CLEMENZA LAW GROUP

NEW YORK, NY · (212) 365-4875

THE PRIVATE BRIEF · HANDBOOK

The Founder's First-Year Legal Handbook

Nobody starts a company because they want to do paperwork. You start one because you have something to build and people to build it for. But somewhere in the first year, usually at an inconvenient moment, the paperwork catches up: an investor asks for documents you never made, a co-founder leaves and it turns out nobody wrote down what that means, a letter arrives about a filing you had never heard of.

This handbook is written to get ahead of that. It walks through the legal side of a New York startup's first twelve months in the order it actually happens, in everyday language, with a short checklist at the end of each chapter. It will not turn you into a lawyer, and it is not meant to. It is meant to let you recognize each moment as it arrives, know what it asks of you, and know when a lawyer should be in the room.

Read it once now. Then keep it, and come back to the chapter you need when the moment comes.

clemenzalaw.com/reference/founder-first-year

Chapters

CHAPTER 1

Before you begin: the shape of the year

Here is the whole first year in one paragraph. In the first weeks you decide what kind of company you are forming and file the papers that bring it into existence. Soon after, you and your co-founders write down who owns what and what happens if someone leaves. Then the company starts doing things: signing contracts, hiring people, building a product, choosing a name. Each of those creates a little paperwork, and the paperwork piles up in a folder that nobody looks at until the day someone important asks to see it. That day is usually a financing or an acquisition, and the state of the folder decides how that day goes.

The chapters that follow take those moments one at a time. Two ideas run through all of them, and they are worth stating once here.

The first is that almost everything in this handbook is cheap to do at the right moment and expensive to do later. A founder's share assignment costs an hour in month one and a negotiation in year three. A board consent is a page when it is signed on time and a problem when it is reconstructed from memory. Doing things in order is most of the trick.

The second is that you do not have to do any of this alone, and you should not try to do all of it yourself. Some steps are genuinely simple. Others look simple and are not. Each chapter says which is which, and the last chapter is about how to work with a lawyer so that you get the judgment you need without paying for more than you need.

THE CHECKLIST

- [ ] Make one folder, today

  A shared, backed-up folder (a cloud drive is fine) with subfolders for the company's formation papers, the founders' agreements, board records, contracts, people, intellectual property, and money. Every document mentioned in this handbook goes in it the day it is signed.

  > The folder is the single most valuable habit in this handbook. Companies that keep it hand an investor a tidy link. Companies that do not spend two stressful weeks reconstructing their own history.

- [ ] Open a company bank account before the first dollar moves

  Company money and personal money never mix. The whole point of forming an entity is that its debts are not yours, and courts can take that protection away when the finances are tangled together.

- [ ] Decide who owns the paperwork

One founder is responsible for the folder, the calendar of filings, and knowing when to call the lawyer. It does not have to be the chief executive. It has to be someone.

CHAPTER 2

What kind of company

The first legal decision most founders make is made in ten minutes on a website, and it is the one they live with longest. The choice is between a limited liability company (an LLC) and a corporation, and the difference is not cosmetic. It decides how you are taxed, what outside investors will expect, how much formality you have to keep up, and, in New York, whether you owe a publication fee that surprises nearly everyone.

An LLC is the simpler structure. Its owners are called members, its rules live in a document called an operating agreement that the members write themselves, and by default its profits pass straight through to the members' personal tax returns rather than being taxed at the company level. It has almost no required formalities. A corporation is more formal: it has shareholders, a board of directors, officers, and a set of rituals (annual meetings, written approvals, minutes) that have to be kept up. By default it pays tax on its own profits, though a corporation that qualifies and elects to be an S corporation is taxed more like a pass-through, and an LLC can elect to be taxed as a corporation. Settle the tax classification with an accountant rather than assuming the default. But it is the structure investors know, it can issue the preferred stock they want and the stock options your employees will want, and it is what venture-backed companies almost always are.

The rough rule is this. If you plan to raise money from investors in the next couple of years, form a corporation now, and form it in Delaware, whose corporate law investors know best; you then register it in New York as a company doing business here. If you are building something you will own and run, an LLC is usually the better fit. If you are not sure, an LLC is the cheaper place to wait, provided you convert before the first serious investor conversation rather than in the middle of it.

Whichever you choose, one New York rule deserves its own paragraph. A New York LLC must, within a hundred and twenty days of its articles of organization taking effect, publish a notice once a week for six weeks running in two newspapers designated by the clerk of the county where the office is, and then file proof with the state. What the newspapers charge depends on the county, and in Manhattan it is the expensive end; get a current quote before you budget for it. Skip it and the company's authority to do business in New York is suspended until you comply, which becomes a problem at exactly the wrong moment. Corporations have no such requirement.

THE CHECKLIST

- [ ] **Answer the investor question honestly**

Will you raise from angels or venture funds within about two years? Yes means a Delaware corporation, registered in New York. No means an LLC is probably right. This one answer decides most of the rest.

> Founders sometimes form a New York corporation to save the Delaware fees and then have to move it before their first round. If investors are the plan, start where you will end up.

- [ ] **Talk to an accountant before you file, not after**

The tax treatment differs, and there is an option (called an S election) that lets a profitable owner-run company pass profits through while saving on self-employment tax. New York City adds its own wrinkle: it taxes LLCs and corporations under different regimes. An hour with an accountant who knows the city is the cheapest hour the company will buy.

- [ ] **If it is an LLC, adopt a written operating agreement**

New York requires it, and most young LLCs skip it and run for years on the default rules in the statute, which are almost never what the founders would have chosen. If you have co-founders, this is also where the decisions in the next chapter live.

> The online formation services often hand you a template operating agreement written for a single owner. With two or more founders, it is the wrong document.

- [ ] **If it is an LLC, calendar the publication requirement the day you form**

A hundred and twenty days, two newspapers, six consecutive weeks, then the certificate of publication filed with the state. Budget for it. Some founders form with an office address in a less expensive county; whether that works for you depends on where the business actually operates, and is a question to ask rather than assume.

- [ ] **If it is a Delaware corporation, register in New York**

A company formed elsewhere that has an office or employees here must file for authority to do business in New York and will owe New York taxes. Investors check for this in diligence.

- [ ] **Get the federal tax number and the state registrations done in the first week**

The federal employer identification number (an EIN) takes minutes online and is free. You will need it for the bank account and for everything that follows. If you will pay anyone in New York, register as an employer with the state as well.

Can you change your mind later? Yes. LLCs convert into Delaware corporations often enough that investors' lawyers have a routine for it. The conversion has costs, in legal work and sometimes in tax, and it is easier the earlier it happens. What you want to avoid is doing it under time pressure, with a financing waiting, and a cap table that has to be rebuilt.

CHAPTER 3

The founders' paper

Falling out with a co-founder is one of the most common ways a promising company dies, and nearly every one of those breakups traces back to a conversation that never happened. Talking about what happens if it goes wrong feels like bad luck when everyone is excited. It is not. It is the kindest thing founders can do for each other, and it is far cheaper in month one than in year three.

Seven conversations cover it. Who owns how much, and why. Whether the shares are earned over time (they should be). Who does what, and who breaks ties. What the company owns, and whether each founder has actually handed it over. Where the money comes from and who can spend it. What happens when someone leaves. And how you will disagree, because you will.

Have the conversations over a long dinner and write the answers down. The documents come afterwards, and they are short: a share purchase agreement for each founder with the vesting terms, an assignment of intellectual property, and a shareholders' agreement (or, in an LLC, the operating agreement) covering decisions and transfers. A lawyer can draft them quickly once the decisions exist. What a lawyer cannot do is make the decisions for you.

One term deserves the spotlight because it protects everyone: vesting. Vesting means founders earn their shares over time rather than owning them all on the first day. The standard is four years with a one-year cliff: nothing is earned for the first twelve months, a quarter at the one-year mark, the rest month by month after that. A founder who leaves after eight months leaves with nothing; one who leaves after two years leaves with half. It sounds like a lack of trust. It is the opposite. It protects each founder from every other founder's change of circumstances, and investors will require it anyway. Setting it yourselves means you choose the terms.

THE CHECKLIST

- [ ] **Decide the split on purpose, not by default**

  Equal is sometimes right, but it is a default, not a decision. Who had the idea, who is full time, who is putting in money, who has the skills the company cannot function without? An unequal split that everyone discussed is healthy. An equal split that one person quietly resents is a slow poison.

- [ ] Put every founder on a vesting schedule

Four years, one-year cliff, monthly after that, with a decision on whether vesting speeds up if the company is sold. Each founder's share purchase agreement carries the schedule.

> The company should have the right to buy back unvested shares when a founder leaves. Without that clause, vesting is a promise with no mechanism.

- [ ] File each founder's 83(b) election within thirty days of the shares being transferred

This is a short tax form (the IRS now publishes it as Form 15620) that tells the IRS to tax your shares at today's value, usually near zero, rather than as they vest and grow. The clock runs from the day the stock is transferred, not the day the paperwork is finished. Filing late does not simply get you the election late, and the tax consequences can be serious, so if the thirty days have already run, ask a tax adviser the same week rather than assuming either way. Keep proof of mailing and the IRS acknowledgement in the folder.

> This is the deadline in this handbook that founders miss most often, and the one with no cure. Set the reminder the day the shares are issued.

- [ ] Assign everything to the company, in writing, on day one

The code, the designs, the name, the domain, the customer list: nothing a founder made belongs to the company until it is assigned. Each founder signs an assignment of what exists now and an agreement to assign what they create going forward.

> Anything a founder built at a previous employer, or while under someone else's contract, deserves particular care. A former employer with a claim to your core product is a diligence problem no financing survives easily.

- [ ] Write down roles, time commitment and who breaks ties

Titles are easy; decision rights are not. Which decisions need everyone, which can one founder make alone, and who has the final word when two of you disagree? Say plainly what full time means, and what happens if someone is keeping a day job for a while.

- [ ] Decide what leaving looks like

Unvested shares are forfeited. Can the company buy back vested shares, and at what price? What counts as being removed for cause? Define these now, when nobody is accused of anything.

- [ ] Agree a way out of a deadlock

A trusted advisor who breaks ties, a mediator, or a right for one founder to buy out the other. A deadlock with no exit can kill a company that was otherwise fine.

If you get through all seven conversations and still want to build the company together, you have learned something important, and the paperwork will take a lawyer a short time. If you cannot get through them, you have learned something even more important, and it cost you a dinner.

CHAPTER 4

Keeping the company's records straight

A company is a legal fiction, and it acts through its paperwork. When the board decides something, a piece of paper records the decision. When the company issues shares, a piece of paper authorizes it. When someone is made an officer, a piece of paper gives them the title and the authority that comes with it. The collection of those pieces of paper is called the minute book, and its condition is the first thing an investor's lawyer looks at.

For a corporation, most decisions are made by written consent: a short document stating the resolution, signed by the directors, filed with the minutes. In New York there is one rule about consents that catches nearly every founder out. The board can act in writing without a meeting only if every director signs. Not a majority. Everyone. If one director has not signed, the action has not been taken, however clearly everyone agreed on the call. Delaware, where many startups are formed, has the same unanimity rule for written consents.

Three kinds of decisions need board action rather than an informal yes: issuing shares or options, electing officers, and adopting an equity plan for employees. And three consents go missing at nearly every young company. The one electing the officers, so that the person signing as chief executive actually holds the title. The one approving each individual option grant, with the share count, the vesting schedule and the price fixed on the date the board approved it, not the date the offer letter promised it. And the catch-up consent that ratifies whatever an officer signed between meetings on the assumption that the authority was implied.

None of this is hard. It is a habit: when the company does something that matters, a consent gets drafted, everyone signs, and it goes in the folder. The chapter's checklist is that habit written down.

THE CHECKLIST

- [ ] **Elect the officers in writing, as of their actual start dates**

  Someone has signed as chief executive since week one. A consent should say so. Banks, landlords and insurers will eventually ask who is actually authorized to sign, and "we all agreed" is not the answer they want.

- [ ] Approve every share issuance and every option grant by consent, individually

Adopting the equity plan is one resolution. Each grant is a separate one, naming the person, the number of shares, the vesting schedule and an exercise price set at fair market value on the grant date. The grant is not real until the board has approved it in writing.

> The exercise price has to be supported by an independent valuation (often called a 409A valuation) that is refreshed at least yearly and after any financing. Options granted at the wrong price are the diligence finding that arrives with a repricing bill attached.

- [ ] Have the shareholders approve the option plan within twelve months of the board adopting it

For incentive stock options to get the favorable tax treatment employees expect, the shareholders (usually just the founders at this stage) must approve the plan within a year before or after the board adopts it. That is a rule about incentive stock options in particular, not about every equity award; other grants have their own requirements. It is one more signature page, and it is routinely forgotten.

- [ ] Keep the cap table as a document the board has approved, not just a spreadsheet

The cap table lists who owns what. Every line on it should trace back to a signed consent and a signed purchase or grant agreement. If the spreadsheet says something the minute book does not support, the minute book wins.

- [ ] Ratify what got signed between meetings

The lease, the hosting contract, the bank signature card. At the next opportunity, a short consent ratifies them. Unglamorous, and exactly what keeps a signature from being challenged later by someone with a reason to challenge it.

- [ ] File the state's recurring reports and pay the annual taxes

New York corporations and LLCs file a short biennial statement with the Department of State every two years, in the anniversary month of formation. Corporations file an annual franchise tax return; LLCs pay an annual filing fee. A Delaware corporation also owes Delaware an annual report and franchise tax, and the default method of calculating that tax produces an alarming number that a different permitted method usually reduces dramatically.

> Delaware's franchise tax notice is the letter that makes new founders panic every spring. The notice is calculated one way; Delaware permits two, and you may pay the lesser. Have someone run it both ways, including the assumed par value method, which needs your issued shares and your total gross assets.

- [ ] Keep the minute book current, not reconstructed

A consent signed on the day is a page. A consent reconstructed eighteen months later, with dates chosen to match what should have happened, is a document that has to be explained.

CHAPTER 5

The contracts you will sign this year

In the first year a company signs more contracts than its founders expect: a non-disclosure agreement with a prospective partner, a first customer agreement, a stack of software and vendor terms, an agreement with a freelance designer, and often a lease. Most of them are signed as sent, because the other side called them standard and reading them felt slow.

Here is why they matter more than their length suggests. A term you accept once becomes a term you accept two hundred times, because it lives in a template. Your customer agreement in particular is the most repeated legal document the company will ever produce, and the version you sign in year one becomes the position you defend in year four. Getting the first few right is the highest-leverage legal work a young company can buy.

You do not need to understand every clause. You need to find five of them in any document and know what they mean. What are you giving (the scope, the exclusivity, the term)? What are you getting, and how is it calculated? Who owns what comes out of the relationship? Who is on the hook if something goes wrong, and up to how much? And how does it end? Find those five answers and you understand the deal well enough to know whether to sign it or send it to a lawyer.

THE CHECKLIST

- [ ] **Own your customer agreement**

  Have one, know where it came from, and revise it when the product changes. Five clauses decide what it is worth: the cap on your liability (a cap at twelve months of fees is ordinary), what you are promising to defend (an indemnity for your own product infringing someone's rights is normal; an uncapped one for the customer's use of it is not), who owns configurations and the customer's suggestions, what happens on termination, and how renewal works.

  > Nothing goes into a security or data exhibit that someone in the company cannot demonstrate on a screen share. Promises made in a sales questionnaire are contract terms once the deal is signed.

- [ ] **Read the non-disclosure agreement for what it is**

  An NDA should be mutual, limited to a defined period, and about confidentiality only. Watch for clauses that quietly do more: a promise not to hire, a promise not to compete, or a grant of rights in whatever you discuss.

- [ ] **Calendar every vendor renewal the day you sign**

Most software and service contracts renew automatically unless you give notice thirty or sixty days before the anniversary. Put the notice date, not the renewal date, in a shared calendar. A twelve-month contract for a tool two people still use, renewed twice because nobody diaried it, is one of the most common findings in a legal review.

- [ ] **When there is an order form, online terms and an addendum, say which wins**

Vendors can change online terms unilaterally. If your negotiated addendum does not say it takes precedence, the version on the website does.

- [ ] **Know which vendors touch customer data, and on what terms**

Whatever you promised your own customers about their data has to be true of every vendor that handles it. A gap here is not a vendor problem. It is a promise you made and cannot keep.

- [ ] **Treat a first lease as the largest obligation the company has signed, because it is**

In New York City the usual arrangement is a good guy guarantee: a founder personally guarantees the rent only until the company moves out, leaves the space clean, and is paid up to that date. Check what actually triggers release, how much notice is required, and whether the guaranty is capped. A guaranty with good guy in the heading and full-term in the text is a different instrument.

> Also read the escalation clause (fixed percentage or pass-through of building costs), the restoration clause (what you must put back at the end can cost more than the build-out), and whether the lease can move if the company is acquired or shrinks.

- [ ] **Send the ones that set a precedent to a lawyer**

The first customer agreement, the lease, anything with a personal guarantee, and any contract that will become a template. A review of a document you will sign two hundred times costs a fraction of what the two hundred signatures are worth.

CHAPTER 6

Your first people

Hiring the first employee changes the company's legal life more than any other single event in the first year. Before that moment, the law mostly asks you to keep your records straight. After it, New York asks specific things of you, with specific deadlines, and it does not grade on effort.

The good news is that the list is finite, and most of it is set up once. You register as an employer. You get the insurance the state requires. You give each new hire the written notices the law prescribes. You put a short handbook in place. And you make sure that every person who makes anything for the company has signed a document handing it over.

The one decision that grows more expensive every month it is left alone is the line between employees and contractors. Calling someone a contractor does not make them one. If they work your hours, under your supervision, with your tools, on your core business, the law will likely treat them as an employee whatever the agreement says, and the exposure (unpaid taxes, benefits, penalties) accrues per person per year. Year one is when it is cheap to look at.

New York also has a law that founders hiring freelancers rarely know about. When you hire an independent contractor for covered work worth eight hundred dollars or more, on its own or added to every contract between the two of you in the immediately preceding hundred and twenty days, the law requires a written contract with specific contents, a copy for the freelancer, payment by the agreed date or within thirty days of the work being done, and a copy kept for six years. It applies to the graphic designer you found online exactly as much as to a consultant. Several trades are carved out: sales representatives, licensed medical professionals, construction contractors, and lawyers doing legal work under the contract, but only lawyers in good standing with a U.S. bar who are not under a court order suspending or restricting their practice. Check the list before deciding a hire is covered or is not.

THE CHECKLIST

- [ ] **Register as an employer and get the required coverage before the first day**

  Register with the state for unemployment insurance and withholding. Obtain workers' compensation, disability and paid family leave coverage, all three of which New York requires. Operating without them carries steep penalties.

- [ ] **Give every new hire the written pay notice New York requires**

At hiring, in writing, in English and, where the state Department of Labor publishes a model notice in the employee's primary language, in that language too: their rate of pay, how they are paid, the regular payday, and the employer's details. Keep a signed copy. It is a small form and a common finding.

- [ ] **Put a pay range in every job posting**

Employers covered by the state law (broadly, those with four or more employees) must state the pay or pay range in advertisements for jobs, promotions and transfers, along with the job description if one exists. It reaches any role that will be performed at least partly in New York, and also a role performed elsewhere that reports to a supervisor, an office or a worksite here, which catches the remote hire people assume is outside the rule. A posting without a range is a compliance question with a live deadline.

- [ ] **Have every employee and contractor sign an invention assignment and confidentiality agreement before they start**

The single most common gap found in diligence, and free to prevent. It should say that what they create for the company belongs to the company, and that they will keep its information confidential.

> The contractor with no assignment is usually an early designer or freelance developer whose work is still in the product. The longer you wait, the less likely they are to sign.

- [ ] **Use a written contract for every freelancer, with the contents the law prescribes**

Both parties' names and addresses, the services, the value, the rate and method of payment, when payment is due, and when the freelancer must submit their invoice. Pay on time. Keep the copy.

- [ ] **Classify honestly, and revisit it every year**

Same hours, same supervision, same tools, same work as an employee usually means employee. If a contractor has drifted into that pattern, convert them before an audit or a departing worker does it for you.

- [ ] **Set up the annual training and the written policies**

New York requires every employer to provide sexual harassment prevention training to every employee every year and to have a written policy. Paid sick leave rules apply from the first hire, with the amount depending on the company's size. A short handbook covering these, plus the basics on conduct and equipment, is enough at this stage.

- [ ] **Grant equity properly or not at all**

An offer letter promising options is not a grant. The board approves each grant in writing (see the chapter on keeping the company's records straight), the exercise price is supported by a current valuation, and the employee signs a grant agreement. Promising two percent in a conversation creates an expectation and no rights, which is the worst of both.

- [ ] **Paper every departure**

Even a friendly one. A short letter confirming the last day, what happens to their equity, that company property and access have been returned, and, where appropriate, a release. A missing departure file is a recurring finding in reviews.

CHAPTER 7

Protecting the name and the work

By the end of the first year the company owns things that did not exist at the start: a name people recognize, a product, a body of code or designs or content, a website with users. Each of these is an asset, and each can be lost or clouded by something small left undone in the first months.

Start with the name. A surprising number of companies build a brand for a year and then discover that someone else registered a similar name for a similar business first, and now has the right to make them change it. A trademark clearance search before you commit to a name costs little and takes days. A rebrand after launch costs everything the brand was worth. Once the name is clear, filing a federal trademark application early puts your date ahead of anyone who comes later; the registration itself takes a year or more to arrive, which is one more reason to start early.

Then the work. The chapters on the founders' paper and on your first people covered the assignments that make the company the owner of what its founders, employees and contractors create. Two more things belong here. If your product uses open-source software, someone should know which licenses are involved, because a few of them carry conditions that can matter to an acquirer. And if the company owns the design files, the code repository, the domain and the social accounts, make sure it is actually the company that holds the account, not a founder's personal login.

Finally, the promises the company makes to the public. A website that collects anything from users (an email address, an account, analytics) needs a privacy policy that describes what the company actually does with the data, and terms of use that set the rules. These are not boilerplate. A privacy policy written at launch that no longer describes the product is a finding in nearly every review, and depending on who your users are and where they live, privacy laws from California to Europe may apply to a company in New York.

THE CHECKLIST

- [ ] **Clear the name before you commit to it**

  A proper search looks beyond exact matches at similar names in related fields, which is what the trademark office and a court would look at. Do it before the logo, the domain and the launch, not after.

  > A free search of the trademark database for the exact name is not clearance. The conflicts that hurt are the ones that are similar, not identical.

- [ ] File the federal trademark application early

You can file before you are selling, on the basis that you intend to use the name, which reserves your place in line. Register for the goods or services you actually provide, not every category imaginable.

- [ ] Put the domain, the repository and every account in the company's name

With company email addresses as the owners and recovery contacts, and credentials in a shared, secure manager. A departing founder who personally owns the domain is a hostage situation nobody intended.

- [ ] Keep a list of the open-source components in your product and their licenses

Most are permissive and harmless. A few require you to share your own code under certain conditions. Knowing which is which is a question every technical acquirer asks.

- [ ] Publish a privacy policy and terms of use that describe the product you actually have

And revise them when the product changes: new analytics, new vendors that process user data, any AI tooling. New York's data security law requires reasonable safeguards for New Yorkers' personal information and notice if it is breached, whatever the size of the company.

- [ ] Register the copyright in anything you would want to enforce

Copyright exists automatically, but for a U.S. work you generally have to register before you can sue over infringement, and registering early (before the infringement, or promptly after publication) is what keeps statutory damages and attorney's fees on the table. It does not guarantee a recovery. For core software, key content and brand artwork, it is inexpensive and worth doing.

- [ ] Write down how the team may use AI tools

One page: which tools are approved (the paid versions whose terms say your inputs are not used for training), what may and may not be pasted in, and that a person reviews anything that matters. Material generated entirely by a machine may not be protected by copyright at all, so brand assets and core content should involve real human work.

CHAPTER 8

The first money

At some point in the first year many companies take in outside money for the first time: from friends and family, from an angel, sometimes from a fund. The instruments are simpler than they sound, and the legal rules around them are stricter than founders expect.

The two most common early instruments are the SAFE and the convertible note. A SAFE (the letters stand for simple agreement for future equity) is a short document in which an investor gives the company money now in exchange for shares later, at the company's next priced round, usually at a discount or subject to a cap on the valuation. It is not a loan; there is no interest and no repayment date. A convertible note is similar but is technically debt: it carries interest and a maturity date, and converts into shares at the next round. Both let you raise without settling on a valuation today. The terms that matter are the valuation cap, the discount, and what happens if there is no next round.

Selling shares (or SAFEs, or notes) is selling securities, and securities law applies to a two-person company exactly as it applies to a public one. The good news is that private companies almost always sell under an exemption from full registration. Which exemption you are using has to be decided before you offer anything, because each one sets its own rules. The common private route lets you sell to accredited investors (people who meet income or net-worth thresholds) and a limited number of others, and it forbids advertising the offering publicly. A different route does permit public advertising, at the price of having to verify that every buyer really is accredited. Either way, a notice goes to the federal regulator within fifteen days of the first sale, and New York has its own notice requirement that depends on the exemption you picked, so check the Attorney General's current process rather than assuming one filing fits. Miss a notice and the money is still yours, but the problem follows the company into every later financing.

The other thing the first money does is trigger the first real look at your folder. Even a friendly angel will ask for the formation documents, the founders' agreements, the cap table and the contracts. This is the moment the habits in the earlier chapters pay for themselves, and the checklist below is the folder an investor expects to see.

THE CHECKLIST

- [ ] **Understand the three terms of any SAFE or note before you sign**

The valuation cap (the highest company value at which the investment converts), the discount (the price break the investor gets at the next round), and any clause that gives the investor whatever better terms a later investor gets. Model what they mean for your ownership after the next round, because they compound.

> Stacking several SAFEs at different caps is easy to do and hard to undo. Keep a running model of what the founders will own after conversion, not just how much has been raised.

- [ ] **Sell only to investors who qualify, and do not advertise**

For the usual exemption, investors should be accredited, and the offering should be made through relationships rather than public announcement. A post on social media inviting investment can take the company outside the exemption it was relying on.

- [ ] **Make the notice filings after the first sale**

A short federal notice within fifteen days of the first investment, and the New York notice filing. They are routine, they are inexpensive, and they are forgotten constantly.

- [ ] **Approve the financing by board consent and, where required, shareholder consent**

The issuance of the SAFEs or notes, and later the shares they convert into, needs the same written authority as any other issuance (see the chapter on keeping the company's records straight).

- [ ] **Assemble the folder an investor will ask for**

Formation documents and any amendments; bylaws or operating agreement; every board and shareholder consent; the cap table; each founder's purchase agreement, vesting terms and 83(b) proof; the option plan and every grant; every invention assignment; the customer agreement template and every signed customer and vendor contract; offer letters and contractor agreements; trademark filings; privacy policy and terms; insurance; financial statements and tax filings.

> The state of this folder is what an investor's lawyer reports back on. A tidy folder shortens diligence by weeks and signals a company that will be easy to work with. A messy one raises the price of the money, or costs the deal.

- [ ] **Get directors' and officers' insurance when an outside investor joins the board**

It protects the individuals who sit on the board, including the founders, and most institutional investors will ask for it as a condition of the seat.

CHAPTER 9

The year at a glance

Most of what this handbook describes happens once. A handful of things come round every year, and they are the things that get missed, because nobody wrote them down and the person who knew has moved on. Here they are, stated as rules rather than dates, because the dates move and depend on when your company was formed and when its year ends.

Put each of these in the shared calendar with a name next to it. Reviewing the list takes five minutes at the start of each quarter, and it is the difference between a company that is always ready to be looked at and one that hopes nobody looks.

THE CHECKLIST

- [ ] **Early each year: the tax forms for the people you paid**

  A form to every contractor paid six hundred dollars or more in the prior year, and a wage statement to every employee, both due by the end of January. The first thing that gets missed when the bookkeeper changes.

- [ ] **Each year: the company's income tax returns, federal, state and city**

  Corporations and LLCs file on different forms and schedules, and New York City has its own. Your accountant owns the dates; the founder who owns the folder confirms they were met.

- [ ] **Each spring, for a Delaware corporation: the Delaware annual report and franchise tax**

  Recalculate the tax before paying the figure on the notice (see the chapter on keeping the company's records straight).

- [ ] **Every two years, in the anniversary month of formation: the New York biennial statement**

  A short filing with the Department of State confirming the company's address and the person to receive legal papers. Easy to forget precisely because it is not annual.

- [ ] **Every year: the annual meeting or the written consents that replace it**

  A corporation elects or re-elects its directors and officers each year. It can be done by written consent, and it should be done, because a board whose terms have all technically lapsed is a finding.

- [ ] **Every year, and after any financing: refresh the valuation that supports option prices**

  Options granted at a price supported by a stale valuation are the diligence finding that arrives with a repricing bill.

- [ ] **Every year: the harassment prevention training for every employee**

  Required in New York regardless of the company's size. Keep the attendance record.

- [ ] **Every year: reread the privacy policy, the customer template and the contractor roster against reality**

  Does the privacy policy describe the current product? Has the customer agreement drifted through negotiated exceptions? Has any contractor become, in practice, an employee? An hour each, once a year.

- [ ] **Every year: insurance renewals**

  General liability, workers' compensation and the state coverages, cyber if you hold customer data, and directors' and officers' cover once there are outside directors. Confirm each is in force and at limits that match the company you now are, not the one you were.

- [ ] **Rolling: vendor notice windows and trademark deadlines**

  The notice dates for auto-renewing contracts (see the chapter on contracts), and the response deadlines on any trademark office correspondence, which are strict and unforgiving.

CHAPTER 10

When to bring in a lawyer, and how to use one well

Founders tend to make one of two mistakes about lawyers in the first year. Some call for everything and spend money they did not need to spend. More common, and more expensive in the end, are the ones who call for nothing, because each individual question seemed too small to be worth the cost of asking, until the questions had compounded into a problem that was not small at all.

Here is a better rule. Some things in this handbook you can do yourself: the folder, the calendar, the bank account, the tax number, reading a vendor contract for its renewal clause. Some things look simple and are not: the founders' agreements, the first customer template, the lease, anything with a personal guarantee, the first financing, a departure that is not entirely friendly. Those are the moments a lawyer should be in the room, and they are the moments when good advice is cheapest relative to what it prevents.

The way you engage a lawyer matters as much as when. For a young company there are broadly two arrangements. You can call a lawyer when something comes up and pay by the hour, which works well for a discrete project and badly for a stream of small questions, because the first hour of every call is spent explaining who you are. Or you can put a lawyer on a monthly plan as your general counsel: an outside lawyer who learns the business once, stays, and answers the small questions as they come, for a fixed monthly fee covering a set number of hours. Plans of this kind typically start at a few hours a month and grow with the company. The right time for one is usually earlier than founders expect: when legal questions are arriving more than once a month, when contracts are being signed unread because review feels slow, or when a financing or a big customer is on the horizon.

A word about the free alternative. A chatbot is a very good way to learn the vocabulary of a problem before you call anyone, so that the call is shorter and cheaper. It is not your lawyer. It does not know New York, it does not know what you did not tell it, nothing you type into it is confidential or privileged, and nobody is accountable when it is wrong. Use it to prepare your questions. Then ask a person who is responsible for the answer.

THE CHECKLIST

- [ ] **Call a lawyer for the moments that set a precedent or cannot be undone**

  The founders' agreements. The first customer template. The lease and any personal guarantee. Any equity grant. The first outside money. A departure with any friction. A letter from a regulator, a former employee's lawyer, or anyone claiming you infringed their rights.

☐ **Ask for a legal health check before, or instead of, the first big project**

A read-before-you-advise review of what the company already has: entity papers, contracts, intellectual property, people, privacy. It returns a written inventory, a ranking of what actually matters, and a ninety-day plan with owners and dates. For most first-year companies it finds the same handful of gaps described in this handbook, and fixes them while they are still cheap.

☐ **Before you engage anyone on a monthly plan, ask five questions**

What exactly is included each month, in writing? Who does the work? What happens, and what does it cost, when something falls outside the plan, and are you told before the meter starts? How do they work with other lawyers when you need a litigator or a tax attorney? And what does it take to stop?

> An ongoing relationship should make your legal costs more predictable, not less. If the answers to these are vague, keep looking.

☐ **Bring the whole problem, not the question you think you have**

A lawyer's first ten minutes on any question are spent finding out what you did not think to mention: the side letter, the earlier email, the fact that the other party is your landlord's cousin. Say everything. It is confidential, and it is the part that changes the answer.

☐ **Notice when you have stopped asking**

If you find yourself deciding not to raise a question because of what it might cost, the arrangement you have is not working, and that is worth saying to your lawyer directly. The whole point of counsel in the first year is that the small question gets asked early, when it is still small.

That is the year. None of it is dramatic, and almost none of it is difficult once you can see it coming. Companies that do these things in order spend their first financing talking about the business. Companies that do not spend it explaining the folder. This handbook exists so that you are the first kind.

If you would like to talk any of it through, that conversation is where we usually begin: bring the last few things that have kept you up at night, legally speaking, and we will tell you which are simple, which are not, and what to do first.

This is general information about how these instruments and obligations usually work, not legal advice about your situation, and reading it does not make you a client. Deadlines and requirements turn on facts particular to you: your fiscal year, your state, the agreement actually in front of you. Confirm your own before you rely on any of it.

Clemenza Law Group, New York, NY. (212) 365-4875.

The current edition of this handbook, and the essays behind it, are at clemenzalaw.com/reference/founder-first-year.