

MODULE 2

Legal Formation

Establish the company as a legally recognized entity with proper ownership, governance, and founder equity

Introduction

This module focuses on the process to establish the company as a legally recognized entity with proper ownership, governance, and founder equity structure. Following Module 1's goal of defining what IP the company controls, Module 2 structures the company in its legal form, who owns it, and on what terms. These formation decisions have long-lasting consequences: the entity type affects how the company can raise capital, how founders are taxed, and whether institutional investors can participate. Considerations for equity structure, vesting schedules, and the 83(b) election all interact with each other and build on the IP assignment executed in Module 1. Founders should not treat these as administrative formalities, they are foundational economic decisions that require legal counsel to execute correctly.

Task Guidance

TASK	"DONE" LOOKS LIKE	KEY RISK / TIMING
Select entity type (typically Delaware C-Corp)	Founder and legal counsel have selected an entity type with full understanding of the tax, governance, and financing implications. Decision is documented.	Delaware C-Corp is the default for venture-backed companies. LLC or S-Corp may be appropriate in narrow circumstances but requires explicit legal rationale. Do not let the founder default to LLC because it sounds simpler.
Confirm state of incorporation	State of incorporation is determined. If Delaware (most common), a registered agent in Delaware has been identified.	Delaware is preferred for investor familiarity and legal precedent even if operations are in Tennessee. Incorporating locally may be fine, but should be a deliberate choice.
File Certificate of Incorporation	Certificate of Incorporation (or Articles of Incorporation) is filed with the appropriate state and a file-stamped copy is in hand.	Minor errors in authorized share structure or registered agent information can create downstream issues. Have legal counsel file, not the founder directly.
Appoint registered agent	A registered agent is formally appointed in the state of incorporation and the state of primary operations (if different). Agent contact information is documented.	Registered agent services cost \$50-\$200/year. Founders sometimes try to serve as their own registered agent, permissible, but can create risk if they miss legal notices.

TASK	"DONE" LOOKS LIKE	KEY RISK / TIMING
Define authorized share structure	The total authorized shares and initial share classes (common stock, any preferred authorization) are defined and reflected in the Certificate of Incorporation.	Authorizing 10 million shares of common is a common starting point. The structure affects how much equity can be issued before requiring shareholder approval to authorize more.
Adopt bylaws	Bylaws are adopted by the board at the initial meeting and are on file. Bylaws cover governance basics: meeting requirements, officer roles, voting thresholds.	Standard startup bylaws are relatively straightforward but should be reviewed by legal counsel. Customizations can create problems later if they conflict with investor term sheets.
Conduct initial board action	Initial board written consent or meeting minutes are executed and cover: officer appointments, equity issuance authorization, bank account authorization, and adoption of equity plan if applicable.	The initial board action is the legal record of company formation decisions. Gaps here create corporate governance defects that surface in due diligence.
Issue founder stock	Each founder's shares are formally issued via a stock purchase agreement at a defined purchase price (typically par value). Shares are recorded in the cap table.	Shares should not be issued informally or under a handshake agreement. Each issuance requires a signed stock purchase agreement. The date of issuance triggers the 83(b) clock.

TASK	"DONE" LOOKS LIKE	KEY RISK / TIMING
File 83(b) elections (within 30 days of stock issuance)	Each founder has filed an 83(b) election with the IRS within 30 days of the date shares were issued. Proof of mailing or filing is retained. A copy has been sent to the company.	CRITICAL: The 30-day deadline is absolute. Missing it means founders pay ordinary income tax on the full value of shares as they vest rather than at grant. For a company that grows significantly, this tax cost can be enormous.
Execute restricted stock purchase agreements	Each founder has signed a restricted stock purchase agreement (RSPA) that defines the vesting schedule, repurchase rights, and transfer restrictions on their shares.	The RSPA is the legal document that makes vesting enforceable. Without it, founders hold fully vested shares from day one, a red flag for investors and a major problem if a founder departs early.
Execute vesting agreements	Vesting schedules are documented and agreed by all founders. Standard structure is 4-year vesting with a 1-year cliff. Any acceleration provisions are explicitly defined.	Acceleration provisions (single-trigger vs. double-trigger on acquisition) matter significantly in exit scenarios. Founders often don't think about this at formation, counselors should surface it.
Execute IP assignment agreements	Each founder has signed an IP assignment agreement transferring all relevant IP to the company. This covers both the licensed university IP and any independently developed IP the founder is contributing.	IP assignment must cover both past IP (already developed) and future IP (developed during company tenure). A gap here means the company may not own its core technology, something you do not want to uncover in future due diligence.

TASK	"DONE" LOOKS LIKE	KEY RISK / TIMING
Establish cap table management system	A cap table is established and maintained in a recognized format. A well-structured spreadsheet can work, but ideally a dedicated platform like Carta, Pulley, or equivalent is used. All issuances are recorded.	Informal or untracked cap tables are a serious diligence risk. Investors expect a clean, accurate cap table. Carta or a similar platform is worth the cost from day one.

Completion Gate

The two tasks in this module that carry consequences that cannot be undone are the 83(b) election deadline and informal equity arrangements made before proper legal structure is in place. If a founder does nothing else in Module 2, they should understand the 83(b) clock and have engaged a startup attorney before any shares change hands. Everything else in this module can be corrected; these two cannot.

- ☐ Entity type has been selected with legal counsel and the Certificate of Incorporation is filed.
- ☐ Bylaws are adopted and initial board action is documented.
- ☐ Founder shares are issued via signed stock purchase agreements and no informal equity arrangements exist.
- ☐ 83(b) elections have been filed by ALL founders within 30 days of share issuance. Proof of filing is retained.
- ☐ Restricted stock purchase agreements and vesting schedules are executed by all founders.
- ☐ IP assignment agreements are signed by all founders, covering past and future IP.

☐ Cap table is established and accurately reflects all issued shares.