

# **New Ventures BC Corporate Structure**

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# About Fasken Martineau DuMoulin LLP

A Canadian leader in the practice of business law and litigation representing clients nationally and internationally.



Comprised of more than 560 lawyers who offer customized legal advice in over 30 practice areas, our greatest value to any client is achieved through our commitment to understand their business, culture and people.

# Overview

The initial corporate matters you need to consider in building your technology company:

- Initial Corporate Structuring Issues.
- Allocating Founders Shares.
- Preparing a Financing Plan.
- Sourcing Seed Capital.
- Allocating Stock Options.
- Financing a New Venture.

**The Founder**

**Person**

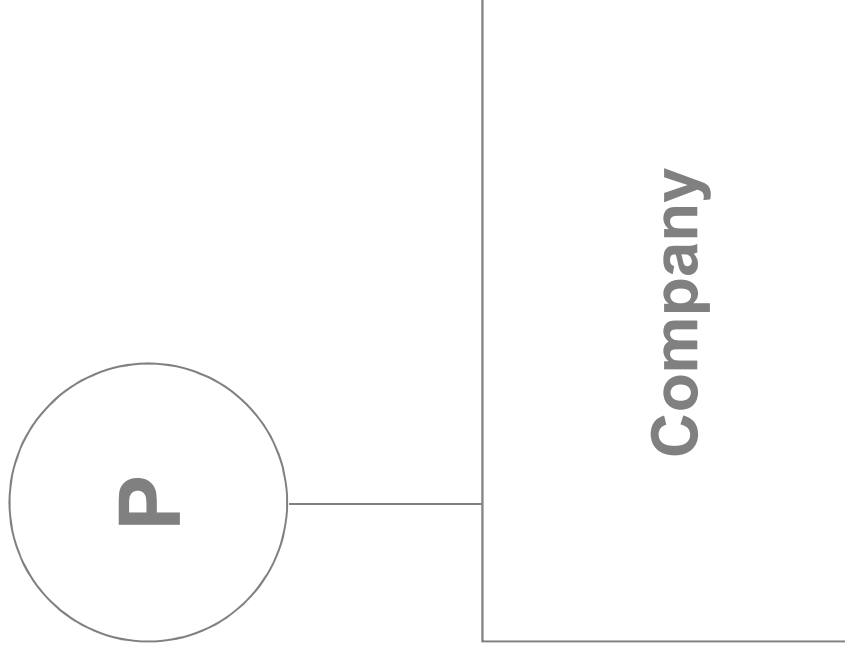
# The Others



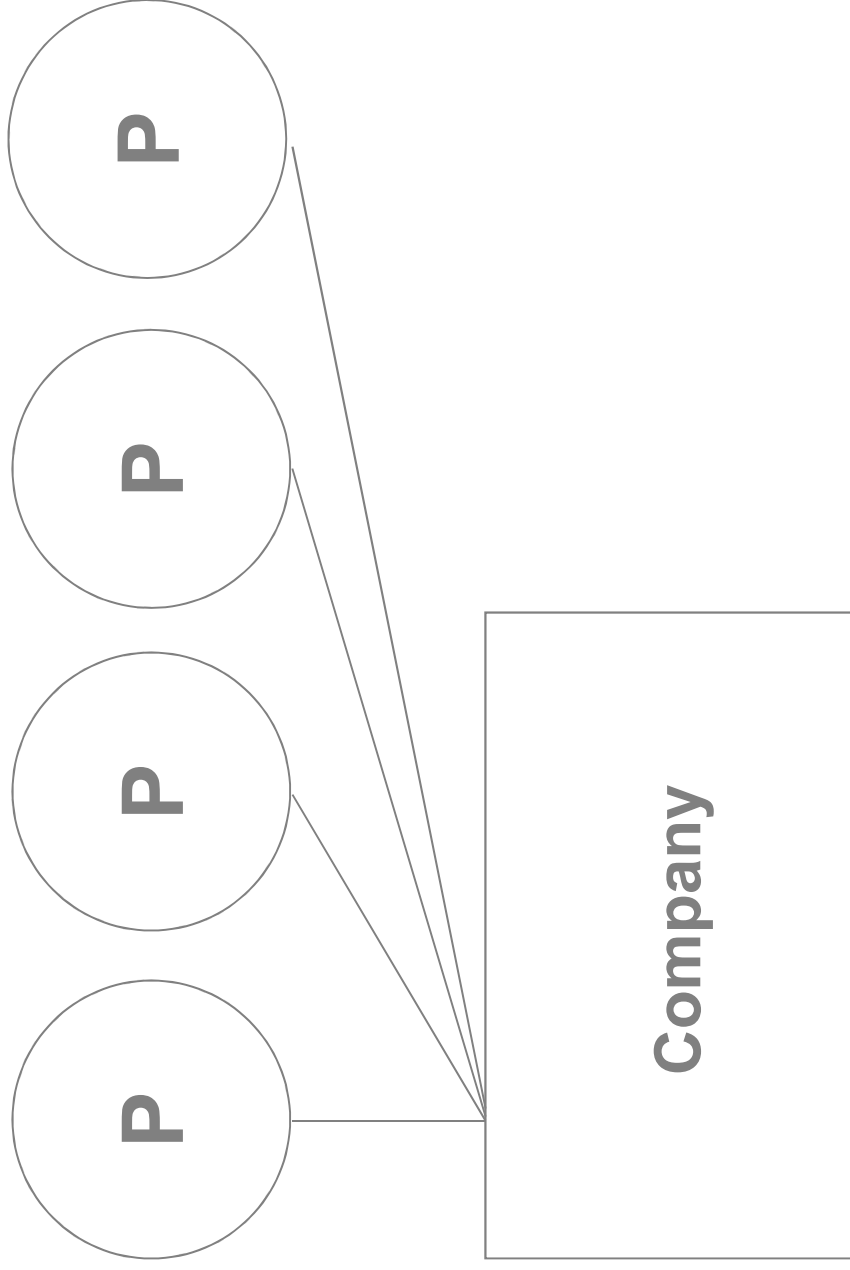
# Options for Association

- Proprietorships
- Partnerships
- Limited Partnerships
- Joint Ventures
- Companies
  - Provincial
  - Federal
  - International

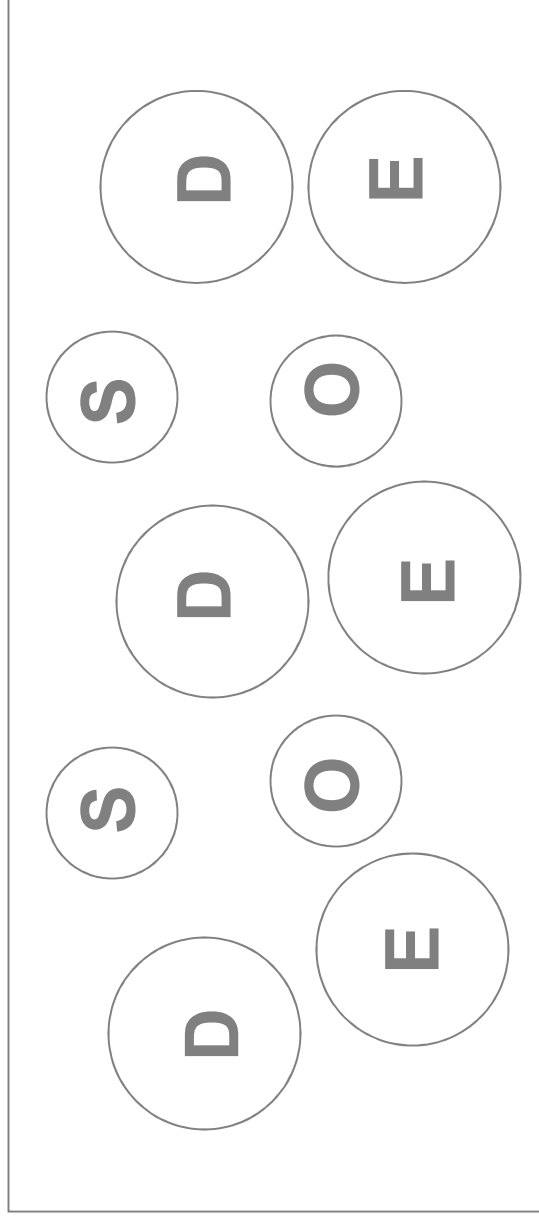
# Incorporation



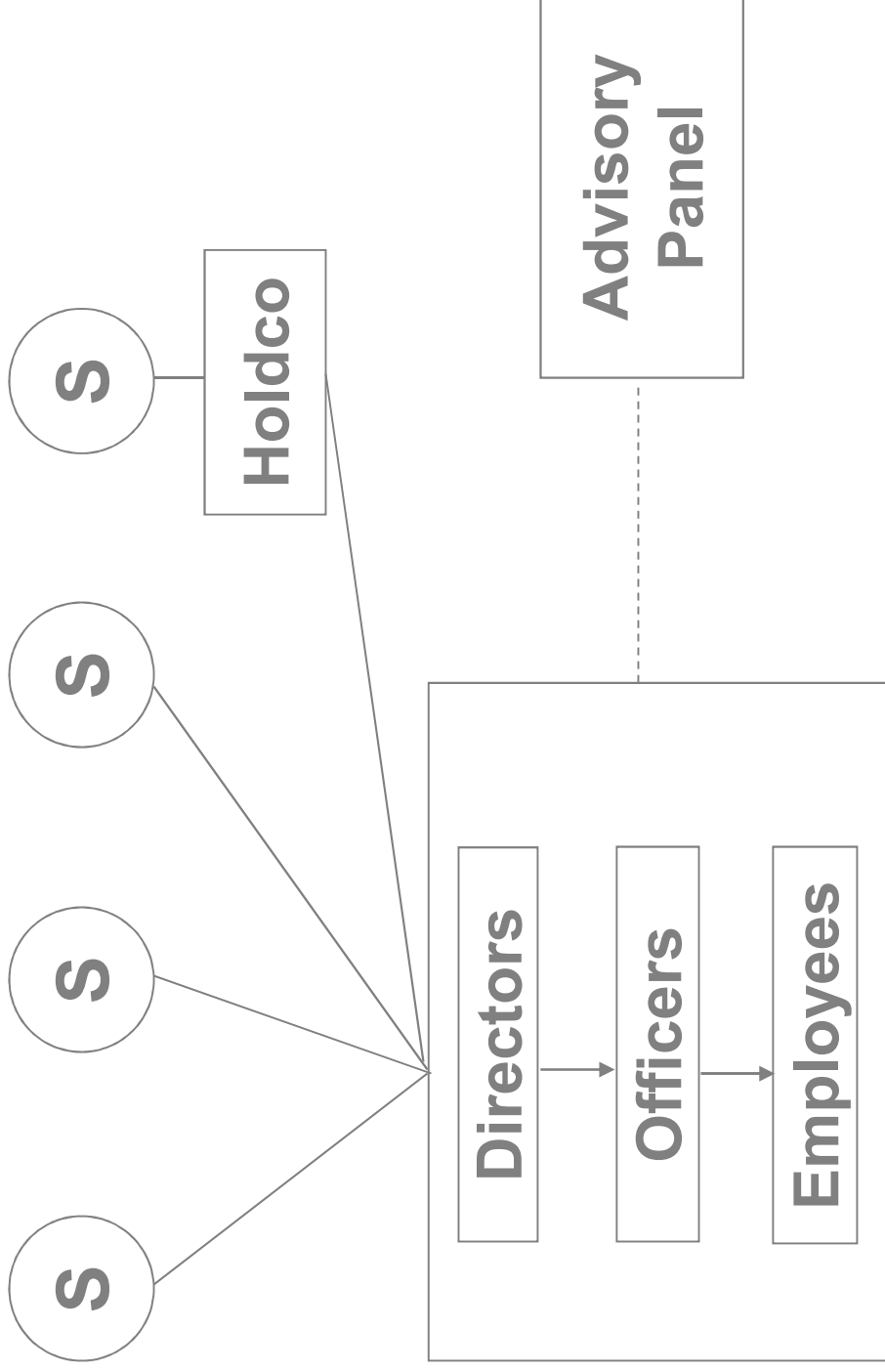
# Incorporation



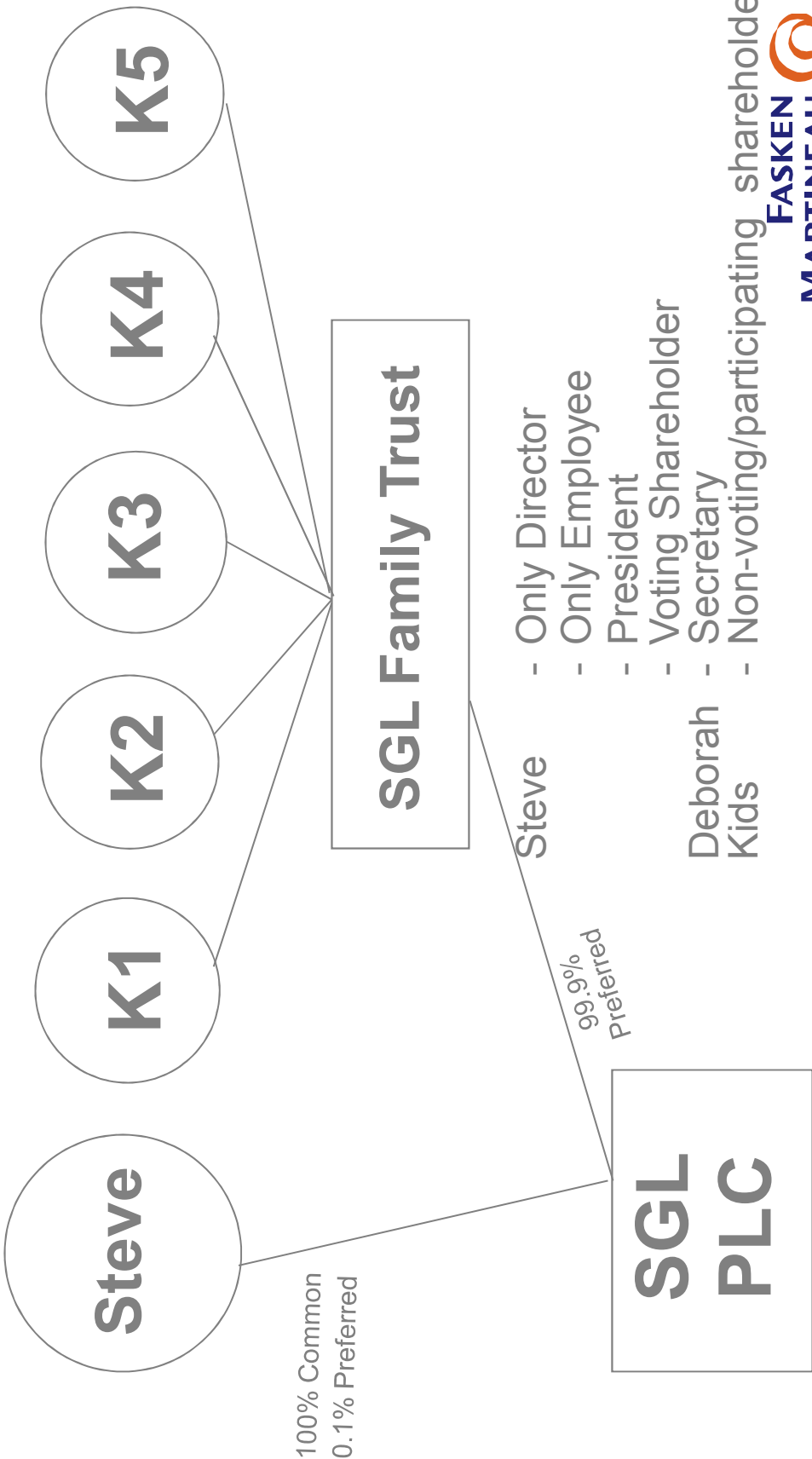
# The Company



# The Structure



# Steven G. Lukas Personal Law Corp.



# Shareholders

- Anybody can be a shareholder
  - individuals
  - companies
  - partnerships
- As many as you want
  - rules change at 50 “people”
  - rules on how you find your shareholders (ie: see a lawyer!)

## Shareholders (cont'd)

- No liability aside from the initial investment in the shares of the company
- (unless a contract says otherwise - ie: shareholders' agreement, guarantee)
- Variety of share classes, rights, restrictions
  - voting, non-voting
  - participating/non-participating
  - options, warrants, rights

## Shareholders (cont'd)

- Exclusive right to elect directors
- Pre-emptive rights
- Relationship governed by Articles, Shareholders' Agreements

# The Policy Setters

Directors

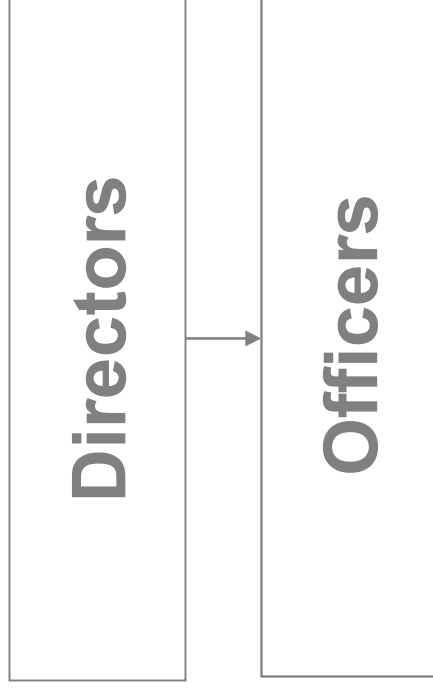
# Directors

- Elected by the shareholders
  - (but can fill “vacancies” and increase number in certain circumstances)
- At least one
- If BC, no residency requirement
- Qualifications

## Directors (cont'd)

- Power to manage the affairs of the Company
  - (subject to articles, shareholders' agreements, etc.)
  - determine policy
- Duties to the Company and the “shareholders as a whole” to act fairly and diligently
- Potential personal liability
  - breaching duties
  - taxes, wages
- Appoint the Officers

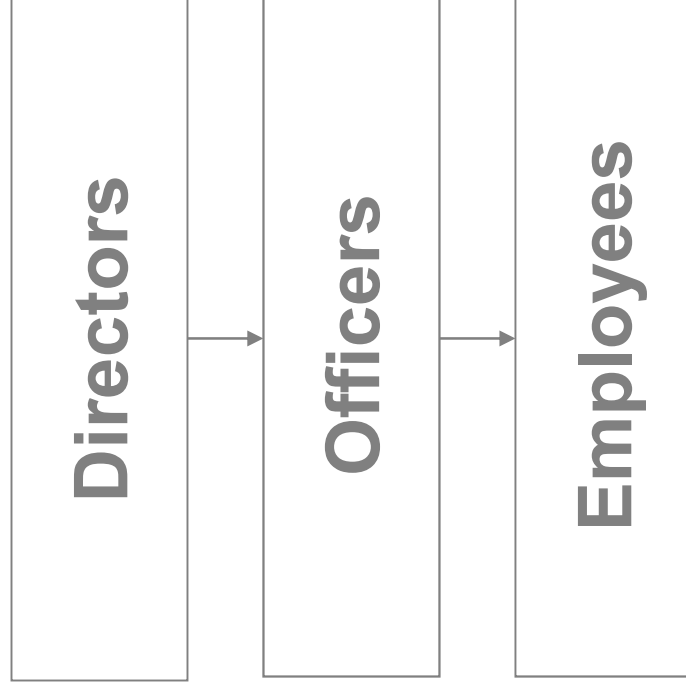
# The Instructors



# Officers

- Appointed by the Directors
- As many as you want, any titles at all:
  - President, Chairman, CEO, COO, CTO, VP, Secretary, etc.
- In charge of day-to-day affairs of the Company

# The Doers



# Employees

- Do all the real work
- Employee v. Contractor
- Employment agreement
  - confidentiality
  - assignment of intellectual property
- Compensation
  - cash
  - shares
  - options

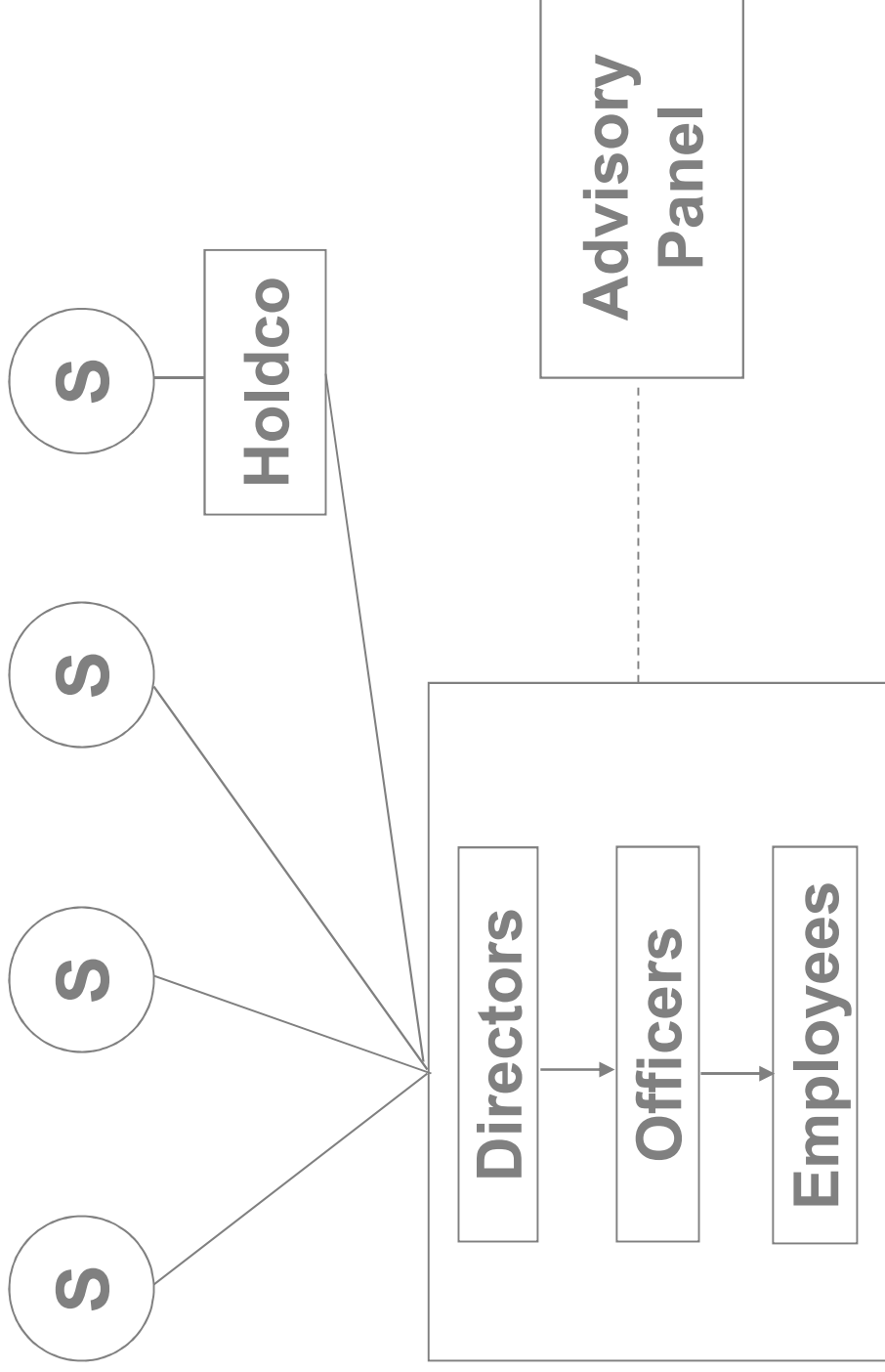
# The Advisors

Advisory Panel

# Advisory Panel

- Non-Director Experts
  - focussed on the field in question
- Advise the Board

# The Structure



## Other Issues

- Conflicts of Interest
  - within the structure - ie: your role as Shareholder v. Director
  - within other companies - ie: director of this Company and director of contracting company
  - between the Company and the educational institution - ie: technology transfer/pricing/time
  - between investor and inventor
- Public v. Private

# Initial Corporate Structuring

## **Incorporation – U.S. v. Canada v. Offshore;**

### **Canada because:**

- Financing Issues - Investors don't like offshore companies.
- Government grants – In most cases, only available to Canadian companies.
- Taxation and Employment issues - Are simpler if you are building the company here.

## **B.C. (BCBCA) v. Federal (CBCA):**

- Either BC Business Corporations Act (BCBCA) or Canada Business Corporations Act (CBCA) are fine and both are investor friendly.

# Initial Corporate Structuring – cont'd

## **Create a structure with:**

- Unlimited number of common shares.
- Unlimited number of “blank-cheque” preferred shares.

## **Financiers dictate financing terms:**

- Debt vs. equity, price, preferences, terms of SHAG, etc.

## **If you can, avoid:**

- Issuing secured debt.
- Using shareholders' loans.
- Using multiple share classes.
- Incorporating offshore.

# Founders' Shares

## What are Founders' Shares?:

- Large block of shares issued at a low price to position the Founders.
- To recognize their “sweat equity” contribution.

## What class of shares should they be?:

- Common shares.
- Preferred shares for sophisticated investors.

## At what price should they be issued?:

- Nominal - \$0.0001 to \$0.01 per share.

# Founders' Shares – cont'd

## To whom should they be issued?

- Founders and senior officers.
- Not to employees or outside investors.

## Common mistakes in allocating Founders' shares:

- Not setting aside enough Founders' shares at time of incorporation: 4.0M – 8.0M.
- Not setting aside some Founders' shares for future additions to the management team: set aside 15% - 25%.
- Not vesting the Founders' shares: 2 - 4 years, or providing for "reverse-vesting".
- Issuing them to the wrong people.

# Preparing a Financing Plan

## Determine a “Road-Map” for financing:

The company determines its developmental “milestones”:

- What they are.
- By when they will be met.
- How much funding is needed to meet them.

The milestones are integrated with the budget and a timeline to determine how many tranches of financing will be needed and when.

This info is used to prepare a sample capital structure table - a “road map” for the financing trail (e.g. – to raise \$5.0M).

# Sources of Financing – Debt/Grants

Non-equity financing might come from:

- **Government grants/credits/refunds:**
  - VCC Program.
  - NRC, IRAP, TPC, SRED.
  - Telefilm Canada and other industry specific organizations.
  - Environmental/“green” grants.
- **Quasi-governmental organizations like:**
  - BC Innovation Council, Business Development Bank of Canada etc.

# Sources of Financing - Equity

**Initial (equity) seed financing may come from:**

- The “Founders”.
- Their “Friends and Family”.

**Follow on rounds (pre-public) from:**

- Angels.
- Venture Capitalists.
- Investment bankers (both private and institutional).
- Underwriters (i.e. brokers).

• **Public financing - Initial Public Offering.**

• **Strategic Partners.**

# Sources of Equity Financing – Revisited

- **Categories of Financiers:**
  - Founders: Variable
  - Friends and Family: \$50K – \$150K
  - Angels: \$250K - \$500K
  - Venture Capitalists: \$1.0M - \$3.0M
  - Underwriters: \$1.0M - \$5.0M
  - Strategic Partners: Variable
- **Match potential investors with your Financing Plan to maximize chance to secure investment.**

# Securities Legislation

## Requirement:

- If you distribute a security, you must:
  - file a prospectus

OR

- Rely on exemption from prospectus requirement

# Exemptions

- Family, Friends and Business Associates
- Accredited Investor
- Private Issuer
- Offering Memorandum

# Family, Friends & Business Associates Exemption

Can sell securities in any amount without any disclosure to:

- Director, senior officer or control person
- Family member of a director, senior officer or control person

## Family, Friends & Business Associates Exemption (cont'd)

- Close personal friend or close business associate of a director, senior officer or control person
- No limit on number of purchasers or amount that can be raised

## **“close personal friend” or “close business associate”**

- Has known the director, senior officer or control person for a “sufficient period of time”
- Is in a position to assess the capabilities and trustworthiness of the director, senior officer or control person

# Accredited Investor Exemption

- “accredited investors” can purchase any securities in any amount at any time
- No limit on number of purchasers or amount that can be raised
- Either public or private companies, partnerships, etc.

## “accredited investor”

- Individual, corporation, limited partnership, trust or estate with net assets of \$5 million
- Individual with cash and financial assets over \$1 million
- Individual whose net income exceeds \$200,000 (\$300,000 with spouse) in each of the past 2 years

# “financial assets”

- Meaning of financial assets
- Does **not** include real property

# Private Issuer Exemption

Can sell securities in any amount without any disclosure to:

- Director, officer, employee or control person
- Family member of a director, senior officer or control person

## Private Issuer Exemption (cont'd)

- Close personal friend or close business associate of a director, senior officer or control person
- Current holder of designated securities
- Accredited investor
- Person or company that is not the public

## “private issuer”

- Not a reporting issuer
- Common shares are subject to restrictions on transfer
- Fewer than 50 shareholders
- Has only distributed its common shares to persons listed in exemption

# Offering Memorandum Exemption

Issuer can sell securities to anyone in B.C. in any amount if Issuer:

- Delivers an offering memorandum in the prescribed form
- Obtains a signed Risk Acknowledgement from the purchaser

# Risk Acknowledgement

- Clear, blunt statement of risks of investing in exempt market securities
- Issuer must give a copy of the signed Risk Acknowledgement to purchaser prior to making investment

# Liability for Misrepresentation

If the offering memorandum contains a misrepresentation, the purchaser has:

- A right of action for rescission
- A right of action for damages

# Other Exemptions

- Employees
- Permitted consultants

# Capitalization Table Founders' Round

	No. of Shares	Price	Funds Raised
<b>Founders (3)</b>	<b>6,000,000</b>	<b>\$0.0001</b>	<b>\$600</b>
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
<b>Total:</b>	<b>6,000,000</b>		<b>\$ 600</b>

# Capitalization Table Friends & Family Round

	No. of Shares	Price	Funds Raised
Founders	6,000,000	\$0.0001	\$600
Family and Friends	400,000	0.25	100,000
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Total:	6,400,000		\$ 100,600

# Stock Options

## What are stock options?:

- The right to purchase a number of shares at a predetermined price.
- Used to incent the team building the Company.

## How many should be issued?:

- 10% - 30% of issued share capital.

## At what price should they be issued?:

- Last round of financing or higher.

# Stock Options – cont'd

**Companies must plan for growth and make a notional allocation of their options.**

## **Allocate stock options by category:**

- Senior Management: 35% - 50%
- Remaining Employees: 25% - 35%
- Board of Directors: 13% - 20%
- Board of Advisors: 2% - 5%
- Contingency: 10% - 15%

## **Companies should:**

- Integrate Stock Option Plan with their HR Plan.
- Vest all options over 2 – 4 years.

# Capitalization Table Stock Option Plan Added

	No. of Shares	Price	Funds Raised
Founders	6,000,000	\$0.0001	\$600
Family and Friends	400,000	0.25	100,000
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
<b>Total:</b>	<b>6,400,000</b>		<b>\$ 100,600</b>
<b>Option Plan</b>	<b>1,500,000</b>	<b>n/a</b>	<b>n/a</b>

# Capitalization Table

## Angel Round

	No. of Shares	Price	Funds Raised
Founders	6,000,000	\$0.0001	\$600
Family and Friends	400,000	0.25	100,000
Angels	1,200,000	0.35	420,000
Type of Investor (?)	?	?	?
Type of Investor (?)	?	?	?
Total:	7,600,000		\$ 520,600
Option Plan	1,500,000	n/a	n/a

# Capitalization Table

## Series "A" VC Round

	No. of Shares	Price	Funds Raised
Founders	6,000,000	\$0.0001	\$600
Family and Friends	400,000	0.25	100,000
Angels	1,200,000	0.35	420,000
Venture Capitalists	3,000,000	0.50	1,500,000
Type of Investor (?)	?	?	?
Total:	9,600,000		\$ 2,020,600
Option Plan	1,500,000	n/a	n/a

# Capitalization Table

## \$5.0M Raised

	No. of Shares	Price	Funds Raised
Founders	6,000,000	\$0.0001	\$600
Family and Friends	400,000	0.25	100,000
Angels	1,200,000	0.35	420,000
Venture Capitalists	3,000,000	0.50	1,500,000
<b>VC/IPO</b>	<b>3,000,000</b>	<b>1.00</b>	<b>3,000,000</b>
Total:	13,600,000		\$ 5,020,600
Option Plan	1,500,000	n/a	n/a

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