



Orrick Legal Guide for:

Stripe Atlas

Limited Liability Companies



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Welcome

Welcome to the Orrick Legal Guide for Stripe Atlas: Limited Liability Companies. We have spent a lot of time advising entrepreneurs, and have written this guide to help you navigate the legal journey of starting and managing a limited liability company. This guide is organized into a few categories:

- **Considerations before starting**
- **Forming an LLC**
- **The Stripe Atlas Operating Agreement**
- **Maintaining the LLC**

Though this Orrick Legal Guide will provide you with some of the framework for navigating limited liability companies, 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 legal advice and a tax advisor who can guide you through the tax considerations of forming an LLC.

Section 1: Considerations Before Starting

What is the difference between a Corporation and an LLC?

Both corporations and limited liability companies are intended to offer limited liability for their owners, so the decision between the two types of organizations is often driven in large part by tax considerations:

- For income 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 owners (who are called “members” of the LLC). This means that each member of the LLC reports their respective, allocable share of the LLC’s profits or losses on their personal income tax return; if the LLC only has one member, then the LLC is generally treated as a sole proprietorship for income tax purposes. (But note that, under U.S. federal income tax law, utilization of losses is subject to special rules and may be limited—your tax advisor can provide more detail.) Depending on the founders’ tax situations, pass-through taxation may result in an increase or a reduction in their personal taxes.
- Assets generally can be moved much more freely into and out of an LLC, unlike a corporation (where income tax considerations and corporate formalities may pose greater obstacles to asset transfers).
- 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.
- The management structure of an LLC is not as clearly established as that of a corporation – it does not have a well-known structure established and regulated by law, as does a corporation. This means that the LLC offers more flexibility with respect to management structure, though many founders may prefer the well-recognized internal management structure of a corporation for structuring and controlling the company and its team.
- LLCs allow for some complex tax-optimization strategies (which are beyond the scope of this guide), such as potentially enhancing the “Qualified Small Business Stock” tax credit for an LLC that converts to a corporation. Discuss with your tax advisor if you would like to know more.
- State and local income tax laws often differ from federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit of the LLC. In addition, a member of the LLC may be required to file separate income tax returns in each state where the LLC does business.
- Deciding whether to operate through a corporation or an LLC is an important decision and may result in entirely different income tax consequences to the company and its owners. You should consult with your tax advisor regarding tax consequences relevant to you.

What are the possible benefits of forming an LLC, as opposed to a corporation?

There may be added tax efficiency from forming your company as an LLC as opposed to a corporation. Here are some examples of situations where the tax treatment of an LLC may be more tax efficient (in each case, based on discussions with your tax advisor):

- You have determined that you can use your LLC’s losses to reduce taxes on other sources of income you have.

- You anticipate that your business will be profitable in the near-term, and you have determined that the pass-through of the profits will result in lower overall taxes than the “double taxation” that applies to corporations. (See the PwC Tax Guide for more information regarding double taxation of a corporation.)
- You would like to be able to move intellectual property or other assets into and out of your business, potentially without tax consequences (e.g., you anticipate developing new IP and using it to create “spinoff” companies).

There are other, more complex, tax benefits that may apply as well – you should discuss with your tax advisor if you are considering the LLC form for the purpose of tax optimization.

A secondary reason for forming an LLC is if you still have some uncertainty regarding what, exactly, your business will be doing and/or what assets it will need to conduct its business. Because an LLC is not subject to the same formalities as a corporation, many major decisions regarding the company’s business (such as what assets to dispose of) can be made with fewer formalities – depending on the content of the LLC’s governing documents, transfers of assets into or out of the LLC may not require any prior written approval, unlike with a corporation (where a formal consent of the Board of Directors would typically be needed). Also, as noted above, assets can be moved into and out of the company, potentially without the tax consequences that a corporation would be subject to.

I’ve heard that it’s “easier” and cheaper to form and maintain an LLC than a corporation. Is that correct?

Generally this is not an accurate statement, though there are some specific aspects of running an LLC that you may find easier. For example, because there are very few governance formalities that apply to an LLC (e.g., obtaining written consents for company actions) other than what is laid out in the LLC’s Operating Agreement, there are fewer opportunities to make errors regarding those formalities, and perhaps less need to involve legal counsel when the company takes actions that significantly impact the business. The contractual nature of the Operating Agreement also allows for far more flexibility in how you structure the governance of your company.

However, actions that are straightforward for corporations (like creating an employee stock plan) tend to be much more complicated for LLCs because there are usually no “off-the-shelf” solutions – documents need to be custom-drafted and tailored to your LLC, so you ultimately end up spending more time and money on legal costs if you need to go beyond the matters covered by your LLC’s initial Operating Agreement. You will probably also need to spend more time and money on obtaining tax advice, as the tax treatment of LLCs creates more opportunities to unintentionally impact your personal income taxes.

If I’m an international founder, how should I determine whether an LLC is right for me?

If you are not a U.S. taxpayer, then you should discuss whether to form an LLC with a tax advisor from the country where you pay taxes. Because an LLC is a pass-through entity under U.S. tax laws, there may be negative U.S. income tax consequences to you, along with any special tax considerations in your country.

Are there any circumstances under which an LLC is not an appropriate form to use?

There are some circumstances where an LLC may *not* be the best choice:

- **You intend to involve outside investors in the company.** As noted above, some types of investors will not or cannot invest in an entity structured as an LLC because of the potential negative tax

implications of investing. Some investors may insist on the familiarity and certainty of the management and governance structure of a corporation.

- **You intend to grant equity to employees.** While this is possible to do with an LLC, granting interests in the LLC to employees has a number of tax consequences to the employee – for example, by receiving an interest in the LLC, the employee’s status for tax purposes converts to that of a member in the LLC, which can have adverse tax effects for that individual (such as imposing self-employment taxes, creating additional tax filing requirements, and making the individual ineligible for certain types of employee benefits). Additionally, you will need to file a Schedule K-1 for every individual who has an interest in the company—which creates administrative hassles.

I’ve already formed a corporation, but have changed my mind and wish to form an LLC. Can I convert my corporation to an LLC?

While Delaware law allows for the conversion of a Delaware corporation to a Delaware LLC, there may be tax consequences for doing so. You should discuss with your tax advisor and with legal counsel to determine if conversion is the right approach for your company.

Section 2: Forming an LLC

Stripe Atlas enables you to form a limited liability company in Delaware. Based on the information you provide in the account application, you will use Stripe Atlas to generate formation documents using some standard defaults. This section walks through some background on forming a Delaware LLC and some of the key decisions you will make as you complete the Stripe Atlas application.

Is there a minimum number of required members for a Delaware LLC?

A Delaware LLC is not required to have more than one member.

Do U.S. laws require that an LLC member be a U.S. citizen or permanent resident to form a Delaware LLC?

No. There are no U.S. federal or state laws that require an LLC member to be a U.S. citizen or permanent resident to form a Delaware LLC. Non-U.S. persons can be members of a Delaware LLC.

Why should I form my LLC in Delaware?

Each U.S. state has laws that allow you to form an LLC. Similarly, each state has its own rules governing the formation, governance and management of LLCs. Delaware LLCs are simple to form, extremely flexible (with few restrictions on management and governance arrangements), and more familiar to parties you will interact with. In addition, the process of converting a Delaware LLC to a Delaware corporation, should you ever decide to do so, is straightforward and common enough that there are standard forms addressing most elements of the process. See the Orrick Legal Guide to Stripe Atlas (for corporations) for a discussion of the advantages of forming your corporation in Delaware.

What are the steps to form an LLC in Delaware?

You can generate the necessary documents and submit the required filing to form your Delaware LLC using Stripe Atlas:

File a Certificate of Formation

The Certificate of Formation is filed with the Delaware Secretary of State. The only pieces of information included in the Certificate of Formation are the name of the company and the identity of the Company's registered agent.

Filing of the Certificate of Formation establishes the existence of an LLC. A filing fee is paid to the state of Delaware (this is included in the setup fee for Stripe Atlas). The Certificate of Formation then becomes a publicly available document.

Appoint a registered agent

All Delaware LLCs are required to have a registered agent that receives official correspondence on behalf of the company. As part of Stripe Atlas, you are enrolled with a registered agent at a current annual cost of \$100. (The first year's fee for this service is included in the setup fee for Stripe Atlas.)

Sign an Operating Agreement

The Operating Agreement is a contract between the members of the LLC that details the rights and obligations of the members, including both economic and governance rights. The Operating

Agreement also establishes the rules for how the LLC will be managed, such as what approvals are required to undertake certain key actions.

There is no limit to what the members can agree to in an Operating Agreement—it can be very short and simple, or detailed and complex. The Operating Agreement provided when you use Stripe Atlas is “middle-of-the-road” with respect to complexity, and is designed to be appropriate for a typical start-up LLC with multiple members. While it is possible to create a simpler Operating Agreement for a single-member LLC, Stripe Atlas provides the same form of Operating Agreement even if your LLC will initially have a single member – this ensures that the process of adding additional members to your LLC later will be simpler and smoother.

Because the Operating Agreement is merely a contract between the members, it will not be filed, and will not be made publicly available. However, the Operating Agreement is an important governing document, and a copy should always be kept with your LLC’s records (as noted below regarding recordkeeping).

Once you sign and submit these documents on Stripe Atlas, and Stripe Atlas causes the Certificate of Formation to be filed in Delaware, your LLC will be formed.

Who is responsible for managing the LLC?

The Operating Agreement of the LLC should specify who holds management responsibilities. One approach is to have the members of the LLC also be responsible for managing the company – an arrangement referred to as a “member-managed LLC”. Another approach is to establish one or more managers who will have the responsibility for managing the company – an arrangement referred to as a “manager-managed LLC”. For a manager-managed LLC, typically some key decisions (such as when to dissolve the company) are reserved to the members in the Operating Agreement.

Are an LLC’s members employees?

The members of an LLC are **not** employees for the purposes of U.S. tax laws, even if they are paid by the LLC and provide services to the LLC. Instead, they are treated as partners: their income is reported on Schedule K-1, and in many cases they will be required to pay self-employment tax on a periodic basis.

Section 3: The Stripe Atlas Operating Agreement

The Operating Agreement of an LLC in many ways functions like the Certificate of Incorporation of a Delaware corporation. However, the Operating Agreement is ultimately just a contract among the LLC's members, which means that the range of provisions that can be included in the Operating Agreement is nearly limitless.

The provisions contained in the Operating Agreement designed for use with Stripe Atlas are designed to address common needs of a start-up initially formed as a Delaware LLC (while leaving open a simple path to later convert to a Delaware corporation). This section addresses many of the key provisions of the Stripe Atlas Operating Agreement.

Will my LLC be member-managed or manager-managed? Why?

When you form an LLC using Stripe Atlas, the Operating Agreement will set up a manager-managed LLC. The manager-managed structure provides more flexibility. For example, by allowing you to designate only certain of the members as managers, this approach allows some founders of the LLC to be members without needing to be responsible for managing the business (so, for example, you can decide that a technically focused founder will not be responsible for management decisions). This structure also allows you to assign management responsibility to individuals who are not members of the LLC.

How many managers should my LLC have? How do I change the number of managers or replace a manager?

When you form an LLC using Stripe Atlas, you will have the opportunity to specify the number of managers that the LLC will initially have. The optimal number of managers will depend on the needs of your business.

If you later decide you would like to change the number of managers, you may do so by amending the Operating Agreement. Amending the Operating Agreement requires the unanimous consent of the managers and the consent of members holding a majority of the LLC.

A manager may be removed at any time by the members who hold a majority of the LLC. Likewise, a vacancy may be filled by the members who hold a majority of the LLC.

What powers do the managers have? Do the managers act individually, or as a group?

Generally, the managers of an LLC only have the powers listed in the Operating Agreement. The Stripe Atlas Operating Agreement provides the managers with broad authority – the managers have “all powers necessary, convenient or appropriate” to run the business.

The Stripe Atlas Operating Agreement allows individual managers to make decisions about the day-to-day operations of the LLC and execute contracts on behalf of the LLC, but the managers must act as a group (unanimously) when making certain key decisions, such as electing to convert the LLC into a corporation.

The Operating Agreement requires me to appoint someone as a “Partner Representative.” What does the Partner Representative do?

If your LLC is ever audited or subject to other inquiries from the IRS, the Partner Representative is the person who will be responsible for discussing those matters with the IRS. The Partner Representative will also have the authority to make decisions about tax matters on behalf of the LLC in those discussions with the IRS.

What are units? How do they differ from ownership percentages?

Ultimately, a member’s ownership stake in an LLC determines that member’s economic interest in the LLC. While this ownership stake can be expressed as a percentage, most companies find it more convenient to express members’ ownership using “units” rather than percentages. Units function much like shares of stock in a corporation – the LLC can repurchase units or issue new units, and members can transfer units. Ultimately units translate into ownership stakes in the company, but without the need to recalculate ownership percentages every time the LLC issues additional ownership stakes.

When you form an LLC using Stripe Atlas, the Operating Agreement will initially authorize the issuance of 10,000,000 units – similar to the number of shares authorized when you incorporate a corporation using Stripe Atlas. This total was chosen so that if your LLC later converts to a Delaware corporation, exchanging one share of the corporation for each unit of the LLC results in a company with a typical total capitalization, assuming you convert units to shares on a one-to-one basis (which is generally the simplest conversion method).

Are there multiple “classes” of units?

In general it is possible to create multiple “classes” of units in an LLC with different rights (for example, you can create units with additional voting rights, or units that have some of the features of Preferred Stock of a corporation). When you form an LLC using Stripe Atlas, the Operating Agreement will only provide for one class of units. If you would like to form an LLC with multiple classes of units, you should work with legal counsel to form your LLC.

Do units “vest” like the shares of a corporation?

When you form an LLC using Stripe Atlas, the units the members of the LLC receive will **not** be subject to vesting. Membership in an LLC is not analogous to employment by a corporation – the membership structure of an LLC generally requires that member *departures* be negotiated, not just member additions. This is one of the ways that the members of an LLC are more tightly bound than the stockholders of a corporation (in this respect, an LLC is more like a partnership than a corporation). Thus the nature of the membership relationship in an LLC is not conducive to taking a “one size fits all” approach to vesting – and in fact many LLCs do not impose vesting at all.

While it is possible to impose vesting on a member’s units in an LLC, this creates significant added complexity in the documents setting forth the LLC agreement. Unlike with a corporation, where there are standard “off-the-shelf” agreements for vesting arrangements, all vesting arrangements for an LLC need to be tailored to comply with that LLC’s Operating Agreement.

If you wish to form an LLC that provides for vesting on members’ units, you should work with legal counsel to form your LLC. Alternatively, if you plan to eventually convert your LLC to a corporation then it is straightforward to impose vesting in connection with the conversion.

How do I add new members to my LLC?

The Stripe Atlas Operating Agreement gives the Managers the authority to add new members to the LLC. Each new member must become a party to the Operating Agreement.

What do I do if a member wants to withdraw from my LLC? What happens upon the death of a member?

The Stripe Atlas Operating Agreement requires the managers to consent to the withdrawal of a member. Imposing this limitation on a member's withdrawal helps ensure an orderly departure: since the withdrawing member has an ownership interest in the assets of the LLC, the remaining members will want to negotiate the terms of withdrawal and amount of payout, if any, to the withdrawing member.

If a member of your LLC dies, that member's ownership interest will pass according to their will, trust or other document governing the disposition of their estate (or according to applicable law if there is no such document). However, after the interest is transferred, the Stripe Atlas Operating Agreement removes all voting rights from that transferred ownership interest, so that the transferee only retains that member's economic rights. The remaining members may then wish to negotiate terms for reacquiring the deceased member's interest in the LLC.

If a member of your LLC intends to withdraw or has died, you should work with legal counsel to ensure that any terms of withdrawal or of reacquisition of units are suitable for your company and the remaining members.

Section 4: Maintaining the LLC

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

Your Delaware entity will have an annual Registered Agent fee (currently \$100 per year; your first year is included in your Stripe Atlas fee) and must pay the Delaware Limited Liability Company Tax (see below).

Are capital contributions required?

There is no legal requirement for members of an LLC to make capital contributions to the company, and the Stripe Atlas Operating Agreement does not require capital contributions. If capital contributions are made, the Stripe Atlas Operating Agreement assumes that the members will contribute amounts that are proportionate to their ownership percentage. If that is not the case you should work with legal counsel to understand the consequences of such disproportionate contributions.

Notwithstanding the above, the members of an LLC should ensure that the company is sufficiently capitalized to allow the LLC to operate its business and cover its anticipated liabilities. Failure to adequately capitalize the company can be a factor in “piercing the corporate veil” (see below).

Are contributions of intellectual property required?

Contributions of intellectual property are a form of capital contribution, and similarly are not required. Nevertheless, it can be a good idea to assign all existing IP relevant to the business at the time you form your LLC, to ensure that the LLC has all necessary IP rights in order to conduct its business. The Stripe Atlas Operating Agreement includes a provision that assigns all relevant IP held by the members to the LLC.

If you fail to assign relevant IP at the time of formation, or if you later determine that the LLC no longer needs certain IP that was assigned, the tax treatment of an LLC allows you to easily transfer IP into or out of the LLC as needed. You should work with legal counsel if you plan to assign IP to or from the LLC.

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 the LLC and seek compensation directly from the members and their personal assets.

The cases where 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 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 members:

- disregard of legal formalities applicable to the company;
- co-mingling of personal and company assets or diversion of company assets to personal use;
- “holding out” to creditors by a member that the member is the obligor;
- inadequate capitalization of the company; and
- manipulation of company assets and liabilities by the member.

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 LLC was operated as a true separate entity from its members. You can document this by:

- Obtaining and recording member and manager authorization for company actions;
- Maintaining complete and proper records for the company separate from the personal records of the company's owners;
- Making it clear in all contracts with others that they are dealing with the LLC and not any particular individual; for example by using the following signature block format on all contracts and agreements:

NAME OF LLC]

By: _____

Title: _____; and

- Conducting all transactions between the company and its members on an arms-length basis whenever possible. The company should not be paying the personal expenses of its members 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. Company 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 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 Formation (file stamped by the state);
- Operating Agreement;
- Any other agreements among members, including agreements evidencing ownership or economic interests in the LLC;
- Qualifications to do business in states other than the state of formation;
- Evidence of any filings under securities laws;
- Copies of all manager and member resolutions, adopted either at meetings or by written consents;
- 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);
- Financial statements and tax records; and
- Annual 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.

Do I need licenses for my business?

Many trades, professions, businesses, and occupations are regulated by state law, which will often require that companies meet various qualifications before granting certain certificates of registration or business licenses. Many cities also require that companies 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 company 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.

Does a Delaware LLC pay an annual franchise tax?

Like a corporation, an LLC pays an annual tax. Unlike a corporation, an LLC does not need to file an annual report with the state of Delaware, and the annual tax owed is a flat fee (currently \$300.00 per year).

When is the LLC Tax Due?

The LLC Tax is currently due by June 1 of every year. If the tax is not paid on or before June 1, the state imposes a \$200 late penalty, plus a monthly interest fee of 1.5 percent.

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

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. EIN requests are part of onboarding for Stripe Atlas users – users will generally 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 to file tax returns?

Most LLCs will file a federal income tax return on Form 1065 on or before the fifteenth day of the third month following the close of each fiscal year (typically this means March 15). Form 1065 is an informational tax return, as the LLC itself is not taxed on any income.

What is a Schedule K-1? Do I need to prepare one?

The members of a multi-member LLC are generally treated as partners in a partnership for U.S. tax purposes. A Schedule K-1 is used to report each member's share of the LLC's income, losses, deductions, etc. The LLC is required to provide each member with a Schedule K-1 each year.

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 companies 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 company 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 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. Remember, members of an LLC cannot be treated as employees for income tax purposes, and will be subject to additional tax payment and reporting rules.

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;
- a paragraph explaining that employment relationships with the company are "at will" and what that means;

- a paragraph explaining that the company requires all employees, as a condition of employment and continued employment, to sign a CIIAA;
- a final paragraph letting them know how long they have to accept the offer and providing a contact name in case they have any questions; and
- 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.

What is a 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 company 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.

If members are not employees of the LLC, why do they sign CIIAAs?

If the members of an LLC are the company's founders, then typically they will also be providing services to the LLC, even if they are not deemed employees. Often the founders will be generating key intellectual property, and will have access to particularly sensitive information about the company. Thus it is particularly important to ensure that the founders are subject to the same requirements listed above.

When you use Stripe Atlas to form an LLC, as part of the formation process you will sign a CIIAA that includes the items discussed above. When you sign the CIIAA you will have an opportunity to specifically exclude intellectual property that you do not wish to assign to the LLC.

How do I convert a Delaware LLC to a Delaware corporation?

In order to convert your LLC to a Delaware corporation, you must first obtain the requisite approvals. The Stripe Atlas Operating Agreement has been designed to require only the unanimous consent of the managers in order to proceed with a conversion, and not the formal consent of all members, in order to help streamline the conversion process.

After obtaining approval for the conversion, the LLC must next prepare a “plan of conversion”, which details the mechanics of the conversion (such as how units in the LLC will convert into shares of the resulting corporation). The LLC then files a certificate of conversion with the Delaware Secretary of State, along with a certificate of incorporation for the resulting corporation. The resulting corporation will also need to proceed with many of the same post-incorporation formalities as a new corporation. See the Orrick Legal Guide for Stripe Atlas for more details.

It is strongly recommended that you consult with legal counsel before converting your LLC to a corporation. Stripe Atlas provides templates for the conversion process that have been tailored to the Stripe Atlas LLC, including the following documents (which are designed to be used by your legal counsel):

Documents executed on behalf of the LLC:

- Written Consent approving the conversion (by the Managers) – this ensures the written approval required by the Stripe Atlas Operating Agreement is obtained prior to conversion;
- Plan of Conversion – this document specifies how the membership interests in the LLC will convert into stock ownership in the resulting corporation; and
- Certificate of conversion – this document is filed with the Delaware Secretary of State to make the conversion come into effect.

Documents executed on behalf of the resulting corporation (see the See the Orrick Legal Guide for Stripe Atlas (for corporations) for more details):

- Certificate of Incorporation (for the resulting corporation) – the Certificate of Incorporation template provided is the same form used when forming a new corporation using Stripe Atlas;
- Board Approval of Organizational Resolutions – this handles some initial organizational matters for a new corporation, and is almost identical to the form used when forming a new corporation using Stripe Atlas, except that some additional resolutions are required to handle matters related to the conversion;
- Bylaws – these are the same Bylaws used when incorporating a new corporation on Stripe Atlas; and
- Stock Issuance Agreements – these are the documents that issue stock to the LLC members in exchange for their LLC interests.

What happens if the LLC dissolves?

Upon the dissolution of an LLC, the remaining assets of the LLC (if any) are distributed according to the terms of the Operating Agreement. The Stripe Atlas Operating Agreement provides for pro rata distribution of assets, which means that each member receives a percentage of the company’s assets equal to their

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ownership percentage. You should consult with legal counsel before proceeding with dissolution of your LLC.