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CATALYZE

Resource
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Contents

Key decisions

So you're ready to form a company - what next? Incorporation documents are deceptively simple but require key decisions from the founders such as the type of company, where to incorporate and how to allocate initial ownership.

State of incorporation and type of company

VC-backed companies are typically incorporated in Delaware, a state focused on business and recognized for its well-developed case law. Investors are most familiar with Delaware's company-favorable statutes that are updated regularly to remain at the cutting edge of corporate governance.

In addition to being incorporated in Delaware, investors may require that entities be structured as corporations as a condition to funding, as venture capital funds (VCs) are often restricted from investing in pass-through entities such as LLCs. Founders of a startup who plan to seek investments from VCs will save time and money during the fundraising process by carefully choosing the appropriate state of incorporation and entity type from the start.

Ownership; initial capitalization

Who will serve as the company's officers and directors? If there is more than one founder, how will ownership be split? These decisions will determine who initially handles day-to-day operations and related decision-making, and who holds the power to approve – or veto – certain corporate actions.

(Also see Hiring Employees and Equity Incentives)

Potential pitfalls

Below are some common mistakes founders often make at the formation stage. By taking certain actions now, founders can avoid creating major issues or costly clean-up headaches.

- Attempting to form a company with a name that is already being used elsewhere

  Check state databases, including states where the company plans to do business; search the internet for similarly named companies in the startup's space.

- Incorporating as an LLC, or in a state other than Delaware, if the founder plans to raise venture capital

  See key decisions above.

- Over-complicating business terms and documents at the time of formation

  Consider time and cost to implement and maintain; potential investors may reject non-standard approaches and require costly changes.

- Waiting to issue founder stock

  Issue founder stock as early as possible. A founder may owe taxes or have to pay for shares out-of-pocket if stock is issued once it has value (e.g., after the company has received a financing term sheet).

- Violating the terms of employment agreements with a current or previous employer

A founder's engagement with a current or previous employer may overlap with that founder's employment with the new entity; potential investors will scrutinize any ambiguity that may impact the new entity's claim to essential intellectual property.

- Soliciting employees from a former workplace

  Before inviting former colleagues and others to work for the new entity, review any agreements they may have with current employers to avoid violating restrictive covenants.

- Failing to transfer all essential intellectual property created prior to formation to the new entity

  It is essential that anyone involved in the creation of a company's intellectual property transfer ownership of that property to the company, typically in exchange for stock or nominal cash payment, by executing a Technology Assignment Agreement.

- Neglecting to obtain signed Proprietary Information and Invention Agreements (PIIAs) from all founders/early employees that assign all intellectual property created after formation to the new entity

  It is important that all service providers – employees (including founders), advisors and consultants – assign to the company all technology created during their tenure; PIIAs also contain confidentiality provisions to protect the company's proprietary information.

- Assuming there will never be disagreements among the founders

  Anticipate conflict and establish terms regarding corporate governance and ownership accordingly; subject founders' stock to time-based vesting.
  (Also see Hiring Employees and Equity Incentives*)*

Establish best practices

Prospective investors interested in your business will want to "look under the hood." Click here for an example of questions an investor may ask while considering a pre-seed investment. Establishing best practices from the start will simplify the fundraising process and get cash into your bank account faster.

Learn about the Corporate Transparency Act and required filings

(*NOTE: Check in with your Gunderson team as to current status and filing requirements*)

For companies formed after January 1, 2024 and before January 1, 2025, a founder has 90 calendar days from the date of the filed certificate of incorporation to submit information to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and obtain a FinCEN identifier (for companies formed on or after January 1, 2025, the initial filing deadline is 30 calendar days); keep information up-to-date on a going-forward basis.

Assign and protect intellectual property (IP)

A top diligence issue for VC investors is ensuring the company owns or has rights to all of the IP needed to run its business.

(Also see potential pitfalls above)

Manage contracts and agreements

Confirm company agreements are finalized, dated and signed by all parties; create a system to track contracts and their terms, noting those with non-standard/unusual provisions; save all paperwork related to the company's incorporation, technology assignment, equity issuances, etc.

Solicit board of director approvals

Certain actions – *e.g.*, appointing officers, issuing/repurchasing stock, granting options, incurring debt (convertible notes, SAFEs) – require the approval of the company's board of directors via written resolutions, even if there is only one director. Your Gunderson team will assist in creating your company's electronic "corporate record book" and drafting resolutions for board approval.

Consider company location and "doing business"

A company incorporated in Delaware may be headquartered in any state, although recent changes in the workplace and "hybrid" work have impacted the analysis as to whether and where companies establish physical offices. Regardless, a company must qualify to do business in states where it has operations and comply with employment laws in the states where its employees reside.

Comply with securities laws

The issuance of any security – stock, options, convertible notes, SAFEs – requires either the registration of the security with the U.S. Securities and Exchange Commission or a valid exemption from such registration. Consult with your

Gunderson team before offering or issuing any security to ensure compliance with federal and state securities laws.

Seek assistance with international operations

Consult with your Gunderson team if you plan to expand your business outside of the United States, hire non-U.S. service providers (including consultants), or enter into any related contract.

Obtain basic insurance coverage

- General liability and business property at the time of incorporation (even if fully remote)
- Employment practices liability when first employees are hired; workers compensation is required in all states where employees reside
- Error & omissions and cyber insurance as the product develops and the company has customers

Your Gunderson team can recommend providers that specialize in insurance and scale their products for technology start-ups.

Related resources

Hiring Employees and Equity Incentives

What founders need to know before capitalizing a company, hiring employees and offering equity incentives.

Pre-seed Financing

Guidance for initial fundraising, related key decisions, and recommended best practices.

Intro to Financing and the Venture Capital Ecosystem

Types of investors providing capital to startups, basic terminology regarding the structure and focus of venture capital investors and an overview of basic types of venture capital financings.

Preparing for a Venture Financing

Tips and insights on ways to prepare for an upcoming equity financing.

Featured Insights

FIRM NEWS

Gunderson Dettmer Launches Catalyze: An Exclusive Community Platform Built to Support and Empower Companies Throughout the Startup Journey

INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

CLIENT NEWS

Gunderson Dettmer represented Statsig in its $1.1B acquisition by OpenAI

RESOURCE

Example Pre-Seed Due Diligence Checklist

RESOURCE

6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)

INSIGHTS

Ryan Purcell Guest-Authors “6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)” for Not Another CEO

INSIGHTS

Client Insight: Quarterly Employment Law Update – Summer 2025

INSIGHTS

Private Market Liquidity: A Review of Tender Offers

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Client Insight: Eighth Circuit Vacates FTC's "Click-to-Cancel" Rule

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Client Insight: One, Big, Beautiful Bill Enactment: Impacts To Qualified Small Business Stock

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Client Insight: "Click to Cancel" Amendments to the FTC Negative Option Rule and California's Automatic Renewal Law

FIRM NEWS

Gunderson Dettmer Practice Areas and Partners Recognized by Chambers USA 2025 Guide