FOOTHOLD AMERICA

THE EASY WAY TO THE USA

Expanding your business into America.

footholdamerica.com

Contents.

Expanding your business into America.

If you have identified the opportunity of expanding your business into the US or need to have employees based there, this guide helps you figure out how to go about it.

There's a lot of sense in your decision to target America - the US has the world's largest gross domestic product by more than $7t to second largest, China, in 2020.

However, the country is huge - 50 states each with their own trading and employment laws and taxation. And some of those states are individually bigger than powerful countries such as the UK.

Whilst America is ranked 6th for ease of doing business, starting a business there is more challenging. Indeed, it was ranked 55th for ease of starting a business by the World Bank in May 2019.

In some cases, you can do business in America very successfully without taking on the complexities of actually starting a business (or separate legal entity) there. Weighing up all the options before choosing to create your own subsidiary is wise and may save you a vast amount of time and money.

Needless to say, a successful transition into one of the world's wealthiest nations is worth the effort.

> "The United States has always provided foreign investors a stable and welcoming market. As a place to do business, the United States offers a predictable and transparent legal system, low taxes, outstanding infrastructure, and access to the world's most lucrative consumer market"
>
> - The International Trade Administration, U.S. Department of Commerce

About Foothold America

Foothold America was born out of the experience of parent company Alacrita, a British firm that successfully branched out into the US.

Having navigated the administrative maze involved in getting established in America, Alacrita recognised opportunities to simplify the process for others.

Since its formation in 2014, Foothold America has enabled and supported firms, based around the globe, to branch out into the US.

Options for exploring the US market.

There are many reasons business leaders consider expanding into America.

You may have been successfully exporting goods or a providing a service for a while and know there's a market to grow. Perhaps you know the talent you need is in America or you may even have identified specific individuals you wish to hire. Maybe a key employee is moving to the States and you don't want to lose them or you're even considering emigrating yourself. It could, of course, be a much newer venture where you've identified an opportunity in the US and want to explore it.

To make a significant impact in the US there'll come a point when you need to have boots on the ground and there's good reason not to delay.

Even in the increasingly global marketplace we live in - with all the benefits of improved communications - the old adage of 'it's who you know, not what you know' continues to ring true. Having the right people, in the right place with the right connections is still key to making a business soar.

Adam Uren, editor and CEO of Bring Me The News, an online news service in Minneapolis, Minnesota, said:

"Who you know is still important. Even in the digital age, relationship building is still a crucial part of doing business in America.

"My company has been helped to grow thanks to some mutually beneficial partnerships that came about through people we knew or have worked with before."

Advantages of having employees based in America.

Having employees based in America:

✓ Gives your customers a point of contact closer to them.

✓ Ensures you have representation within the same time zone.

✓ Will teach you a lot about operating in the USA.

✓ Is a stepping stone to making the vital connections you need to thrive as a business.

Three routes to employing people in America.

There are three routes to employing people in America. One can be executed extremely quickly, at relatively low cost and will allow you to take on an American citizen within a week. One is heavily bureaucratic, will take a number of months, but may be necessary depending on your circumstances. The other is most likely best avoided. Each route has varying levels of risk, cost and complexity. The choices are:

1. Setting up a branch office

Setting up a branch office may seem like a simple solution, but exposes you to very high risks and could detrimentally impact on your current business. Due to the branch office not being a separate legal entity, the entire company may be exposed to any litigation or claim on it, as well as US taxation.

2. Creating a subsidiary/new legal entity

Creating a subsidiary is probably the most commonly known route to expanding your business into America. It involves creating a new company, a new legal entity, in the United States controlled by your parent company.

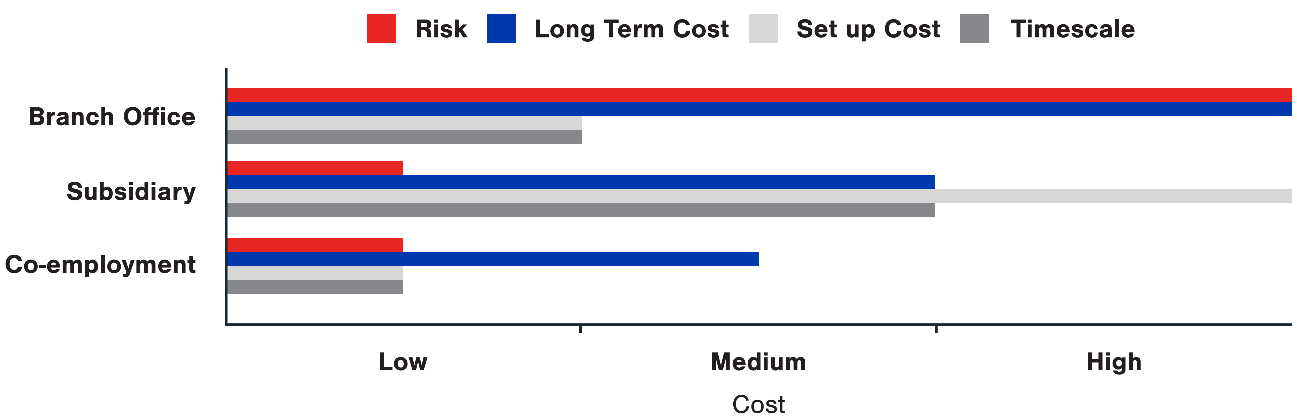
There is no getting away from the fact that it is a complex process which requires professional advice and guidance and is certainly a significant investment. There are some circumstances where this is the only viable option to expand into America.

3. Co-employment

Co-employment is a middle ground option that allows you to take on staff in America without establishing your own legal entity. It allows you to move quickly and with significantly less commitment and cost than creating a subsidiary.

Co-employment involves enlisting the services of a specialist firm that has an established US subsidiary and can act as a go-between, employing people for you - in the name of your company.

There are some circumstances where co-employment is not a viable option. For many, it is a great way to test the water in America.



Why setting up a branch office is a high risk option.

It's not unusual, on first instinct, to think setting up a branch office of your existing business in America may be the most seamless route to begin trading there.

In reality, most firms will then discount this option, due to the fact that setting up a branch office means potentially exposing your existing company to increased taxation and liability.

Taxation, liability and investment limitations of a branch office.

Because a branch office is not a separate legal entity, it will likely expose your parent company to US taxation on its entire corporate income rather than just earnings achieved in America. That alone is a potentially huge and costly outcome.

Similarly, because a branch office is an extension of the parent company rather than a separate legal entity, the entire company is exposed to liability should there be any litigation or claim against the branch and vice versa. It is worth remembering that America has a well earned reputation for being litigious so this isn't something to be dismissed lightly.

On top of those issues, a branch office may lack credibility in the eyes of investors and potential partners. It is not unusual to find investors and partners unwilling to deal with a branch office as opposed to a stand-alone entity, which could reduce future opportunities and growth.

Conclusion on branch offices.

Simply speaking, creating a branch office is not usually a wise route to doing business in America. This route is potentially damaging to both your parent company and opportunity to thrive in the US.

That leaves two remaining options for expanding your business into America, both of which have their own merits.

An introduction to subsidiaries and co-employment.

Forming an American subsidiary or entering a co-employment arrangement are two legitimate means of expanding your business into America and beginning to take on employees there.

What is a subsidiary?

A subsidiary is a company that is more than 50 per cent controlled by a parent company.

The subsidiary is a distinct legal entity, and therefore liabilities, taxation and regulations are treated distinctly, limiting exposure to your parent company.

NOUN

1. A company controlled by a holding company.
'a subsidiary of Cable and Wireless'
'the firm's Spanish subsidiary'

1.1 *rare* A thing that is of lesser importance than but related to something else.
'Mozart follows his first theme by a crowd of subsidaries'

Creating an American subsidiary is a big step, which represents significant investment and commitment.

International businesses considering establishing a subsidiary in the USA typically incur first year costs of around $65,000. The majority of this cost goes into professional legal and tax advice, which is necessary to ensure what you're setting up is optimized for your specific scenario. Average ongoing costs of $15,000 can be expected for filing of state, federal and consolidated taxes.

It usually takes at least three to four months to set up a subsidiary.

In certain cases, assuming you have disregarded setting up a branch office of your existing business, creating a subsidiary is the only viable option for expanding your business into America.

Circumstances when you'll likely need to create a subsidiary:

✓ You need to employ eight to ten employees in the first year

✓ You need to import tangible goods into the US

✓ You must enter into certain contracts, such as significant real estate leases

✓ Your clients may require it

What is co-employment?

Co-employment involves a relationship between two employers to share the responsibilities in relation to specific employees. It is mostly an arrangement of outsourcing some of the HR related responsibilities including payroll and benefits, which are particularly complex in America.

There are two types of co-employment arrangement: co-employment alongside a subsidiary and co-employment as an alternative to creating a subsidiary - which is a cheaper and lower commitment option to creating a separate legal entity, but only viable in some circumstances.

What is **Co-employment?**

A contractual relationship between two or more employers over the sharing of certain responsibilities in relation to the same employee.

When co-employment may be a suitable alternative to a subsidiary

✓ You are keen to keep set-up costs to a minimum

✓ You need to recruit staff in several states in Year One

✓ You need an interim solution to allow you to employ people in America whilst your subsidiary is being set up

✓ You need to move quickly to employ people in America

X You are not certain you will remain in America long-term

✓ You are interested in handing over responsibility for things such as payroll, book-keeping, filing taxes

✓ You want to attract top-quality staff by offering competitive benefits from day-one of a level you may not be able to offer as a start-up subsidiary

X You don't have internal expertise in US employment law and compliance including things like US medical insurance, workers' compensation and 401(k) retirement plans

X You won't be:

- *Employing eight to ten employees in the first year*
- *Import tangible goods into the US*
- *Entering certain contracts, such as significant real estate leases, straight away*

Co-employment alongside a US subsidiary

If you need to create a subsidiary you may still wish to consider co-employment alongside it.

Due to the complex nature of taxes and benefits in the US, it is common for US-based companies to use a co-employment provider to ensure they meet all their obligations and commitments to employees.

Co-employment providers take care of things like payroll, employee taxes, retirement plans and health insurance. In the case of employers who only have one member of staff a co-employment arrangement is the only way to provide health care.

It is not unusual for American employees to be reassured by the involvement of a co-employment provider as they can be confident that all the requirements they have are being properly met.

Once you have identified prospective staff, a co-employment provider can conduct background checks, hire staff and provide HR support on your behalf.

Co-employment as an alternative to creating a subsidiary

There are co-employment options that will allow you to take on employees without the need to create a separate legal entity in America. In this case you will essentially be enlisting a third party to employ US workers on your behalf, through an existing American subsidiary.

The third party takes responsibility for all the complexities of HR issues such as compliance with employment law, employee benefits, payroll and income tax, which, in America, vary from state-to-state.

This type of co-employment will allow you to take on staff with minimal set-up costs and risk. There will then be ongoing fees for the co-employment service. It would take many years for these costs to come close to the average start-up costs for a subsidiary.

Fees may vary widely between providers and will depend on your particular requirements. You should budget around 35 per cent - 50 per cent above salary to account for taxes, insurance, benefits and co-employment fees. Employees with salaries less than $100k, would experience these costs toward the higher end of the range. Generally, you will pay a one-time onboarding fee and a monthly fee. Always ask for a detailed budget from your co-employment provider.

It can be possible to onboard a member of staff in as little as a week via a co-employment arrangement, allowing you to react quickly to a live opportunity for your business.

In a co-employment arrangement, you remain in control of all business related decisions. Employees recruited in this way still ‘belong’ to your company and can have a company email, phone number and carry a company business card.

As opposed to creating your own subsidiary, co-employment has the added benefit of allowing a quick and less complicated exit from the US if, after giving it a go, you discover the time is not right to expand.

In cases where you establish your own subsidiary and then enlist the services of a co-employment provider to help meet your obligations to your employees, you can expect to pay significantly less per month for the co-employment service.

Danny Lopez, former British Consul General in New York and Director General for UK Trade and Investment USA, said:

"I have seen companies grow their sales in the US on a huge scale without actually setting up a company over here.
"Secure an initial set of customers, secure an initial geographical patch where you are going to try to make it before deciding to take the whole country on.
"My advice is always to work with somebody who is either a local or gets this market inside out. If nothing else, it will help with speeding up the process of doing business in this country."

Key considerations - co-employment as an alternative to creating a subsidiary

Depending on the package and provider you choose to enable co-employment, it may mean:

- You can can quickly create a credible presence in the US without the cost and complexity of setting up a US entity/subsidiary
- A saving of tens of thousands of dollars a year in legal, tax advising and tax filing expenses
- You can rapidly onboard a chosen worker - particularly valuable to ensure the perfect candidate does not slip through your fingers if they're available now
- You can quickly secure the services of talented US workers who understand the market and location and may already have strong relationships with prospective customers or investors
- Your workers immediately have access to a benefits package that is not available to the typical start-up, helping you to entice top-quality staff and retain them
- You won't have to waste less time creating systems for payroll and ensuring compliance
- You can exit the arrangement in a matter of weeks if necessary

Steps to taking on staff under a co-employment arrangement

1. **Identify the opportunity**
   America is a vast and very diverse country. You need to decide where you want to have a presence as well as where you can secure qualified talent. You may only ever have one employee who travels the country.

2. **Identify the candidate**
   With your recruiter or on your own, identify the candidate who will grow and/or manage your US expansion. Compare co-employment providers, ensuring to ask about their fees and a summary of current benefits offered to employees.

3. **Make the offer**
   Employment can begin in as little as one week of a signed job offer. Your co-employment provider should ensure the employee's right to work in the US, conduct background checks, set appropriate income tax and employer tax deductions and get employees signed up to receive benefits.

A comparison between subsidiary and co-employment.

Setting up a subsidiary is a complex process and one that requires professional advice and input from an appropriate legal advisor and accountant experienced in US and international tax matters.

Using co-employment as an alternative to setting up a subsidiary can be a way of recruiting employees in the US more quickly, with less bureaucracy, less risk and less investment, but it is not a viable solution in all cases.

For illustrative purposes, the table below compares the pros and cons of Foothold America's Employee Management Service, a co-employment solution, with creating a subsidiary.

Our Employee Management Service (EMS) involves us employing workers in the US on your behalf. This overcomes the cost and bureaucracy of employing US workers yourself through your US legal entity. However, we also help companies set up a legal entity themselves in the US if that is the better option.

	US subsidiary set-up & management, either initially, or in transition from Employee Management Service to subsidiary	Employ US workers through Employee Management Service without setting up an entity
Low upfront fees	✗	✓
Employ US workers quickly	✗	✓
Quick & easy exit from the US	✗	✓
Facilitate importation of tangible products in the US	✓	✗
Need to raise US capital	✓	✓
Firmly committed to the US market	✓	✓
Testing the US market	✗	✓
Plan to hire fewer than 5 employees	✗	✓
Plan to scale rapidly, 5+ employees in year one	✓	✗
Need a US bricks and mortar bank account	✓	✗
US bank account through FX banking is sufficient	✗	✓
Clients expect/require you to have an EIN/Tax ID	✓	✗
Sign long-term office lease	✓	✗
Month-to-month virtual office	✓	✓
Home-based employees	✓	✓
Direct your employees' activities	✓	✓
Employees carry your business card	✓	✓
Obtain a US phone number	✓	✓
US employees can sign contracts on behalf of the company	✓	✗
Obtain a US business address	✓	✓
Avoid obligation to file & pay US employer taxes*	✗	✓
Avoid obligation to file & pay US corporation tax and file consolidated tax returns*	✗	✓
Employ foreign nationals wishing to settle in the US	✓	✗

*Discuss details with your tax advisor

When you need to create an American subsidiary.

There are circumstances when co-employment will not be appropriate for your business requirements and in those cases you may need to create a subsidiary.

As previously outlined, circumstances that are likely to require you to create a subsidiary include, when you:

- You plan to employ eight to ten employees in the first year
- Have to import tangible goods into the US
- Must enter into certain contracts, such as significant real estate leases

Should you need to create a US subsidiary you will need to engage professional tax and legal advisors with knowledge of your domestic legislation and the equivalent rules that you will encounter in the US. Establishing an American entity takes commitment and capital.

It usually takes a number of months to create a subsidiary and get to the point where you can begin recruiting staff. Depending on your circumstances you may also need to complete a lengthy visa application process first.

You can create a subsidiary and then enlist a co-employment provider to take on HR responsibilities such as payroll, income tax and benefits. This is a common practice for American employers to do due to the complexity of such matters in the US.

If you form a subsidiary and do not use any co-employment services, you will be directly responsible for compliance with US federal and state employment law and all tax requirements.

Sophia Warnon, Operations Manager at cyber security company Garrison Technology which established a US entity, said:

"Don't underestimate how long it can take to do things properly, especially if you are hiring people in different states – there's a lot of different legislation in each state."

The subsidiary process

Creating an American subsidiary is a complex process. There are specialist firms who can help you navigate your way through.

You will need to:

1. **Engage tax and legal advisors**
   It's important to find the right people to guide the process for you. They'll need a deep understanding of your domestic situation and that in the US.

2. **Decide upon your subsidiary's legal structure**
   Working with your legal and tax advisors you'll need to identify the most appropriate of the legal structure options open to you, which include Limited Liability Company (LLC), C Corporation and S corporations. Most overseas companies choose a C Corporation, which is similar to a Limited Company in the UK or GmbH in Germany.

3. **Open an American bank account**
   Most US banks will require you to open the account in person. Unsurprisingly, there are a number of specific forms you'll need to complete, including evidence your entity is 'in good standing' in the state of incorporation. You will need to have registered with the Internal Revenue Service (IRS) to get a Employer Identification Number (EIN).

   Another option is to establish a US bank account, usually free of charge, with a foreign exchange provider. In many cases, you wouldn't need a US subsidiary, though you would likely be required to document ownership of your business in another country.

4. **Research and establish the best location to establish your subsidiary**
   Important factors will include geography, infrastructure, transport links, availability of appropriate staff and time zones. Tax, federal and state laws are also key considerations.

5. **Prepare to start recruiting**
   You'll need to ensure you're complying with US employment law and may wish to consider consulting with a recruitment specialist to avoid pitfalls that could result in litigation.You'll have to decide whether to partner with a co-employment provider for HR, payroll and benefits services. If you decide not to, you'll need to consider and put in place benefits schemes including 401(k) / retirement plans and health insurance.

Who can help me in the process of creating a subsidiary?

Creating a US entity is a specialist process and you'll need professional advice.

There are firms who provide 'project management' style services to reduce the headache and alleviate the chances of the process overwhelming your time and distracting from your existing business and growth plans.

You'll almost certainly need a US attorney, an international tax consultant who understands your domestic tax regime and an accountant who understands how to prepare and submit records for US taxation.

You might also like to talk to the government department in your country that typically helps domestic businesses to succeed internationally (such as UK Trade and Investment) and your embassy office in the States. You may find other Government supported organizations in your region that could help, such as the Council of the American States in Europe.

A US subsidiary in numbers

- **It will likely take at least four months** to create a functioning subsidiary
- **First year costs** to an international business establishing a subsidiary in America are typically: around **$65,000**
- Average **ongoing annual costs** for filing of state, federal and consolidated taxes, can be expected to be around: **$15,000**

Legal structures for your subsidiary

There are a number of different ‘types’ of subsidiary you can establish in the US, such as Limited Liability Companies (LLCs), C corporations or S corporations. You should take professional advice to decide which route to go down and throughout the process.

S corporations are only an option for subsidiaries with an American parent company. Most international businesses opt to establish C corporations.

C corporations

A C corporation is seen as a separate tax entity and is therefore taxed separately to its owners. The dividends are taxed again once they’ve been distributed to shareholders.

C corporations offer limited liability to directors, shareholders, officers and employees.

They are very credible in the eyes of suppliers, lenders and customers, and there’s no limit to the number of shareholders. A C corporation can conduct a shares IPO (Initial Public Offering).

There’s unlimited potential for growth, and there may be some tax advantages.

However, a C corporation is an expensive way to form a subsidiary in America as there are lot of fees involved, as well as fees payable to the state in which you’re doing business.

There are also lots of regulations and formalities to comply with if you register as a C corporation due to the fact they get a great deal of government oversight.

Limited Liability Company (LLC)

A Limited Liability Company (LLC) is intended to do as its name suggests and ‘limit the liability’ for legal affairs, tax affairs and costs. In actuality there are occasions where an LLC will limit liability less than a C Corporation.

Unlike a C corporation, an LLC is not seen as a separate tax entity at a federal level. Instead all profits and losses ‘pass through’ the business to each member of the LLC and are reported on the personal tax returns of members. Some states, however, do impose an annual tax on LLCs.

Deciding which legal form your business should take is a complex process, with many factors that need to be considered. You should seek professional advice from an expert.

Visas - an overview.

If your business expansion into America requires you, or other non-US citizen employees who don't hold a Green Card, to work in the US then you're going to have to consider work visas.

Traveling to America for the purpose of temporarily engaging in business activities, such as the negotiation of contracts or consultation with business associates, for less than 90 days may be possible under the Visa Waiver Programme, if you are from a qualifying country. This arrangement does not generally allow for employment or productive activity such as operating a business or consultancy work.

To enable employment in the US, there are many visa options, each with their own restrictions, pros and cons. You should seek expert advice on the best course of action for you and your business.

Contacting an attorney at an early stage will allow you to get the best advice regarding which visa to apply for and everything you need to do to have the best chance of success. The process is highly complex and there are attorneys who specialize in individual visa types.

It's difficult to be definitive regarding the costs involved as it will depend on the attorney you choose, though legal fees for most of the visas outlined here should be somewhere between $5,500 and $10,000 for a single person. There will likely be additional fees for additional applicants.

There may also be business plan fees (ranging anywhere from $1,500-$3,000) and government fees (anywhere from $205-$2,000) and potentially translation fees as everything must be submitted in English.

The application process for non-immigrant work visas (those that allow a person to work in the US for a temporary period) typically take four to six months.

Visas to consider may include:

O visa - an 'Extraordinary Ability' visa

This visa allows someone to work for a company in the US if they can show they have extraordinary ability within their field of expertise.

A successful application for this visa usually requires things like supporting newspaper articles, blog interviews, awards, memberships in key organizations, a high rate of pay for the job as compared to others.

H1B visa

This is the visa people typically think of when they think of working in the US. It applies to qualified people who wish to perform services in a specialty occupation.

This visa gets tougher to secure each year, since there are many more applicants than visas and a cap on numbers. Applications can usually be made from the first business day in April each year and within the first week the cap is typically reached.

From there, a random lottery is held, and the 'selected' applicants will be reviewed for qualifications. The first possible day of work is October 1st of that year.

L1 visa

This is a typical visa for companies that are adding a US office to a business they currently run overseas. The right applicant for this would be someone who has worked for the international office for at least one year in the last three years. They would either be a manager/executive or a specially skilled person. This visa can lead to a Green Card and can be handled in about six months. One of the downsides is that these visas are highly scrutinized.

E2 visa

The E2 visa is for an international investor or employee of an international investor who wants to open an office in the United States.

There can be international offices or just the US office. This visa application can be handled in about three to four months, but a "substantial investment" must be made before the person can apply.

There are no minimum amounts, but the trend is at least $100,000 in investment. This visa is great for someone who wants to launch a business in the US relatively quickly, but there are some downsides.

Only certain countries are eligible, and this visa will never lead to a Green Card. However, it is renewable indefinitely, as long as the business still meets the requirements at the time of renewal. Also, the investor or employee can bring the spouse and children under 21. The spouse can get a work permit to work anywhere in the US.

Angie Rupert, an E2 investor visa attorney based in Los Angeles, California, and founder of Rupert Law Group, said:

"There are many different options when moving a business or employees to the US. They vary in intensity, time and cost, and they also vary depending on the goals of the company.

"Contact an attorney as soon as you have your immigration goals sorted out. These goals should include when you'd like to move to the US and where you plan on working in the US."

Opening a US bank account.

Any business moving into America would be wise to consider setting up a US dollar bank account to make trade more seamless.

Having a US dollar bank account will alleviate the need to wrangle with exchange rates, avoid delays and make trading with American partners a more convenient and smooth process. It will also contribute to ensuring you comply with Internal Revenue Service (IRS) requirements.

If you set up a subsidiary you should be able to get a bricks and mortar US bank account.

Opening a US bank account is a relatively involved process and you should take advice on how to go about it. Your lawyer should be able to help here. Information is also available via the IRS. It is quite usual to need to attend a US bank in person to open an account.

Banking regulations are state specific. Across the board you can expect to file a SS-4 form to obtain an Employer Identification Number / US tax identification number. The purpose of this is to ensure your company is in the IRS's system and does not necessarily mean you are liable to pay US tax.

You can also expect to need to file a W8/W9 form. As a foreign entity you may also be asked to complete a W-8BEN-E.

Even if you do not have a subsidiary there are options to explore to get a US dollar account.

Some overseas banks, in the UK for example, are partnered with US banks. If your domestic account is partnered with a US bank, it may be able to enable you to open an account with the American bank, though, it is worth scrutinising the fees and charges involved as these can be high.

Another option to consider, available to those in certain places such as Europe and Australia, is a dollar account through a foreign exchange company.

Which American state should I establish my business in?

America is a vast country with 50 states all with their own identities. Thorough research is needed to decide where to choose as a base for your business.

If you are creating a subsidiary you'll face decisions both over where to incorporate and where you'll mostly be doing business/employing people. The two may not and do not need to align.

If you're using co-employment as an alternative to creating a subsidiary your choices may be simplified to focus more on where best to recruit employees.

Which state to employ your workers in.

Whether you are creating a subsidiary or using co-employment in place of setting up your own US entity, you'll have to think about where best to take on employees.

This choice will likely be primarily based on your own industry market research and knowledge and will take into account things like:

- Where your customers are
- Where the talent pool of employees or potential employees is. Some cities are hotspots for particular industry and talent pools. Boston, for example, is well an established hotbed for life sciences and academia.
- Transport links, such as proximity to an airport hub - especially if you'll perhaps only have one or two employees travelling the country
- Time zones - you may wish to have an employee in a time zone that allows business hours crossover with your domestic one (the east coast may work better for this if you are in the UK, for example)

You should also be aware of the huge difference in the legal systems of different states, especially around employment.

There will be variations in the cost of hiring employees in different states whether you are setting up your own subsidiary or using a co-employment provider as an alternative.

This will be in terms of typical average salary, which varies greatly across the country. Additional variation will be created due to each state having its own taxation and rules regarding benefits such as maternity leave.

If you are hiring few staff, you may feel finding the right candidate is more important than getting too caught up in those differences.

When you're creating a subsidiary: Pros and cons of incorporating your US entity in some American states.

Where you choose to incorporate your US entity doesn't necessarily need to be aligned to where you expect to do business.

Some states are particularly business friendly and others not so well equipped for a seamless transition, making some more popular than others to incorporate in.

Delaware, for example, is one of the most common states for foreign business, especially large businesses, to incorporate in.

You may find that it's beneficial to have employees in one state but your administrative base in another. Things you'll want to consider in terms of where you may like to take on staff when setting up a subsidiary may include those in the list above, under the heading 'When you're using co-employment as an alternative to creating a subsidiary'.

Additional considerations regarding where to incorporate are likely to include things like taxation rates, which vary greatly from state to state, as do filing fees and other administrative charges.

Nevada is a popular state for businesses to incorporate in due to its low taxation rates and Wyoming has similar benefits.

Boston has secured top ranking more than once in the US Chamber of Commerce's Innovation That Matters study into the health of start-up communities as being the most ready to capitalise on the shift to an increasingly digital economy. Bay Area, San Francisco and Philadelphia also come out well in such studies for their business friendly outlook.

Seeking advice from an expert on which state to choose to incorporate your US entity in is highly advised.

Some states have stand-out benefits that make them particularly popular for start-up international businesses.

Here's a brief analysis of a few of them:

Delaware
Delaware is a popular state for many foreign businesses to incorporate in. Its advantages include the fact that it:

- Has a reputation for favoring corporate managers over shareholders
- Offers favorable taxation rates for large businesses or those with complex structures
- Does not require directors or shareholders to be residents of Delaware
- Has a well established Business Court of Chancery, and there's high confidence and trust in the legal system among large businesses

Nevada
Nevada is another very well-favored state. As well as the fact that it's easy to issue shares in Nevada, other advantages include that this state:

- Generally offers a very low rate of taxation
- Does not impose corporate or individual income tax
- Does not require businesses to pay tax on corporation shares
- Is known for its straightforward dealings with commercial litigation

Wyoming
Wyoming is fast becoming popular too. It offers many of the same benefits as Nevada, but at an even lower tax rate. Also:

- Its annual renewal fees are inexpensive
- There are no business license fees
- The state emphasizes privacy and asset protection for businesses

As stated previously, where you expect to do business and where you choose to incorporate do not necessarily need to be aligned. As such where you choose to take on employees may not be the same as where you incorporate.

There is a huge amount of difference in the legal systems of different states, especially around employment. Average wages also differ greatly.

Tax in America - an overview.

If setting up a subsidiary for your business in America, you'll likely need to pay taxes at a federal, state and, possibly, local level. Opting to use co-employment as an alternative to creating a subsidiary is likely to simplify this.

Numerous factors will affect how much tax you pay including the legal structure of your subsidiary and the state and even city you choose to incorporate in. New York, for example, levies an additional local tax.

Broadly, you can expect to pay basic corporate income tax at a rate of 21 per cent at the federal level, with another 4 per cent made up of state taxes. This tax is calculated on the net income your business earns while operating over the course of a year.

As a substantial and significant cost, tax implications must be high on you agenda in all of your thinking and decision making. It's imperative to seek professional advice from an international tax specialist. For non-US citizens who plan to reside in the US for business, you'll want to ask your tax advisor whether Passive Foreign Investment Company (PFIC) applies to you.

If you're hiring workers directly, rather than through a co-employment provider, in addition to income tax, you'll need to make several other deductions from employees' income and pay the funds to the correct government agency by specific deadlines. If you don't meet the requirements you can be liable for additional fees and if you ignore these responsibilities there are severe penalties.

In particular, these deductions include Social Security and Medicare tax, often known collectively as the FICA (Federal Insurance Contributions Act) tax:

- **Social Security Tax** provides benefits for retired and disabled US workers and their beneficiaries, and is 6.2 per cent of the first $142,800 of an employee's annual salary.
- **Medicare Tax** provides health benefits for US citizens aged 65 and older, and is 1.45 per cent of an employee's annual salary (with an additional 0.9 per cent levied on annual incomes in excess of $200,000).
- In addition to payroll taxes, if you're hiring workers in the USA you may need to keep back additional funds if the courts require you to pay an employee's debt or child support. In such cases your employee would file a W-4 form, which determines the amount based on factors such as the employee's marital status, how many withholding allowances the employee claims and any additional amounts the employee chooses to withhold.

When using co-employment as an alternative to creating a subsidiary you'll have less to think about in terms of corporation tax as you won't have to pay it directly. Similarly, your employee's income tax is likely to be dealt with as part of your payroll, benefits and HR services agreement.

Due to the complexity of payroll taxation most US companies outsource this function.

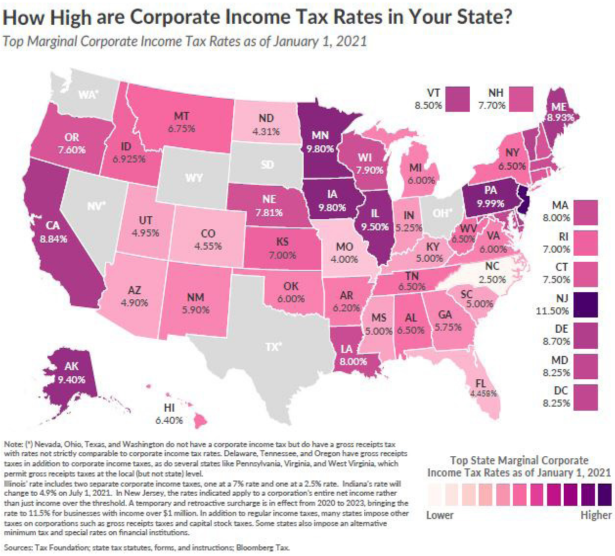
Corporation tax rates by state.

Corporate income tax rates vary from state-to-state with some states not levying it at all and others charging up to 12 per cent.

In 2021, South Dakota and Wyoming are not levying a corporate income tax or gross receipts tax at all, whilst Iowa's corporate income tax was lowered from 12 per cent to 9.8 per cent, according to the independent tax policy nonprofit organization the Tax Foundation.

The Tax Foundation said:

- Top marginal corporate income tax rates of 9 per cent or higher are levied by: Alaska, Illinois, Iowa, Minnesota, New Jersey, and Pennsylvania.
- South Dakota and Wyoming levy neither a corporate income nor gross receipts taxes.
- Ten other states - Arizona, Colorado, Florida, Kentucky, Mississippi, Missouri, North Carolina, North Dakota, South Carolina, and Utah - have top rates at or below 5 per cent.
- Nevada, Ohio, Texas, and Washington impose gross receipts taxes instead of corporate income taxes.
- New Jersey levies the highest top statutory corporate tax rate at 11.5 per cent, followed by Pennsylvania (9.99 per cent) and Iowa and Minnesota (both at 9.8 per cent).
- North Carolina has a flat rate of 2.5 per cent, followed by Missouri (4 per cent) and North Dakota (4.31 per cent). Seven other states impose top rates at or below 5 per cent: Florida at 4.45 per cent, Colorado at 4.55 per cent, Arizona at 4.9 per cent, Utah at 4.95 per cent and Kentucky, Mississippi and South Carolina at 5 per cent.
- Delaware and Oregon impose gross receipts taxes in addition to corporate income taxes.



TaxFoundation

Director, Iain Younger, of Frank Hirth, a firm of international tax specialists, said:

"The good news is that the applicable rate of US federal corporation tax has recently fallen from a top rate of 35 percent down to a flat rate of 21 percent. "However, for business owners' complex rules can apply if they or their business becomes US tax resident. "Similarly, any business looking to set up in the US has to consider the tax position of any staff that will be working or living there and have to consider carefully the most appropriate entities to operate through. "Navigating these complex tax systems may determine the success or failure of any expansion into this biggest of markets."

Disclaimer: Please be reminded that the points raised in this publication are intended to aid and prompt your thinking rather than act as advice. It's imperative to seek professional advice from an international tax specialist and legal expert when expanding your business into America.

Being aware of the culture of American business.

Like any other country or location, America has its own set of generalised working cultural norms and employment laws.

It's important to be aware of the differences between America and what you're used to domestically, both to ensure legal compliance and avoid embarrassment.

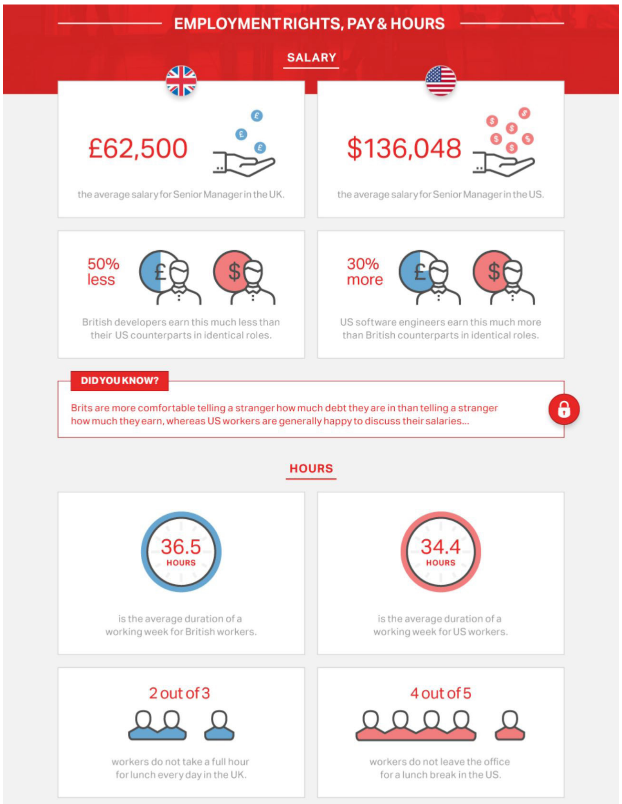
The pay, benefits, working hours, meeting etiquette and way people talk and act in America may all vary greatly from those at home.

American workers are generally not entitled to paid sick leave, tend to be hired 'at will', which means they can be hired and fired on the spot (providing the reasons are not discriminatory) and the average amount of paid leave offered by US employers is 10 days. Meetings tend to start on time and be over quickly.

All of these differences are important to understand, both for costing your business but also to help you effectively operate in the States.

A comparison: Differences between UK and American working culture.

For illustration purposes, our infographic shows some of the key differences between the UK working culture and the American one.



A note on interviewing candidates in the US.

If you're looking to take on a worker in the US, it's important to follow certain rules during the hiring process to avoid discriminating against candidates and potentially opening yourself up to litigation.

One important step to avoid a claim of discrimination is ensuring all applicants are asked the same questions, all of which need to closely align with the job description.

Questions relating to religion, age, sex, marital status, country of origin or any other legally protected category can violate state and federal laws in the US.

Topics to avoid include:

X Age and birth date

X Arrest record (suspected criminal activity that has been documented)

X Citizenship

X Family structure (whether someone is married or has children)

X Physical or mental status

X Military status

X National origin

X Religious beliefs

X Pregnancy or medical history

Your questions must focus on whether a candidate can do what you need them to, whether they'll fit in with everyone else and how much they want the job.

Remember some of the best questions are open-ended.

Examples include:

✓ Describe a time when you've had to multi-task at a job

✓ Can you tell me about a manager or colleague that you didn't get on with? How did you handle the situation?

✓ Describe a past report, presentation or project that you are proud of

✓ Tell me about the most difficult experience you had at a past job

✓ Describe a past group project. How would you describe your role in that team?

The rules around background checks on potential employees.

It's not only permitted, but important and necessary, to carry out background checks on potential employees. However, these checks must be carried out in the right way to avoid a perception of discrimination.

Failing to carry out prudent background checks can also expose you to risk of litigation if something that may have been highlighted later becomes an issue exposing you to a claim of negligent hiring.

For example, should an employee with a violent past assault a colleague, it could be argued you have failed to meet the requirement of providing a safe working environment. A credit check may highlight financial concerns about a candidate who is to be responsible for money, tax or security.

In some cases background checks are a legal requirement, such as when an employee will be working with vulnerable people including children or the elderly.

But, remember, you need the written consent of the person in question.

Background checks are usually carried out at the end of the hiring process after a job offer has been made.

They can include:

- Credit checks
- Drug tests
- Employment and education history searches
- Criminal background checks
- Driving record checks

When the results are returned, employers must use the information in accordance with the law.

For example, if there is a conviction you must reconsider the intended appointment in the light of the offense and how much time has passed since the conviction and completion of any sentence. The applicant must have the opportunity to explain the circumstances and to show they have been rehabilitated.

Using a third party to carry out checks will avoid accidental exposure to extraneous information that reveals something that could later be said to have led to discrimination.

'At will' employment.

In the US, employees in most states, are taken on under an 'at will' employment arrangement, which makes it quick and easy for them to leave and for employers to dispense with their services.

Employers are free to terminate a US worker's employment relationship without notice and for any reason that is not discriminatory i.e on the grounds of pregnancy, race, religion, sex, age etc. Employees can terminate employment relationships just as easily too.

Five top tips when recruiting in America.

Recruitment in America, as with any territory, has its own rules, customs, challenges and opportunities.

We asked Lindsay Moore, Executive Vice President, of Maryland-based HR and recruitment specialist HR Strategy Group, for some thoughts on specific parts of the process and all round top tips.

1. We advise that all potential new hires have background checks performed by a reputable third-party background check company. Background checks are an essential part of the hiring process that will protect the employer, as well as other employees within an organization. In order to avoid employer liability and reduce risk to an organization, we strongly recommend that background checks are performed on all potential employees by a reputable background check company.

2. Individuals conducting interviews within a company should be trained on interviewing dos and don'ts. Hiring managers and others conducting interviews can be trained by HR professionals or an outside recruitment firm to ensure they know what questions can and cannot be asked during an interview. If a hiring manager asks a question that could be seen as discriminatory, it could lead to a costly situation for the employer. It's important to be consistent in each interview and know the right questions to ask each and every time!

HR STRATEGY GROUP

3. When a company is looking to hire their next employee, it is important to use a recruiter that understands how to find the right individuals for their organization. A good recruiter will learn about the company's mission, culture and needs for the position in order to find the best candidate. Most recruiters will know where to find top talent for an organization, and how to find talent that is passively looking. It's also important to ask behavioral based questions during the interview process in order to determine if this person is the right fit for the company. Typically more than one person should interview the top candidates so that the feedback on the potential new hire is broad.

4. Know how to sell your organization! Why do your employees like working for you? Be prepared to talk about your company culture and the career path a person may take if he/she comes onboard. Be honest and up front with candidates so they know what to expect on day one; you don't want to hire someone who runs out the door on day one. Ask situational questions that are open ended during the interview process.

5. Good, quality candidates may be difficult to find. Do not give up. Talk to everyone you know, use social media, pay for job ads, attend job fairs, talk to your neighbors and get out there. The right person will come along for your job.

Benefits American employees will expect and costings.

Americans are notoriously hard working, putting in more hours and taking less time off than many other nations. In return they tend to have expectations of long-term financial security.

You should factor in about 35 to 40 per cent on top of the salary you allocate per employee to cover health insurance, other benefits, tax, employer-paid taxes, unemployment insurance and a co-employment provider fee, if you are using one.

Defined benefit pensions are now largely obsolete in the US, having been mostly replaced by defined contribution retirement plans, of which 401(k) is the most common.

Other benefits may not be a statutory requirement in America but are used by employers to attract and retain staff.

Salaries.

In such a huge country with so many variants in population size and make-up, rurality and level of technological modernity, it's not surprising that there is great deviation in average salaries in different states.

Of course, securing the right candidate is often a bigger driver than cost - particularly when you're seeking only a few, or even one skilled, team member. However, typical salary rates is one factor you may like to bear in mind.

Median household income for five popular US states in 2021:

1. Maryland	**$84,805**
2. New Jersey	**$82,545**
3. Massachusetts	**$81,215**
4. California	**$75,235**
5. New York	**$68,486**

States with the lowest median household income in 2021:

1. Mississippi	**$45,081**
2. West Virginia	**$46,711**
3. Arkansas	**$47,597**
4. Louisiana	**$49,469**
5. New Mexico	**$49,754**

The 401(k) retirement plan.

Named after the section of tax code that refers to it, 401(k) is a defined contribution retirement plan introduced by the American Government.

It has become the most popular retirement plan in the USA. It offers tax benefits to both employers and employees.

The IRS says: "A 401(k) plan is a qualified plan that includes a feature allowing an employee to elect to have the employer contribute a portion of the employee's wages to an individual account under the plan.

"The underlying plan can be a profit-sharing, stock bonus, pre-ERISA money purchase pension, or a rural cooperative plan. Generally, deferred wages (elective deferrals) are not subject to federal income tax withholding at the time of deferral, and they are not reported as taxable income on the employee's individual income tax return."

There are several types of 401 (k) plans including traditional, safe harbor and traditional. A traditional plan requires employers to enable an annual test to show plans benefit employees equally, regardless of seniority.

The average contribution made by employers in 2019 to retirement plans was 5.3 per cent of participants' pay, according to the Plan Sponsor Council of America.

Health insurance.

Providing health insurance is not a requirement for employers in America but is necessary to stand a competitive chance of attracting employees.

Almost all large employers in the US offer health insurance and about half the population receives health insurance as a benefit from their employer. In 2020, the average annual premiums for employer-sponsored health insurance were $7,470 for single coverage and $21,342 for family coverage, according to The Kaiser Family Foundation.

There are tax breaks for both the employer and employee if health insurance is offered as a part of the remuneration package.

Health insurance is categorized as a tax-deductible business expense for the employer and employees don't pay tax on it as a benefit - therefore it's worth more to them than if they received the same value in wages.

Whilst there are clear benefits in providing health insurance to employees, it is often a hugely complex part of being an employer in America. There are numerous options of health plans and choosing carefully is important to ensure broad appeal to workers whilst remaining affordable. In addition, the insurance will vary from state to state so if you have employees in numerous states there will be a need to consider a national provider if employing people directly under the umbrella of your own legal entity. This may be simplified if using a co-employment arrangement as it can be offered within that service along with other benefits.

Sick pay.

America is unusual in having very little regulation of paid or unpaid sick leave at a national level.

The main Federal law regulating sick leave is the Family and Medical Leave Act (FMLA), which requires companies with more than 50 employees to allow them unpaid time off for medical leave or to care for a family member. Otherwise, there's no national requirement to offer sick leave.

Many states and local municipalities have their own rules. In Massachusetts, employees get one hour of paid sick time for every 30 hours worked, and in New York City employees are given 40 hours of paid sick leave per calendar year.

Some employers combine sick leave, personal time and vacation time in a common bank-style 'paid time off' (PTO) arrangement.

If you take on employees directly in the US, it's vital to understand the legal requirements in the relevant locality.

Maternity pay.

It's uncommon for employers in America to offer paid maternity leave and it is largely at the discretion of each employer to decide what to offer.

US employers are not currently required to offer paid maternity leave to their workers according to federal law. However it is also important to check state laws as paid maternity leave is gaining traction in some states.

Nationally, there is a requirement, set down in the Family and Medical Leave Act, that US employers with 50 or more employees allow mothers up to 12 weeks unpaid leave for the purpose of pregnancy or child rearing.

Each state may have its own additions or variations to this requirement. For example, Washington, DC has reduced the threshold of 50 employees down to 10 employees. Some states have extended the length of time away from the workplace beyond 12 weeks.

Paid vacation.

There is no law that obliges US employers to offer paid holiday but, in practice, the majority of US employers do offer some paid leave.

The amount of paid holiday US workers receive varies from employer to employer but around 10 days is fairly usual.

Did you know?

10 days paid holiday is typically standard for an American employee

Litigation and liability.

As an employer in America it's important to have an awareness of some of the things that could lead to litigation and an understanding of where your liability starts and ends.

Of course, your professional legal advisor is the person to turn to on this and it's vital you seek expert advice.

Here we outline a few of the things that commonly cause issues for employers in order to aid thinking. You would likely be wise to investigate and consider insurance options to cover you against potential claims.

Enlisting a co-employment provider may reduce your liability in relation to many of these issues.

1. Independent contractors

Some employers have fallen foul of incorrectly classifying employees as 'independent contractors'.

True independent contractors aren't entitled to company benefits such as health care and paid vacation and it may be a cheaper way of having people work for you.

If it is found the classification was made incorrectly however it can lead to huge penalties, legal costs and retrospective payments.

2. Lunch and rest breaks

Laws over what breaks employees are entitled to may vary from state to state and failing to meet them can lead to litigation.

For example, in California, employers must give their staff a 30-minute break, which must be taken no later than the end of the fifth hour of the shift.

3. Exempt employees

Exempt employees are paid a set rate regardless of how many hours they work and are not entitled to overtime.

Incorrectly classifying employees as exempt may lead to an order to pay retrospective costs and penalties.

4. Discrimination

In the US there are a number of 'protected classes' and employees or prospective employees can sue if they believe they have been treated unfairly due to:

- Gender
- Race
- Age
- Citizenship
- Nationality
- Religion
- Disability
- Pregnancy
- Familial status
- Veteran status
- LGBTQI*

*In United States, in June 2020, the Supreme Court passed a Federal Law against discrimination on the basis of sexual orientation or gender identity.

5. Wrongful termination of employment

While many US workers are hired ‘at-will’ and employees and employers can terminate their employment relationship without notice, there are circumstances under which termination is ‘wrongful’.

This may be the case, for example, if an employee is a whistle-blower and reports an instance of fraud only to find then that their employment relationship is terminated.

In a blog post published in October 2018, Rager Law Firm, said: “While the average settlement for wrongful termination cases in California is around $40,000, the average value of a court verdict in wrongful termination cases is slightly larger, around $45,000 (but do keep in mind that attorney fees for legal representation in a wrongful termination trial will skyrocket, too).”

The average value of a court verdict in a wrongful termination case in California is around $45,000

When employment arrangements turn sour.

Sadly there are many examples of cases where things have turned sour and led to substantial awards in relation to employment in the US.

Here are just a few recent awards:

$6m award...
in Pennsylvania after a finding of discrimination on the basis of age and national origin

$3m award...
to a female scientist for gender discrimination and emotional distress damages.

$2.4m award...
in a claim of sexual harassment against a small grocery store in Chicago - later reduced to $477,500

A final word on expanding your business into America.

The process of expanding a business into America can feel mind-boggling, complex and even overwhelming, but there's good reason so many people persist.

The US Dollar is the currency most used in international transactions and is the world's primary anchor currency.

Yes, there are challenges and complications, but that's business and having read this far we hope you'll now have a few solutions to consider too. Seeking the right advice from appropriate professionals and getting your team in place is the key to avoiding the process from being a distraction to your main goals and work.

Allthetopbananas Ltd, is a UK-based supplier of software to the recruitment industry, beginning its journey into the American market place.

John Bradshaw, Allthetopbananas Ltd chairman, said:

"It's very early days for us in terms of launching into America. We are really looking forward, after years of building strong relationships with multiple recruitment partners in the UK, to developing serious and mutually beneficial USA partnerships.

"We're renowned in the UK for delivering a quality service. This is the reason clients have been with us for more than 10 years and the main reason why we were are launching in America. It's a country known for its high levels of quality service, so we're quietly confident the American market will love our offer.

"The challenge for us now is to ensure we maintain balance to our resources; continue our current portfolio of new developments and ensure we maintain a first-class service for our UK partners. At the same time will be putting a high priority into making our exciting launch into America a really great success for all concerned."

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