BCIC New Ventures Corporate Structure April 23, 2014 Steven Lukas 604 631 4840 slukas@fasken.com www.fasken.com



About Fasken Martineau DuMoulin LLP

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



We 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

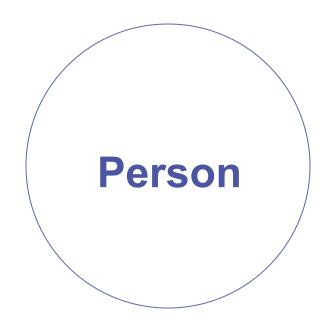
The initial corporate matters you need to consider in building your technology company:

Initial Corporate Structuring Issues.

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- Allocating Founders Shares.
- Oreparing a Financing Plan.
- Sourcing Seed Capital.
- Allocating Stock Options.
- Financing a New Venture.

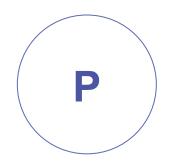
The Founder

















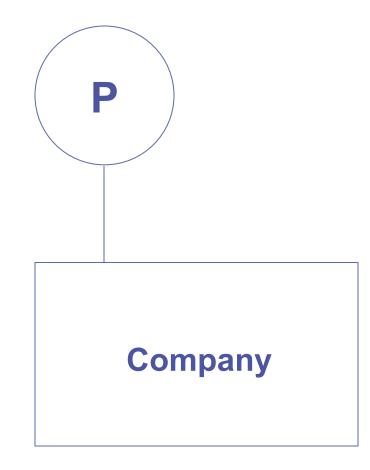
Options for Association

- Proprietorships
- Partnerships
- o Limited Partnerships
- ø Joint Ventures
- Ompanies
 - Provincial
 - Federal
 - International



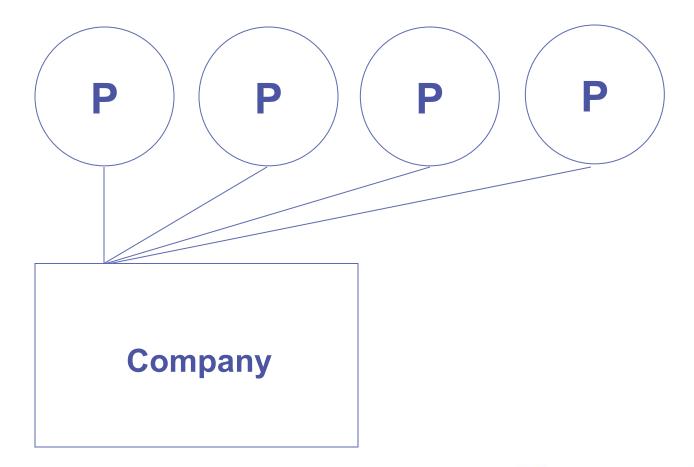


Incorporation



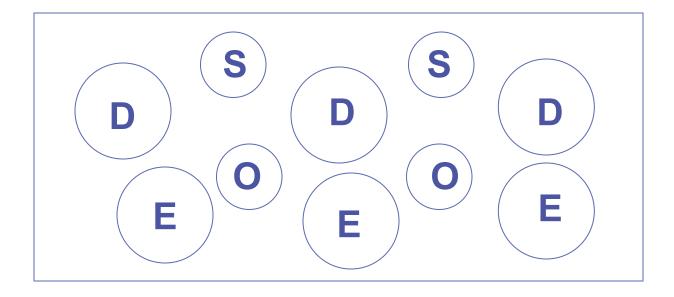




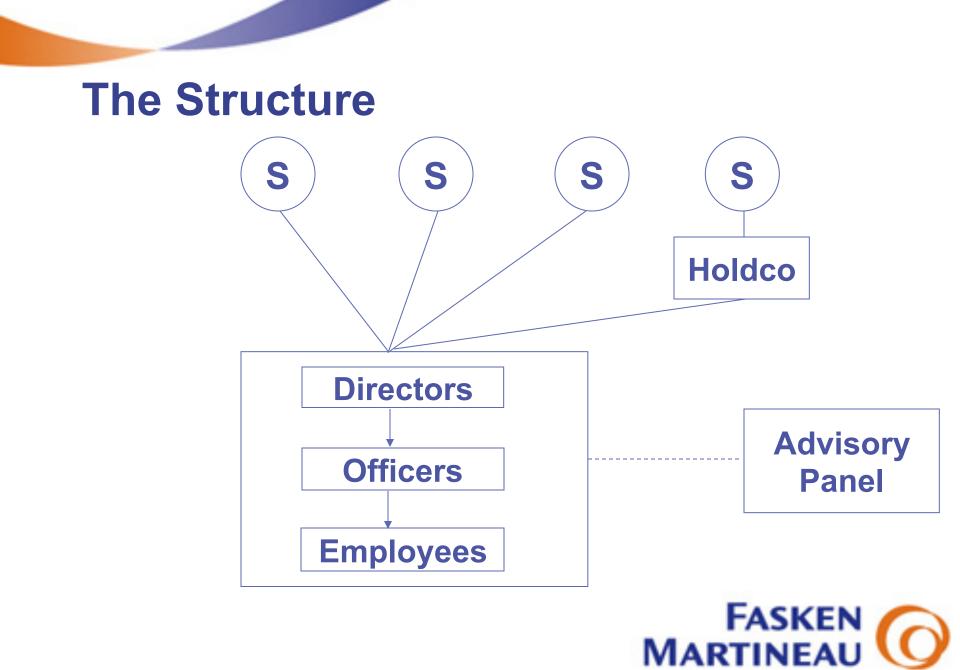




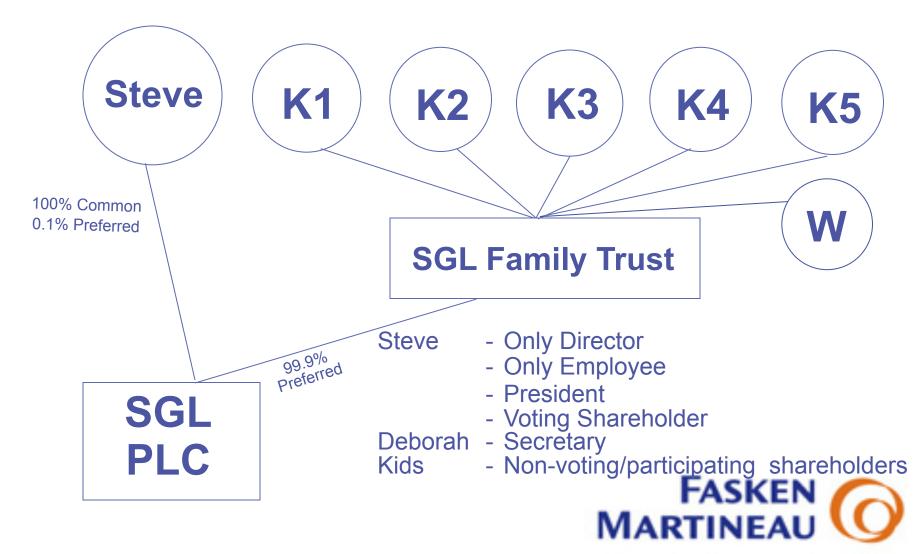
The Company







Steven G. Lukas Personal Law Corp.



Shareholders

- Anybody can be a shareholder
 - individuals
 - o companies
 - o 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
 - o voting, non-voting
 - o participating/non-participating
 - options, warrants, rights

Shareholders (cont'd)

- Exclusive right to elect directors
- OPre-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



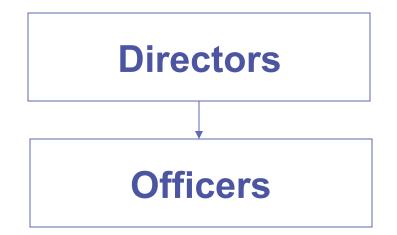
Directors (cont'd)

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





The Instructors





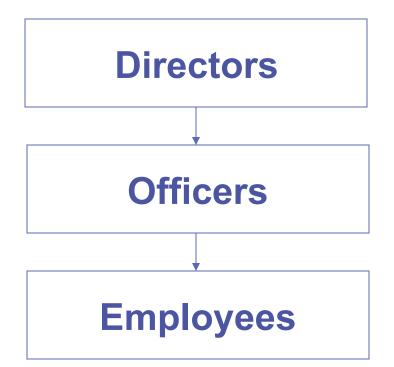
Officers

- 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

- O all the real work
- Employee v. Contractor
- Employment agreement
 - o confidentiality
 - o assignment of intellectual property
- Oppension
 - o cash
 - o shares
 - options





The Advisors

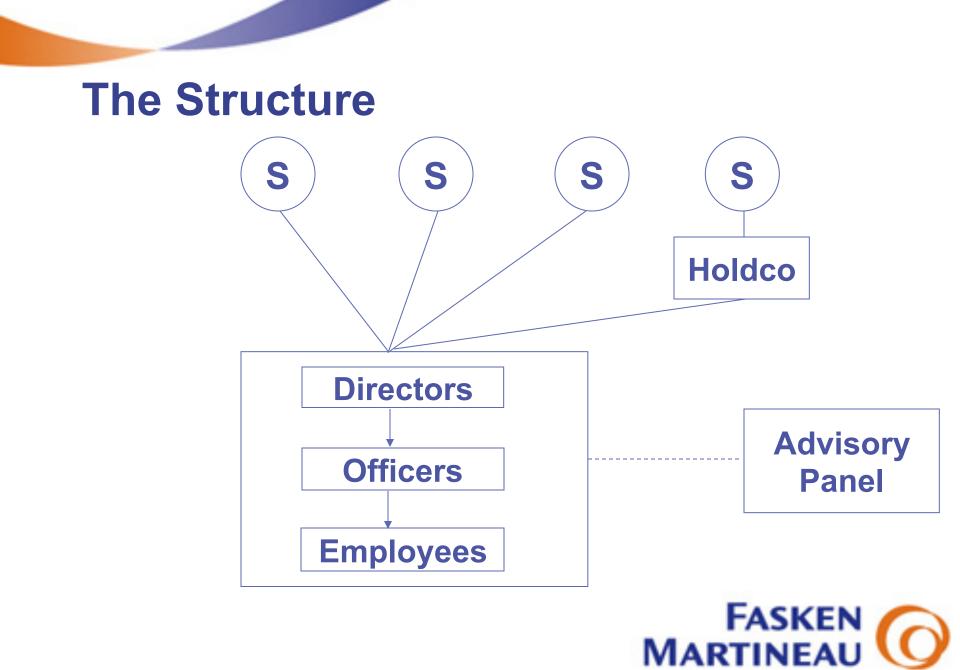
Advisory Panel





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





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
- ø 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.
- o Using shareholders' loans.
- o 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?:

o Common shares.

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.
- o 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).

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Sources of Financing – Debt/Grants

- Non-equity financing might come from:
 - o Government grants/credits/refunds:
 - o VCC Program.
 - NRC, IRAP, TPC, SRED.
 - Telefilm Canada and other industry specific organizations.
 - o 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:

- o The "Founders".
- o Their "Friends and Family".

Follow on rounds (pre-public) from:

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



Sources of Equity Financing – Revisited

o 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:
 - o file a prospectus
 - OR
 - Rely on exemption from prospectus requirement



Exemptions

- Family, Friends and Business Associates
- O Accredited Investor
- O 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
- Obes 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
- o 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:	6,000,000		\$ 600
VALUE:	\$ 600	FOUNDER' S INTEREST:	\$600 (100%)



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
PRE-MONEY VALUE: POST-MONEY VALUE:	\$ 1,500,000 \$ 1.600.000	FOUNDER'S INTERE	FASKEN

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?:

0% - 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:

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

Companies should:

- Integrate Stock Option Plan with their HR Plan.
- o 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
PRE-MONEY VALUE: POST-MONEY VALUE:	\$ 1,600,000 \$ 1,600,000	FOUNDER' S INTEREST:	\$ 1,500,000 (93.75%)

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

PRE-MONEY VALUE: \$2,240,000 FOUNDER'S INTEREST: \$2,240,000 FOUNDER'S INTEREST: \$2,240,000 MARTINEAU

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:	10,600,000		\$2,020,600
Option Plan	1,500,000	n/a	n/a
New Options	500,000	n/a	n/a

PRE-MONEY VALUE: \$3,800,000 FOUNDER'S INTEREST: \$2,000,000 (57%) POST-MONEY VALUE: \$5,300,000 MARTINEAU

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	2,000,000	n/a	n/a

PRE-MONEY VALUE: \$ 10,600,000 FOUNDER'S INTEREST: \$ 0,000,000 (44%) POST-MONEY VALUE: \$ 13,600,000 MARTINEAU

Capitalization Table After Option Exercise At The Time of IPO

	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
Options	2,000,000	0.35	700,000
Total:	15,600,000	n/a	\$5,720,600

PRE-MONEY VALUE: \$ 13,600,000 FOUNDER'S INTEREST: \$ 6,000,000 (42%) POST-MONEY VALUE: \$ 14,300,000 MARTINEAU

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