



New Ventures BC Corporate Structure

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Steven Lukas

604 631 4840

slukas@fasken.com

www.fasken.com



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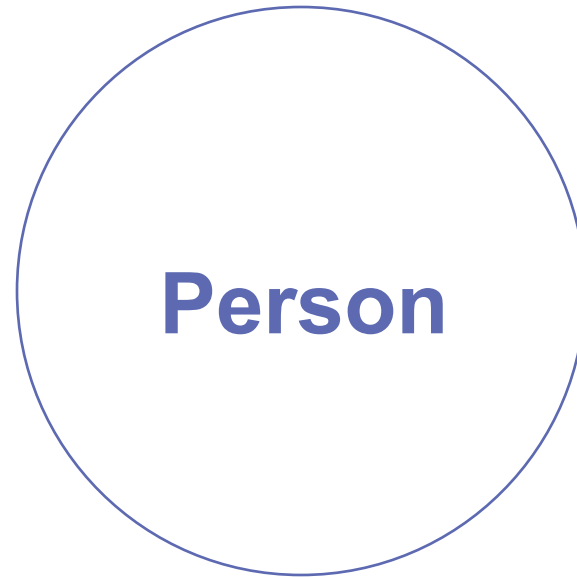
Overview

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

- ⑥ Initial Corporate Structuring Issues.
- ⑥ Allocating Founders Shares.
- ⑥ Preparing a Financing Plan.
- ⑥ Sourcing Seed Capital.
- ⑥ Allocating Stock Options.
- ⑥ Financing a New Venture.

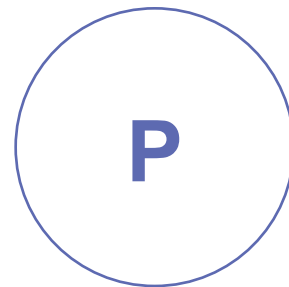
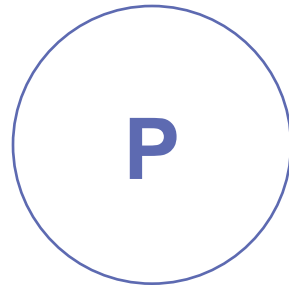
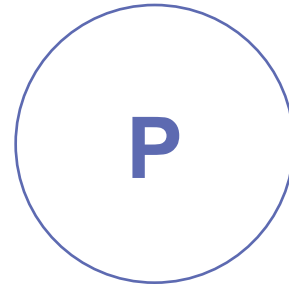
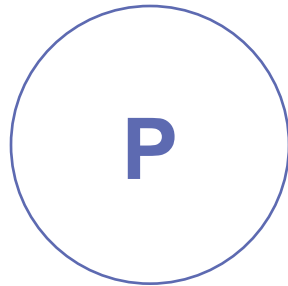


The Founder





The Others



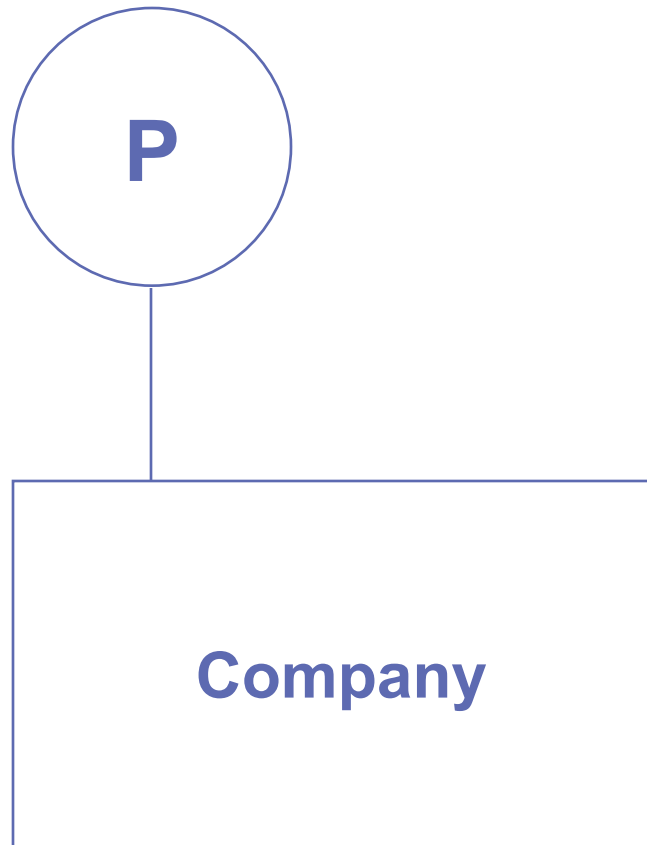


Options for Association

- ④ Proprietorships
- ④ Partnerships
- ④ Limited Partnerships
- ④ Joint Ventures
- ④ Companies
 - ④ Provincial
 - ④ Federal
 - ④ International

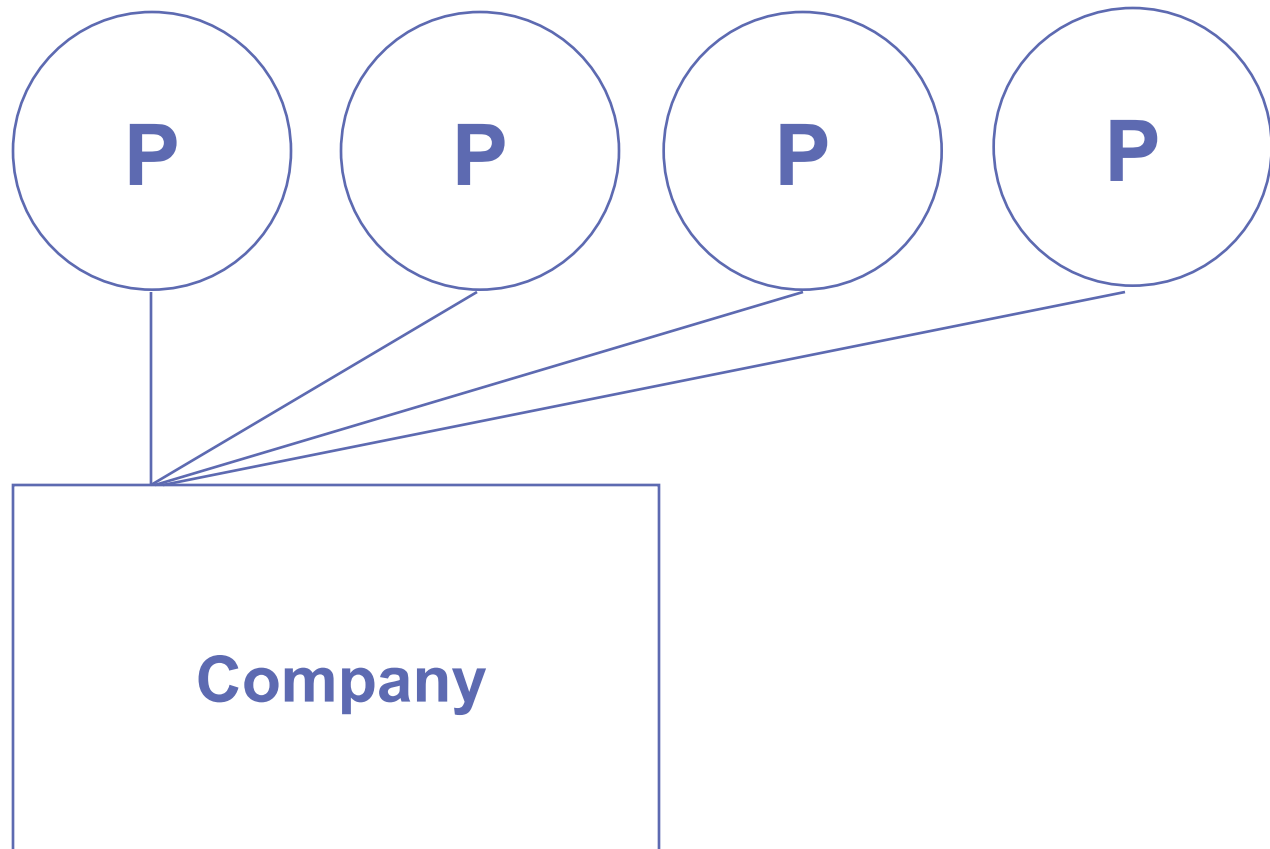


Incorporation



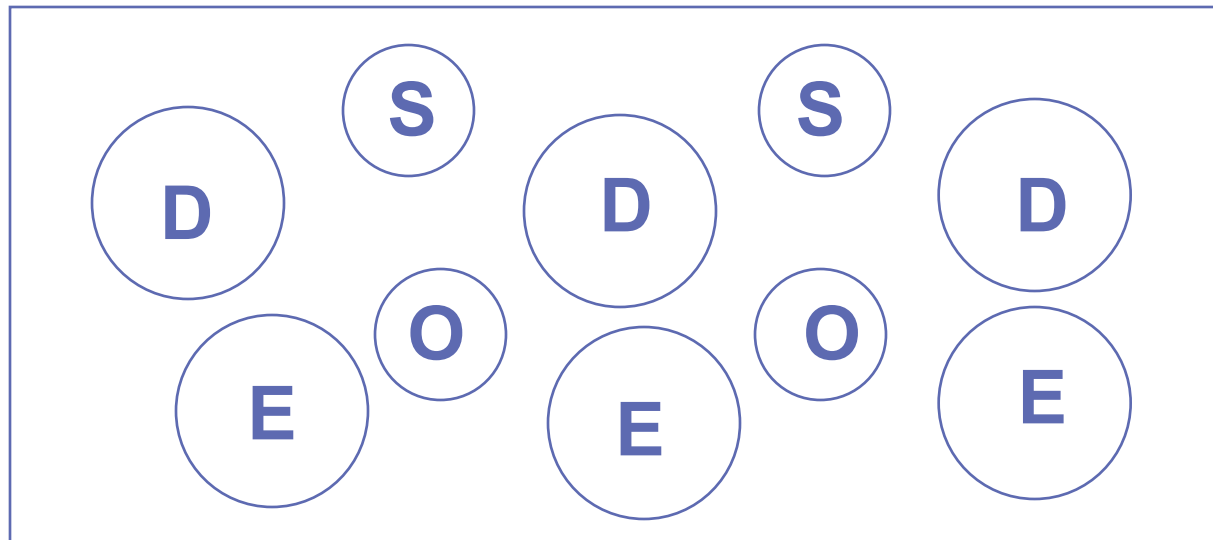


Incorporation

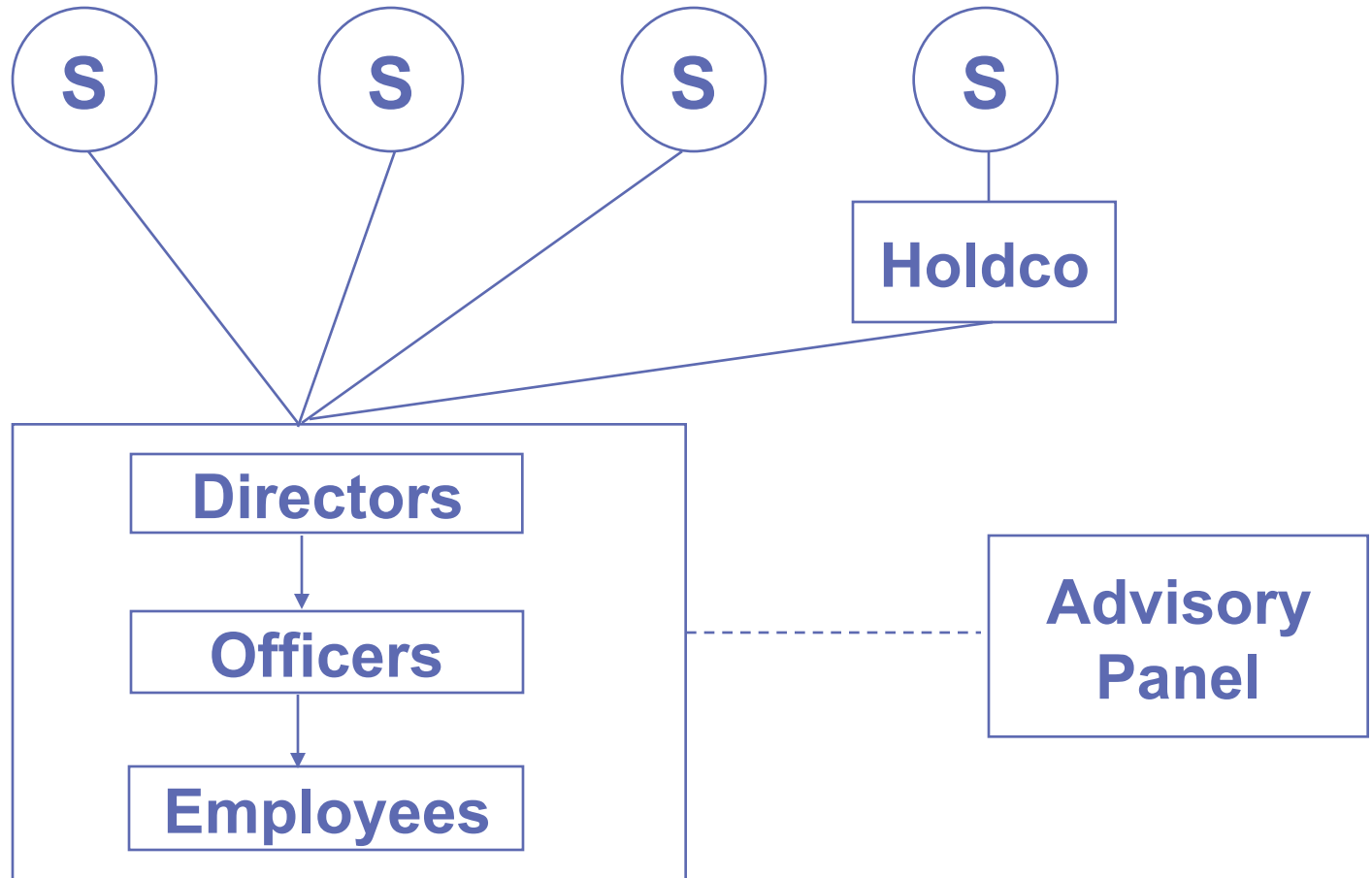




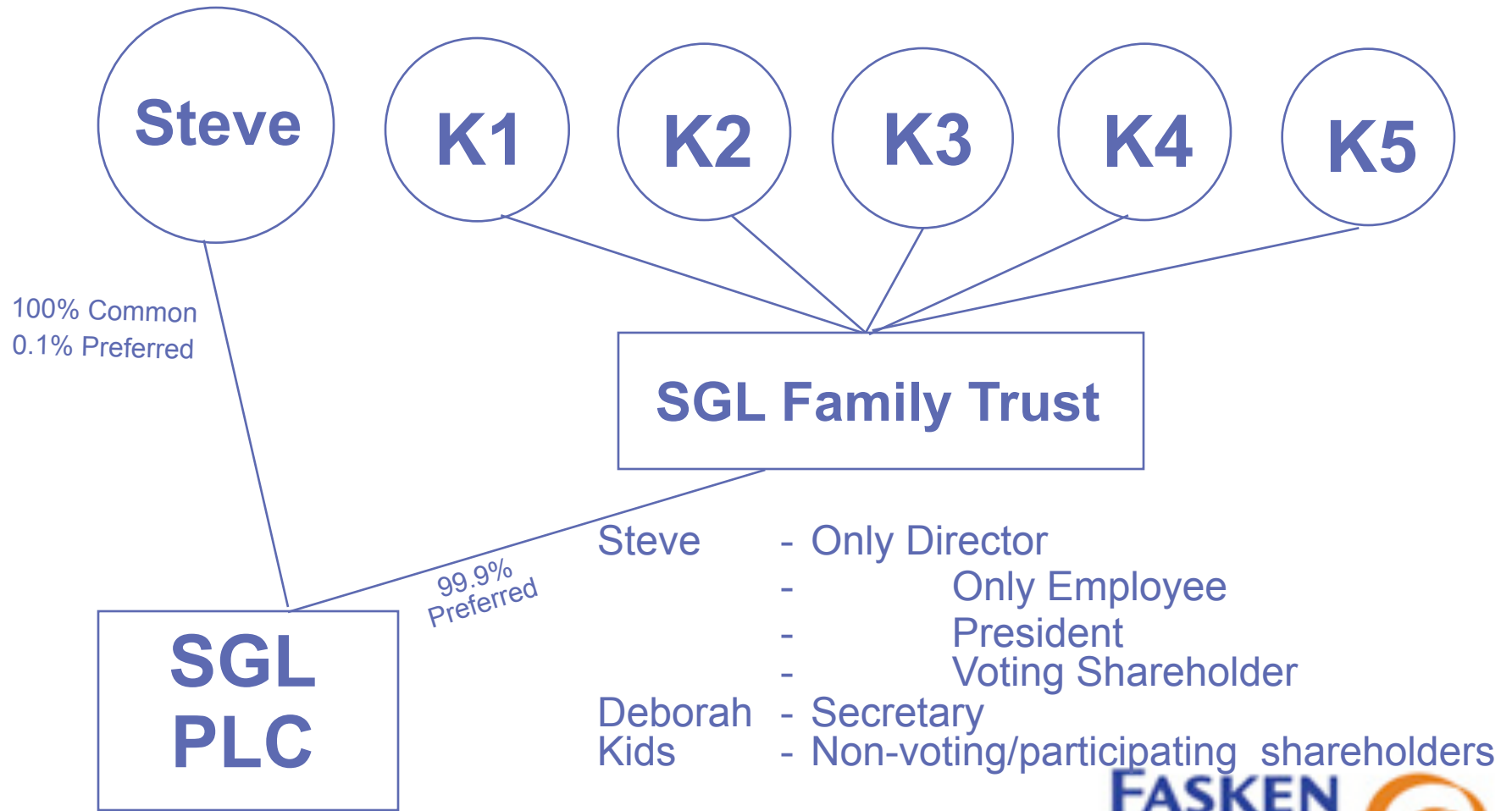
The Company



The Structure



Steven G. Lukas Personal Law Corp.





Shareholders

- ⑥ Anybody can be a shareholder
 - ⑥ individuals
 - ⑥ companies
 - ⑥ partnerships
- ⑥ As many as you want
 - ⑥ rules change at 50 “people”
 - ⑥ rules on how you find your shareholders (ie: see a lawyer!)



Shareholders (cont'd)

- ⑥ No liability aside from the initial investment in the shares of the company
 - ⑥ (unless a contract says otherwise - ie: shareholders' agreement, guarantee)
- ⑥ Variety of share classes, rights, restrictions
 - ⑥ voting, non-voting
 - ⑥ participating/non-participating
 - ⑥ options, warrants, rights



Shareholders (cont'd)

- ⑥ Exclusive right to elect directors
- ⑥ Pre-emptive rights
- ⑥ 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

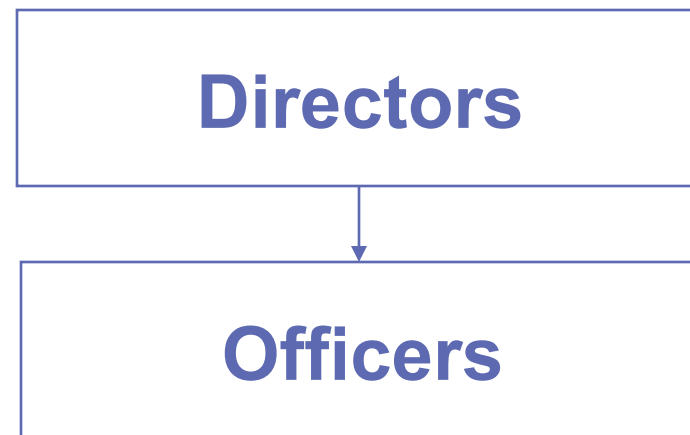


Directors (cont'd)

- ⦿ 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



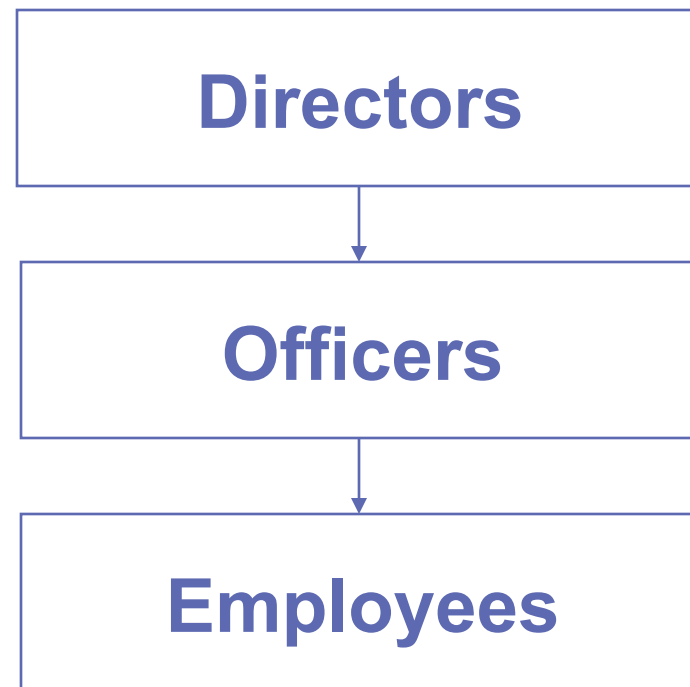


Officers

- ⑥ Appointed by the Directors
- ⑥ As many as you want, any titles at all:
 - ⑥ President, Chairman, CEO, COO, CTO, VP, Secretary, etc.
- ⑥ In charge of day-to-day affairs of the Company



The Doers





Employees

- ⑥ Do all the real work
- ⑥ Employee v. Contractor
- ⑥ Employment agreement
 - ⑥ confidentiality
 - ⑥ assignment of intellectual property
- ⑥ Compensation
 - ⑥ cash
 - ⑥ shares
 - ⑥ options



The Advisors

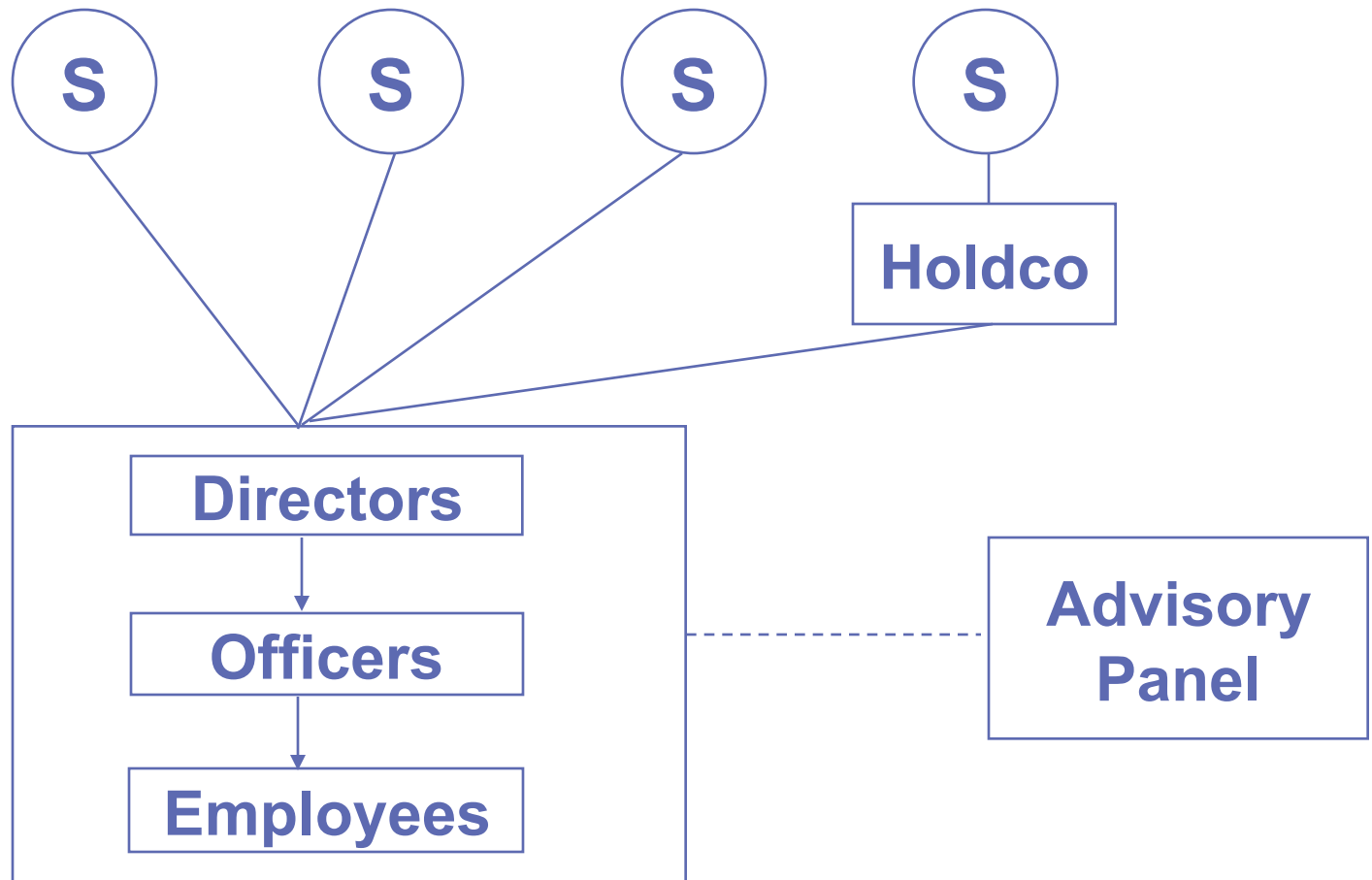
Advisory Panel



Advisory Panel

- ② Non-Director Experts
 - ② focussed on the field in question
- ② Advise the Board

The Structure





Other Issues

- ⑥ Conflicts of Interest
 - ⑥ within the structure - ie: your role as Shareholder v. Director
 - ⑥ within other companies - ie: director of this Company and director of contracting company
 - ⑥ between the Company and the educational institution - ie: technology transfer/pricing/time
 - ⑥ between investor and inventor
- ⑥ Public v. Private



Initial Corporate Structuring

Incorporation – U.S. v. Canada v. Offshore; Canada because:

- ⑥ Financing Issues - Investors don't like offshore companies.
- ⑥ Government grants – In most cases, only available to Canadian companies.
- ⑥ Taxation and Employment issues - Are simpler if you are building the company here.

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

- ⑥ 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:

- ⑥ Unlimited number of common shares.
- ⑥ Unlimited number of “blank-cheque” preferred shares.

Financiers dictate financing terms:

- ⑥ Debt vs. equity, price, preferences, terms of SHAG, etc.

If you can, avoid:

- ⑥ Issuing secured debt.
- ⑥ Using shareholders' loans.
- ⑥ Using multiple share classes.
- ⑥ Incorporating offshore.



Founders' Shares

What are Founders' Shares?:

- ⑥ Large block of shares issued at a low price to position the Founders.
- ⑥ To recognize their “sweat equity” contribution.

What class of shares should they be?:

- ⑥ Common shares.
- ⑥ Preferred shares for sophisticated investors.

At what price should they be issued?:

- ⑥ Nominal - \$0.0001 to \$0.01 per share.



Founders' Shares – cont'd

To whom should they be issued?

- ⑥ Founders and senior officers.
- ⑥ Not to employees or outside investors.

Common mistakes in allocating Founders' shares:

- ⑥ Not setting aside enough Founders' shares at time of incorporation: 4.0M – 8.0M.
- ⑥ Not setting aside some Founders' shares for future additions to the management team: set aside 15% - 25%.
- ⑥ Not vesting the Founders' shares: 2 - 4 years, or providing for “reverse-vesting”.
- ⑥ 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:

- ⑥ **Government grants/credits/refunds:**
 - ⑥ VCC Program.
 - ⑥ NRC, IRAP, TPC, SRED.
 - ⑥ Telefilm Canada and other industry specific organizations.
 - ⑥ Environmental/“green” grants.
- ⑥ **Quasi-governmental organizations like:**
 - ⑥ BC Innovation Council, Business Development Bank of Canada etc.



Sources of Financing - Equity

Initial (equity) seed financing may come from:

- ⑥ The “Founders”.
- ⑥ Their “Friends and Family”.

Follow on rounds (pre-public) from:

- ⑥ Angels.
- ⑥ Venture Capitalists.
- ⑥ Investment bankers (both private and institutional).
- ⑥ Underwriters (i.e. brokers).
- ⑥ **Public financing - Initial Public Offering.**
- ⑥ **Strategic Partners.**



Sources of Equity Financing – Revisited

- ⑥ **Categories of Financiers:**

- ⑥ Founders: Variable
- ⑥ Friends and Family: \$50K – \$150K
- ⑥ Angels: \$250K - \$500K
- ⑥ Venture Capitalists: \$1.0M - \$3.0M
- ⑥ Underwriters: \$1.0M - \$5.0M
- ⑥ Strategic Partners: Variable

- ⑥ **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

- ④ Family, Friends and Business Associates
- ④ Accredited Investor
- ④ Private Issuer
- ④ 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)

- ④ Close personal friend or close business associate of a director, senior officer or control person
- ④ No limit on number of purchasers or amount that can be raised



“close personal friend” or “close business associate”

- ④ Has known the director, senior officer or control person for a “sufficient period of time”
- ④ Is in a position to assess the capabilities and trustworthiness of the director, senior officer or control person



Accredited Investor Exemption

- ④ “accredited investors” can purchase any securities in any amount at any time
- ④ No limit on number of purchasers or amount that can be raised
- ④ Either public or private companies, partnerships, etc.



“accredited investor”

- ④ Individual, corporation, limited partnership, trust or estate with net assets of \$5 million
- ④ Individual with cash and financial assets over \$1 million
- ④ Individual whose net income exceeds \$200,000 (\$300,000 with spouse) in each of the past 2 years



“financial assets”

- ④ Meaning of financial assets
- ④ 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)

- ⑥ Close personal friend or close business associate of a director, senior officer or control person
- ⑥ Current holder of designated securities
- ⑥ Accredited investor
- ⑥ Person or company that is not the public



“private issuer”

- ④ Not a reporting issuer
- ④ Common shares are subject to restrictions on transfer
- ④ Fewer than 50 shareholders
- ④ 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:

- ④ Delivers an offering memorandum in the prescribed form
- ④ Obtains a signed Risk Acknowledgement from the purchaser



Risk Acknowledgement

- ④ Clear, blunt statement of risks of investing in exempt market securities
- ④ 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

- ④ Employees
- ④ Permitted consultants



Capitalization Table

Founders' Round

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



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?:

- ⑥ The right to purchase a number of shares at a predetermined price.
- ⑥ Used to incent the team building the Company.

How many should be issued?:

- ⑥ 10% - 30% of issued share capital.

At what price should they be issued?:

- ⑥ 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 (?)	?	?	?
Total:	6,400,000		\$100,600
Option Plan	1,500,000	n/a	n/a

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
VC/IPO	3,000,000	1.00	3,000,000
Total:	13,600,000		\$5,020,600
Option Plan	1,500,000	n/a	n/a



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