“For many founders, incorporation is a new venture’s essential first step in solidifying their business idea. So what do you need to know about incorporating? The basics can help you decide if and when to take this step:

What is a corporation?

Any business can be structured as a sole proprietorship, partnership, corporation or co-operative.

A corporation is legal entity created by statute, and includes three groups of stakeholders: shareholders, directors and officers. Shareholders own shares of the corporation and elect its directors. Directors have the principal role in managing the business and affairs of the corporation, and appoint the officers. Officers serve at the pleasure of the board, and conduct the day-to-day operations of the corporation.

A corporation is created upon your filing the proper documentation (usually called articles or a certificate of incorporation) with the federal, Provincial or State government. To file your document, you must pay a fee (varying from $200 to $1000 in North America) and provide certain basic information, including your corporation’s name, the initial board of directors and a description of its share capital.

The online guides to the *Canada Business Corporations Act* *[http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs01362.html]* and the *Business Corporations Act* (Ontario) *[http://www.ontario.ca/ontprodconsume/groups/content/@gopsp/@so/@bus/@companies/documents/document/stel02_168137.pdf]* provide information on reserving corporate names and incorporating federally.

Why incorporate?

You gain three principal benefits from incorporating your business:

- limited liability
- tax incentives
- familiarity

Limited liability: A corporation is a separate legal entity. As a result, its creditors cannot generally make claims against the shareholders’, directors’ or officers’ personal assets to satisfy the corporation’s unpaid debts. This a useful structuring benefit, but not a perfect shield. There are statutory exceptions to this principle that impose personal liability on directors for certain liabilities. In addition, founders are often required to personally guarantee liabilities for certain types of material obligations (such as leased premises and bank debt).

Tax planning opportunities: Incorporation provides some positive tax planning opportunities—especially when founders plan to reinvest earnings in the business and claim refundable tax credits for the venture’s R&D expenses.

Familiarity: A key advantage to incorporating is that your stakeholders (e.g., banks, landlords, employees, investors, acquirers) will have experience with the structure of your business. It is simple to incorporate and this well-recognized form will facilitate the way you legally relate to each of your stakeholders.

When to incorporate?

If you have interested customers or investors, it is probably time to incorporate. If you don't yet have these interested parties, you might prefer to wait until your management team and business concepts become more defined. In the meantime, you can protect your corporate name by filing a business name, and you can engage talent and pool intellectual property with appropriately drafted legal agreements.

Where to incorporate?

Start-ups should not feel compelled to incorporate right away in the United States (usually Delaware) or another foreign jurisdiction just to make the corporation more attractive to foreign angel and venture capital investors. Keep in mind that there are great tax incentives for start-ups to incorporate in Canada. If foreign investors like your business and think that it will be more valuable as a foreign corporate entity, there are ways to make that happen at a later date."

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