

# Opening a U.S. Bank Account Can be Much More Onerous than you Think and Can Delay Your Cross-Border Transaction or Growth Plans in the U.S.

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French investments in the U.S. vary largely in terms of scale and nature, but whatever it is a small French startup only creating an even smaller U.S. subsidiary or a large French corporation acquiring and restructuring an even larger U.S. group, they all face the same hurdle at some point: opening a U.S. bank account to run their newly-created or newly-acquired business.

Be aware that U.S. banks require corporations, partnerships and LLCs to have an Employer Identification Number (“EIN”) to open an account. Therefore, until you have an EIN, you cannot open a bank account, which could affect your transaction’s agenda, especially in deals where time is of essence (which is almost always the case).

To obtain an EIN, you need to submit to the Internal Revenue Service (the “IRS”) the SS-4 Form named “Application for Employer Identification Number” (the “Form”) (see link below). The Form requires general and specific information about the company that is applying to the EIN (the “Applicant”), which is why the Form should be filled out by your counsel. In particular, the Form ask to provide with the tax classification of your business, the name of a responsible party of the Applicant (usually an officer of the Applicant), as well as the social security number (the “SSN”) of that responsible party.

## Who Should Be The Responsible Party?

In a domestic-only transaction, there would almost always be a U.S. citizen appointed both as director or officer of the company and as responsible party so that this person can ultimately indicate his or her SSN on the Form. In such a case, the Form can be submitted online, and you can obtain your EIN the same day.

French people, however, do not usually have a SSN (excluding French-American citizens and French bearers of certain types of U.S. visas), which is a common situation in a typical French-American transaction.

In such a case, although a French citizen and non-SSN holder can be designated as the responsible

party for the purpose of the Form, the process to obtain the EIN is slightly different, that is, the Form must be submitted through mail or fax and not online and obtaining the EIN can take 1 to 2 weeks following mailing or faxing of the Form to the IRS.

This process may delay the entire transaction and affect your timeline for the growth of your operations in the U.S. too, so that it necessary to always flag this step early on in the preparation of the transaction.

## Who May Open The Bank Account?

Usually, the responsible party (i.e., the signing party of the Form) and the person who actually opens the bank account (i.e., who signs the bank account agreement with the bank) are the same person: an officer of the Applicant. Please note that U.S. bank will require an in-person meeting to open a bank account so if a French person is the officer of the Applicant, this person will have to travel to the U.S. to open the bank account. Therefore, you should also take this into account since this step can likely affect your timeline. However, to avoid any delays, the Applicant can also add a specific language in its incorporation documents authorizing one of its U.S.-based officers (if any) to open a bank account on behalf and for the Applicant.

Click for a pdf of the [SS-4 Form](#).

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