

Overall Investment Checklist

Key Considerations for Foreign Investors in the United States



Robert Calafell, National Credits & Incentives Leader

Matt Dollard, Global Expansion Advisory Leader

Goran Lukic, Director



The United States business market is competitive. It generally allows for a relatively short period to establish new business operations. However, it is important to be mindful of the regulatory environment when setting up a company in the United States. This checklist is designed to provide an efficient and concise summary of the key issues and considerations when investing in the United States. Your U.S. advisors should be able to elaborate on many of the issues listed below.

Key Questions for Establishing Your Business in the United States

What is your strategy?

Because the United States market is large, doing your due diligence before entering will significantly enhance your success. The temptation for many businesses is to execute first, then plan later. Instead, you should, as the saying goes, plan your work, then work your plan. In other words, start by creating a plan that includes input from a steering team of leaders from across your organization. Set to deliver that plan but remain open-minded and flexible about new opportunities. The ability to adapt to changing or unforeseen circumstances will help your business prosper.

What are your goals?

Leading practices of successful United States market entrants demand you begin by defining your business goals and aspirations. Specifically, what financial and non-financial objectives do you care about? What do you aim to become to your customers? What do you want your brand to represent? What type of relationships do you want with suppliers or partners? What do you want the new venture to mean to your employees? Writing down brief, specific, measurable goals around these topics builds alignment and consensus among the team, allowing them to communicate clear intentions throughout your organization.

Where will you focus?

Most businesses are unable to master the enormous, complex U.S. market within their first year. Therefore, it is crucial to prioritize where the business spends its precious time and resources. Where are your most profitable current or future customers going to come from? Which markets represent the greatest opportunity? Where will you segment by customer, geography, product, or channel? Define this with specificity; do your research and put realistic figures to it; and then allocate the vast majority of your resources to the top tier of opportunities.

How will your product or service succeed?

Taking your product or service to a new market requires you to be an open-minded skeptic about its prospects in a new country. What is your unique selling proposition? Will you compete on speed, agility, service, cost, quality, or innovation? Have you talked to your

current and future customers to understand what they like and do not like about your product or service? What sources of defensible advantages do you have? Will you need partnerships with other businesses to succeed? What is your target business model, and should it differ from your home market, or be localized in some way to succeed? Answering these questions informs how best to organize your new business operations.

How will you configure business operations to meet your goals?

Once you have decided what your business must look like, evaluate the capabilities it must have to meet the goals that your steering team developed. If you sell products, where do you need to transform or develop your supply networks? What technological systems must be put in place? What type of skill sets will you need? How will you attract, hire, and retain the talent to grow your business? What must you have in place to meet customer expectations? Getting to these answers is iterative and is informed by the aforementioned work of goal setting, determining where you will establish, and what and how you will offer your product or service.

What is your plan?

In your plan, identify key work streams, break them down into tasks, set start and end dates, assign owners, and do research to identify the requisite budget. Make a business case that shows initial cost, payback period, return on investment, and cash flow over time. Evaluate if you have the right people on your team and if they have the bandwidth to execute; then build a hiring strategy into your plan. Your strategic execution plan does not assume you have learned everything you need to know during your earlier discovery work. Instead, your plan is an iterative set of activities that builds your knowledge, which, in turn, illuminates what actions you should take.

Take the time to develop your strategy before you begin the investor checklist.



Key Considerations for Investing in the United States

Investment Planning

Proper planning is critical to the successful establishment of business operations in the United States. This can include market and customer analysis, trade and tariff issues, as well as development of expansion and growth financial models and projections. The early inclusion of advisors can expedite and streamline the expansion.

Your U.S. professional services team can include:

- An international tax professional for the most effective structure for the foreign parent company/owners
- A U.S. tax professional to analyze U.S. federal and state tax issues
- A corporate lawyer to incorporate the entity and draft legal contracts and agreements
- An insurance professional to obtain business liability and workers' compensation coverage
- A banker for financing and banking needs
- A trade and tariff advisor
- A location selection consultant
- A real estate professional
- A visa attorney

Investment Strategy Development

Developing a data-driven strategy that aligns with the needs of the business and company stakeholders – and is adaptable to change as the business grows – can focus activity toward agreed-upon benchmarks, targets, and results. It is also important that the top tier of the organization be responsible for setting these strategies. Determine the key questions that must be answered and tactics that must be developed. Consider hiring advisors to conduct rapid research to develop the strategy. An efficient strategic development process should not require more than eight to 12 weeks for most startup projects.

Site Selection

Location will affect many components of your business, not to mention its overall success. Choosing where to establish should be a multi-faceted process. Consider the following steps and questions:

- **Goal setting:** What factors drive your company's success? Apply those you laid out in the planning stage. Consider how important it is for you to be close to your customers.

- **Labor analysis:** How important is gaining access to specific skill sets (labor and talent), and what is the competition, cost, and availability of the required skill sets?
- **Supply chain analysis:** How far can you be from your sources of supply?
- **Location cost analysis:** Narrow a preliminary list to a smaller one and study the best options in further detail. Build a business case to evaluate the cost models utilizing the data you have collected on multiple sites, and weigh the financial and non-financial factors.
- **Credits and incentives:** Evaluate credits and incentives of your investment options. Build these into your business and cost model.
- **Site visits:** Visit a few location options for a first-person analysis of the area and space.

Tax and Entity Planning

Determine the type of legal entity best suited to your unique situation, and determine the date of your accounting year-end.

Note: A business corporation is the most common entity type for foreign investors, but other possibilities exist, such as limited liability companies, partnerships, and unincorporated branches. The selection of entity type and the accounting year-end should be made with the advice of your U.S. tax accountant and corporate lawyer, and as well as your home country advisors.

Select the jurisdiction where you will establish your business entity. A company may register in any state.

Note: Your business entity will be governed by the laws of the state where it is established. Choice of jurisdiction should be made with the advice of your tax professional and corporate lawyer.

Submit paperwork to establish your legal entity. Use an expedited service if needed.

Note: You may pay filing fees and franchise taxes as applicable in the state of registration. These may often total more than \$500. You may also need to name or appoint a registered agent located in the state in which the entity is formed.



- Capitalize the new entity. State law determines the minimum paid-in capital requirement. A common minimum is \$1,000.
- Register with the Internal Revenue Service (IRS) for a Federal Employer Identification Number (FEIN).
- File with the state government for a certificate of assumed name or doing business as (DBA) name, if needed.
- Obtain any appropriate state tax and/or local identification numbers.

Discuss federal, state, and local tax issues with your advisor.

- Prepare for U.S. income tax compliance. Operations will likely be subject to U.S. income tax. Withholding requirements may apply to payments to the foreign parent.
- Assess whether the foreign parent company has had a U.S. income tax presence (“permanent establishment” in the United States) and if there may be delinquent U.S. tax and/or U.S. tax reporting that need to be addressed.
- Consider a capital investment strategy.
- Review anticipated intercompany transactions to determine potential withholding tax and transfer pricing considerations.
- Identify state and local credits and incentives that may be available.

Plan for state and local tax compliance.

Note: Do not overlook state and local taxes. There are important, complex, and significant variations between each jurisdiction. State and local taxes generally are not covered under international tax treaties. Common state and local taxes include property tax, sales/use tax, payroll taxes, and income tax.

- Prepare for employment taxes and contributions. You need to determine the cost and impact of employment taxes and contributions required by state, local and federal law.

Human Resource Planning

Employers must comply with state and federal laws and regulations controlling the hiring, treatment, compensation, and termination of employees. The following considerations and steps should help you ensure compliance and a productive workforce.

Social Security in the United States does not provide health or similar benefits to employees. Instead, it is a retirement income and health benefits program for the elderly and disabled. It is funded by mandatory employer and employee contributions.

Consulting with your professional services team will help you understand the potential impact for your organization of the Affordable Care Act (ACA), the comprehensive health care reform law that passed in 2010. Understand the necessary proactive steps to comply with ACA regulations. Also, ensure proper visas are secured for non-U.S. employees. Be sure to address the family needs of those employees.

Accounting and Financial Reporting

Select an accounting system or provider that is scalable and can grow with your business. The utilization of virtual solutions can be an economical choice for many.

- Select an accounting system and outsource to a provider, if needed.
- Set up your accounting system and financial reporting.
- Address banking, Bankers Automated Clearing Services (BACS), and credit card setup.
- Develop invoicing and bill-pay processing procedures.

Determine the nature and frequency of financial reporting to the parent company, including monthly close and reconciliation processes. (**Note:** There is no mandatory chart of accounts in the United States.)

Determine whether the parent company needs an audit or other attest procedures in the United States. (**Note:** There is no statutory audit requirement for private companies.)

Facility Considerations

Work with identified real estate and facility providers to secure needed space. Utilization of a shared space, such as a co-working location, is not an uncommon solution for initial operations. As operations grow, a lease or more permanent location can be secured.

- Evaluate facility options in conjunction with your real estate advisor.
- Apply for required state or local business licenses or permits.
- Consult with an insurance advisor regarding any potential employers' liability insurance that may be required.
- Determine the technology and IT needs for the location once acquired.



Key Checklist for Foreign Investment in the United States

Investment Planning	Notes
Create business and expansion strategic plan	
Select advisors	
Analyze tariff issues	
Conduct tax analysis	
Develop implementation plan	

Expansion Strategy Development	Notes
Analyze location, labor, and site selection analysis	
Evaluate tax credits, incentives, and grants	
Conduct operational analysis	

Tax and Entity Planning	Notes
Determine entity type and structure	
Determine jurisdiction (state) location	
Obtain FEIN and state tax ID – tax registration	
Register with the Secretary of State	
Complete federal and international tax planning	
Complete state and local tax planning	
Calculate employment tax and withholdings	

Human Resources Planning	Notes
Review social security and other employee benefits	
Assess Affordable Care Act and employers' liability	
Secure visas for non-U.S. employees	

Accounting and Financial Reporting	Notes
Select accounting software/provider	
Determine accounting and reporting procedures	
Determine financial audit requirements	

Facility Considerations	Notes
Secure real estate	
Obtain required permits / licenses	
Establish technology / IT needs	

About RSM

RSM's foreign direct investment (FDI) team helps bring your worlds together via our bicultural, bi-technical professionals who are experienced advising foreign-owned companies understand conducting business in the U.S.

RSM advises companies developing operations in the United States, providing informed multidisciplinary guidance to FDIs investing and building operations in new markets, including:

- Planning needs
- Ongoing operations and exit needs
- Remote selling needs
- Initial entry needs
- Navigating and negotiating local and state credits and incentives
- Maximizing complex international for tax and cash flow efficiencies, as well as domestic tax structuring and compliance
- Outsourcing services including global finance, accounting, and reporting functions

When information about the United States is critical to your success, RSM FDI team possess the extensive local knowledge and experience to be your guide. RSM professionals leverage their multilingual language skills, and business and cultural understanding to provide audit, tax and consulting services to middle market companies focused on international growth and expansion. Learn more by visiting rsmus.com/international.

Disclaimer

This chapter was prepared by Robert Calafell, Matt Dollard, and Goran Lukic with RSM US LLP. Views expressed in this chapter are the authors' own, not that of the International Trade Administration. This chapter does not constitute legal advice. Readers interested in investing in the United States should consult legal counsel.