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# WHERE TO INCORPORATE?

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I am often asked whether a new business should be incorporated in Delaware, or directly in the State in which it plans to base its headquarters.



Delaware is the home to more than one million business entities, including more than 60% of the Fortune 500 companies. However, Delaware is not a tax haven, and is usually not the cheapest option for incorporation.

A number of factors have led to Delaware's dominance in business formation, including:

- Its statute, the Delaware General Corporation Law (DGCL) which offers predictability and stability. The statute is not detailed and prescriptive, but includes a few important mandatory requirements and provides flexibility for corporations and other entities to carry out their business.
- The courts in Delaware which are flexible and responsive.
- The case law providing detailed and substantive guidance to business entities, including the key concept of the "business judgment rule", which is a recognition that business decisions made by directors in good faith and with due care, are not to be interfered with.

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**“Delaware is the home to more than one million business entities”**

The laws in Delaware are said to be “pro-management”, meaning that the laws slightly favor CEO’s and other managers over the shareholders. This can be favorable for corporations that anticipate having a large number of shareholders.

Delaware franchise taxes rate ranges from \$225 or \$400 per year and a registered agent is needed which usually cost \$200 per year.

An entity which is incorporated in Delaware, but does not conduct its business in this State will need to be registered in the State in which its principal activity is based as well as in all the States with which it has a certain nexus. Accountants and tax professionals usually advise corporations and their counsels on the existence of this nexus. In this context, a Delaware corporation will have to support the extra costs of the registrations in foreign States as well as the annual fees for franchise tax and statutory agents where applicable. As examples, franchise taxes in California are of a minimum of \$800.



When considering incorporating a company pursuing a venture capital with plans to go public, Delaware’s predictable body of law and corporation-friendly tax structure is a great choice. But for other businesses, investors should consult with their attorneys and CPA as to the solution best tailored to satisfy their objectives.

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