

Forming a company in USA

An international business that wishes to commence operations in the US will often want to form a subsidiary company as a vehicle for conducting its affairs.

As noted above, the formation of a business entity is regulated at the state (as opposed to the federal) level. A company may be formed in any state, and the formation process varies from state to state. The State of Delaware is the most popular domicile for US and international companies, because it maintains one of the most well-developed bodies of corporate case law, has one of the most advanced and flexible business formations statutes, and is generally regarded as a business-friendly environment. Other common states to form business entities include New York and Nevada. Most subsidiaries are formed as private companies and can be converted into public companies at a later date if the need arises. Private companies cannot offer their shares for sale to members of the public unless the shares are registered with the SEC or an exemption from the SEC's registration requirements is available. As a result, companies that wish to sell their shares to the public on a national exchange such as the NASDAQ or NYSE, must register their shares with the SEC. Publicly-traded companies are subject to greater rules and regulation than private companies.

A company formed in the US is a distinct legal entity with the ability to own assets and employ workers. It is also subject to taxation at both the federal and state levels. The rules relating to the operation and regulation of companies are set out in each states' statutes. A number of different types of business entity can be created in the US, including a corporation, limited liability company (LLC) and various types of partnerships. A corporation issues equity in the form of stock to its owners (shareholders). An LLC will issue a percentage of membership interests, sometimes referred to as units, to its owners (members).

Generally, the key features of US corporations and LLCs include:

1. • limited liability—the liability of the shareholders or members is limited to the amount of capital contributed, subject to certain exceptions
2. • management—a corporation is governed by a board of directors, which designates officers to manage its day-to-day operations. Management of an LLC is initially vested in its members. Members may delegate management to a managing member, non-member

manager, or board of managers. Typically, state laws provide that certain major decisions require approval by members holding a majority of a corporation's shares, or units in the case of an LLC

3. • organisational documents—both a corporation and an LLC are formed by filing a certificate with the state of its choice and paying the associated filing fee. The certificate of incorporation and by-laws of a corporation set out the rules by which the corporation is operated, including the appointment and removal of directors and the procedures for holding board and shareholder meetings. The operating agreement of an LLC provides for the same rules for the LLC
4. • capitalisation—initial capitalisation of a corporation and an LLC may be nominal. The number of shares of a corporation that may be issued is limited by the number of shares authorised by the corporation's certificate of incorporation, which may be changed. Conversely, because membership interests represent a percentage of ownership, the number of membership interests is unlimited. Issuance of additional shares or membership interests may be further limited by pre-emption rights that may apply in favour of the existing owners
5. • statutory filings—a company is required to make certain filings with the state in which it is domiciled and with any state in which it conducts business. The registered address of a company and the liens granted over the company's assets are all a matter of public record