

The incorporation process key legal documents

As an emerging company, once you've decided the form of entity that will work best for your business ([C corporation](#), [S corporation](#) or [limited liability company](#)) and have chosen [the state where you will form your business](#), it's time to move forward and incorporate your company.

Many companies choose to establish themselves in Delaware because of its well-established body of corporate law and business-friendly climate. This article discusses the key legal documents needed to incorporate as a Delaware corporation.

Certificate of incorporation

The Delaware Division of Corporations provides a sample form that you can use in creating your certificate of incorporation (also known as a charter), but you also may use your own template. The charter can only be amended with the consent of the company's stockholders. It contains key information about a company such as the following:

- Name
- Registered office, which must be within the state
- Purpose of the corporation – frequently, companies will choose to use general language to permit flexibility, such as the following: "To carry on any and all business and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware."
- [Number, types and par value of shares of stock that the corporation will be authorized to issue](#)
- Sole incorporator's (the person filing the incorporation paperwork) name and mailing address and
- Any required governance terms such as provisions granting directors the authority to adopt, amend and repeal the bylaws of the corporation and/or limiting the liability of directors of the corporation.

Sole incorporator consent

Now that the corporation has been created through the filing of the charter, it is able to take corporate actions. Typically, the sole incorporator will take fundamental corporate governance actions like setting the number of directors on the board of directors and electing the initial directors of the corporation. At this time of formation, the sole incorporator is the only person with authority to act on behalf of the corporation, so this consent provides the directors with the authority they need to take corporate action. This consent often implements the following actions:

- Approval of the charter
- Setting the number of directors of the corporation
- Naming initial directors
- Adopting by-laws and
- Resignation of the sole incorporator.

Bylaws

Bylaws are one of the central governing documents for a corporation. They are typically adopted and, if necessary, later amended by the board of directors and govern how the company can conduct business. Bylaws will often set forth details

regarding how the corporation will be governed and function such as:

- How stockholder meetings are conducted, when and where they are held, how they are convened, and voting rules for these meetings and stockholder actions
- Whether the board and stockholders can take action by written consent without a meeting
- How the board of directors is organized, including the election and removal of directors, how the board may take action, and other details on director terms, meetings, and quorum requirements and
- Specifics regarding the number and type of officer positions the corporation will have, as well as terms regarding how those officers are elected and removed, and what their respective powers are.

Initial Board Consent

Companies act through their board of directors, often via [written consents](#). The initial board consent can contain many varying approvals, but often include the following items (at a minimum):

- Ratification of the certificate of incorporation
- Election of the officers
- Determination of the fiscal year
- Authorization for officers to open bank accounts on behalf of the company
- Authorization to qualify to do business in any state in which the company operates and
- Adoption of the form of stock certificate that the company will use.

Finally, whether incorporating in Delaware or elsewhere, you should be sure to confirm local requirements before filing. For an overview of some key issues to consider in order to prepare these documents, please see our [pre-incorporation checklist](#).

Now that you've formed your company and taken care of the fundamentals, you're ready to take on the world. Go forth and conquer (but don't forget to keep your counsel in the loop).

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