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# STARTUP ESSENTIALS: Key Formation & Seed Financing Considerations

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# Topics

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- Formations

- Choosing an entity
- Founder issues
- IP issues
- Other formation issues
- Biggest formation mistakes

- Seed Financings

- Overview
  - Typical characteristics
  - Types of investors
  - Types of instruments
- Selecting an instrument
- Biggest seed financing mistakes



# Forming a Startup Company



# Formations: Choice of Entity/Jurisdiction

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- “Startup” vs. Small Business
- Entity Type
  - C-corporation
  - S-corporation / limited liability company (LLC)
- Jurisdiction
  - Delaware vs. alternatives
- Benefit Corporations
  - Delaware “public benefit corporation”
  - “B-Corp” certification from B Lab



# Formations: Founder Issues

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- Roles

- Directors
- Corporate officers
  - President, Treasurer, Secretary
- Operational titles
  - CEO, CTO, COO
- Signature authority
- Apparent authority

- Equity

- Ownership percentages
- Founders' stock
  - Type of stock
  - Consideration
    - Purchase at par value
    - Section 351 exchange for IP
  - Vesting
    - Time-based vs. milestone-based
    - Single vs. double trigger acceleration
    - 83B elections



# Formations: IP Issues

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- Founders' Previous Employment
  - Non-compete agreements
  - Non-solicit agreements
  - IP developed while previously employed
- Documenting Company Ownership of IP
  - Technology assignment agreements
  - Proprietary information and inventions assignments (PIIAs)
  - Assigning domain names to company
- Trademark Clearance
- Patents



## Formations: Other Issues

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- Adopting a Stock Plan
  - Cost and timing considerations
  - Granting/selling founders' stock to early employees
- Bylaw Transfer Restrictions
- Dual Class Structure: High Vote/Low Vote
- Foreign Qualifications
- Tax ID and Bank Account
- Forms
  - NDAs, offer letters, consulting and advisor agreements, master commercial agreements



# Formations: Biggest Mistakes

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1. Failing to file an 83B election within 30 days
2. Failing to ensure all IP is owned by the company
3. Putting off difficult conversations among cofounders around role/equity split
4. Failing to subject cofounders to vesting
5. Building the company or product brands around names that infringe on third-party IP





# Startup Seed Financings



# Seed Financings: Overview

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- Seed Stage of Development
- Typical Amounts Raised
- Number of Investors
- Types of Investors
  - Friends and family
  - Angels
  - Super-angels
  - Seed-stage VC funds



# Seed Financings: Types of Instruments

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- Convertible Note
- Simple Agreement for Future Equity (SAFE)
- Series Seed Convertible Preferred Stock
- Common Stock



# Seed Financings: Choosing an Instrument

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- Equity vs. Non-Equity
  - When and why should a company issue Series Seed preferred stock instead of convertible notes or SAFEs?
- Convertible Notes vs. SAFEs
  - What's the difference?
  - Are there any drawbacks to using SAFEs?
- Why not issue common stock?



# Seed Financings: Biggest Mistakes

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1. Excessively low valuation cap in notes or SAFEs
2. Excessively high pre-money valuation in Series Seed preferred stock financing
3. Overly aggressive preferred stock terms
  - Participating preferred
  - Multiple liquidation preference
  - Cumulative dividends
  - Giving seed investors too much control over the company's operations or future financings/exits



# Relevant Practical Law Resources

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- Setting Up a New Business Checklist
- Startup Seed Financings: Overview
- Choosing the Right Seed Financing Instrument for Startups Checklist
- Convertible Note Financing Checklist
- Convertible Note Purchase Agreement with Short-Form Note
- SAFE: Simple Agreement for Future Equity

These relevant resources are available with a free, no-obligation trial to Practical Law. Visit [Practicallaw.com](https://www.practicallaw.com) and request your free trial today.



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# Questions?

