



Orrick Legal Guide to Equity for:

Stripe Atlas



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Welcome

Welcome to the Orrick Legal Guide to Equity for Stripe Atlas. We've spent a lot of time advising entrepreneurs, and have written this guide to help you navigate the legal journey of starting and managing a company.

The decisions you make as you set up your company will have significant consequences, and we strongly recommend working with legal counsel who can provide customized advice.

Section A: Incorporating a Company

Stripe Atlas enables you to incorporate a company in Delaware. Based on the information you provide in the account application, Stripe Atlas will generate incorporation documents from Orrick's library of standard legal forms. This section walks through some background on incorporating a U.S. company and some of the key decisions you will make as you complete the Stripe Atlas application.

Is there a minimum number of required stockholders for a U.S. corporation?

There are no requirements that a U.S. corporation have more than one stockholder nor that a U.S. LLC have more than one member.

Do U.S. laws require that one stockholder or LLC member be a U.S. citizen or permanent resident to form a U.S. company?

No. There are no U.S. federal or state laws that require a stockholder or LLC member to be a U.S. citizen or permanent resident to form a U.S. company. Non-U.S. nationals can own all of the shares of a U.S. corporation or be the sole members of a U.S. LLC. Nor must a member of the corporation's Board of Directors or corporate officers own any shares (like "directors' qualifying shares"). Similarly, all of the members of the U.S. corporation's Board of Directors and all of its officers can, if so desired, be non-U.S. nationals and U.S. non-residents.

How many shares should my corporation have?

The number and types of shares authorized in a start-up corporation's initial Certificate of Incorporation is somewhat arbitrary. We generally suggest that a start-up initially authorize sufficient shares for initial founder grants and for subsequent employee and consultant grants if it is being organized as a separate company. A subsidiary company needs only a small number of authorized shares since they will all be owned by the parent. Stripe Atlas sets the default to be 1,000 shares of Common Stock (sometimes referred to in other countries as "ordinary shares" or "voting stock") for a subsidiary company, and 10,000,000 shares of Common Stock for a new company. Having a very large amount of authorized stock can have an impact on the annual Delaware franchise tax (see detailed discussion below).

In any event, should you wish to have a greater or lesser number of authorized shares in the future, such a change is easily effected through an amendment of the Certificate of Incorporation to increase the authorized shares of the class of stock that will be sold, if there are insufficient authorized shares.

All (or vast majority if you decide to use Founders Preferred Stock -- see below for more) of the initial shares should be Common Stock because future investors will demand preferred stock with rights and preferences superior to the Common Stock.

What is “par value”?

Par value in most states, including Delaware, is a relic of their corporate statutes that typically comes into play in calculating franchise taxes – it is the minimum issue price for a share of stock. There is very little meaning to par value; because par value has an impact on the annual franchise tax amount due for Delaware corporations, it is generally advised to choose a small number.

The default par values for the Stripe Atlas forms are:

- for a new company: 10,000,000 shares with a par value of \$.00001 per share
- for a subsidiary: 1,000 shares with a par value of \$.1 per share

If you select a different number of shares, Atlas will adjust the par value to keep the product of the par value and the number of shares below \$100. (So, for example, if you choose to issue 5,000 shares, the par value will be \$.01 per share.)

Section B: After Incorporation

How do I issue stock to founders or the parent company?

The documents you sign with Stripe Atlas incorporate the company, appoint the officers and board, and set the basic rules for its operation.

The next step is to issue stock to the initial stockholders (which can be founders, or to a parent company if the new corporation is set up as a subsidiary). For a limited time after you incorporate on Stripe Atlas you will have access to the Stripe Atlas product for issuing founders' stock. If you elect not to use the Stripe Atlas founders' stock issuance product, you will also have access to annotated versions of Orrick's standard templates, which you can also use for this purpose, through your Stripe Atlas dashboard.

If you are setting up your company as a subsidiary of a foreign parent you can use a very short form stock purchase agreement to sell all of the authorized shares of the subsidiary to the parent. Orrick's standard templates are available through your Stripe Atlas dashboard for this purpose.

If you are setting up a new entity, to be owned by founders, employees and investors you should use the longer form stock purchase agreement to sell shares to the initial founders. You can read further on some of the choices to make in the "Stock" section below.

For either type of entity, all issuances of stock must be approved by the Board of Directors – either at a meeting in which a majority of the Directors are present and approve, or by a unanimous written consent.

Section C: Maintaining the Company

What records should I keep?

The following records should be maintained:

- Certificate of Incorporation (corporation) (file stamped by the state), including all filed amendments
- Bylaws (corporation)/Operating Agreement (LLC)
- Qualifications to do business in states other than the state of incorporation
- Organizational Resolutions of the Board (adopting bylaws, appointing initial officers and authorizing any other actions that require formal approval such as issuance shares to founders or parent of subsidiary)
- Stock Purchase Agreements and any other agreements among stockholders
- Evidence of any filings under securities laws
- Copies of minutes from all Board meetings and stockholder meetings
- Copies of all Board and stockholder resolutions, adopted either at meetings or by written consents
- Stock Ledger
- Option Ledger (listing every option holder, type of options held, number of options, vesting schedule and exercise price)
- Capitalization table that includes all stockholders and holders of other securities that are convertible into stock such as options, warrants and convertible promissory notes
- Copies of all issued stock certificates
- Confidential Information and Invention Assignment Agreements (in which founders, employees and contractors have assigned all intellectual property rights to the company)
- Evidence of intellectual property filings/registrations (for any trademarks, copyrights, patents and domain names)
- All contracts and amendments, including non-disclosure agreements, employment agreements and contractor agreements (fully signed and complete copies)
- Option or equity incentive grant documentation (including Board approvals)
- Financial statements and tax records
- Annual or reports or statements of information filed with any states and any other documents filed with states

The best practice is to maintain them in an organized electronic fashion. Some companies organize .pdf versions of their documents on cloud services like Dropbox or Box.

What is a minute book?

The minute book of a company should contain its Certificate of Incorporation, Bylaws, and minutes or written consents covering all meetings and actions of the directors, committees of the Board of Directors, and stockholders. It is very important that the minute book be kept current and that it contain all necessary documentation. In financings, counsel for the investors or underwriters will often review the minute book carefully in connection with their due diligence investigations. Furthermore, up-to-date minute books will aid in establishing that corporate formalities were observed, which will be helpful in avoiding any stockholder liability problems. Many companies use an electronic minute book organized with.pdf versions of the relevant documents.

What agreements should I have with my employees?

You will likely want to either have an offer letter or employment agreement and a CIIAA (see below) with each employee. An employee offer letter is used with most rank-and-file employees. In contrast, an employment agreement is used with a more limited set of key employees.

Every business has different needs when it hires a new employee. But regardless of company size or type of industry, it's a good idea to present new hires with an offer letter that outlines some of the critical terms of the employment relationship to set initial expectations, introduce your culture, and minimize future legal risk. Most offer letters will include:

- opening paragraph with a welcome to the potential new hire, specifying the title of the position offered, the name of the person to whom the position reports and the primary duties;
- the compensation (specified as salary or hourly wage), and that compensation is paid X times monthly in accordance with the regular payroll process;
- paragraph explaining that employment relationships with the company are “at will” and what that means
- paragraph explaining that the company requires all employees, as a condition of employment and continued employment, to sign a CIIAA
- final paragraph letting them know how long they have to accept the offer and providing a contact name in case they have any questions
- below the company signature on the letter, include an acknowledgment that the person has to sign to show their acceptance of the offer.

Employment agreements will amplify the topics covered in an offer letter and may discuss bonus potential, severance, equity grants, etc.

Note that many U.S. states provide significant protections for employees and certain contract provisions (like a covenant not to compete following employment) may not be enforceable and may even invalidate other portions of the agreement. If you expect to have significant employees in U.S. states, you should seek competent advice regarding labor and employment laws.

Orrick's standard documents for employee agreements can be found at the [Start-Up Forms Library](#) or through your Stripe Atlas dashboard

What is the CIIAA?

Many start-up companies have products which involve numerous patent, proprietary, and confidential information implications. In order to protect its rights in such information, a corporation will often include protection of such matters in a Confidential Information and Inventions Assignment Agreement (or CIIAA) with all employees.

In such agreements, the employee will often agree, among other things, that:

- employee will not use any confidential information of the company (including inventions, discoveries, concepts and ideas which are useful or related to the business of the company and which are conceived by the employee during the period of his or her employment);
- employee will disclose promptly to the company any inventions he or she may make, develop, or conceive during the period of his or her employment, with an agreement that all such inventions shall be and remain the property of the company;
- all records and other materials pertaining to confidential information, and all other records or materials developed by the employee during the course of employment, will be and remain the property of the company and, upon termination of his or her employment, will be returned to the company; and
- employee's employment with the company does not and will not breach any agreement or duty which the employee has with anyone else, nor will the employee disclose to the company or use in its behalf any confidential information belonging to others.

You can see Orrick's standard CIIAA at the [Start-Up Forms Library](#).

Section D: Stock

After you incorporate your company using Stripe Atlas, you should issue shares to stockholders. Stripe Atlas provides two ways for you to issue stock to founders: through the Stripe Atlas founders' stock issuance tool, and on the Orrick templates (available through your Stripe Atlas dashboard).

Issuing stock is important and complicated, and we recommend consulting your legal counsel, particularly if you intend to issue stock under a Stock Plan or pursuant to a Stock Option Agreement.

How do I issue stock to the parent if my company is simply a subsidiary?

If the company is going to be a subsidiary completely owned by a foreign parent, you can issue shares to the parent using a very short form stock purchase agreement to sell all of the authorized shares of the subsidiary to the parent. The subsidiary company's Board of Directors must act to approve the sale and issuance of shares. It can do so at a meeting in which a majority of the Directors are present and approve, or by a unanimous written consent. You can obtain Orrick's standard templates for this purpose on your Stripe Atlas dashboard.

How do I issue stock to the founders?

If you plan to have the company owned by founders, employees, investors and others, the section below walks through some of the nuances of issuing stock.

If you incorporate through Stripe Atlas, for a short time following incorporation you will have the opportunity to use Stripe Atlas to issue stock to the founders, using the founders' stock issuance tool.

Alternatively, you can access Orrick's standard forms for issuing stock either through your Stripe Atlas dashboard or at the [Start-Up Forms Library](#).

Stock is issued to founders through the use of a stock purchase agreement that will set the price of the stock, include any transfer restrictions, rights of first refusal and lockups, and may contain vesting provisions. Each of these provisions is explained in greater detail in the questions below. The company's Board of Directors must act to approve the sale and issuance of shares to founders or others. These approvals can happen at a meeting in which a majority of the Directors are present and vote to approve, or by a unanimous written consent by all of the Directors.

How do I issue stock to employees and other service providers?

Stock or options to purchase stock are usually issued to employees (other than the founders), advisors and consultants under a stock plan. The establishment of a stock plan and the subsequent grant of restricted stock or stock options under a stock plan require board approval. The company must reserve a specified number of shares under the stock plan; there must be authorized but unissued shares in the certificate of incorporation in order to reserve these shares. In addition, the establishment of a stock plan and the reservation of shares under the plan must be approved by a company's stockholders (typically by written consent).

Orrick's standard forms for establishing a stock plan are available either through your Stripe Atlas dashboard or at the [Start-Up Forms Library](#), including:

- Stock Plan
- Restricted Stock Purchase Agreements
- Stock Option Agreements
- Board and Stockholder Approvals of Stock Plan.

The discussion below regarding vesting, acceleration of vesting and related matters also apply to stock and options issued under a stock plan.

How many shares should I issue to the founders?

Any number of shares, up to the total number authorized in the certificate of incorporation, can be issued to the founders. However, companies often find it useful to retain some authorized but unissued shares in the certificate of incorporation, to be available for (a) reservation under a stock plan and (b) future issuances outside the stock plan (such as to accelerators like Y Combinator).

One common approach among Silicon Valley companies is to (i) issue 80% of the authorized shares to the founders, (ii) reserve 10% of the authorized shares in a stock plan, and (iii) leave the remaining 10% unissued and un-reserved, for possible future issuances outside the stock plan. A common authorized share total for a new company in Silicon Valley is 10,000,000 shares; under this model, 8,000,000 shares would go to the founders, 1,000,000 shares would be reserved in a stock plan, and 1,000,000 shares would remain authorized but unissued.

If you issue stock to the founders using Stripe Atlas, 80% of the authorized shares will be issued to the founders, so that you will retain the flexibility to authorize a stock plan and issue additional shares later (without needing to amend the certificate of incorporation).

What is vesting? Should initial shares sold to founders be subject to vesting?

When shares are subject to “vesting” it means that if the purchaser (usually a founder or employee) stops providing services to the company, then a portion of the shares are subject to forfeiture or repurchase by the company. Shares issued to these persons usually will “vest” over time – which means that they are no longer subject to forfeiture or repurchase if the purchaser leaves the company. Upon vesting, the recipient benefits by assuming full ownership of the shares. Upon termination of employment, any unvested shares will either be forfeited back to the corporation or the corporation may have a right to repurchase any unvested shares at a price determined by the company (usually the original price paid by the recipient for such shares). Recipients holding stock subject to vesting usually may exercise full voting rights with respect to the shares.

In general, there is an expectation among angel and venture investors that the founders of start-up companies will subject their shares to vesting so the founders forfeit shares if they leave the company prior to the completion of the vesting period. In other words, the founders’ shares will be earned over time as they provide services to the company. This keeps the founders incentivized to stay with the company and contribute to its success. For companies with only one founder, the founder’s stock is often not subject to vesting initially, though investors may later require that the shares become subject to vesting. For companies with multiple founders, each founder’s stock is typically subject to vesting from the initial issuance, to help ensure that all founders remain equally invested in contributing to the company’s development.

The standard vesting schedule is for 25% of the granted shares to vest on the first anniversary of the vesting commencement date (see below) for so long as the stockholder remains in continuous service with the company as an employee or consultant. The remaining shares then vest at a rate of 1/48th of the total shares on a monthly basis thereafter, again so long as there is continuous service. This is commonly called a “4-year vest with a 1-year cliff.” In some cases, investors may allow the founders to establish a vesting commencement date based on when the founder began providing significant services to the company so that he or she can get credit for time already served.

If you use Stripe Atlas to issue stock to the founders of a company with multiple founders, the stock purchase agreement for each founder will include standard vesting. If there is only one founder, the stock purchase agreement will not include any vesting. Note that vesting can be modified later—for example, by adding a vesting schedule to shares that were not initially subject to vesting—with the assistance of legal counsel.

What is a vesting commencement date? What should be each founder’s vesting commencement date?

When shares are subject to a standard 4-year vest with a 1-year cliff, the “vesting commencement date” is the starting date used to calculate when the 1-year and 4-year periods begin.

The vesting commencement date can be set to any date, past, present or future. For employees, the vesting commencement date is typically the date the employee began providing services to the company. For founders, the vesting commencement date is typically either (i) the date the company was incorporated or (ii) the date the founder began working (which may be earlier or later than the incorporation date).

If you use Stripe Atlas to issue stock to the founders of a company with multiple founders, by default the vesting commencement date will be the incorporation date of the company, though you will have the option to customize this date.

Can the vesting be accelerated?

Yes. Founders often worry about what happens to the vesting of their stock if they are fired “without cause” or if the company is acquired. You can include provisions to accelerate the vesting of the founders’ common shares if either of these events occur (single-trigger acceleration), or if they both occur (double-trigger acceleration).

Single-trigger acceleration means that all or some of the unvested shares vest immediately upon the occurrence of either a change of control or a termination without cause. In situations where an M&A event is considered a “success event” rather than a failure to complete an IPO or achieve profitability, some employees will argue that they should be rewarded for helping the company get to the success event. The counter argument is that the whole concept of vesting is to create an incentive to provide service into the future and that the shares that have not yet vested have not been earned.

VCs do not like single-trigger acceleration provisions for founders' stock that are linked to termination of the founders' employment. They argue that equity in a start-up should be earned, and if a founder is terminated, then the founder's stock should not continue to vest. Sometimes the founders can negotiate having a portion of their stock accelerate (usually 6-12 month's worth of vesting) if they are involuntarily terminated, or leave the company for good reason (i.e., they are demoted or the company's headquarters are moved). However, under most agreements, there is no acceleration if the founder voluntarily quits or is terminated for "cause." A 6-12 month vesting acceleration is also common in the event of the founders' death or disability.

VCs similarly do not like single-trigger acceleration on the sale of the company. They argue that it reduces the value of the company to a buyer. Buyers typically want to retain founders, and if the founders are already fully vested, it will be harder for them to do that. If founders and VCs agree upon single-trigger acceleration in these cases, it is usually limited to 25-50% of the unvested shares.

Double-trigger acceleration means the vesting of shares accelerates only if there is both a change of control and the founder is terminated without cause in connection with the change of control. VCs consider this a far more acceptable form of acceleration than single-trigger acceleration, and in fact double-trigger acceleration is standard for stock issued to the founders.

100% of the shares issued to the founders using Stripe Atlas will be subject to double-trigger acceleration. You can amend the founders' acceleration at a later time with the assistance of legal counsel.

How much should founders pay for their stock?

Usually founders will pay par value for Common Stock. Corporate law requires every stockholder to pay adequate consideration in exchange for their shares. This means that stockholders must pay at least the par value per share. There are, however, tax and accounting implications if any stockholders pays a price per share below the "fair market value" of the shares, so you should carefully consider whether the price per share should be greater than the nominal par value of the shares (for example, if you developed some valuable intellectual property or other work product for the company prior to issuing stock, then it's possible that the fair market value of the shares is greater than par value). You should discuss this issue with your counsel if the company is beyond the "raw idea" stage at the time of incorporation and has gained traction on developing its product or if the company is already in talks with potential investors, etc.

Currently you can only generate and sign documents to issue stock to your founders using Stripe Atlas if the company is still in the raw idea stage. Stock using Stripe Atlas will be issued at par value. If your company is at a later stage, you can work with an attorney to customize the annotated Orrick templates available on your Stripe Atlas dashboard or in the Orrick forms library.

Should founders pay cash for founder stock?

Founders stock can be paid for in cash.

It may also be paid for by assigning intellectual property and tangible assets to the new company. Founders can pay the entire purchase price by assigning all of their intellectual property to the company, along with any tangible assets related to the company's business of the company. If the amount due for the shares exceeds the value of the IP and other assets contributed by the founder, the founder will need to pay the difference in cash. The company should keep a record of the payment, such as a scanned copy of the check used to pay for the shares, a screenshot of a wire transfer or a signed receipt.

If you issue stock to the founders using Stripe Atlas, the founders will pay for the stock using a combination of (a) IP the founder generated for the company prior to signing the stock purchase agreement and (b) cash equal to the purchase price of the shares. This ensures that the shares are fully paid, and that all IP generated by the founders prior to the formation of the company is properly assigned.

What is a Section 83(b) election?

For persons subject to U.S. taxation, a Section 83(b) election is a letter sent to the Internal Revenue Service (IRS) by those who have stock that is not fully vested. A Section 83(b) election informs the IRS that the taxpayer is electing to recognize any income associated with the stock immediately rather than waiting until the stock vests or is no longer subject to the issuer's repurchase right. Section 83(b) elections do not need to be made with respect to stock options (unless you are doing an unusual transaction known as an early exercise) nor are they made with stock that is fully vested when it is granted or purchased.

Note that non-U.S. residents may be subject to U.S. taxation. If you are not a U.S. resident, you should consult your tax advisor to determine if you are subject to U.S. taxation.

Should I make a Section 83(b) election?

In most cases, startup lawyers strongly advise someone who acquires startup stock that is subject to vesting to file a Section 83(b) election with the IRS. While you should consult your own tax advisor for further guidance on what a Section 83(b) election is and whether it is appropriate for your circumstances, we note that if you receive stock that is subject to vesting (which is sometimes also described as restricted stock because it is subject to repurchase by the issuer) worth a nominal amount (which is often the case for the stock issued to the founders at the formation of a new company), for most people it almost always is economically beneficial to file a Section 83(b) election. However, if you are paying more than a nominal amount for the stock, filing a Section 83(b) election could immediately cause you a large U.S. tax bill. After you made an election under this scenario, if the company underperforms and is dissolved or liquidated, and in particular if it fails before your stock vests or is no longer subject to repurchase, you likely would have been economically better off to not have made a Section 83(b) election.

How do I make a Section 83(b) election?

You should obtain a set of Section 83(b) election forms and sign (manually, do not use an electronic signature service) three (3) copies of the documentation. You must complete and mail the Section 83(b) election within 30 days of the stock grant or purchase. You should use a transmittal letter and send two copies to the IRS by USPS Certified Mail with Return Receipt requested. Use the IRS mailing address where you file your income tax return. Though it is not mandatory, it is recommended that you include a second copy of the Section 83(b) election with a self-addressed, postage-paid envelope and request the IRS return it with a date-stamp for record-keeping (the IRS will not respond to requests for copies of or verifications of a Section 83(b) filing).

If you use Stripe Atlas to issue stock to the founders, for your convenience a standard Section 83(b) election form and transmittal letter will be provided for the founders to download, complete, sign and send. Note that the founders are responsible for mailing the manually signed election forms, as Stripe Atlas cannot submit these on your behalf.

What must I do after I make a Section 83(b) election?

You should send one copy of the Section 83(b) election to the issuer. You should retain in a safe place the mailing receipt, the USPS Return Receipt and the date-stamped copy of the Section 83(b) election returned to you by the IRS.

What are transfer restrictions?

A transfer restriction is a provision that blocks a stockholder from being able to transfer shares (or economic or other rights under the shares) to another person without either certain conditions being satisfied or without the consent of the issuing corporation (or both). Delaware law allows for transfer restrictions by agreement or by insertion into the Bylaws.

What is right of first refusal (ROFR)?

A right of first refusal (or ROFR) is a contractual obligation of an a stockholder or LLC member (as applicable) to offer to sell its equity to the other holders, or sometimes back to the company, after receiving a bona fide offer from a third party to buy that equity stake. The ROFR is usually described in the original purchase agreement, a stockholders agreement or LLC agreement, as applicable, and the offer to the company and other equity-holders must typically be made on substantially the same terms as those offered by the third party. The effect of a ROFR is usually to delay the process of selling equity to a third party.

If you use Stripe Atlas to issue stock to the founders of your company, then the associated stock purchase agreements will give the company a ROFR over the shares held by the founders. This is a market-standard provision that most venture capital investors will expect to see included in founder stock purchase agreements.

What is “lock-up”?

A “lock up” is a special provision that is usually contained in a stock purchase agreement or other stockholder agreement that provides for a predetermined amount of time following an initial public offering where large shareholders, such as company executives and investors representing considerable ownership, are restricted from selling their shares. The usual lock-up is for 180 days.

If you issue stock to the founders using Stripe Atlas, the associated stock purchase agreement includes a market-standard 180-day lock-up (which also includes an option to extend the lock-up period if required to do so by Financial Industry Regulatory Authority rules).

Why does my spouse need to sign my stock purchase agreement?

In some jurisdictions where community property rules (or similar laws) apply to property held and acquired by married couples, upon divorce those rules may conflict with the transfer restrictions and ROFR discussed above. Obtaining your spouse’s signature helps ensure that any transfer restrictions and ROFR are not superseded by any community property rules.

What are security laws? Blue-sky laws?

Federal and state laws closely regulate the offer and sale of securities, which include stock, options and warrants. Securities laws are meant to protect investors from unscrupulous business owners. These laws require corporations to follow certain procedures before accepting investments in exchange for shares of stock (the “securities”). Technically, a corporation is required to register the sale of shares with the U.S. Securities and Exchange Commission (SEC) and its state securities agency before granting stock to the

initial corporate owners (stockholders). Many small corporations are exempted from the registration process under federal and state laws. For example, SEC rules don't require a corporation to register a "private offering," which is a non-advertised sale of stock to a limited number of people (generally 35 or fewer)—companies typically claim an exemption for founder stock issuances under this rule. For sales to non-U.S. persons, a special exemption, known as "Regulation S" may be available.

In addition to the federal securities laws, issuers and sellers of securities must comply with state securities regulations also referred to as "blue sky laws" before they can issue stock to purchasers in a particular state. This means that you must consult legal counsel before selling stock so they can provide advice regarding possible exemptions or filings for each state where the purchasers reside. For example, founder stock issuances made in California generally require the filing of a "25102(f) notice" with the state of California, even if no filing is to be made at the federal level.

In addition to compliance with U.S. federal and state securities laws, on the corporate level, the Board of Directors must approve all offers and issuances of securities

Note that the above discussion also applies to transfers of securities from one holder to another, and not just original issuances by the company. Before issuing or transferring any securities, please consult with your legal counsel to confirm that an exemption is available, and to ensure compliance with corporate formalities and applicable contractual rights (such as a ROFR). Note also that if you are located outside the United States, you may be subject to additional securities laws in your jurisdiction; you should consult with local legal counsel for more details.

What is Regulation S?

Regulation S provides a "safe harbor" or exemption for companies to make offers and sale of securities which will be considered "outside the United States" for purposes of certain rules under the U.S. securities laws, and therefore not subject to the registration requirements of such laws.

The safe harbor provided by Regulation S has two general requirements:

- **Offshore transaction.** An offer or sale of securities is made in an "offshore transaction" if (i) the offer is not made to a person in the United States (other than a distributor) and (ii) at the time the buy order is originated, the buyer is outside the United States or the seller and any person acting on his behalf reasonably believes that the buyer is outside the United States.
- **No Directed selling efforts.** "Directed selling efforts" are defined as "any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on . . . Regulation S."

So long as the initial founders are non-U.S. persons under Regulation S, it is the usual exemption relied upon for the initial issuance to foreign founders of U.S. entities. Please consult a legal advisor with respect to the applicable securities law exemption.

Do I need a stock plan?

A "stock plan" refers to a general governing document under which a company sets aside a pool of its stock to be issued to compensate, retain and attract employees. The stock plan contains the standard terms and conditions of the awards to be granted.

The most common forms of incentives for the employees of young, growing companies are awards of restricted stock and stock options that are granted pursuant to a company stock plan. These types of equity awards provide employees with the opportunity to acquire stock of the company on favorable terms; in return, the employees are generally required to remain employed by the company for a certain period of time before obtaining unrestricted ownership of the stock or the right to exercise the options. The purpose of granting stock or options to acquire stock in the company at a designated price is to attract, retain and motivate employees by providing for or increasing the proprietary interest of such employees in the company. Other reasons for the popularity of equity awards include the ability of the employee to receive compensation with favorable tax treatment, and the fact that the employee is given the opportunity to receive compensation without a cash outlay by the company (but with the possibility of still receiving a tax deduction).

Specifically, a stock option gives an employee the right to purchase a specified number of shares for a fixed price (the “exercise price”) during a prescribed period of time. The principal benefit of a stock option is the potential to profit from any increase in the value of the company’s common stock during the period in which the option is exercisable, without risking any money. If the value of the common stock increases above the exercise price during its term, the employee is able to buy the shares at a discount from that increased price. On the other hand, if the value of the common stock does not increase above the exercise price, the employee will not recognize a benefit from the option.

Restricted stock are shares of company common stock that are issued for no cost or sold at a specified price to a recipient, but that vest in accordance with terms and conditions that the company establishes in its discretion. Generally, shares of restricted stock will be held by the company as the escrow agent until all restrictions on the restricted stock have lapsed (i.e., the shares have vested). Unlike an option, which is a right to buy shares, restricted stock grants are actual issuances of shares to the purchasers. Recipients holding restricted stock usually may exercise full voting rights with respect to the shares and are stockholders of the company.

There are several material terms to consider when choosing to adopt a stock plan, including, for example, the types of awards, vesting schedules, methods of paying for the stock and treatment of equity awards upon a change in control of the company. For this reason, a company should carefully examine its incentive goals and the characteristics of its employees before adopting any plan.

It is important to realize that issuances of securities to employees, like securities issuances to any other person, are subject to federal and state securities regulations. Consequently, neither an issuer nor an employee may sell unregistered securities without either registering the security or qualifying under an exemption. Typically shares and options issued properly issued to employees under a stock plan are eligible for a “Rule 701” exemption, but please consult a legal adviser prior to issuing securities to employees or a parent entity, as corporate and securities law compliance can be complex, and difficult to correct after the fact.

What is the difference between a stock certificate and uncertificated shares?

A stock certificate is simply a special document issued by a corporation to a stockholder that represents the stockholders shares – it provides the name of the registered holder, the number of shares and bears the signature of certain corporate officers. Because it represents a legal equity interest in a corporation, if a stock certificate is lost it must be replaced before it can be transferred to another holder or tendered for consideration if the company is purchased. This can be a time consuming and costly process for both the company and the stockholder.

However, Delaware allows for uncertificated shares and electronic books and records – that means that the issuance of shares is reflected on the books and records of the company and the company does not have to issue certificates. It is not the default under Delaware law, but the documents used in Stripe Atlas provide for the more convenient option of uncertificated securities by including certain provisions in Bylaws and the Organizational Resolutions of the Board of Directors.

Note that even if your company's shares are uncertificated, you will still have the option of issuing a stock certificate to any of your investors who require one.

What is a stock ledger? Should I keep one for my company?

The company must keep adequate records of stock issuances, showing the amount of stock issued, dates issued, and consideration received. A stock ledger can help the company organize this information. Usually, at least while the company is privately held, it is useful for the company to keep copies of all stock certificates issued if certificates are used. If uncertificated securities are used, an accurate and up-to-date stock ledger becomes even more important.