



Doing Business  
in the **US**



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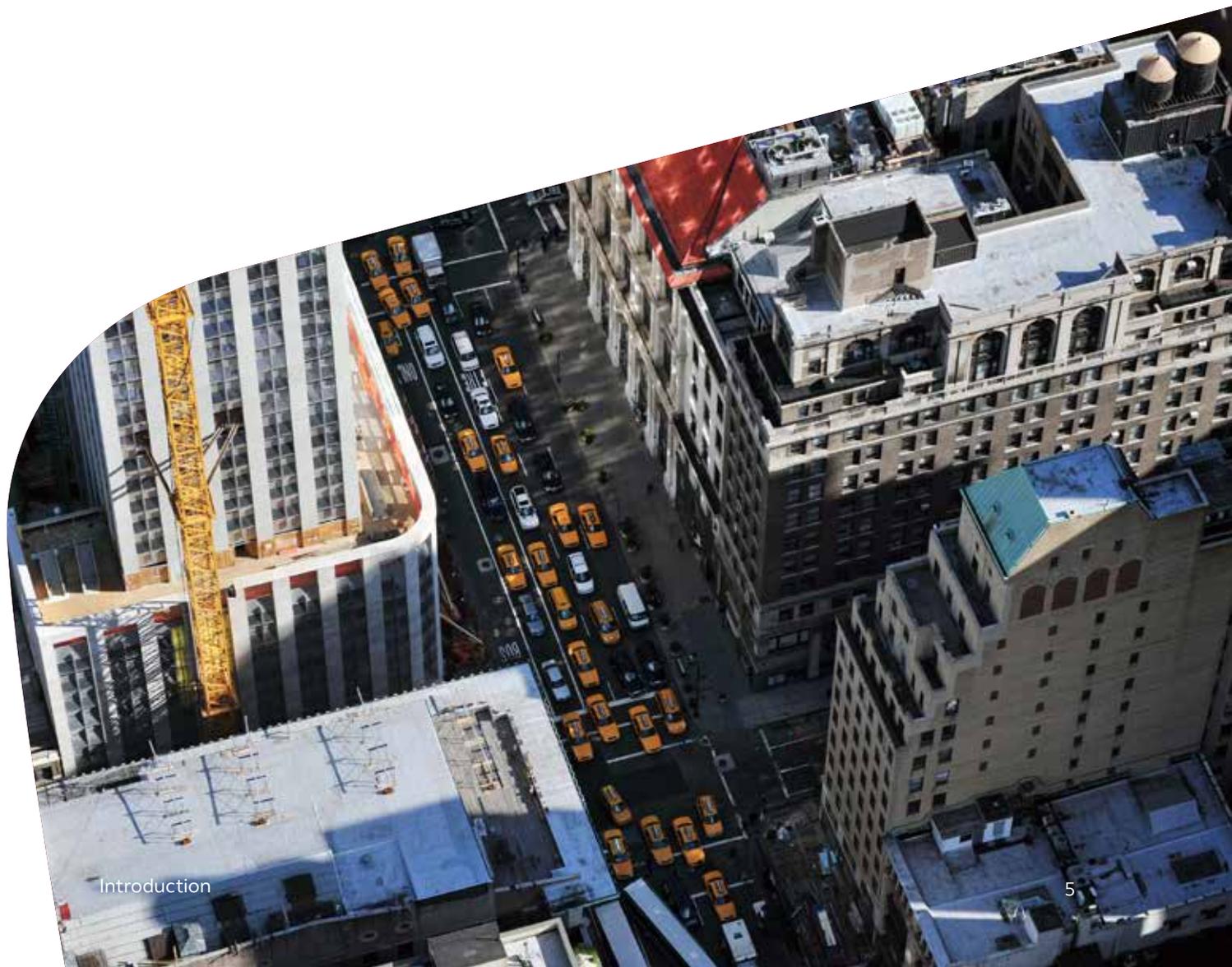
# Introduction

# About Vistra

Ranked among the top four corporate service providers globally, Vistra is a versatile group of professionals, providing a uniquely broad range of services and solutions. Our capabilities span across international incorporations to trust, fiduciary, corporate and private client services, and fund administration.

We have a strong presence internationally, with offices throughout the Americas, Europe, Middle East, and Asia Pacific.

As a leading global player with expert industry knowledge and location specialists, Vistra has a deep understanding of the professional worlds of our clients, and a proven track record of offering highly versatile solutions, providing the people, processes, and products that help our clients get the most from their international business.





# Introduction to the US

# Why Do Business in the US?

## The largest economy in the world

The United States is unmistakably a prominent player in the international business world, and can be considered a powerhouse from both an economic and political point of view. It is the largest single national economy in the world and it is forecasted to remain so for the next decade. Exemplary of the role the US plays in international business is the fact that the US Dollar is the most used currency in international transactions.

The US has a population of more than 300 million, composed of a wide range of ethnicities and origins, which are spread across six different time zones in 50 states. English is the language spoken by the vast majority of the citizens and the country also has a large Spanish-speaking community. This has led to many private companies, as well as some government agencies, to provide services in Spanish as well as English.

The US has a very diverse mix of cultures, ethnicities and religions. Its immense and contrasting geography breeds regional subcultures and identities, so there is no stereotypical 'American'.

## US business culture

Due to the large exposure of certain aspects of the American culture, one may easily fall into the trap of feeling it is already familiar. However, just like any foreign jurisdiction, it is critical to understand the cultural concepts below the surface in order to benefit off the many opportunities of doing business in the US. Its size, diversity in consumer tastes, and its wide range of income levels allows success for a large variety of goods and services.



Key defining characteristics of the American business culture include:

- Fast paced
- Accuracy
- Hard working and dedicated employees
- Equal footing
- Opportunistic / adaptable
- Clearly defined rules
- Diversity

American employees are generally well-educated, productive, innovative, and mobile. The country has a stable government and business climate which have contributed to making it one of the world's most attractive markets for venture capital and private equity funding.

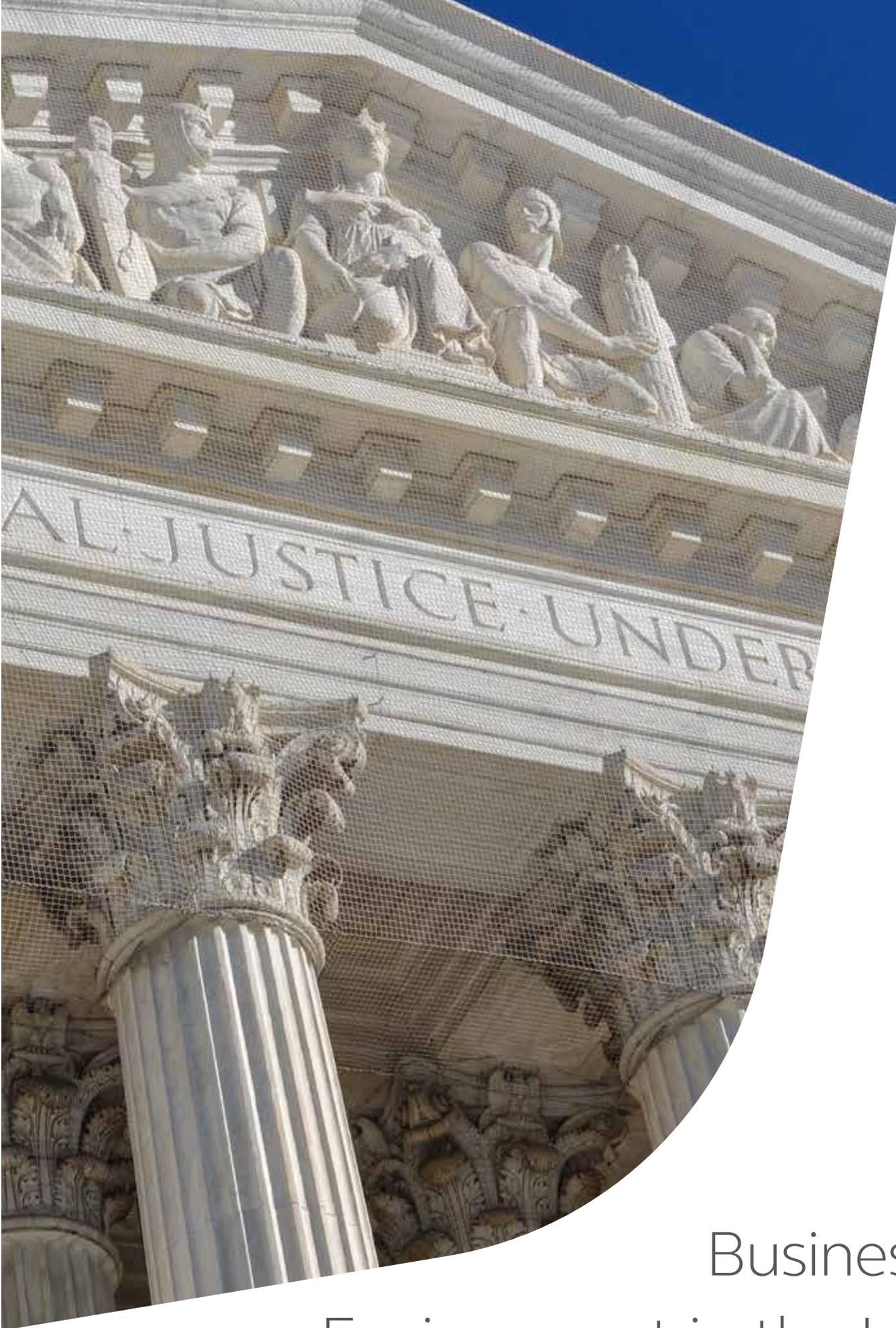
Some of the challenges include:

- Vast regional differences between the 50 markets/states
- Strong competition, causing saturation of products or services
- High customer service expectations
- High cost of living in major cities
- High costs for business insurance
- Litigation is common
- Expensive and time consuming process for work visas

## Advantages and challenges

Briefly summarised below are some advantages of doing business in the US:

- Access to the world's largest market
- Access to the world's largest private sector
- Low regulatory barriers
- Access to global supply chains that can lead to exports for other markets
- One of the most innovative consumer markets in the world
- Productive and skilled labour force with high mobility
- Strong rule of law



# Business Environment in the US

# Regulatory Background

## The US Government

The United States have a dual-sovereign system, comprising of the federal government and the governments of the fifty individual states. The powers of the federal government are limited to those listed in the US Constitution. All powers which are not granted to the federal government are reserved for the state governments.

Each State has its own laws and regulations. In situations where a conflict occurs the federal law generally prevails. Federal law covers matters such as offerings of securities and bankruptcy, whilst state law will typically include matters relating to contract and corporate law.

A contract will never subject to “US law,” but for example to New York State law or Texas State law. The court system is equally divided into federal courts and state courts, which operate separately from each other. It can be a complex exercise to determine in which court a claim must be brought forth to.

## US taxation system

The US has one of the most complex tax systems in the world. Both the federal government as well as most of the states are imposing income taxes. In addition, certain cities and localities impose income tax as well. US tax law requires employers to withhold and remit income taxes and social security taxes from the wages of employees, and corporations are required to pay income taxes on a quarterly basis.

As a general rule, US persons (both individuals and corporations) are subject to federal income tax on their worldwide income. Nonresidents are subject to US federal income tax only on their US-source income.

Furthermore, several of other forms of taxes are imposed at the federal level, which include estate tax, gift tax, generation-skipping transfer tax and social security taxes.



# Legal Entities

## Set up of an incorporation

The principal legal forms of businesses in the US are:

- Sole proprietorship
- Corporation, S corporation and C corporation
- Partnership
- Joint venture
- Limited liability company
- Branch

## S-corporation and C-corporation

In the US there are two types of corporations: the S corporation and the C-corporation.

### The S-corporation

This form is for used for United States federal income tax purposes, and is a closely held corporation that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code.

In general, S-corporations do not pay any federal income taxes. Instead, the corporation's income or losses are divided amongst and passed through to its shareholders. The shareholders must then report the income or loss on their own individual income tax returns. The taxation of S-corporations resembles that of partnerships. As with partnerships, the income, deductions, and tax credits of an S-corporation flow through to shareholders annually, regardless of whether distributions are made. Thus, income is taxed at the shareholder level and not at the corporate level. Payments to S-shareholders by the corporation are distributed tax-free to the extent that the

distributed earnings are previously taxed. Also, certain corporate penalty taxes (e.g., accumulated earnings tax, personal holding company tax) and the alternative minimum tax does not apply to an S-corporation.

In order to make an election to be treated as an S-corporation, the corporation:

- Must be a liability entity (a domestic corporation which has elected to be taxed as a corporation)
- Must have only one class of stock
- Must not have more than 100 shareholders
- Must have shareholders that are US citizens or residents, and must be natural persons, so corporate shareholders and partnerships are generally excluded; however, certain trusts, estates, and tax-exempt corporations, notably 501(c)(3) corporations, are permitted to be shareholders
- Must allocate profits and losses to shareholders proportionately to each one's interest in the business

### The C-corporation

This second form refers to any corporation that, under United States federal income tax law, is taxed separately from its owners.

Most major companies (and many smaller companies) are treated as C-corporations for US federal income tax purposes. A corporation may qualify as a corporation without regard to any limit on the number of shareholders, foreign or domestic.

## Establishments

New business entities are created under the laws of one of the fifty states, or alternatively, the District of Columbia.

The District of Columbia is not a state, but a federal district. When the Constitution of the United States was adopted in 1787, what is now the District of Columbia was part of the state of Maryland. In 1791, the District was ceded to the federal government for the purpose of becoming the nation's capital, to be governed by Congress.

Some of the common states used for incorporations by foreign shareholders are Delaware, New York, and Florida. The legal form chosen by these in general are corporations and LLCs.

Business formation is a relatively simple procedure in the US. Businesses can be created regardless of citizenship (except in the case of S-Corp) or residency of the owners of the business. However, a variety of tax and non-tax factors influence what will be the best vehicle through which the business in the US should be carried.

Some of these factors include:

- Costs of establishment and maintenance
- Ownership transfer possibilities
- Taxation considerations
- The availability of limited liability protection for owners
- Management and control issues
- Capital and credit requirements
- Commercial and/or regulatory requirements

The purpose of your US expansion will influence the choice of the entity form and tax regime. It is possible that an important customer is insisting on a local presence in the US or perhaps your decision is influenced by growth in sales and customer interest in the region.

Once your motives and objectives are clearly defined, you can start to plan accordingly.

## Forming the Corporation

The first step in establishing a corporation is to prepare a certificate of incorporation, and to file it with the relevant department of State. This is usually done by a US attorney who acts as incorporator through a power of attorney.

The certificate of incorporation is generally a short document that includes:

- Company name
- Registered address
- Business activities
- Authorised number of shares
- Name and address of the incorporator
- Registered agent

A registered agent is a person chosen to receive service of process and is located in the state of incorporation. Typically, a professional company is hired to act as registered agent. The certificate of incorporation is a public document.

The incorporator will also adopt the initial bylaws. The bylaws are an internal document which governs the internal functioning of the corporation, such as procedures for election of directors, powers of officers, and procedures for shareholders' meetings.

Guidelines on what can or cannot be used in a company name vary per state. In New York for example, an LLC filing restricts the use of certain words in LLC names. Words such as "legal services," "academy," "education," and "fidelity" are only allowed with the state's permission.

Some words and phrases are completely prohibited. An LLC in New York cannot use or include the following words in its business name:

- Corporation
- State police
- Cooperative
- Urban development

Although every state will have slight differences in their requirements, the process of forming a new corporation is usually quick. It is possible to incorporate a business within 3 to 5 days whilst in some states it is possible to incorporate a business within the same day.

## Foreign qualification

Doing business in other states-known as foreign qualification-can be confusing as it may sound like an international concept. However, “foreign” doesn’t refer to something outside of the United States when it comes to US corporations and limited liability companies (LLCs). It concerns operating domestically in the US, but outside of the state in which you incorporated your business.

Foreign qualifying is simply registering to do business in a state other than the one in which you incorporated. That is because corporations and LLCs are considered domestic only in their state of incorporation. For example, if you form an LLC in Delaware, it is only domestic in Delaware and considered a foreign LLC in other states.

If you are evaluating whether to incorporate in a state other than one where you are located, you should consider whether you may need to get a foreign qualification in your home state.

There are various factors used in determining the need to foreign qualify. While different states have different criteria for transacting business, consider the following:

- Does your company have a physical presence in the state?
- Does your company have employees in the state?
- Does your company accept orders in the state?
- Does your company have a bank account in the state?

If you answered yes to any of these statements, you will likely need to foreign qualify your business in the state.

Since there are additional costs - including initial and ongoing fees from both your state of incorporation and state of qualification - you may wonder if the process is really necessary, but state laws require foreign corporations and LLCs doing business within their borders to foreign qualify, and the consequences of not doing so outweigh the costs: you may lose access to that state’s court system. For example, if an employee or customer within a state in which you do business sues your company, you cannot defend the lawsuit in that state, because your company is not recognised as a business there.

You may face fines, penalties and back taxes for the time in which your company did business within a state without having a foreign qualification.

An alternative to foreign qualifying is to incorporate your business or form your LLC in the other state(s) in which you plan to do business. The primary difference is that when you incorporate or form your LLC in multiple states, your company becomes domestic in each of those states, thereby creating separate entities.

### **Consider the following in making your decision:**

For corporations, the increase in corporate formalities is a big disadvantage. Corporate formalities include drafting and maintaining bylaws; issuing stock and recording all stock transfers; holding initial and then annual meetings of directors and shareholders; and keeping minutes of all director and shareholder meetings with the corporate records. LLCs do not face the extensive formalities imposed on corporations.

When you create a separate corporation in each state, each has its own stock, shareholders, directors, and officers. Even if they are the same people for each, the formalities apply for each domestic corporation, greatly increasing the annual record-keeping requirements. When you foreign qualify, only one corporation or LLC exists. For corporations, regardless of the number of states in which it foreign qualifies; it needs only one set of bylaws, stock, shareholders, directors, and officers. Record keeping for initial and annual meetings of directors and shareholders happens only once.

Forming a new corporation or LLC in each state provides liability separation. For example, if one of your companies is forced into bankruptcy in one state, company assets in the other states typically are not used to pay for the bankrupt business. If you are foreign qualified in each state, only one corporation or LLC exists, so there is no separation of liabilities.

## Director requirements & liability

The requirements for directors differ per state. For example, in New York the following obligations arise with regard to directors for a company:

- **Minimum number:** Corporations must have one or more directors
- **Residence requirements:** New York does not have a provision specifying where directors must reside
- **Age requirements:** Directors must be at least 18 years old
- **Inclusion in the Certificate of Incorporation:** Director names and addresses are not required to be listed in the Certificate of Incorporation

Unlike in some jurisdictions, the concept of a corporate director is not familiar in the United States. In the Netherlands or Luxembourg for example, a corporation can be appointed to act as a director for another company.

Independent directors however are very common. The difference between a director and an independent director is that the latter is a member of a company's board of directors who was brought in from outside the company.

Because an independent outside director has not worked with the company for a period of time (typically for at least the previous year), he or she is not an existing manager and is generally not tied to the company's existing way of doing business.

Stockholders and politicians pushed for more independent outside directors in the wake of

the Enron collapse in the early part of the 2000s because the general consensus among stockholders is that independent directors improve the performance of a company through their objective view of the company's health and operations. Furthermore, they do not have to pander to other management personnel in order to preserve their jobs.

With regard to liabilities - the board of directors nor any of its individual members have any personal liability, under normal circumstances, for the acts or obligations of the corporation. However, all of them can be held accountable for their own actions. In general, members of the board of directors tend to be brought before court only by shareholders of the corporation - not by third parties.

# Taxation

## Corporate income taxation for state and local purposes

In order for a state or locality to impose their corporate income tax, a taxable presence within such jurisdiction must exist.

Under federal law, a multistate corporation cannot be subject to state or local corporate income tax if the following conditions are met and these are the only activities conducted in-state:

- Solicitation of orders by company representatives
- Sale of tangible personal property
- Orders are sent outside the state for approval or rejection
- If approved, the goods are filled by shipment or delivery from a point outside the state

Once a corporation has a corporate income tax connection in a state or locality, the taxable income is generally determined by starting with federal taxable income as determined under the IRC. Certain states/localities may have their own addition/subtraction modifications in calculating state taxable income.

State income tax rates for corporations can vary from 5% to over 10%. State and local income taxes are deductible in determining taxable income for federal purposes.

In addition, states generally require a separate corporation income tax return for each legal entity doing business in their state. Many states may permit or require a corporation that is conducting a 'unitary business' with affiliated corporations to file a combined or consolidated corporate income tax return, including affiliates that do not have an independent taxable presence or connection in such state or locality.

**After the passage of the Tax Cuts and Jobs Act, on December 20th, 2017, the corporate tax rate has been changed to a flat 21% starting January 1st, 2018.**

## Taxation related to the acquisition of a US Corporation

The basic choice for a foreign corporation acquiring a US corporation is whether to structure the acquisition of the US Corporation as an acquisition of assets or as an acquisition of the capital stock of the US Corporation.

A foreign company could potentially run into issues relating to US federal income tax associated with the taxable acquisition of a US corporation. The term 'taxable acquisition' refers to acquisitions whereby the foreign corporation pays for an acquisition with cash and/or a note and the seller of stock or assets recognises gain or loss on all of the consideration received.

When entering into such a scenario one should take into consideration that each potential acquisition presents its own particular issues, and that non-tax factors are often influential in structuring the acquisition of a US corporation by a foreign corporation.

## Value-added tax

Value-added tax (VAT) is imposed in more than 140 countries worldwide; making it the world's most commonly used tax. VAT is currently not imposed in the United States and should be taken into account when entering the US market via the incorporation of a US entity, which has business related dealings and exposure with EU related parties or any other countries where VAT is imposed.

VAT can impact almost every transaction while doing business across multiple jurisdictions – also when facing the situation of dealing with a jurisdiction which does not impose VAT whilst the other jurisdictions your firm is operating in do.

Significant VAT issues, which can include real cash costs such as penalties and interest for VAT non-compliance and irrecoverable VAT, can arise in areas such as:

- Global contracting
- Global supply chain

- Mergers, acquisitions, and divestitures
- Expansion into new countries
- Technology and compliance
- Cash flow enhancement
- Financial services and insurance

## Employment and Staffing

### Laws

The US legal system is part of the common law tradition (with the exception of Louisiana and Puerto Rico, which follow the civil law tradition). US labour and employment laws originate from constitutional law, statutory law, administrative regulations, and common law (which include unwritten customs, principles and rules and case law).

All these sources are present on different levels, so that labour and employment law provisions can be found in the federal and state constitutions, federal and state statutes, and administrative regulations by both federal and state agencies, and case law by both federal and state courts.

Companies are often faced with the challenge that legal requirements and obligations are not always aligned.

For instance, in order to determine minimum wage requirements for its US workforce, a company should not only familiarise itself with US federal wage and hour laws, but also with the laws of the state and municipality in which it operates.

### Hiring

From a tax perspective, the key element can be summarised into the following question: would the activities in the United States constitute a taxable presence (or “permanent establishment” under an applicable treaty) even if the activities were not conducted through a US subsidiary or branch?

If the activities would create a taxable presence (or permanent establishment), then typically the company will decide to, or will be required to, establish a registered local presence (i.e. a branch or subsidiary).

If the activities do not create a taxable presence on their own, the non-US head office may consider directly hiring employees in the local country.

From a corporate perspective, the key questions are:

- Is a foreign corporation permitted to conduct the planned activities in the US, and specifically, the targeted US state?
- Do the planned activities rise to the level of “doing business” in the United States?

- What are the legal requirements for qualifying to do business?
- Are there commercial, legal or other reasons why it might be desirable to conduct the planned activities from a US-incorporated entity?

From an employment law perspective, the company must consider the local legal requirements to employ an individual, including any mandatory benefits requirements imposed on employers. The company will need to engage a payroll provider to ensure appropriate withholdings and deductions for income taxes (federal and state) and social security payments are made. Compensation insurance is a legal requirement as well.

## Employment “at-will”

Although the United States has certain statutory worker protection laws, employees generally have relatively limited rights in the context of terminations absent an express employment contract or collective bargaining agreement when compared to many other developed nations. The primary reason for this is a legal concept unique to the United States known as the “at-will” employment doctrine.

This doctrine provides that an employer in the United States is free to terminate an employee at any time, without notice and without cause, as long as it is not for an unlawful reason. Similarly, the employee enjoys the right to terminate employment at any time and for any reason. Accordingly, unless specific statutes apply or contractual obligations exist, employees can be terminated without any financial payments, that is, without notice, pay in lieu, or severance. In essence, “at-will” employees in the United States work at the will of the employer.

The doctrine of “at-will” employment, however, is not interpreted uniformly in all 50 states. Some states interpret the doctrine broadly while others have created exceptions to the doctrine or otherwise restricted its application. The clear trend

in the past decade has been to grant additional rights to workers. Thus, the “at-will” employment doctrine is becoming narrower, and as a result, “wrongful termination” litigation has become a fact of corporate life in the United States.

Foreign-based companies and their executives must recognise that exceptions to the “at-will” employment doctrine have steadily eroded the doctrine to the point that employers face significant legal risks when terminating employees.

## Employment contracts

Written employment agreements are generally not required in the United States, unlike in many non-US jurisdictions. Individual written employment contracts are optional, and typically are not used for middle management and lower level employees. Instead, as mentioned above, it is common to use a short “at-will” offer letter with these employees.

Employment contracts are more commonly used for high level executives or key employees, such as when an executive has negotiated specific terms and conditions of employment that are not otherwise present in an “at-will” employment relationship.

## Temporary and permanent residence visas

When establishing operations in the US, many foreign companies wish to transfer one or more of their local employees to their US business. Before transferring an employee to the United States, the employer must obtain a valid visa for the employee. The rules regarding visas are quite complex. It is advisable to retain an experienced US immigration lawyer early on in the process.

There are two principal categories of visas:

- **Immigrant Visas.** Immigrant visas allow the employee to live in the US permanently. Successful applicants will receive a “green card” and are considered US residents for tax purposes. Oftentimes, applicants first obtain a certain temporary visa before becoming eligible to apply for a green card
- **Nonimmigrant Visas.** Nonimmigrant visas are much more common for foreign employees. These allow the employee to reside in the US on a temporary basis

Pursuant to the visa waiver program, citizens of treaty countries do not need to obtain a visa to travel to the US for a period of up to 90 days. It is not permitted to earn a salary from a US source under this program. The visa waiver program can be used when the purpose of the trip is, for example, to attend a seminar or convention, engage in business negotiations, or to sell products for a foreign employer.

## Pension / retirement

When talking about social security retirement benefits, there is a nuance in what is called ‘full retirement age’. This varies from age 65 to age 67, depending on what year the person was born.

In 1983, some amendments were made in the social security act. These amendments changed the full retirement age considered by the IRS for people born in the year 1938 or after that year.

As a result hereof the details are as follows:

- If a person is born in 1938, then the retirement age is ordained to be 65 years and two months
- If the person is born in any year from 1943 to 1954, then the mandatory age limit for retirement is 66
- For people born from the year 1955 onwards, there is an addition of two months per year. That is, a person born in 1957, will have a ‘Normal Retirement Age’ of 66 years and 6 months

A retirement plan may be set up by employers, insurance companies, trade unions, the government, or other institutions. Federal tax aspects of retirement plans in the United States are based on provisions of the Internal Revenue Code and the plans are regulated by the Department of Labour under the provisions of the Employee Retirement Income Security Act (ERISA).

Retirement plans are classified as either defined benefit plans or defined contribution plans, depending on how benefits are determined.

For example: in a defined benefit (or pension) plan, benefits are calculated using a fixed formula that typically factors in final pay and service with an employer, and payments are made from a trust fund specifically dedicated to the plan. Separate accounts for each participant do not exist.

By contrast, in a defined contribution plan, each participant has an account, and the benefit for the participant is dependent upon both the amount of money contributed into the account and the performance of the investments purchased with the funds contributed to the account.

A 401(k) plan is the tax-qualified, defined-contribution pension account defined in subsection 401(k) of the Internal Revenue Code. Under the plan, retirement savings contributions are provided (and sometimes proportionately matched) by an employer, deducted from the employee’s paycheck before taxation (therefore tax-deferred until withdrawn after retirement or as otherwise permitted by applicable law), and limited to a maximum pre-tax annual contribution of US\$17,500 (as of 2014).

Other employer-provided defined-contribution plans include 403(b) plans for nonprofit institutions and 457(b) plans for governmental employers. These plans are all established under section 401(a) of the Internal Revenue Code. 401(a) plans may provide total annual addition of US\$52,000 (as of 2014) per plan participant, including both employee and employer contributions.

# Annual and Regulatory Filings

Some companies, whether foreign or domestic, are required by law to file with the Securities and Exchange Commission (SEC) registration statements, periodic reports, and other forms electronically through EDGAR. Anyone can access and download this information for free.

Companies that are privately owned are not required by law to disclose detailed financial and operating information in most instances. They enjoy wide latitude in deciding what types of information to make available to the public. Small businesses and other enterprises that are privately owned may shield information from public knowledge and determine for themselves who needs to know specific types of information.

Companies that are publicly owned, on the other hand, are subject to detailed disclosure laws

about their financial condition, operating results, management compensation, and other areas of their business. While these disclosure obligations are primarily linked with large publicly traded companies, many smaller companies choose to raise capital by making shares in the company available to investors. In such instances, the small business is subject to many of the same disclosure laws that apply to large corporations. Disclosure laws and regulations are monitored and enforced by the US SEC.



# Intellectual Property

Intellectual property often comprises the most valuable assets of any business. Therefore, it is important to make sure that these rights are properly protected prior to commencing business in the US. Intellectual property is sometimes called “intangible property” because it refers to creations of the mind, such as literary and artistic works, inventions, instruments of branding used in commerce, and the secrets of a company that provide it with an economic advantage over its competitors.

There are four main areas of US intellectual property law:

- Copyright
- Patents
- Trademarks
- Trade secrets

Aside from trade secrets, this area is primarily governed by federal law.

## Internet domain names

Registering an Internet domain name gives registrants the right to exclusively use that domain name as an Internet address for use in connection with its business. All domain names are controlled by the Internet Corporation for Assigned Names and Numbers (ICANN) a global organisation.

The ICANN website contains a directory of approved companies that can be used to register a domain name.

When choosing a domain name it is crucial to ensure that the name does not violate another’s trademark. A registration can potentially be lost if another party has registered the domain name as a mark, or has greater rights to the mark under state common law even if a domain name was properly registered.

## Licensing

One way of monetising intellectual property is through licensing. A license is a contract giving another party the right to use or exploit intellectual property rights. Unlike an assignment, where the owner of the intellectual property essentially sells its rights in the intellectual property, a licensor retains ownership of the intellectual property and the licensee’s rights end when the license ends.

A license can be exclusive or non-exclusive. An exclusive license means that the licensor will not license anyone else the right to use the intellectual property for the term of the license. In contrast, a licensor can grant as many non-exclusive licenses as it chooses to.

A license can also be limited in scope. For example, a licensor might give one party the exclusive right to use its patented invention in one type of product, and give another party the right to use it in another product. As with all contracts, licenses can be drafted to suit a number of different arrangements. However, because intellectual property is treated like any other form of property under US law, it is important to consider antitrust issues when structuring a license and avoid arrangements that might create anticompetitive effects.

# Other Matters to Consider

## Restrictions on foreign investment

There are few limitations on foreign investments in the US, which generally welcome such investment. However, certain industries, such as defense, insurance, banking, securities and utilities, are highly regulated and may require government consents or are subject to reporting requirements. There are some additional exceptions which are important to keep in mind when contemplating a transaction in the US.

## Reporting requirements

The International Investment and Trade in Services Survey Act requires that any transaction that results in a 10% or greater voting interest in a US business enterprise by a foreign party, either by acquisition or establishment of a new entity, must be reported to the Bureau of Economic Analysis of the US Commerce Department within 45 days of the investment, unless an exemption applies.

The identity and ownership structure of the US enterprise, the name and country of origin of the “ultimate beneficial owner” of the foreign party and financial and operating information are among the items that must be disclosed. After initial reporting, quarterly and annual reports are required for larger businesses as well.

Under the Agricultural Foreign Investment Disclosure Act of 1978, a foreign person that acquires or transfers an interest in US agricultural land must report the transaction to the Agricultural Stabilisation and Conservation Service of the US Agriculture Department.

In addition, many states have foreign reporting statutes affecting foreign investment. Failure to comply with these reporting requirements can result in significant fines.

## Importing and distributing goods into the US

When doing business in the US import, clearance and distribution of goods are important elements to take into consideration. Before shipping products to the US, it is important to find out how these products will be classified and valued by the US customs and what procedures must be followed in order to obtain product clearance.

After the import and clearance of goods has been dealt with, the distribution phase begins. This involves negotiations as well as entering into various agreements, such as distribution agreements, and service agreements to name a few.

When exporting from the US, you will need to comply with the foreign trade regulations (FTR).

Most of the US states are applying the Uniform Commercial Code (UCC) rules. The UCC is the law governing the sale of products from your US subsidiary to distributors or customers in the US Specific State, and federal laws also provide for additional protections to the benefit of consumers. These laws can complement or supersede the UCC rules.

All goods imported into the US must enter the country via a designated port of entry, where an import duty on the foreign goods may be charged. The rate of import duty varies depending on the type of goods and the country of origin. Goods from developing countries, for example, are often charged lower rates or nothing at all.

Under the North American Free Trade Agreement, goods produced in and traded among the US, Canada, and Mexico receive preferential tariff treatment as well.

## Foreign Trade Zones

Foreign Trade Zones (FTZs) are areas established in or adjacent to US ports of entry, in which goods remain free of import duties and taxes. FTZs are legally outside the customs territory of the US. An FTZ can be valuable for importers for purposes of keeping goods until they are sold to a consumer, thereby avoiding paying import taxes on goods until such a time as they may be sold. Also, goods may be further processed in the FTZ so that the importer can obtain the benefit of a lower tariff rate on the resulting good. The FTZs were created to promote international trade and are widely used.

Despite some restrictions, the US continues to be an attractive environment for business and investment.

There are quite a few programs and services, on both state and federal levels, that promote foreign investment in the US. Some of these programs provide grants, loans, loan guarantees, and tax incentives.

## Opening a bank account

Since September 11, 2001 and the Patriot Act, non-US citizens are no longer allowed to open a bank account online. When opening an account you must visit the bank of your choice and sign the necessary paperwork in person – permitted that the country where you originate from is not blacklisted in the US.

If you are not physically present in the US, your approach will have to be different. Many non-citizens turn to major international banks as these have branches around the world. Enabling persons to open a US Dollar account at any of these American banks with branches in various countries.

Furthermore, not all foreign citizens living outside of the US are permitted to open a bank account in the US unless they have a valid reason to do so,

e.g. collecting rental income on real estate located in the US.

When requiring a corporate account this can be done relatively easier as a US Corporation is considered a formal US person. In case of absence, official representatives of the US Corporation may grant a power of attorney in which the power to act on their behalf is granted to a US-based person, who may then assist with the account opening.

The following documents are usually needed\*:

- Business address in the US
- Certified copies of the newly established US subsidiary's corporate documentation (e.g. certificate of incorporation, bylaws, etc.)
- 2 proof of identification of the person opening the bank account on behalf of the US subsidiary (someone has to physically meet with the bank representative)
- A power of attorney to represent the US subsidiary in opening such bank account
- A Federal Employee Identification Number (EIN)
- A valid reason for opening the bank account (i.e. business rationale).

*\* the list of documents/information needed can vary depending on the bank selected and/or on the type of entity.*

Also good to note is that although checks have become a marginal payment system or have been completely abandoned in an increasing number of countries, the US relies heavily on checks, due to the convenience it affords payers and due to the absence of a high volume system for low value electronic payments.

## Conclusion

While it may seem as if there are strict rules, requirements, and many topics to consider, the US has been a principal destination for foreign direct investment and continues to be. The key to succeeding is mainly understanding what you will need to deal with. The US business environment is highly energetic, robust and the opportunity for growth is clear for all to see.

Vistra can help you from the very start of your US expansion, from deciding where to set up your first branch and incorporation, through to everyday compliance monitoring and payroll administration. With our International Expansion Services, we offer financial, legal, administrative, and management support, including HR and Trade solutions and Intellectual Property protection.

Further information about our International Expansion Services is provided in the final section of this brochure.





# Your Partner in the US

# How Vistra Can Help Grow Your Business in the US

## International Expansion Services

If you are looking to set up business overseas, Vistra can assist via a wide range of services offered.

Limitation of liability also needs to be considered when choosing a suitable legal form.

Costs of establishment, maintenance, ownership transfer possibilities and taxation are some of the considerations which need to be taken into account when deciding what kind of presence to have in the US. For example, the question of whether to establish a representative office, branch, or US subsidiary.

## Corporate legal & compliance

### Business license & permits

In the United States, certain licenses and permits, both federal as well as state, need to be obtained in order to run a business legally.

The local requirements can be complex at times, but we can guide you through all matters relating to business licenses and permits.

Depending on where your business will be located and the type of activities you intent to undertake, we will assess what regulations are applicable. Following an assessment we will assist by providing the relevant information and taking care of all required application forms.

After our assistance in helping you with a license our service continues by helping you to monitor, comply and renew your licenses and permits.

When the decision is made to establish a US subsidiary, the most common corporate forms are LLCs and LLPs. Vistra has a large and diverse international network of law, tax and accounting firms with whom we work closely. We are therefore capable of involving advisors who would be most suitable for your specific situation.

Furthermore we would be capable of coordinating with the relevant department of state and/or tax authorities to ensure the correct entity is chosen and tax filings are being handled, including check-the-box elections if applicable.

## Structure

Vistra takes care of every setup detail, from company incorporation to establishing banking relationships with financial institutions or liaising with relevant authorities. Together with advisors within our network we can help you set-up the most efficient and beneficial structure that is tailored at realising your specific goals. At the same time we make sure your business remains compliant in the country of establishment.

## Finance & accounting

Vistra assists companies with their efforts to meet accounting requirements and provides comprehensive experience in all areas of accounting and reporting services, all over the world. In addition to the local generally accepted accounting principles, we have employees with profound knowledge of consolidations, IFRS, as well as staff available to deal with US GAAP – outside the United States.

## Reporting

In the United States some companies, whether foreign or domestic, are required by law to file registration statements, periodic reports, and other forms electronically through EDGAR to comply with SEC regulations. Vistra is capable of assisting clients with all such filings.

## Transfer Pricing

Transfer pricing is a complex challenge for multinational companies willing to sell goods and provide for services in the US through their US subsidiary.

Indeed, appropriate pricing needs to be established for goods and services transferred between affiliated entities and thus determining where profits will be recognised ultimately. Vistra will point out potential transfer pricing issues and liaise with local tax advisors on behalf of our clients in order to conduct a transfer pricing study and ensure appropriate tax treatment.

## Trade services

### Coordination and assistance

When entering the US market, import, clearance and distribution of goods are important elements to take into consideration.

Many of our international clients who are trying to enter the US market intend to import and sell goods in the US. We consider it our duty to inform clients about the importance of getting their goods through US customs in a correct and efficient manner.

Vistra assists clients by liaising with licensed customs “brokers” who will clear products through US customs and prepare the required entry forms:

- Description of items
- Valuation for Customs purposes and Harmonised Tariff Schedules of the US (HTSUS)
- Classification

When exporting from the US, you will need to comply with the foreign trade regulations (FTR).

## Additional services

### Global HR solutions

### Intellectual property management

By providing our clients with local support, backed by global experts we deliver one stop solutions and 24/7 availability through our enhanced software applications.

For more information about these specific services, please do not hesitate to contact one of our experts.



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