

A low-angle, upward-looking perspective of several modern skyscrapers with glass facades, framed by a large, circular, metallic structure that resembles a tunnel or a large ring. The sky is blue with scattered white clouds. The buildings are reflected in the glass surfaces, creating a complex geometric pattern.

# Doing business in the **United States** 2026

An overview for foreign companies considering  
doing business within the United States

## Contents

Introduction .....	3
Cultural considerations and business etiquette .....	4
Understanding US business entities .....	7
Incorporating in the US .....	10
Taxation and compliance .....	12
Employment and labor laws .....	14
Immigration considerations for foreign workers .....	17
Intellectual property protection .....	20
Contract law and commercial agreements .....	23
Regulatory compliance .....	25
Data privacy and security .....	32
Litigation and dispute resolution .....	35
Insurance .....	37
Recent Executive Orders .....	40
ESG, climate and sustainability disclosure and incentives .....	43
Antitrust and competition regulation .....	45
Conclusion and recommendations .....	48
Key Contacts .....	50

## Introduction

Welcome to this overview for foreign companies considering doing business within the United States. As the world's largest economy and a hub for global business, the United States offers immense opportunities for foreign companies seeking growth and expansion.

However, navigating the US legal landscape can be complex and challenging, especially for companies unfamiliar with the country's laws and regulations.

In this guide, we will explore the essential legal considerations that foreign companies must understand and address when entering the US market. From choosing the right business entity and navigating tax obligations to complying with employment laws and protecting intellectual property, we'll cover all aspects of doing business in the US to help you establish a strong and compliant presence.



The importance of **understanding these legal considerations cannot be overstated**. Failing to comply with US laws and regulations can lead to legal liabilities, financial penalties and reputational damage, jeopardizing the success of your business venture.

By equipping yourself with the knowledge and guidance provided in this guide, you can mitigate risks, make informed decisions and lay the foundation for a successful entry into the US market.

Whether you're a startup looking to expand internationally or an established multinational corporation seeking new opportunities, this guide is designed to provide valuable insights and practical advice to help you navigate the complexities of the US legal system. From incorporation and taxation to employment practices and intellectual property protection, we'll cover everything you need to know to confidently launch and grow your business in the United States.

Before we dive into the specifics, it's important to note that the information provided in this guide is intended for general informational purposes only and should not be construed as legal advice. Every business is unique and it's essential to consult with qualified legal professionals who can provide tailored guidance based on your specific circumstances and objectives.

With that said, let's begin our journey into the legal considerations for foreign companies entering the US market. Whether you're at the early stages of planning or already in the process of establishing your presence, this guide will serve as a valuable resource to help you navigate the intricacies of doing business in the world's largest economy.





## Cultural considerations and business etiquette

Understanding cultural norms, customs and business etiquette is essential for foreign companies entering the US market to build relationships, navigate social interactions and conduct business effectively.



The **United States is a diverse and multicultural society with varying cultural practices** and expectations across different regions and industries. In this section, we'll explore the key cultural considerations and business etiquette for foreign companies operating in the United States.

### Diversity and inclusion:

**Cultural diversity:** The United States is known for its cultural diversity, with people from diverse backgrounds, ethnicities, religions and lifestyles. Embrace diversity and foster an inclusive work environment that respects and values differences.

**Sensitivity and respect:** Be sensitive to cultural differences and avoid making assumptions based on stereotypes or generalizations. Show respect for individuals' cultural backgrounds, beliefs and traditions.

### Communication styles:

**Direct communication:** Americans tend to value direct and straightforward communication, preferring clarity and brevity in business conversations. Be concise and to the point when conveying information or making requests.

**Openness and transparency:** Foster an environment of openness and transparency in business dealings, sharing information freely and honestly with colleagues, clients and partners.

### Business meetings and networking:

**Punctuality:** Respect punctuality and arrive on time for business meetings, appointments and events. Being punctual demonstrates professionalism and respect for others' time.

**Handshakes:** Handshakes are a common greeting in business settings, signaling professionalism and respect. Offer a firm handshake and maintain eye contact when greeting business associates.

**Networking events:** Attend networking events, conferences and industry gatherings to expand your professional network and build relationships with potential clients, partners and stakeholders.

### Work culture:

**Work-life balance:** Americans value work-life balance and prioritize leisure time and personal pursuits outside of work. Respect employees' personal time and encourage a healthy balance between work and leisure activities.

**Meritocracy and achievement:** The US business culture emphasizes meritocracy and achievement, rewarding individuals based on their performance, skills and contributions to the organization. Recognize and reward employees for their hard work and accomplishments.

### Dining and social etiquette:

**Business meals:** Business meals are a common practice for networking and relationship-building. Familiarize yourself with dining etiquette, such as table manners, tipping customs and appropriate conversation topics.

**Alcohol consumption:** Exercise moderation when consuming alcohol during business meals or social gatherings, as excessive drinking can be perceived negatively and impair professional judgment.

### Respecting governmental authorities:

**Federalism system:** The United States has a federalism structure wherein each state has power to regulate businesses operating within its borders and the federal government imposes additional business regulations on a national level.

**Municipal and local governments:** In addition to state and federal regulations, there may be regulatory and licensing requirements within a local municipality. It is necessary to understand and comply with each level of regulatory and licensing authority.

### Conclusion:

By understanding and respecting cultural norms, customs and business etiquette in the United States, foreign companies can foster positive relationships, enhance communication and navigate business interactions effectively in the US market. Embrace diversity, adapt to local customs and demonstrate professionalism, honesty and respect in all business dealings to build trust and credibility with American colleagues, clients and partners. However, cultural norms and business practices may vary across different regions and industries, so it's essential to remain flexible, open-minded and receptive to cultural differences as you conduct business in the United States.

## Understanding US business entities

Before diving into the intricacies of doing business in the United States, it's crucial to understand the various business entity types available to foreign companies.



Choosing the right business structure is a critical decision that will impact your company's operations, tax obligations, liability exposure and overall flexibility.

In this section, we'll explore the different types of business entities most common in the US and the factors to consider when selecting the most suitable option for your business.

### Types of business entities:

#### Sole proprietorship:

- A sole proprietorship is the simplest form of business entity, owned and operated by a single individual.
- The owner has complete control over the business and is personally liable for its debts and obligations.
- While easy to establish and operate, sole proprietorships offer no legal distinction between the business and its owner, exposing the owner to unlimited personal liability.

#### Partnership:

- A partnership is a business structure owned and operated by two or more individuals or entities.
- Partners share in the profits, losses and liabilities of the business based on the terms of a partnership agreement.
- Partnerships can be general partnerships, where all partners share equally in the management and liability; limited partnerships, where some partners have limited liability; or limited liability partnership, where all partners have limited liability and their personal assets cannot be used to satisfy business debts and liabilities.



#### Corporation:

- A corporation is a separate legal entity that is owned by shareholders and managed by a board of directors.
- Corporations offer limited liability protection to their shareholders, meaning that shareholders are not personally liable for the debts and obligations of the corporation.
- Corporations can issue stock and raise capital through equity financing, making them an attractive option for businesses seeking to grow and expand.
- Corporations can be tax elect as C-Corporations, where the corporation pays tax on its profits and shareholders pay tax on distributions; and, if certain requirements are met, as S-Corporations, where the shareholders pay tax on the corporation's profits.

#### Limited liability company (LLC):

- An LLC is a hybrid business structure that combines the limited liability protection of a corporation with the pass-through taxation of a partnership or sole proprietorship or s-corporation.
- LLCs offer flexibility in management and operations, allowing members to customize the structure and governance of the business.
- LLCs are popular among small and medium-sized businesses due to their simplicity, flexibility and tax advantages.

#### Factors to consider:

**Liability protection:** Consider the level of liability protection offered by each business entity type and how it aligns with your risk tolerance and asset protection goals.

**Taxation:** Evaluate the tax implications of each business structure, including income taxes, self-employment taxes and potential tax benefits or incentives.

**Management and control:** Determine how you want your business to be managed and controlled, considering factors such as decision-making authority, governance structure and ownership rights.

**Compliance requirements:** Understand the legal and regulatory requirements associated with each business entity type, including formation and ongoing compliance obligations.

**Flexibility and growth potential:** Consider the scalability and growth potential of each business structure, as well as the ease of adding or removing owners or shareholders.

#### Conclusion:

By carefully considering these factors and consulting with legal and financial professionals, you can choose the business entity type that best suits your company's needs and objectives. Whether you opt for a sole proprietorship, partnership, corporation or LLC, selecting the right business structure is the first step towards establishing a solid legal foundation for your business in the United States.

# Incorporating in the US

Once you have chosen the appropriate business entity type for your company, the next step is to incorporate your business in the United States.

Incorporation is the process of legally forming a business entity and registering it with the appropriate state authorities. In this section, we'll explore the steps involved in incorporating your business in the US and the requirements for foreign companies seeking to operate in the country.

## Steps to incorporate:

**Choose a state of incorporation:** The first step in incorporating your business is to choose the state in which you want to incorporate. Many businesses choose to incorporate in Delaware due to its favorable corporate laws and business-friendly environment. However, other states, such as Nevada and Wyoming, also offer advantages for certain types of businesses.

**Select a business name:** Choose a unique and distinguishable name for your business that complies with state naming requirements. Conduct a thorough search to ensure that the name you want is available and not already in use by another entity.

**Appoint a registered agent:** Designate a registered agent who will be responsible for receiving legal documents and official correspondence on behalf of your business. The registered agent must have a physical address in the state of incorporation.

**File articles of incorporation:** Prepare and file articles of incorporation with the Secretary of State or the relevant state agency. The articles of incorporation typically include basic information about the business, such as its name, address, purpose and the number and type of shares of stock authorized.

**Draft bylaws:** Draft corporate bylaws that outline the internal rules and procedures governing the operation of your business. Bylaws typically cover matters such as shareholder meetings, director responsibilities and corporate governance structure.

**Issue stock certificates:** Issue stock certificates to the initial shareholders of the corporation, documenting their ownership interests in the company.

**Obtain necessary permits and licenses:** Depending on the nature of your business and its location, you may need to obtain various permits, licenses and registrations at the federal, state and local levels to legally operate your business.

**Comply with tax requirements:** Register for federal, state and local taxes, including employer identification numbers (EINs), sales tax permits and other tax-related obligations.

## Requirements for foreign companies:

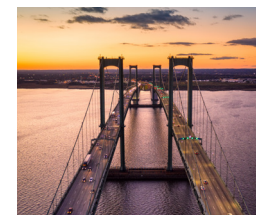
**Register as a foreign entity:** Foreign companies seeking to do business in the US must register as a foreign entity in the states where they plan to operate. This typically involves filing a certificate of authority or foreign qualification with the Secretary of State or the relevant state agency.

**Obtain necessary visas and work permits:** Foreign companies may need to obtain visas and work permits for their employees who will be working in the US on a temporary or permanent basis. This may include investor visas, employment-based visas or intra-company transfer visas, depending on the circumstances.

**Comply with immigration laws:** Ensure compliance with US immigration laws and regulations, including employer sponsorship requirements, visa application procedures and ongoing reporting obligations.

## Conclusion:

By following these steps and fulfilling the necessary requirements, you can successfully incorporate your business in the United States and establish a legal presence in the country. Incorporation provides numerous benefits, including limited liability protection, access to capital markets and credibility with customers and business partners. However, it's essential to seek professional guidance and consult with legal and financial experts to ensure compliance with all legal and regulatory requirements throughout the incorporation process.





## Taxation and compliance

Understanding the US tax system and ensuring compliance with tax obligations is essential for foreign companies operating in the United States. The US tax system is complex, with federal, state and local taxes impacting businesses in various ways. In this section, we'll explore the key aspects of taxation and compliance for foreign companies doing business in the US, including federal tax requirements, state taxes and tax planning strategies.

### Federal tax requirements:

**Corporate income tax:** Foreign corporations doing business in the US are generally subject to federal corporate income tax on their US-source income. The corporate tax rate is graduated, with rates ranging from 15% to 35% depending on the level of taxable income.

**Tax treaties:** Many countries have tax treaties with the United States that may impact the taxation of foreign companies. These treaties often provide for reduced withholding rates on certain types of income and may offer other tax benefits to foreign companies.

**Withholding taxes:** Foreign companies may be subject to withholding taxes on certain types of US-source income, such as dividends, interest and royalties. The withholding tax rates vary depending on the type of income and the provisions of applicable tax treaties.

**Transfer pricing:** Transfer pricing rules govern the pricing of transactions between related parties, such as a foreign parent company and its US subsidiary. It's essential for foreign companies to comply with transfer pricing regulations to avoid tax implications and penalties.

### State and local taxes:

**State corporate income tax:** In addition to federal taxes, foreign companies may be subject to state corporate income tax on their income derived from business activities conducted within the state. State tax rates and rules vary widely, so it's essential to understand the tax requirements in each state where you operate.

**Sales and use taxes:** Foreign companies selling goods or services in the US may be subject to state and local sales and use taxes. These taxes apply to retail sales of tangible personal property and certain services and the rates and rules vary by jurisdiction.

**Property taxes:** Foreign companies that own or lease real property in the US may be subject to property taxes imposed by state and local governments. Property tax rates and assessment methods vary by jurisdiction.

### Tax planning strategies:

**Entity structuring:** Choosing the right business entity structure can have significant tax implications for foreign companies. Structuring your business as a corporation, LLC, partnership, or sole proprietorship can impact your tax liability and compliance obligations.

**Tax credits and incentives:** Foreign companies may be eligible for various tax credits and incentives offered by federal, state and local governments to encourage investment and job creation. These incentives may include research and development credits, investment tax credits and enterprise zone benefits.

**International tax planning:** Implementing tax planning strategies at the international level can help foreign companies minimize their overall tax burden. This may include establishing holding companies in tax-friendly jurisdictions, utilizing tax treaties and structuring transactions to optimize tax efficiency.

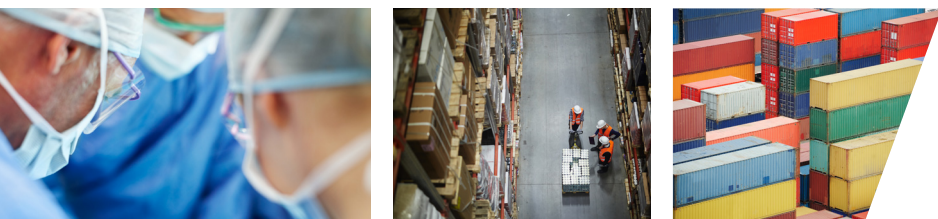
### Compliance:

**Tax reporting and filing:** Foreign companies must comply with various tax reporting and filing requirements, including filing annual tax returns, reporting foreign financial accounts and complying with transfer pricing documentation requirements.

**Audits and investigations:** Failure to comply with US tax laws can result in audits, investigations and penalties imposed by the Internal Revenue Service (IRS) and state tax authorities. It's essential for foreign companies to maintain accurate records and documentation to support their tax positions and transactions.

### Conclusion:

By understanding the US tax system, planning strategically and ensuring compliance with all tax requirements, foreign companies can minimize their tax liabilities and navigate the complexities of doing business in the United States effectively. However, due to the complexity of US tax laws and regulations, it's advisable to seek professional guidance from tax advisors and accountants with expertise in international taxation.



## Employment and labor laws

Navigating US employment and labor laws is crucial for foreign companies establishing a presence in the United States.



From hiring and managing employees to ensuring compliance with federal and state regulations, understanding the legal framework governing the employer-employee relationship is essential.

In this section, we'll explore the key aspects of US employment and labor laws that foreign companies need to consider when operating in the country.

### Federal employment laws:

There are a number of federal laws, rules and regulations impacting a variety of employment concerns, with the following being an example of the most frequently confronted statutory schemes:

**Fair Labor Standards Act (FLSA):** The FLSA establishes minimum wage, overtime pay, recordkeeping and child labor standards for employees in the United States. Foreign companies must comply with FLSA regulations when hiring employees and compensating them for their work.

**Title VII of the Civil Rights Act:** Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. Foreign companies must ensure equal employment opportunity and take proactive steps to prevent discrimination and harassment in the workplace.

**Family and Medical Leave Act (FMLA):** The FMLA provides eligible employees with unpaid leave for specified family and medical reasons, such as the birth of a child or a serious health condition. Foreign companies with employees in the United States must comply with FMLA requirements and provide eligible employees with leave as mandated by law.

**Americans with Disabilities Act (ADA):** The ADA prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation and other areas. Foreign companies must make reasonable accommodations for employees with disabilities and ensure accessibility in the workplace.

### State employment laws:

Like the federal statutory schemes, there are a number of state and local laws, rules and regulations governing employment relationships, with the following being some of the more frequently encountered circumstances:

**At-will employment:** Most states in the US follow the doctrine of at-will employment, which allows employers to terminate employees for any reason or no reason at all, as long as it's not unlawful. However, some states have exceptions to at-will employment, such as implied contracts or public policy considerations.

**Wage and hour laws:** Many states have their own wage and hour laws governing minimum wage, overtime pay, meal and rest breaks and other employment-related matters. Foreign companies must comply with state-specific wage and hour requirements in addition to federal regulations.

**Employee privacy laws:** Some states have laws regulating employee privacy rights, including restrictions on background checks, drug testing and monitoring employee communications. Foreign companies must understand and comply with state privacy laws to avoid legal liability.

### Employee benefits and compensation:

**Healthcare benefits:** Foreign companies with employees in the United States may be required to provide health insurance coverage under the Affordable Care Act (ACA) or other state-specific healthcare mandates. Understanding and complying with healthcare benefit requirements is essential for foreign employers.

**Retirement plans:** Offering retirement benefits, such as 401(k) plans, can be an attractive incentive for attracting and retaining employees. Foreign companies must understand their obligations under federal and state laws governing retirement plans and ensure compliance with reporting and disclosure requirements.



### Collective bargaining and unions:

Federal law and certain state law analogs generally permit employees to collectively bargain, join a labor union and afford many other employee protections. Foreign companies acquiring or forming businesses in the US that have collective bargaining units must be mindful of the rules and regulations governing their employees' rights.

### Independent contractors and temporary workers:

When first entering the US market a company may elect to utilize independent contractors. An independent contractor's relationship to the company is evaluated under both federal and applicable state law. One must be mindful not to misclassify an "employee" as an independent contractor.

Another option for companies first entering the US market is to utilize temporary workers through a reputable agency. These relationships are governed by the contractual agreement between the company and the employment agency.

### Compliance and risk management:

**Employee handbook and policies:** Developing an employee handbook with clear policies and procedures can help foreign companies establish expectations for employee conduct, mitigate legal risks and ensure compliance with applicable laws and regulations.

**Training and development:** Providing training and development opportunities for employees can enhance productivity, morale and compliance with workplace laws. Foreign companies should invest in training programs to educate employees about their rights, responsibilities and company policies.

**Risk assessment and mitigation:** Conducting regular risk assessments and implementing effective risk management strategies can help foreign companies identify and address potential legal liabilities in the areas of employment law, labor relations and workplace safety.

### Conclusion:

By understanding and complying with US employment and labor laws, foreign companies can build strong and productive workforces, minimize legal risks and create a positive and inclusive work environment for their employees. However, due to the complexity of employment law regulations, it's advisable for foreign companies to seek guidance from experienced employment law attorneys and HR professionals to ensure compliance with all legal requirements.

## Immigration considerations for foreign workers

Navigating immigration laws and policies is essential for foreign companies seeking to employ foreign workers in the United States or send employees to work in the US market.

Understanding the various visa options, eligibility requirements and compliance obligations is crucial for ensuring legal compliance and facilitating the smooth entry and employment of foreign workers. In this section, we'll explore the key immigration considerations for foreign companies operating in the United States.

### Visa options for foreign workers:

**H-1B Visa:** The H-1B visa is a non-immigrant visa category that allows US employers to temporarily employ foreign workers in specialty occupations that require specialized knowledge and skills. Foreign companies can sponsor employees for H-1B visas to work in the United States for up to six years.

On September 19, 2025, the President issued a Proclamation, *Restriction on Entry of Certain Nonimmigrant Workers*. Under the Proclamation, certain H-1B petitions filed at or after 12:01 a.m. eastern daylight time on September 21, 2025 must be accompanied by an additional \$100,000 payment as a condition of eligibility. The Proclamation also provides grounds for a waiver of this fee if the employment of the H-1B worker is determined to be in the national interest and does not present a security threat. However, it did not indicate what factors would be applied in making this determination.

**L-1 Visa:** The L-1 visa is available to foreign companies that wish to transfer employees from an overseas office to a US office. The L-1 visa allows intracompany transferees, including executives, managers and employees with specialized knowledge, to work in the United States for an initial period of up to three years, with extensions available.

*Note: On September 29, 2025, the bi-partisan H-1B and L-1 Visa Reform Act of 2025 was proposed, aiming to overhaul two key US employment-based visa programs. This bipartisan proposal seeks stricter regulations, including wage requirements, recruitment mandates and enhanced government oversight.*

**E-2 Visa:** The E-2 visa is available to foreign investors and entrepreneurs from countries with which the United States has a treaty of commerce and navigation. The E-2 visa allows investors to establish and operate a business in the United States and employ foreign workers to work in the enterprise.

**EB-5 Visa:** The EB-5 visa is a US immigrant investor program that grants permanent residency to foreign nationals who invest at least \$800,000 in a new commercial enterprise, creating or preserving at least 10 jobs for US workers.

*Note: On October 22, 2025, the USCIS newly released a proposed fee rule includes reductions to several key EB-5 Immigrant Investor Program filing fees.*

**O-1 Visa:** The O-1 visa is available to individuals with extraordinary ability or achievement in their field, such as science, education, business or athletics. The O-1 visa allows foreign workers with exceptional skills or talents to work in the United States for a specific employer or project.

**TN visa:** The TN visa is available to Canadian and Mexican citizens under the USMCA (formerly NAFTA). It is a non-immigrant visa for professionals who have specific job offers in the US that require at least a bachelor's degree or its equivalent.

## Compliance requirements:

**Labor condition applications (LCAs):** Employers sponsoring foreign workers for H-1B visas must file labor condition applications (LCAs) with the US Department of Labor (DOL) and comply with wage and labor requirements, including paying prevailing wages and providing working conditions comparable to those of US workers.

**I-9 Employment verification:** Employers must comply with Form I-9 employment verification requirements by verifying the identity and employment eligibility of all employees, including foreign workers authorized to work in the United States, within three days of hire.

**Maintaining status:** Foreign workers must maintain valid immigration status while working in the United States and comply with visa conditions, such as limitations on employment, duration of stay and reporting requirements.

## Permanent residency options:

**Employment-based green cards:** Foreign workers may be eligible for employment-based immigrant visas (green cards) based on sponsorship by a US employer. Employment-based green card categories include EB-1 (priority workers), EB-2 (professionals with advanced degrees or exceptional ability) and EB-3 (skilled workers, professionals and other workers).

**PERM labor certification:** For most employment-based green card categories, employers must obtain labor certification from the DOL through the PERM process, demonstrating that there are no qualified US workers available to fill the position and that hiring a foreign worker will not adversely affect the wages and working conditions of US workers.

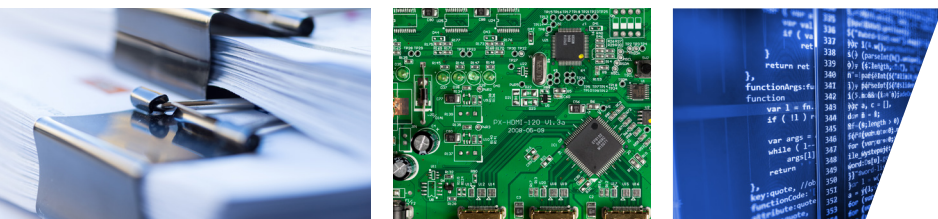
## Compliance and due diligence:

**Immigration compliance programs:** Implement robust immigration compliance programs and internal controls to ensure compliance with immigration laws and regulations, monitor visa expiration dates and maintain accurate records of foreign workers' immigration status and employment history.

**Due diligence for business transactions:** Conduct due diligence for mergers, acquisitions and other business transactions involving foreign workers to assess potential immigration implications, liabilities and compliance risks associated with the transfer or termination of employees.

## Conclusion:

By understanding the various visa options, compliance requirements and permanent residency pathways available for foreign workers, foreign companies can navigate immigration processes effectively, attract and retain top talent and achieve their business objectives in the United States. However, due to the complexity and rapidly changing landscape of immigration laws and regulations, foreign companies should seek guidance from experienced immigration attorneys and professionals to ensure compliance with all legal requirements and optimize their immigration strategies for the US market.



## Intellectual property protection

Protecting intellectual property (IP) is crucial for foreign companies entering the US market to safeguard their innovations, brands and creative works.



The US has robust laws and enforcement mechanisms to protect various forms of IP, including patents, trademarks, copyrights and trade secrets.

In this section, we'll explore the key aspects of IP protection for foreign companies operating in the United States and strategies for safeguarding their valuable assets.

### Patents:

**Patentability and registration:** Foreign companies seeking patent protection for their inventions must ensure that their innovations meet the criteria for patentability, including novelty, non-obviousness and utility. Patents can be obtained by filing patent applications with the United States Patent and Trademark Office (USPTO) and undergoing examination by patent examiners.

**Patent infringement:** Foreign companies should be vigilant about monitoring their competitors and third parties for potential patent infringement. If a foreign company believes that its patents are being infringed upon, it can enforce its patent rights through litigation or other legal means.

### Trademarks:

**Trademark registration:** Foreign companies can protect their brands, logos and slogans by registering trademarks with the USPTO. Trademark registration provides exclusive rights to use the mark in connection with the goods or services specified in the registration and helps prevent others from using confusingly similar marks.

**Trademark enforcement:** Foreign companies should actively monitor the marketplace for unauthorized use of their trademarks and take swift action to enforce their trademark rights. This may include sending cease-and-desist letters, filing trademark infringement lawsuits and pursuing administrative remedies through the USPTO.

### Copyrights:

**Copyrightable works:** Copyright protection extends to original works of authorship, including literary works, artistic works, musical compositions and computer software. Foreign companies automatically obtain copyright protection for their works upon creation, but registering copyrights with the US Copyright Office provides additional benefits, such as the ability to sue for statutory damages and attorneys' fees.

**Copyright infringement:** Foreign companies should monitor the use of their copyrighted works by third parties and take action against unauthorized copying, distribution, or public performance. Copyright infringement claims can be pursued through litigation or other legal remedies available under the Digital Millennium Copyright Act (DMCA) and other copyright laws.

### Trade secrets:

**Protection strategies:** Trade secrets, such as proprietary information, formulas and customer lists, can be protected through confidentiality agreements, non-disclosure agreements (NDAs) and other contractual arrangements. Foreign companies should implement robust trade secret protection measures to prevent unauthorized disclosure or use of their valuable confidential information.

**Enforcement:** If a foreign company's trade secrets are misappropriated by employees, business partners, or competitors, it can pursue legal action for trade secret theft and seek damages, injunctive relief and other remedies available under state and federal trade secret laws.



## International IP enforcement:

**Cross-border protection:** Foreign companies should be aware of the international aspects of IP protection and enforcement, including the recognition and enforcement of US IP rights in foreign jurisdictions and vice versa. International treaties and agreements, such as the Paris Convention and the TRIPS Agreement, provide mechanisms for cross-border IP protection and enforcement.

**Global anti-counterfeiting efforts:** Foreign companies should participate in global efforts to combat counterfeiting and piracy, including working with government agencies, industry associations and international organizations to prevent the sale and distribution of counterfeit goods and infringing products.

## Conclusion:

Protecting intellectual property is essential for foreign companies seeking to establish a competitive advantage and succeed in the US market. By understanding the various forms of IP protection available, implementing effective IP protection strategies and enforcing their rights through legal means, foreign companies can safeguard their innovations, brands and creative works and mitigate the risk of IP infringement and misappropriation. However, due to the complexity of IP laws and enforcement procedures, foreign companies should seek guidance from experienced IP attorneys and professionals to develop comprehensive IP protection strategies tailored to their specific needs and objectives.

## Contract law and commercial agreements

Navigating contract law and drafting effective commercial agreements is essential for foreign companies entering the US market to establish relationships with customers, suppliers, distributors and other business partners.

Contracts serve as the foundation for business transactions, outlining the rights, responsibilities and obligations of the parties involved. In this section, we'll explore the key aspects of contract law and the essential considerations for drafting and negotiating commercial agreements in the United States.

## Basic principles of contract law:

**Offer and acceptance:** Contract formation begins with an offer by one party to enter into a legally binding agreement and an acceptance of that offer by the other party. The offer and acceptance must be clear, definite and communicated between the parties.

**Consideration:** For a contract to be enforceable, there must be mutual consideration exchanged between the parties. Consideration is something of value given by each party to the other, such as money, goods, or services.

**Legal capacity:** To be bound by a contract, the parties must have the legal capacity to enter into agreements. Minors, mentally incapacitated individuals and those under duress or coercion may lack the capacity to contract.

**Legal purpose:** Contracts must have a lawful purpose to be enforceable. Agreements that violate public policy or involve illegal activities are void and unenforceable.

## Essential elements of commercial agreements:

**Identification of parties:** Commercial agreements should clearly identify the parties involved, including their legal names, addresses and contact information.

**Scope of services or products:** The agreement should outline the goods or services being provided, including specifications, quantities, delivery schedules and quality standards.

**Payment terms:** Clearly define the payment terms, including pricing, invoicing procedures, payment methods and any applicable taxes or fees.

**Term and termination:** Specify the duration of the agreement, renewal options and conditions for termination, including notice requirements and penalties for early termination.



**Intellectual property rights:** Address ownership and licensing rights for intellectual property created or exchanged as part of the agreement, including patents, trademarks, copyrights and trade secrets.

**Confidentiality and non-disclosure:** Include provisions to protect confidential information and trade secrets shared between the parties, outlining obligations for confidentiality, non-disclosure and limitations on use.

**Dispute resolution:** Determine the process for resolving disputes between the parties, including negotiation, mediation, arbitration, or litigation and specify the governing law and jurisdiction for any legal proceedings.

### Best practices for drafting and negotiating contracts:

**Clarity and precision:** Use clear and concise language to avoid ambiguity and misunderstandings. Define key terms and provisions with precision to ensure mutual understanding.

**Compliance with applicable laws:** Ensure that the contract complies with all applicable laws, regulations and industry standards governing the subject matter of the agreement.

**Flexibility and adaptability:** Anticipate changes in circumstances and include provisions for modifying or terminating the agreement to accommodate future developments.

**Risk allocation:** Allocate risks and liabilities between the parties fairly and equitably, considering factors such as indemnification, limitation of liability and insurance coverage.

**Legal review and approval:** Seek legal review and approval of the contract by qualified attorneys with expertise in contract law and relevant industry regulations.

### Conclusion

By understanding the principles of contract law, incorporating essential elements into commercial agreements and following best practices for drafting and negotiating contracts, foreign companies can establish legally enforceable relationships with their business partners and protect their interests in the US market. However, due to the complexities of contract law and the potential consequences of poorly drafted agreements, foreign companies should seek guidance from experienced legal counsel to ensure compliance with all legal requirements and mitigate the risk of disputes and litigation.

## Regulatory compliance

Compliance with regulatory requirements is essential for foreign companies entering the US market to ensure adherence to laws, regulations and industry standards governing their operations.

Failure to comply with regulatory obligations can result in legal liabilities, financial penalties and reputational damage. In this section, we'll explore the key aspects of regulatory compliance for foreign companies operating in the United States and strategies for effectively managing compliance risks.

### Regulatory landscape:

**Federal regulations:** Foreign companies operating in the US must comply with a wide range of federal regulations across various industries, including healthcare, finance, environmental protection, consumer protection and more. Also, depending on the transaction, some real estate and other types of transactions involving foreign investment in the US need to be evaluated and/or approved by the Committee on Foreign Investment of the United States (CFIUS). Understanding and adhering to federal regulatory requirements is essential for maintaining legal compliance and avoiding regulatory enforcement actions.

**State regulations:** In addition to federal regulations, foreign companies may be subject to state-specific regulations that vary depending on the states where they conduct business. State regulations may cover areas such as business licensing, environmental compliance, labor standards and consumer protection. Foreign companies must understand and comply with state regulatory requirements in each jurisdiction where they operate.

## Industry-specific regulations:

**Healthcare regulations:** Foreign companies operating in the healthcare industry must comply with regulations governing patient privacy (HIPAA), drug and medical device manufacturing (FDA), healthcare fraud and abuse (Stark Law, Anti-Kickback Statute) and other healthcare-related activities. Compliance with healthcare regulations is critical for protecting patient safety and avoiding legal and financial liabilities.

**Financial regulations:** Foreign companies in the financial services sector must comply with regulations imposed by federal agencies such as the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) and the Federal Reserve. Regulatory compliance is essential for maintaining the integrity of financial markets and protecting investors' interests.

**Environmental regulations:** Foreign companies engaging in activities that impact the environment, such as manufacturing, energy production or waste disposal, must comply with federal and state environmental regulations. Compliance with environmental laws is crucial for minimizing pollution, conserving natural resources and avoiding environmental liabilities.

## Privacy, cybersecurity and data breach duties:

### Privacy considerations

**Data protection laws:** The US does not have a single, comprehensive privacy law like the EU's GDPR, but several federal and state-level regulations govern how businesses handle personal data. For example:

- California Consumer Privacy Act (CCPA): Requires businesses to disclose data collection practices, allow consumers to opt-out of data sales and ensure consumers can request deletion of their personal data.
- Health Insurance Portability and Accountability Act (HIPAA): If a business deals with health-related information, this law regulates the privacy and security of health data.
- Children's Online Privacy Protection Act (COPPA): Protects the privacy of children under 13 by imposing strict rules on the collection of personal information.

**Data consent:** Ensure transparent data collection practices. If targeting users in certain states (like California), businesses should consider offering a clear opt-in and opt-out mechanism.

**Cross-border data transfer:** If a company transfers personal data across borders (for example, from the EU to the US), it needs to comply with international frameworks like the EU-US Data Privacy Framework (formerly Privacy Shield) or Standard Contractual Clauses (SCCs).

### Cybersecurity considerations:

**Risk assessment & compliance:** Ensure understanding of relevant cybersecurity frameworks. Some common ones include:

- NIST Cybersecurity Framework: Widely adopted by US companies as a comprehensive guide for securing IT systems.
- Federal Information Security Management Act (FISMA): Requires federal agencies and contractors to follow strict cybersecurity standards.
- Payment Card Industry Data Security Standard (PCI DSS): If handling credit card information, compliance with PCI DSS is crucial.

**Data encryption and secure storage:** As a basic requirement, sensitive data (e.g., customer financial or health data) must be encrypted both at rest and in transit. Proper encryption ensures compliance with many legal requirements (e.g., CCPA, HIPAA).

**Employee training and access controls:** Implement continuous employee training on cybersecurity risks, phishing attacks and secure handling of data. Restrict access to sensitive data based on roles to limit the scope of potential breaches.

**Incident response plan:** Establish a clear plan to address potential breaches or cybersecurity threats. This includes how to detect, respond, recover and communicate during and after an incident.

### Data breach duties:

**Breach notification:** Most US states have data breach notification laws that require businesses to notify affected individuals and relevant authorities if there is a breach involving personal information. The timing for notifying individuals often varies but typically ranges from 30 to 90 days.

**Federal laws:** In addition to state-level laws, certain federal regulations also come into play, such as the Health Information Technology for Economic and Clinical Health (HITECH) Act for healthcare entities and Gramm-Leach-Bliley Act (GLBA) for financial institutions.



**Consumer protection:** In the event of a breach, companies must demonstrate that they are actively taking steps to protect consumers. Some states may require businesses to provide identity theft protection services to affected individuals for a certain period.

**Penalties for non-compliance:** Failure to comply with breach notification requirements can result in significant penalties, including fines and reputational damage. Businesses should stay abreast of local and federal laws to mitigate such risks.

## Export controls:

Export controls regulate the transfer of sensitive goods, services and technologies across borders, ensuring that such exports do not pose risks to national security, foreign policy or economic interests.

**Export Administration Regulations (EAR):** The EAR, administered by the Bureau of Industry and Security (BIS) under the US Department of Commerce, regulates the export of dual-use goods and technologies (i.e., those with both civilian and military applications). Companies need to determine if their products or services are subject to EAR and, if so, whether they require an export license.

**International Traffic in Arms Regulations (ITAR):** For businesses involved in the defense or aerospace sectors, ITAR governs the export of military-related goods and services. Violating ITAR can result in heavy fines and restrictions on the ability to export to certain countries.

**Deemed export rule:** This rule states that sharing controlled technologies or information with foreign nationals (even within the US) can be treated as an export to the individual's home country. Companies must ensure they do not inadvertently violate export controls by hiring foreign nationals or transferring sensitive information.

**Technology and software:** Export controls also apply to software and technology, especially when it involves encryption, military technology or certain advanced technologies (e.g., artificial intelligence, quantum computing).

**Practical steps:** Businesses must identify whether their products, services or technologies fall under US exports controls (EAR, TIAR) and obtain licenses if required. They should also ensure that foreign nationals do not access controlled information under the Deemed Export Rule.

## Sanctions:

Sanctions are legal measures imposed by the US government to restrict or prohibit transactions with certain foreign governments, individuals or entities that pose a national security or foreign policy threat.

**Office of Foreign Assets Control (OFAC):** OFAC, part of the US Department of the Treasury, administers and enforces US sanctions. It maintains lists of Specially Designated Nationals (SDN) – individuals, entities and countries with whom US persons are prohibited from doing business.

**Sanctions programs:** US sanctions programs include comprehensive country-based sanctions (e.g., against North Korea, Iran, Cuba), as well as more targeted sanctions against specific individuals, groups or sectors. A company must screen transactions to ensure they do not involve entities or individuals subject to OFAC sanctions.

**Secondary sanctions:** Companies outside of the US may also be subject to US sanctions if they engage in prohibited activities with sanctioned countries or entities. This is known as secondary sanctions.

**Sanctions screening:** Businesses must implement procedures to screen customers, suppliers and other counterparties against relevant sanctions lists to ensure compliance. Failure to do so can result in heavy fines, penalties and reputational damage.

**Practical steps:** Companies must screen all partners, customer and suppliers against US sanctions lists to avoid engaging with prohibited entities. It is important to stay updated on sanctions changes, as violations can result in heavy penalties.

## Trade compliance:

Trade compliance refers to adhering to the complex web of international trade laws, regulations and agreements that govern imports and exports.

**US Customs and Border Protection (CBP):** CBP enforces US customs laws, including tariffs, classification of goods and valuation of goods. Companies must classify their products correctly and ensure proper customs declarations are made when importing or exporting.

**Tariffs and duties:** Understanding the tariff classifications (using the Harmonized System or HS Code) and applicable duties for imported and exported goods is critical. Changes to tariffs, such as those imposed during trade disputes (e.g., US-China tariffs), can significantly affect the cost of doing business.

**Free Trade Agreements (FTAs):** The US is party to several FTAs (e.g., USMCA with Canada and Mexico, KORUS FTA with South Korea), which can provide businesses with duty-free or reduced-duty access to certain markets. Compliance with rules of origin is essential to benefit from these agreements.

**Anti-Dumping and Countervailing Duties (AD/CVD):** US laws prohibit the importation of goods that are sold at unfairly low prices (dumping) or are subsidized by foreign governments. Companies must be aware of any AD/CVD investigations or duties imposed on their products.

**Import/export documentation:** Businesses need to maintain accurate and detailed records of their imports and exports, including invoices, certificates of origin and bills of lading. This documentation is necessary for customs clearance and potential audits by regulatory agencies.

**Practical steps:** Businesses should classify products under the correct tariff codes and ensure accurate customs declarations. They can also benefit from Free Trade Agreements to reduce tariffs, but must comply with rules of origin and watch out for anti-dumping measures.

### Compliance management strategies:

**Compliance program development:** Develop and implement a comprehensive compliance program that identifies regulatory requirements applicable to your business, establishes internal controls and procedures and assigns responsibility for compliance oversight and monitoring.

**Employee training and awareness:** Provide regular training and awareness programs to educate employees about regulatory requirements, ethical standards and the importance of compliance in their day-to-day activities.

**Monitoring and auditing:** Conduct periodic monitoring and auditing of business operations to assess compliance with regulatory requirements, identify potential violations or risks and implement corrective actions as necessary.

**Third-party due diligence:** Perform due diligence on third-party vendors, suppliers, contractors and business partners to ensure they comply with applicable laws and regulations and adhere to ethical standards.

**Regulatory reporting and documentation:** Maintain accurate and up-to-date records of regulatory compliance activities, including documentation of policies, procedures, training programs, audits and regulatory filings.

### Regulatory enforcement and remediation:

**Response to regulatory inquiries:** Promptly respond to regulatory inquiries, investigations, or enforcement actions by cooperating with regulatory authorities, providing requested information and taking corrective actions to address identified issues.



**Remediation and compliance improvement:** Implement remediation measures to address regulatory violations, prevent recurrence of non-compliance and improve overall compliance effectiveness.

**Legal counsel and compliance advisors:** Seek guidance from legal counsel and compliance advisors with expertise in regulatory compliance and industry-specific regulations to navigate complex regulatory requirements and mitigate compliance risks effectively.

### Conclusion:

By prioritizing regulatory compliance, implementing robust compliance management strategies and seeking guidance from legal and compliance professionals, foreign companies can establish a culture of compliance, mitigate regulatory risks and build trust and credibility with stakeholders in the US market. However, due to the dynamic and evolving nature of regulatory requirements, ongoing vigilance and proactive compliance efforts are essential to adapt to changing regulatory landscapes and ensure continued compliance with applicable laws and regulations.



## Data privacy and security

Protecting the privacy and security of personal and sensitive data is a critical consideration for foreign companies entering the US market, particularly in light of increasingly stringent data privacy regulations and growing concerns about cybersecurity threats.

In this section, we'll explore the key aspects of data privacy and security for foreign companies operating in the United States and strategies for effectively managing data protection risks.

### Regulatory landscape:

**General Data Protection Regulation (GDPR):** Although the GDPR is a European Union regulation, it applies to foreign companies that process the personal data of EU residents, regardless of where the companies are located. Foreign companies must comply with GDPR requirements when handling the personal data of EU data subjects.

**California Consumer Privacy Act (CCPA):** The CCPA is a comprehensive data privacy law in California that imposes obligations on businesses that collect, process and share personal information of California residents. Foreign companies with customers or clients in California must comply with CCPA requirements, including data subject rights, transparency and data security measures.

### Key data privacy principles:

**Data minimization:** Collect and process only the minimum amount of personal data necessary to fulfill the intended purpose and avoid unnecessary or excessive data collection.

**Purpose limitation:** Clearly define the purposes for which personal data is collected, processed and used and ensure that data is not used for purposes incompatible with the original purpose of collection.

**Transparency and notice:** Provide clear and transparent notices to individuals about how their personal data is collected, processed and shared, including the purposes of processing, data retention periods and individuals' rights regarding their data.

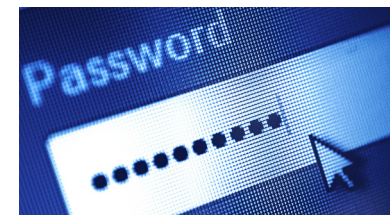
**Data security:** Implement appropriate technical and organizational measures to protect personal data against unauthorized access, disclosure, alteration, or destruction and ensure the confidentiality, integrity and availability of data.

### Compliance management strategies:

**Data Protection Impact Assessments (DPIAs):** Conduct DPIAs to assess the risks associated with data processing activities, identify potential privacy risks and implement measures to mitigate those risks.

**Privacy by design and default:** Incorporate privacy and data protection principles into the design and development of products, services and business processes from the outset and default to the highest level of privacy protection.

**Data breach response plan:** Develop and implement a data breach response plan to effectively respond to data security incidents, including incident detection, containment, notification and remediation.





**Vendor management:** Implement robust vendor management practices to ensure that third-party service providers and vendors comply with data privacy and security requirements and adequately protect personal data.

### Emerging trends and considerations:

**Emergence of new regulations:** Stay informed about emerging data privacy regulations and legislation at the federal, state and international levels and assess their impact on your business operations and compliance obligations.

**Cybersecurity threats:** Mitigate cybersecurity risks by implementing cybersecurity best practices, such as encryption, access controls, intrusion detection and employee training, to protect against data breaches and cyberattacks.

**Data localization requirements:** Be aware of data localization requirements that mandate the storage and processing of personal data within specific geographic regions or jurisdictions and assess the implications for your data processing activities.

**Cross-border data transfers:** Understand the legal requirements and mechanisms for transferring personal data across borders, such as standard contractual clauses, binding corporate rules and adequacy determinations, to ensure lawful data transfers.

### Conclusion:

By prioritizing data privacy and security, implementing robust compliance management strategies and staying abreast of emerging trends and regulatory developments, foreign companies can effectively manage data protection risks, build trust with customers and business partners and demonstrate their commitment to protecting personal data in the US market. However, due to the dynamic nature of data privacy regulations and cybersecurity threats, ongoing vigilance and proactive measures are essential to adapt to evolving privacy landscapes and ensure compliance with applicable data protection laws and regulations.

## Litigation and dispute resolution

While entering the US market presents significant opportunities for foreign companies, it also comes with the risk of potential litigation and disputes.

Understanding the US legal system, litigation procedures and dispute resolution mechanisms is crucial for foreign companies to protect their interests, mitigate legal risks and effectively resolve conflicts. In this section, we'll explore the key aspects of litigation and dispute resolution for foreign companies operating in the United States.

### Legal system overview:

**Adversarial system:** The US operates under an adversarial legal system, where parties to a dispute present their cases before a neutral judge or jury and the outcome is determined based on evidence and legal arguments presented by each side.

**State and federal courts:** The US has a dual court system comprising state and federal courts, each with jurisdiction over specific types of cases. Understanding the jurisdictional requirements and procedural rules of state and federal courts is essential for foreign companies involved in litigation.

### Types of litigation:

**Commercial litigation:** Commercial litigation encompasses disputes arising from business transactions, contracts, commercial relationships and other business-related matters. Common types of commercial litigation include breach of contract, business torts, intellectual property disputes and shareholder disputes.

**Employment litigation:** Employment litigation involves disputes between employers and employees regarding employment contracts, workplace discrimination, harassment, wrongful termination, wage and hour violations and other employment-related issues.

**Product liability litigation:** Product liability litigation arises from injuries or damages caused by defective products, including design defects, manufacturing defects and failure to warn. Foreign companies may face product liability claims if their products cause harm to consumers in the United States.

### Alternative dispute resolution (ADR):

**Mediation:** Mediation is a voluntary, confidential process in which a neutral mediator facilitates communication and negotiation between parties to help them reach a mutually acceptable resolution of their dispute. Mediation is often used to resolve disputes efficiently and cost-effectively outside of court.

**Arbitration:** Arbitration is a private, binding process in which parties submit their dispute to a neutral arbitrator or panel of arbitrators who render a final decision. Arbitration clauses in contracts may require parties to arbitrate disputes rather than litigate them in court.

### Risk management strategies:

**Contractual protections:** Include dispute resolution clauses, such as arbitration or mediation clauses, in contracts to provide a mechanism for resolving disputes efficiently and avoiding costly litigation.

**Compliance and documentation:** Maintain accurate and thorough records of business transactions, communications, agreements and compliance efforts to support your position in the event of litigation.

**Insurance coverage:** Obtain appropriate insurance coverage, such as commercial general liability insurance, product liability insurance and directors and officers (D&O) liability insurance, to mitigate financial risks associated with litigation.

### Legal representation:

**Qualified counsel:** Retain qualified legal counsel with experience in US litigation and dispute resolution to represent your interests, navigate the legal process and advocate on your behalf in court or alternative dispute resolution proceedings.

**Litigation strategy:** Work closely with your legal counsel to develop a strategic litigation plan tailored to your objectives, resources and risk tolerance and explore opportunities for settlement or resolution at every stage of the litigation process.

### Conclusion:

By understanding the US legal system, implementing effective risk management strategies and working closely with experienced legal counsel, foreign companies can navigate litigation and dispute resolution effectively, protect their interests and minimize legal and financial risks in the US market. While litigation can be costly, time-consuming and unpredictable, proactive measures and strategic planning can help foreign companies resolve disputes efficiently and preserve their reputation and competitive position in the marketplace.



## Insurance

Entering the US market presents numerous opportunities for foreign companies, but it also comes with a range of risks that necessitate comprehensive insurance coverage.

Understanding the types of insurance needed, the process of obtaining them and the challenges involved is crucial for mitigating potential financial losses and ensuring smooth operations.

### Types of insurance required:

**General liability insurance:** This is essential for covering claims related to bodily injuries, property damage and personal injury on the business premises or caused by business operations. It protects against lawsuits and claims from third parties, providing a financial safety net.

**Commercial property insurance:** Protects the company's physical assets, including buildings, equipment, inventory and furniture, against risks like fire, theft, vandalism and natural disasters. This insurance is vital for businesses with significant physical assets.

**Workers' compensation insurance:** Required in most states, this covers medical expenses and lost wages for employees who get injured or fall ill due to their job. It also protects the company from legal liabilities arising from workplace injuries.

**Product liability insurance:** Essential for companies that manufacture or sell products in the US, this insurance covers legal costs and damages if a product causes harm or injury. It safeguards the company against product-related lawsuits.

**Professional liability insurance:** Also known as Errors and Omissions (E&O) insurance, this is crucial for service providers. It covers legal claims arising from professional mistakes, negligence, or failure to deliver promised services.

**Directors and officers insurance:** Commonly referred to as D&O insurance, this insurance protects company executives from personal financial loss if they are sued for alleged wrongful acts while managing a company. This coverage includes legal defense costs, settlements and judgments arising from claims related to breach of duty, negligence, mismanagement, or other errors.

**Business interruption insurance:** This insurance compensates for lost income and operating expenses if business operations are disrupted due to a covered event, such as a natural disaster. It helps maintain financial stability during unforeseen interruptions.

## Steps to obtain insurance:

**Assess risks:** Identify and evaluate the specific risks associated with your business operations, industry and geographical location in the US. This helps in determining the types and extent of insurance coverage required.

**Engage a broker:** Work with an experienced insurance broker who understands the US market and can navigate the complexities of insurance procurement. A broker can provide valuable advice, negotiate terms and secure the best policies tailored to your needs.

**Choose reputable insurers:** Select insurance providers with a strong reputation and financial stability. Research their claims process, customer service and track record to ensure they can reliably support your business when needed.

**Customize coverage:** Tailor insurance policies to match your business's specific requirements. Ensure that coverage limits and terms are adequate to protect against potential losses without overpaying for unnecessary coverage.

**Understand legal requirements:** Compliance with state-specific insurance regulations is mandatory. Consult with legal experts to understand the mandatory insurance requirements and ensure all policies meet the legal standards.

**Review and renew:** Regularly review your insurance coverage to adapt to changes in business operations, market conditions and emerging risks. Renew policies in a timely manner to avoid lapses in coverage.

## Challenges and considerations:

**Cultural and regulatory differences:** Navigating the US insurance market can be challenging due to differences in regulations, business practices and cultural expectations. Engaging local experts can mitigate these challenges.

**Cost management:** Balancing adequate coverage with cost is crucial. Over-insurance can strain finances, while under-insurance can leave the company vulnerable. Strategic planning and negotiation are key.

**Claims process:** Understanding the claims process and ensuring that the company maintains proper documentation and follows procedures meticulously can facilitate smoother claims handling and quicker resolutions.

**Risk mitigation strategies:** Beyond insurance, implementing robust risk management practices, such as safety protocols, employee training and quality control measures, can reduce the likelihood and impact of insurable events.

## Conclusion:

Obtaining the right insurance is a critical component of a foreign company's successful entry into the US market. By carefully assessing risks, engaging knowledgeable brokers, complying with regulations and regularly reviewing coverage, businesses can protect their assets, manage liabilities and operate with confidence in a new market.



## Recent Executive Orders

In 2025, the US administration issued a series of Executive Orders (EOs) that together have redefined how foreign businesses access the American market.

While the United States remains an open economy, entry is now increasingly conditional—tied to reciprocity in trade, domestic production, data security and national-interest alignment. The following developments illustrate the changing regulatory terrain and what they mean for businesses considering investment or expansion in the US during 2025–26.

### Reciprocal trade and tariff dynamics

#### Key Orders:

- EO 14257 (April 2, 2025) – Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent United States Goods Trade Deficits
- EO 14346 (September 5, 2025) – Modifying the Scope of Reciprocal Tariffs and Establishing Procedures for Implementing Trade and Security Agreements
- EO 14326 (July 31, 2025) – Further Modifying the Reciprocal Tariff Rates

**General conditions:** These orders have created a flexible tariff framework allowing the executive branch to adjust import duties according to each trading partner's conduct and the national-security implications of trade relationships. Instead of fixed schedules negotiated over years, tariff treatment can now shift rapidly in response to diplomatic developments or perceived imbalances.

#### Impact on foreign entrants:

- Cost volatility: Import costs can change through presidential proclamation, affecting business models dependent on predictable margins.
- Country-of-origin sensitivity: Access conditions are increasingly bilateral - businesses from countries viewed as “reciprocal” may enjoy stability, while others may face sudden duty increases.
- Policy linkage: Market access is now intertwined with broader security and industrial-policy objectives.

**Implications:** Foreign businesses should plan for dynamic import costs, use supply chains anchored in “trusted” jurisdictions and include tariff-adjustment clauses in contracts. Localization of production or final assembly in the US can significantly mitigate exposure to these shifting trade rules.

### Low-value imports and logistics controls

**Key Order:** EO 14324 (July 30, 2025) – Suspending Duty-Free De Minimis Treatment for All Countries

**General conditions:** This order suspended the duty-free allowance for low-value shipments (the so-called “de minimis” threshold). All imports, regardless of value or origin, now pass through full customs assessment. The move aims to prevent foreign e-commerce sellers from undercutting domestic retailers and to tighten import visibility.

#### Impact on foreign entrants:

- Cross-border e-commerce disruption: Businesses built around small-parcel deliveries face higher compliance and brokerage costs.
- Fulfilment restructuring: To remain competitive, many foreign sellers will need to establish US warehouses or rely on domestic third-party logistics providers.
- Transparency expectations: US authorities expect traceability in supply chains, even for low-value goods.

**Implications:** Foreign businesses should reassess their logistics strategy. Shipping in bulk to US fulfilment centers or developing hybrid on-shore models can preserve competitiveness and compliance certainty.

### Strategic-sector resilience and localization

#### Key Orders:

- EO 14336 (August 13, 2025) – Ensuring American Pharmaceutical Supply Chain Resilience by Filling the Strategic Active Pharmaceutical Ingredients Reserve
- EO 14315 (July 7, 2025) – Ending Market-Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources

**General conditions:** These orders extend “national resilience” logic into critical industries such as pharmaceuticals, energy and advanced manufacturing. They encourage domestic production of essential inputs and limit public support for foreign-controlled or geopolitically sensitive suppliers.



#### Impact on foreign entrants:

- Local-production preference: Contracts and grants increasingly favor manufacturers with US facilities or US-sourced inputs.
- Scrutiny of ownership: Foreign investors in critical sectors can expect closer review of control structures and data flows.
- Industrial-policy alignment: Demonstrating contribution to supply-chain security or US employment strengthens market access.

**Implications:** Localization is no longer optional for long-term success. Foreign companies should evaluate the feasibility of partial on-shoring, joint ventures with US partners or licensing arrangements that include technology transfer and job creation.

## Data, platforms and digital sovereignty

#### Key Orders:

- EO 14352 (September 25, 2025) – Saving TikTok While Protecting National Security
- EO 14320 (July 23, 2025) – Promoting the Export of the American AI Technology Stack

**General conditions:** Digital and data-driven businesses now operate under explicit national-security scrutiny. EO 14352 imposed security conditions on foreign-owned social-media and data platforms, while EO 14320 promotes a US-controlled AI ecosystem. Together, they frame digital infrastructure as a strategic domain governed by trust and transparency.

#### Impact on foreign entrants:

- Regulatory gating: Foreign technology and data companies must demonstrate safe data handling, transparent algorithms and independence from foreign governments.
- Licensing and audit readiness: Security certifications or “trusted-provider” status may be prerequisites for federal contracts or critical-infrastructure participation.
- Opportunities for partnership: Co-development with US technology companies can satisfy localization and trust requirements while expanding market access.

**Implications:** Foreign digital businesses should prepare for rigorous review of ownership, data flows and governance. Early engagement with regulators and alignment with US privacy and export-control standards will ease entry.

#### Conclusion:

The rapidly evolving landscape shaped by executive orders presents both challenges and opportunities for businesses. The structural volatility of policy, combined with the ability of the administration to adjust tariffs and trade conditions without legislative delay, necessitates a proactive approach to resilience in contracts, pricing and supply chain planning. Localization, particularly in sectors like pharmaceuticals and energy, offers a way to mitigate risk and align with government priorities on US capacity and employment. Compliance is increasingly tied to competitiveness, especially in sectors such as technology and data, where transparent governance can unlock crucial regulatory approval and partnership opportunities. To stay ahead, businesses must continuously monitor the Federal Register for updates and assign dedicated resources to track sector-specific changes.

## ESG, climate and sustainability disclosure and incentives

Foreign companies entering the US market need to understand the complex landscape of ESG (Environmental, Social and Governance), climate and sustainability disclosure requirements.

These regulations are evolving rapidly at federal, state and international levels. While the SEC’s climate disclosure rules are in limbo, there are significant obligations at the state and global levels that can impact foreign companies’ operations in the US.

#### Federal Securities and Exchange Commission’s climate disclosure rules

In March 2024, the US Securities and Exchange Commission (SEC) introduced rules mandating climate-related disclosures in companies’ filings, such as registration statements and periodic reports. However, after encountering legal challenges, the SEC reversed its stance in March 2025, withdrawing its defense of these regulations, leaving their future in question.

**Implications for foreign companies:** For the time being, foreign companies are not required to comply with these specific SEC rules. However, the SEC may revisit or propose new regulations, particularly as political leadership changes in the future.

### Key areas potentially affected if the rules are reinforced:

- **Climate-Related Risks:** Foreign firms with US operations would need to disclose the financial impacts of both physical climate risks (e.g., extreme weather events) and transition risks (e.g., shifts in regulatory or market conditions).
- **Greenhouse Gas Emissions Reporting:** The proposed rules would have required detailed reporting on Scope 1, Scope 2 and Scope 3 emissions, including emissions from foreign entities' global operations. If reinstated, this could push foreign companies to measure and disclose their carbon footprint in the US market.
- **Board-Level Oversight:** The SEC's rules would require foreign companies to disclose how climate risks are managed at the board and executive levels—an added layer of governance responsibility for international companies that may not face similar requirements in other jurisdictions.

**Next steps:** Even though the SEC rules are currently suspended, foreign companies should monitor developments closely to ensure readiness for any potential reinstatement or new regulations in the future.

### State-level ESG and climate disclosure requirements and incentives

Companies entering or operating in the US should be prepared for varying climate disclosure rules and incentives across states. States are increasingly enacting their own climate-related regulations, with a focus on:

**Emissions reporting:** Many states require companies to disclose greenhouse gas emissions, often broken down into Scope 1, 2 and 3 and to assess climate-related risks (e.g., California, New York).

**Climate risk assessment:** Companies may need to evaluate and report on their exposure to physical risks (e.g., extreme weather, sea-level rise) and transition risks (e.g., regulatory changes) in certain regions (e.g., Florida, New York).

**Energy and environmental impact:** States are promoting clean energy adoption, energy efficiency and sustainability through regulations and incentives (e.g., Florida, California).

**Sector-specific compliance:** High-emission industries like energy, manufacturing and finance face stricter reporting and compliance requirements (e.g., New York, California).

**Incentives for sustainability:** Tax credits and funding programs are available for businesses investing in green technologies and climate-resilient projects (e.g., Florida, New York).

### Conclusion:

Foreign companies entering the US market must navigate a dynamic and complex landscape of ESG, climate and sustainability disclosures at the federal, state and international levels. While the future of federal SEC climate disclosure rules remains uncertain, state-specific regulations are already in place and continue to evolve rapidly. Companies should be prepared for varying obligations, ranging from emissions reporting and climate risk assessments to sector-specific compliance requirements. Additionally, many states offer incentives for sustainability efforts, creating both challenges and opportunities for foreign firms. As these regulations develop, staying informed and agile will be key to ensuring compliance and maximizing the potential benefits of incentives in the US market.

## Antitrust and competition regulation

Entering the US market requires careful adherence to antitrust and competition laws. These laws aim to foster fair competition, prevent monopolistic practices and protect consumers.

**Understand the antitrust framework:** US antitrust laws are designed to promote competition and prevent anti-competitive behavior. This means companies making a market entry must avoid actions that could unfairly limit market choices, such as monopolizing a market, price-fixing or collusion. The companies' practices should encourage fair competition and benefit consumers through lower prices and better products.

**Scrutiny on mergers and acquisitions (M&A):** If a company plans to enter the US market via a merger or acquisition, it should be prepared for antitrust scrutiny. The FTC and DOJ review large transactions to ensure they don't substantially reduce competition. Certain thresholds trigger mandatory filings and even smaller deals could face scrutiny if they impact competition. Legal counsel is crucial to navigate this process and avoid deal disruptions.

**Pricing and market conduct:** Pricing practices must comply with US antitrust laws. Price-fixing (agreeing with competitors on prices), price discrimination (offering unfair pricing to certain customers) and predatory pricing (undercutting competitors to drive them out) are prohibited. A company entering the market must therefore ensure pricing is transparent, fair and does not harm competitors or consumers. Exclusive contracts and restrictive business arrangements should also be carefully reviewed.



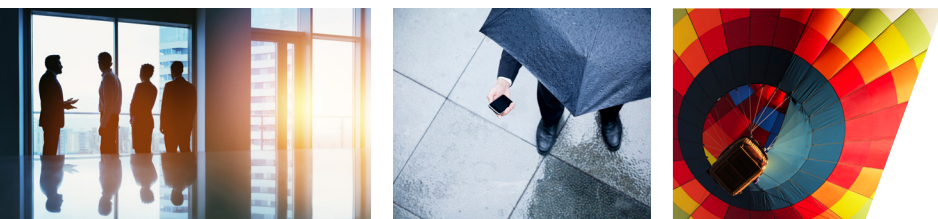
**Avoid collusion and anti-competitive agreements:** US antitrust laws prohibit agreements between competitors that harm competition. This includes price-fixing, market allocation and bid rigging. Even informal agreements or coordinated actions that limit competition can trigger enforcement actions. Companies should therefore avoid any discussions or agreements with competitors that might suggest collusion.

**State-specific antitrust laws:** In addition to federal laws, each state may have its own antitrust regulations, which can be more stringent. It's important to be aware of local laws in the states where the company intends to operate to ensure full compliance with both state and federal rules.

**Ongoing compliance and monitoring:** Antitrust compliance is not a one-time task; it requires ongoing vigilance. As a company's market share grows, regulators will monitor for any actions that may harm competition. Companies should thus ensure its business practices continue to promote fair competition and regularly assess how changes in pricing or strategy could be viewed under antitrust laws.

### Conclusion:

Given the complexity of US antitrust laws, especially around mergers and market conduct, it's essential to consult with antitrust counsel before making key strategic decisions. Legal experts can help navigate M&A reviews, pricing strategies and business practices to ensure compliance and minimize legal risks.



## Conclusion and recommendations

Entering the US market presents significant opportunities for foreign companies to expand their reach, access new customers and drive growth.

However, navigating the complexities of doing business in the United States requires careful planning, strategic decision-making and compliance with legal, regulatory and cultural requirements. In this final section, we'll summarize key takeaways and provide recommendations for foreign companies seeking to establish and grow their presence in the US market.

### Key takeaways:

**Legal and regulatory compliance:** Understand and comply with US laws, regulations and industry standards governing your business operations, including corporate governance, taxation, employment, intellectual property, data privacy and regulatory compliance.

**Business entity selection:** Choose the appropriate business entity type that aligns with your business goals, risk tolerance and tax considerations and consider factors such as liability protection, taxation and operational flexibility.

**Cultural awareness and adaptation:** Respect cultural differences, norms and business etiquette in the United States and adapt your communication style, behavior and business practices to align with American customs and expectations.

**Strategic planning and risk management:** Develop a comprehensive business plan that outlines your market entry strategy, competitive positioning, target market segments, marketing and sales strategies and risk management measures to mitigate potential challenges and uncertainties.

**Compliance management systems:** Implement robust compliance management systems and internal controls to ensure adherence to legal and regulatory requirements, monitor compliance risks and address any non-compliance issues proactively.

**Continuous learning and improvement:** Stay informed about market trends, industry developments and regulatory changes affecting your business operations in the United States and continuously evaluate and adapt your strategies to optimize performance and achieve sustainable growth.

### Recommendations:

**Seek professional guidance:** Consult with legal, financial and business advisors with expertise in US market entry and expansion to guide you through the complexities of doing business in the United States and ensure compliance with all legal and regulatory requirements.

**Invest in market research:** Conduct thorough market research to assess market demand, competitive landscape, consumer preferences and regulatory environment in the United States and use insights to inform your business strategy and decision-making process.

**Build strategic partnerships:** Identify and cultivate strategic partnerships with local businesses, industry associations, government agencies and other stakeholders to access resources, networks and opportunities for collaboration and growth in the US market.

**Prioritize customer experience:** Focus on delivering exceptional customer experiences and building strong relationships with your customers in the United States to differentiate your brand, drive customer loyalty and foster long-term success in the market.

**Stay agile and adaptive:** Remain agile and adaptive in response to changing market dynamics, emerging trends and evolving consumer preferences and be prepared to adjust your strategies and tactics accordingly to stay competitive and resilient in the US market.

By following these recommendations and leveraging the insights and best practices outlined in this guide, foreign companies can overcome challenges, capitalize on opportunities and achieve success in the dynamic and lucrative US market. With careful planning, strategic execution and a commitment to excellence, foreign companies can establish a strong foothold, expand their market presence and realize their growth aspirations in the United States.



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