



Orrick Legal Guide for

Stripe Atlas



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Welcome

Welcome to the Orrick Legal Guide 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. It's organized into a few categories:

- Considerations before starting
- Incorporating a company
- After incorporation
- Maintaining the company
- Stock

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 1: Considerations Before Starting

Why should I consider forming a company?

While businesses can be conducted without any formal organization by an individual (called a sole proprietorship) or in informal partnerships, the primary reasons for selecting a corporate form is for the limited liability and perpetual existence that these organizations can provide because once a company is formed, it is regarded as a separate legal entity from its owners. Sole proprietors and partnerships are usually personally liable for the debts and obligations of their businesses and the businesses cease upon the death or departure of the principals.

Companies also offer the ability to transfer all or a portion of the ownership interests in the company using straightforward, well-recognized methods. Establishing a company also adds credibility to the enterprise in the marketplace and presents a professional image.

If I'm an international entrepreneur, should I form a subsidiary of a foreign parent company, or a new company owned by the founders?

This is a basic decision you must make before submitting the Stripe Atlas account application; incorporating a subsidiary or a new entity involves signing different documents. (In particular, the forms for issuing stock are much less complicated with a subsidiary.)

If you don't have an international company, you should set up a new entity, and issue stock to founders, employees, investors, and others.

If you already have an international company, then this is an important decision. If you intend to manage the equity split among the owners of your business at the parent company level, then setting up a subsidiary is the best path. If you want the equity split of the new U.S. company to mirror the split of the foreign entity -- or want it to be owned in part by someone or an entity other than the foreign parent -- then set up a new U.S. entity.

If you do choose to incorporate your company as a subsidiary of a foreign parent company, there are some things you need to do first: You must ensure that the parent company is not subject to any negative covenants (for example in a loan agreement or shareholders agreement) that prohibit the formation of a subsidiary. You should secure any required lender or shareholder consents prior to forming the U.S. subsidiary. Please consult with your local legal counsel.

You should consult the [PwC Tax Guide](#) for Stripe Atlas and your own competent tax advisors regarding the tax implications of setting up either a new company or a subsidiary of a foreign parent.

What is the difference between a company and a branch?

If you already have a company incorporated in another country, you have two options when starting to conduct business in the U.S.: you can either establish a “branch” of your non-U.S. company or a separate U.S. entity (usually either a corporation or a limited liability company (LLC)). A “branch” in the U.S. is only an extension of your non-U.S. company and will expose your non-U.S. company to all types of liabilities without limitation. A U.S. branch is not a separate legal entity conferring limited liability on its owner. It will be subject to the jurisdiction of the courts of the state in which it operates, and possibly other U.S. courts. One of the tax reasons not to use a branch is that the U.S. tax authorities can then require complete, detailed information on the world-wide operations of the non-U.S. company. The non-U.S. company will then have to obtain U.S. federal tax federal, state and possibly city tax ID numbers and file tax returns.

A separate company, if properly formed and maintained, will offer limited liability to its stockholders and is often required by U.S. banks and many U.S. counterparties to your business relationships.

For this reason, Stripe Atlas only enables you to incorporate a new company in the U.S.

Are there U.S. immigration issues to consider before forming a U.S. company?

Stripe Atlas does not provide any immigration-related advice or resources. The impacts of serving as an officer or director of a U.S. company on potential future U.S. immigration should be discussed with competent immigration counsel. You can seek a referral to immigration counsel from state bar associations (a bar association is a group that licenses and regulates attorneys in a state).

Note that one popular type of U.S. visa (known as an L-1 visa) allows for the transfer of key employees among an international group of companies, and for this purpose the U.S. entity should be a subsidiary of the non-U.S. parent.

What resources should I review and consider before forming a U.S. company?

You should consult the [PwC Tax Guide](#) for Stripe Atlas and the information in this Legal Guide. You should also discuss with your own legal and tax advisors.

What is the difference between a Corporation and an LLC?

Both corporations and LLCs will offer limited liability for their owners, so often the decision between the two types of organizations is driven by tax considerations. LLCs usually act as “pass through” entities for tax purposes – meaning that the profits and losses of the entity are passed directly to the LLC members. In contrast a corporation is a “blocker” in that it is a separate entity for tax purposes and its profits and losses are not directly passed through to its shareholders.

Today, the beta of Stripe Atlas only supports incorporating as a corporation. Stripe will be adding support for LLC's in the future. If you'd like to incorporate as an LLC, email atlas@stripe.com to be notified when Stripe adds this ability.

Either type of entity can be used to conduct U.S. operations and can provide the protections of limited liability for its owners. However, many find corporations to offer advantages:

- For tax purposes a corporation is a separate tax-paying entity, while an LLC (subject to some complicated exceptions) is a “pass through” entity for tax purposes – its profits and losses are attributed to its members, potentially subjecting them to direct taxation.
- If you expect to involve outside investors in the future, many types of investors will not be interested in (or may be legally barred from) investing in LLCs because of the income and loss pass-through nature.
- The management structure of an LLC is not as clearly defined as a corporation – it does not have a well-known structure established and regulated by law, as does a corporation: no Board of Directors, no officers like a President, CEO, Vice President(s), Treasurer, Secretary, etc. A well-recognized internal management structure is important for structuring and controlling the company and its team.
- Transfer of ownership interests in an LLC may be more complicated compared to shares of a corporation -- especially if there will be more than one class or type of ownership interests. An LLC does not normally issue any written evidence of ownership, like shares. It can issue ownership interest certificates, but that will have to be specified in the Operating Agreement.

Section 2: 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.

Can I set up a national or federal entity, or do I have to choose one U.S. state?

There are no "federal" corporations or "national" LLCs. Each of the U.S.'s fifty 50 states has corporate laws. You must choose to form a corporation or LLC under the laws of a particular U.S. state. Thus, there are New York corporations, Delaware corporations, New York LLCs, Delaware LLCs, California corporations, California LLCs, etc.

Today, Stripe Atlas only supports setting up Delaware corporations.

Why should I incorporate in Delaware?

Forming your company in Delaware is easiest and most efficient. Delaware is the state of incorporation for more than 60% of Fortune 500 companies. Delaware has an established body of laws governing corporations: it's the only state to have a separate business court system (the Court of Chancery). This is meaningful to entrepreneurs for two reasons. First, there is a long-established body of laws relevant to corporations that has been tested in the Delaware courts over many years. In the event of any legal action, therefore, there is a high degree of predictability. Second, Delaware has a long record of pro-management decisions. Venture capitalists (VCs) feel more at ease when they see that a company is incorporated in Delaware because it is familiar to them.

How do I choose a name?

A Delaware entity may not use a corporate name that is already in use by an entity in Delaware or one that closely resembles one already in use. You can check here to check the availability of a specific corporate name.

The entity name for a corporation must contain one of the words “association,” “company,” “corporation,” “club,” “foundation,” “fund,” “incorporated,” “institute,” “society,” “union,” “syndicate,” or “limited,” (or abbreviations thereof, with or without punctuation), or words (or abbreviations thereof, with or without punctuation) of like import of foreign countries or jurisdictions (provided they are written in roman characters or letters).

Does selecting a name in Delaware protect the name in other U.S. states or offer trademark or service mark protection?

Your Delaware name can be used by another entity in another U.S. jurisdiction. A registered corporate name is not the same thing as a trademark. A registered U.S. federal trademark will provide protection throughout the entire USA for the particular goods or services for which it is registered.

The most fundamental right which a trademark, trade name or service mark owner receives is the right to prevent others from trading on the owner’s goodwill by confusing or deceiving third parties into purchasing a product or service through the use of a similar trademark or service mark. The basic question in assessing whether a trademark, trade name or service mark has been infringed is whether the use of a similar mark or name by another results in a likelihood of confusion among prospective purchasers of products or services. When an entity wants to establish a national reputation, it should conduct a broad name search through trademark, trade name and service mark registries before making a significant investment in the name. Also, the entity should check the availability of its corporate name (or variations of the name) with Internet domain name registries.

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.)

What is an “incorporator”?

For a corporation, the incorporator is a person under Delaware law that has the power to represent the company as an agent during the process of creation. The incorporator has the authority to prepare, sign and file the Certificate of Incorporation and any other needed documents.

The incorporator’s authority ends when the corporation is registered (by filing the Certificate of Incorporation with the state) and the initial Director(s) are appointed. An incorporator is not an owner or officer.

What are "officers"? What do the President and Secretary do?

Officers of a corporation (who are appointed by the Board of Directors) are responsible for the day to day operations and management of a corporation. Delaware laws essentially require that a corporation have, at a minimum a President and a Secretary, which you select as a part of using Stripe Atlas.

A company’s president is in charge of the general supervision, direction, and control of the business and other officers of the corporation. A secretary is in charge of keeping the corporate minute book, the stock records and other books and records of the company. They are also in charge of giving notices for any meetings of stockholders or Directors and for keeping a record of the decisions made at such meetings.

Other officer posts are optional (examples: one or more Vice Presidents, a Treasurer or an Assistant Secretary or Treasurer). An individual may serve in more than one officer position (including all both of the required offices). You can appoint other roles after you incorporate your company with Stripe Atlas.

Are a corporation’s officers employees?

Generally, merely serving as a corporate officer will not make an individual an employee. If it is clearly agreed that the officer is on the corporation’s payroll, then the individual is an employee. However, it is not unusual to have a President, Vice President, Treasurer, Secretary or other corporate officer who is not an employee of your corporation. Sometimes, a U.S. lawyer will serve as a corporation’s Secretary, but not be its employee.

What is a “director”? How many directors should my company have?

Members of a corporation’s Board of Directors (called “directors”) are not directors in the sense of the term that term is used in many other countries. In the U.S. meaning, directors are members of the governing board of the corporation. The Board of Directors acts and decides as a body; individual directors have no power to act or to bind the corporation individually. Under Delaware law, a one person Board of Directors is permitted. Directors can be officers and officers can be directors. Many corporate actions require the approval of the Board of Directors (like amending the Certificate of Incorporation, selling stock, granting options, etc.). The day to day operations of a corporation are handled by the officers, also known as “management.”

Because the Board of Directors decides and acts as a body, it is usually a good idea to have an odd number of directors in order to ensure that there is not a deadlock. Board of Directors decisions made at a meeting are usually made by majority rule unless the Certificate of Incorporation or Bylaws contains a provision providing otherwise. Board of Directors decisions made by written consent (which do not require a meeting) must be unanimous and are not effective until all directors have signed the action. Board of Directors decisions made by written consent may also be made (and consented to by the directors) electronically over email and it is important that the Bylaws provide for this method of unanimous written consent.

What is a registered agent? A registered office?

Delaware law requires every corporation or LLC to have and maintain both a “registered office” and a “registered agent” in Delaware. A registered agent is a responsible third-party who is registered in the same state in which a business entity was established and who is designated to receive service of process notices, correspondence from the Secretary of State, and other official government notifications, usually tax forms and notice of lawsuits, on behalf of the corporation or LLC. The theory of the law requiring all Delaware entities to have a registered agent and a registered office in Delaware is that there must be an actual person residing at an actual physical address in Delaware to receive important papers so that the Delaware courts will have jurisdiction over the entity.

A registered office is simply the physical location within a state where the registered agent can be located or contacted.

Stripe has arranged for Rocket Lawyer to act as the Delaware registered agent for Stripe Atlas users. Rocket Lawyer charges an annual fee of \$100. (The first year is included in the Stripe Atlas setup fee.)

Through Stripe Atlas, you provide Rocket Lawyer with the name, business address, and business telephone number of a natural person who is authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the corporation. This information must be updated from time to time as necessary.

What are the steps to form a corporation in Delaware?

Stripe Atlas helps you incorporate your company in Delaware by generating the necessary documents (from Orrick's library of legal forms) and submitting them for filing once you have signed them. Stripe Atlas handles these basic steps to incorporate the company:

File a Certificate of Incorporation

The Certificate of Incorporation is filed with the Delaware Secretary of State. Only a few items must be included in the Certificate of Incorporation to make it effective, including the name of the corporation, a brief description of its purpose, the number of shares that are initially authorized, and the name and address of the incorporator and the initial directors.

Filing of the Certificate of Incorporation establishes the existence of a corporation. A filing fee is paid to the state of Delaware (this is included in the setup fee for Stripe Atlas).

Appoint a registered agent

You are signed up with a registered agent that receives official correspondence on behalf of the company. All Stripe Atlas users are automatically set up with Rocket Lawyer as a registered agent at annual cost of \$100. (The first year's fee is included in the setup fee for Stripe Atlas.)

Bylaws

The Board adopts the Bylaws in the organizational resolutions discussed below. The Bylaws set forth the rules and various general corporate procedures affecting the governance of the corporation.

A corporation's Bylaws typically set forth the rules and various general corporate procedures affecting the governance of the corporation. The Bylaws provide the procedural mechanics required by Delaware law, including establishing the number of authorized directors. The Bylaws provided when you use Stripe Atlas are generally appropriate for a typical start-up company.

Board Approval of Organizational Resolutions

The Board of Directors signs an Approval of Organizational Resolutions concerning certain organizational matters. The organizational resolutions provided by Stripe Atlas complete the organization of the Company by appointing officers and detailing other initial steps to get the corporation up and running.

Once you sign and submit these documents on Stripe Atlas, and Stripe Atlas causes certain filings to be made in Delaware, your company will be incorporated.

Section 3: 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.

What is an Employer Identification Number (or EIN)? Do I need one for my business?

Any business must have a federal employer identification number to complete its federal tax returns and banks require it in order to open accounts. Stripe Atlas handles this for you -- users will receive an EIN within ten days of submitting signed forms.

In addition, state employer identification numbers are required in any state in which a company has employees and pays wages. Such numbers can be obtained by filing forms with applicable state agencies (for example, in California, you file a Form DE-1 with the California Employment Development Department).

Do I need licenses for my business?

Many trades, professions, businesses, and occupations are regulated by state law, which will often require that corporations meet various qualifications before granting certain certificates of registration or business licenses. Many cities also require that corporations doing business within the city limits obtain a local business license.

Do I have to register my business in a state other than Delaware?

Most state laws provide that a "foreign corporation" (i.e., a corporation or LLC formed under the laws of another state) may not "do business" within the state unless it registers, or "qualifies" under the rules of that state by filing certain paperwork with state authorities. The scope and extent of the company's activities will govern whether registrations and qualifications will be necessary. Typical activities that will require a corporation to qualify to do business in a state by making certain filings are: (1) transaction of a substantial amount of its ordinary business in the state; (2) maintaining an active office in the state; and (3) manufacturing products in the state. However, activities of substantially less magnitude may also require

qualification. You should talk to competent legal counsel about whether or not the company needs to “qualify” in another state.

Do I have to collect or pay taxes in a state other than Delaware?

Even if qualification by making certain filings with state authorities is unnecessary, the company may be obligated to pay corporate income and other taxes (including sales and use taxes) as a consequence of operating in a state. For this purpose, “operating” in another state may include very limited and tenuous contacts; the states are becoming increasingly aggressive in treating foreign corporations as subject to their taxing jurisdiction based on virtually any activity within their borders. If the company employs persons located in other states, it may be subject to employer wage withholding requirements, worker’s compensation requirements and other regulatory requirements. Note that the penalties in some states (like New York) for failing to secure worker’s compensation insurance can be severe. Further, if the corporation owns real or personal property in other states, it may be required to pay property taxes in such states. States may require you to collect sales or use taxes when selling goods or services to customers or users in a state.

You should consult the [PwC Tax Guide](#) for Stripe Atlas and your own competent tax advisors regarding the tax implications of operating or selling goods or services in a state.

What is the BE-13 filing requirement?

The U.S. Bureau of Economic Analysis requires that all foreign entities that establish a new legal entity in the U.S. file a BE-13 survey within 45 days of incorporation. The primary purpose of the survey is to collect data on how many new companies are being formed by foreign entities in the U.S., to measure the amount of new foreign direct investment that is coming into the U.S., and to assess this impact on the U.S. economy. The survey is a one-time filing at no cost, and Stripe can submit this information for you.

The actual document that needs to be filed is a BE-13 Claim for Exemption because you are a U.S. business enterprise that was established by a foreign entity (which includes individuals), and the cost of forming your company was less than \$3 million USD.

If you’d like to read more information on the BE-13 filing requirement, you can find it on the U.S. Bureau of Economic Analysis webpage [here](#).

Section 4: Maintaining the Company

What do I need to do to keep my company in good standing?

At a minimum you will need to make annual filings in the state of incorporation (Delaware) and each state where you have qualified to do business. You will need to make sure that any annual fees are paid on time. (See below for a discussion of the Delaware franchise tax).

What are the ongoing, recurring costs for the Delaware entity?

Your Delaware entity will have an annual Registered Agent fee (\$100 per year with Rocket Lawyer; your first year is included with Stripe Atlas) and must pay the Delaware Franchise Tax (see below).

What is piercing the corporate veil?

"Piercing the corporate veil" refers to specific circumstances that may permit creditors or others with a claim against a company to defeat the limited liability protection of a corporation or LLC and seek compensation directly from the stockholders or members and their personal assets.

The cases where stockholders or members have had personal liability generally happen when fraud or other bad acts have occurred, and where it would be manifestly unfair to allow a stockholder or LLC member to hide behind limited liability.

The following are among the facts that courts have relied on in allowing the corporate veil to be pierced to allow claims personally against stockholders or members:

- disregard of corporate formalities;
- co-mingling of personal and corporate assets or diversion of corporate assets to personal use;
- "holding out" to creditors by a stockholder that the stockholder is the obligor;
- inadequate capitalization of the corporation; and
- manipulation of corporate assets and liabilities by the stockholder.

Why should I keep corporate records?

A case for keeping the corporate veil in place is bolstered when a company's books and records show that the corporation or LLC was operated as a true separate entity from its stockholders or members. You can document this by:

- Obtaining and recording stockholder and board authorization for corporate actions;
- Maintaining complete and proper records for the corporation separate from the personal records of the corporation's owners;

- Making it clear in all contracts with others that they are dealing with the corporation and not any particular individual; for example by using the following signature block format on all contracts and agreements:
 - [NAME OF CORPORATION]
 - By: _____
 - Title: _____; and
- Conducting all transactions between the corporation and its stockholders, officers, and directors on an arms-length basis whenever possible. The company should not be paying the personal expenses of its stockholders, officers, and directors and the assets of these persons should not be mixed with those of the company.

In addition to maintaining the protections of limited liability, when your start-up needs capital or is looking to exit, potential investors and buyers will want to see everything and know everything about your company since inception. Their goal is to have an understanding of the formation and activities of the company since inception through a due diligence process. Corporate records are also required to back up the key representations and warranties the company will make in investment or sale documents and to ensure that the statements made to investors and buyers about the company are true, accurate and complete.

Poor corporate record-keeping may scare off investors and buyers, even if there are in fact no underlying risks or issues.

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 should I expect when I get a bill for the Delaware annual franchise tax?

The Franchise Tax is the fee imposed by the state of Delaware for the right or privilege to own a Delaware company. The tax has no bearing on income or company activity—it is simply required by the state of Delaware to maintain the good standing status of your company. The term “Franchise Tax” does not imply that your company is a franchise business.

The Franchise Tax for a corporation is based on your corporation type and the number of authorized shares your company has. The total cost of the Franchise Tax is comprised of an annual report fee and the actual tax due.

A corporation having 5,000 authorized shares or less is considered a minimum stock corporation. The annual report fee is \$50 and the tax is \$175 as of July 1, 2014, for a total of \$225 per year.

A corporation having 5,001 authorized shares or more is considered a maximum stock corporation. The annual report fee is \$50 and the tax would be somewhere between \$200 and \$180,000 per year.

There are two methods to calculate a maximum stock company's Franchise Tax. They are:

- **The Authorized Shares Method -- The state of Delaware uses this method to initially calculate your taxes – do not be alarmed if your initial bill is for over \$180,000.** This method is calculated based on the number of authorized shares. The calculation is as follows:
 - o 5,000 shares or less: \$175 (as of July 1, 2014)
 - o 5,001 - 10,000 shares: \$250 (as of July 1, 2014)
 - o Additional 10,000 shares or portion thereof: add \$75
 - o The maximum annual tax is \$180,000
- **The Assumed Par Value Capital Method --** The state of Delaware allows you to pay the lower of the two calculation methods. Therefore, if you receive a bill from Delaware for tens of thousands of dollars, it may be in your best interest to try calculating your Franchise Tax with the assumed par value capital method. Here is a link to a [Delaware Franchise Tax Calculator](#). In order to utilize this filing method, you will need to provide the company's total gross assets (as reported on the Form 1120, Schedule L) and the total number of issued shares. Many times the tax is then calculated to the minimum payment of \$350 Franchise Tax plus the \$50 annual report fee. The calculation used for this method is more complex.

When is the Franchise Tax Due?

The Franchise Tax for a corporation is due by March 1 of every year. If the tax is not paid on or before March 1, the state imposes a \$125 late penalty, plus a monthly interest fee of 1.5 percent.

Corporations and LLCs taxed in arrears, meaning the tax due by each due date is for the previous calendar year.

Do I need to file tax returns?

A corporation must file a federal income tax return on Form 1120 on or before the fifteenth day of the third month following the close of each fiscal year (for companies created using Stripe Atlas, this means March 15). See the [PwC Tax Guide](#) for more detail on taxes.

What is the fiscal year? What should it be for my company?

A fiscal year is that a company or government uses for accounting purposes and preparing financial statements. The fiscal year may or may not be the same as a calendar year. For tax purposes, companies can choose to be calendar-year taxpayers or fiscal-year taxpayers. The default IRS system is based on the calendar year, so choosing a fiscal year-end other than December 31 means that a taxpayer has to make some adjustments to the deadlines for filing certain forms and making certain payments. The vast majority of companies choose December 31 as the fiscal year end and if you want to use a different date, be sure to check with tax and accounting advisors.

The standard Bylaws for Stripe Atlas entrepreneurs use a December 31 fiscal year end.

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 5: 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.