



Top 5 Reasons to Incorporate in Delaware

Source: <http://startuplawyer.com/incorporation/top-5-reasons-to-incorporate-in-delaware>

When you incorporate your startup company, two main decisions arise. First, what type of entity should your startup company be? Second, where should you incorporate?

Of the two, entrepreneurs focus primarily on choice of entity—LLC, Corporation, etc.—and usually just incorporate in their home state. And home state incorporation will make sense for most. But for a few startup companies, incorporating in a foreign state like Delaware, will be a better decision.

Delaware's division of corporations lists 4 reasons to incorporate in Delaware on [its website](#):

Why Choose Delaware as Your Corporate Home?

More than half a million business entities have their legal home in Delaware including more than 50% of all U.S. publicly-traded companies and 60% of the Fortune 500. Businesses choose Delaware because we provide a complete package of incorporation services including modern and flexible corporate laws, our highly-respected Court of Chancery, a business-friendly State Government, and the customer service oriented Staff of the Delaware Division of Corporations.

Talk about selling your state short. I'll see their four reasons and raise them one. Thus, the following are my top five reasons to incorporate in Delaware:

- 1. Flexible Laws.** Delaware's General Corporation Law is the most advanced and flexible business formation statute in the United States. It is designed to provide maximum flexibility in the structuring of business entities and the allocation of rights and duties among founders and shareholders.
- 2. No Wildcard Juries.** If you do end up going to court to settle a dispute, Delaware's Court of Chancery uses judges instead of juries. I don't know about you, but I'd rather place my startup company's legal fate in the hands of a well-trained expert than people whose legal experience consists of The People's Court and Law and Order re-runs.
- 3. Precedence = Less Litigation.** Since judges are used, decisions are issued as written opinions that your startup company can rely on. Thus, most Delaware corporations do not end up litigating disputes because their professional advisers examine these published opinions and construct deals to avoid lawsuits.
- 4. It's Free! (Well, almost).** Delaware charges \$89 to incorporate. A little bit cheaper than California (\$100..but they nail you for \$800 every year in franchise fees), New York (\$125), and a lot cheaper than Texas (\$300). [note: Even if you incorporate in a foreign state like Delaware, your startup company may still be subject to registration as a "foreign entity" and compliance with the laws of states you transact business in.]
- 5. Privacy.** In a world where personal privacy is constantly eroding (the Google 3D Mapping truck should be driving by my house anyway now), Delaware does not require director or officer names to be listed in the formation documents. Thus, Delaware provides a level of anonymity from snoopers.

Even though this post makes a big push for incorporating in Delaware, you shouldn't assume Delaware is the default choice for your startup company. The fact so many large, public companies choose Delaware should demonstrate that large, public companies tend to benefit the most from incorporating in Delaware.

So think about it and discuss incorporating in Delaware with your co-founders and professional advisers. But note that if you are planning to work with an investment bank or venture capital fund, you will likely have no choice but to become a Delaware entity. And for the five reasons above, that may not be such a bad thing.

Update: If you are looking for information about startup company incorporation, check out my [“If I Launched a Startup”](#) article.

About The Author

Ryan Roberts is a startup lawyer and represents technology companies through all phases of the startup process, including incorporation, seed & venture financings, and exit transactions. Click [here](#) to learn more about his practice.