



2022

# How to set up a US Subsidiary

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A quick internet search of 'How to set up a US entity' yields more than 350 million entries. Clearly there is an abundance of information. Before we get into HOW to do it, let's discuss a more important question – WHEN should you setup a US Subsidiary? Very few resources outline key scenarios to consider.

Please allow me to assume something about you, valued eBook reader. You run a company somewhere in the world outside of the United States. You are considering expanding to the US and speculate the first step is to set up a US entity. You may be relieved to know you don't have to set up an entity right away in many instances.

It is true that many foreign business owners immediately set up entities to do business in the US. There are many reasons to do this. However, there are also important reasons to avoid or postpone the process.



**You may need access to US dollars within a banking system to pay US invoices or accept fees for your services. Is it time to set up a US entity? Not necessarily.**

International banks in your home country may offer USD accounts. In Europe, one of the largest international banks, HSBC, offers international accounts with no minimum balance or turnover. In the case of one well-known UK bank, Lloyds Bank, the second largest banking group in the UK, businesses must have turnover over £3M turnover to be eligible.

When a client, vendor, or government agency requires you to have a US bank account, it is time to set up a US entity. You can't get a true bricks and mortar US business bank account without one.

Foreign exchange companies, such as Wise, make it easy to pay in many currencies. There will be fees. However, when you compare the exchange rate with many banks, you'll find you save money by using a foreign exchange company, especially when sending amounts over \$1,000.

Here's a handy comparison of fees and exchange rates among top banks and foreign exchange companies. It's important to consider customer service and ease of use in addition to costs.

The illustration on the following page was captured in May 2022. Rates change daily so be sure to check frequently.



Provider	Exchange rate (1 GBP → EUR)	Transfer fee	Recipient gets Sending 1,000 GBP
 Wise	1.17378 ● Mid-market rate [?]	4.28 GBP Transparent fee [?]	1,168.76 EUR
 Pockit <small>Powered by Wise</small>	1.17378 ● Mid-market rate [?]	4.28 GBP Transparent fee [?]	1,168.76 EUR
 monzo	1.17378 ● Mid-market rate [?]	7.26 GBP Transparent fee [?]	1,165.26 EUR ▼ - 3.50 EUR
 OFX	1.16192 ●	0.00 GBP	1,161.92 EUR ▼ - 6.84 EUR
 Remitly <small>Promises Delivered</small>	1.15980 ●	2.99 GBP	1,156.33 EUR ▼ - 12.43 EUR
 xoom	1.15674 ●	1.99 GBP	1,154.44 EUR ▼ - 14.32 EUR
 MoneyGram	1.15326 ●	0.00 GBP	1,153.26 EUR ▼ - 15.50 EUR
 WESTERN UNION	1.15179 ●	0.00 GBP	1,151.79 EUR ▼ - 16.97 EUR
 monese	1.17278 ●	25.00 GBP	⚠️ 1,143.46 EUR ▼ - 25.30 EUR
 LLOYDS BANK 	1.13214 ●	0.00 GBP	1,132.14 EUR ▼ - 36.62 EUR
 HALIFAX	1.13191 ●	0.00 GBP	1,131.91 EUR ▼ - 36.85 EUR
 PayPal	1.12614 ●	0.00 GBP	1,126.14 EUR ▼ - 42.62 EUR

### You may be seeking venture funding from US investors. Is it time to set up a US entity? Yes.

According to [Notion Capital Managers LLP](#), location matters, especially in the early stages. A non-US company seeking US funding to grow their business will be more successful with a US company. It's not impossible without an entity, but to increase your chances of securing US funds, set up that subsidiary.

According to [UpCounsel](#) not only should you have a US entity, but they recommend that it's a Delaware C-corporation.

In the age of hybrid work, many companies continue to rent office space for their team to work together at least a few days a week. This may be the case for you with your US team. Knowing when to set up your US subsidiary to manage office space is straight-forward. Below are the typical approaches to secure your US address.

I want to...	Is it time to set up a US entity?	Why?
Have a virtual office address in the US	No	Most virtual offices will allow you to set up an account using a foreign bank account.
Lease office space	Probably	Many landlords won't feel comfortable with a foreign company signing a lease. They may require a US entity and a US bank account.
Buy or build an office	Yes	There is no denying that building or buying real estate for your company represents a bona fide US presence and should be accompanied by a US entity.

Here are the top [US virtual offices](#). The highest rated for international companies is [DaVinci Virtual](#) offering 5,000 locations in 45 countries and all 50 US states.

If a vanity address is important for your business, consider these virtual offices in these well-known US cities.

Check out these [prestigious address in New York City's](#) in the heart of the financial and commercial center. Be prepared for sticker shock.

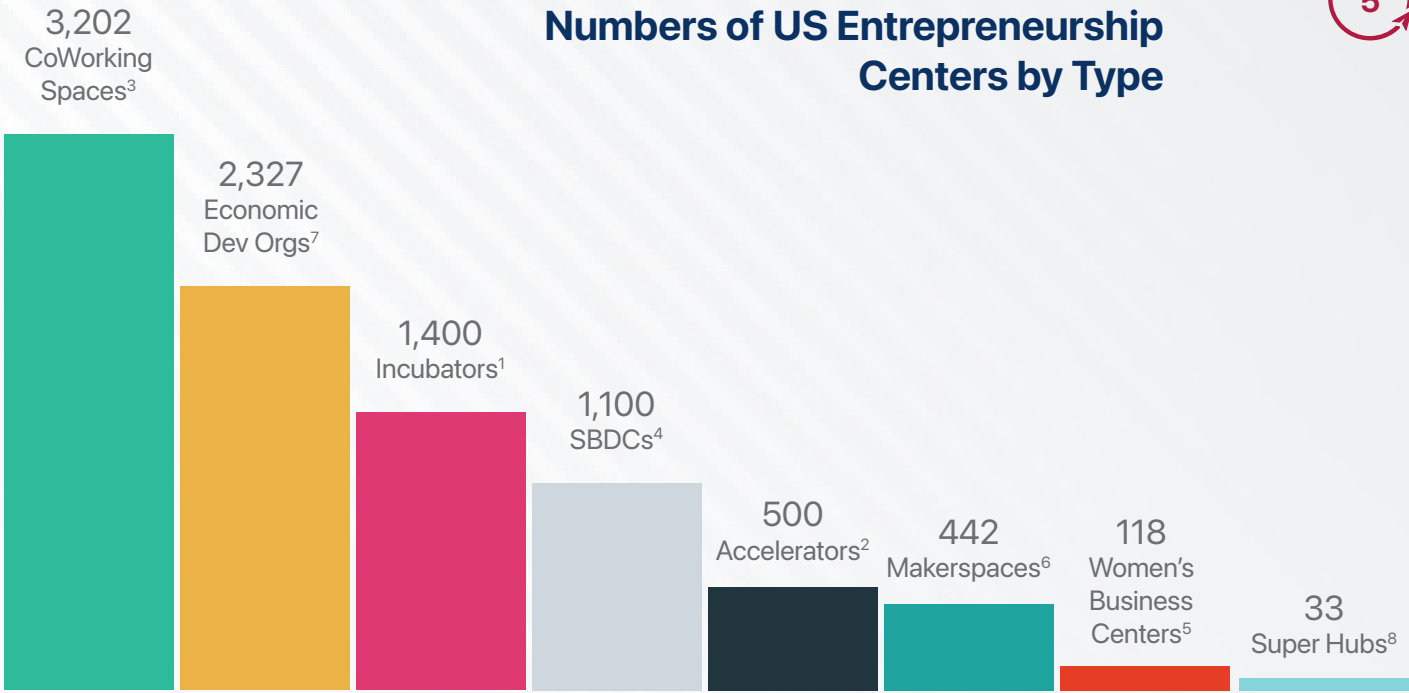
While Austin, Texas isn't one of the largest cities in US, it's become an attractive landing spot for foreign companies attracted to the lifestyle and relatively low costs. Here are the [top start-up accelerators and incubators in Austin](#).

For the life science industry, Boston and nearby Cambridge, Massachusetts are attractive locations. In addition to well-known incubators, here are some of the [top addresses](#).

If you're not sold on Boston, a competitive expensive life science hub, consider the [top 65 biotech and pharma incubators](#) around the country.

According to the [International Business Innovation Association](#), the total number of US incubators is estimated to be 1,400. The IBIA chart on the next page shows the number of other types of entrepreneurship centers in the US.

# Numbers of US Entrepreneurship Centers by Type



1. Internal Research, InBIA, 2016  
2. Brookings Institute, 2015  
3. Emergent Research/Global Coworking Unconference Conference, 2017  
4. ASBDO, 2016

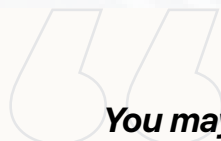
5. US SBA, 2018  
6. Popular Science, 2016  
7. Economic Development Directory, 2018  
8. Internal Research, InBIA, 2018



## **Congratulations, you have US clients. Do you have to have a US entity? No.**

However, even though you don't have to have a US entity you may be subject to US taxes.

Foothold America US Expansion Advisor, Rose Adedeji, let's her clients know that getting tax advice early in the process is critical.



***You may need a Federal Employer Identification Number (EIN) associated with your home country company to pay taxes on sales in the US. Even though this isn't the same as setting up a US subsidiary, it's important to know what revenue threshold will trigger federal or state tax***

**- Rose Adedeji, US Expansion Advisor  
Foothold America**

If you are about to secure a significant piece of business from a large US company, be sure to find out if they will require you to have a US entity and a US bank account. Many non-US businesses have been thrown into a panic after celebrating a huge US sales win. Supplying an EIN or completing the IRS form W-8BEN-E, a Certificate of Status of Beneficial Owner for United States Tax Withholding & Reporting (Entities), may be enough for your US clients.



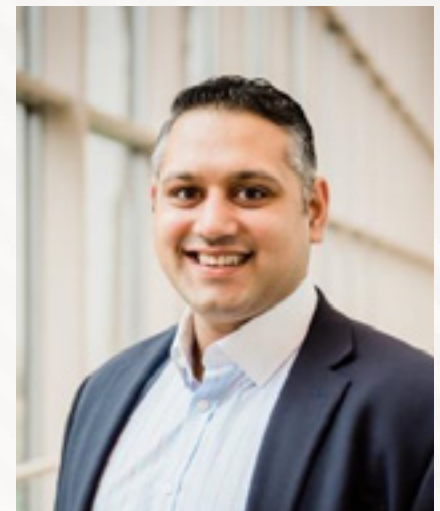
Sometimes you must fly to the US, have meetings, and make connections to secure your first US clients. Before we answer the question about needing a US entity, we first need to know, do you require a visa to enter the US? The answer to this and other questions in this section, depend on your nationality and treaties between your homeland and the US.

Here are a few common scenarios business owners who are expanding to the US face.

I want to...	Do I need a visa?	Is it time to set up a US entity?
Meet with potential customers	No, if your country is part of the <u>US Visa Waiver Program</u> .	No
Stay in the country for a few months to provide services to clients?	Yes	Probably
Live in the US permanently as the business owner.	Yes	Yes, unless you are on a spousal visa and can legally work in the US using an Employer of Record service (more on this later).
Send a key employee who is a non-US citizen to the US to run the business.	Yes	Yes, unless they are on a spousal visa and can legally work in the US using an Employer of Record service (more on this later).

**Immigration is a key pillar for US expansion, and forward planning is critical to ensure a seamless and successful launch the US market. When I speak with clients, I like to understand their business objectives and focus on short, medium, and long-term visa options to meet their goals.**

**- Arvinder Ubhi, Director,  
Ellis Porter, London**





To get and keep your US business flowing, you'll soon need people on the ground. Having your home country team manage US clients from many time zones away can be exhausting and inefficient. You have several options to consider for your people power.

Should you hire them directly, use an Employer of Record service, use independent contractors, agents, or distributors? In large part, it depends on your rollout plan. Let's run through a few common scenarios and consider the best options.

## ① You earned a short-term US contract.

**Congratulations. It often happens that a US business is testing you, and they want to see you perform under a short-term contract before doing more business with you.**

You have a few options to fulfil the contract.

- » Your home country staff can do the work. This is easy and a great way for a client to see you in action. Obviously, this doesn't work if the person must be onsite.
- » You can find an independent contractor to provide service. Use of a contractor for a few months may be a fine solution, especially if delivery of this service is finite. If the contract is eligible for an extension, you must be careful because in the long-term this person needs to become an employee. Is your contractor willing or able to become a full-time permanent employee? Review this important IRS classification information before hiring a contractor.
- » Use an Employer of Record service, such as Foothold America's Employee Management Service. There are no long-term contracts and should the client contract continue, you continue the service with Foothold America. Easy.

## ② You have a few US sales and want to test the waters further.

**Congratulations. You are gaining traction.**

You have the same options as above, though hiring directly and using an Employer of Record service are the most appropriate and the safest to avoid worker misclassification.

## ③ You have significant revenue from the US and want to build a small team.

Congratulations. You're cooking now.

You can grow a sizable team from one to more 25 while using our Employer of Record service, Employee Management Service. With dedicated support, you can avoid hiring HR and payroll employees keeping your US team lean and focused.

## ④ You plan to scale in the US with more than five employees in the first year.

Congratulations. You're ready to make your mark.

As your commitment to the US market grows, the option to hire employees directly may become more attractive. When you plan to have at least five employees, as far as the administrative costs are concerned, it becomes economically favourable to hire directly. You will need a US entity which Foothold America can set up for you. Keep in mind, a subsidiary means more complexity, tax, accounting, and employment advice.

Scaling doesn't mean you can't keep using an Employer of Record service through substantial growth. If avoiding complexity and administrative time is a priority, review item three above.



## ⑤ You are planning an IPO down the road and want to be viewed as a US company.

Congratulations. You are beginning with the end in mind.

In this case, we recommend setting up a US entity from the start and put your accounting function in place. You'll want to show several years of squeaky-clean US accounts and filings. Review item four above for details of how to hire employees directly.



Now that you have an idea when to set up your US entity, let's take a quick look at HOW to. When working with Foothold America, we can narrow it down to two steps.

1. Watch this two-minute video ► [Seven Steps to Setting Up a US Entity](#)
2. Speak with a Foothold America [US Expansion Advisor](#).

Because setting up your US subsidiary involves working with US federal and state authorities, it's challenging to know how much time it will take. On the quick side, it could be just a few weeks before you have all the documents you need to set up a US bank account. Depending on the bank's policies and efficiency, setting up a business checking account can take weeks to months. A prudent rule of thumb is to plan on two to three months for full US entity setup including hiring, paying and supplying employee benefits.

# How to Set up an US Entity



For those of you with a DIY mindset, let's review the series of steps to setting up a US entity.

## 1 Decide on your entity structure.

This is best done through consultation with a US tax advisor. You'll find our vetted [tax and accounting partners here](#).

The most common company structure international companies choose is either a C-corporation or Limited Liability Company (LLC). Be sure to discuss which of the two ways to setup your LLC tax arrangement is best – as an individual or as a corporation.

Historically, Foothold America clients by large majority have been advised to register C-corporations; however, every situation is different.

# How to Set up an US Entity

## ② Pick a state in which to register your entity and complete registration.

For your state registration, the first step is to check to see if your desired company name is available, and if so, reserve the company name through the state portal.

In the US, corporations are **registered on the state level** in the state of your choice. The most popular state for company registration is Delaware, followed by Nevada and Wyoming.

For your state registration, you are required to **choose a Registered Agent**, one who manages SOP (Service of Process); essentially, this is a repository for your official papers. It's important to note the address of your Registered Agent cannot be used as the address for your IRS federal employer identification number, which is a critical step for setting up your company.

**Choose a virtual or physical address** in the state in which you primarily do business. This is most likely the place you would identify as your headquarters. It can be in any state. Your chosen address is what you use to register your company with the IRS (Internal Revenue Service). You can also use a residential address. You cannot use a Post Office (PO) Box.

**Your federal employer identification number (EIN)** is one of the most important company numbers you'll use. In addition to the IRS, state governments, banks, clients, and vendors use this nine-digit company identifier. The EIN is sometimes referred to as FEIN (Federal Employer Identification Number), or your Company Tax ID, or your Federal Tax Identification Number. These are one in the same and are in the format of two digits followed by seven digits.

There are several ways to apply for an EIN – online, by fax, by mail, or for foreign applicants, by phone. You can designate a Responsible Party in the US to get your EIN faster. Regardless of how you apply for an EIN, you will need to provide all the information on Form SS-4. Be careful to get this form right. Forms with errors will be sent back and take longer for the IRS to process.



## ③ Set up your US bank account.

As mentioned earlier, you may be able to do significant business in the US without a US bank account. However, your business life will be much easier when you are speaking the financial language of the people in the US. Banks in the US use nine-digit routing numbers and account numbers that are usually ten to 12 digits. Source codes, IBAN, BIC codes, SWIFT codes are nowhere to be found. Many American businesses still use checks so you may need to deposit them or write them.

Generally, you need the following items to open a US bank account. Many banks require you to open the account in-person. Following the Covid-19 epidemic, some US banks have relaxed their rules and will allow non-US residents to open accounts by sending signed documents by mail.



- **Photo ID** of the director opening the account. Caveat – the bank may want passports or other government ID from all foreign directors or shareholders.
- **Proof of personal address** for the named director. Don't worry if you live out of the country, you can supply proof from a bank or utility company for your residential address.
- **Articles of Incorporation/Association.** If you register a C-corporation, you'll have Articles of Incorporation or Association. Limited Liability Companies (LLC) have a similar document called Articles of Organization. Sometimes corporate registration documents are called a Corporate Charter or Certificate of Incorporation.
- **EIN** – Employer Identification Number. See section 2 on page 12.
- **Proof of business address** – See Section 2 on page 12.
- **Minimum deposit** – This varies from bank to bank but is usually nominal.
- **You might also be asked for** – a company business plan, a copy of your home country business documents, or to appear in person. Be sure to check online for the specific requirements of your chosen bank, and remember, the information on their website may not apply to non-resident company owners.

## ④ Ensure ongoing compliance.

There are several corporate governance requirements you must initiate at the time of entity setup and keep current. These include a shareholders agreement, company bylaws, initial board meeting minutes and bank resolution. If in the future you change directors, change the number of shares, amend bylaws or take other corporate governance actions, you must document them in board minutes. This becomes critical if there is ever a lawsuit against the company, or within the company among the board members, officers, or directors.

Several of the activities you've undertaken to set up your US entity require annual renewal. For example, the state of Delaware requires an annual report which they call Franchise Tax. It's due by 01 March of every year and includes any updates on directors, address, and number of shares. The cost is based on the number of shares your company has and as of May 2022 are as follows:

- **<5,000 shares - \$175**
- **5,001 – 10,000 shares - \$250**
- **Each additional 10,000 shares - \$85**

This may not seem like much, but remember, you must register in each state in which you are doing business. To make matters more complicated, each state defines 'doing business in the state' differently. A rule of thumb is, if you have an employee who resides in the state, you should register as a foreign entity. If you have an office in the state, you should register. For some states, you only have to register if your sales in the state reach a certain threshold. This is where your US accountant comes into play.

To clarify the meaning of a foreign entity, it doesn't mean foreign as in based out of the US. It means your initial corporate registration was in another state. For example, if you registered your company in Delaware and begin doing business in Massachusetts (MA), you would register in MA as a foreign entity.

You must also renew Registered Agent services annually.

# A final word on compliance.

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Staying on the right side of US federal and state regulations is a non-stop activity. Your responsibilities broaden from those outlined here for entity setup when your activities include providing service in a regulated industry, hiring employees, health and safety, and much more. Foothold America is a resource for you in many areas of compliance.

We wish you the very best in your US expansion efforts.

Please [Contact Us](#) us for more information. Our online resources, on-demand webinars, e-Books, infographics, extensive FAQs, and twice weekly [Live Discovery Events](#) are available to you as you require.







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