

## WHERE TO INCORPORATE? MINNESOTA VS. DELAWARE

When an entrepreneur is thinking about forming a corporation, one question that is often asked is: "Where should I incorporate—Minnesota or Delaware?" If the entrepreneur will be, and plans to continue to be, sole owner of the new corporation, the answer is simple: incorporate in Minnesota.

On the other hand, if the entrepreneur plans to include others in the ownership circle, there is not a simple answer. The entrepreneur will need to take a closer look at the advantages and disadvantages of incorporating in each state.

### Advantages of Incorporating in Minnesota

- The state filing fees associated with the commencement and maintenance of a corporation are lower in Minnesota.
- Minnesota lawyers are often more familiar with Minnesota law; thus incorporating in Minnesota is often easier and more economical for the entrepreneur in the short and long term.
- Minnesota does not have a "franchise tax" on a corporation's authorized number of shares.
- Directors may take written action by a majority vote, as opposed to a unanimous vote, which provides greater flexibility in decision making.
- Minnesota corporations have greater legal protection from corporate takeovers.
- The standard for making distributions to shareholders is easier to meet.

### Disadvantages of Incorporating in Minnesota

- Disgruntled shareholders have more rights and protections than under Delaware law.
- Investors and directors may be unfamiliar with Minnesota law, making them reluctant to invest in a Minnesota corporation or serve on its board.
- A Minnesota corporation may unknowingly provide its minority shareholders the right to elect a director and give all shareholders the right to participate in future offerings of its stock.
- Minnesota's anti-takeover provisions may interfere with and provide obstacles to negotiated transactions.

- There is less case law in Minnesota regarding corporations and corporate disputes.

### Advantages of Incorporating in Delaware

- There are no equivalent rights and protections for disgruntled shareholders under Delaware law.
- Delaware corporations are often more accepted by the investment community, which may help with fundraising and the recruitment of directors.
- There is extensive corporate case law to draw upon.
- A Delaware corporation cannot unknowingly provide its minority shareholders the right to elect a director and give all shareholders the right to participate in future offerings of its stock.
- Delaware law has fewer class and series voting requirements than Minnesota law.

### Disadvantages of Incorporating in Delaware

- Minnesota lawyers are often less comfortable with Delaware law and forms, which could result in errors and greater expense.
- Delaware has higher filing fees than Minnesota and a "franchise tax" on authorized shares.
- A Minnesota-based corporation must have a registered agent in Delaware and it will need to qualify to do business in Minnesota, adding to the cost.
- Written actions by directors in Delaware require unanimous consent, which often delays decision making.
- There is a higher threshold to make distributions to shareholders.
- There are fewer takeover protections in place for Delaware corporations.

Since there are good reasons to incorporate in either Minnesota or Delaware, and this summary is not exhaustive, every entrepreneur pondering incorporation should weigh the advantages and disadvantages with an attorney to determine the state that is likely to be most advantageous.



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