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# EMBA Ticinensis

## Doing business in US

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The United States are a federal republic of presidential type, in which Federation and States have different areas of competence, whose boundaries, however, are not rigid and absolute.

According to the Tenth Amendment of the Constitution, those powers which are not expressly vested in the Federal Government, and which are not removed from the jurisdiction of the individual States by the Constitution itself, are reserved to the latter.

However, a State enjoys autonomous legislative power, with the express consent of the Government and within the limits set by it. In principle, it can be said that in the U.S. federal system a large part of private law falls within the competence of the State.



Matters governed by federal law, with exclusive jurisdiction of the federal courts:

- Trademark Law
- Copyright Law
- Antitrust Law
- Admiralty Law

Uniform regulation in all 51 states.

Other matters such as corporate law, agency law, contract law and employment law are governed by state laws and, therefore, although the basic principles may be the same, there are differences from state to state.



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<b>Italian exports to the United States</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>gen-nov 2019</b>	<b>gen-nov 2020</b>
<b>Total (mln. €)</b>	40.483,91	42.760,33	45.584,21	41.981	38.633
<b>Variation (%)</b>	9,6	4,9	7,5		-8

<b>Italian imports from the United States</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>gen-nov 2019</b>	<b>gen-nov 2020</b>
<b>Total (mln. €)</b>	15.011,1	16.659,99	16.999,17	15.802	13.760
<b>Variation (%)</b>	7,8	6,3	6,5		-12,9

**U.S. market**

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### What to sell:

- Information and Communication Services
- Chemicals
- Motor vehicles, trailers and semitrailers
- Machinery and equipment
- Wholesale and retail trade
- Repair of motor vehicles and motorcycles

### Where to invest:

- Electricity, gas, steam and energy from renewable sources
- Motor vehicles, trailers and semi-trailers
- Information and communication services
- Other transport equipment (ships and boats, locomotives and rolling stock, aircraft and spacecraft, military equipment)

Examining the "Doing Business 2020" ranking issued by the World Bank, the United States ranks 6<sup>th</sup> globally, achieving good scores on the following indicators:

- Starting a business (91.6/100)
- Getting credit (95/100)
- Trading across borders (92/100)
- Resolving insolvency (90.5/100)

However, one of the issues that plays against investment in the United States comes from the protectionist measures that have characterized the country's trade policy for some years now.





Generally, there are no restrictions on foreign ownership of a company incorporated in the United States, and the procedure is the same as for a U.S. resident.

Managing the company from outside the United States is allowed but may not be allowed within the United States without a valid work visa.

A U.S. address is not required to set up a business in the United States. The only state requirement related to physical address is having a Registered Agent, whose service allows you to incorporate or form an LLC in the United States. However, in order to open a bank account or obtain an EIN (Tax ID), a mailing address in the United States is required (not necessarily in the state of formation).



Company type	Business Corporation	Limited Liability Company
<b>Default tax status</b>	C-Corporation	<ul style="list-style-type: none"> <li>• One Member Sole Proprietorship</li> <li>• Two or More Members Partnership</li> </ul>
<b>Optional tax status</b>	S-Corporation with restrictions	<ul style="list-style-type: none"> <li>• C-Corporation</li> <li>• S-Corporation with restrictions</li> </ul>
<b>Incorporation documents</b>	<ul style="list-style-type: none"> <li>• Certificate of Incorporation</li> <li>• Articles of Incorporation</li> </ul>	<ul style="list-style-type: none"> <li>• Articles of Formation</li> <li>• Articles of Organization</li> </ul>
<b>Governance documents</b>	<ul style="list-style-type: none"> <li>• Organizational Minutes and bylaws</li> <li>• Opzionale: shareholder agreement</li> </ul>	Operating Agreement
<b>Ownership documents</b>	Share certificate for each shareholder	Member certificate for each member
<b>Tax documents</b>	IRS Form SS4 – Employer Identification Number request	
<b>Due diligence documents</b>	Federal law prohibits certain citizens (Iranians, North Koreans, Cubans), for instance, from owning U.S. assets, including U.S. companies.	

## Types of corporations



The basic steps for incorporation in the United States are:

- choose the corporate structure (non-U.S. residents cannot create S-Corporations);
- choose the state in which the company is to be incorporated;
- choose a name for the business; select a Registered Agent to receive and sign legal documents on behalf of the corporation; file a Certificate of Incorporation;
- once the company is formed, file a report and pay franchise tax;
- apply for an Employer Identification Number (required not only to hire workers, but also to open a bank account, pay taxes, or often to obtain a business license).

Eventual requests for:

- patent protection, trademarks, logos, etc;
- Special licenses and permits for services and goods sold;
- a work visa;
- financing or financial relief through state and/or federal incentives.



Local and foreign investments are not regulated in the United States. The Treasury's Committee on Foreign Investment in the US (CFIUS), which also has inspection powers, oversees the operations of foreign companies within U.S. borders.

Foreign investment is facilitated through various federal incentive programs. At state level, the range of these incentives is broader and has characteristics varying according to the type of investment, the location and the social protection measures connected with the investment itself.



## **Beretta USA's experience: public tender, trade regulation and export controls, incentives**

Stefano Itri,  
Vice-President Beretta USA BDT Sales  
Beretta USA Corp

- Type B1 visas

Among the main features of this type of visa is the possibility of conducting business in the U.S. on behalf of an Italian employer. The B1 visa is also granted to skilled workers who travel to the U.S. for business activities such as installation, repair or service of industrial and commercial equipment or machinery purchased from/by an Italian company or to train U.S. workers employed in the realization of the above services.



- Type E visas

Treaty Trader (E-1) and Treaty Investor (E-2) visas are nonimmigrant visas for nationals of countries with which the United States has a treaty of commerce and navigation and who travel to the U.S. to engage in substantial "trade" activity or to develop and manage the operations of a business acquired or created as a result of an investment in the country. They are typically used by managers who own the Italian company, for Executive and/or Managerial employees, and for qualified essential employees.



- Type L-1 Visas

The L-1 visa allows foreign companies with branches or subsidiaries in the United States to send their employees to the U.S. The L-1 visa is available to workers of multinational corporations that have offices in the United States while maintaining interests in their home country.





The authorization to travel on the basis of a National Interest Exception to the Presidential Proclamation is mandatory for all travelers from the Schengen area who are not U.S. citizens: from March 2, 2021 the requirements to obtain it became even more stringent.

Now, only travels to provide support in critical sectors are allowed.\*

Executives and managers who travel to direct operations, attend U.S. client meetings, and/or for routine travel will no longer be considered eligible for a national interest exception.

\* Chemical sector; communications sector; commercial facilities; machinery, electrical equipment and transportation equipment manufacturing; hydroelectric facilities; defense industrial base; emergency services; energy sector; financial services; food and agriculture; government facilities; health care and public health; information technology; nuclear sector; transportation sector.

**Nonimmigrant visas: NIE**

## **Doing business in the US: pros and cons. Two managers and two successful stories**

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