HSP GROUP
Global Expansion Simplified

13 Costly Mistakes to Avoid When Expanding to the United States

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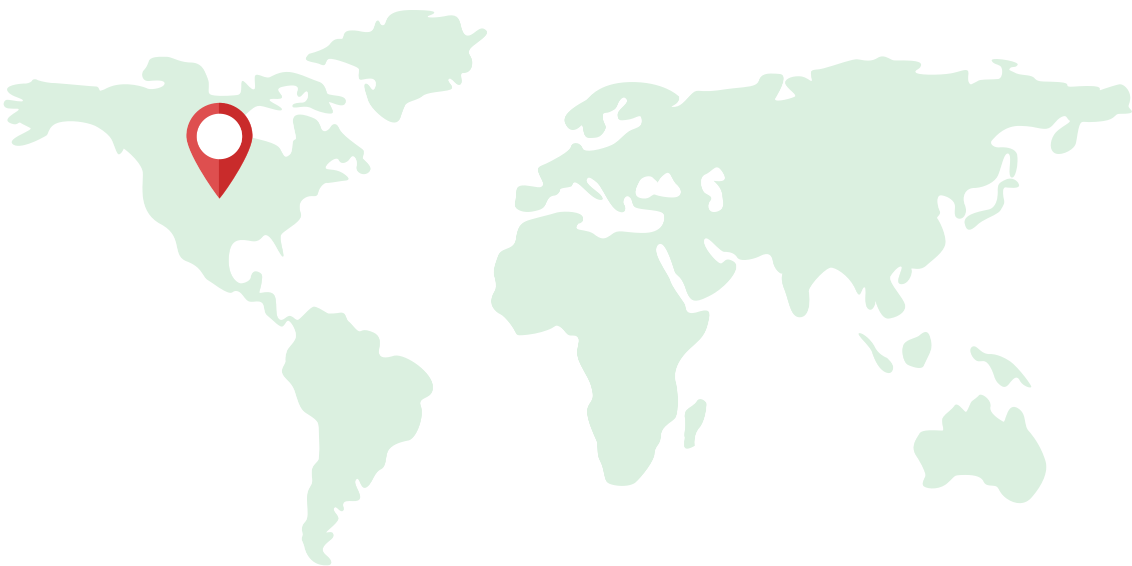
No global market holds more sway over entrepreneurs than that of the United States. As the largest economy in the world, it presents unmatched opportunities for growing businesses.

But despite its business-friendly reputation, entering the US market inevitably involves navigating a sea of rules and regulations that in many cases are unique in comparison with other locations. The fact each state essentially acts like a small country adds another layer of complexity that newcomers must overcome to thrive. A simple mistake made early on can cost you a lot down the road.

So the more you know of the potential pitfalls, the better off you are. An untold number of businesses realise success with their US expansion plans every year — and you can too. A good start? Consider these 13 costly mistakes to avoid when expanding to the United States.



Mistake #1

Choosing the wrong business entity

Deciding which business entity to establish is important, as the easiest setup is not necessarily the most cost-effective in the long run. At first glance, it may seem like setting up a branch office — not incorporating at all — helps you achieve your goal of getting up and running fast in the United States. **But the wrong setup can have serious implications.**

Since a branch office is an extension of the parent company, rather than a separate legal entity, you will not only have to pay US taxes on your entire corporate income, but you also expose your existing business to liabilities and lawsuits.

With this dynamic in mind, most companies tend to focus on setting up a subsidiary company, a distinct legal entity which shields the parent company and allows liabilities, taxation, and regulations to be treated separately, as long as you stay compliant. In the United States, the two most common entity types include the **limited liability company (LLC) and the business corporation**.

As you debate which entity aligns best with your goals, bear in mind that any advice that holds true for US residents does not necessarily apply to non-US residents. The special conditions that you, as a foreign national, need to consider when starting a business affect a wide range of areas: taxes rates, employee benefits, paperwork quantity, exit possibilities, funding opportunities, ownership transfers and more.

Mistake #2

Going straight for incorporating in Delaware

Few conversations about incorporating in the United States take place without Delaware playing a leading role. **The small East Coast state has earned a reputation as the go-to launching point for companies moving into the US market.**

While registering as a Delaware corporation does bring certain benefits, making it the default state without exploring other locations may not yield the results you are looking for. If you let preconceived notions about the Delaware business environment overshadow all other considerations —Where will you be hiring from? What does your business journey look like? Do you plan to sell in a few years? — you can miss out on more optimal locations to kick off your US venture. If you think of Delaware as a tax haven, you may, for instance, be surprised to learn that you are likely setting yourself up for disappointment.

As a general rule, large corporations benefit the most from registering in Delaware. Companies looking to attract outside investment from angel, venture capital and private equity investors may also be wise to choose Delaware, as many investors only or strongly prefer to invest in a Delaware C corporation.

On the other hand, small to midsize businesses, or those not seeking investment in a US entity type, should carefully weigh the additional cost and complexity involved against the benefits of simply incorporating in the operating state before making a decision.

Mistake #3

Incorporating in the wrong state

Leaving Delaware aside, the US market is as diverse as its 50 states. Each state is in many ways like a mini-country, each governed by its own set of state laws and local regulations, in addition to federal requirements. Multiplied by different variables for taxes, employee benefits, insurance, cost of living, talent availability, compliance rules, and administrative requirements, it is indeed a complex environment to navigate for any company, let alone one coming from overseas.

The decision of where to register is therefore of major significance. An ill-informed choice can be excessively costly and time-consuming to rectify. If you operate your business in a state other than the one in which you are registered, you may, for instance, find yourself unable to create a company bank account and be forced to pay additional filing and document fees to gain authority to do business. In short, incorporating in the state of your physical location is usually preferable and less expensive.

Your chief priorities, whether it's the need for high-quality talent or proximity to distribution hotspots, should ultimately drive the decision of where it makes the most financial sense to incorporate. In sum, it is the context of your revenue model — Is it a cost-plus intercompany model or a standalone with its own P&L? — that will loom large in your decision.

Mistake #4

Failing to leverage alternative employment approaches

The costs, and for an employer even the ability, to secure medical insurance tends to come as a shock to foreign companies vying to get into the USA. But there are, fortunately, more options than shelving expansion plans or suffering under the weight of excessive employee benefit costs.

In response to the availability and often exorbitant amounts that employers would otherwise have to spend, and the complexity of multiple state employment laws (think remote employees in different states), an industry of third-party providers has emerged. The concept of the Professional Employment Organization, or PEO, may be unfamiliar to overseas companies. Yet, PEOs play a crucial role in administering payroll and employee benefit programs.

For small companies, in particular, the third-party PEO co-employer enables them to take advantage of economies of scale. **By bundling together the people resources of multiple companies, the PEO can secure umbrella or group insurance packages that reduce per-capita employment costs for your business.** In addition, the PEO can serve as your outsourced HR department, handling back-office needs like corporate tax returns and annual corporate filings.

Mistake #5

Misunderstanding the nuances of at-will employment

In the eyes of many European companies, employees in the United States have little say. More than a few movies have depicted the disgruntled employee leaving the office with a cardboard box moments after being fired. In reality, however, the policy of at-will employment is not quite as cavalier as it may seem.

While it's true all states but Montana are 'at-will' by default — meaning employers can hire or fire US employees for any or no reason — most employees belong to a so-called 'protected category' (race, age, sex, religion, nationality, etc.). **They can, consequently, make a claim of discrimination under US law if they believe they have been treated unfairly.**

In the event of an employee dispute or complaint, it is of critical importance to take the right steps. Failure to properly address the issue can result in significant legal expenses, not to mention potential unwanted publicity. Your best safeguard: meticulously drafted offer letters, employment handbooks, and other employment related agreements. (Note: Unlike most other countries, an actual employment contract is not typically used relative to US employees and employers.)

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Mistake #6

Neglecting to draft US-tailored employment related agreements

In a litigious market like the United States, mutually executed agreements are your best tools to mitigate employment disputes. But amid the slew of details that must be weighed — from termination terms and worker classifications, to non-compete and non-disclosure clauses, to commission plans and overtime exemptions — it is easy to make mistakes that can cost you should a dispute erupt.

Unlike the multi-page, employment-term contracts that European companies often use, US employers typically separate the brief but meticulous offer letter from other employment related agreements. Not doing so can, in fact, lead to the loss of key employment protections if the agreement is altered.

Also, keep in mind:

- **All states have different employment laws.** If you have employees in multiple states, the agreements will not look the same. Massachusetts, for example, forbids employers from soliciting past salary history from candidates.
- **Commission disputes can be very costly.** Commission plans in the United States must include a detailed description of how commissions are earned, paid, and computed.
- **Medical leave is complicated.** Failing to navigate the overlapping family, military, and medical leave laws can leave you vulnerable to litigation.

Mistake #7

Failing to stay compliant with the rules and regulations

The protection your LLC or corporation enjoys from the arm of the law only lasts as long as you remain compliant. A single misstep that draws the attention of authorities can set in motion a costly and potentially business-ending event.

If a plaintiff can show your business is non-compliant, your corporate protections disappear, putting your non-US and even personal assets at risk. Claiming ignorance of the rules is, unfortunately, not a valid excuse during an audit by the Internal Revenue Service (IRS). The larger footprint you have, such as employees in different states, the more compliance considerations you will need to carefully track.

It is your responsibility to stay on top of a myriad of issues, such as:

- Have you purchased adequate business insurance for general business liability?
- Did you submit annual statements or other reports on time, as required by your state of incorporation?
- Did you remember to file for foreign qualification for operating in 'good standing' if you incorporated in one state but operate in others?
- Did you send in your Articles of Amendment to notify authorities of any key changes to your business?
- Are you adhering to State, Federal and international tax rules and filing requirements?

Mistake #8

Leaving your intellectual property vulnerable to risks

A key feature of expanding to the United States is understanding the risk to your Intellectual Property (IP)/patents. Patent trolling or patent hoarding is, for instance, much more common in the US than in other parts of the world because of the 'American rule', under which each party is responsible for paying its own attorney's fees (a 2014 Supreme Court decision did attempt to curb frivolous patent lawsuits). These 'patent trolls' deploy hardball tactics to try and push the boundaries of the patent system and to achieve outcomes that contradict the intention of the original patent.

Similarly, protect your trademarks. **Spending money developing your brand only to find out another entity now claims ownership is a costly discovery.** Although the online US trademark register is a good place to start to check for potential conflicts, it does not cover everything. Even a mark that is similar but not identical can spell legal trouble (think Koka-Kola).

If a clearance search turns up nothing, consider applying for a US registration. Confidentiality and contractor agreements should also be in place to protect any trade secrets and other essential IP.

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Mistake #9

Failing to understand tax liability

The American tax system is notoriously complex, even for regular citizens. Corporate taxes are levied at many levels of government, from federal and state levels down to individual municipalities. Corporations also have to take into account other taxes like the Federal Alternative Minimum Tax and, depending on their business structure, they may need to collect sales and use tax at the point of the consumer purchase.

- **As a result of these complexities, it is critical that you understand your obligations to a) Stay compliant and b) Avoid paying more than you really need.** Since the passage of the Tax Cuts and Jobs Act, as of 2018, the nominal Federal corporate tax rate in the US is a flat 21%. However, there are numerous complexities that need to be understood and State taxes add an increased layer.

Again, when you operate through a US subsidiary, intercompany agreements should put a comfortable distance between your parent company and the reach of the IRS. As a foreign national, you also need to be aware of double taxation agreements between the US and your home country as it can affect the tax on profits generated overseas.

Mistake #10

Underestimating the litigious nature of the US market

If there's one feature of American culture that Europeans often joke about it is the proliferation of lawsuits. Still, it is possible for newcomers to underestimate how often litigation may be wielded as a threat to negotiate a certain business outcome. In a recent case in California, for example, a company is being sued for having a website that allegedly does not comply with the American Disability Act for the visually impaired.

Companies expanding to the United States need to be sensitive to this dynamic — or risk paying a high price for their inaction. By arming your organization with quality legal counsel, robust US insurance policies (including cross-border insurance), compliance programs, and unambiguous contracts, you are in a good position to prevent and counter any prospect of litigation.

Mistake #11

Failing to grasp the scope of immigration issues

A Visa waiver (ESTA) only takes you so far. Good for occasional business visits to the United States, it does not authorize you or any non-US resident employees to work here. **Failing to account for the amount of time and paperwork it takes to attain a work visa is a mistake that businesses make all too often.**

The importance of getting this step right cannot be overstated. An accidental oversight in this area, and you may find yourself deported for life and unable to operate your own business.

Depending on your situation, the most common visas for non-residents who have set up a company include E-1, E-2 and L-1 visas. You also need to keep in mind that once you receive a Green Card, you are, from a tax perspective, considered a US citizen. This means, for instance, that all offshore assets, including capital gains from sales overseas, must be declared on your US tax returns.

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Mistake #12

Forgetting to tap into financial ecosystems

The US boasts economic development directors at all levels of government. States and many municipalities are competing for the attention of new businesses with a range of grants and financial incentives. Trade and economic development organizations work tirelessly to enhance the state and local business environments.

So, what is the problem? **Not all new businesses coming to the USA are aware of the incredible opportunities that this ecosystem of different players present.** And those who do know, do not always have the bandwidth to fully take advantage of it.

While common entry points include New York, Boston, San Francisco or Chicago, the fact is secondary markets like Tampa, Salt Lake City, Albuquerque, Columbus, Indianapolis, and many others deserve a close look as well. These markets typically fly under the radar when overseas companies debate their expansion plans, yet they sit on a wealth of incentives and other resources that your business could potentially leverage.

Mistake #13

Trying to expand without enlisting expert help

Considering the costly mistakes listed so far, it should be clear that entering the United States is a complex undertaking. The potential rewards are unquestionably huge, but it pays to be aware of the pitfalls and how to avoid them. And, of course, there are many more issues to think about on top of the 13 listed, such as taking into account the rules surrounding data privacy; GDPR; GAAP reporting requirements; and OFAC rules in regard to trading partners, to name a few. Is it worth the risk of going it alone?

In every circumstance, it helps to have an expert partner who can guide and support you through the entire process, from incorporating, to HR and benefits, to sales and taxes, payroll, and all the other back-office needs.

Rather than trying to piece together a team of experts for each issue, you can always enlist HSP Group as your trusted partner and one-stop-shop for all your US expansion needs. Your success is our pledge. Consider us your gateway to the USA!

How can HSP Group help?

HSP Group is a global organization but we are headquartered in (by far) the world's largest economy, the USA. **HSP Group is therefore well placed to serve as your gateway into the USA.** You can rely on HSP Group to efficiently and proactively manage the day-to-day start-up considerations, as well as on-going practical compliance tasks, so you can focus on your business plan and optimize a successful launch into the USA.

Services to assist your expanding business

Our **Global Entity Solutions** assist you with setting up your operation in the USA (incorporations, bank accounts, start-up registrations, etc.). On a recurring, ongoing basis, we pick up back-office tasks best addressed via outsourcing (bookkeeping, invoicing, collections, payables, HR, and tax filings). We also ensure your operation remains compliant with all legal, regulatory, accounting and year-end tax requirements.

Services to support your people

Our **Global People Solutions** provide an end-to-end solution to fulfill your recurring HR and Payroll back-office needs, giving employees a better experience and supporting them as effectively as they would be supported if working for a domestic employer.

What else can we do for you?

Our **Consulting Solutions** will assist with the unpredictable but consistent need for help with ad-hoc projects and challenges as they arise, including Global Mobility support, terminations and other technical HR advice; introductions to Federal, State, County and Municipal economic development organizations; best-practice assessments; and state and municipal tax optimization strategies.

We can help

Instead of working with various providers for each of the different services required, often varying from state to state depending on where you operate, HSP Group can be your **single point of contact.** We serve as your entire administrative back-office, supporting your requirements across all 50 states, so you can fully focus on building your business and finding success in the USA.

If you would like to learn more about how HSP Group can be of assistance with our **USA Inbound Services,** reach out and contact one of our experts at **contact@hsp.com**.