

New Corporation

Corporate Formation

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Corporations are formed under state, not federal, law

Therefore, in forming a corporation, you need to choose the state in which to form.

The state in which you primarily do business is always a good choice in which to form.

Delaware is usually a good choice because it has laws that make running the corporation easier for management.

Some people choose Nevada because it has liberalized its corporate laws and does not impose a state income tax.

However, Nevada does not have the rich history of decisional law that Delaware has and, as long as you do business in California you will be subject to California taxes.

In the articles, we will include (i) the name of the corporation, (ii) the number of authorized shares, (iii) a very general statement of the purpose of the corporation, (iv) the identity of the person upon whom to serve lawsuits, and (v) a few other things.

Depending on the state in which you incorporate, you might need to include a corporate designation like "Inc." "Corp." "Incorporated" "Corporation" or even "Ltd." in your corporate name.

Additionally, corporate names are awarded based upon lack of confusion with other corporate names in the state in which you incorporate. Just because a name is available does not mean that another company does not have rights to the name under trademark law.

In forming a corporation, we will file Articles of Incorporation in the jurisdiction in which you are incorporating.

The incorporator will then (i) appoint your initial directors, (ii) authorize indemnification of your initial directors, (iii) adopt Bylaws, and (iv) resign.

Now you'll have a properly designated Board of directors, indemnified by the corporation, with Articles and Bylaws to govern their actions, and ready to go!

We'll next document several important Board actions.

Among these, the two most important will be (i) appointing the initial officers, and (ii) authorizing the sale of founders stock.

In California you must appoint (i) a President and CEO, (ii) a Secretary, and (iii) a Treasurer or CFO.

You can appoint as many other officers as you want, but we must file a statement with California within 90 days of incorporation naming the three officers listed.

Some states have par value designated for their stock and some do not. In non par value states we will designate the stock as "no par." In par value states we will designate a very low par value, like \$0.0001.

Par value is an antiquated concept, but is still used by states like Delaware and Nevada to impose certain taxes, so you need to be careful what par you choose.

We will document stock purchase agreements between the newly formed corporation and the founders.

It is not legal to have the corporation give away stock, but usually the founders pay a very low price (like \$0.0001) for an aggregate of about 5,000,000 shares of Common Stock.

We can discuss the capital structure that is right for you, but 5,000,000 founders shares (or any similar number) should give you flexibility concerning (i) engaging in rounds of financing, (ii) structuring an option plan, and (iii) going public.

We take care of filings with public agencies such as (i) filing the articles of incorporation, (ii) filing a notice of officers and directors, (iii) perfecting securities exemptions for the sale of founders stock, (iv) getting you a federal tax ID number, and (v) perfecting a subchapter S election if that's what you want.

With Articles filed, Bylaws adopted and ratified, directors appointed and indemnified, founders stock sold and all filings made, you're fully formed and ready to do business!