

Guide to do business in

# DELAWARE

**Chandrawat  
& Partners**





## ABOUT DELAWARE

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Delaware is a state in the Mid-Atlantic region of the United States, bordering Maryland to its south and west; Pennsylvania to its north; and New Jersey and the Atlantic Ocean to its east. On December 7, 1787, Delaware became the first state to ratify the Constitution of the United States and has since been known as The "First State." Since the turn of the 20th century, Delaware has also been a de facto onshore corporate heaven, in which by virtue of its corporate laws, the state is the domicile of over half of all New York Stock Exchange-listed businesses and over three-fifths of the Fortune 500.

## ADVANTAGES

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1.6 million businesses in the U.S. call Delaware their home. With a population of about 1 million, there are more businesses than people in the state! Some of the advantages have been laid down below:

### **Easy formation and operation**

Formation of business in Delaware presents one of the simplest, quickest formation processes in the country. It can be done online in under an hour with minimum hassle. The state's flexible business statute also allows you to file without disclosing personal information, so your privacy is protected and the members or partners of your business feel secure.

### **Residency is not required**

Officers, directors, and shareholders do not need to be residents of Delaware when they incorporate a business in this place.

### **Slimmed-down corporate structure**

Delaware law allows just one person to hold the role of officer, director, and shareholder, which is attractive to small businesses.

### **A Corporation court**

Delaware has a Court of Chancery, which handles only corporation cases. The judges are experts in corporate law, and the decisions from the court tend to be more predictable than those in other states.

### **Filings are processed quickly**

The process of filing takes place within a day which makes Delaware a corporation friendly state.

## SIMPLE TAX REGIME

In Delaware, following types of taxes are levied: income tax, corporate tax, federal self-employment tax, and franchise tax.

### Income Tax

As a business owner, Delaware income tax needs to be paid from the earnings that flow through to the personal tax return. It will be taxed at Delaware's standard rates, and there needs to be an application for regular allowances and deductions.

- Income from \$0 to \$2,000 is liable to tax at rate of 0%;
- Income from \$2,000 to \$5,000 is liable to tax at rate of 2.2%;
- Income from \$5,000 to \$10,000 is liable to tax at rate of \$66 + 3.9%
- Income from \$10,000 to \$20,000 is liable to tax at rate of \$261 + 4.8%
- Income from \$20,000 to \$25,000 is liable to tax at rate of \$741 + 5.2%
- Income from \$25,000 to \$60,000 is liable to tax at rate of \$1,001 + 5.5%
- Income from \$60,000+ is liable to tax at rate of \$2943.50 + 6.6% over \$60,000

### Corporate Tax

Every domestic or foreign corporation doing business in Delaware, are not specifically exempted under Section 1902(b), Title 30, Delaware Code, is required to file a corporate income tax return (Form 1100 or Form 1100EZ) and pay a tax of 8.7% on its federal taxable income allocated and apportioned to Delaware.

This tax is based on an equally weighted three-factor method of apportionment. The factors are property, wages and sales in Delaware. From the 1st of January 2020, the calculation for Delaware is based entirely on the sales or gross receipts factor on the Delaware corporate income tax return.

### Franchise Tax

The state of Delaware levies a tax on formed businesses and LLCs within the state for the privilege of incorporating in Delaware. The cost for LLCs is set at an annual fee of \$300, and must be paid to the Delaware Division of Corporations.

### Self-Employment Tax

All members or managers who take profits out of the LLC must pay self-employment tax. This tax is administered by the Federal Insurance Contributions Act (FICA), and covers social security, medicare and other benefits. The current self-employment tax rate is 15.3 percent.

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Following types of business entities are available in Delaware:

### Sole proprietorship

The simplest form of business enterprise is a sole proprietorship. The business is conducted by an individual after obtaining the necessary licenses, permits and other documents necessary to commence business. If conducted under a trade name, a "fictitious name filing" is required to notify the public of the use of a trade name by the sole proprietor.

Because there are no formation or operational formalities, a sole proprietorship is very simple to start, operate and to terminate. A sole proprietorship does not involve the creation of a legal entity separate from the proprietor. As a result, the sole proprietor is personally liable for all debts and obligations of the business and there is no continuity of business in the event of disability or death. The only way to transfer ownership of the business is through a sale of the assets used in the business.

### Limited Liability Partnership

Delaware authorizes a special form of general partnership known as a limited liability partnership. In a limited liability partnership, the partnership is required to register with the Delaware Secretary of State and maintain a specified amount of liability insurance. In return, partners are relieved of personal liability for obligations of the partnership.

Partners remain personally liable for their own negligence or misconduct and that of persons under their direct supervision and control. The limited liability partnership is attractive to professionals who want the benefits of the partnership form but without the personal liability for the professional misconduct of other partners and employees.

### Corporation

A corporation is an entity formed under state or federal law. It is probably the most commonly used and best understood form of business entity. It is separate and distinct from its owners, and may acquire, hold, and dispose of property, conduct its business, and sue or be sued in its own name. The relative rights and duties of the corporation, its owners, and its management are largely defined by statute and by the corporation's certificate of incorporation and bylaws.

## DELAWARE COMPANIES

### **Delaware statutory trust**

A Delaware statutory trust, another extremely flexible business structure, is an unincorporated association created by a trust instrument and the filing with the Secretary of State of Delaware of a certificate of trust. A governing instrument, which includes the trust instrument, provides for the governance of the statutory trust and the conduct of its business.

A governing instrument may provide for various classes of trustees and beneficial owners and define their respective rights, powers, and duties. A statutory trust has perpetual existence. It is managed by one or more named trustees who are not liable for the obligations of the statutory trust. The beneficial owners have the same insulation from liability as shareholders of a corporation, have an undivided beneficial interest in the statutory trust's property, and have no interest in specific statutory trust property.

### **Limited Liability Company**

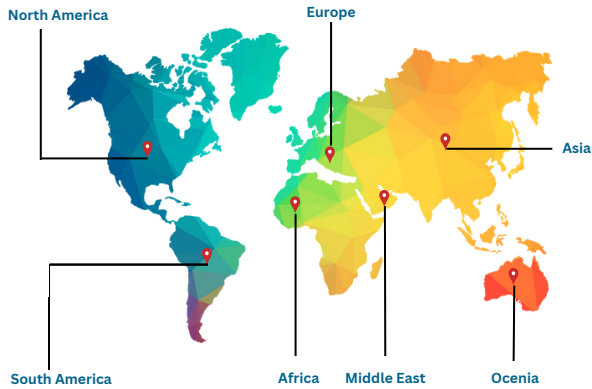
A limited liability company is a recent and flexible business structure available in Delaware. Formed by filing a certificate of formation with the Delaware Secretary of State, a limited liability company is a separate legal entity having the power to conduct a business, acquire, hold and dispose of property, and sue or be sued in its own name. A limited liability company may have as few as one member. Management may be by the members or by selected managers who may or may not be members themselves.

As with limited partnerships, the relation among members and the management structure are typically set forth in a written limited liability company agreement. A limited liability company agreement may provide various classes of members and managers and their respective rights, powers and duties and it may also set forth the manner of allocation of profits and losses of a limited liability company to its members.

### **General Partnership**

A general partnership is simply an association of two or more persons to carry on a business as co-owners. No formalities are required to create a general partnership. Thus, a general partnership may arise out of the conduct and actions of the parties, or pursuant to an oral agreement. It is prudent, however, to use a written agreement that specifies the respective rights and duties of the partners. Where no agreement exists, the Revised Uniform Partnership Act provides some rules for the creation, operation, dissolution and termination of a general partnership, but it is not a good substitute for an agreement.

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