to guard against disclosure. If trade secrets become public knowledge, or are shared within a specific industry, they will lose their status as trade secrets.

Legal protections include non-disclosure agreements (NDAs) and non-compete clauses with employees. Owners of a trade secret may need similar agreements with other parties they interact with, such as vendors or licensees.

If a trade secret is acquired by improper means or is in violation of a contractual agreement, the secret is generally deemed to have been misappropriated. If this occurs, then seek the following:

- Injunctions against further use of the misappropriated information
- Monetary damages equivalent to the actual loss caused by misappropriation
- Attorneys' fees.
- In some states if the misappropriation is "willful and malicious" a court may increase the monetary damages awarded to the trade secret owner

Trademarks

Obtaining a trademark: A trademark is a brand name that includes any word, name, symbol, and/or design used to identify and distinguish the goods and/or services of one seller or provider from those of others, and to indicate the source of the goods and or services.

"Common law" trademark rights vest in a seller upon use of a trademark "in commerce." For goods, this requires placement of the trademark directly on the goods or packaging. For services, the mark must be used or displayed in the sale or advertising of the services. Such common law rights extend to the geographic area in which the trademark is sufficiently recognized by the public as being an indicator of source for the respective goods and/or services.

To obtain a federal trademark registration, a trademark owner must file an application with the U.S. Patent and Trademark Office USPTO") with the fee and trademark, and the trademark owner must designate how the goods and/or services will be used. A trademark examiner will review the trademark to see if there are any issues with the trademark itself or the application, and then publish the application in the Official Trademark Gazette for 30 days. During this time, members of the public may file an opposition to the trademark if they believe it infringes on their own trademarks or believe it should not be registered. If there is not any opposition, the trademark will move through the registration process.

Enforcement of a trademark: If a dispute cannot be settled outside of court, a trademark owner must initiate litigation to enforce their trademark rights. Successful plaintiffs are entitled the following under federal law:

- Injunctions against further infringement of the trademark
- Defendant's profits
- Damages sustained by the plaintiff
  - Costs of the action
  - Damages may be multiplied if the defendant shows a bad faith infringement

Copyright

Obtaining a copyright: In the U.S., copyright is obtained automatically when a creative work is fixed in a tangible medium. For example, when a book is written it automatically has copyright protection. However, the idea of a potential book does not have copyright protection. Similarly, singing a song extemporaneously may not have copyright protection, but a recording of that song may have copyright protection. Copyrights do not protect ideas, but rather the expression of those ideas.

The U.S. also has a system for registering a copyright. Individuals or companies who want to register a copyright can submit their application for copyright registration to the Copyright Office.

Enforcement of a copyright: In the U.S., copyright enforcement occurs through litigation in federal court. Registered copyrights can be enforced through the International Trade Commission to exclude imports of infringing goods. Although registration is not required to obtain a copyright, a party can only initiate litigation if it first registers its copyright. Also, a party cannot recover statutory damages or attorneys' fees for infringement that occurred before the registration.

Prior to litigation, notice and take-down processes can be used to stop copyright infringement online. For example, under the Digital Millennium Copyright Act (DMCA), online service providers have protection for online storage. However, if the owner of a work under copyright protection appropriately identifies the infringement to the service provider, the service provider is required to remove the infringing material and notify the infringer. The process has several important nuances, but it generally permits quick relief when online copyright infringement occurs.

For more information about moving and operating a business in the U.S., visit our website gpec.org or contact 001.800.421.GPEC (4732) or email info@gpec.org.