
BLACKTECHSTARTUP EDUCATION

Black Tech Startup 03: Form the Company Without Giving Away the Future

A founder-control guide to entity choice, equity, vesting, IP ownership, 83(b), trademarks, tax setup and the documents that keep a promising startup from becoming an ownership dispute.

This is Part 3 of 6 in the Black Tech Startup series. Work the sequence in order: each guide assumes you completed the operating decisions in the previous one.

Formation is an ownership event, not paperwork theater

The goal of formation is not to collect an LLC certificate and call yourself official. The goal is to create a legal container that can own the product, enter contracts, receive revenue, issue equity and survive changes in the founding team. That means entity choice, founder ownership, intellectual-property transfer, tax setup and decision rights need to fit the business you designed in Guide 2. This is also where undercapitalized founders can get trapped: cheap templates can create expensive ambiguity, while expensive legal work can burn cash before it is needed. Use qualified startup counsel or a strong small-business attorney for consequential equity and securities decisions, but arrive prepared with the decisions this guide identifies so you pay for judgment rather than basic education.

Choose the entity for the company you are actually building

A single-owner consulting business and a venture-scale software company do not have identical needs. LLCs are flexible under state law and can have different federal tax classifications.

Corporations create a share structure that many institutional investors and equity-compensation plans are built around. If you expect outside venture financing, discuss a C corporation—often Delaware—with counsel before defaulting to an LLC and converting later. If you are building a profitable owner-

operated company, an LLC may be entirely appropriate. State formation and federal tax classification are related but not the same decision. Do not copy another founder's entity because their capital path, owners, state taxes and exit goals may be different.

Write the founder deal before the company becomes valuable

If there are co-founders, document who owns what, why, what each person is expected to contribute, how decisions are made and what happens when someone leaves. Equal splits can be fair; they can also create deadlock when commitment becomes unequal. The critical protection is vesting or a comparable repurchase structure so one founder does not walk away early with a permanent block of ownership while the others spend years building the company. Define roles, time commitment, outside-work rules, major decisions requiring special approval and a dispute path. Friendship is not a governance system. Clear documents preserve relationships because they reduce the number of future arguments that depend on memory.

Treat the 83(b) clock like an emergency deadline

When founders receive restricted stock subject to vesting, a Section 83(b) election can materially affect when income is recognized for tax purposes. The IRS deadline is generally no later than 30 days after the property transfer, and missing it can create serious consequences if the stock later becomes more valuable before it vests. This is not a form to discover six months after incorporation. Ask your attorney or tax professional at the time the stock is issued whether an 83(b) election applies, and document proof of timely filing. The IRS now provides Form 15620 for the election. Tax treatment depends on facts, so this guide is not telling every founder to file; it is telling every founder not to be surprised by a short deadline.

Make the company own what the company is selling

Your cap table can be perfect while your core technology is owned by somebody else. Inventory every asset created before and after formation: source code, models, designs, brand assets, domain names, datasets, documentation, inventions and customer-specific work. Founders should assign relevant pre-formation IP to the company where appropriate. Employees generally create certain copyrightable work within the scope of employment as work made for hire, but independent-contractor work is more complicated. The Copyright Office makes clear that commissioned work does not automatically become company-owned just because you paid for it. Your contractor agreement should address ownership, assignment, confidentiality, third-party materials and open-source obligations before the work begins.

Protect the name before you build demand around it

A state business-name filing is not the same thing as federal trademark protection. Search the USPTO database and the broader marketplace before investing heavily in a brand. Look for confusingly similar marks in related goods and services, not only exact spelling matches. If the name is strategically important, discuss filing strategy with trademark counsel or use USPTO educational resources to understand the process. Trademark Center is now the filing system for new federal applications. Do this early enough that a conflict does not force a costly rebrand after customers, press and investors know the original name.

Get the tax and banking foundation clean

Obtain the EIN directly from the IRS when required; the online application is free for eligible U.S.-based applicants. Open a dedicated business bank account. Decide who can authorize payments and contracts. Establish bookkeeping from the first dollar so revenue, founder contributions, reimbursements, contractor payments and capital are not mixed together. Understand how your entity type affects owner compensation and tax filings. If the company may qualify for the research credit, begin preserving contemporaneous records of technical work and qualified expenses rather than trying to reconstruct them at tax time. Clean records increase the quality of decisions and reduce diligence pain later.

Know the BOI rule that changed

Do not copy stale 2024 startup checklists about the Corporate Transparency Act. FinCEN's current rule exempts entities created in the United States from BOI reporting requirements; only certain foreign entities registered to do business in the United States remain within the reporting definition. This is exactly why founders should verify compliance requirements from the responsible agency rather than from an old social post or template. State annual reports, franchise taxes, business licenses and tax filings still exist even when BOI does not. Maintain a compliance calendar with owner, due date, payment and proof for every recurring obligation.

Build a diligence folder before anyone asks for it

Create a secure company-records folder containing formation documents, governing documents, cap table, founder stock agreements, 83(b) evidence if applicable, IP assignments, contractor and employee agreements, board or member approvals, trademark/patent records, tax IDs, insurance, material customer contracts and financing documents. This is not about looking sophisticated. A future

customer, lender, investor or acquirer may ask whether the company owns its code, whether equity was properly issued or whether an ex-founder retains rights. The cheapest time to answer those questions is when the transaction happens, not two years later during diligence.

Protect the cap table as carefully as the bank account

Every equity issuance should have a purpose, approval path and paper trail. Maintain a current cap table showing issued shares or units, options or other rights, vesting, exercise or purchase price where applicable, and the fully diluted ownership picture. Do not promise percentages casually in email or text before counsel has checked the structure. If you add advisors, define the specific contribution, duration and vesting rather than granting permanent ownership for introductions. When outside money arrives, remember that selling securities is regulated even when the investor is a friend, customer or community member. Use counsel for the exemption and offering documents that fit the transaction. Clean issuance records are what let future investors trust that the ownership they are buying is real.

The deliverable before Guide 4

You are ready to build when the legal entity exists, the founder ownership is documented, vesting and decision rights are clear, the company has an EIN and clean banking, material pre-formation IP has been addressed, contractor/employee IP terms are ready, the brand has been searched, and recurring compliance obligations are on a calendar. Do not treat formation as the finish line. It is the moment when the product, money and contracts finally have a clear owner.

BLACK TECH STARTUP SERIES

Your six-part path to an operating company

-
- | | |
|---------------|---|
| PART 1 | Prove the Problem Before You Build the Product |
|---------------|---|
-
- | | |
|---------------|---|
| PART 2 | Design a Business That Can Survive the Capital Gap |
|---------------|---|
-
- | | |
|---------------|--|
| PART 3 | Form the Company Without Giving Away the Future |
|---------------|--|
-
- | | |
|---------------|--|
| PART 4 | Build the First Product Customers Will Actually Pay For |
|---------------|--|
-
- | | |
|---------------|---|
| PART 5 | Turn Proof Into Customers, Contracts and Capital |
|---------------|---|
-
- | | |
|---------------|---|
| PART 6 | Turn the Startup Into an Operating Company |
|---------------|---|
-

Research behind this guide

Use the primary sources below to verify current rules, eligibility and program details before acting. Program terms can change.

SBA — launch your business and choose a structure



IRS — starting a business and entity/tax basics



IRS — Publication 583, starting a business and keeping records



FinCEN — current BOI reporting rule for U.S.-formed companies



IRS — Section 83(b) 30-day filing requirement



U.S. Copyright Office — works made for hire



U.S. Copyright Office — copyright ownership and transfers



USPTO — trademark basics and current filing process



Delaware Division of Corporations — forming a business entity



Important: This guide is educational information, not individualized legal, tax, investment or compliance advice. For decisions with legal or financial consequences, use a qualified professional who can review your facts.

SHARE THIS GUIDE ↗

POWERED BY: BLACK TECH STARTUP

blacktechstartup.com