

How to Set Up a US Company as a Non-Resident

While a non-resident must go through all the same steps as a resident, there are additional complications. For most non-residents, international tax law, getting visas and opening a bank account present the most problems. Each of these topics is very complicated.

The steps outlined below cover the critical steps that must be addressed before a business can be launched.

- What type of company is being set up
 - S Corporation, C-Corporation Versus LLC Tax Comparison
- Where the company is being incorporated
- Where the company will be doing business
- The type and activity of the business, and its need for licenses, registrations, permits etc.
- The staffing needs, which in turn influence the need for physical location and size of facilities

Checklist: How to set up a US Company as a Non-Resident

Step 1: Determination Stage

Step 1, determine what exactly you want to do, where and how you want to do it, how much it will cost and whether or not you have the budget. In this step, you need to determine:

- Where to establish your US business
- Where to incorporate your US company
- Your need for protecting your intellectual property
- Whether you will need to obtain any special licenses
- Your need for visas or other immigration needs
- Your need for staffing for the business
- Your need to access the capital markets in the US
- Your need for marketing, supply chain and other support services
- Are there any tax incentives available, and what options are available to minimize your tax burden

Step 2: Planning Stage

In the **Company Planning Stage** you will determine such practical matters as:

- The name of the company
- Whether to be a corporation or a limited liability company
- Which state to incorporate in and which states to register in



www.strategicaccess.org • PO Box 1495, Bonita CA 92108
(858) 848-1ONE – (858) 848-1663 • info@strategicaccess.org

- Determine the capitalization of the company (how many shares at what par value, and how much each shareholder will contribute to the company as their capital contribution)
- Determine who will be the shareholders, officers and directors
- Determine the roles and responsibilities of the company's officers and directors

Step 3: Action Stage

After completing the Company Planning Stage, the **Action Stage** should be very smooth and fast:

Provide the necessary documents

1. Form the company
2. Register the company in other states as needed
3. Hold the organizational meeting, appointing the officers and directors, issuing shares to the shareholders and taking such other actions as necessary
4. Obtain the federal Employer Identification Number
5. Open your bank account
6. Start business: buy, lease or rent office space, hire employees, market the products, etc.

Where to Set Up a US Business

The Value of Advance Planning

Choosing a business location is perhaps the most critical decision, and once you are committed to a choice it is expensive to change. It involves looking at demographics, assessing your supply chain, scoping the competition, staying on budget, understanding state laws and taxes, and much more.

This selection should be one that fulfills business objectives in the most cost effective way, and as such is a trade off between cost and quality factors. At the outset, a company needs to identify which factors are the key drivers in the location choice – is it access to market? Availability of skilled labor? Transport infrastructure? Most likely it is a combination of all these, and others. By working through this issues, a set of quantitative and qualitative data points can be developed.

Typically, the factors to consider will include:

- Cost: Labor, Property, Utilities, Corporate Tax, Incentives
- Quality: Labor Skills, Labor Flexibility, Connectivity, Infrastructure, Risk, Quality of Life

All of these factors can also be broken down into sub-factors.



www.strategicaccess.org • PO Box 1495, Bonita CA 92108
(858) 848-1ONE – (858) 848-1663 • info@strategicaccess.org

A robust corporate location process involves using a range of primary and secondary data sources, starting out with a “long list” of states or cities, and through robust and logical analysis identifying 2 – 3 cities that meet the criteria. At this point, a company should visit these locations, talk to similar companies, government officials, and even recruiters, to understand which city is the right “fit” for them.

Choosing a State of Incorporation

Once you have chosen your location to set up your business, the next step is choosing a state of incorporation. You can incorporate in the state where you are doing business, or you can incorporate in another state. Incorporating in the same state as your business is cheaper. Sometimes incorporating in another state has more benefits, but will always cost more.

Choosing a State of Incorporation For Your New Business

You are not required to incorporate in the state where your business operates; you have the freedom to choose from any one of the 50 states or the District of Columbia.

The key thing to know is that you must be registered to do business in the state where your business is located. If you incorporate in the same state where your business is located, then this is automatic. If you incorporate in a different state, you will have to register your company to do business in the state where your business is located.

In making the decision of where to incorporate, there are two primary factors to weigh: your budget and your goals. The decision typically is between incorporating in the state of operations and incorporating in Delaware and registering the company in the state or states where the company will be doing business. If the corporation is a closely held company that does business primarily within a single state, local incorporation is typically the best decision. The cost of local incorporation will usually be less than incorporating in another state and qualifying to do business as a foreign company in that state.

A foreign company that qualifies to do business in another state is subject to taxes and annual report fees from both the state of incorporation and the qualifying state. Thus, the actual advantage of incorporating in a state with very low or no corporate income tax is not as great as it appears, if your business must still qualify to do business in its state of operations.

Introduction to Types of US Business Visas

You can start and own a US company without a visa, and without even coming to the US. Opening a bank account for your business is more difficult, but often can also be done from outside the US (no guarantees!). Managing an LLC from outside the US is allowed, but may not be permitted within the US without a valid work visa. Being a director, as well as a shareholder, of a US corporation is allowed without any kind of visa, but being an officer and performing your duties within the US is generally not allowed. Working for your corporation or LLC within the US without a valid work visa is not allowed.

If you are planning to come to the US to start a business, you will need to have one of the various types of US business visas. Without a visa, you can be the owner or manager of a US company, but you cannot legally work before. If you do work for your own company without the proper visa, you can be deported without right of return, and your company can be fined for hiring an illegal alien.

Types of US Business Visas

Name	Description	Length	Limitations
B1	Short term business visa Not allowed to sign contracts or perform work for hire	Temporary, up to 6 months	Can negotiate but cannot sign contracts
B2	Short term Tourist visa	Temporary, up to 6 months	Can negotiate but cannot sign contract
E-1	Treaty trader visa. Good for setting up a business that will trade with the visa-holder's home country. Must be with a country with an appropriate treaty with the US	Temporary, can be renewed until business is no longer in operation	Is only valid as long as there is a business. Children under 21 cannot work, and lose their status once they turn 21
E-2	Treaty investor visa. Allows a citizen of a <u>treaty country</u> to come to the US to start a business	Temporary, can be renewed until business is no longer in operation	Is only valid as long as there is a business. Children under 21 cannot work, and lose their status once they turn 21
EB-5	Investor Green Card program. Requires an investment of \$500k to \$1MM, must hire at least 10 US residents within 2 years and survive more than 5 years	Leads to permanent residence after probation period	
L-1	Intercompany transfer visa. Allows holder to transfer from foreign company to a US company subject to restrictions	One year, with up to 3 extensions	Employee must have worked for foreign, related company for more than one year in the last 3 years
H-1B	Specialized labor visa	Three year, extendable	Annual quota restricts number of visas available. Cannot be used for self-employment.
O-1	Extraordinary Ability visa	Up to three years, extendable	Must be able to document extraordinary ability
TN	NAFTA temporary work visa	Up to three years, extendable	Cannot be used for self-employment