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Why Should I Incorporate in Delaware?

Your offices will be in New York City, your employees will be in New York and New Jersey, and your first target customers will be up and down the East Coast—why would you want to incorporate your startup in Delaware?

It might seem strange to incorporate in a state that you may never have visited. However, there is a reason that more than one million companies, including more than 50% of all U.S. publicly-traded companies and 60% of the Fortune 500 are incorporated in Delaware.

There are a number of compelling reasons to incorporate in Delaware as opposed to your home state:

1. **Flexible Corporate Laws**. Delaware's corporate law is generally recognized as the most advanced in the United States. It provides tremendous flexibility in the organization and governance of the corporation as well as with the rights and duties of directors and stockholders. For example, this can be beneficial when a founder wants to expand or limit director liability or the ability of a majority of stockholders to make quick decisions without seeking the consent of each individual stockholder.
2. **Sophisticated Court System**. Although no one wants to go to court, Delaware's Court of Chancery is the place you want to be if your corporation is involved in a lawsuit. The Court of Chancery is a highly respected court that focuses on corporate issues. As a result, the judges in the Court of Chancery are very sophisticated and knowledgeable when it comes to corporate matters—and that's who you want hearing your case if you're the company.
3. **Great Customer Service**. Delaware's Secretary of State's office does a great job keeping things moving on the administrative side. They generally process filings faster and at a lower cost than other states.
4. **Privacy**. Unlike many other states, Delaware does not require officer or director names or addresses on the Certificate of Incorporation. This provides some level of privacy while your startup may be in stealth mode.
5. **Efficiency**. Because so many startups incorporate in Delaware, law firms with a startup practice will often have documents modeled after Delaware law **(you can view Day Pitney's Startup Program, Day Pitney Launch, here)**. Therefore, you can get your startup up and running relatively quickly without incurring significant legal expenses.
6. **Investors Like Delaware**. For many of the reasons listed above, investors prefer Delaware corporations. It provides a level of stability and predictability for them. Incorporating in Delaware sends a message of sophistication and shows you're in tune with investor needs.

There are some other considerations to weigh before incorporating in Delaware:

1. **Registered Agent**. Delaware law requires Delaware corporations to have a registered agent located in Delaware. There are many service providers that will act as your registered agent and it costs approximately $100 to $150 per year.
2. **Registering Your Business In-State**. If your company is incorporated in one state (e.g., Delaware), but you are doing business in another state, you will generally need to register your business in that second state and comply with their reporting requirements (and pay the annual reporting fee).
3. **Franchise Taxes**. You will have to pay Delaware franchise taxes each year. This is not an income tax, but an annual tax that applies to all companies incorporated in Delaware. It is based on the number and value of the corporate

shares and corporate assets. The tax can be as low as $175, but can be as high as $200,000 if you don't structure your company properly. This is one of many reasons to talk to a lawyer before forming your company.

If your business is small and only plans to conduct business in one or two states, the additional costs of incorporating in Delaware may outweigh the benefits.

If you are looking to have a national footprint or seeking venture capital financing, generally, a Delaware C-Corporation is the choice for you.

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