



RUSSIN & VECCHI
Establishing a Business Presence in the United States

In general, establishment of a company in the United States is not very complicated. Authorization comes from each state instead of the federal government. Laws, registration forms and requirements vary, but all states have internet websites that walk you through the process. An individual could complete all of the registration requirements themselves for uncomplicated business structures. Legal counsel would be advised for anything beyond the simplest business form. There are essentially four steps to setting up a business.

Step 1: Determine the basic legal structure of the business and properly register the business and record the business name. There are several different legal structures available for businesses operating in the US, each having different characteristics based on ownership, liability, and taxation:

Types of Business Entities (Joint Ventures and Subsidiaries would also be structured as one of these business types)				
Sole Proprietorship	Partnership	Corporation S-Corporation	Limited Liability Company Limited Liability Partnership	Foreign Corporation & Representative Office
<p>A business owned and operated by one person.</p> <ul style="list-style-type: none"> • Sole proprietor (“SP”) has sole control and responsibility for business • SP is personally liable for all debts of business • Income from business is reported on SP’s personal tax return 	<p>Two or more persons or businesses join together as co-owners to carry on a trade or business.</p> <ul style="list-style-type: none"> • Can be created by a written or oral contract between individuals • Partners share in profits and losses • Flexible management and profit sharing arrangements possible • Individual partners report their portion of their income on their personal tax return <p style="text-align: center;"><u>General Partnership</u></p> <ul style="list-style-type: none"> • Liabilities of the partnership are assumed by each partner and are extended to the personal assets of each partner <p style="text-align: center;"><u>Limited Partnership</u></p> <ul style="list-style-type: none"> • Must have at least one or more general partners and one or more limited partners • General partners share full liability for partnership obligations • Limited partner liability is limited to the extent of their investment • There must be at least one general partner that manages the business. • Limited partners cannot take part in running the business. 	<p>A corporation is a separate and distinct legal entity which exists apart from its owners or shareholders. As a separate legal entity, it has its own rights, privileges, and liabilities.</p> <p style="text-align: center;"><u>Corporation</u></p> <ul style="list-style-type: none"> • Formed for profit or nonprofit • Shareholders liability is limited to the shareholder’s investment • Continuous legal entity which is unaffected by the death or transfer of shares by its owners • Extensive record keeping and articles of incorporation required • Corporation pays taxes on its profits. Taxes on dividends are also paid by shareholders <p style="text-align: center;"><u>S Corporation</u></p> <p>Combines corporate characteristics with the tax benefits of partnerships.</p> <ul style="list-style-type: none"> • A corporation can elect to be treated as an S Corp. anytime • Profits and losses are passed proportionally to the shareholders for personal tax return reporting • Limited to 75 shareholders, 1 class of stock, shareholders must be US citizens or residents, shareholders must be made up of individuals, estates, or trusts only. 	<p>A limited liability company (“LLC”) combines many of the favorable characteristics of corporations, and general and limited partnerships. There is also none of the shareholder limitations imposed by S-Corps.</p> <ul style="list-style-type: none"> • Unincorporated organization of one or more members • Liability of shareholders is limited to the amount of their investment • Profits and losses are normally passed proportionally to the shareholders for reporting on their personal tax returns • Must file an Articles of Organization • Members can manage the company themselves or elect outside managers <p>A number of states also provide for the licensing of one or more individuals who are engaged in professional services, such as doctors or lawyers.</p> <ul style="list-style-type: none"> • A limited liability partnership (“LLP”) is a general partnership that provides professional services • The Professional Corporation is an alternative to the LLP in some states. 	<p style="text-align: center;"><u>Foreign Corporation</u></p> <p>A foreign corporation is a corporation that is doing business in a particular state but is incorporated at a location outside the state or in a foreign country</p> <ul style="list-style-type: none"> • Normally requires an application of authority to operate in the state • Application also requires proof of good standing issued by the state or country where the company is incorporated • Is subject to corporate taxation • Liability is linked back to the parent corporation • Essentially operates as a branch of the parent <p style="text-align: center;"><u>Representative Office</u></p> <p>Apart from banks and other financial institutions, the concept of a representative office is not generally recognized as a legal business structure in the US. Therefore, there is no formal formation process. However, states will generally require a company that desires this type of representation, to:</p> <ul style="list-style-type: none"> • Register as a foreign corporation, or • Obtain a business license for employment and tax purposes.



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After determining the appropriate legal structure of the business, the business name and entity type must then be registered with the appropriate state commerce office in the state or county where the business will be located. Each state will have a standard form it uses for name and business registration and a name search will be performed to make sure the name contemplated is not already registered. For a foreign corporation, normally the same name of the parent is used. You may also want to register any applicable trade or service marks with the state you will be doing business in as well as at the federal level. Incorporation will also require filing an application to obtain a certificate of incorporation or organization. This is normally obtained after completing a registration application and filing a set of articles of incorporation, which describes the organization, top officers, company location, and details on the makeup the stock in the company and rights of shareholders. These filings are made with the applicable state commerce office or Secretary of State and the filing fee is in the range of US\$25 – US\$175. Specific information on state requirements for establishing a business, forms, licenses, and state and local tax information can be found on the websites of each of the fifty states. For state website access, the following format should be used for any of the states: www.state.ny.us. Change the two letter state abbreviation following the word “state” to the state you want. For example, Texas and California would be www.state.tx.us and www.state.ca.us.

Step 2: Determine the federal, state, and local tax obligations of the newly established business. Both the Internal Revenue Service (“IRS”) and virtually every state have internet websites where you can download applicable information on taxation. It is recommended that a professional tax advisor, accountant, or attorney be consulted before starting a for-profit business. Every business, except for certain sole proprietorships that do not have any employees, needs to obtain a federal Employer Identification Number (“EIN”) by filing form SS-4, available on the Internal Revenue Service website at www.irs.ustreas.gov. In general, businesses will be taxed federally according to the type of legal entity established. The federal tax year is normally January to December. However, in some circumstances, the IRS permits companies to designate a different tax year. State, city, and other local taxes are a function of the location and type of business. States will normally also have some form of tax registration process that is part of the business registration process.

Step 3: Determine the necessary licenses, permits, certifications, and/or authorizations for a specific business on the federal, state, and local levels. Licenses and permits, certifications or other authorizations required for a new business are a function of the location and type of business. The number of approvals required can be one or two to many. For example, the establishment of a commercial laundry in California requires a business license, a fire department permit, a burglar alarm permit if there is a security system, an industrial wastewater discharge permit, zoning approval, among others, just to set up a laundry. Business licenses are normally renewed annually. As property use is regulated at the local level, there also may be local zoning ordinances and building permits that apply to the location where you want to establish a business. Some states also regulate or require permits for home-based businesses. All of the state websites have details on licensing requirements and application forms for different types of businesses.

Step 4: Determine the federal and state employer requirements. As an employer in the US, you are subject to labor, safety, and tax regulations. Certain key Federal Regulations you should be aware of include:

- **Americans with Disabilities Act** – Provides protection for people with disabilities in the areas of employment, public services and transportation, public accommodations, and telecommunications. The act protects against discrimination and requires certain steps to be taken by businesses to accommodate and provide easy access for the disabled. For more information, refer to www.eeoc.gov.
- **Equal Employment Requirements** – Federal and state laws prohibit employment discrimination. The Equal Employment Opportunity Commission (“EEOC”) as well as established state employment entities are charged with enforcing fair employment laws which prohibit discrimination on the basis of race, color, sex, religion, disability, age, or national origin. For more information, refer to www.eeoc.gov.
- **Safety Requirements** – The Occupational Safety and Health Administration (“OSHA”), part of the U.S. Department of Labor, maintains regulations that deal with occupational safety and health. For more information on the Occupational and Safety Health Act of 1970, refer to www.osha.gov.



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Step 4: Determine the federal and state employer requirements (con't)

- **Wage and Labor Requirements** – The U.S. has specific regulations governing minimum wages, and overtime for hourly wage workers. Currently the federal minimum wage is US\$5.15 an hour, and 1 ½ times the regular wage if an employee works more than 40 hours per week. Some states have higher minimum wages than the federal minimum. Child labor laws restrict employment of children below the age of 16, except in the case of farm labor. For more detailed information on applicable labor laws, see the U.S. Department of Labor website at www.dol.gov and the website for the state you are doing business in.
- **Employee Tax Withholding Requirements** – Employers are generally responsible for withholding federal, state, and local taxes from employee wages. In addition to state and local taxes, employers must withhold federal social security taxes as part of the U.S. disability and retirement scheme. They are also typically required to contribute to state unemployment insurance and a worker's compensation scheme related to injuries that were incurred while working. For further information on these requirements, see the following websites: U.S. Social Security Administration at www.ssa.gov, www.irs.gov, and the specific state website for the state the business is located in.

In addition to the above noted four steps, you should be aware of the other following points:

- The application process to form a corporation consists of completing and filing a “certificate” or “articles” of incorporation. Although states differ on the information required, they generally require all or most of the following information: 1) the name of the corporation, 2) the purpose and scope of business, 3) the number and type of shares the corporation is authorized to issue, 4) name, address, and consent of a designated registered agent, 5) names and addresses of incorporators, and 6) the date incorporation is to take effect. A few states require the designation of at least one director with the filing.
- Almost no state requires that directors, officers, or shareholders, etc. be registered with the state.
- Little emphasis is put on the company's registered capital. A company may have minimal registered capital, but its actual capital, in terms of its financial records, may also be significantly different. Hence, registered capital and actual capital are usually unrelated. Also, a share transfer price may bear no relationship to actual share values. A company with US\$50,000 of capital may issue two shares (e.g. to the founders) at a price of US\$1 each, and no other shares may have been issued
- Company seals are not required by law and do not carry official legal recognition as in Vietnam. However, some companies do use them for commercial purposes and to stamp on official documents such as share certificates. The seal is not registered with the state and can be purchased from any manufacturer if desired.
- States vary on whether a business is required to designate a registered agent to accept legal papers served on the company on its behalf. Information on state requirements can be found on state websites
- As you compile all of the necessary information required to set up a business, a detailed table of all of the regular filing requirements, tax payment dates etc. should be completed in order to ensure compliance with all regulatory and licensing requirements on any ongoing basis.
- Once you have established your business and have completed all of the legal requirements for establishing a business, it is relatively easy to go to any bank and establish a banking account for facilitating the cash management component of your business.

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