

# LEGAL ASPECTS

A Guide to Doing Business  
in the United States  
来美经商法律相关事务指南



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in the United States

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# PARKER POE

## FIRM PROFILE 律所简介

### Parker Poe is a leader in the Southeastern

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With approximately 275 attorneys in North Carolina, South Carolina, Georgia, and Washington, DC, we are conveniently located throughout a growing region in the U.S. and, as a member of two international law networks (TerraLex and Employment Law Alliance), we have access to more than 200 law firms around the globe. We serve a wide range of industries including automotive, biotechnology, pharmaceuticals, textiles, chemicals, technology, telecommunications, financial, real estate, energy and advanced manufacturing.

**Parker Poe**是位于美国东南部、服务于跨国公司、外企、本地公司、同时兼有上市客户和私营客户的领衔律所，在世界市场拥有强劲竞争力。律所旗下拥有约**275**名律师，办公地点正好分布在北卡罗来纳、南卡罗来纳、佐治亚、华盛顿DC等正在快速发展的美国地区。同时作为两个律师联盟的成员（**TerraLex**国际律师联盟和就业法律联盟），我们可轻松触达全世界超过**200**家律师事务所。我们服务的行业非常广泛，包括汽车工业、生物科技、医药业、纺织业、化学工业、科技业、通讯业、金融业、房地产业、能源和其他高端制造业等。



For over 30 years, Parker Poe and its International Business Team has assisted hundreds of foreign-owned companies with their U.S. investment and business needs. Parker Poe's International Business attorneys provide clients with quality and effective legal advice based on years of experience and a worldwide network of relationships. We are committed to understanding each client's business and its method of operation so we can provide quality service that is focused on your specific needs.

三十多年以来，**Parker Poe**以及它的国际商务团队协助了成百上千家外资公司在美投资和商业需求。其国际化商务律师依托多年累计的经验和其所在的全球律师关系网为客户提供着高质量且高效的法律建议。我们致力于理解每一位客户的业务和经营方式，从而为客户提供专属定制的高质量服务。

The International Business Team also has substantial experience in representing clients doing business worldwide, including in Europe, Latin America and Asia. Foreign language capability includes native speakers in German, Spanish and French, Chinese-Mandarin, and Taiwanese among other languages.

我们的国际商务团队在代表客户的全球其他地区业务方面也有丰富的经验，所涵盖的地区有欧洲、拉美洲和亚洲。业务语言包括德语、西班牙语、法语、汉语普通话和**Taiwanese**及其他语言。

# PARKER POE

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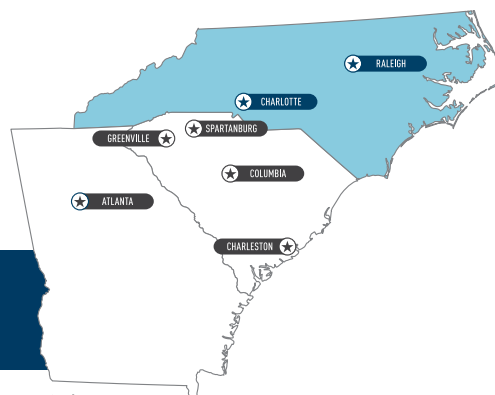
- **Inbound investment and site selection**  
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- **Business incentives and investments, including services for developing, constructing, and financing manufacturing, distribution, research and other facilities**  
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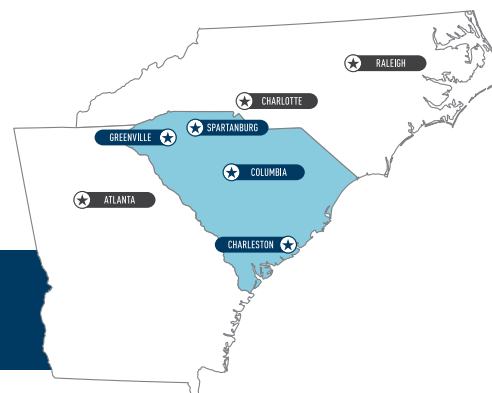
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# LEGAL ISSUES

## 法律相关问题

### The Legal Aspects guide provides a base of useful information

on issues which should be considered as part of the process of investing in the U.S. It is not intended, however, to be an exhaustive discussion of these topics, and it is not an alternative to specific legal advice relating to the facts and circumstances of each particular investment and business need.

此法律相关事务指南提供了策划来美国投资时一些基本问题的有用信息，这些问题应该作为策划中的一部分。本指南意不在穷尽所有相关问题，也不能作为特定投资经营需求的具体法律建议。

A foreign company must consider various legal issues as part of its “business plan” for doing business in the U.S. The actual issues will often depend on such things as the company’s size, field of business and business goals. Also, as the company expands, new issues may need to be addressed.

一家外资公司来美经商需要考虑到众多法律相关问题作为“商业计划”的一部分。具体问题经常涉及公司的规模、从事的领域和经营目标。同时，在公司扩张过程中，新的问题也会产生并需要解决。

This section provides an overview of many, but not all, of the issues a company should be aware of as it plans its investment and operations in the U.S.

本部分提供了很多（并非所有）在计划投资和经营过程中公司需要考虑到的问题的概述。

### Additional Resources

There are many resources available to help a foreign investor in making legal and business decisions when establishing operations in the United States. These resources include, for example:

有很多可用资源也可以帮助境外投资者在美国投资和经营时做出法律和经营决策。这些资源包括：



**State Departments of Commerce and State Economic Development Organizations;**  
美国商务部和经济发展组织



**Regional Economic Development Organizations;**  
地区经济发展组织



**Local Economic Development Organizations and Chambers of Commerce;**  
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# LEGAL ISSUES

## 法律相关问题

### Entities for Doing Business in the United States

#### 在美经商的公司实体

One of the first issues faced by a foreign investor is choosing the most appropriate entity structure for its U.S. operations.

外国投资者需要面对的第一个问题就是选一个合适于在美经营业务的公司实体。

A legal entity in the U.S. is formed at the state level, and there are several types of U.S. entities. (The U.S. does not have federal or nationwide entities.) Each form of business entity has its advantages and disadvantages, which are discussed in the following pages.

美国的公司法人实体是在各州设立的（美国没有联邦层面或全国性实体）。公司实体形式有很多，每一种公司实体都有它的自身优势和缺点，在下面内容中我们将具体讲述。

- Corporations
- Limited Liability Companies (LLC)
- Other Entities 其他形式的经济实体

In deciding whether to do business in the U.S. through a corporation, an LLC, or another entity type, the tax laws of the foreign investor's home country should also be considered so the structure with the maximum overall benefit for the investors can be established.

要决定美国的公司是用 **Corporation**、**LLC** 还是其他形式的实体，公司母国的税法也应该纳入考虑中，从而让整个公司构架能为投资者带来最大利益。



# CORPORATION

**The corporation is the traditional legal entity.** A corporation is often set up as a wholly-owned subsidiary of a foreign parent company or directly owned by the private owners of the foreign company. Joint ventures and other mixed ownership scenarios are also possible.

**Corporation**是一种传统的公司法人实体。一个**Corporation**往往是由外国母公司全部持股的子公司或者由外国公司的个体股东持有。合资或其他混合的所有形式也是可能存在的。

## Advantages 优势

Limited liability of the shareholders can be achieved. If the corporation is properly formed, capitalized and operated, the shareholders are generally shielded from debts and obligations of the corporation and the shareholders' potential loss is limited to its capital investment. In addition, the board of directors and officers are, with limited exceptions, protected from personal liability if they meet their fiduciary duties of good faith and loyalty.

股东可只对公司承担有限的责任。如果**Corporation**被恰当建立、注资并经营，股东们个人将免于承担公司的债务和责任，股东可能承担的最多的损失以出资额为上限。此外，董事会和高层管理人员的责任也是有限的，只要完成了对股东的信义责任，不需要以个人名义承担责任。

## Disadvantages 缺点

A corporation must conform to certain formalities on a state and federal level. For example, state law typically requires a corporation to adopt bylaws and hold annual director and shareholder meetings. A corporation also has less flexibility in management structure as compared to an LLC. A typical U.S. corporation's structure consists of shareholders, directors, and officers.

**Corporation**必须遵循州和联邦层面要求的某些管理形式。比如，州级法律一般要求**Corporation**制定公司规章制度，每年召开董事会和股东会议。在管理构架上**Corporation**也没有LLC灵活。一个典型的美国**Corporation**需要有股东、董事和高层管理人员的职权。



# CORPORATION



## Formation 组建

- Many states have modern corporate statutes, so the decision on where to incorporate more often depends on the location of the investment and related state tax aspects. Although forming a corporation in Delaware is an option, it is not required, and there are sometimes advantages to incorporating in the state of the principal business location.  
许多州具有自己的现代公司法规，所以决定在哪里组建公司往往取决于投资的地点以及相关州的税务规定。特拉华州是其中一个选择，但是这并不是强制选择。有时在业务主营的州组建公司是有很多优势的。
- In most states, the procedure for organizing a wholly-owned corporation is relatively simple: 在大部分州内，组建一个全资的**Corporation**的步骤是相对简单的：
  - Filing of a short document often entitled the “Articles of Incorporation” with the Secretary of State of the state to form the corporation.  
向公司成立所在州的州政府秘书长提交一份简短的、通常叫做“公司章程（**Articles of Incorporation**）”的文件。
  - Execution of various other documents in order to complete the establishment of a U.S. corporation, including “bylaws” which regulate the internal management of the corporation and “organizational resolutions” which, among other things, elect the directors of the corporation, appoint the officers, select the fiscal year and establish bank accounts in the U.S.  
成立公司的其他文件包括规定公司内部管理的“公司规章制度（**bylaws**）”和规定选举董事、任命高层管理人员、决定会计年度和银行开户等事务的“公司组织决议（**organizational resolutions**）”。

## Minimum Capital 最低资本

- There is no legally required minimum capital contribution for the establishment of a corporation. However, for limited liability reasons, the capital should be reasonable based on the intended business operations. In addition, if debt owed to a shareholder is excessive in comparison to shareholder equity, the debt may be at risk of being re-characterized as equity for U.S. income tax purposes.  
对于**Corporation**的建立法律是没有规定的最低投入额度的。然而，考虑到有限责任的问题，资本额度需要与业务经营相匹配。另外，如果一个股东持有公司的债务超过股东持有的股权，那么此债务可能因为所得税问题有被重新认定为股权的风险。
- The capital contribution to the corporation can take many forms, including cash or property (such as equipment or inventory) and in many states can also include promissory notes, services performed and contracts for services to be performed.  
资本投入形式可以有很多种，包括现金或财产（比如设备、存货等）。很多州也允许包括期票、提供的服务以及待执行的服务合同等作为资本投入。

# CORPORATION



## Control 公司管理控制

- A U.S. corporation has three levels of control: (i) the shareholders; (ii) the directors; and (iii) the officers.  
一个美国的**Corporation**通常受三层面控制：（i）股东；（ii）董事；（iii）高层管理人员。
- The shareholders own the corporation and exercise indirect control by electing the board of directors and by voting on certain fundamental matters of corporate policy.  
股东拥有该公司，通过选举董事会成员和为公司根本性事务的政策进行投票行使他们的间接控制权；
- The board of directors establishes the general policies of the corporation and approves certain actions of the corporation. In addition, the board of directors appoints officers.  
董事会建立公司的一般政策，通过公司的某些方案举措。另外，董事会需要命名高层管理人员。
- The officers are responsible for implementing the policies of the board of directors and overseeing the day-to-day operations of the corporation. A corporation usually has as its officers a president, a secretary and a treasurer/CFO (and may have one or more vice presidents and an assistant secretary).  
高层管理人员负责执行董事会制定的政策，并监管公司日常的经营。一个**Corporation**的高级管理人员需要有总经理、秘书长和财务长（也可能有一个或多个副总经理和秘书长助理）。
- The same person can function in the capacity of a shareholder, a director and an officer. The same person can hold more than one officer position. However, it is common for there to be at least two separate individuals who act as officers in order to execute certain contracts and perform other functions.  
同一人可以同时是公司的股东、董事和高层管理人员。同一人也可以同时兼任多个高层管理职位。但是，一般公司会有至少两个人作为高层管理人员以便于执行某些合同或履行某些职能。

## Tax Considerations 税务考虑

The foreign investor should consider the tax aspects relating to the formation and operation of its United States corporation. The corporation will be subject to federal and applicable state income taxes. As a general rule, both federal and state taxes are applied on a graduated rate. The federal corporate income tax rate in 2022 is 21%. State corporate income tax rates vary from state to state with 3%–8% being a common range.

在美国成立**Corporation**并进行业务经营时，外国投资人应该考虑到与之相关的税务问题。公司需遵循联邦和相关的州内所得税。一般情况下，联邦和州的税都会是分级税制。**2019**年联邦规定的**Corporation**所得税为**21%**。州内此类公司所得税各州不同，普遍范围在**3%–8%**之间。



# CORPORATION

**Disadvantage: “Double Taxation”** – The main disadvantage of the corporate form of doing business in the United States (particularly as compared to an LLC, discussed below) is the “double taxation” of income.

**缺点：“双重税”** – 在美国经商使用**Corporation**作为实体的主要弊端（尤其与LLC相比之下）就是所得税的“双重税”。

- Any taxable net income of the corporation will be taxed at the federal and state corporate income tax rates. In addition, when the after-tax profits of the corporation are distributed to its shareholders, the shareholders are also taxed at the federal and state levels on these distributions.

公司所有符合征收所得税的净收入都将在联邦和州内被征税。此外，在税后利润被分配给各个股东后，股东被分配到的这些收入也将被联邦和州征税。

- The tax imposed on distributions will depend on the location of the shareholder. If the shareholder is a foreign entity or an individual residing outside the United States, the distributions will generally be taxed at a flat 30% rate, which is required to be withheld by the corporation and remitted to the U.S. taxing authorities. This 30% rate may be reduced to 5%-15% (or even 0% in some instances) if the U.S. has a tax treaty with the foreign shareholder's home country and the shareholder qualifies for treaty benefits. In addition, under some treaties, the dividend withholding may be reduced to 0% if a foreign corporation owns at least 80% of the U.S. corporation and meets certain criteria.

股东拿到分配后其税率会根据股东所在地点不同而不同。如果股东是国外公司实体或在美国境外居住的个人，这些分配一般将被征收固定的30%的所得税，这些税款被要求由公司扣留，再汇款至税务机关。如果美国与股东的母国有税收协定，并且股东符合享受税收协定优惠的条件，30%的税率有可能被降低至5%-15%（有时候甚至可能降至0%）。此外，在某些协定下，如果外国Corporation拥有80%的美国境内的公司股份并符合其他某些条件，需要被扣留的分红也可能被减至0%。

# CORPORATION

**Example:** Dividends paid by a U.S. corporation which is engaged in an active trade or business and is at least 10% owned by a corporate investor from the following countries would be taxed in the United States at the following reduced rates. (Note: Some other rules may apply and some reduced rates apply after owning the required amount of stock for a 12-month period.)

**举例：**一家积极从事贸易或其他业务的美国**Corporation**，其股份至少**10%**由以下国家股东持有，此公司的分红将被按以下税率征收（注意：有些获得减免的税率要求股东至少持有该公司股份**12**个月）

Country	Treaty withholding rate on dividends to a Foreign Corporate Stockholder owning at least 10% stock* 由外国股东持股超过10%的公司，税务协定要求扣留的分红比例
Austria 奥地利	5%
Belgium 比利时	5%
Canada 加拿大	5%
China 中国	10%
Czech Republic 捷克	5%
Denmark 丹麦	5%
Finland 芬兰	5%
France 法国	5%
Germany 德国	5%
Hungary 匈牙利	5%
India 印度	15%
Italy 意大利	5% *
Japan 日本	5%
Korea 韩国	10%
Mexico 墨西哥	5%
Netherlands 荷兰	5%
Republic of Ireland 爱尔兰	5%
Spain 西班牙	5%
Sweden 瑞典	5%
Switzerland 瑞士	5%
Taiwan 台湾	N/A
Turkey 土耳其	15%
United Kingdom 英国	5%

Each treaty, however, should be analyzed for specific application to each investment and situation.

但是，每一个投资项目和情况需要具体分析是否符合某一税务协议的具体申请条件。

In addition, the foreign shareholder may be entitled to a credit for some or all of the tax imposed on such distributions, and this opportunity should be considered with the foreign investor's tax advisor in its home country. In some countries no further tax is imposed on intercorporate distributions.

此外，外国投资人有可能拥有部分或全部分红的免税额。这种免税机会应该同投资人母国的税务顾问共同探讨。在某些国家，公司内部的再分配是不需要再纳税的。

\*must own at least 25% of stock for this reduced rate 享受此优惠税率需持有至少25%的股份

# CORPORATION

**No U.S. Income Tax Return** – Although a U.S. corporation owned by foreign investors has the disadvantage of double taxation, it has the advantage that the foreign shareholder generally avoids any requirement to file U.S. income tax returns.

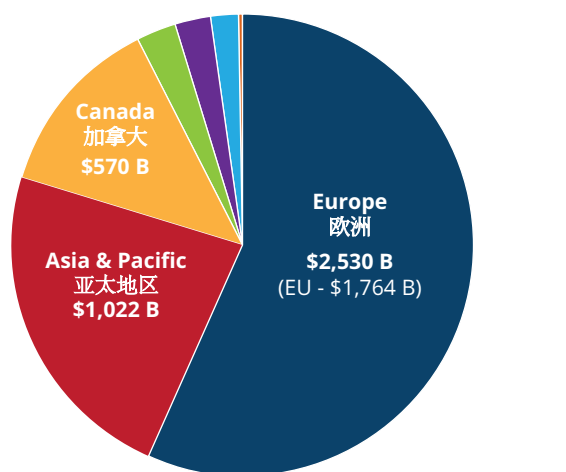
**无美国所得税申报** – 虽然由外国股东持有的美国Corporation有双重税，但Corporation的优势在于其外国股东是不需要进行所得税申报的。

**U.S. Estate Aspects** – If the U.S. corporation is owned by an individual foreign investor, the value of the individual's stock in the corporation will generally be subject to U.S. estate tax upon the investor's death unless a treaty exemption applies.

**遗产方面** – 如果美国的Corporation是由外国自然人投资人持有，该投资人的股份价值一般在本人过世后需要被征收遗产税，除非有贸易条例规定豁免缴纳。

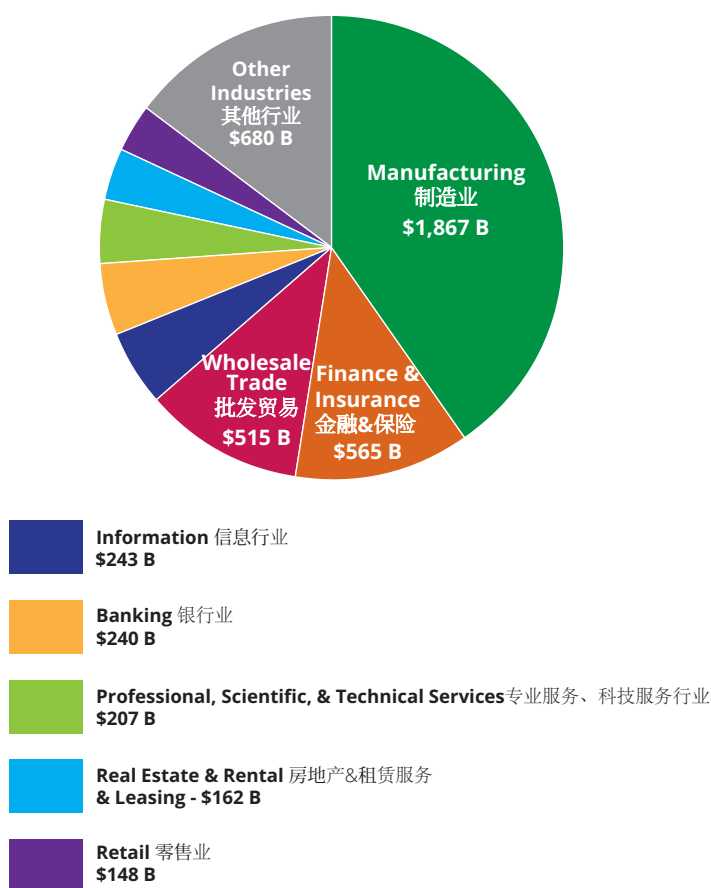
## Cumulative FDIUS by Region 2020

2020年累计国外来美投资额按地区展示



## Cumulative FDIUS by Industry 2020

2020年国外来美投资按行业展示



Note: Canada is treated as a region in this graph and analysis.  
Data are shown on a historical-cost basis, or cost at time of investment.  
Source: Bureau of Economic Analysis  
注意：加拿大在本图中作为一个地区展示。数据是以历史成本为依据。

Data are shown on a historical-cost basis, or cost at time of investment.  
Source: Bureau of Economic Analysis  
数据以历史成本或投资时的成本为依据。数据来源：经济分析局

# LIMITED LIABILITY COMPANIES LLC公司



A limited liability company (“LLC”) is a hybrid of a corporation and a partnership. It is conceptually similar to the SARL in France, the Limitada in Italy, the S. de R.L. in Mexico and the S.L. in Spain. The owners of an LLC are called “Members.” An LLC can be Member-Managed or Manager-Managed.

LLC是一种Corporation和合伙制混合的公司形式。在概念上类似法国的SARL，意大利的Limitada，墨西哥的S. de R.L.，西班牙的S.L.。LLC的持有者称为“Members（成员）”。LLC可以是“成员管理的”，也可以是“经理管理的”。

## Advantages 优势

- **Limited Liability** – Like a corporation, if the LLC is properly formed, capitalized and operated, the LLC provides its Members with limited liability.  
**有限责任** – 同Corporation一样，如果LLC恰当成立、注资和经营，LLC的成员只承担有限的责任。
- **Flexibility** – An LLC is more flexible than a corporation with respect to the management structure and control. An LLC is recommended, but not required, to follow internal formalities.  
**灵活性** – 在管理构架和公司权利控制上，LLC要比Corporation灵活。法律只建议而不强制LLC遵循内部管理的正式步骤。
- **Single Level U.S. Federal and State Taxation** – An LLC, unlike a corporation, is generally not subject to an entity-level income tax. A multi-member LLC is generally treated as a partnership for income tax purposes, and its income, deductions, gains and losses flow-through to its Members. An LLC with a single Member is generally disregarded for U.S. income tax purposes. In either case, “double taxation” in the U.S. is generally avoided because no income tax is imposed at the entity level. As a result, the conduct of business in the U.S. through an LLC is sometimes more tax efficient than through a corporation. The opportunity for tax savings may be limited, however, if the foreign owner is a corporation due to applicability of the U.S. branch profits tax. The amount of savings depends on the plans for distributing profits, the U.S. tax rate on distributions to a particular foreign investor, and other considerations.  
**单重联邦税和州税** – 与Corporation不同，LLC一般不需要缴纳公司层面的所得税。一个由多个成员组成的LLC在所得税方面被视为合伙人制公司，收入、减免、盈利和损失由“成员”按照合伙人制度承担。只有一个成员的LLC在所得税问题上被视为“被忽略的实体”。不管成员是一个还是多个，LLC是不缴纳“双重税”的，因为公司实体不需要缴纳所得税。所以在美国以LLC的实体形式从事商业活动有时比Corporation更加能有效节税。但是如果此LLC的外国母公司是Corporation，由于美国“分支利润税”的存在，此LLC节税机会可能有限。
- **“Check the Box”** – For U.S. tax purposes, the LLC may elect to be taxed as a corporation by “checking the box” on an IRS tax form. Depending on the structure of the investment and the business plans, there may be tax benefits to making this election.  
**“此项勾选”** – 为了在美纳税，LLC可能自愿选择在IRS税单上“勾选”作为一个Corporation纳税。根据投资结构和商业计划的不同，有可能选择此项会享受税务优惠。



# LIMITED LIABILITY COMPANIES LLC公司



## Disadvantages (U.S. Tax Perspective) 缺点（美国税务角度）

- The foreign Members of an LLC must file U.S. tax returns and pay tax on the LLC's income. This filing exposes the foreign Member to, among other things, audits by the U.S. Internal Revenue Service.

LLC的外国成员必须填写纳税申报单，支付LLC的收入所得税。纳税申报单将外国成员暴露在美国国税局的审查以及其他事务下。

- In addition, a U.S. "branch profits" tax may be imposed if the Member is a foreign corporation. The branch profits tax may reduce the U.S. tax benefits of using an LLC versus a U.S. corporation.

此外，如果组成LLC的“成员”是一个外国Corporation，美国“分支利润税”有可能被征收。此税种可能减少LLC相较于Corporation实体的税务优势。

- If the LLC is owned by an individual foreign investor, the value of the foreign Member's ownership interest in the LLC will generally be subjected to U.S. estate tax upon the investor's death unless a treaty exemption applies.

如果LLC是有一位外国自然人拥有，这位外国成员拥有的LLC所有权权益在这位投资人去世后一般需要被收取美国遗产税，除非有税务条例规定的减免。

## Formation 组建

- In most states, the procedure to form an LLC is relatively simple. A short document often entitled the "Articles of Organization" is filed with the Secretary of State of the state to form the LLC.

在多数州中，组建成立LLC的步骤相对简单。只需向公司成立所在州的州政府秘书长提交一份简短的通常叫做“Articles of Incorporation（公司章程）”的文件。

- A written Operating Agreement (to govern the relationships among the Members and if applicable, the Managers) is not legally required in most states, but is highly recommended. An Operating Agreement generally:

一份叫做“经营协议（Operating Agreement）”（管理成员之间的关系，另外，如适用，管理经营者）是非法定必须提交的，但是强力建议提交。一份经营协议通常：

- Provides more flexibility than the bylaws in a corporation.  
比Corporation需要提供的“公司规章制度（bylaws）”更加灵活。
- Allocates the income, gain, losses, deductions and credits among the Members, and governs the distribution of cash and other property among the Members.  
在成员之间分配收入、盈利、损失、减免和信用额度，管理现金和其他资产在成员之间的分配。
- Can expressly delineate the decision-making rules and the management responsibilities of the Members.  
可以清楚地描述决策的规则以及成员的经营责任。
- Can impose restrictions on the transferability of ownership interests.  
可以在所有权益的可转移性上施加限制。
- Can include provisions prohibiting Members from competing against the LLC.  
可以包含防止成员与本LLC竞争的条款。

# LIMITED LIABILITY COMPANIES



## Minimum Capital 最低资本

- There is no legally required minimum capital contribution for the establishment of an LLC. However, for limited liability reasons, the capital should be reasonable based on the intended business operations. In addition, if debt owed to a Member is excessive in comparison to equity, the debt may be at risk of being re-characterized as equity for U.S. inc  
在建立LLC时对于最低投入资本并没有法律上的固定。然而，考虑到有限责任的问题，资本需要与业务经营相匹配。此外，如果某位成员拥有的对公司的债权超过其拥有的股权，那么此债务可能因为所得税问题有被重新认定为股权的风险。
- The capital contribution to the LLC can take many forms, including cash or property (such as equipment or inventory) and in many states can also include promissory notes, services performed and contracts for services to be performed.  
资本投入LLC的形式可以有很多种，包括现金或财产（比如设备、存货等）。很多州也允许包括期票、提供的服务以及待执行的服务合同等作为资本投入。

## Control 公司管理控制

An LLC is generally formed either as a "Member-Managed" or "Manager-Managed" limited liability company depending on how the investor would like to designate voting and control for management of daily operations: 家LLC一般可以是“成员管理”的，也可以是“经理管理”的有限责任公司，取决于投资人想如何明确投票方式和日常经营的管理方式。

- **Member-Managed LLC** – The Members “manage” the day-to-day operations of the LLC, subject to the terms of the operating agreement.  
成员管理的LLC – LLC成员遵循经营协议的规定来管理公司日常的经营。
- **Manager-Managed LLC** – The Members have an economic interest in the LLC but generally do not control the day-to-day management of the LLC. The management is controlled by one or more Managers who are appointed by the Members pursuant to the Operating Agreement. The Managers may be Members or non-Members of the LLC. The duties of each Manager (or board of managers) are often included in the Operating Agreement.  
经理管理的LLC – 成员拥有LLC的经济利益，但是不控制公司的日常管理。管理层根据经营协议任命经理，一个或多个经理掌控公司的管理。经理可以是LLC的成员，也可以不是成员。每一位经理（或理事会）的职责通常在经营协议中有规定。

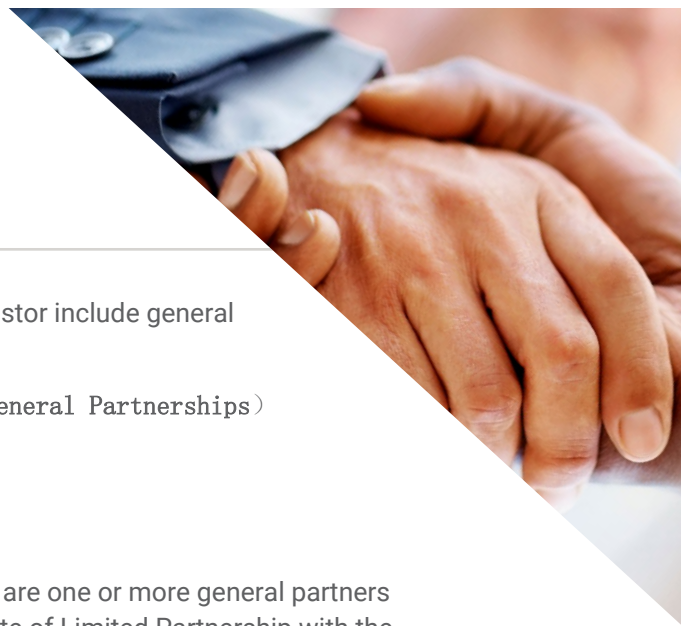
## Tax Considerations 税务考虑

There are ways to structure a U.S. investment so that the foreign investor’s main operating company is not directly exposed to U.S. taxation through ownership of an LLC. Much of this structuring involves tax considerations in the foreign investor’s home country. For instance, the foreign investor could establish a wholly-owned subsidiary in its home country, and this foreign subsidiary could be the Member of the U.S. LLC. Thus, the foreign subsidiary would act as a holding company through which the investment in the U.S. would be made. This foreign subsidiary would then have the U.S. tax obligations described above.

有很多方法来规划美国的投资，使外国投资人的主要经营公司不因为LLC的所有权暴露在美国税务之下。很多的规划涉及到外国投资人母国的税法考虑。比如，外国投资人可以在母国设立一个全资子公司，这个全资子公司可以作为LLC的成员。这样，这个外国子公司可以以控股公司身份在美国进行投资。以此方式，这家外国子公司就承担上文所述的美国税法义务。

# OTHER ENTITIES

## 其他实体形式



Other forms of business entities available to a foreign investor include general partnerships and limited partnerships.

其他外国投资者可以使用的经济实体形式包括普通合伙（General Partnerships）和有限合伙（Limited Partnerships）。

### Limited Partnership 有限合伙

- A limited partnership is a legal entity in which there are one or more general partners and limited partners. It is formed by filing a Certificate of Limited Partnership with the Secretary of State of the state of formation.  
有限合伙是由一个或多个普通合伙人和有限合伙人组成的法人实体。成立有限合伙公司需向州政府秘书处递交有限合伙凭照
- A partnership agreement is not required but similar to the operating agreement for an LLC, it is recommended to govern the relationships of the partners.  
合伙人协议（Partnership Agreement）并不是法定强制要求，但是同LLC的经营协议（Operating Agreement）一样建议提交，以方便管理合伙人之间的关系。
- The two classes of partners are:  
两种不同级别的合伙人是：
  - **“General Partner(s)”** – manages the day-to-day operations of the partnership and has unlimited liability for all debts and obligations of the limited partnership.  
普通合伙人（General Partner(s)）- 管理公司日常经营，对于有限合伙公司的债务和其他责任承担无限连带责任。
  - **“Limited Partner(s)”** – are similar to shareholders in a corporation in that they have limited liability and are not liable for the debts and obligations of the limited partnership. In exchange for this limited liability, the limited partners generally lack the ability to control the affairs of the limited partnership. If the limited partners exert too much control over the partnership, they risk being treated like a general partner and being held liable for the debts and obligations of the limited partnership.  
有限合伙人（Limited Partner(s)）- 类似Corporation中的股东，对公司承担有限的责任，对公司的债务和其他责任不承担责任。换取有限责任的代价是有限合伙人一般没有控制和管理此有限合伙公司事物的权力。如果有限合伙人对公司实施过多干预和管理，他们有可能将被视为普通合伙人，有被追究公司债务和其他责任的风险。

# OTHER ENTITIES

## 其他实体形式



### General Partnership 普通合伙

- A general partnership is an association of two or more persons or entities to carry on a business for profit. A written partnership agreement is not legally required. A general partnership can be created unintentionally by activities of the parties.

普通合伙人是由两个或以上自然人或实体以营利为目的一起经营生意。合伙人协议（Partnership Agreement）并不是法律强制要求。尽管一起做生意的人或实体主观上可能没有设立Partnership的想法，但如果他们以盈利为目的一起经营生意，并分享利润，那么在事实上Partnership已经存在了。

- Foreign investors generally do not choose a general partnership because each partner has unlimited liability for the debts and obligations of the partnership.

外国投资人一般不会选择普通合伙形式，因为每一个合伙人对于Partnership的债务和其他责任需要承担无限连带责任。

### Hybrid Entities 混合实体形式

- An entity which is taxed in one country as a corporation but taxed in another country as a partnership. 一个实体在一个国家被作为Corporation形式征税，而在另一个国家作为Partnership征税。
- The hybrid form of taxation may create significant tax advantages. For example, as discussed above, an LLC can “check the box,” thereby electing to have the LLC taxed in the U.S. as a corporation. Depending on the tax system in the foreign country of the Member, the LLC may nevertheless be taxed in the foreign country as a partnership.

这种混合型是可能带来不可忽视的纳税优势。比如，如上文所说到的，一个LLC可以在税单上自行选择在美国作为Corporation进行纳税。根据成员母公司的税法，这个LLC可能只会被视为Partnership来纳税。

- Whether the advantage of this hybrid tax treatment is available will depend, for example, on the respective income tax treaty between the U.S. and the foreign country.

这种混合实体形式是否具有优势在某些案例下取决于美国同这个国家是否具有税务协议

### Branch 分支机构/分公司

We generally advise against operating in the U.S. as a branch (sometimes called a permanent establishment) because, among other things, a branch does not provide the foreign investor with limited liability protection. We recommend that you consult with your U.S. and foreign tax advisor to evaluate the best structure for your U.S. investment.

由于分公司不会给外国投资人有限责任的保护等原因，我们一般不建议在美国设立分公司（有时候被称为永久设立机构(permanent establishment)）。我们建议您咨询美国税务和国外的税务顾问来评估在美投资的最优公司架构。



# VISA & IMMIGRATION 签证和移民

## The Basics of U.S. Visa and Immigration Laws

### 美国签证和移民法律的基本知识

U.S. immigration laws are very complex and can cause problems and delays for those individuals and companies who fail to plan ahead for their U.S. travel and personnel needs. A thorough evaluation of your immigration needs should be undertaken early in the investment process.

美国的移民法律十分复杂，没有提前为赴美旅行做准备的公司和个人有可能遇到问题并因此耽误行程。来美投资之前周密地考虑移民需求是投资过程早期需要进行的步骤。

### U.S. immigration laws distinguish between two types of persons:

美国移民法律针对两种类型的人有不同规定：

#### Non-Immigrants 非移民者

Persons coming to the U.S. for a temporary period of time for business or pleasure

短暂来美从事商务或旅游的人

Foreign Business visitors or tourists may travel under (i) the Visa Waiver program (aka ESTA) if they qualify or (ii) a B-1/B-2 visa in both cases so long as they are not coming to be employed in the U.S.

外国商务人员或游客可以 (i) 在有资格情况下免签（也就是ESTA）(ii) 申请B-1/B-2签证来美。两种情况下他们都不能在美国受雇佣。

Foreign employees coming to be employed in the U.S. commonly use one of five nonimmigrant business visa categories:

将在美国受雇佣的员工一般使用下面五种非移民类商务签证：

- L-1
- H-1B
- E-1/E-2
- O-1

#### Immigrants 移民者

Persons intending to remain in the U.S. permanently

有意向在美国永久居住的人

Lawful Permanent Resident “LPR” (or more commonly known as the “green card”) may be obtained in a number of ways, principally through employment or a family relationship.

合法永居 “LPR”（更为人熟知的“绿卡”）可以通过几种方式获得，一般通过雇佣关系或家庭关系。

The permanent residency process can take several years, so foreign nationals and employers should consider long-term plans as soon as possible.

合法永居权的过程可能需要几年，所以外国人士和雇佣者应该尽快为长期计划做打算。



# VISA & IMMIGRATION

## 签证和移民

### Common Non-Immigrant Visa Categories 常见的非移民类签证种类

#### Visa Waiver Program (“VWP” and commonly called “ESTA”)

##### 免签方案 (“VWP”，一般称为“ESTA”)

- Permits qualifying foreign nationals to engage in activities similar to those allowed under a B-1/B-2 visa, but without the need to obtain a visa from the U.S. Consulate abroad prior to the application for entry to the U.S.  
发给有资格的外国人士的许可，允许其在美国从事B1/B2签证允许的活动，但并不需要在赴美之前向国外的领馆进行申请获得签证。

- Available to citizens of most European nations, Japan and certain other foreign countries approved by the U.S.  
大多数欧洲国家、日本和某些其他国家的公民获得了美国的免签资格。

- Period of admission is up to 90 days without the ability to extend or change status while in the U. S. 留美时间最多为90天，在美期间不能延期或改变身份状态。

- VWP travelers must meet certain other requirements, including having a machine-readable passport and completing the Electronic System for Travel Authorization (“ESTA”) registration before traveling. In addition, foreign nationals who have traveled to certain designated countries may no longer be able to travel under the VWP program.

VWP的赴美人士还需要具备其他条件，包括需要有可被机器读取的护照和出行前完成旅游授权电子系统 (“ESTA”) 填写。此外，赴美人士如果来美之前去过某些国家可能失去免签资格。

#### B-1 Business Visitor B-1 商务签证

- Enables a business traveler to visit the United States for a short period of time (normally six months or less) with extensions possible in some cases.

让商务旅行者短期来美（一般6个月或更短），某些情况下可以续签。

- May, among other things, solicit sales (under certain restrictions) or negotiate contracts for the foreign company, and/or attend business meetings on behalf of the foreign company.

可以为外国公司进行销售（有一定限制），代表外国公司进行合同谈判，或代表外国公司参加商务会议等事务。

- May not work for a U.S. company in the U.S.  
在美期间不能为美国公司工作。

- May not be paid in the U.S. for services performed.  
不能获得美国公司的服务酬劳。

#### B-2 Pleasure, Tourism, Medical Treatment Visitor B-2 娱乐、旅游、医疗签证

- Enables a foreign citizen to visit the United States for a short period of time (normally six months or less) with extensions possible in some cases.

让外国公民短期来美（一般6个月或更短），某些情况下可以续签。

- Purpose of the planned travel is recreational in nature, including tourism, visiting friends or family, or medical treatment.

来美目的以娱乐为主，包括旅游、探亲访友或接受医学治疗。

***Often, the B-1 and B-2 visa will be combined and issued as one visa: (B-1/B-2 visa), but the individual's admission to the U.S. is in one or the other category.***

***通常B-1和B-2签证是合并成一个签证来颁发的 (B1/B2签证)，但是每个人被允许进入美国的签证的原因只能属于其中一类。***



# VISA & IMMIGRATION 签证和移民

## Common Non-Immigrant Visa Categories 常见的非移民类签证种类

### L-1 Intracompany Transferee Visa L-1公司人员调动签证

- Available for managers, executives and individuals with “specialized knowledge” of the company’s business or products coming to work in the U.S. which individual has worked abroad in such capacity with a qualifying affiliate for at least one year within the three years preceding admission to the U.S.

适用于来美工作的高层经理、高管、以及其他拥有“公司或产品特殊知识技能”的人员，申请人必须在提交申请的前三年内至少一年在美国境外为公司工作一年。

- Regulations limit the initial issuance of an L-1 petition to one year for individuals being transferred to newly-formed U.S. businesses (businesses that have been in operation for less than one year; so called “new office” L-1 petitions). All other petitions may be issued for an initial period of three years.

法规规定对于为美国新创立的公司（成立不满一年的公司；因此该签证也被称为“新公司”L-1签证申请）工作的人员，首次签证有效期通常为1年。其他现存公司，首次签证有效期通常为3年。

- Individuals who are managers or executives in L-1A status may stay in the U.S. for a maximum consecutive period of up to seven years; whereas individuals in L-1B status with specialized knowledge capacity may remain in the U.S. in L-1B status for a consecutive period of up to five years.

持有L-1A签证的经理或高管可以最多在美国逗留7年；有特殊知识技能的持有L-1B签证的个人可以最多在美国逗留5年。

- L-1 petitions are usually submitted first to U.S. Citizenship and Immigration Services and then, if approved, to the U.S. Consulate abroad for issuance of the L-visa. L-1

签证申请通常首先提交到美国公民和移民服务局。通过后由美国境外的领馆签发签证。

- L-1 Blanket: Employers with 3 or more domestic and foreign branches, subsidiaries, or affiliates and combined U.S. sales of \$25million, a U.S. workforce of 1,000 employees or have received approval of at least 10 L-1 petitions can request a blanket L approval. The blanket L allows eligible employees to bypass U.S. Citizenship and Immigration Service adjudication and apply for the L-1 visa directly with the consulate. The blanket provides significant savings in time and government filing fees.

**L-1 Blanket** 跨国公司集体调职签证：拥有3个或以上美国境内或外国分支机构、子公司或隶属机构并且销售额达到2500万美元，美国员工达到1000人或已经获准至少10个L-1签证的公司可以申请L类集体调职签证。L类集体调职签证可以允许满足申请条件的职员跳过美国公民和移民服务局的裁定，直接向领馆申请L-1签证。集体调职签证可以大大节省时间和政府申请费。

# VISA & IMMIGRATION

## 签证和移民

### Common Non-Immigrant Visa Categories 常见的非移民类签证种类

#### E-1/E-2 Trader or Investor Visa E-1/E-2 交易员或投资人签证

- Available to investors, executives, managers, or essential skill employees through treaties between the U.S. and various foreign countries.  
适用于与美国有协议的国家和一些其他国家的投资人、高管、经理、关键技术人员。
- The E-visa applicant must be of the same nationality as the ultimate foreign owner(s) of the U.S. company which will employ him or her in the U.S.  
E签证申请者必须和将雇佣他/她的美国公司的最终母公司是同一个国籍。
- The E-visa applicant must either be (i) the investor coming to direct and develop the enterprise or (ii) an executive, manager or essential skills employee of the U.S. business.  
E签证申请者必须或者是（i）来美监管发展企业的投资人，或者是（ii）在美公司的高管、经理、或特殊技术人员。
- An E-1 visa application requires proof that “substantial trade” between the U.S. and the treaty country is being carried out by the U.S. company.  
E-1签证申请者必须证明其工作的在美公司正在进行美国和协议国之间的“重大贸易活动”。
- An E-2 visa application requires a showing that a “substantial investment” has been made by an overseas company or by foreign nationals owning the Treaty entity in the U.S.  
E-2签证申请者必须证明海外公司或海外人士正在进行美国和协议国之间因为协议而产生的“重大投资活动”。
- An E-visa company registration and visa applications for individuals are usually made directly at the U.S. Embassy abroad, without having to file a petition first with the U.S. Citizenship and Immigration Service.  
E签证登记和申请通常直接在美国境外的美国使馆进行，不需要先在美国公民和移民服务局提交申请。
- E-visas are generally issued in increments of up to five years. However, they can be reissued indefinitely, so long as the trade or investment, the nationality, and the position requirements for eligibility continue to be met.  
E签证一般以增量最多5年签发。但是可无限续签，只要贸易项目、投资项目、任职资格一直符合条件。



# VISA & IMMIGRATION

## 签证和移民

### Common Non-Immigrant Visa Categories 常见的非移民类签证种类

#### H-1B Specialty Occupation Visa H-1B专业职业签证

- Available to individuals coming to the U.S. to be employed in specialty occupations.  
适用于来美被雇佣的从事“专业职业”的外国人士。
- Specialty occupations include those which require the services of a professional with a university degree (or equivalent), such as scientists, engineers, computer systems analysts, and some marketing specialists.  
从事“专业职业”的人员必须具有学士学历（或同等学历），比如从事科学研究、工程师、电脑系统分析员或其他市场营销等专业的人士。
- Employers sponsoring H-1B non-immigrants must obtain approval of a labor condition application from the U.S. Department of Labor in which the employer must attest, among other things, that it will pay the H-1B nonimmigrant the higher of the actual or the prevailing wage for the job.  
为非移民人士担保申请H-1B签证的雇佣公司必须向美国劳工部提交用工条件申请并获得许可，雇佣公司必须宣誓保证将支付该H-1B签证申请的非移民人士与市场价格一致或者比其更高的薪资。
- An H-1B visa may be issued for an initial three-year period and may be extended for an additional three years, for a maximum consecutive period of six years. (Note: This maximum period may be extended in certain circumstances if a permanent labor certification application (PERM) or I-140 immigrant petition has been filed and is either still pending or approved.)  
H-1B签证初始签发时长为三年，可以继续申请延长三年，最长持续有效期为6年（如果劳工证（PERM）或者I-140移民申请已经提交并在处理中或已经获得批准，这个最长期限可以被延长）。
- There is an annual cap on the number of new H-1B petitions that may be granted each fiscal year. In recent years the cap has been reached early in the filing season, so advance planning is critical for the H-1B category.  
每个财政年之内H-1B的可申请数量是有上限的。最近几年申请指标在申请季开始后很快就达到上限，所以提前规划是非常关键的。
- H-1B petitions are usually submitted first to U.S. Citizenship and Immigration Services and then, if approved, to the U.S. Consulate abroad for issuance of the H-visa.  
H-1B签证的申请通常首先提交给美国公民和移民服务局，如果申请通过，签证由美国境外的使馆签发。

# VISA & IMMIGRATION

## 签证和移民

### Common Non-Immigrant Visa Categories 常见的非移民类签证种类

#### **TN or NAFTA Visa** TN或NAFTA签证

- The TN or NAFTA visa permits citizens of Canada or Mexico to work in the U.S. in certain specialty occupations, such as lawyers, accountants or engineers.  
TN或NAFTA签证是签发给在美国从事专门职业的加拿大人或者墨西哥人，如律师、会计或工程师等。
- Canadian TN applicants may apply directly at pre-flight inspection or a port-of-entry and may be granted a three-year admission to the U.S.  
加拿大籍人士的TN签证申请可以在飞行前检查或者入境时直接申请，可以获准在美国逗留三年。
- Mexican TN applicants must apply with the U.S. Consulate in Mexico for a visa. Mexican TN applicants may be granted a one-year visa, but may be admitted to the U.S. for three years.  
墨西哥籍人士申请TN签证必须向美国驻墨西哥的领馆进行申请。签证有效期为1年，但是可以入境时获准在美国逗留三年。
- The TN status may be extended indefinitely so long as the foreign national has non-immigrant intent.  
TN签证可以无限期延长只要该外国人士无移民倾向。

#### **O-1 Extraordinary Ability Visa** O-1杰出人才签证

- Available to aliens of extraordinary ability, including exceptional ability in business.  
O-1杰出人才签证
- To obtain O-1 classification, the applicant must establish that he or she has achieved national or international acclaim.  
要获得O-1签证的级别，申请人必须证实他/她的成就获得了国际认可。
- An O-1 petition may be approved for an initial period of three years, and extensions may be granted in one-year increments.  
要获得O-1签证的级别，申请人必须证实他/她的成就获得了国际认可。

# VISA & IMMIGRATION 签证和移民

## Other Immigration Categories 其他移民类型

### **Dependents** 其他随行从属人员

Accompanying spouses and dependent children under the age of 21 will generally be eligible to apply for dependent non-immigrant visas (L-2, E-1 or E-2, H-4, O-3, or TD) which may be valid for the same period of time as the visa of the principal beneficiary. In most visa categories (except dependents of L or E principals), family members may not engage in employment in the U.S. while in dependent, non-immigrant status. A spouse with L-2 or E-1/E-2 status are eligible to work upon entering the U.S. and may apply for an employment authorization document by filing an I-765 application. A spouse in H-4 status is eligible to work once their respective spouse receives approval of the green card petition and must apply for an employment authorization document by filing an I-765 application with U.S. Citizenship and Immigration Services.

随行的配偶和小于21岁的随行子女一般有资格申请从属非移民类签证（L-2，E-1/E-2，H-4，O-3，或TD），其有效期同签证主要持有者一致。大多数的签证类型（除了L和E类）不允许家庭成员以从属人员和非移民人士的身份在美国就业。但是随行配偶如果获得了L-2或E-1/E-2签证，可以在入境美国后向美国公民和移民服务局提交I-765申请获得就业资格。随行配偶如果持有H-4签证，可以在自己配偶获得绿卡申请通过后获得就业资格，但仍必须向美国公民和移民局提交I-765申请。

### **Employment-Based Permanent Residency Processing** 就业类永居资格审核流程

Employment-based permanent residency cases generally require an indefinite offer of employment with a U.S. employer. Typical employment-based immigrant visa cases include EB-1 petitions for Extraordinary Ability Aliens, Outstanding Researchers or Multinational Executive/Manager Transferees and EB-2 or EB-3 cases for advanced degree professionals, professionals, or skilled workers through the PERM Labor Certification process. Each permanent residency case is unique and circumstances should be evaluated on a case-by-case basis.

就业类永居资格的申请一般要求美国雇主给与无限期的雇佣。典型就业类移民签证包括有杰出才能的外国人、杰出科研工作者、跨国公司高管/经理调任者可申请的EB-1绿卡；高学位专业人士、有杰出能力的专业人士、高技能工作者获得的劳工证（PERM）后可申请的EB-2或EB-3绿卡。每一个永居身份的申请都有其特殊性，都需要按照各自的情况具体分析对待。



# CORPORATE PREMISES

## 公司所需驻地问题



**The company will, of course, need premises from which to operate.**  
公司的经营自然需要合适的场所。

Office space and flex space (for office/warehouse) are generally available in the U.S. Warehouse and production facilities may also be available, depending on the supply in each particular location. There are often numerous options for land on which to build a warehouse or production facility.

办公空间和多用空间是在美国是可以拿到的。库房和生产车间根据不同地点情况也可以找到，并且会有很多土地供选择来建造库房或生产车间。

Various economic development organizations, chambers of commerce, site selection consultants and real estate brokers are available to work with a foreign company to find the location best suited for its particular needs.

不同的经济开发相关机构、商会、选址顾问和房地产中介都可以同外国公司合作为不同的需求选择地址。

### Leasing Office Space 租赁办公地址

Leases for office space or manufacturing, warehouse or retail facilities will often be lengthy documents containing many legal provisions.

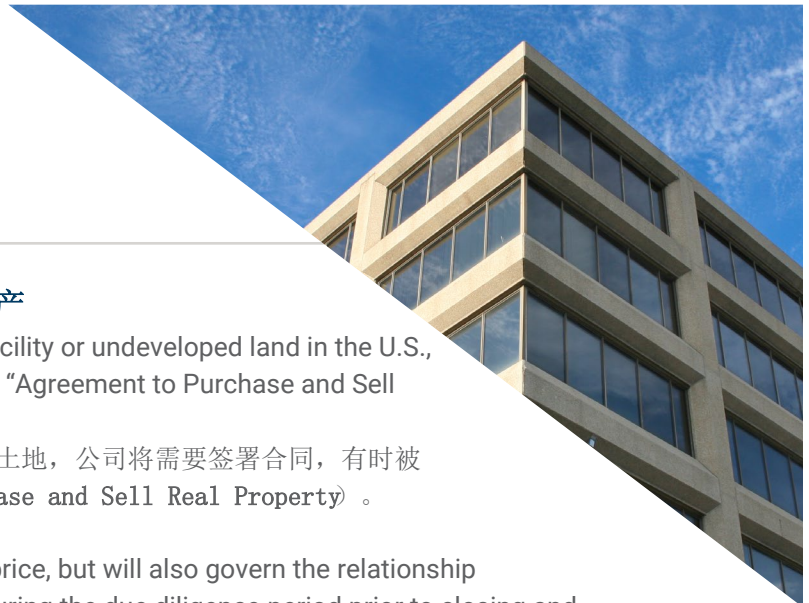
租赁办公空间、库房和零售用途的场地的租约通常会是一份包含众多法律条款的冗长文件。

- Landlords will typically provide the first draft of a commercial lease; however, the landlord's form will often be drafted heavily in its favor.  
一般房东提供商业租约的初稿，但是房东的公司拟定的租约会非常倾向于保护房东的利益。
- Landlords are generally reluctant to make extensive revisions to their form depending on the market and bargaining positions.  
房东一般会基于市场情况或谈判地位而不情愿为租约做大量修改。
- Some lease provisions on which a prospective tenant should focus in a lease negotiation include:  
潜在租户在租约谈判中应该注意的几个条款有：
  - Business terms, such as rent (including future increases), term, the tenant's right to alter the leased premises, options to expand the size of the leased premises, early termination rights, tenant renewal options, rent concessions, upfit allowances, and the tenant's required contribution toward the landlord's insurance, real property tax, repair costs, and common area maintenance expenses.  
商业条款，比如租金（包括未来租金的增长）、租期、租户可对租用场地的改建权利、可扩大租用范围的选择、提早结束合同的权利、续租的选择权、租金的让步、场地改造补贴、租户需要为房东分担的保险、房产税、维修费和公共区域的维护费用等。
  - Legal issues, including the allocation of various risks between landlord and tenant in the insurance and indemnity provisions, the tenant's sublease and assignment rights, authorized uses of the premises, and landlord remedies upon a tenant default under the lease.  
法律问题，包括保险中相关风险和赔偿在房东和租户之间的划分，租户转租和转让的权利、规定场地使用目的以及租户违约时对房东的补偿措施等。



# CORPORATE PREMISES

## 公司所需驻地问题



### **Purchasing Real Property 购置不动产**

If a company decides to purchase an existing facility or undeveloped land in the U.S., it will enter into a contract, sometimes called an “Agreement to Purchase and Sell Real Property.”

如果公司决定在美国购买现有设施或者未开发的土地，公司将需要签署合同，有时被称为“不动产买卖协议”（Agreement to Purchase and Sell Real Property）。

The contract will not only dictate the purchase price, but will also govern the relationship between the prospective purchaser and seller during the due diligence period prior to closing and may include seller warranties which survive the closing. Typically, the purchaser’s lawyer prepares the initial draft of the contract.

本合同不仅将决定购买价格，也同时管理潜在买方和卖方从尽职调查期间到交易完成的关系，并且可能包括在交易完成后继续有效的卖方保修条款。一般情况下，买家的律师起草合同初稿。

Due diligence activities may include: a title search; property survey; phase I environmental study; feasibility study (including a geotechnical/soils report and architect and engineering evaluation); property appraisal; obtaining financing commitments; and, if it is an income-producing property, a review of rent and other historic financial information.

尽职调查可能包括：所有权调查；地籍测量；第一阶段环境调查；可行性调查（包括地质/土壤报告和建筑与工程评估）；资产评估；获得融资承诺；如果不动产是收入型房产，还需要有房租评审和其他历史财务信息报告。

A common provision for the benefit of the purchaser of the property is that the purchaser is only required to close on the sale if the due diligence examination yields results satisfactory to the purchaser. A purchaser is customarily provided with a “free look” during the due diligence period and can obtain a refund of its earnest money deposit (sometimes less a testing fee) if, before the expiration of the due diligence period, it decides not to proceed with the purchase of the property.

通常对于购买者有利的一个条款是只有购买者对调查结果的结果满意他/她才有义务完成交易。购买者等于在尽职调查阶段可以获得“免费审查”不动产的权利，并且如果在尽职调查结束之前决定退出交易，付过的保证金（有时减去尽职调查花费）可以被退回。

Typically, the seller of the property pays the real estate broker commission to both the seller’s and buyer’s real estate brokers. The purchaser does not pay its broker.

通常情况下，出售者承担出售者和购买者两方的房地产中介费。购买者不需要付中介费。

# SITE SELECTION & INCENTIVES

## 选址&政府对纳税、增加就业和基础设施的优惠政策

Parker Poe's Site Selection and Incentives services are crafted to each client and project, and can range from a full site selection process to review and assistance with documenting and closing incentive offerings. Parker Poe assists both domestic and foreign companies with the negotiation of incentives for projects targeting locations in the U.S., Canada and Mexico.

**Parker Poe**在选址和与政府谈判纳税和对企业可提供的优惠政策方面的服务是根据每个客户量身定制的。服务范围可以包括整个选址过程、审阅和协助起草文件以及完成与政府达成的有关优惠政策的协议。**Parker Poe**服务了众多在美国、加拿大和墨西哥选址办企业的国内外客户，为他们提供与政府谈判的服务。



### Site Selection 选址

**Parker Poe** and its non-legal subsidiary (**Parker Poe Consulting LLC**) often work with the client's site selection team to evaluate the legal aspects of various sites. These services often include:

**Parker Poe**律所及其非法律业务子公司（**Parker Poe**咨询）经常与客户的选址团队合作来评估各种选地的法律问题。这些服务包括：

- A preliminary review of relative real estate, infrastructure, labor, environmental and regulatory issues. Including Parker Poe early in the site selection process can save the company valuable time and money. We can often swiftly spot unusual environmental conditions and local regulations which might, in comparison to other sites, cause additional project delay and generate additional costs.

初步评审相关不动产、基础设施、劳工、环境和其他法规相关问题。在选址早期有**Parker Poe**的参与可以为您节省时间和金钱。我们通常能迅速发现不寻常的环境状况，或者与其他选地相比可能造成额外工程拖延或产生额外花费的当地法规政策。

- Once a short list of desirable sites has been identified, Parker Poe can prepare a project management timeline capturing the steps necessary to efficiently execute the legal aspects of the project.

在选择好几处候选地后，**Parker Poe**将准备项目管理的大事表，标记出法律方面需要执行的必要步骤。

- A review and negotiation of legal documents for the purchase and development of the site, through closing on the purchase.

审阅以及谈判购买及开发选地的法律文件，直到交易成功。

### Incentives 政府对纳税、增加就业和基础设施的优惠政策

Incentives are often a part of the site selection process. Parker Poe frequently performs the following incentive-related services for clients:

政府的激励和优惠政策经常是选址需要考虑的部分。**Parker Poe**通常在这方面为客户提供以下服务

- Assisting the client to negotiate incentives offerings.  
协助客户同政府谈判优惠条件。
- Providing the client with a comparative analysis of incentives offerings from various state and local governments, reflecting the true and current value of these packages.  
为客户提供不同州或地方政府提供条件的比较分析，从而反映每个优惠条件组合的真实价值。

# SITE SELECTION & INCENTIVES

选址&政府对纳税、增加就业和基础设施的优惠政策

- Setting out the performance goals and compliance steps required to receive the incentives. Assisting the client with the preparation of either a non-binding Memorandum of Understanding (“MOU”) or a binding Performance Agreement memorializing all significant state and local economic development incentive agreements and promises made to the client by governmental representatives and third parties.

列出要获得这些激励政策和优惠条件所需要达到的目标和遵循步骤。协助客户起草无约束力的“合作备忘录”（MOU），或者有法律约束力的“执行协议”，列出所有重大意义的情况，地方经济发展优惠政策协议，以及客户为获得优惠政策需要对政府或其他第三方所做的承诺。

- Reviewing and negotiating legal documents for the incentives prior to the announcement of the project and the closing on the land or facility.  
在项目宣布之前到土地或设施交易完成整个过程中进行审阅和起草有关政府激励优惠政策的法律文件。
- Assisting the client with compliance once the incentives have been finalized and the project announced.  
优惠政策一旦敲定，项目被宣布后，协助客户照章行事。

**A wide variety of state and local financial and tax incentives are available for new, expanding and, in some cases, retained businesses. The type and amount of incentives is generally driven by:**

州和地方为新的、不断扩大的、甚至有时是一直留存的公司提供多种多样财政和税务优惠政策。影响政策的要素有：

- Number of new jobs created or retained,
- Amount of wages paid,
- Amount of capital to be invested, and
- State and location of the project.
- 增加就业或保持就业的数量,
- 支付工资的数目,
- 投资额的大小,
- 项目所在州或地方的选址。

**State and local incentives can range from individually tailored legislative incentive packages for large projects to statutory incentives for smaller projects. Many incentive packages are negotiated. The incentives depend on the project and the policies of the respective state and local governments, and some examples include:**

州和地方的优惠政策形式多样。对大的项目会有单独为其定制的优惠套餐，对相对小的项目有法定的优惠政策。很多优惠政策是谈判的结果。优惠政策取决于项目本身以及州和地方政府的政策。具体例子包括：

- Non-refundable and refundable tax credits,
- Tax abatements,
- Grants,
- Low interest loans and bond financing,
- Training assistance,
- Research and development support, and
- Land (in some cases).
- 不可返还金额的和可返还金额的税务抵免金
- 税务减免,
- 政府津贴
- 低息贷款和债务融资
- 培训支持
- 研究和开发支持
- 土地（某些情况）

# EMPLOYMENT

## 雇佣招聘



The U.S. laws regarding the employment of workers are generally less restrictive than in most foreign countries. Federal law applies throughout all states. State laws, and sometimes local laws, also can regulate employment practices.

美国雇佣员工的法律相对比其他大多数国家的更加宽松。联邦法律在全国通用，州法律、有时地方法律也会管理约束行为。

Some states are “right to work” states which means that the right of a person to work for a particular company cannot be denied solely because of the employee’s membership or non-membership in any labor union, organization or association. This is beneficial to employers because it discourages the formation of labor unions. Other states allow agreements with unions to make employment conditional upon union membership.

有些州是“工作权”州，“工作权”意思是一个人为某个公司工作的权利不能因为此人属于或不属于某个工会、组织或社团而被否决。这对雇主是有利的，因为这不鼓励工会的建立。有些其他州允许雇佣条件基于工会会籍之上。

### Legal issues which should be considered when hiring and terminating employees in the United States:

在美国雇佣或结束雇佣员工时需要考虑的法律问题有：

#### “Employment at Will” Doctrine

##### “自由雇佣”原则

- Most states follow this doctrine.  
大部分州遵循此原则。
- It means that without an agreement as to the term or length of employment, an employee can be terminated by the employer, with or without cause, at any time, except for certain illegal reasons.  
意思是如果没有协议规定雇佣的期限或长度，雇员可以被雇主在任何时间雇佣，不管是否有理由，除非是雇主出于某些非法原因结束雇佣。
- Employment agreements with *non-executive* employees are not common in the U.S. and often an employment offer letter is used as an alternative.  
在美国与非高管人员签订雇佣协议是不常见的，录用通知书通常作为该用途使用。
- Written employment agreements with executive employees are more common. These often include provisions such as salary, benefits, length of employment, notice period for termination, covenants not to use or disclose confidential information, and covenants not to compete.  
高级管理人员通常会提供给书面雇佣协议。条款通常包括工资、福利、雇佣期限、雇佣终止提前通知时间，不得使用或透露公司机密的条款，和反竞争条款。



# EMPLOYMENT

## 雇佣招聘



### Covenant Not to Compete 反竞争条款

- An agreement by an employee not to compete with the employer in certain ways for a period of time after the employment relationship ends.  
规定员工在与雇主结束雇佣关系后以某些方式、在一定时间内避免与前雇主竞争的协议。
- Strictly construed by the courts, but it is generally enforceable in many states if it is in writing, supported by consideration, protects a legitimate business interest, reasonable as to the scope of the restricted work, the duration of the restriction and the territory, and does not violate a public policy of the state.  
法庭会严格解析该条款，但是如果是以书面形式呈现，有现实情况做支持，保护正当的经济利益，被限制的工作范围、时间长度和地区合理，并且不违反州的公共政策，条款在很多州是可以被执行的。
- To be enforceable, a covenant not to compete must be designed to protect a legitimate business interest of the employer — typically, confidential information or goodwill/customer relationships.  
要让反竞争条款具有可执行性，条款需要设计为保护雇主正当的经济利益——通常为商业机密或商誉/客户关系。
- In a number of states, the offer of employment generally is adequate consideration for the covenant not to compete if the covenant not to compete is signed by the employee prior to beginning employment.  
在众多州中，如果员工在雇佣关系开始之前签署了非竞争条款，录用通知书作为该条款的对价就已经足够了。
- A covenant not to compete executed after the employment relationship has begun will require, in most states, new consideration, such as specific additional salary or benefits or other compensation.  
如果雇佣关系已经开始，反竞争条款要再实施，大部分州要求增加新的对价，比如具体的薪资、福利或者提供其他形式的报酬。
- The restrictive covenants often include promises not to solicit customers or employees for a competitor for a set period of time following the end of employment.  
条件一般约束员工承诺在雇佣关系结束后一段时间内不为竞争对手招揽原来的客户或员工。
- The terms of the covenant not to compete should be carefully drafted, with the assistance of legal counsel, to address the requirements for enforceability pursuant to specific state law.  
反竞争条款需要在法律顾问的协助下谨慎撰写，使条款能依据州的特定法律要求达到可执行的条件。

# EMPLOYMENT

## 雇佣招聘



### Written Confidentiality Agreement 书面保密协议

- Most every U.S. state has a trade secret protection act that prohibits employees from using or disclosing information of the employer which is confidential and proprietary. A new federal law provides additional protections against disclosure of trade secret information that has been designated as such by the employer.  
大部分美国的州都有商业机密保护法案，禁止员工使用或透露雇主的机密和私有信息。有几条联邦法律也为保护雇主规定为机密的贸易信息提供额外的保护。
- Nevertheless, many employers require their employees to sign a written confidentiality agreement at the time the employee begins employment, since it provides the company additional protection through the contract. 尽管如此，很多雇主仍然要求员工在开始受雇佣时签订书面的保密协议，以此书面合同的形式为公司提供多一重保障。
- An Employee Handbook (discussed below) can also set forth the employer's position with regard to protection of confidential information.  
员工手册（下面将提到）也可以阐明雇主对于公司保密信息的立场。

### Federal & State Discrimination Laws 联邦&州的反歧视法律

- Protect employees (and prospective employees) from discrimination based on factors such as age, race, gender, religion, national origin, sexual orientation and physical or mental disabilities.  
这些法律保护员工（潜在员工）不因年龄、种族、性别、宗教、地域、性取向或身体/精神残疾而受到歧视。
- Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act are examples of some federal anti-discrimination laws.  
联邦反歧视的法案有1964年的人权法案、就业年龄歧视法案、美国残疾人法案等例子。

### Other Employment Issues

- The **amount of wages** to be paid to an employee is established by the employer, generally based on market and industry practices (although state and federal laws set a minimum wage that is consistently applied to all industries). 支付给员工多少工资是由雇主决定，通常以市场和行业惯例为依据（虽然州和联邦有针对全行业的最低工资的法律规定）。
- For employees who do not fall under a specific exemption, **overtime** must be paid after 40 hours of work in a given week at a rate of one and one-half times the employee's regular rate. The employer should determine at the beginning of employment whether the employee is exempt or non-exempt for overtime based on the application of specific regulatory provisions.  
对于没有特殊豁免的员工，每周超过40小时之外加班费是必须付的，超出工时的工资应为普通工资的1.5倍。雇主要在雇佣关系建立之初根据相关法规确定该员工是否免于支付加班费。
- In addition, the employer must withhold a certain percentage of the employee's income to pay certain federal and state taxes and make periodic filings to government agencies regarding the wages of each employee.  
另外，雇主需要代扣一部分员工收入来支付某些联邦和州的税，并定期向国家机关上报每一个雇员的工资。

# EMPLOYMENT

## 雇佣招聘

### Health Insurance 健康保险

- Federal law generally requires employers with **50 or more full-time employees or full-time**

**equivalents** to offer full-time employees and their dependents affordable health coverage that meets certain standards or the employer must pay significant penalties.

联邦法律一般要求雇有50个全职员工或相当于该数量的全职员工的雇主为员工和他们的家属提供价格合理并达到一定标准的健康保险，否则该雇主就要面临大笔的罚款。

- The analysis of whether an employer has the requisite number of employees to be subject to these rules is conducted on a “controlled-group” basis (meaning that an employer must count employees of certain related companies as if they were its own employees). For example, a foreign company with several subsidiaries in the United States must aggregate the employees of the parent and all subsidiaries who work in the United States for purposes of complying with these rules. 分析一个雇主是否满足必要的员工数量并受法规管制的标准叫做“控制组”基准 (controlled group)

(意思是雇主需要将某些相关公司的员工看做自己的雇员一样来计算人员数量)。比如，一个外国公司在美国有几个分公司，那么母公司和所有子公司的员工都要计算在内，并以此数量来履行美国法规的要求。

- Other than health insurance for employers with over 50 employees, employers are not generally required to grant employees any specific benefits. In practice, however, employers may offer certain benefit packages as an incentive for employees to work for them. These benefits generally include one or more of the following: medical insurance, dental insurance, disability insurance, and profit sharing and retirement plans.

除了健康保险之外，雇有50个员工以上的雇主一般没有义务向员工提供其他特别的福利。然而在实践中，雇主可能需要再提供一些福利项目来吸引员工。

- Larger employers may be required to offer eligible employees unpaid job-protected leave from work due to childbirth, serious illness or military service. 更大规模的雇主有可能要提供生育、重病或兵役的带薪假期给符合条件的员工。

### Employee Handbook 员工手册

- The **amount of wages** to be paid to an employee is established by the employer, generally based on market and industry practices (although state and federal laws set a minimum wage that is consistently applied to all industries).

支付给员工多少工资是由雇主决定，通常以市场和行业惯例为依据（虽然州和联邦有针对全行业的最低工资的法律规定）。

- For employees who do not fall under a specific exemption, overtime must be paid after 40 hours of work in a given week at a rate of one and one-half times the employee's regular rate. The employer should determine at the beginning of employment whether the employee is exempt or non-exempt for overtime based on the application of specific regulatory provisions.

对于没有特殊豁免的员工，每周超过40小时之外加班费是必须付的，超出工时的工资应为普通工资的1.5倍。雇主要在雇佣关系建立之初根据相关法规确定该员工是否免于支付加班费。

- In addition, the employer must withhold a certain percentage of the employee's income to pay certain federal and state taxes and make periodic filings to government agencies regarding the wages of each employee.

另外，雇主需要代扣一部分员工收入来支付某些联邦和州的税，并定期向国家机关上报每一个雇员的工资。

# ENVIRONMENTAL

## 环境相关问题



**Businesses locating in the United States need to understand their obligations under applicable federal, state and local environmental laws.** Environmental regulations tend to

be more detailed in the U.S. than in many other countries. In large part, the federal government creates environmental regulatory programs, although each state and some local governments may have their own environmental laws. Many states are granted authority from the federal government to implement and apply the federal laws. Common environmental laws include the federal Clean Water Act and Clean Air Act as well as other statutory programs aimed at the regulation of activities generating or storing hazardous waste or the underground tank storage of petroleum and hazardous substances.

在美国经营的公司需要了解适用于自己的联邦、州和地方的相关环境法所规定的环境方面的义务。美国的环境法规比其他国家的更加具体细致。大体上，联邦政府制定环境法规，每个州和地方政府也可能有他们自己的环境法。很多州允许联邦政府来实施和应用环境法。普遍适用的环境法包括联邦的《清洁水法案》和《清洁空气法案》以及其他成文的法案，致力于规范产生或存储有害废弃物、地下罐储石油或其他有害物质的行为。

### Permits 许可证

- When purchasing or constructing facilities, permitting issues should be considered at the beginning of the **planning process**. The time for obtaining a permit can vary from weeks for a simple **sedimentation control permit**, to many months for a complicated air emissions permit or wetlands permit.  
在购置或建设设施时，许可证的问题需要在最开始进行计划。许可证取得的时间可能需要几周如简单的沉淀控制许可证，到几个月如复杂的空气排放许可或者湿地许可证。
- For example, air emissions permits need to be obtained **before** starting construction if the potential emissions from the facility exceed certain regulatory thresholds.  
例如，如果设施需要排放的空气超过某些法规的门槛，空气排放许可证需要在施工开始之前提前获得。
- Spill prevention plans need to be prepared and in place before beginning operations at facilities that use or store petroleum or any other type of oil in excess of certain threshold amounts if there is a chance of an oil spill reaching streams or other surface waters.  
使用或存储石油或其他油类超过一定门槛的设施如果有可能发生油污泄漏并可能污染河流或其他地表水，泄漏预防方案需要在设施运营开始之前准备好。
- Special pre-construction permits may be required in coastal counties under state coastal management laws.  
沿海的郡县要求按照州沿海管理法律在施工前取得特殊许可。
- Additional land use or zoning restrictions may apply in certain localities.  
额外的土地使用或分区规划的规定有可能在有些选地中适用。
- For businesses buying **existing operations**, environmental permits can sometimes be transferred to the new owner. However, the permits needed to continue operations should be identified and the transfer procedures initiated well in advance of the purchase so that permit transfers or new permits can be in place at closing. Operating with a permit in the former owner's name can lead to significant liability. In addition, certain permits cannot be transferred, requiring a new owner to obtain a new permit prior to operation.  
对于收购现有运营中设施的公司，环境许可证有时可以被转让给新的所有者。但是，能让设施继续运行的许可需要提前识别出来，许可的转让手续在收购之前要开始进行，以便在收购结束时完成转让或取得新的证件。用设施前所有者名下的许可证有可能导致重大责任的产生。此外，某些许可证是不可以转让的，需要新的所有者在开始运营之前重新申请新的许可证。



# ENVIRONMENTAL

## 环境相关问题



### Pre-Purchase Environmental Reviews 收购前环境评审

- Necessary to cover legal issues that extend beyond permitting.  
很有必要的步骤，以覆盖除了许可证之外的其他法律事务。
- The United States has a strict liability scheme applicable to owners of property contaminated with certain hazardous substances. Innocent purchasers may have a defense to liability for pre-existing contamination only if they perform investigations that meet statutory standards and do not uncover contamination. If contamination is uncovered, certain defenses may still apply, but the potential liability needs to be assessed prior to purchase, and measures to protect against that liability, such as indemnity agreements, brownfields agreements, or insurance, should be considered.  
美国对于持有有害物质污染的地产所有者实行一套严格的责任制度。如果购买者按照法规标准事先进行了调查但是没有发觉污染，无辜的购买者可能可以为以前存在的污染对自己的责任进行辩护。如果污染被发现，仍然可以对责任做一些辩护，但是潜在的责任需要在购买前评估好，提前考虑好保护自己免受责任的条款，比如补偿损失条款、棕地协议或保险等。
- Early environmental review can help determine if there is some prohibition or requirement for construction or development of a property. For example, Clean Water Act rules prohibit construction activities without approval from the United States Army Corps of Engineers if those activities disturb certain “wetlands.”  
提早做环境评审可以确定某块地产是否有建筑或开发方面的限制或要求。比如，如果实施的建筑活动会破坏某些“湿地”，《清洁水法案》禁止在取得美国陆军工程兵团的允许之前进行施工。
- An environmental consultant can assist with the environmental review, and Parker Poe can work closely with them in order to evaluate and advise on the legal ramifications.  
环境咨询师可以协助环境评审，Parker Poe可以从旁协助，以便提出法律方面的建议。
- Some purchasers elect to purchase environmental insurance to reduce the risk of environmental liabilities associated with real property.  
很多购买者选择购买环境保险以降低与地产相关的环境方面的风险。

# ENVIRONMENTAL

## 环境相关问题

### Operations & Environmental Regulations 运营&环境法规

- Once properly permitted operations begin at the facility, companies also need to be aware of the environmental regulations governing their operating activities, both under the permits and those that extend beyond the requirements of any environmental permit.  
获得了许可的设施一旦开始运营，公司仍然需要熟知管辖其运营行为的环境法规，不管是在许可证规定下的法规还是在许可证之外的法规。
- For instance, manufacturing companies that generate waste typically do not need a permit for that activity, but they are obligated to determine which of their waste streams meet the definition of “hazardous waste” and to follow complex rules for storing, transporting and disposing of such waste.例如，产生废物的制造企业一般不需要为产生废物取得许可证，但是他们有义务自己识别哪些废弃物符合“有害废弃物”的定义，并需要遵守哪些复杂的存储、运输和处置的规则。
- Spills of oil or hazardous substances may need to be reported to government agencies depending on the amount spilled, but if certain thresholds are exceeded, stringent reporting requirements may apply.根据泄漏的多少，油或者有害物质的泄漏有可能需要上报给政府机构。但是如果泄漏的量已经超过一定门槛数值，可能需要遵循更严格的上报要求。
- The import, export, transportation and use of certain chemicals involve various environmental and health and safety regulations. For example, certain chemicals that are not incorporated into the company's products may need to be reported if regulatory thresholds are exceeded. Safety Data Sheets (“SDS”) for certain chemicals (and products made with or containing certain chemicals) need to be obtained from suppliers and prepared for use by the company.  
进口、出口、运输和使用某些化学物品涉及各种环境、健康和安全的法规。比如某些不被混合到公司产品中的化学物品如果超过门槛数量可能需要上报。某些化学物质（或含有某些化学物质的产品）需要带有供货商提供给公司使用的《安全数据表》（“SDS”）。
- Records concerning certain chemicals may need to be maintained at the facility.  
生产设施中可能需要保存某些化学物品的记录。

**To keep up with the variety of complex regulations, companies sometimes prepare environmental management manuals and institute training programs. We often work with companies and their consultants to identify and manage these types of compliance issues.**  
要做到随时遵守各种复杂的法规，公司有时需要准备环境管理手册，并制定培训方案。我们经常同客户公司及他们的咨询公司合作，识别并处理法规遵守方面的各类问题。



# PRODUCT LIABILITY 产品责任问题

**There has been much publicity worldwide about U.S. product liability laws.** Product liability claims are different than contract or warranty claims and, as such, anyone who has designed, manufactured, sold or serviced the product is potentially liable in the U.S. for product liability claims. Liability can include compensatory damages (to compensate the injured party) as well as punitive damages (to punish the party at fault). There are a number of theories for product liability claims and many states follow the doctrine of “strict liability.” This doctrine means that if an individual is injured or property is damaged by a defective product, anyone who has designed, manufactured, sold or serviced the product is potentially liable regardless of the degree of care used in the testing, manufacture, marketing, sale or servicing of the product.

针对美国有关产品责任的法律有诸多相关文章和报道。产品责任索赔不同于合同或者质保期索赔，任何人在美国设计、制造、售卖或为产品提供服务都有可能要面对产品责任的索赔。责任可能包括损害性赔偿（补偿伤者）和惩罚性赔偿（惩罚过错方）。针对产品责任索赔有很多理论，很多州遵循“严格赔偿责任”原则。这个原则意思是，如果因为一个有缺陷的产品造成个人受到伤害或者财产受到损失，任何设计、生产、售卖或为产品提供服务的各方都有可能需要承担责任，不管在产品检测、生产、营销、售卖或为产品提供服务时有多谨慎。

## Managing Product Liability Risk 管理产品责任风险

Product liability is a fact of life in the United States, and there is no way to eliminate this risk. There are, however, many ways to manage the risk:

产品责任风险在美国是不可改变的事实，并且没有办法完全将风险排除。但是，是有办法管控风险的：

- Build well-designed, quality products with appropriate safety devices and warning labels.  
制造设计周到、高质量、有恰当安全装置和警告标识的产品。
- Carefully draft promotional materials and instruction manuals on operation, use and safety.  
谨慎撰写营销材料和运行、使用及安全说明书。
- Obtain product liability insurance for the U.S. market to complement, not as an alternative to, the other ways of managing product liability risk.  
购买产品责任保险来补充但并非取代其他控制风险的措施。
- A general liability policy without “product liability/completed operations” will not cover the company for product liability claims.  
没有“产品责任/完工责任”的一般责任政策是不能保护公司免于产品责任索赔的。
- Policies should cover all types of liability (including punitive damages) and exclusions from coverage should be evaluated.  
政策应该涵盖所有类型的责任（包括惩罚性责任），并且应该对没有涵盖到的责任做评估。
- The U.S. subsidiary needs to be covered by the insurance, and the other group companies also need to be covered.  
美国的分公司需要包含在保险范围内，并且其他涉及的集团公司也需要在投保范围内。
- U.S. insurance policies normally cover the costs of defense outside the limits of insurance.  
美国保险政策一般规定即使索赔额超出保额范围，辩护费用仍然是被在保险范围内的。
- Customers will often require a Certificate of Insurance from the U.S. Subsidiary for Product Liability. Coverage or policies from Europe will often not be accepted by customers.  
顾客经常要求提供一份美国分公司的产品责任保险单，提供欧洲的保单或保险政策一般是不被顾客接受的。
- Evaluate implementing coordinated global insurance policies. Global policies can provide better protection for the group and may be more cost effective. A “standalone” U.S. policy will not protect the foreign parent company and affiliates.  
评估执行全球的保险政策。全球保险政策可能使集团受到更好的保护，并且更加划算。一个“独立的”保险政策是不能保护母公司和其他附属公司的。
- Periodically perform safety audits of the company’s practices, procedures and products.  
定期对公司的操作行为、步骤和产品进行安全审核。



# COMMERCIAL TERMS 商业条款



## Terms of Sale 销售条款

- The U.S. business will need terms and conditions of sale (“Terms of Sale”) which comply with U.S. law. Terms of Sale should apply to both products and services.  
美国公司需要有符合美国法律的销售条款 (“Terms of Sale”)。该条款应该同时适用于产品和服务。
- Nearly all 50 states have adopted (with some modifications) the Uniform Commercial Code (“UCC”), a uniform set of statutes governing the sale of goods. The rules codified in these state statutes must be followed when selling in the U.S.  
基本所有50个州都（在做了一些修改之后）采用了《美国统一商法》（“UCC”），这是管理销售货品的统一法则。在美国进行的销售活动必须遵守这些州的成文法律。
- **Literal English translations of foreign terms are not sufficient and may not be enforceable in the United States because the legal principles involved can be very different.**  
**翻译成英文的外国条款是不够的，而且可能在美国不能适用实施，因为涉及的法律准则可能非常不同。**
- U.S. Terms of Sale should be incorporated into all sales documents and should include common commercial terms as well as limitations of warranties and exclusions of certain damages.  
美国的销售条款应该体现在所有的销售文件上，并且应该包括一般的商业条款、保修的限制和排除某些损害情况。国外的销售条款在用在美国市场前应该被认真评估，并且仅在外国公司为美国市场提供产品或服务的前提下。
- Actual sales documents (i.e., quotations and order confirmations) can include terms specific to a transaction and thereby modify specific provisions of the Terms of Sale.  
实际的销售文件（如报价和确认订单）可以包括交易具体的条款，因此需要修订具体的销售条款。
- Terms of Sale should be drafted consistent with the company’s operations and products and with terms of sale in the marketplace.  
销售条款的撰写应该与公司的运营和产品保持一致，与市场环境下的销售条款一致。
- Sales procedures and appropriate sales documentation should also be implemented and consistently followed to maximize the likelihood that the company’s Terms of Sale will apply to the sale transactions. Many customers will include with their purchase order a set of buyer terms of purchase. The company should understand the interplay between the company’s Terms of Sale and the buyer’s terms of purchase and the potential for conflict resulting in a “battle of the forms.”  
销售程序和恰当的销售记录应该被贯彻并始终如一地执行，以最大化保证公司的销售条款在交易中被遵守。很多顾客在采购时会需要一份买方购买条款。公司需要明白销售条款和买方条款之间的相互关系和可能引起“合同形式之争”的风险。公司应该采取措施来降低“合同形式之争”的风险。
- If the foreign company (or a foreign affiliate), rather than a U.S. entity, sells the products or provides services in the U.S., its foreign terms of sale should be evaluated for use in the U.S. market.  
如果外国公司（或其附属公司）在美国实际销售产品或提供服务，应该评估一下其国外的销售条款是否能在美国市场使用。

## Terms of Purchase

The company should also use terms and conditions of purchase (“Terms of Purchase”) when purchasing products or materials. These Terms of Purchase are particularly useful for frequent purchases of sophisticated products or materials used in the entity’s operations or production. The company should understand the potential for the “battle of the forms” when using its Terms of Purchase.

公司应该在购买产品或材料时使用购买条款 (“Terms of Purchase”)。这类条款在公司频繁采购时或采购公司运营或生产使用的复杂精密产品或材料时非常有用。公司在使用购买条款时应该了解潜在的“合同形式之争”的风险。

# COMMERCIAL TERMS 商业条款



## Sales Representative, Distribution & Supply Agreements

### 销售代表、分销和供应协议

In addition to documenting the terms of each sales contract, the U.S. business should evaluate its distribution model for the U.S. marketplace and implement agreements reflecting the method of distribution and sale. Common models of distribution and sale include:

除了要用文字记录每一份销售合同的条款，在美经商的公司还应该评估在美国市场的分销模式并用相应的合约执行其分销和销售方略。常见的分销和销售模式有：

- Independent Sales Representatives
- Independent Distributors
- Supply Agreements with End-Users
- 独立销售代表
- 独立经销商
- 与最终用户的供应协议

We recommend the U.S. business have written agreements. This helps to reduce the risk of omissions or misunderstandings and follows the common U.S. “freedom of contract” approach to contracts. Forms (and translations) of agreements from overseas should not be used because the legal principles and statutory protections in the U.S. are very different.

我们建议在美公司使用书面协议。这样能帮助减少疏漏或误会产生的风险，遵循美国“契约自由”的原则。国外的协议（或翻译件）不应该被使用，因为美国的法律原则和法令是非常不一样的。

Each type of agreement will be different to reflect the type of relationship. At the same time, some common considerations in all of these types of agreements include:

每一种不同的协议反映不同类型的关系。同时，所有不同类型的协议中经常被提及的关键点有：

- Description and quantity of goods
- Price or commission and payment
- Delivery terms
- Warranty
- Any laws specifically applicable to the products or services
- Limitation of liability
- Indemnity
- Insurance
- Choice of law and dispute resolution
- 产品的描述和数量
- 价格或佣金以及支付款项
- 交货期限
- 保修期
- 适用于产品或服务的特定法律
- 责任范围
- 赔偿
- 保险
- 适用的法律和争端解决机制

We work with our clients to prepare these types of agreements so they reflect the business model being used and the client’s goals and business terms.

我们会与客户协作准备各类协议，保证客户的商业模型、目标和业务条款得到体现。

# TRADEMARKS & OTHER INTELLECTUAL PROPERTY

## 商标&其他知识产权问题

Federal and state laws in the U.S. provide comprehensive protections and enforcement processes for patents (including design patents), trademarks, copyrights, trade secrets and other forms of intellectual property. The U.S. is party to a number of international treaties and arrangements regarding intellectual property, including the Patent Cooperation Treaty, Paris Convention, Madrid Protocol and Berne Convention. It is therefore possible that intellectual property rights may be established in the U.S. under certain circumstances based on non-U.S. intellectual property rights.

美国联邦和州法律为专利（包括设计专利）、商标、版权、商业秘密和其他形式的知识产权提供全面的法律条文和执行程序的保护。美国是很多知识产权方面的国际条约和协定的成员，其中包括《国际专利合作条约》、《巴黎公约》、《马德里协定》和《巴恩公约》的成员。这使得在一定条件下非美国的知识产权在美国仍然可能受到认可。

### Trademarks 商标

- Can be registered in the U.S. at both the federal and state levels. In addition, unregistered “common law” trademarks used in U.S. commerce are protectable. Federal registration provides the owner of the trademark additional protections, rights and remedies over common law rights.  
可以在美国联邦和州层面注册。此外，在美国商用的没有被注册的“习惯法”商标也是受保护的。在联邦的注册为商标的拥有者提供比习惯法更多的保护、权利、法定补偿。
- Businesses adopting a new corporate name or introducing a new brand in the U.S. are well advised to conduct a comprehensive trademark clearance search to determine whether the desired corporate name or brand can be used without infringing a pre-existing trademark.  
我们强烈建议在美国选定新公司名称或者发布新品牌的企业对商标进行全面的调查来确定预计要使用的公司名称不侵犯其他现存的商标权益。
- If registered protection in the U.S. is desired, the application generally should be filed as soon as possible, particularly if the trademark is not yet in use in the U.S. Foreign entities also face a potentially important deadline: by filing their U.S. application within 6 months of their home-country filing for the same mark, they may be entitled to claim trademark rights in the U.S. back to the date of their home-country filing.  
如果公司希望在美国注册并获得保护，申请应该尽早进行，尤其是商标还没有在美国使用的情况下。外国公司也可能面对一个截止日期：如果在美国的申请是在母国提交申请的6个月之内，就有资格将美国商标的权利追溯到母国申请的时间。
- Registering a corporate name with a state (i.e., the Secretary of State’s office) does not necessarily mean that the corporate name can be used as a trademark. Similarly, just because a company name is available as a “.com” domain name does not necessarily mean that the company name is available for adoption and use as a trade  
在州内（也就是州秘书办公室）申请公司名称不一定意味着公司名可以用作商标使用。同样，一个可以用作“.com”的域名不一定意味着公司名称一定可以被使用并可以用作商标。



# TRADEMARKS & OTHER INTELLECTUAL PROPERTY

## 商标&其他知识产权问题

### Patents 专利

- Issued in the U.S. only at the federal level.  
在联邦层面颁发。
- U.S. patent laws were recently revised to establish a “first to file” patent system (instead of the previous “first to invent” system) and to broaden the scope of public disclosures outside of the U.S. that can destroy novelty of an invention.  
美国专利法律最近刚刚进行了修订，建立了“先申请原则”（替代了之前的“先发明原则”），并将公开披露而破坏发明的新颖性的范围扩大到了美国之外。
- If patent protection is desired, it is advantageous to file patent applications as early as possible. For foreign-owned companies in the U.S., worldwide patent protection is often evaluated and coordinated at the parent company level.  
如果有申请专利的需要，申请越早提交越为有利。对于在美国的外资公司，全球专利保护经常时常会被考虑，并且与母公司层面配合。
- Certain non-public inventions can also be protected under state law as trade secrets.  
某些没有公布的发明也可以在州法律下以商业机密的名义获得保护。



### Trade Secrets & Confidential Information 商业机密&保密信息

- A trade secret is information (a) that has economic value from not being generally known, and (b) that is the subject of reasonable efforts to maintain its secrecy. Trade secrets can last forever, so long as they are kept confidential. Companies must diligently protect their trade secrets.  
商业机密是（a）具有商业价值的、不被大众所知的；（b）比并且需要采取一些措施来保持其秘密性的信息。商业机密的性质可以终身保持，只要其机密性一直被维持。公司必须毫不放松地保护自己的商业机密。
- Confidentiality agreements prohibit third parties from sharing and improperly using confidential information. Parties should enter into confidentiality agreements before exchanging any sensitive business information. Confidentiality agreements often require careful negotiation, since inadvertent disclosures of information could invalidate trade secrets and result in financial harm to a company.

保密协议防止第三方泄漏和不恰当使用机密信息。在交换双方敏感商业信息之前各方应该签订保密协议。保密协议一般需要谨慎谈判，无意中泄漏信息可能导致商业机密失去机密性，给公司带来经济损失。

# TRADEMARKS & OTHER INTELLECTUAL PROPERTY

## 商标&其他知识产权问题

### Employee Inventions 员工发明

Employer ownership of works of authorship and inventions created by employees depends upon the scope of the employee's employment and the nature of the particular invention. In order to reduce uncertainty, it is common in the United States for employers to require employees to enter into invention/intellectual property ownership or assignment agreements. The best time to enter into such an agreement is at the commencement of the employee's employment.

员工对于自己创作的作品和发明的所有权取决于员工的雇佣范围以及该发明的属性。为了降低风险，一般在美国雇主会要求员工签订发明/知识产权所有权转让协议。要求员工签订协议的最佳时机是在员工在受到雇佣之初。

### Data Privacy

Data privacy regulation in the U.S. is growing in importance and is reflected in a complex array of federal and state laws. In general, these laws tend to be directed toward specific types of information (e.g., financial health care or child-related). While the U.S. waits to see if the American Data Privacy and Protection Act (ADPPA) will get enacted, many states have passed "breach notification laws" requiring companies to provide notice to persons whose personal information may have been compromised. As of June, 2022, five states—California, Colorado, Connecticut, Utah and Virginia—have passed more comprehensive consumer data privacy laws and at least 22 states have legislation pending.

数据保密的规章制度在美国日渐重要，在联邦和州法律中也有体现。一般情况下，这些法律倾向于指向某类特定的信息（如财务信息、卫生保健信息或儿童相关的信息）。在美国在观望《美国数据隐私与保护法案》（ADPPA）是否会颁布的同时，很多州通过了所谓《违反通知法》，要求公司在某个人信息被透露时通知本人。截止到2022年6月，五个州——加利福尼亚、科罗拉多、康妮狄克、犹他和弗吉尼亚——已经通过了更加全面的数据隐私法律，还有至少22个州有相关立法待定。

For many foreign-owned U.S. companies, the data privacy laws in the home-country and in countries of affiliates need to be considered and an appropriate regime established to comply with the cross-border sharing of information.

对于很多在美的外资公司，母国公司和附属公司所在国家的数据保密法律都需要被考虑到，应该建立合适的制度管理跨国之间的信息披露。

Companies should post privacy policies on their websites explaining how they collect and use customer data.

公司应该在自己的网站上发布保密政策，解释客户数据将被如何收集和使用。

# FINANCING SOURCES

## 融资来源问题

There are several potential sources of funds for foreign investors including banks, leasing companies and factoring companies. In addition, the issuance of industrial revenue bonds is sometimes a source of financing for certain manufacturing businesses.

对于外国投资人，潜在融资来源包括银行、租赁公司和代理融通公司。此外，发行工业收入债权优势是某些制造业公司可以进行融资的一种方式。

**Banks** are available to provide short-, medium- and long-term financing.

银行可以提供短期、中期和长期资金。

- Short-term financing can be arranged through loans or the use of a "line of credit." Pursuant to a line of credit, the customer is permitted to draw down sums of money from time to time up to a specified maximum.

短期融资可以以借款或“信用额度”的方式进行。根据信用额度，客户可以随时提取资金，直到达到特定限额。

- Medium-term and long-term financings can be at a fixed rate or floating rate of interest. Common market indicators for floating rates are the "prime lending rate" and the London Interbank Offering Rate ("LIBOR").

中期和长期的融资可以使用固定利息率或浮动利率。一般浮动利率的市场指标是“最优惠贷款利率”和“伦敦银行同行拆放利率”（“LIBOR”）。

- For many newly formed U.S. subsidiaries, obtaining credit without support from the parent company can be challenging because the company has no U.S. credit history. There are parent company support mechanisms which banks will consider when extending initial loans.

很多新成立的美国子公司要在没有母公司的支持下获得信用的是有困难的，因为该公司在美国没有信用记录。银行在给与借款时会考虑母公司的支持机制。

**Leasing Companies** generally finance personal property and equipment.

租赁公司一般提供动产或设备。

- A leasing company will purchase equipment for the investor and then lease it to the investor for a specified periodic payment. The leasing company retains actual title to the equipment and can depreciate the equipment on its financial statements.

租赁公司一般会为投资者购买设备然后租赁给投资者并定时收取付款。租赁公司保留对设备的所有权，并在自己的财务报表中对设备进行分摊折旧。

- For true leases, the lessee is generally allowed to treat the rental payments as a current expense on its financial statements, thus reducing net taxable income.

对于真正的租赁，承租人一般可以将租金付款作为费用放入财务报表中，以此降低净应税所得。

- Many equipment lease agreements will provide for a purchase option at the end of the term.

很多设备租赁协议在期限到期时提供买断的选择。

- The company should consult with a U.S. tax advisor to determine whether a lease or a purchase of equipment would be most beneficial.

公司应该咨询美国税务顾问来决定租赁和购买哪个方式更有利。

# FINANCING SOURCES

## 融资来源问题

**Factoring Companies** provide funds by purchasing accounts receivable at a discount. The customer is notified that its account has been assigned and then remits payments directly to the factoring company.  
代理融通公司收购公司的应收账款来为公司提供资金。公司客户将被通知其账户已被转让，并账款将直接汇款到代理融通公司。

- The factoring company generally does not assume the risk of non-payment. The factoring company occasionally performs bookkeeping and collection functions.

代理融通公司一般不承担不能收回账款的风险。这类公司有时也有记账和代收款功能。

- Advantage to the seller: access to immediate cash, although at a reduced value.

对于出售者的益处：可以马上获得现金，虽然要承担价值上的损失。



**Industrial Revenue Bonds** are a form of long-term, low-interest financing used to finance the establishment or expansion of manufacturing facilities. The low interest rate is available because the interest earned by the bondholder is exempt from federal (and sometimes state) income taxes.

工业收入债权是为建立或扩大生产设施进行的长期、低息的融资方式。利息低是因为债券的持有者获得的利息收入是免于缴纳联邦（有时州）所得税的。

- May be issued in amounts up to \$10 million, subject to certain conditions.  
在某些条款限制下，可以最多发行1000万美金的债权。
- Focused on the creation of jobs in the manufacturing sector which will raise the average manufacturing wage level in the community and reduce unemployment.  
致力于在制造业创造更多就业机会，提高该社区制造业的平均公司，降低失业率。
- Begins with the entity's application to the county Fiscal Authority (the "Authority") for "inducement." The inducement indicates the Authority's intent to issue industrial revenue bonds for the benefit of the company.  
企业首先要向所在郡县“财政当局”（“当局”）申请“诱导”（“inducement”）。该诱导表明当局要为该公司的利益发行行业收入债权的意向。
- Only certain costs incurred by the company may be paid out of bond proceeds and those costs generally must be incurred after "inducement". Thus, the company should not enter into binding contracts for the purchase of land or other assets or incur project costs prior to being induced or prior to speaking with legal counsel.  
只有在“诱导”公布之后或在发布之前60天内公司产生的花费可以用债券收益来支付。因此，公司在获得“诱导”之前或咨询法律顾问之前不建议签订购买土地或其他资产的必须遵守的合同。
- "Inducement" enables the company to proceed with the development of the project even though the bonds have not yet been issued.  
当局的“诱导”使公司能在债券还没发行之前就能进行项目的开发。



# OTHER GOVERNMENT REGULATIONS & OTHER LEGAL ISSUES

## 其他政府条例&其他法律问题

**Other federal, state, and local laws and regulations may directly and indirectly regulate the conduct of business in the United States.**

其他联邦、州或地方法律法规可能会直接或间接地管理在美公司的经营行为。

There are many other legal issues beyond the scope of this summary which may be of interest to a particular company as it plans its strategy for investing and doing business in the United States. These include, for instance:

在这些总结的范围之外还有可能存在其他法律问题，一些公司可能在策划来美投资经商的策略中有兴趣了解。比如：

- U.S. trade laws,
- Governmental affairs,
- Industry specific regulations,
- Mergers and acquisitions,
- Joint ventures, and
- Licensing transactions.
- 美国贸易法,
- 政府事务,
- 特定行业法规,
- 合并收购,
- 合资公司,
- 许可交易。

Parker Poe works with the company on its specific needs and transactions to facilitate the company's investment and business operations in the United States

Parker Poe能服务于这些公司的特殊需求和交易要求，推动公司在美国的投资项目和业务运营。

