

## FOREWORD

[Incorporating a business in Florida](#) will provide you with many advantages. The costs of running a business are low from a governmental and regulatory viewpoint.

A business corporation is required to be registered in the State of Florida to “do business.” This means that a corporation from another state or country must be registered to carry a true business relationship in Florida. “Doing business” means that any business who rents an office or employs Florida people in the State needs to be registered.

The cost of registering with the State is virtually the same as having a [Florida corporation](#). It also prevents the corporation from being subjected to daily fines for failing to register.

There is several types of business corporations available to the public. Some of them are more suited to your present needs than others.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

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## 1. Forms of Business Entities in the U.S.

An investor from outside the United States (“U.S.”) may choose among a variety of company structures to do business in the U.S. The main forms are:

- **Corporation:** either a U.S. subsidiary or a U.S. branch of a non-U.S. corporation.
- **Limited Liability Company (LLC).**
- **Partnership:** general, limited or limited liability partnership.

A "joint venture," typically characterized by two or more non-affiliates joining forces to establish a business venture, can take the form of a corporation, a limited liability company or a partnership. A single individual investor or a husband and wife team has another alternative, establishing a "sole proprietorship."

## 2. Main Considerations in the Choice of Entity

The most important factors to consider in selecting the form of business entity are the following, each of which will be discussed below under the entity concerned:

- Limited liability (that is, to what extent can the personal liability of the investing owners for the debts, taxes and other liabilities of the new U.S. entity be limited so that the creditor has recourse only to the assets of the U.S. entity?)
- Management and control
- Capital and credit requirements
- Tax considerations
- Difficulty or ease of organization and operation
- Transferability of ownership
- Continuity of existence

## 3. Corporations

A corporation is the most common form of business entity in the U.S. utilized by foreign investors.

It can take two forms:

1. Establishment of a new corporation in the U.S. (or acquisition of an existing corporation in the U.S.). If the non-U.S. owner of the new U.S. corporation is another company, the U.S. corporation is said to be a subsidiary.
2. Establishment of a branch in the U.S. of a non-U.S. company. In this case, it

is the non-U.S. company that is doing business in the U.S., and no new legal entity is formed from a company law standpoint. The branch would, however, become a taxpayer from the U.S. tax standpoint.

**a. Nature**

A U.S. corporation is a legal entity created under the laws of one of the 50 states of the U.S. and has a juridical existence separate from the persons who own, control, manage and operate it. The corporation enters into contracts and acquires, holds, and transfers property in its corporate name; it is ordinarily a separate taxpayer and it is liable for its debts and other liabilities; and it can institute suit and be sued in its own name. It issues shares of capital stock to the persons who contribute the money or other business assets (equity or ownership investment capital), which the corporation then utilizes to conduct its business. The stockholders are entitled to any dividends the corporation may pay and to receive all the corporation's assets (after all creditors have been paid) if the corporation is liquidated.

**b. Limitation of Liability**

The main reason most businesses operate in the form of a corporation is to limit the personal liability of the owners for the debts, taxes and other liabilities of the business. Ordinarily, the stockholders of a corporation are not personally liable for the liabilities of the corporation, and their liability is thus usually limited to the amount of equity capital that they have invested in the corporation in exchange for their shares of stock.

*Exceptions.* In certain instances, although uncommon, the owners of a corporation might be held liable for the corporation's liabilities. This is called "piercing the corporate veil." This may occur, for example, if there is a failure to observe corporate formalities or maintain the separate existence of the corporation, or if the corporation is capitalized with too little equity capital (owner's money) as compared to debt capital (borrowed money), also known as "thin capitalization," under circumstances amounting to fraud or other improprieties in dealing with creditors. Also, there are some special laws that might hold certain individuals liable for specified corporation debts—for example, in some cases an officer obligated to withhold federal income tax

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