



# Business Incorporation Strategies for Foreigners

Presented by Nellie Akalp

# Nellie Akalp

## CorpNet CEO

A veteran entrepreneur in the online legal document filing space since 1997, Nellie has helped more than half a million small businesses and licensed professionals get their businesses and clients set up and running. She has developed a strong following within the CPA and small business community having been honored as a Small Business Influencer Champion and was named women entrepreneur of the year by NAWBO.



# Today's Agenda

Whether living abroad, or residing in the US as a non-citizen, the American dream can be achieved by following certain rules and processes. In this webinar, Nellie Akalp will share steps necessary for your clients without U.S. citizenship to start a business in the United States.

In this webinar, we'll review:

- What citizenship is required to start a business in the United States
- Business entity options for non-US citizens
- Which state is the most optimal for non-US citizens to register a business in
- Importance of setting up a bank account in the United States



# Required Citizenship Status



# Required Citizenship Status

- Generally, if a foreigner pays taxes, they do not need a green card to own a business, be listed as a corporate officer or director of a U.S. company, or earn profits from it.
- However, to work in a business that they have invested in, individuals must have approval from the U.S. government through either an E-2 Treaty Investor Visa or EB-5 Visa.

# Do you manage business incorporation and compliance activities for your organization or on behalf of your clients?

- ☐ Yes, for my organization
- ☐ Yes, on behalf of my clients
- ☐ Yes, I advise my clients
- ☐ Not currently, but I am interested in offering this service



## Polling Question #1

# Business Entity Options



# How Can a Business Structure Impact Future Success?

- Who qualifies to own the company
- What must be done to transfer ownership of the company
- Taxes the company is subject to
- The ability to obtain credit and funding
- The business owner's personal liability
- The number of ongoing compliance requirements



# Optimal Business Structures

- As non-residents, foreign entrepreneurs have two primary choices of business structure for their United States business.
- The C Corporation and the Limited Liability Company (LLC) are both excellent options for foreign-owned businesses.
- While S Corporations are a popular option for U.S. citizens, this is not a suitable option for non-residents. Foreign entrepreneurs are prohibited from forming an S Corporation in the U.S. because each S Corporation shareholder must be a U.S. Citizen or permanent resident alien.

# C Corporation

- A C Corporation, also referred to as a general for-profit corporation, is a legal, taxable entity, separate from its owners.
- A C Corporation's shareholders' personal liability is limited to the amount they have individually invested in the company. In contrast, owners of a sole proprietorship or partnership are personally liable for business debts and legal issues.
- You'll often hear a C Corporation's income tax treatment referred to as "double taxation" because first, the corporation pays taxes on its profits, and then the individual shareholders pay taxes on the dividend income they receive from the business.
- Even though forming a C Corporation involves more legalities and formalities, the costs are reasonable compared to other business structures that do not offer the same level of liability protection, growth potential, and tax flexibility.

# Limited Liability Company (LLC)

- Next to operating a business as a Sole Proprietor or Partnership, an LLC is the least complex and costly form of business to start and maintain from a state compliance perspective.
- Because an LLC is considered a separate legal entity from its members, its financial and legal responsibilities are also its own.
- By default, an LLC is considered a “disregarded entity” for tax purposes. Business income and losses are passed through to its members’ tax returns and are subject to members’ individual tax rates.
- There are multiple types of LLC options available which provide flexibility on usage, setup, and management options.

# Formation Highlights

	LLC	C Corporation
Formation	State Filing Required	State Filing Required
Limited Personal Liability	Yes	Yes
Transferability of Interest	Yes: Often Limited	Yes
Duration	Unlimited	Unlimited
Pass-through Taxation	Yes: Upon Election	No
Ability to Raise Capital	Yes	Yes
Limitations on Number of Owners	No	No

# Filing and Paperwork Requirements

	Initial Filing Requirements	Internal Documentation	Annual Compliance Requirements	Registered Agent Required
Limited Liability Company	Initial Filing	LLC Operating Agreement	Annual Reports	Yes
C Corporation	Initial Filing Initial Report Publication Fees	Corporate Bylaws	Annual Reports Annual Meetings Meeting Minutes	Yes



# Corporate Bylaws

For C Corporations of any size, bylaws tell how that company will govern itself. Consider them the documented version of the company's rules:

- The number of directors that will sit on the board
- Range and power of the directors
- Date, time and location for annual meetings of the board
- How the directors are elected or removed
- How corporate officers are appointed
- Officers' duties and powers
- Date time and location of annual shareholders meetings
- Voting rules for both directors and shareholders

# LLC Operating Agreement

To make sure all members of an LLC understand roles and responsibilities, an LLC operating agreement should be created. While most states don't require this filing, it is useful to have intact to provide evidence that personal and business affairs are separate and can help avoid misunderstandings and arguments, between business partners.

An operating agreement should include the following:

- Percentage of ownership and distribution of profits
- LLC's management structure, members roles and responsibilities
- How decisions will be made
- Member exit details
- Business dissolution

# How do you currently manage business incorporation and compliance activities?

- ☐ I currently use CorpNet
- ☐ I use another filing and compliance service
- ☐ Internet research and spreadsheets
- ☐ Other



## Polling Question #2

# Optimal States for Business Formation



# Choosing a State for Incorporation

- Most resident entrepreneurs usually choose to locate their businesses in the states where they reside, but as a nonresident, you are free to file your business entity in any state.
- Within the United States, California, Delaware, Nevada, Texas, and Wyoming are all popular options.
- To make the decision, look at some key indicators such as:
  - The state's business environment (i.e., regulations and restrictions)
  - Access to resources such as materials and employees
  - Costs of doing business there
  - Tax incentives to attract new businesses



# Popular State for Incorporation

## Delaware

- Advantageous for larger companies
- Has the most developed and flexible corporate statutes in the country
- Considered pro-business

## Nevada

- No state corporate income tax
- No franchise tax
- No personal income tax
- Low filing fees

# How frequently do you form new entities or file reports for existing entities?

- ☐ 0-4 times per year
- ☐ 5-10 times per year
- ☐ 11-20 times per year
- ☐ 20+ times per year



## Polling Question #3

# Registered Agents



# Assigning a Registered Agent

- A registered agent is sometimes referred to as a resident agent or an agent for service of process.
- A registered agent is a person or company officially recognized by the state where one has incorporated or registered as an LLC to accept service of process on behalf of the business.
- By law, a business needs to have a registered agent as soon as one registers an LLC or C Corporation.

# Assigning a Registered Agent

Requirements vary from state to state, but typically a registered agent must be:

- Aa resident of the state or an entity having a business office and authorization to do business in the state.
- 18 years of age or older
- Have a physical address (not PO Box)

It's best for foreign business owners can select companies like CorpNet to serve as their resident agent. Such companies will have business addresses and agents in each state and will be able to easily fulfill the needs and comply with state regulations and service processing.



# Employer Identification Numbers



# Obtaining an EIN

- An Employer Identification Number (or EIN for short) is also referred to as a Federal ID number, Tax ID Number, or Federal Tax ID Number.
- It is a nine-digit number used for tax filing and reporting and for other business documentation purposes.
- Foreign companies that do business within the U.S. (including Amazon sellers) must have EINs to report income and pay taxes.
- When importing goods into the United States, business owners must show an EIN if they don't have an ITIN or SSN.
- A valid EIN is required by law for LLCs and C Corporations.
- The EIN application (Form SS-4) requests the name and Taxpayer Identification Number (SSN, ITIN, or EIN) of the “responsible party” who controls, manages, or directs the entity. The responsible party must be an individual, not a business entity.

# Options for Non-U.S. Citizens

- Non-U.S. citizens who own a business can obtain an EIN even though they do not have a Social Security Number.
- Foreign Business Owners with a Company Incorporated in the US
  - Individuals not eligible for an SSN (only for U.S. citizens) can get an Individual Taxpayer Identification Number (ITIN).
  - Having an ITIN will allow a foreign business owner with a U.S.-based business to apply for an EIN online.
  - The company must have a physical presence in the U.S. (a U.S. mailing address alone is not sufficient) to qualify for using the online application.
- Foreign Business Owners with a Foreign Company
  - International business owners cannot use the online EIN form if their company is incorporated outside of the United States or U.S. territories.

# Applying for an EIN Without an SSN or ITIN

- Individuals without an SSN or ITIN will need to request an EIN by filing Form SS-4 by mail, fax, or phone.
- Form SS-4 asks for various information about the business, including:
  - U.S. mailing address
  - Type of entity (LLC or Corporation)
  - Reason for requesting an EIN
  - The industry the business is associated with

# Business Bank Accounts



# Setting Up a Business Bank Account

- To create an entity based in the U.S., you must open a bank account based in the U.S.
- It has become more complicated for foreigners to open accounts in the U.S. since the USA Patriot Act was passed, but with official documentation and proof of identification, it can be accomplished.
- Generally, the required items include:
  - Official corporation documents that include the official U.S. business address
  - ITIN number and EIN
  - Passport



# Business Licenses and Permits





# Business Licenses and Permits

- Just like any other business, non-citizen-owned companies must apply for licenses and permits if needed.
- Business licenses and permits are based on a company's industry, business activities, and the jurisdictions where they operate.
- It's important to check with the Secretary of State, county clerk, and local government authorities to determine what requirements your business is subject to.

# Ongoing Compliance Tasks



# Ongoing Compliance Tasks

- Depending on the entity type and where the business is located, entrepreneurs must complete certain compliance formalities.
- Examples include:
  - File and pay taxes on time
  - Submit an annual report to the state
  - Renew licenses and permits
  - Hold shareholder or member meetings
- Failure to comply with reporting rules and pay required fees can result in fines, penalties, loss of owners' personal liability protection, and even suspension or dissolution of the business.

# Helpful Resources



# CorpNet Tools Are Your Resources

- Business Name Search Tool
- Interactive Business Structure Wizard Tool
- CorpNet Compliance Portal With Monitoring and Proactive Alerts
- Annual Meeting Minutes Services
- Business Guides and Checklists
- The CorpNet Blog



YOUR TRUSTED PARTNER FOR:

## Incorporation, Business Filings & Corporate Compliance Services

### Become a CorpNet Referral or White-Label Reseller Partner

Refer your clients to CorpNet or offer services for entity formations, business filings, state tax registrations, and compliance services. Refer and earn a commission on each sale, or simply pass on the savings to your clients as a discount. Resell and it is your client, your brand and we do all the work!

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EASY





RELIABLE

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## Would you like to learn more about working with CorpNet?

- ☐ Yes, I am interested in possibly using CorpNet within my organization
- ☐ Yes, I am interested in learning more about CorpNet's partner program
- ☐ Not at this time



## Polling Question #4