JUNE 2015

WILLIAMS MULLEN
FDI USA NEWSLETTER

ABOUT US

Founded in 1909, our firm has 225 attorneys, a national and international practice, and a particular focus on representing foreign companies in connection with their direct investments in the United States, whether by acquisition (M&A), joint venture or the setting up of a U.S. subsidiary. Our offices are located in Washington, D.C., Virginia, North Carolina and South Carolina. Given the size and experience of our firm, Williams Mullen can provide the full range of commercial legal services–from intellectual property to corporate tax matters to visa strategies and more–to meet the needs of global businesses.

www.williamsmullen.com/FDI

WELCOME

We hope this first issue of our FDI (Foreign Direct Investment) USA Newsletter will be of interest to you, and we welcome your readership. Many of you attended the SelectUSA FDI Summit in Washington D.C. or are making plans to expand your business in the USA. Each quarter this Newsletter will highlight some of the FAQs that arise from such projects—from how to finance a deal to selecting the right visa or tax strategy and more. Please email your suggestions for future topics to enorman@williamsmullen.com. We want to keep this Newsletter interactive and relevant to your international business.

Eliot Norman, Attorney and Editor
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INSIDE

RESULTS OF 2015 SELECTUSA SUMMIT

– Washington, D.C. March 22-24 2015, by Eliot Norman, Partner, Williams Mullen

SelectUSA reported that: "By all accounts, the 2015 SelectUSA Investment Summit hosted by President Barack Obama on March 23-24 was a tremendous success." We agree.

Williams Mullen sent three of its Economic Development and FDI partners to the event, and we were among more than 2600 participants. By our count, more than 750 foreign business and corporate representatives from more than 70 international markets attended. We felt the enthusiasm, whether in matchmaking meetings, on the exhibit floor, or at any of the many presentations.

President Obama gave the keynote address and announced a number of changes affecting FDI, including new immigration regulations. We met a number of U.S. Ambassadors who accompanied delegations from China, France, Sweden, Italy and other countries to the summit. In all, 50 U.S. Ambassadors attended.

Key topics covered included investor visas, workforce development, how to invest in infrastructure and advanced manufacturing. I was particularly impressed by the presentation of Eric Schmidt, Executive Chairman of Google, who explained with case examples why the United States is open to innovation and the advantages of a transparent U.S. economy for Start-up companies with new technologies.

I attended follow-on meetings with investors from Greece and France, including a reception at the French Embassy. Several commented that because of the Summit and their meetings with U.S. Economic Development Agencies that they had made the decision to set up operations in the United States.

2015 UPCOMING EVENTS:

Eliot Norman, Williams Mullen will speak at this event:

OCTOBER
National Aerospace FDI Exposition
October 26 - 28, 2015
Los Angeles, CA

JUNE
SelectUSA at BIO 2015
June 15 - 18, 2015
Philadelphia, PA

SelectUSA at the International Franchise Expo
June 18 - 20, 2015
New York, NY

JULY
U.S. Business Seminars in Japan
July 16 - 17, 2015
Takamatsu, Hiroshima

AUGUST
SelectUSA Taiwan Road Show
August 5 - 6, 2015
Taipei and Kaohsiung, Taiwan

SEPTEMBER
SelectUSA Nordic Road Show
September 14 - 21, 2015
Oslo, Copenhagen/Malmo, Gothenburg, Stockholm, Helsinki, Tallinn

OCTOBER
SelectUSA India Road Show
October 13 - 15, 2015
New Delhi, Mumbai, Chennai

RAISING CAPITAL: SIMPLIFYING THE U.S. CAPITAL MARKETS

– Justin Marriott, Managing Director, Marriott & Co.

From time to time, your business may need to raise capital for a number of reasons, including to fund growth, the development of new products, general corporate and working capital needs, equipment purchases, acquisitions, shareholder dividends, and many others. However, raising capital is a costly endeavor that requires careful consideration to determine the appropriate form for your business. These costs can be both tangible (i.e. interest rates, fees, etc.) and intangible (i.e. time, resources, loss of control, etc). This article will provide a look into the varieties of capital available, which may be ideal based on the unique situation and characteristics of your business.

The cheapest source of financing is **senior debt**, which is the most senior source of capital and carries with it the lowest interest rate. Senior debt is secured by the assets of the business. Additionally, this form of debt grants the lender first lien on the assets of the business, meaning that, in the event of liquidation, senior debtholders will be repaid before any other debt or equity holders. Common types of senior debt include term loans and lines of credit. The available amount of secured debt that a lender will provide depends on the size and quality of your company's assets such as property, equipment, inventory, accounts receivable, etc. A senior debt facility will include well-defined covenants that a business will have to comply with at the penalty of default. Common covenants include liquidity ratios like total debt to cash flow, fixed charge coverage, interest coverage, and more.

After senior debt, subordinated debt-holders will have a secondary claim to a company's assets. **Subordinated debt** can be structured in many different ways. **Mezzanine debt** is a form of subordinated debt that has a higher interest rate and may contain embedded equity options or warrants, making it a costlier form of capital. In this arrangement, the debtholder has the option to acquire equity in the company under a method that is defined within the loan documents. Additionally, subordinated debt lenders will provide unitranche financing, where one lender may provide a combination of senior and subordinated debt that is blended into one security that has a higher interest rate than senior debt but has equity warrants.

Beyond debt, capital can also be raised through the issuance of equity. The two most common forms are **preferred stock** and **common stock.** Preferred stock holders are senior to common investors, meaning that, in liquidation, preferred investors will receive compensation before common investors. However, in both cases, equity holders will only receive payment after all debtholders have been indemnified. Raising capital through equity generally carries higher fees than raising debt, making it more expensive. Additionally, you dilute the ownership structure by bringing on an outside investor who will share in the economic rights of your company and can often gain a presence on the board of directors. However, an equity investor will generally not impose the strict covenants and controls that many lenders do.

If you are in need of capital for any of the reasons outlined above, **Marriott & Co.** has significant experience advising privately-held companies in raising both debt and equity capital between $5 million and $20 million. For more information on Marriott & Co.'s customized approach to capital raise assignments and its proven track record, please contact **Justin Marriott, Managing Director at justin@marriott-co.com.**

RECENT FDI SUCCESS STORIES

MICHIGAN CONFIRMED TWO INVESTMENTS FOLLOWING THE 2015 SELECTUSA INVESTMENT SUMMIT

> **Promac,** an Italian-based automotive supplier, plans to open its first North American facility in Troy. The company produces parts for many industries, including aviation, aerospace, energy, precision prototypes, and complex machining.

> **APAG** Elektronik AG is a Zurich, Switzerland-based electronics design and manufacturing firm. The company confirmed plans to open a sales office in Troy in mid-2015, and is considering an electronics manufacturing facility in 2016.

VOLVO ANNOUNCES FIRST U.S. AUTO FACTORY IN SOUTH CAROLINA

May 11, 2015: This $500 million investment should create FDI opportunities for Tier 1 and Tier 2 suppliers already doing business with Volvo in Europe and China. Construction will begin this fall so that the factory can begin producing vehicles in 2018. See http://tinyurl.com/ok7nbzn

NORTH CAROLINA ATTRACTS FDI IN MANUFACTURING AND TEXTILES

March 13, 2015. Canadian-based Peds® Legwear (PEDS) opened its new production facility. PEDS' recent $16 million investment in the plant and new machinery has allowed the company to hire North Carolina factory workers who were previously laid off. By 2018, this new facility will bring more than 200 jobs to Hildebran, NC. SelectUSA provided counseling to PEDS on how to navigate the federal regulatory process and also helped identify sources of federal funding. In addition to PEDS' investment in the Hildebran facility, the company plans an additional $8 million venture, bringing their total investment in the United States to $24 million.

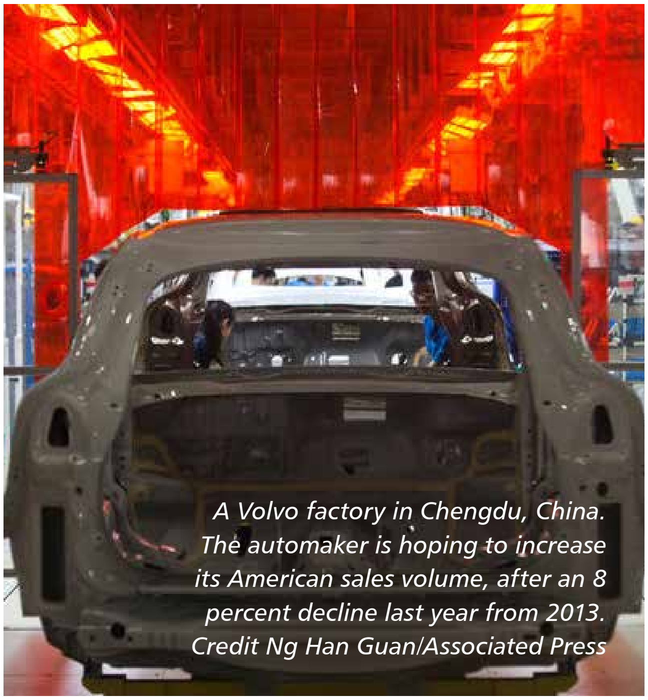
VIRGINIA ATTRACTS BRAZILIAN FDI

April 9, 2015: Mavalério, a Brazilian manufacturer of candy and other confectionary products, will invest $5 million to establish its first U.S. production operation in Hanover County. The project will create 55 new jobs. The location of this new operation will help the company grow its footprint in the U.S. market.

Mavalério, founded in 1969 and based in Sao Paulo, Brazil, is the largest producer of decorative confectionery in Latin America, currently exporting to more than 20 countries. According to Fernando Bettin, Mavalério director of operations: "We have chosen the state of Virginia because we can reach 55 percent of the U.S. population within 750 miles, and we couldn't be more pleased with our location As a manufacturer of sugar confectionery toppings, interstate, port and airport access are critical to maintain our supply chain."

CHINESE FDI IN THE USA

A new study reports that Chinese companies have invested $46 billion in the US since 2000.



A Volvo factory in Chengdu, China. The automaker is hoping to increase its American sales volume, after an 8 percent decline last year from 2013. Credit Ng Han Guan/Associated Press

Contact Us

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Eliot Norman has focused his practice on immigration law and FDI (Foreign Direct Investment) since 1995. He will be speaking at the FDI Aerospace Summit in Los Angeles on October 26-28 on negotiating supply contracts, investment visas and incorporation of U.S. subsidiaries. He is a graduate of Yale College and Boston College Law School (cum laude). Eliot holds a Certificat from the Institut d'etudes politiques, Paris, France and speaks French fluently.

For further information on the topics in this FDI newsletter you may wish to contact Mr. Norman at enorman@williamsmullen.com.

FDI LEGAL UPDATES

TAX

Williams Mullen updates *10 FAQ for Establishing Operations in the United States.* We now provide expanded coverage of tax issues in our Answer to Question #4: What Taxes will the U.S. Subsidiary Corporation Pay?
www.williamsmullen.com/news/10FAQS

VISAS

Foreign companies typically use the L-1B to transfer key personnel from overseas to help establish or expand the operations of their U.S. subsidiaries. As announced by President Obama at the Summit, USCIS has issued a Draft Memorandum to be effective August 31, 2015. It should provide clearer standards for the criteria for deciding nonimmigrant petitions for L-1B Specialized Knowledge employee transfers.

For our Williams Mullen quick guide to investor and business visas – B-1, H-1B, L-1 and E-1/E-2 and more, visit www.williamsmullen.com/visa-guide

EMPLOYMENT LAW

Foreign companies establishing U.S. subsidiaries can benefit from more liberal employment laws that allow employment "at will." That is, employers are generally free to terminate the employment relationship with an employee for any or no reason at all, with or without notice, and without the requirement of severance pay. However, terminations must not violate any of a number of federal and state statutes prohibiting employment discrimination on numerous protected characteristics—race, sex, age, disability, religion, etc. With respect to disability discrimination, a Federal Court of Appeals recently reconfirmed what many employers have long suspected–almost all physical and mental impairments will meet the definition of "disability" under the Americans with Disabilities Act (ADA). Thus, companies are required to provide reasonable accommodations to a larger number of workers. www.williamsmullen.com/news/americans-with-disabilities-act

OBAMA CARE

More employers will soon be subject to the mandates of the Affordable Care Act. Beginning January 1, 2016, if your U.S. company employed on average at least 50 full-time workers during 2015, you must provide private "affordable" health care insurance that meets certain "minimum value" requirements. Failure to comply with the "pay or play" rules can result in penalties in the thousands of dollars annually for either not filing the right IRS forms or for failing to provide health care coverage or both.
www.williamsmullen.com/newsletter/obama-care