BRIS GROUP

UNITED STATES

LIMITED LIABILITY COMPANY (LLC)

CLIENT GUIDE 2026

State formation, federal tax classification, foreign ownership and compliance

Professional company formation and ongoing corporate administration

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USA Limited Liability Company (LLC) at a Glance

A **Limited Liability Company (LLC)** is created under the law of a U.S. state, not under one single federal LLC statute. State law governs formation, members, managers, registered-agent requirements and annual state compliance, while federal tax classification is governed by the Internal Revenue Code and Treasury Regulations. This guide explains the federal framework and the common position for internationally owned LLCs; the selected state's law and fees must always be confirmed separately.

Topic	Current legal / practical position
Foreign ownership	Most states permit an LLC to be wholly owned by non-U.S. persons; federal tax rules do not impose a general U.S.-resident member requirement.
Members	A single-member or multi-member LLC is possible, subject to the chosen state's statute.
Management	An LLC may generally be member-managed or manager-managed according to state law and the operating agreement.
Registered agent	The LLC normally must continuously maintain a registered agent/address in its state of formation.
Share capital	An LLC has membership interests rather than corporate shares; there is generally no federal minimum share-capital requirement.
Federal tax classification	By default, a domestic one-member LLC is disregarded for federal income tax; a domestic LLC with 2+ members is a partnership, unless corporate treatment is elected.
Potential 0% federal income tax	Possible in specific foreign-owned structures where the foreign owner has no U.S. trade/business, no effectively connected income and no other U.S.-taxable income; reporting can still be mandatory.
State taxes/fees	Annual reports, franchise taxes and state income/gross-receipts taxes vary materially by state.

Key Benefits for International Clients

- 100% foreign ownership is generally available in commonly used formation states.
- One-member structure is possible and can be simple to administer.
- Flexible operating agreement can govern ownership, management, distributions and transfers.
- Limited-liability protection under the selected state's LLC statute, subject to normal legal exceptions.
- No federal statutory minimum share capital; funding is documented as member contributions/loans according to the structure.
- Federal 'check-the-box' classification provides flexibility: disregarded entity, partnership, or election to corporate treatment.
- A foreign-owned single-member disregarded LLC can, in the correct facts, have **no U.S. federal income tax on foreign-source/non-ECI business profits**, while remaining subject to important IRS information reporting.
- U.S. legal entity, EIN and state registration can be commercially useful for international operations, subject to banking/payment-provider requirements.
- Domestic U.S.-created entities are currently exempt from FinCEN CTA beneficial-ownership reporting under the March 2025 rule.

The Important 0% Federal Tax Scenario

A foreign-owned U.S. LLC CAN legitimately have 0% U.S. federal income tax in the right circumstances

For a **single-member LLC treated as a disregarded entity**, federal income-tax consequences generally flow to its foreign owner. A nonresident alien is principally subject to U.S. federal income tax on **effectively connected income (ECI)** from a U.S. trade or business and on certain U.S.-source FDAP income. Therefore, if the foreign owner genuinely conducts the business outside the United States, performs no services/business operations in the U.S., has no U.S. trade or business/ECI and receives no other U.S.-taxable income, the LLC's foreign business profits may result in **0% U.S. federal income tax**.

This is **not an automatic 'LLC tax exemption'**. The conclusion depends on the owner, tax classification, source of income, where services and business activities are performed, U.S. agents/offices/personnel, U.S. real property, investment income and treaty rules. State taxes may also apply independently.

When 0% Federal Tax Does NOT Apply

- The foreign owner is engaged in a U.S. trade or business and the LLC generates effectively connected income.
- Services or substantial business activities are performed physically in the United States.
- The LLC/owner has a U.S. office, fixed place, personnel or other facts creating U.S. taxable business presence.
- The owner receives U.S.-source FDAP income, which can be subject to 30% gross withholding unless reduced by treaty/statutory rules.
- The business owns/disposes of U.S. real property interests or earns other specially taxable U.S. income.
- A multi-member LLC treated as a partnership has ECI allocable to foreign partners; section 1446 withholding can apply.
- The LLC elects corporate taxation; the tax analysis changes and corporate-level federal tax can apply.
- State-level nexus, franchise, income or gross-receipts tax applies even where federal income tax is nil.

Federal Tax Classification

Topic	Current legal / practical position
1 member - default	Domestic single-member LLC is generally a **disregarded entity** for federal income-tax purposes.

Topic	Current legal / practical position
2+ members - default	Domestic multi-member LLC is generally classified as a **partnership**.
Corporate election	An eligible LLC can file Form 8832 to elect treatment as an association taxable as a corporation.
S corporation	An LLC meeting all eligibility conditions can elect S-corporation treatment, but **nonresident alien shareholders are not eligible S-corporation shareholders**.
Employment/excise taxes	A disregarded LLC is nevertheless treated as a separate entity for employment tax and certain excise taxes.
State classification	State tax treatment may differ from federal classification.

Formation Requirements - State Law

Formation requirements depend on the state selected. Common elements include filing **Articles/Certificate of Organization** with the Secretary of State or equivalent office, appointing a registered agent, paying the state formation fee and maintaining the required state records.

Topic	Current legal / practical position
LLC name	Must comply with the selected state's naming statute and normally include LLC/L.L.C. or equivalent designation.
Organizer	The formation document is filed by an organizer; the organizer need not necessarily be the member.
Member(s)	One or more members according to state law.
Manager(s)	Optional manager-managed structure where permitted/selected.
Registered agent	Required in the formation state with a qualifying in-state registered address.
Operating agreement	Strongly recommended and mandatory/recognised according to the selected state's rules; governs internal rights and economics.
EIN	Usually obtained from the IRS for banking, reporting and tax administration; foreign-owned disregarded entities need an EIN for Form 5472 compliance.
Licensing	Federal, state, county or city licences/registrations can apply according to the actual business.

Capital & Contributions

An LLC does not have corporate share capital in the same sense as a corporation. Members contribute cash, property or other value according to the operating agreement and applicable state law. There is generally **no federal minimum paid-up capital** for an ordinary LLC. Some regulated businesses can have separate financial requirements.

No need to invent a nominal 'share capital'

For client documents, the ownership should normally be described as membership interests/percentages and member contributions rather than as shares and authorised share capital, unless the selected state documentation uses another permitted formulation.

Documents Required from the Client

- Passport/government-issued ID and recent proof of address for each member, manager and ultimate beneficial owner.
- For corporate members: incorporation, constitutional, management and full ownership-chain documents.
- Proposed state of formation and three proposed LLC names.
- Detailed business activity and countries where services/operations will actually be performed.
- Ownership percentages, member contributions and management structure.
- Tax residence of each foreign member/owner.
- Source-of-funds/source-of-wealth evidence required under AML procedures.
- Expected turnover, currencies, banking/payment providers, customers/suppliers and transaction profile.
- Details of any U.S. employees, office, warehouse, agents, inventory, real estate, customers or physical operations.

Foreign-Owned Single-Member LLC - Form 5472

0% tax does NOT mean 'no IRS filing'

A **foreign-owned U.S. disregarded entity** is treated as a domestic corporation for the limited reporting rules of IRC §6038A. It must file **Form 5472 attached to a pro forma Form 1120** when it has reportable transactions with its foreign owner or other related parties. Formation funding, contributions, distributions and other owner transactions can be reportable. The filing requirement can apply even where the LLC owes **zero U.S. federal income tax**.

The IRS instructions require the foreign-owned U.S. disregarded entity to use the owner's tax year, or the calendar year if the owner has no U.S. tax year. Form 5472 is attached to the pro forma Form 1120 and filed by the applicable deadline, with extensions available through Form 7004.

Form 5472 Penalties

Form 5472 compliance is particularly important because IRC §6038A provides substantial monetary penalties for failure to file a correct and complete form on time and for failures relating to required records. BRIS Group should therefore never market a foreign-owned LLC as a structure with 'no annual filing' without first distinguishing state filings, Form 5472/pro forma 1120 and the owner's own tax obligations.

Multi-Member LLC with Foreign Members

A domestic LLC with two or more members is generally treated as a partnership unless it elects corporate treatment. It normally files **Form 1065** and issues partner reporting schedules. If the partnership has effectively connected taxable income allocable to foreign partners, IRC §1446 generally requires partnership withholding even if no cash distribution is made.

The IRS currently states that section 1446 withholding on ECI allocated to foreign partners is generally based on the highest applicable rates: currently 37% for non-corporate foreign partners and 21% for corporate foreign partners, subject to the detailed rules, forms and exceptions.

U.S.-Source FDAP Income

A foreign owner can be taxable in the U.S. even without a U.S. trade or business where it receives certain U.S.-source **fixed, determinable, annual or periodical (FDAP)** income. The statutory rate is generally **30% on gross income**, unless an Internal Revenue Code exemption or applicable income-tax treaty provides a lower rate. Typical categories can include interest, dividends, rents and royalties, although important statutory exceptions exist.

State Taxes and Annual Fees

There is no single 'USA LLC annual fee'. Each state has its own formation fee, registered-agent rules, annual/biennial report, franchise tax and tax nexus regime. In addition, doing business in another state may require foreign qualification there.

State must be selected before quoting the client

Delaware, Wyoming, Florida, Texas and other states have materially different annual costs, privacy/public-record rules and tax obligations. The brochure therefore gives the correct federal framework rather than presenting one state's rules as applicable to every U.S. LLC.

FinCEN Beneficial Ownership Reporting - Current Rule

Domestic U.S. LLCs are currently exempt from CTA BOI reporting

FinCEN's March 2025 interim final rule changed the Corporate Transparency Act reporting regime. **Entities created in the United States, including domestic LLCs, are currently exempt from BOI reporting to FinCEN.** The revised reporting-company definition generally applies to certain entities formed under foreign law that register to do business in the United States.

This federal CTA exemption does not make ownership anonymous. States, the IRS, banks, registered agents, AML-regulated service providers and other authorities can require ownership/control information under their own rules. State public-record disclosure also varies.

EIN, Banking & W-8 Documentation

An EIN is commonly required for tax filings and banking/payment-provider onboarding. A foreign person does not need to become a U.S. resident merely to own an LLC. Banks and payment providers apply their own eligibility, physical-presence, address, KYC and business-substance requirements. Depending on the payment and tax classification, foreign owners may also need appropriate Forms W-8 rather than Form W-9.

Annual Compliance Checklist

- Maintain the registered agent and state registered address.
- File state annual/biennial report and pay franchise/annual fees where applicable.
- Maintain the operating agreement, member/manager and contribution records.
- Maintain adequate bookkeeping and supporting records.
- Maintain the EIN and IRS correspondence.
- For a foreign-owned disregarded LLC, review Form 5472/pro forma 1120 every year.
- For a partnership-classified LLC, file Form 1065 and partner schedules as required.
- Review section 1446 withholding where foreign partners receive allocated ECI.
- Review U.S. trade/business, ECI and FDAP exposure annually.
- Review state nexus, sales tax, payroll and foreign qualification in other states.
- Maintain licences and permits required by actual business activity.
- Maintain AML/KYC, sanctions, banking and source-of-funds records.

Why a USA LLC Can Be Attractive

Topic	Current legal / practical position
Foreign ownership	Common U.S. states allow 100% foreign ownership.
Flexible tax classification	Disregarded, partnership or corporate classification depending on members/elections.

Topic	Current legal / practical position
Potential 0% federal tax	Possible for qualifying foreign-owned disregarded structures with genuine non-U.S. business and no U.S.-taxable income.
No federal minimum capital	Member contributions can be structured commercially.
Flexible governance	Member-managed or manager-managed structures and tailored operating agreement.
Commercial profile	U.S. entity useful for many international counterparties and digital businesses.
Current CTA position	Domestic U.S.-created LLCs are currently exempt from FinCEN BOI reporting.

How BRIS Group Supports You

State selection - Review business facts and compare suitable states rather than selecting a state solely by advertised formation price.

LLC formation - Coordinate state filing, registered agent and formation documents.

Operating agreement - Coordinate an agreement appropriate to single/multi-member ownership and management.

EIN - Coordinate EIN application and IRS setup.

Foreign-owner compliance - Coordinate Form 5472/pro forma 1120 analysis and filing support for foreign-owned disregarded LLCs.

Tax/accounting - Coordinate federal/state bookkeeping and tax support according to classification and business activity.

Annual compliance - Coordinate registered agent, state reports/fees and corporate record maintenance.

Documents - Arrange state certificates, certified documents, Good Standing and apostille/legalisation where required.

Professional Fees & Quotations

Tailored quotation

This brochure is an informational guide to U.S. LLC formation and maintenance and is not a fee quotation. BRIS Group professional fees, state filing fees, registered-agent services, operating agreement, EIN, Form 5472/pro forma 1120, Form 1065, accounting/tax, annual state reports, Good Standing, certified documents, apostille and optional services are quoted separately. Clients may request a tailored quotation based on the selected state, ownership and business activity.

Client Preparation Checklist

- Preferred state or request for state-selection advice.
- Three proposed LLC names.
- Detailed business activity and countries where work will actually be performed.
- Member(s), ownership percentages and ultimate beneficial owners.
- Single-member or multi-member structure.
- Member-managed or manager-managed structure.
- Passport and recent proof of address for each relevant individual.
- Corporate documents for any legal-entity member.
- Member contributions/funding arrangements.
- Tax residence of every foreign owner.
- Expected turnover, banking/payment providers and transaction profile.
- Any U.S. staff, office, warehouse, inventory, agents, real property or physical operations.
- Any state sales-tax, payroll, regulated-activity or licensing requirements.

Important Legal Notes & Official Sources

This brochure is a general commercial guide and does not constitute U.S. federal/state legal, tax, accounting, securities, sales-tax, employment or regulatory advice. LLC law and annual obligations are state-specific. **A foreign-owned U.S. LLC can have 0% U.S. federal income tax in the correct circumstances, but it is not automatically tax-exempt.** The result depends particularly on federal tax classification, the owner's residence/status, source of income, U.S. trade or business, ECI, FDAP and state nexus.

Primary official sources reviewed: IRS LLC classification guidance and Publication 3402; IRS Effectively Connected Income and nonresident-alien taxation guidance; Instructions for Forms 5472 and 1120; IRS partnership/section 1446 guidance; FinCEN Corporate Transparency Act / BOI interim final rule and current BOI guidance. State formation law and fees must be checked for the state selected by the client.

Information reviewed: August 2026. Federal tax, FinCEN, state formation, annual fees and state tax rules will be reconfirmed before formation and annual compliance work.

PREPARED BY BRIS GROUP

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