



# Doing business in the US

## 2016

In association with:





# Contents

Introduction .....	3
– Country profile .....	4
Legal overview .....	5
Conducting business in the US .....	9
Tax system .....	12
Labour .....	19
Audit .....	22
Trade .....	24
Finance .....	25
Infrastructure .....	28

# Introduction

This guide is intended to provide potential investors with the knowledge and insight needed to do business in the United States (U.S.); one of the largest and most vibrant markets in the world. The U.S. is a large and complex country, whose economic, political and cultural influence is felt worldwide. To operate successfully in this market, companies should be aware of the numerous factors that influence competitive advantage in the U.S.

The U.S. is a market-oriented economy, which benefits from abundant natural resources and a highly productive, educated workforce. The U.S.' growth was founded on industrial strength and although the U.S. is now considered post-industrial, it retains a strong manufacturing sector. The current focus of the U.S. economy has shifted towards services, but it maintains a large presence in manufacturing, oil and energy, financial services, engineering and technology, pharmaceuticals and media. The state relies on the private sector, with government agencies often purchasing goods and services from private companies.

The vast size and geographical diversity of the U.S. gives it a large and vibrant consumer economy that offers a huge variety of goods and services; several states have comparable outputs to smaller European countries. The U.S. currently has the largest GDP of any single country, with a value of USD17,419 billion<sup>1</sup>; a position it has held since 1900. The U.S. dollar remains one of the strongest global currencies, and the world's most popular reserve currency.

The biggest export markets for the U.S. are Canada, Mexico, China, Japan, the U.K. and Germany. According to the U.S. Bureau of Economic Analysis, the trade deficit increased by USD14.9 billion between September 2014 and September 2015.

The U.S. experienced average growth of 2.7 per cent per annum from 1973 until the start of the financial crisis in 2008. The U.S. was at the centre of the 2008 crisis, and GDP fell by as much as 5 per cent between 2008 and 2009. While the U.S. economy was officially out of recession in the second quarter of 2009, recovery was fairly slow, as economic indicators only began to show an upward trend in 2013.

The economy is expected to remain on a growth trajectory in 2016, supported by consumer demand, labour market improvements and supportive financial conditions. Consequently, it is likely that policy rates will begin to increase from record lows.

The majority of U.S. businesses enjoy great flexibility in decisions to expand capital plant, lay off surplus workers and develop new products. U.S. firms are near the forefront in technological advances,

especially in medical, aerospace and military equipment.

The U.S. has a welcoming attitude to foreign direct investment, and the federal government provides equal treatment to both domestic and international investors.

While the federal government offers no incentives (or restrictions) to Foreign Direct Investment, state and local governments often offer incentives to preferred industries or proposals in the form of grants, bonds, tax exemptions, work force training, infrastructure improvements and more. Technology and manufacturing are typical examples of these desirable industries.

While this guide makes reference to some of the most common issues investors might face, it must be noted that certain industries, such as the financial services sector, are subject to special regulation and therefore companies wishing to invest in this area should seek legal advice.

*The information in this publication is current at December 2015.*

<sup>1</sup> *The World Bank*

## Country profile

<b>Capital City</b>	Washington DC
<b>Area</b>	9,857,306 sq. km
<b>Population</b>	321,368,864
<b>Language</b>	English
<b>Currency</b>	United States Dollar (USD)
<b>International dialling code</b>	+ (00) 1
<b>National Holidays 2016</b>	1 January – New Year’s Day 18 January – Martin Luther King’s Birthday 15 February – George Washington’s Birthday 30 May – Memorial Day 4 July – Independence Day 5 September – Labour Day 10 October – Columbus Day 11 November – Veterans Day 24 November – Thanksgiving 25 December – Christmas Day
<b>Business and Banking hours</b>	09:00 – 17:00
<b>Stock exchanges</b>	NASDAQ NYSE NYSE AMEX
<b>Political structure</b>	Constitutional Federal Republic
<b>Doing Business rank 2016</b>	7

## Ease of Doing Business

Topics	2016 rank	2015 rank	Change in rank
Starting a business	49	44	-5
Licenses and Permits	33	33	No change
Getting Electricity	44	42	-2
Registering property	34	33	-1
Financing	2	2	No change
Protecting Investors	35	32	-3
Paying Taxes	53	48	-5
Trading Across Borders	34	33	-1
Enforcing Contracts	21	21	No change
Resolving Insolvency	5	4	-1

Source: World Bank Group (Doing Business)



# Legal overview

## Political and legal system

The U.S. is a federal republic and constitutional representative democracy, centred in Washington D.C. It combines and encompasses laws, bodies and agencies at a federal, state and local level.

The U.S. government works on a system of checks and balances among the three branches of government, which are: the executive branch, judicial branch and legislative branch. Each branch has its own independent institutional base and its own enumerated and implied powers.

The executive branch is responsible for implementing and enforcing the laws written by Congress, and is headed by the president of the U.S.. The president also appoints the heads of federal departments.

The legislative branch consists of the Senate (100 senators, two from each of the 50 states) and the House (435 representatives, representing each of the 50 states, based on population). The Senate and the House make up the Congress, which is tasked with writing and passing legislation. The Congress is granted a number of rights and powers by the Constitution, including the authority to declare war and confirm or reject presidential appointments.

The judicial branch of the U.S. government has the responsibility of interpreting and applying the law. It includes the U.S. Supreme Court, which is the "highest court in the land" and acts as the final authority in legal disputes. The main political parties are the Democratic Party, generally viewed as more liberal, and the Republican Party, generally viewed as more conservative.

There are other "third parties", but these have historically shown less influence.

The U.S. has a strong judicial system that is rated 19th in the world by the World Justice Project (WJP) Rule of Law Index. The legal system consists of federal and state courts, with trial, appellate and supreme courts in the federal and state systems. Generally, state laws govern areas that are not pre-empted by the federal government, eg, state and local taxation, marriage and family law and local crime. Federal laws govern areas that are expressly or implicitly pre-empted by the federal government, eg, international treaties, federal taxation, violations of federal law, cases involving the federal government, interstate crimes, and issues involving interstate commerce.

The U.S. Constitution provides that each criminal defendant is entitled to representation by legal counsel and a trial by a jury of his/her peers.

## Data protection

There is no single, comprehensive law regarding data protection in the U.S. Provisions can therefore be found in a number of federal and state laws regarding privacy and consumer protection. These include, but are not limited to:

- The Federal Trade Commission Act (FTC Act)
- The Gramm-Leach-Bliley Act (GLBA), aka the Financial Services Modernization Act
- The Health Insurance Portability and Accountability Act (HIPAA)
- Health Information Technology for Economic and Clinical Health (HITECH Act)

- The Fair Credit Reporting Act (FCRA)
- The Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM)
- The Electronic Communications Privacy Act
- Privacy of Consumer Financial Information (Regulation P)
- Unfair, Deceptive or Abusive Acts or Practices (UDAAP)
- Right to Financial Privacy Act (RFPA)
- Various state level privacy, data breach, biometric data, and consent to record voice laws

The intent of these laws is generally to mandate or encourage businesses to:

- Keep customer data securely and confidentially
- Act transparently in the way they share data
- Keep and store private data for no longer than necessary
- Ensure that data is accurate
- Use data as disclosed to customers

Laws will vary depending on the context and the state. Businesses must be familiar with the sector-specific laws applicable in the state(s) where they operate.

The Federal Trade Commission (FTC) is one of the primary regulators and enforcers in this space; it frequently prosecutes business entities for offences related to data protection. Prosecutions may result in fines.

The increasing scale and complexity of the data laws in the U.S. can represent a challenge to data managers and impose administrative costs on businesses.



### **Money laundering regulations**

The U.S. has a strict anti-money-laundering apparatus, which includes a number of laws criminalising money laundering, as well as regulations requiring transparency in transactions and the maintenance and disclosure of certain financial records.

The Bank Secrecy Act (BSA), 31 U.S.C. §§ 5311-5330, is the primary U.S. anti-money laundering law. It requires, amongst other things, that U.S. financial institutions keep and make available records of transactions (such as cash transactions over USD10,000), report suspicious activities, and perform “Know Your Customer” due diligence. The BSA also includes certain provisions of the USA PATRIOT Act designed to detect and deter terrorist financing activities. A related federal regulation, 12 C.F.R. § 21.21, requires U.S. financial institutions to have a written, board-approved compliance program that is reasonably designed to assure and monitor compliance with the BSA. The compliance program must, at a minimum, include internal controls, independent testing, a designated compliance officer, and training for appropriate personnel.

The Financial Crimes Enforcement Network (FinCEN) of the US

Department of the Treasury is the institution tasked with monitoring financial transactions in order to combat money laundering, terrorist financing, and other financial crimes. It serves as the financial intelligence unit of the U.S., and is the primary enforcer of the BSA. BSA-related reporting requirements for banks are also administered by FinCEN. The Federal Reserve and Office of the Comptroller of the Treasury also play active roles in the enforcement of the BSA. In addition, although Office of Foreign Assets Control (OFAC) regulations administering and enforcing U.S. economic and trade sanctions are separate and distinct from the BSA, financial institutions often view OFAC compliance as related to their BSA compliance obligations.

The U.S. imposes information reporting controls on the movement of money across its borders. For example, transfers of money in excess of USD10,000 may need to be reported directly to FinCEN, although other requirements may apply for smaller amounts as well, depending on certain facts and circumstances. Financial institutions are required to file reports such as Currency Transaction Reports and Suspicious Activity Reports electronically through the BSA E-Filing System.

U.S. money laundering law has a broad scope; there is no minimum amount for a crime to be prosecuted. Moreover, transactions do not need to be successful in order to infringe the law.

In addition, the Foreign Account Tax Compliance Act (FATCA) is now effective in the U.S. and requires foreign financial institutions to report certain financial accounts owned by, or having the signature authority of, a U.S. person. These must be reported either directly to the U.S. Internal Revenue Service (IRS) or indirectly through their own government’s revenue agency. Failure to report such accounts may result in withholding penalties by the financial institutions. A U.S. person’s failure to report such accounts may result in civil or potentially criminal penalties.

### **Intellectual Property Rights**

In the U.S. intellectual property is protected by patents, copyrights and trademarks. These serve in their various forms to provide developers and creators with an exclusive legal right to own and use their intellectual property.

In the U.S. patents and trademarks are regulated by the U.S. Patent and Trademark Office (USPTO), and copyright is regulated by the U.S. Copyright Office.

## COPYRIGHT

Copyright can protect any original works of authorship including: literary work, dramatic works, musical works, artistic works, layouts and typographical arrangements, recordings and broadcasts. It is an automatic right, and therefore, it is not necessary to apply to register a copyright; however, registration is a prerequisite to filing a lawsuit for copyright infringement. The copyright symbol (©) is still used optionally to provide additional legal protection.

<b>Protection granted</b>	Copyright does not protect ideas for work, it is only when the work itself is fixed that copyright automatically protects it. Copyright in the U.S. is granted by the 1976 Copyright Act, which has been amended to conform to the Berne Convention. A copyright gives the bearer the exclusive right to reproduce, sell, export and perform the work created. The copyright holder must bear all costs of protecting the copyright, including legal representation, court costs etc.
<b>Infringements</b>	Copyright applies to any medium, which means that copyright protected work cannot be reproduced in any other medium. Acts that can infringe a copyright include the copying of the whole or a substantial part of the work, issuing copies to the public, etc. without the consent of the copyright owner. Authorising an infringement can in itself constitute a copyright infringement.
<b>Duration</b>	For works created on or after January 1, 1978: 70 years after the death of the author. If the work was a 'work for hire' (eg product of a corporation or business) 120 years after the creation of the work or 95 years after first publication (whichever is shorter). Generally, works created or registered before January 1, 1978 can have their copyrights renewed to a maximum duration of 95 years (some exceptions apply).

## PATENTS

A patent is a property right relating to an invention or process, often applicable to an industrial environment. Patents must be registered with the USPTO, and result in public disclosure of the details of the invention, as well as legal protection for a limited duration. The limited duration of a patent means that at its expiry, the content of the patent becomes public domain. Pure discoveries and scientific or mathematical formulae cannot be patented. Patents are now generally accepted to behave as property, and can be bought, sold, mortgaged etc.

<b>Protection granted</b>	A patent gives its owner the ability to take legal action to stop others from using, copying, manufacturing, selling and importing the invention without the inventor's permission. It also allows the owner to sell the invention and all the intellectual property rights, licence the invention to someone else while retaining the IP rights, discuss the invention with others and set up a business based around the invention.
<b>Infringement</b>	Infringing a patent means manufacturing, using, offering for sale, selling or importing patented products or inventions without the owner's permission. It is not necessary to know that an invention is patented to infringe the patent.
<b>Duration</b>	Generally 20 years from the date on which the application was filed (some exceptions apply).
<b>Overseas patent convention</b>	A patent held in the U.S. offers no protection outside of the U.S. and as such, an inventor must obtain patents separately in other countries to guarantee protection. The Patent Cooperation Treaty (PCT) may aid in streamlining the process of acquiring patents in multiple countries where said country has signed onto the PCT.

## TRADE MARKS

A trademark is a brand name that serves to distinguish and identify goods and services produced by one individual or company from any other provider. A trademark can be a: word, personal name, design, letter, phrase, symbol, distinctive colour, symbol, smell or combination thereof. Trademarks need not be registered, but owning a federal trademark provides important benefits and further legal protections. Unregistered trademarks are usually denoted by the TM or SM symbols, and registered trademarks are usually denoted by the ® symbol.

<b>Protection granted</b>	The owner can obtain protection in the U.S. by registering the trademark with the USPTO, usually through a legal advocate. Once a trademark is registered, the owner gains presumptive rights to its use throughout the U.S.. The federal registration can be used to obtain registration in foreign countries. Trademark infringement actions concerning a registered or unregistered mark can be brought in federal court in the U.S.
<b>Infringement</b>	Some examples of potential infringement of a trademark, include without limitation: <ul style="list-style-type: none"><li>• Unauthorised use of an identical or confusingly similar trade mark for identical or similar goods and services to a trademark which thereby creates a likelihood of confusion on the part of the public</li><li>• Where a mark is famous (ie widely recognised by the general consuming public of the U.S. as a designation of source of the goods or services of the mark's owner), trademark dilution may arise from the unauthorised use of the similar mark which impairs the distinctiveness of the famous mark or harms the reputation of the famous mark</li></ul>
<b>Duration</b>	Potentially indefinite. Federal trademark registrations must be renewed every 10 years, and a statement of use also must be filed between the fifth and sixth years after registration.



# Conducting business in the U.S.

Any foreign company or individual wanting to do business in the U.S. will need to decide under which form they want to operate. The various business entities available are described below.

## Branch

There is no specific regulation that governs the setting up of a branch in the U.S. Generally, a foreign company that wishes to establish a branch in the U.S. must register with the state where the branch will conduct business. Operating a branch may open up a parent company to increased liability and potential legal claims and as such many companies prefer to set up corporations in order to reduce liability.

## Limited Liability Company (LLC)

### Formation

LLCs are formed under state law rather than federal law and as such the statutes governing LLCs can vary from state to state. An LLC combines the limited liability structure of a corporation with the flexible structure of a partnership.

### Capital requirement

Like corporations, there are usually no minimum capital requirements to form an LLC.

### Company charter

The terms of an LLC are set out in an agreement (usually called a Limited Liability Company Agreement or an Operating Agreement). Owners of an LLC have limited liability for the potential losses, obligations and actions of the LLC. Typically, their maximum loss is limited to the value of their investment in the LLC.

### Filing requirements

An LLC is treated as a pass-through entity, unless its members elect for it to be treated as a corporation

for federal tax purposes. A pass-through entity is a means of preventing double taxation in which the business entity does not pay income tax at the corporate level, but instead income taxes are paid by the owners on income from the business.

The Limited Liability Company Agreement need not be filed with a public official, unless the LLC is publicly-traded which would necessitate registration with the Securities and Exchange Commission (SEC).

## Corporation Formation

Corporations are created under state law rather than federal law; thus it is important to recognise that corporate law will vary from state to state. Certain states are therefore more often selected due to more favourable or flexible conditions provided by local statutes governing corporations (Delaware is a popular choice for these reasons). A Corporation incorporated in one state (or in a foreign country) may operate in any other state, but may be required to file tax returns in those jurisdictions. Corporations typically adopt the suffix 'Inc.', short for "incorporated", but others such as 'corp', short for 'corporation' or 'Ltd' short for 'limited' may also be available.

Forming a Corporation is a simple procedure in most states, usually only requiring completion of an application, generally known as the Articles of Incorporation. This application is filed with the appropriate state agency, and must be renewed annually, usually with an accompanying small fee. Failure to file the annual report may result in the state revoking the Corporation's right to do business in the state, or to dissolution of the Corporation.



Generally, a foreign company that wishes to establish a branch in the U.S. must register with the state where the branch will conduct business.



### Capital requirement

There is generally no minimum capital requirement imposed on corporations, and companies are commonly formed with a share capital of USD1-2. Some states impose restrictions on the issuance of shares and the types of business.

### Constitution

A Corporation is considered a separate legal entity to its owners (shareholders), and has many of the same rights as a person. The right of “corporate personhood” is a legal concept that originates in the U.S. and states that corporations can legally be considered as people. This means that corporations can sue, be sued, and have the same responsibilities as a natural person. Corporations will produce a Certificate of Incorporation (or Articles of Incorporation), which is the official charter for the company governing its existence, powers and the shares it may issue. The charter will also contain the rules governing how senior positions are determined, usually by voting by shareholders, board members and directors. The charter is filed with the appropriate public official in the state in which the Corporation is formed and can only be amended with the approval of the Corporation’s directors and shareholders. The internal bye-laws of the corporation are generally not published.

### Filing requirements

Every company incorporated or registered in a state is required to file an annual report stating the names of the corporate officers and the company address. Most states impose an annual fee for the right to do business in the state. Failure to file the annual report may result in the state revoking the corporation’s right to do business in the state or the dissolution of the Corporation.

### S Corporation

S Corporations are corporations that choose to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders therefore report all relevant income on their personal tax returns and are taxed at the individual income tax rates. This allows S Corporations to avoid double taxation. S Corporations are still responsible for tax on certain built-in gains and passive income at the entity level.

As per the IRS website, to qualify as an S Corporation, the following requirements must be met:

- Be a domestic corporation
- Have only allowable shareholders
  - May be individuals, certain trusts, and estates and
  - May not be partnerships, corporations or non-resident alien shareholders

- Have no more than 100 shareholders
- Have only one class of stock
- Not be an ineligible corporation (ie certain financial institutions, insurance companies, and domestic international sales corporations)

To become an S Corporation, Form 2553 ‘Election by a Small Business Corporation’ must be signed by all shareholders and submitted to the IRS.

### Sole Proprietorship

A Sole Proprietorship is an unincorporated business wholly owned by a single individual, where there is no legal distinction made between the individual and the business. One therefore cannot be a sole proprietor and treat the company as a corporation.

### Formation

Starting a Sole Proprietorship business is very easy, as it requires no formal or legal steps at the federal, state, or local level. Sole proprietors need a name to operate under and a trademark on that name, as well as a business bank account.

### Capital requirement

There are no capital requirements for a Sole Proprietorship, but an individual in a Sole Proprietorship is



held personally liable for all business commitments.

#### **Filing requirements**

As the operator and business are considered the same entity, a Sole Proprietorship is not taxed separately. Instead, the individual is taxed on their income, and the income, losses and expenses are filed on Schedule C of the individual's Form 1040, "U.S. Individual Income Tax Return." This is regarded as "self-employment". This is an uncommon entity structure for many businesses due to the risk of unlimited liability to the individual owner.

#### **Partnership**

Partnerships are agreements of two or more individuals or entities that may include Joint Ventures. The partnership's organization and activities are governed primarily by statutory law. Most states have adopted the Uniform Partnership Act; consequently, partnership law is generally standard throughout the U.S.. There is usually no limit to the number of partners. Types of partnerships include general partnership, limited partnership and limited liability partnership. Generally a partnership is not considered an entity separate from its partners for federal or state income tax purposes. Each individual partner (or corporate partner) reports his or her respective share of the partnership's yearly profits or losses on his or her personal (or corporate) tax return.

#### **General Partnerships**

In a General Partnership, two or more partners share liability for the partnership's obligations and risk. General partnerships are rarely used because similar tax structures exist for other business vehicles that offer limited liability.

#### **Limited Partnerships**

In a Limited Partnership, one general partner assumes personal liability for all of the partnership's liabilities and obligations, while the other limited partners have limited liability. Limited partners are only liable for what they contribute to the partnership, and have no management control of the partnership. The general partner acts as a corporation or other entity that itself offers limited liability to its owners.

Both forms of partnership qualify as "pass-through" entities for U.S. federal income tax purposes. The existence of LLCs (which offer less liability for owners) has reduced the popularity of the partnership structure.

#### **Trust**

A Trust is an unincorporated entity under which the title to business property is turned over to a person (trustee) who manages the property for the benefit of the owners who hold transferrable shares in the Trust. Generally, a Business Trust will not classify as a Trust for federal income tax purposes, but will instead be classified as a Partnership.

Trust arrangements are commonly used by individuals in structuring their personal estates. These trusts are typically not established for business purposes and can be established by individuals in life or at death. A Trust created during one's lifetime is referred to as an 'inter vivos' Trust. A Trust created upon death is referred to as a Testamentary Trust. Under both arrangements legal title of the property is transferred to a trustee who controls and maintains the property for the designated beneficiaries.

Income from a Trust will be taxable to the Trust, the beneficiary or the creator of the Trust, depending mainly on the terms of the Trust. Additionally, a determining factor in taxability may be whether distributions are made to the beneficiaries. Certain types of trusts in which the creator remains in control are ignored for income tax purposes and all income is passed through and taxed to the creator. Trusts are commonly used for estate-planning purposes and offer non-tax advantages as a vehicle for holding property.

In certain situations, formation of a Trust by a non-resident alien, prior to achieving U.S. residency status, can be advantageous from a tax point of view.

The choice of entity is an important decision and should not be made without the consultation of qualified professionals.



# Tax system

All U.S. businesses are subject to a variety of taxes. The laws, regulations and cases governing taxation in the U.S. are complex and change regularly. Tax rates and structures vary across different states. Potential investors in the U.S. should obtain tax advice from a qualified tax advisor as to the effects of all relevant authorities.

## Corporate Income Tax (CIT)

Generally, a U.S. company is taxed on the entirety of its worldwide income, including that from branches or subsidiaries located outside the U.S. This "worldwide" system of taxation differs from many other countries, which typically tax its residents, whether individuals or corporations, on a "territorial" basis. Nonetheless, offshore profits are generally not taxed until repatriated back to the U.S.

### Corporate income tax rates for 2016:

Tax Bracket (USD)	Tax Rate (%)
0 - 50,000	15
50,001 - 75,000	25
75,001 - 100,000	34
100,001 - 335,000	39
335,001 - 10,000,000	34
10,000,001 - 15,000,000	35
15,000,001 - 18,333,333	38
More than 18,333,333	35

*Note: Personal service corporations are taxed at a flat 35 per cent rate.*

State level taxes may be applied on top of these taxes, which could result in an average marginal tax rate of more than 40 per cent.

## Registration

Businesses must be registered with the Internal Revenue Service (IRS) in order to receive a federal Employer Identification Number (EIN), which is necessary to file a tax return. The U.S. tax system is self-assessed and is based on a system of voluntary compliance.

## Residency of corporation

The residency of corporations is generally determined for U.S. federal tax purposes based on the place of organisation of the corporation, subject to certain exceptions.

## Liability to tax

Income taxes are imposed by the federal government, most states, some cities and other local authorities. The federal income tax is administered by the IRS.

Special taxes or rates on corporations include the alternative minimum tax, the accumulated earnings tax and the personal holding company tax, among others.

## Taxable income

While financial statement income (book income) provides the starting point for calculating taxable income, the Internal Revenue Code and income tax regulations contain numerous tax accounting methods that differ from those used for financial reporting purposes. Tax accounting methods are generally adopted on a taxpayer's tax return for its first taxable year and can generally only be changed in subsequent years with the approval of the IRS.

A number of typical tax accounting methods may be elected:

- Cash or accrual method
- Inventory valuation methods
- Revenue recognition methods
- Timing of tax deduction for expenses
- Depreciation and amortization methods

Taxable income can be treated differently from book income for a number of items:

**Amortization:** Amortization is allowed for the cost of most acquired intangible assets such as patents, franchises and goodwill over a 15 year useful life, regardless of the actual useful life of the asset.

**Depletion:** Depletion is allowed for exhaustible resources such as oil, gas, timber and minerals.

**Interest:** For some corporations, the deductibility of certain types of interest expense (eg, interest paid to certain related foreign persons or real estate investment trusts as defined under U.S. federal tax law) may be limited when debt-to-equity ratios are within parameters defined under U.S. federal tax law. The existence of certain guarantees of debt may also result in the application of these rules.

**Start-up expenditures:** A newly organised corporation is deemed to elect to deduct the first USD5,000 of organizational and start-up costs and amortize the remaining amount over a period of not less than 180



months. Taxpayers wishing to capitalise such costs must make an affirmative election to capitalise.

**Bad debt expenses:** Most taxpayers may not deduct an estimate or reserve for bad debt. Instead, a bad debt deduction is allowable only on a specific identification basis in the year that the debt becomes worthless or partially worthless.

**Depreciation:** The tax recovery period for fixed assets often differs from book treatment, as illustrated in the table below.

Subject to certain requirements, most types of tangible property are depreciable. Tangible property that is used in the U.S. and was placed into service after 1980 and before 1987 is generally depreciable on an accelerated basis. Tangible property that was placed into service after 1986 is depreciable under a modified accelerated basis; in this case, the property is grouped into classes of personal and real property. Each class has a designated recovery period and depreciation method.

Fixed Asset	Period	Method
Autos, Trucks	5 years	Accelerated or Straight Line
Furniture and fixtures	7 years	Accelerated or Straight line
Equipment	3,5,7,10 or 15 years	Various
Real Property	31.5 or 39 years	Straight Line

The tax code also provides accelerated depreciation incentives such as bonus depreciation for new (as opposed to used) shorter life assets purchased by the Taxpayer. Congress recently extended and modified this "bonus depreciation" legislation until 2019, gradually reducing the amount of the deduction over time.

### Inventory valuation

Inventory is the collection of assets that is intended for sale, and is usually priced at cost or the lower of cost market value, on either a 'first-in, first-out' (FIFO) basis or 'last-in, first-out' (LIFO). In addition to capitalising costs of producing or acquiring such assets, for tax purposes many types of indirect and overhead costs are required to be capitalised under Section 263A that are not capitalised as part of book inventory.

### Capital gains

Capital gains are taxed at the same rate as general income. Capital losses can be offset by capital gains; subject to certain restrictions, capital losses may be carried back three years and forward five years.

### Taxable year

Generally, a corporation may choose as its taxable year any 12-month period that ends on the last day of a given month. Alternatively, a taxpayer may elect to use a "52-53-week" taxable year as defined in the Internal Revenue Code and income tax regulations. Once chosen, a taxable year can generally only be changed with the consent of the IRS.

Foreign corporations are generally subject to the same rules noted above, unless they are controlled by US persons. Certain controlled foreign corporations may have required taxable years that are based on the majority US owner's taxable year.

### Groups

Domestic corporations forming an affiliated group may elect to file a consolidated return for federal income tax purposes. The broad effect of consolidation is that the group is taxed as a single corporation, filing one return. This allows for the offset of profits and losses and tax-deferred transfers of assets within the group. Special rules apply to losses incurred by a corporation before it joins the consolidated group. If an election to consolidate the group is made, all eligible corporations within the group must join in the election. A foreign corporation (except for certain Canadian and Mexican corporations) cannot be included in a consolidated group.

Unlike federal income tax reporting, states differ in determining what filing methods are required or allowed for an affiliated group of companies. Some states require or allow entities to report on a separate basis, while others require or allow an affiliated group to file a combined report (which may be substantially different from that of a federal consolidated group). Other states allow consolidated filing groups (but again, such groups may be different from the federal consolidated group).

### Transfer pricing

Transfer pricing regulations govern transactions among related business entities (controlled transactions). Enterprises must transfer assets based on an 'arm's length principle', which stipulates that the receiving business must be treated in the same way as a third party (ie uncontrolled transaction). The transfer pricing regulations are in place in order to prevent tax evasion by corporations, as entities could otherwise use controlled transactions to lower U.S. taxable income by shifting income to low-tax jurisdictions.

### Payment dates and tax returns

A domestic corporation must file a federal tax return (Form 1120, "U.S. Corporation Income Tax Return") within three-and-a-half months of its year-end. For corporations

with a calendar year-end, the date for filing a federal income tax return is March 15. However, automatic extensions of time of up to six months are available. For tax years beginning after December 31, 2015, corporate income tax returns will be due four and a half months after its year-end. For example, a calendar year corporation's tax return for the 2016 tax year will be due on April 15, 2017, excluding extensions of time to file.

A foreign corporation that maintains an office or place of business in the U.S. must generally file a Form 1120-F by the 15th day of the third month after the end of its tax year. A foreign corporation that does not maintain an office or place of business in the U.S. generally must file Form 1120-F by the 15th day of the sixth month after the end of its tax year. The foreign corporation may file for an automatic extension of time to file before the original due date of the return to request a 6-month extension.

Corporations with total assets of USD10 million or more at the end of the corporation's tax year must generally file its income tax return electronically. The balance of tax due must be paid by the original due date of the return. A corporation may be required to make estimated tax payments during the taxable year. Various penalties and interest may apply for non-compliance. States and localities have varying payment dates and tax return filing requirements that are often not consistent with the federal filing requirements discussed above.

#### **Losses**

For federal income tax purposes, a net operating loss may be carried back two years and carried forward for 20 years. Special rules provide a longer carry-back period for losses attributable to certain activities or liabilities.

States and localities have special rules that often impact the amount of a loss available to a taxpayer. State carry-forward and carry-back periods may differ from the federal carry-forward and carry-back periods. Likewise, states and localities do not uniformly follow federal rules on capital gains and losses. It is advisable to consult an experienced advisor in this field to help manage the complexities of adherence.

#### **Foreign tax credits**

Generally speaking, when taxpayers pay or accrue foreign income taxes, the taxpayer may be eligible to receive either a foreign tax credit or an income tax deduction for the foreign taxes paid or accrued. The foreign tax credit (or deduction) is intended to reduce the double tax burden that would otherwise arise when foreign sourced income is taxed by both the U.S. and a foreign jurisdiction from which the income is derived. A foreign tax credit may reduce the income tax liability of the taxpayer; however, the amount allowable as a credit is subject to certain limitations.

#### **Foreign investment in U.S. real property**

Under the Foreign Investment in Real Property Tax Act (FIRPTA), gain or loss from the disposition of a U.S. real property interest by a non-resident alien or foreign corporation is subject to tax in the U.S. as if the foreign person were engaged in a U.S. trade or business and the gain or loss was effectively connected with such trade or business. The term "U.S. real property interest" is based on U.S. federal tax principles. Moreover, persons acquiring certain U.S. real property interests from foreign persons generally must withhold and remit tax based on the value realised upon the disposition. Tax treaties typically do not limit the ability of the U.S. to impose tax on



Generally speaking, when taxpayers pay or accrue foreign income taxes, the taxpayer may be eligible to receive either a foreign tax credit or an income tax deduction for the foreign taxes paid or accrued.



dispositions of U.S. real property interests by foreign persons.

### **Branch profits and excess interest tax**

In addition to the tax on effectively connected income (ECI) described above, which only describes ECI with regard to FIRPTA, foreign corporations are also generally required to pay tax at a rate of 30 per cent on U.S. effectively connected earnings and profits that are deemed to be divested from the U.S. during the year (ie, branch profits tax). It should be noted that any U.S. sourced income of a foreign corporation or person may be considered ECI. The branch profits tax regime generally attempts to achieve parity between U.S. operations established through a domestic corporation and those established as a branch (ie, it looks to impose a tax on branch operations equivalent to the

dividend withholding tax imposed on domestic corporations). In addition to the branch profits tax, a second set of rules serves to make interest expense of a U.S. branch equivalent to that of a subsidiary (branch interest rules). Special rules may apply in the case of branch-level interest expense to prevent foreign corporations from avoiding the branch profits tax through interest deductions. The branch profits tax and excess interest tax can be reduced or eliminated under certain tax treaties. If tax treaty benefits exist, U.S. federal tax law may impose qualifications on foreign corporations in order to obtain such benefits in addition to those described in the applicable tax treaty.

### **Personal Income Tax**

As described previously, unlike some other countries, the U.S. taxes its citizens, as well as non-citizens qualifying as U.S. residents on their worldwide income. The taxation

of an individual who is not a U.S. citizen depends upon whether or not the individual is considered a resident of the U.S..

Resident alien individuals are taxed in the U.S. on their worldwide income just as U.S. citizens are. Non-resident aliens are taxed on certain types of passive or effectively connected income.

An individual is generally considered to be a resident alien for U.S. federal tax purposes in the following cases:

- The individual is a lawful permanent resident of the U.S. (ie, the individual holds a so-called "green card")
- The individual meets the "substantial presence test" under the applicable U.S. federal tax laws



## Tax rates

The income tax burden on individuals is low in the U.S. compared with that of other industrialised nations. Rates vary depending on the taxpayer category. For 2016:

Tax (%)	Married filing jointly / surviving spouses (USD)	Married filing separately (USD)	Single (USD)	Head of Household (USD)
10	0 – 18,550	0 – 9,275	0 – 9,275	0 – 13,250
15	18,551 – 75,300	9,276 – 37,650	9,276 – 37,650	13,251 – 50,400
25	75,301 – 151,900	37,651 – 75,950	37,651 – 91,150	50,401 – 130,150
28	151,901 – 231,450	75,951 – 115,725	91,151 – 190,150	130,151 – 210,800
33	231,451 – 413,350	115,726 – 206,675	190,151 – 413,350	210,801 – 413,350
35	413,351 – 466,950	206,676 – 233,475	413,351 – 415,050	413,351 – 441,000
39.6	466,951 +	233,476 +	415,051 +	441,001 +

Brackets are indexed annually to reflect inflation. An alternative minimum tax may apply.

Most states and localities also actively collect income tax from non-residents, as well as individuals who reside in their territory. The imposition of income tax on non-residents may occur when non-residents have gross income sourced at state or locality through an ownership interest in an entity doing business or performing services in that state or locality.

## Taxable income

Individuals are taxed based on their gross income, which includes all sources (unless specifically exempted by the tax code). Gross income can include salaries, pensions, service fees, business income, property gains, rents, and dividends among other things.

Each state will have its own laws for the specific calculation of taxable income. Most states follow similar tax laws to federal laws, but there are some exceptions.

## Itemised deductions

Itemised deductions are subtracted from Adjusted Gross Income (AGI) when calculating tax. These deductions include mortgage interest, state and local income, charitable donations and other tax deductible payments.

## Exemptions

Individuals are allowed to claim a "personal exemption" from their AGI which is a flat amount. In 2016 this amount is USD4,050, and all income above this is taxable at graduated rates. Additional personal exemptions may be available for each qualified dependent who is a US citizen or, in certain instances, a resident of the U.S., Canada or Mexico for some part of the tax year.

## Credits

Tax credits are available to reduce the tax liability of an individual on a dollar for dollar basis. This includes foreign tax credits, child tax credits, and adoption credits, among others. Credits are typically subject to limitations and phase-outs.

## Payment dates

U.S. citizens and residents must file an income tax return (Form 1040) by 15 April, following the end of the tax year (31 December). For U.S. citizens or residents who have a tax home outside the U.S. on 15 April, the due date for filing and payment of any balances of tax due is automatically extended to June 15.

Taxpayers may also obtain an automatic six-month extension to file their income tax returns by 15 October by filing Form 4868.

These filing extensions do not extend the deadline for paying tax, only for filing the tax return. The time for payment may not be extended.

Tax must be paid throughout the year through withholding and estimated tax payments. It may be necessary for the individual to make quarterly estimated tax payments if taxes are not being withheld from their wages. Penalties may apply to underpaid estimated tax.

Penalties and interest may be assessed for non-compliance.

Employers must withhold federal income tax from wages, in accordance with published wage withholding tables and information supplied by the employee. There are strict time limits and reporting requirements for payment of withheld taxes to the government. In most states there is a similar requirement to withhold state income taxes.



## Foreign persons

Foreign persons include non-resident alien individuals, foreign corporations and certain trusts, estates and foreign governments. For this purpose, the determination of a person or entity's status as foreign person is made solely under U.S. federal tax rules.

Two distinct tax regimes are applicable to foreign persons under U.S. federal tax law:

- **Fixed or Determinable Annual or Periodical income (FDAP):** Certain types of passive income (as defined under U.S. federal tax law) are subject to a flat 30 per cent withholding tax at the source of payment
- **Income Effectively Connected with the Conduct of a U.S. Trade or Business (ECI):** Foreign persons who are deemed to be engaged in the conduct of a trade or business within the U.S. may be taxed similarly to U.S. persons on income they earn that is effectively connected with such trade or business. The determination of whether a foreign person is engaged in the conduct of a trade or business within the U.S., as well as the determination of any taxable income connected to such trade or business, is made within the definitions and rules of U.S. federal tax laws.

Certain tax treaties entered into by the U.S. with other tax jurisdictions may reduce or eliminate the tax imposed by the U.S. on FDAP or ECI income.

## Passive income

Certain types of income, including interest, dividends, rents, royalties, and other FDAP income, may be subject to U.S. taxation at a rate of 30 per cent if the income is from U.S. sources (as defined by applicable U.S. federal tax law) and it is not otherwise treated as

income effectively connected with the conduct of a trade or business within the U.S..

When applicable, this tax is withheld at the source of the payment by the payer (or, more specifically, by the withholding agent, which is determined under highly complex U.S. federal tax rules). The withholding agent generally must remit the tax withheld to the IRS and file certain tax returns.

If the applicable withholding tax is eligible for reduction or elimination by an applicable U.S. tax treaty, the recipient must generally provide certification to the payer that the recipient is eligible for benefits under a treaty. The type of certification that must be provided depends on the nature of the payment and type of benefit the recipient is claiming. Moreover, tax withholding under the Foreign Account Tax Compliance Act (FATCA) may apply.

## Effectively connected income

Foreign persons who earn taxable income that is effectively connected with the conduct of a trade or business within the U.S. are subject to U.S. federal tax on such income at graduated rates in a manner similar to that of U.S. persons. Such income generally includes any income from U.S. sources that is connected with the foreign person's U.S. trade or business.

If a foreign person is engaged in the conduct of a trade or business within the U.S., the foreign person generally must file an annual income tax return with the IRS. For instance, a non-resident alien individual must file Form 1040NR, U.S. Non-resident Alien Income Tax Return, and a foreign corporation generally must file Form 1120F, U.S. Income Tax Return of a Foreign Corporation.

Certain activities of foreign persons may be eligible for reduced rates of

tax, or exemption, based on a tax treaty entered into by the U.S..

## Tax treaties

The U.S. has entered into bilateral income tax treaties with various foreign jurisdictions to reduce the incidence of double taxation and tax avoidance of certain income derived both domestically and abroad. The following considerations are generally taken into account by foreign entities seeking to obtain benefits under a tax treaty that the U.S. has entered into:

- Tax treaties may reduce the applicable tax rates on certain types of income and exempt certain items of income from taxation
- Tax treaties may limit the types of activities of foreign persons that can be subjected to U.S. taxation
- In order to qualify for benefits under most U.S. tax treaties, foreign persons must qualify as residents of the country in which the treaty applies. In the case of many treaties, this entails meeting certain limitation of benefits provisions intended to curtail so-called treaty-shopping
- U.S. taxpayers are generally not permitted to apply reduced rates of withholding unless proper certification is presented by the foreign person recipient
- Certain treaty positions taken by foreign persons to reduce or eliminate the imposition of U.S. taxation must be disclosed to the IRS with the foreign person's tax return. Penalties can be imposed if such disclosures are not properly made.

## Other taxes

### Sales Tax

There are no nationally imposed sales taxes (such as Value Added Tax) but most states and some local

jurisdictions impose a local sales tax. These taxes vary significantly depending on the local jurisdiction, and are subject to routine modification.

### **Property taxes**

A variety of property taxes are levied by most states and local jurisdictions, including taxes on the ownership of real property and certain personal property, as well as transfers of real property.

### **Net investment income tax**

Beginning in 2013, a 3.8 per cent tax on "net investment income" became effective for certain higher-income individual taxpayers with modified AGI in excess of USD200,000 for single filers and USD250,000 for joint filers. Taxpayers meeting those thresholds could be subject to an additional 3.8 per cent tax on income earned from a passive activity, capital gain from a disposition of property, or income derived from rents, royalties, interest, dividends and annuities. The threshold amounts are not indexed to inflation, and trusts and estates are also subject to the tax, albeit at lower threshold levels.

### **Estate and gift taxes**

A non-domiciled alien is liable for estate tax on property located within the U.S., unless exempted by a treaty. Intangible property located in the U.S. is subject to estate tax. The estate tax is imposed on the value of property that was owned at death.

The estate tax and gift tax are currently unified under U.S. federal tax law, with a top rate of 40 per cent and a lifetime exemption of USD5.45 million in 2016.

An unlimited amount may be transferred free of tax to a U.S. citizen's spouse because U.S. federal tax law provides an unlimited marital deduction for bequests to spouses of U.S. citizens. This unlimited deduction will also apply to property left to a non-U.S. citizen spouse if the property is left in trust for the benefit of a non-U.S. citizen spouse and the trust meets the requirements of a Qualified Domestic Trust. A non-domiciled alien is allowed a credit that will offset a certain portion of his or her estate. Some states impose taxes on gifts, trusts, estates, and inheritances.

### **Generation-skipping transfer tax**

If a transfer is subject to gift or estate tax, it may also be subject to generation-skipping transfer (GST) taxes. GST taxes apply when a transfer subject to gift or estate tax is to a person who is two or more generations younger than the transferring taxpayer (eg, grandchildren and great-grandchildren). The GST lifetime exemption is USD5.45 million for 2016.



# Labour

In the U.S., employment is regulated by the contract between employer and employee and subject to a wide range of both state and federal rules. These apply to both US and foreign employees within the U.S..

Individual employee rights are governed by the following legislation:

- The Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector and in state and local governments
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination

Workplace regulation is applied at both the state and federal level by the U.S. Department of Labour, as well as each state's own local labour department.

U.S. employees have relatively little protection from termination due to the default classification of employment as "at-will" under U.S. law. The "at-will" rule gives employers the right to terminate an employee at any time, without notice, and for any reason. However, there are multiple statutes prohibiting discrimination and termination based on race, gender, age, sexual orientation, physical disabilities etc.

## Minimum wage

As of December 2015, the statutory minimum wage in the U.S. is set at a nationwide level of USD7.25 per hour. Some states have set a higher rate, with the highest being USD9.47 per hour in Washington. After a call from the president in 2014 to raise minimum wages, several states have passed legislation to increase the minimum wage between 2017 and 2021, with the highest being an eventual wage of USD15 per hour in Seattle, to be implemented by 2021.

Various minimum wage exceptions apply under specific circumstances to disabled workers, full-time students, youth under the age of 20 in their first 90 consecutive calendar days of employment, tipped employees and student-learners.

## Working time and leave

Employers are not required by law to offer paid vacations, but one to three weeks per year is a customary level of paid vacation. A number of public holidays are observed by government offices. Private-sector employers, although not required by law to do so, customarily observe seven major holidays.

Maternity leave is guaranteed to employees under the Family and Medical Leave Act of 1993, which



Employers are not required by law to offer paid vacations, but one to three weeks per year is a customary level of paid vacation.



provides new mothers with a minimum of 12 weeks unpaid leave, given certain stipulations.

Several states have expanded the coverage of maternity leave legislation to provide more extensive benefits. The extent of these benefits varies from state to state, and in the District of Columbia a law recently went into effect providing eight weeks of fully paid leave to DC government workers.

### **Social security**

The Federal Insurance Contributions Act (FICA) imposes both U.S. Social Security and Medicare tax on all compensation received for services performed within the U.S. and outside the U.S. for certain U.S. citizens and residents. FICA generally requires matching contributions from the employer and the employee for both Medicare and U.S. Social Security (also called old age, survivors, and disability insurance, or OASDI).

The OASDI rate is 6.2 per cent for both employers and employees in 2016. OASDI is imposed up to a wage cap that is adjusted for inflation each year and is USD118,500 in 2016.

The Medicare tax rate starts at 1.45 per cent for both the employer and the employee and is not capped. Beginning in 2013, the rate on the employee share of Medicare tax increased to 2.35 per cent on earned income over USD200,000 for single filers or USD250,000 for joint filers. An employer is required to withhold Medicare tax at the higher 2.35 per cent on an employee's wages in excess of USD200,000, regardless of the employee's filing status. The employer's share of Medicare tax remains 1.45 per cent of all employee wages. As described previously, a new Medicare tax became effective for the first time in 2013 that imposes a 3.8 per cent tax on "net investment income," but only to the extent adjusted gross income exceeds USD200,000 for single filers and USD250,000 for joint filers.

Generally, employers must pay unemployment insurance to both state and federal authorities. State unemployment insurance contributions vary from state to state and may also depend on the insurance claims record of the employer's workforce. The Federal Unemployment Tax Act (FUTA) imposes a six per cent tax on the first USD7,000 in remuneration paid

Generally,  
employers  
must pay  
unemployment  
insurance to  
both state  
and federal  
authorities.



to each employee, though most employers can claim a 5.4 per cent credit for state employment taxes (employers in states that have borrowed money from the federal government for unemployment benefits could be subject to a reduced credit).

Employers must also withhold federal and state income tax from wages, in accordance with published wage withholding tables and information supplied by the employee. There are strict time limits and reporting requirements for the remittance of withheld taxes to the federal and state governments.

Employers are not required to provide retirement benefits for workers, but the federal government provides incentives under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code to employers to sponsor retirement benefit plans, funded by employers, employees or both. The most common scheme available is the defined contribution plan, more commonly known as the 401(k), which allows both employers and employees to contribute to separate accounts for participating employees. The employer and employee contributions are excluded from the employee's taxable income until distributed to the employee. Non-U.S. retirement benefit plans generally do not qualify for U.S. tax benefits.

Many employers also offer profit-sharing plans and stock incentive plans. Other employment benefits such as housing or cars are less common than in other countries.

## **Healthcare and benefits**

### **Healthcare**

The U.S. healthcare system is heavily reliant on private medical insurance, which the majority of people will acquire through their employer.

Healthcare benefits are a significant part of labour costs for most U.S. employers. These benefits are provided by the payment of premiums, usually with a contribution from the employee, to a variety of private insurers and not-for-profit organisations. Larger employers often self-insure the benefit; that is, these employers do not pay a premium to an insurer, but instead, pay directly for the cost of healthcare services obtained by their employees. Regardless of whether the benefit is insured or self-insured, employees are usually not taxed on the value of the benefit.

In 2016, in accordance with the Patient Protection and Affordable Care Act, all employers with 50 or more full-time employees and full-time equivalent employees are required to offer coverage to at least 95 per cent of their full-time employees and dependents or pay a penalty equal to USD2,160 (as indexed for inflation in 2016) times the number of full-time employees in excess of 30 full-time employees (counting even those to whom coverage is offered). Employers who avoid the USD2,160 penalty by offering coverage are subject to a USD3,240 annual penalty (as indexed for inflation in 2016) if the coverage does not meet affordability and minimum value requirements.

## **Employment of resident and non-resident employees**

U.S. immigration law is regulated and administered by federal agencies. The law divides all foreign nationals wishing to enter the U.S. into two basic categories: immigrants and non-immigrants. Immigrants are foreign nationals who enter the U.S. in order to reside permanently, while non-immigrants are persons who come for a temporary visit only. Both categories require a visa to work in the U.S..

There are numerous categories of non-immigrant visa, which allow the individual to enter and remain in the U.S. on a temporary basis (usually from six months to five years) and in certain cases to accept employment. If an applicant meets the necessary requirements, the U.S. Citizenship and Immigration Services (USCIS) can grant him or her permission to work in the U.S..

Although the federal government has made it more difficult to enter the U.S. for certain classes of non-immigrant, the non-immigrant visa offers the easiest and best means for foreign persons to enter the country for temporary assignments with domestic or foreign employers. Foreign nationals who wish to enter the U.S. as permanent residents should expect considerable delays in obtaining their visas.

There are several government agencies involved in the visa application process. The U.S. Department of Homeland Security (DHS) is the government agency that oversees immigration.

## **Trade unions**

All U.S. employees have the right to join a union. Union membership is most common in the manufacturing, construction, government and transportation sectors, but unions only represent a small proportion of the private sector workforce. Once a majority of employees agree to organise a labour union, the union will negotiate with management on behalf of its members to achieve their best interests with regard to working conditions and compensation issues. The process is called collective bargaining and these negotiations generally culminate in the execution of a binding collective bargaining agreement. Grievances are frequently settled by arbitration, but the right to strike is protected by law.

# Audit

There is no general requirement for privately-held U.S. companies to submit formal financial statements to any regulatory body, aside from specific requests from owners or creditors.

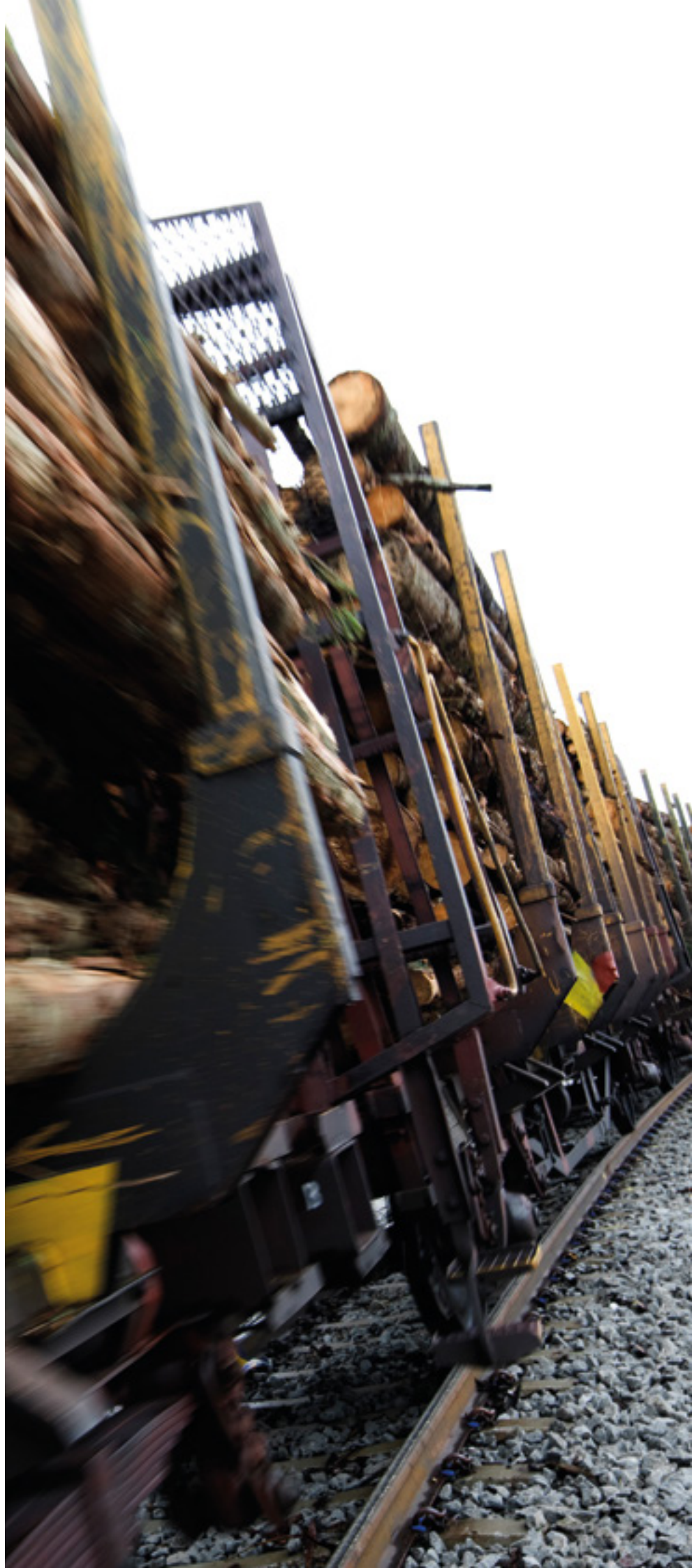
Financial reporting requirements are substantially different for publicly traded and privately held companies. Publicly traded companies are subject to additional financial statement and disclosure requirements promulgated by the Securities and Exchange Commission (SEC). Their annual financial statements are required to be audited by registered independent certified public accountants.

## Accounting standards

In most cases financial statements are prepared in accordance with a conceptual framework referred to as generally accepted accounting principles (GAAP). Although not statutory, GAAP have long been recognised as authoritative by business executives, governmental agencies, the courts and professional accountants.

Reporting standards for corporations and their auditors are issued from various sources:

- The Financial Accounting Standards Board (FASB) has the responsibility and ultimate authority for establishing accounting principles used in the preparation of financial statements for entities required to undergo an independent audit
- The Public Company Accounting Oversight Board (PCAOB), created in 2002 by the Sarbanes-Oxley Act, issues auditing and independence and ethics rules for public accountants performing audits and reviews of publicly registered companies. The annual financial statements of publicly held companies must be



audited by independent certified public accounting firms that are registered with the PCAOB

- The American Institute of Certified Public Accountants (AICPA) sets auditing and attestation standards for audits of most private companies, and provides accounting and auditing guidance through issuance of accounting and audit guides and statements of position

The SEC's mission is to protect investors. One of its primary tasks includes ensuring that information presented in public filing documents related to offerings of securities and periodic financial information presented by public companies is complete and not misleading. In addition, the SEC publishes rules and interpretations relating to information distributed to shareholders, company financial reporting, audit requirements and independence. Both the SEC and the PCAOB are staffed to conduct investigations and may take legal action against companies, management, auditors or other parties if potential violations of the securities laws or other regulations may have occurred.

#### **Accounting records**

Reporting standards may vary based on the industry and sector of a business and based on whether the business is a for-profit operation. For example, not-for-profit organisations, such as colleges and churches, follow accounting practices that differ from the reporting standards for corporations organised for profit. Similarly, an oil and gas company will have different reporting requirements than a traditional manufacturer.

U.S. GAAP rules may differ significantly from international accounting conventions. The SEC has allowed the use of International Financial Reporting Standards (IFRS)

by foreign private issuers reporting in the U.S.. The summary of a July 2012 SEC report on IFRS use in the U.S. said: "The staff report does not include a final policy decision, or even a recommendation, as to whether IFRS should be incorporated into the U.S. financial reporting system, or how such incorporation should occur".

#### **Audit requirements**

Although the financial statements of privately held companies are generally not statutorily required to be audited by independent certified public accountants, many owners/managers of privately held companies choose to have such audits for general business reasons. Companies with significant creditors or minority equity interests may be required to use a public accounting firm to comply with loan/stockholder agreements. Some regulated industries, such as insurance companies, are more likely to be subject to regulatory reporting requirements, including providing audited financial statements.

#### **Branches of foreign companies**

Branches require a US tax filing by the foreign company, and do not provide tax advantages over forming a corporation and thus are rarely used.

When applicable, SEC rules require that foreign branches file Form 5472, Information Return of a 25 per cent Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

#### **Treaty-based positions**

Any person who takes the position that an income tax treaty overrules an internal revenue law of the U.S. may be required to disclose such position to the IRS. When applicable, such disclosure can be made with the person's U.S. tax return or on a pro forma return if a return is not otherwise required.



The SEC has allowed the use of International Financial Reporting Standards (IFRS) by foreign private issuers reporting in the U.S..



# Trade

## Imports

Per the office of the U.S. Trade Representative, the U.S. is a party to free trade agreements with 20 countries, as well as participating in negotiations of the Trans-Pacific Partnership (TPP) with countries of the Asia-Pacific and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union. These trade agreements serve to open markets and facilitate free trade.

## Customs duties

All goods imported into the U.S. are subject to duty unless specifically exempted. Most duties are levied on an ad valorem basis. The Harmonized Tariff Schedule of the U.S. (HTSUS) sets forth the rates of duty and the U.S. Customs and Border Protection (CBP) is responsible for the interpretation and enforcement of the HTSUS. Virtually all trading partners, except a small number of communist countries, may qualify for 'most-favored nation' treatment. Preferential rates and programs are available in many developing countries and increasingly in countries with which the U.S. has negotiated free trade agreements. After reviewing merchandise, it may be possible to re-engineer a product to achieve duty savings.

Customs value may be determined using various valuation methods; the preferred basis of appraisal is transaction value. Imports that are priced at less than fair value or that benefit from foreign government subsidies may be subject to anti-dumping duties, countervailing duties and other sanctions. It may be possible to reduce values, and therefore customs duties, by reviewing methods of valuation.

Numerous foreign trade zones and bonded warehouses (both public

and private) have been established throughout the U.S.. Duties are generally deferred until goods are imported into the U.S. from such zones.

If properly documented, most goods assembled abroad from American components are subject to duty only on the value that is added abroad. This has facilitated the establishment of assembly plants in various lower-wage countries and along the U.S.-Mexican border.

## Compliance

The Customs Modernization Act (Mod Act) has shifted responsibility for classifying and valuing merchandise to the importer. Onerous penalties are possible for non-compliance issues as simple as negligence. However, the Mod Act states that if an importer consults an expert (including an accountant or attorney experienced in customs), they will not be penalised, even if the expert gave them advice that ultimately proved to be incorrect. To obtain this benefit, the importer must engage the expert and obtain a written opinion.

The U.S. Customs and Border Patrol have a regular cycle of auditing importers, both selectively and randomly. Many importers have found it helpful to perform a pre-emptive audit with expert guidance. Potential benefits include eliminating compliance issues and identifying duty savings. Finally, if importers find problems and disclose them to customs officials (and also meet certain statutory requirements), they can limit the amount they must pay to the duties owed plus interest.

## Import restrictions

Certain advance cargo information on merchandise arriving in

the U.S. by commercial ocean carrier for U. S. consumption must be electronically submitted by the Importer Security Filing (ISF) importer, or his or her authorised agent.

U.S. customs officers and employees are not authorised to act as agents for importers or forwarders of imported merchandise, although they may give all reasonable advice and assistance to inexperienced importers.

Customs brokers are the only persons who are authorised by the tariff laws of the U.S. to act as agents for importers in the transaction of their customs business. Customs brokers are individuals or firms licensed by the U.S. Customs and Border Protection to prepare and file the necessary customs entries, arrange for the payment of duties, take steps to effect the release of the goods in customs custody, and otherwise represent their principals in customs matters. The fees charged for these services may vary according to the customs broker and the extent of services performed.

The type of documentation required for admission depends on the type of merchandise. For example, apparel from countries where quotas or quantitative restrictions are imposed may require a visa document. Merchandise that is regulated by the Food and Drug Administration (FDA) may require preclearance of a manufacturer/ vendor and/or the filing of certain FDA documents at the time of entry. In order to expedite clearance of special classes of merchandise, it is important to be prepared prior to entry.



# Finance

## Capital markets

There are three national securities exchanges in the U.S. that are available to overseas companies: the NASDAQ Stock Market (NASDAQ), the New York Stock Exchange (NYSE) and the NYSE Amex (formerly known as the American Stock Exchange). Each has its own listing requirements, both qualitative and quantitative. To trade on any of these stock exchanges, the company must be registered with the SEC. Each exchange has complete descriptions of their listing requirements on their respective websites.

On the NYSE, non-U.S. companies may elect to qualify for listing either under the exchange's Worldwide Listing Standards or its Domestic Listing Standards. An applicant company must meet all of the criteria within the standards under which it seeks to qualify for listing.

On the NASDAQ, non-U.S. companies that choose to list their securities must meet certain initial and continued financial requirements. Companies may choose to list on one of three exchanges: the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market. NASDAQ's quantitative listing requirements generally call for all companies to meet higher thresholds for initial listing than for continued listing. Listing requirements are complex and change regularly, and can be found on the relevant websites for each exchange.

## Other sources of finance

### Venture capital

Venture capital (VC) is money that typically is invested in young, growing or otherwise unproven companies that have the potential to develop into significant firms. In

recent decades, VC has become an increasingly important source of funds for start-up companies.

Obtaining VC is unlike traditional forms of money-raising, such as obtaining loans. Lenders have a legal right to interest on a loan and repayment of the capital, irrespective of the company's success or failure. By contrast, VC typically is invested in exchange for a stake in a company and, as shareholders, the investors get returns only if the business grows or becomes profitable.

### Private equity

Private equity (PE) is defined as investments by professionally managed partnerships that involve leveraged buyouts (LOBs) or other equity investments with a substantial amount of associated indebtedness. PE funding has historically been used to purchase majority interests in operating companies. These operating businesses can either be entrepreneur-owned private companies or divisions/subsidiaries of larger publicly traded companies. PE funding has also been used to take public companies private.

In recent years, PE funding has been used in a broader spectrum of transactions. Shareholder recapitalisations involve providing liquidity to existing shareholders while they still retain a meaningful ownership interest in their companies. These recapitalisations can occur with the PE investor purchasing a majority or a minority stake in the company. Also, PE firms are increasingly making minority investments in growing businesses much like VC firms. Although PE firms typically do not invest in start-up or early-stage companies, a higher degree of overlap is occurring between VC investors and PE firms.



Although PE firms typically do not invest in start-up or early-stage companies, a higher degree of overlap is occurring between VC investors and PE firms.



## **Banking system**

### **Financial institutions**

The U.S. has historically rejected universal banking in favour of a divide between commercial and investment banking. As a result, U.S. financial institutions include commercial banks, investment banks, insurance companies, savings banks and a number of other financial services organisations that have traditionally specialised in providing a certain type of financial service or product. Most financial institutions are owned and controlled by bank or financial holding companies, which are used to diversify the location of operations and services provided by the parent company. Financial institutions are regulated by a fragmented group of state and federal agencies, many with overlapping authority. Oversight is determined by the type of charter granted to the financial institution and is a factor to be considered when forming a financial services entity.

### **Commercial banks**

The U.S. has a dual banking system that allows banks to obtain a charter either from the federal government or from one of the various states. Foreign banks also have a significant presence in the country. The advent of interstate banking brought on by the Riegle-Neal Interstate Banking, Branching and Efficiency Act of 1994 and the partial repeal of the Glass-Steagall Act by the Gramm-Leach-Bliley Act of 1999 has given rise to a rapid pace of consolidation in the industry, although there are still more small local banks than are commonly found in the other countries.

National banks operate under federal charter and are not owned by the government. National banks are supervised by the Office of the Comptroller of Currency (OCC). They must be members of the Federal Reserve System and are insured by the Federal Deposit Insurance Corporation (FDIC), a government agency. Each such bank must have the word "national" in its name and is required to maintain substantial deposits with the Federal Reserve Bank (the central bank of the U.S.).

Each state has laws that cover the chartering, organisation and regulation of banks within its jurisdiction. The laws are administered in much the same way as those applying to national banks. State-chartered banks may become members of the Federal Reserve System. All state-chartered banks are insured by the FDIC and need not become members of the Federal Reserve System in order to be insured.

In addition to performing the traditional commercial banking activities, many commercial banks accept savings deposits and act in a trust capacity. Commercial banks provide a full range of services for the international business community, including lines of credit, letters of credit, banker's acceptances, factoring receivables and foreign exchange transactions. With the partial repeal of the Glass-Steagall Act, commercial banks, through their financial holding company affiliates, may conduct securities underwriting and sponsor mutual funds.

Commercial banks are principally a source of short- and medium-term credit. Business loans may be made on a secured or unsecured basis, depending on the financial stability of the firm, its general reputation and the banker's familiarity with its management. Interest is generally related to the bank's prime rate, although many banks also provide loans priced according to the London Interbank Offer Rate (LIBOR).

### **Investment banks**

Investment banks play an integral role in the financial system through underwriting and distributing long-term debt and equity. Long-term financing may be accomplished either through a public offering or by a private placement.

Investment banks provide numerous other financial services, including merger and acquisition advice, financial policy analysis, research and technical assistance, securities trading, and structuring of sale-leaseback transactions. Many investment banks have also been brought under the umbrella of a parent financial holding company, allowing them to form relationships with affiliated financial institutions capable of providing additional financial services.

### **Credit unions**

Credit unions are voluntary, cooperative, non-profit financial institutions that are owned by their members. Credit union members typically share a definable community of interest or a common bond based on occupation, association or residence. The U.S.

also has corporate federal credit unions, which essentially operate as “bankers’ banks” and provide loan services to other credit unions.

Credit unions enjoy tax-exempt status and are exempt from several other statutes that restrict commercial banks because they were initially created to provide financial services to low-income consumers. Credit unions are restricted in the type and amount of loans they can provide. The Federal Credit Union Access Act of 1998 prohibits credit unions from making commercial loans totalling more than 12.25 per cent of assets. Credit unions have recently petitioned Congress to increase this cap to 27.5 per cent of assets and a bill to increase the cap to that amount was introduced in the House in February 2013. However, commercial banks have raised resistance, arguing that such an increase will create unfair competition for their products.

Like banks and savings associations, credit unions may be chartered under state or federal law. Credit unions are regulated by the National Credit Union Administration. The National Credit Union Share Insurance Fund provides insurance up to USD250,000 per member account for federal credit unions and qualified state-chartered credit unions.

### **Savings banks**

As with commercial banks, the U.S. utilises a dual banking system that allows the formation of a savings association under federal or state law. Federal savings associations were previously chartered and supervised by the Office of Thrift Supervision (OTS) and insured by the FDIC. The Dodd-Frank Act transferred the functions of the OTS to the OCC, FDIC, the Federal Reserve Board and the Bureau of Consumer Financial Protection on 21 July 2011. Federal savings associations are eligible to become

members of the Federal Home Loan Bank System, which extends credit to members and facilitates a secondary market for conventional mortgages. Federal savings associations are required to devote the majority of their assets to home mortgages, small business loans and consumer credit.

State savings associations are regulated by their state chartering authority and the Federal Reserve Bank (FRB). State savings associations may elect to become members of the Federal Home Loan Bank System. In order to obtain membership in the system, an association must be FDIC-insured and make long-term (15-30 years) mortgage loans to the satisfaction of the Federal Housing Finance Board.

Savings banks and savings and loan associations play an important role in channelling long-term funds into the housing industry. These funds are primarily invested in long-term mortgages on residential and commercial property.

### **Insurance industry**

The U.S. has the largest insurance market in the world, over USD1.7 trillion of premiums are issued annually. It has been the largest market since 2000. The insurance industry forms an integral part of the U.S. economy, and includes more than 2.3 million licensed insurance agents and brokers.

U.S. insurers are active participants in financial markets, and are among the largest purchasers of bonds, as well as numerous other short term financial instruments.

The U.S. has long been a centre of innovation and expansion for the insurance industry, and consequently, insurance is offered in nearly every conceivable field.

Insurance is regulated at a national level by the National Association of

Insurance Commissioners (NAIC) and the Federal Insurance Office (FIO). Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FIO:

- Monitors the industry to identify gaps and potential crisis
- Monitors the extent to which insurance is available to the public
- Makes recommendations to the federal reserve
- Coordinates efforts to develop federal policy relating to the insurance industry

It is worth noting that the Life and Health sector in the U.S. is particularly competitive, due to the privatised healthcare system.

### **Investment management industry**

The U.S. has a large and diverse investment management community and has traditionally been a world leader in both size and innovation. The industry collectively allocates approximately USD53 trillion in financial assets.

The industry suffered following the 2008 financial crisis and has undergone significant regulatory reforms in the subsequent years. Transparency is an increasing focus; investors are far more hesitant about utilising high leverage strategies. Despite this, investment management continues to be a highly profitable sector.

As a world centre for asset management, U.S. markets consist of a wide variety of companies that offer a comprehensive array of investment products. Professional asset managers invest in bonds, shares and other securities as well as assets such as real estate to produce various investment products. These products are widely used by institutions including pensions, corporations, and charities.



# Infrastructure

The overall quality and reliability of infrastructure is a critical factor for businesses across all sectors. The U.S. has one of the strongest infrastructures in the world, ranking fourth in the Nabarro world infrastructure index.

The U.S. has a good national ICT infrastructure and ranked eighth in the world for broadband quality.

The U.S. ICT infrastructure has a number of key features that allows it to meet the requirements of international companies:

- Ranking as one of the world's leading locations for its IT environment
- Broadband internet penetration is 79 per cent
- The largest number of secure servers in the world
- The largest 4G/LTE network in the world

With an integrated system of airports, seaports, rail and roads, businesses located in the U.S. can select the optimal method of moving people and freight between major cities and locations, both within the U.S. and internationally.

The main advantages of the U.S. transport system include:

- Excellent air links to internal and international locations from a large number of high quality of airports
- The largest nation-controlled access highway system in the world
- A large and comprehensive rail network facilitates the movements of huge amounts of goods across the entire length of the country
- Small regional commuter rail systems around metropolitan areas



- Over 150 mainland sea ports, as well as others on islands territories such as Hawaii and Guam
- Over 325 total ports of entry into the country, including airports, land borders and airports

The U.S. has a large and comprehensive highway network covering 6,406,504 km, which is owned and operated by local governments, with federal assistance. An interstate highway system joins a National highway system to provide comprehensive links on both local and national levels.

The U.S. has a high quality utility infrastructure, with access standardised and near universal. The

electrical power grid is far reaching and consistent, with energy prices remaining relatively low.

Though large, the U.S. power grid is one of the oldest in the world, and there have been recent calls for heavier government investment in its upkeep and expansion.

The U.S. Environmental Protection Agency (EPA) maintains active protection of environmentally significant sites and resources, and is responsible for the management of hazardous waste. The EPA actively cleans and manages brownfield and industrial sites. The U.S. maintains a large municipal waste disposal network.

This document is issued by HSBC Bank plc (the Bank). This guide is a joint project with Grant Thornton. It is not intended as an offer or solicitation for business to anyone in any jurisdiction. It is not intended for distribution to anyone located in or resident in jurisdictions which restrict the distribution of this document. It shall not be copied, reproduced, transmitted or further distributed by any recipient. The information contained in this document is of a general nature only. It is not meant to be comprehensive and does not constitute financial, legal, tax or other professional advice. You should not act upon the information contained in this document without obtaining specific professional advice. Whilst every care has been taken in preparing this document, the Bank and Grant Thornton makes no guarantee, representation or warranty (express or implied) as to its accuracy or completeness, and under no circumstances will the Bank or Grant Thornton be liable for any loss caused by reliance on any opinion or statement made in this document. Except as specifically indicated, the expressions of opinion are those of the Bank and are subject to change without notice. The materials contained in this document were assembled in January 2016 and were based on the law enforceable and information available at that time.

Grant Thornton refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton International Ltd (GTIL) and its member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. This publication has been prepared only as a guide. No responsibility can be accepted by GTIL for loss occasioned to any person acting or refraining from acting as a result of any material in this publication.

HSBC retains all responsibility for the translation of the content of this guide. In the event of any discrepancy or inconsistency between the English and translated versions of this Guide, the English version shall apply and prevail.