

# Business formation considerations: Delaware vs. Florida and related cybersecurity concerns

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Kennedys

# Agenda

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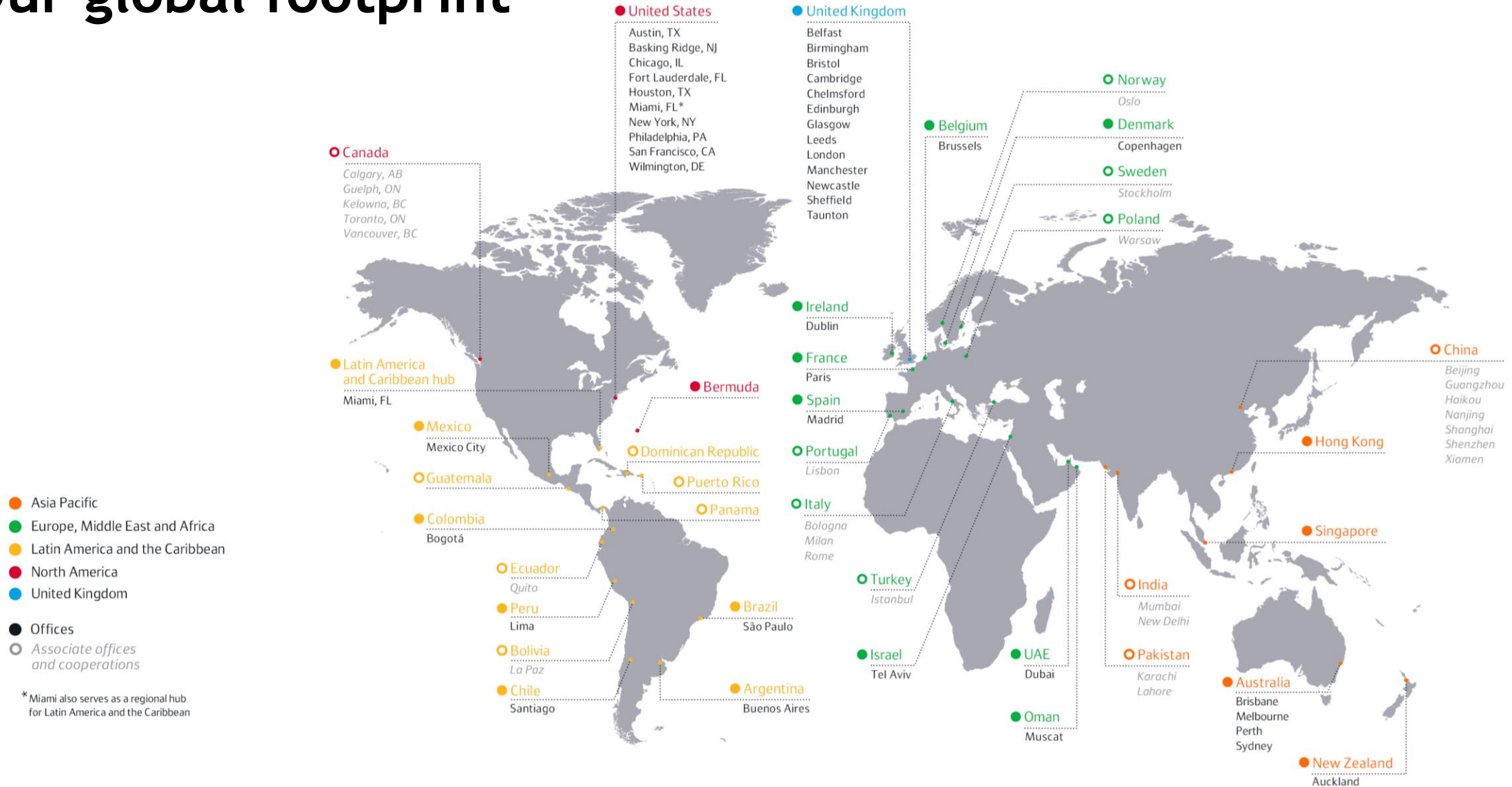




# About Kennedys

Kennedys

# Our global footprint



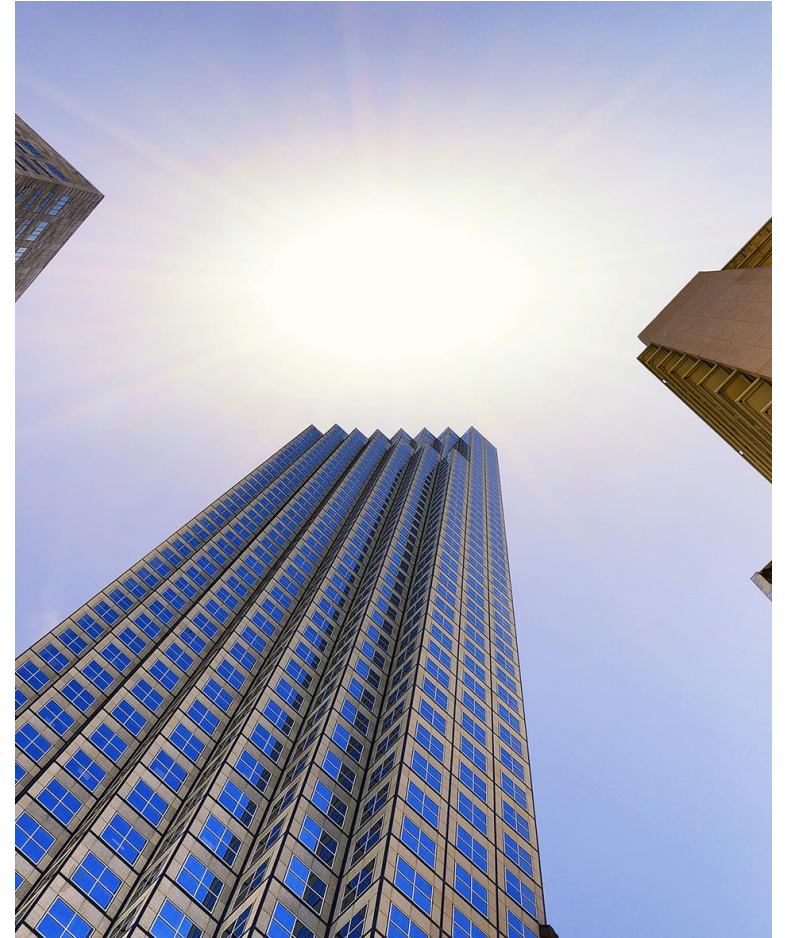


# Pros and Cons of forming a company in Florida and Delaware

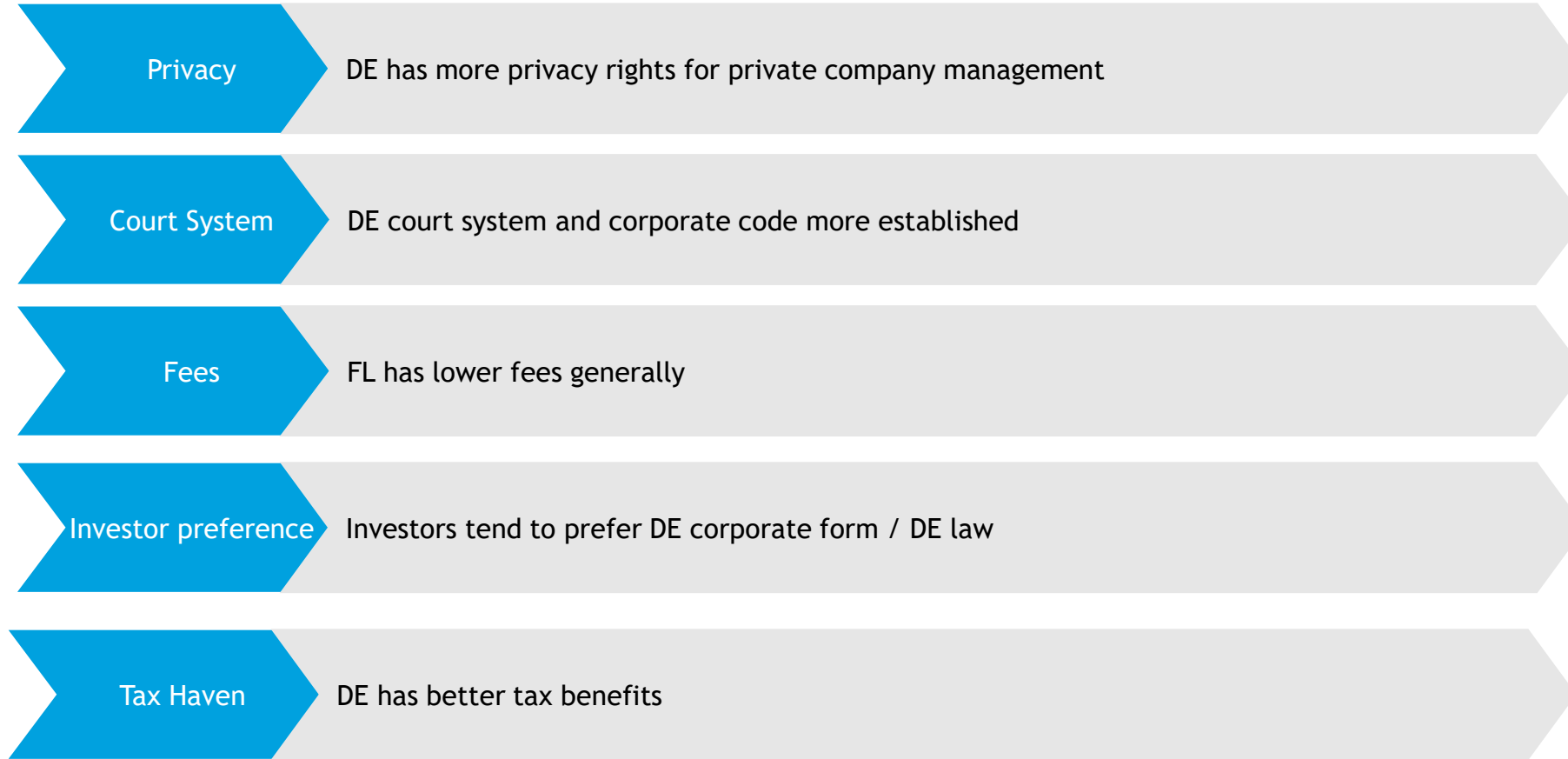


# Common grounds

- Ease of formation
- Only need registered agent in-state
- Can act by resolution/consents
- Formed with one shareholder (foreigner or not)
- Same person can be shareholder, director, and officer



# Areas of divergence



# Conclusion

## FLORIDA

For local businesses,  
probably best to form  
locally

## DELAWARE

If doing business beyond your  
state or intend to bring on  
investors, Delaware has  
advantages

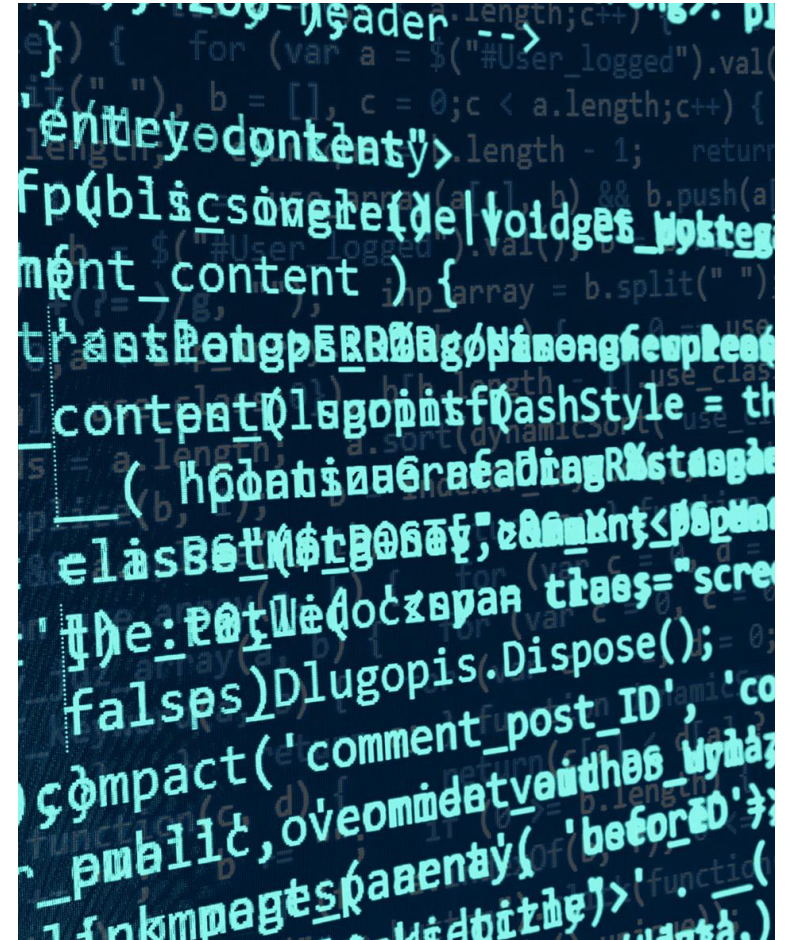




# Cybersecurity and Privacy considerations

# Cybersecurity vs. Privacy

- **Cybersecurity** relates to measures taken to protect the confidentiality, availability, and integrity of personal data processed by your organization, business information belonging to your organization, and your organization's information systems.
- **Privacy** relates to the collection, use, disclosure, and storage/retention of personal data.



# US Notification requirements

## State Data Breach Laws



## Industry Specific Federal & State Laws

- Healthcare
  - HIPAA
- Public Company
  - SEC
- Insurer/Financial Services
  - NYDFS
  - NAIC Model Law
- Banking
  - FINRA



# Florida

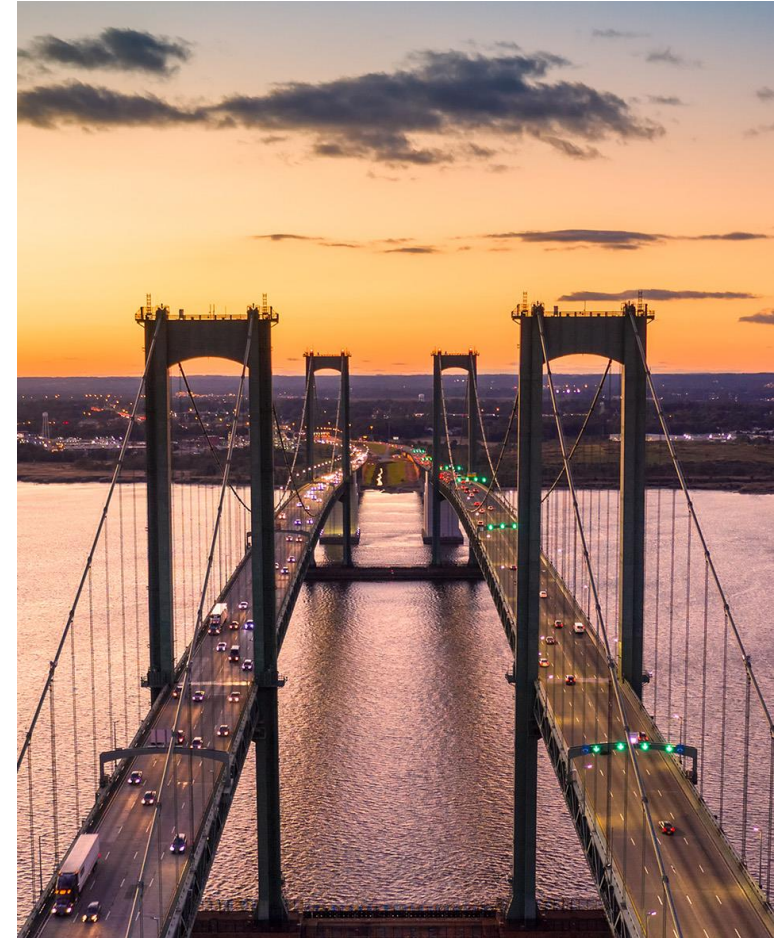
- Federal Digital Bills of Rights (FDBR) requires consent before selling sensitive data.
  - Other requirements apply if > \$1B
  - Directed at 🗣️
- Florida Information Protection Act:
  - Any organization conducting business in Florida must take “reasonable measures to “protect and secure” electronic personal data
  - Breach = access





# Delaware

- Delaware Personal Data Privacy Act
  - Eff. Jan. 2025
  - DPDPA applies to any organization that conducts business in DE and controls or processes data of 35K+ DE residents or 10K+ and derives 20% of gross revenue from data sales
- Breach notification law
  - Any organization conducting business in DE must have “reasonable practices and procedures” to protect personal data
  - Breach = acquisition



# Lei Geral de Proteção de Dados Pessoais (LGPD)

- The LGPD has an extraterritorial effect, so regardless of where you establish your company in the US, if your business aims to offer or provide goods or services to people in Brazil, the LGPD applies to you.
- The LGPD requires you to adopt security, technical and administrative measures able to protect personal data from non-authorized access and from accidental or illicit destruction, loss, change, modification, communication, or any type of improper or illicit processing.
- Personal data as information related to an identified or identifiable physical person, a broad definition.

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# Lei Geral de Proteção de Dados Pessoais (LGPD)

- Breach notification requirements.
- Who, how, and when to notify?
- Article 52 establishes that any infractions of the rules established in the LGPD, can be subject to administrative penalties applied by the ANPD.
- Regulatory activity.



# Thank you!



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## Kennedys

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