

## When should a UK startup establish a US company?



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One of the most common questions we field from UK startups and scale-ups building a US business is when to establish a separate US company.

Below are various indicators that it's time to strongly consider setting up a US entity. Of course, check with your US advisors to confirm what makes the most sense for your business.

**Employees.** If you're hiring US-based employees, you'll generally want to employ them through a US entity.

US and UK employment laws [are very different](#), and you should avoid uncertainty as to which applies. Employing US hires directly from a UK company also increases the risk of US and UK tax authorities making competing claims on the same US revenue and of the UK company being exposed to [US litigation](#).

**Immigration.** If you're planning to send UK employees to work in the States, keep in mind that certain types of US visas require a US entity.

**Revenues.** If your UK entity is generating revenue from the US, it may be tax-efficient to operate that portion of the business through a US entity and/or allocate to a US entity certain revenues and costs (e.g., through transfer pricing arrangements and tax sharing agreements).

Whether that structure makes sense for your business depends on numerous factors. The key is to recognize that US-sourced revenue means it may be time to have a chat with your tax advisor.

**Commercial contracts.** Some US companies simply prefer to transact with other US companies. To be clear, this is usually a commercial consideration rather than a legal imperative. With limited exceptions (e.g., certain contracts with the US Government), there's generally no legal restriction on a US entity entering into a contract with a UK company.

**Bank account.** Establishing a US corporate bank account through a US entity typically is easier than through a UK entity.

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**Litigation risk.** If your UK company is doing business with the US and operating in a space where US product liability, patent infringement, or other litigation claims are frequent, it may be worth establishing a US company and structuring the business in a manner that makes it more difficult for US claimants to access the UK entity's deeper pockets.

**Regulatory requirements.** Some heavily-regulated industries (e.g., financial services, healthcare) may require certain types of US operations to be run through a US entity.

**Crowdfunding.** Many US crowdfunding platforms require a US entity through which to raise funds.

**Accelerators.** Some US accelerator programs require the companies in their cohorts to have a US parent company.

**US VC investors.** It is unusual for US VC investors to invest early-stage capital into UK companies without [a meaningful "US story"](#), i.e., US operations, US traction, and/or a founder or other senior decision-maker in proximity to the investor. A US entity, without more, typically is insufficient (at least for US-based institutional VC investors; corporate VCs with international operations may take a different view).

If you do in fact receive a term sheet for an early-stage investment from a US VC investor prior to establishing US operations, the US investor may insist you establish a US parent company. That dynamic is discussed further below.

### Should your US company be the parent company or a subsidiary of the UK company?

Incorporating a US subsidiary typically is sufficient for a UK company to establish US operations. However, many US VC investors (particularly at the seed and Series A stages) will require a UK company to establish a US parent company before investing (the so-called "[Delaware Flip](#)").

Whether your UK company should "flip" into a US parent company to take in US VC investment is a question that requires thoughtful consideration of the commercial, legal and tax implications. For more on the pros and cons of the Delaware Flip, see [this article](#).

One related question we're often asked – particularly for corporate structures involving a UK parent and a US subsidiary – is whether US employees should receive options in the shares of the UK parent or the US subsidiary. You should consult your advisors to confirm what's optimal for your company, but most typically we see the answer being the UK parent. That approach reduces the likelihood of friction resulting from different shareholders seeking to maximize the profits of different entities within the same corporate structure. (For more on extending equity-based compensation to employees of a US subsidiary, see [here](#).)

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### Logistics: How do I establish a US company?

We most commonly see UK startups and scale-ups establish US subsidiaries that are incorporated in the US state of Delaware and are registered to do business in the US states where the US company has employees and/or offices. There is no “national” corporation in the US for most entity types, and Delaware has been the preferred state of incorporation for over fifty years due to (among other reasons) its robust corporate law, customer service, tax structure, and the quality of its judicial system in the event of disputes. For more on setting up US operations, see [here](#) and [here](#).

Forming a US entity can be done quickly and is among the least-expensive aspects of US expansion. It typically is included in discounted fixed-fee US establishment packages offered by US law firms that regularly work with emerging companies. For more on ensuring you receive value for this legal spend, see [here](#).

A final question we’re often asked is whether you should bypass outside advisors altogether and use an online incorporation service. A few thoughts on that are [here](#) and [here](#). In short, the potential downsides of a DIY approach to early-stage legal, tax, and compliance matters are more significant in the US than in the UK. Don’t take our word for it – seek out experienced UK founders who have built successful US businesses.

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