Disclaimer:

The Business Law Clinic (the “BLC”) is pleased to provide general legal information related to your queries. Please note that this information is for reference purposes only since, as law students, we are not licensed to provide legal advice. If you wish to pursue any course of action based on the information contained within this memorandum, it is advisable to speak first to a licensed lawyer practising in British Columbia.

Introduction

This memo addresses the following issues:

1) Sole Proprietorships: Potential Advantages and Disadvantages

2) Partnerships: Overview, Potential Advantages and Disadvantages, Registration

3) Incorporation: Overview, Potential Advantages and Disadvantages, In-depth Considerations and How to Incorporate

4) Securities Law: Introduction, Registration and Prospectus Requirements

The information provided in this memo is at a very general level. It is recommended that you contact the UVic Business Law Clinic with more specific questions as your business plan evolves. If you have any questions regarding the information in this memo, or would like additional information, please do not hesitate to contact the Business Law Clinic.
Business Structures
There are several types of business forms that may be used to facilitate for-profit business. This section will provide a general overview of sole proprietorships, general partnerships and corporations.

Sole Proprietorships
A sole proprietorship is the simplest business form. Under this form a single person carrying on the business is the ultimate decision-maker. However the sole proprietor may hire employees or engage agents and delegate to them some of his or her authority, including management authority.

Sole proprietors and sole proprietorships are not treated as separate legal entities. This means that there is no legal distinction between the proprietor and the business. In a sole proprietorship one owns both personal assets and the assets of the business and sole proprietors will be directly liable for all of the debts of their businesses or for any potential damages awarded in a lawsuit.

Potential Advantages of Sole Proprietorships:

Simplicity and Affordability of Formation and Dissolution
To form a sole proprietorship the sole proprietor simply starts carrying on the business. At dissolution the sole proprietor simply stops carrying on the business. There is no need to file annual reports.

Managerial Control
Sole Proprietors enjoy full control in terms of establishing the business purposes, conducting business activities and making decisions.

Financial Flexibility
Sole Proprietors have great flexibility in terms of fundraising and in terms of choosing how to use business profits and assets.

Tax benefits
All profits go to the sole proprietor and are taxed as personal income. Losses can be deducted against other income sources, which can be beneficial in the initial years, when losses are expected.

Potential Disadvantages of Sole Proprietorships:

Unlimited Liability
A sole proprietor is personally liable for the losses of the business, and may also be responsible for the wrongful acts of his/her employees if those acts are committed in connection with the sole
proprietorship. This means, for example, that personal assets and property could be seized in order to pay for damages or losses incurred by the business.

Name Limitations and Lack of Name Protection
There are limitations on the business names of sole proprietorships. For example, a sole proprietor’s business name cannot be the same name as a corporation that is incorporated, registered or continued in B.C. Furthermore, a sole proprietor’s business name cannot be so similar to such names that it is likely to confuse or mislead. The sole proprietor may have to register the business name if he or she carried on the business in a name other than his or her own legal name. There is also no business name protection unless the sole proprietor trademarks the business name. Even if the business name under which the proprietor conducts business is registered, another company could still register a similar name in the BC corporate registry. A trademark registration can provide protection; however registration of a trademark takes time and adds expense.

Lack of Continuity
The sole proprietorship, and therefore the business, ceases to exist if the sole proprietor dies.

More Information
More information about sole proprietorships may be found here:
http://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/proprietorships-partnerships

Registration Information can be found here:
**Partnership**

**Overview**
There are other forms of partnerships, such as limited liability partnerships, but this memo will only discuss the simplest form, general partnerships.

Where two or more people decide to carry on a business without formal organization, they are likely to be considered to be in a general partnership, whether this is intended or not. It is important therefore to realize that a sole proprietorship could be legally considered a partnership without the owner’s intent. The *Partnership Act (British Columbia)* broadly defines partnership as “the relation, which subsists between persons carrying on a business in common with a view of profit” (site).

Where people begin carrying on business together as either a registered or unregistered partnership they are automatically governed by the *Partnership Act*. There does not need to be a written partnership agreement for a legal partnership to exist. However it is generally advisable for partners to enter into a written partnership agreement, which allows them to vary default provisions of the *Partnership Act* where they choose to. (See “Partnership Agreements” below for examples of what these agreements typically include). There is a registration requirement for general partnerships, but a general partnership can still exist even if it fails to comply with this requirement.

**Liability**
In law, partners and partnerships are not treated as separate legal entities. As a result, each partner is jointly and severally liable for the liabilities of the partnership. Consequently, the acts of one partner in conducting the business, even if not authorized by the others, may bring liability upon them all. As well, the personal assets of each partner and the business assets of the partnership are equally available to both personal creditors and business creditors to satisfy any claims.

**Potential Advantages of Partnership**

**Easy formation**
The organization of a partnership can be simple since there are few legal requirements for forming a partnership. Typically, a partnership is created when two or more persons enter into a partnership agreement that sets out the terms of the partnership. However, that is not always the case. For example, a court may find that a partnership exists between two or more persons because of their relationship and the indicia (signs, indications or distinguishing marks) of a partnership even if the persons did not enter into a partnership agreement and did not intend to create a partnership.
Inexpensive to Set Up
General partnerships are relatively inexpensive to form, although this may not be the case if there is a need for a formal partnership agreement.

Partners Share in the Business
All partners share in the management of the business as long as a partnership agreement does not state otherwise. Partners are also presumed under the Partnership Act to have an equal share of profits and losses.

Limited Regulation
The law governing partnerships does not impose as many formal requirements as other forms of organization such as a corporation. No annual reports are required, although owners are required to file taxes.

Tax Advantages
A partner’s share in the partnership business losses can be deducted against his/her personal income and there is no double taxation (of business profits as corporate profits and personal income).

Note on Taxation of Partnerships:
Under Canada’s Income Tax Act, the partners and the partnership are not treated as separate legal entities. This means that partnerships are a flow-through tax entity – the partnership income and losses flow through to the partners, and there is no separate tax rate or income tax return for the partnership. Income tax law requires the partners to calculate the income earned or losses incurred by the partnership, to allocate the income or losses to the partners and then to include their share of the income or losses in their personal income tax returns. Canada and B.C. have a progressive tax rate structure for individuals. Meaning the tax rates increase as taxable income increases.

Potential Disadvantages

No Limited Liability
Each partner is personally liable for the losses of the business while he/she is a partner, and may also be responsible for the wrongful acts of his/her fellow partners if those acts are committed in connection with the partnership business.

A Partner Can Legally Bind Another Partner Without his/her Approval
Partners can be legally bound by contracts entered into and debts incurred by the other partners in the operation of the business, even where they have not given consent.

Lack of Continuity
Under the Partnership Act, on the death or bankruptcy of a partner or dissolution of a corporate partner, a partnership of two partners is dissolved. However, with a partnership of more than two partners, the partnership is dissolved as between the bankrupt, dead or dissolved partner and the other partners only, and the partnership will continue to exist with respect to the remaining
partners. Partnership agreements can provide for different terms with regards to withdrawals and admission of new partners.

**No Name Protection**
There is no name protection provided by the *Partnership Act*.

**Partnership Agreements**
Although it is not essential to have a written partnership agreement, it is generally advisable to establish the terms of the partnership in a formal written partnership agreement. Each individual will have different skills, experiences and expectations, which should be addressed within a formal partnership agreement in order to protect the partners in the event of a conflict. The *Partnership Act* imposes a default system of rights and duties upon partners, most of which may be (and usually are) altered in a partnership agreement. The partnership agreement is often also used to define management responsibilities and to ensure the partnership’s continued existence after a partner leaves the business. The negotiation and drafting of a partnership agreement can be complex if the needs of the partners are diverse and the complexity of the business is significant. Sample partnership agreements can be accessed and the Small Business B.C. library ([http://www.smallbusinessbc.ca](http://www.smallbusinessbc.ca)).

**Some details that should be addressed in a partnership agreement include:**
- The nature and purpose of the partnership;
- Name of the partnership
- Supply of capital and any ongoing financial support
- Treatment of financial matters
- Payment of salaries and drawings
- How profits or losses will be dealt with
- Role and responsibilities of each partner
- A partnership structure may vary from joint arrangement where all partners make decision as equals or one individual may be elected as managing or senior partners, thereby taking on a more executive position within the business
- Details on how accounting records will be maintained
- Provisions concerning the dissolution of the partnership
- Provisions concerning the admission and requirement of partners; and
- Provisions concerning the settlement of disputes among partners.

**Dissolution**
A general partnership that was entered into for an unspecified amount of time may be dissolved by any partner giving notice to the other partner(s) of his or her intention to dissolve the partnership. Note that there is automatic dissolution in certain circumstances, such as the death of a partner.
Registration
General partnerships have a registration requirement. The partners must file a registration statement with the Registrar of Companies. (It is important to note that registration does not create a partnership – the purpose of registration is to disclose the names of the partners behind the partnership.)

Firm Name
There are limitations on the firm name with which a general partnership may carry on business. For example, a partnership’s firm name cannot be the same name as a corporation that is incorporated, registered or continued in B.C. Furthermore, a partnership’s firm name cannot be so similar to such a name that it is likely to confuse or mislead. A partnership must submit a business name approval request, and upon approval, must file a registration statement with the Registrar of Companies.

More Information
More information about partnerships may be found here: http://www.bcregistryservices.gov.bc.ca/bcreg/corppg/partnership/index.page?

A list of frequently asked questions may be found here: http://www.bcregistryservices.gov.bc.ca/bcreg/corppg/partnership/faq.page?.
**Incorporation**

In Canada, incorporation is the dominant form of business association for both large and small businesses. The result of incorporation is the creation of a legal entity that is separate and distinct from its owners, the shareholders. This means that the liabilities of the corporation are its own and generally not those of its shareholders. Its two main advantages are limitation on the liability of shareholders and a corporate tax rate that is lower than the personal tax rate. Incorporation is a very flexible form of business association that gives the individuals forming it a lot of control in structuring the business.

**Overview**

A corporation has the capacity and all the rights, powers and privileges of a natural legal person. Its organizational structure includes a board of directors, officers and shareholders. The directors manage the corporation. The directors may appoint officers to manage the day-to-day operations of the corporation, though officers are not required. The shareholders own the corporation. Each share held by a shareholder is essentially a “bundle of rights” with respect to the corporation and other shareholders. The main rights include voting rights, dividend rights and dissolution rights. Voting rights give shareholders the right to vote at meetings of shareholders. Dividend rights grant the shareholder the right to a share in the corporate profits when dividends are declared. Dissolution rights provide the shareholder with the right to a share in the corporate profits and assets when the corporation is dissolved. (An individual may be the sole director, officer and shareholder of a corporation. In fact, this is very common for small businesses.)

When a corporation is incorporated, it acquires all of the legal powers of an individual, an independent existence separate and distinct from its shareholders, and an unlimited life expectancy. A corporation can acquire assets, go into debt, enter into contracts, join a partnership, and sue or be sued. Shareholders have an ownership interest in the corporation as a whole, but they do not actually own or have a right to any of the corporation's specific assets. Usually, ownership interests in the corporation are transferred through the transfer of shares without affecting the corporation's existence or continued operation.

**Federal vs. Provincial Incorporation**

In B.C., a corporation is created when a business fulfills the formal requirements of the *B.C. Business Corporations Act* (the “BCBCA”) or using the federal, *Canadian Business Corporation Act* (the “CBCA”). The Acts are similar in many respects with a few differences. The CBCA offers limited name protection across all of Canada and is most often chosen by corporations who plan to carry out business across Canada. The majority of corporations in BC are incorporated under the BCBCA. Its advantages generally are its wide familiarity in BC and ease of dealing with the registrar. For you the key difference is that the CBCA has a residency requirement for directors, while the BCBCA does not. The result of incorporation under either Act is the creation of a separate, distinct legal entity.

Companies incorporated outside of the province they operate in, can register extra-provincially. If you are a corporation operating in BC, you must register with the provincial Registrar of Companies. If you wish to expand your corporate activities outside of BC at a later date, you
need to obtain an extra-provincial registration from every other province in which you plan to open an office or have a presence. These options should be discussed with a lawyer.

Advantages of Incorporation

Limited Liability for Shareholders
Liability protection is generally the main non-tax reason to incorporate, and is the main motivation for most incorporations to take place. Note that a sole proprietor or partner in a general partnership has unlimited liability to creditors of the business unless a specific contract is in place to limit their liability. Shareholders of a corporation generally have no such risk.

Tax Advantages
In many cases, the key reason for incorporation has to do with taxation. There are three potential significant tax benefits of incorporation for small active Canadian businesses.

1) Tax Deferral
Net income of a sole proprietorship is taxed directly in the hands of the owner. However, a corporation is a separate taxpayer with its own tax rates. The Income Tax Act provides a small business deduction for Canadian-controlled private corporations. For these purposes, a private corporation means one whose shares have no been sold broadly to the investing public. The small business deduction is a reduced rate of tax for these Canadian-controlled private corporations on the first $500,000 of business income. For reference, see the CRA.

The small business deduction works out to be a tax deferral because the individual shareholders end up paying tax on the income in their own marginal tax rates when the corporate income is distributed to the shareholders as dividends. However, there can be significant tax savings because the small business corporate tax rate is likely to be lower than the individual’s personal tax rate. For this reason, keeping the income in the corporation (by not paying a dividend) allows for a deferral of tax until the income is distributed in the form of a dividend. Tax deferred can then be invested for a return.

This tax deferral aspect of the small business deduction only works when the corporation is earning income and the income is not being withdrawn from the corporation.

2) Capital Gains Exemption
The other main tax advantage to the incorporation of a small business is the ability to claim the (for 2016) $412,000 capital gains exemption on the sale of the business. Where the shareholders qualify, the first $412,000 of capital gains are exempt from tax. Note that the exemption applies to the individual and not the corporation.

The capital gains exemption only occurs when the business is sold (at time of sale), and when the corporation’s business has done well enough that the value of the assets in the corporations has increased. If the corporation’s business does not do well and the corporation suffers losses, there will still be no income to benefit from the small business deduction and it is unlikely that there will be a capital gain.
3) Income Splitting Opportunities
With a corporation one can legally and acceptably income split with other family members via dividends. Dividends are not based upon a “value for service rendered”; rather the payment of dividends, and thus access to income splitting, is based upon share ownership in the corporation.

By issuing (typically non-voting) shares to family members (spouses, adult children, parents), dividends can be paid out for substantial amounts tax free if the recipient is not earning any other income.

If family members work for the corporation (doing administrative work, billing bookkeeping, cleaning, research etc.) they can be remunerated with salary to increase earned income eligible for CPP pension and RRSP room.

Consulting with a tax lawyer or accounting professional regarding all three of these advantages is highly recommended.

Corporate Ownership can be Structured According to Preference

Ownership of corporations exists via ownership of the corporation’s shares. Another advantage of incorporation is the flexibility that can be built into the types or classes of shares that are issued. Corporations must have one type of common voting share, but they can have other classes of shares, which can give shareholders a range of different types of rights. A corporation can be quite innovative with regard to the characteristics assigned to other classes of shares. For example, shares can be designed such that they:

- Have no voting rights
- Have no voting rights or right to dissent with respect to issues revolving around shares, classes of shares, cancellation of shares, issuance of shares, etc.
- Have a right to receive dividends (as determined and declared by the board of directors from time to time)
- Be redeemable by the corporation for a pre-determined price (e.g.$1.00)
- Be redeemable by the corporation upon liquidation, dissolution, or winding up for a pre-determined price (e.g. $1.00 each); and
- Be denied entitlement to any additional profit above and beyond what was declared by the board.

By using differing classes of shares with differing rights attached, corporations can distinguish a range of shareholding relationships in terms of allocating financial risks and reward, and varying participation in the shareholder decision making process. Shareholders can be considered ‘silent’ investors or they can be intimately involved in the management or oversight of the corporation, and profits can be allocated accordingly.

Perpetual Existence
A corporation is said to exist is perpetuity. This means a corporation continues to exist even if all of its shares change hands.
Ease of Transfer of Business Ownership
Shares are freely transferable unless corporate bylaws include an express restriction on the transfer of shares. However, securities laws (more information provided below) put certain restrictions on the initial distribution and subsequent transfer of shares that are particularly likely to constrain the transfer of shares in closely-held corporations. In a closely-held corporation the shareholders typically take part in the management of the business and should be particularly careful about whom they are in business with. In addition, they usually want to avoid the added expense of compliance with securities laws that may arise if the shares end up being publicly distributed. Consequently it is common in closely-held corporations to have a restriction on the transfer of shares that is often virtually identical to the kinds of restrictions that are often put on the transfer of partnership interests. There is generally no significant difference in how freely one may transfer shares in a closely-held corporation and how freely one might transfer partnership interests in a partnership.

Separate Legal Entity:
Corporations have the ability to do anything a natural person of full legal capacity can do such as enter into contracts.

Facilities for a Corporation to Secure Additional Capital:
The principal method that a corporation has for raising additional capital is via issuing shares and debentures. Debentures are just evidences of indebtedness – a form of ‘IOU’ that can in turn be bought and sold. The terms on debentures are similar to those in bank loan agreements and thus the sale of debentures to numerous persons is similar to getting a loan from numerous persons on terms not unlike one would find in a bank loan.

Selling shares may allow for investment from parties with limited interest in control of the business, or from a wide range of small investors. Note that these possible financing benefits are still subject to regulation by securities legislation when one attempts to sell such instruments broadly to the public.

Rights and Remedies of Shareholders
Shareholders can participate in the management of the corporation to the extent that they have become directors or officers. Shareholders also exercise control over the election of directors or officers.

Potential Disadvantages of Incorporation

Closely Regulated
The BCBA requires all corporations to file an annual report and also file any changes to the location of corporate offices and its directors. The corporation is also required to maintain certain corporate records.

Costs
There are costs to incorporation that do not arise with either a sole proprietorship or partnership. First, there is the fee for the incorporation itself. Additionally if a lawyer is retained to carry out
the incorporation, there are the legal fees associated with the incorporation process. These can run up to several hundred dollars or even several thousand dollars depending on the complexity of the corporation and whether a shareholders’ agreement is needed. After incorporation there are requirements for the filing of annual reports with an accompanying modest fee. In most jurisdictions incorporation and filings can now be done electronically. Other added costs involve maintaining certain corporate records and the filing of an additional tax return. While these costs are usually not particularly large they should be considered.

Record Keeping
It is necessary for a corporation to keep extensive records. As it is a separate legal entity, it must prepare financial statements and file tax returns independently of the owners.

Charter Restrictions
Under the BCBCA corporations are governed by default standard-form articles. Incorporation documents and by-laws should in general be carefully drafted to ensure that the corporation has the power to conduct the business as intended.

Personal Guarantees May Undermine Limited Liability Advantage
While incorporation can offer protection to shareholders, this protection is not absolute. For example, suppliers to a small business may require personal guarantees from the shareholders of a corporation before they will advance substantial amounts of credit. These personal guarantees from the shareholders effectively eliminate the limited liability gained by incorporating to the extent of the guarantee. It is important to note, however, that the shareholders maintain limited liability for other purposes. For example, if someone were to injure him/herself on the corporation’s property, general liability insurance would usually cover the claim. However, if the damages exceeded the amount covered in the insurance policy, the injured party could only look to the assets of the company to cover the damages.

Piercing the Corporate Veil
Directors of a corporation may also be held legally responsible in certain cases, despite corporate limited liability. This is known as “piercing the corporate veil”. This is a complicated area of business law and the court will likely only hold directors liable for corporate obligations in circumstances involving gross negligence, fraud or other egregious misconduct.

In Depth Consideration of Incorporation
Whether or not to incorporate raises various issues, such as your personal cash flow needs, the relative profitability of your business, and personal and corporate tax rates.

Cash Flow
If you require all of the profits from your business to support your personal cash flow needs, incorporation may not be for you. The cost of setting up and maintaining the corporation could outweigh the tax benefits. However, when your financial position allows you to retain some of your business profits inside the corporation, incorporation could deliver significant tax savings.
Tax Issues
Under income tax law, the shareholders and the corporation are treated as separate legal entities. Unlike general partnerships, the shareholders may not deduct any corporate losses from their personal income taxes. However, the corporation may deduct corporate losses from its corporate income tax and may defer deducting corporate losses to future years where it is more advantageous to do so.

Most businesses, in their initial stages of operation, incur losses. A corporation is a separate legal entity and is therefore a separate taxpayer. Shareholders cannot claim losses incurred by a corporation for their own personal advantage (for example, offsetting their own losses). In the early stages of your business, it may be better not to incorporate so that you can use the losses to your personal advantage. Once your business becomes profitable, incorporation can provide tax advantages. If your business earns active business income (income earned as a direct result of business operations as opposed to passive income earned, e.g., by investment) you may gain an immediate tax break and the opportunity to defer part of your tax payment.

Incorporation also allows you to take advantage of income splitting to reduce taxes. If your spouse or adult children are shareholders in your corporation, any dividends they receive will usually be taxed in their hands.

Your incorporated business can choose a fiscal year spanning any 12-month period. You can select a fiscal year-end that coincides with business or cash flow peaks (making tax payments easier) or when corporate expenses are higher (selecting which fiscal year expenses will fall into).

Creditor-proofing personal assets
Incorporation can limit your liability because corporate assets and personal assets are kept separate and corporate creditors can only go after assets owned by the corporation. However, banks and other corporate suppliers often require small business owners to personally guarantee any liabilities. This means that they will have recourse (subject to certain exemptions) to your personal assets such as your house, car, etc. Also, directors of a corporation may be held liable for many types of unpaid debts including outstanding income tax, GST, PST, and employees’ wages. Therefore, it should be remembered that incorporating your business might not protect you from all creditors.

How to Incorporate Your Business
Name: The first step is to register your corporate name, which requires approval from the Names Unit of the Registrar of Companies. The following site provides you with step-by-step instructions on how to register your name. The name approval request filing fee is approximately $30.

The approval of any name is at the discretion of the Registrar. The Registrar recommends that three business name choices be submitted in order of preference. Further, it is recommended that the application instructions are read very carefully, as a properly completed form saves time and money. It is worthwhile to search through telephone listings, business directories, and other
publications for potential conflicts with your chosen name. It is also possible to do a name search using the “Newly Updated Automated Name Search” (NUANS) database. The NUANS database contains a list of registered trademarks, incorporated corporations, and registered business names in Canada. A NUANS search costs about $20.

The Names Examiner will search the Corporate Registry for names that may conflict with your name choices. This register includes the names of corporations incorporated or registered extra-provincially in BC. However, it does not include names of BC firms, trademarks, or corporations registered outside BC. If you want to ensure your proposed corporate name does not conflict with the rights of a third party, you may wish to search other jurisdictions in Canada. Most public business and trademark registers in Canada are reflected in the NUANS database mentioned above.

Under the BCBCA, your name must have three components:

1) A distinctive element, which is a non-descriptive word or phrase. (e.g. a geographic location, a name, or a made up word or phrase.)
2) A description of what type of business you are in.
3) A corporate designation such as Incorporated, Inc., Limited, Ltd., Corporation, or Corp.

Once name approval is complete, a Name Reservation number is assigned and the name will be reserved for a 56-day period. Incorporation must occur by the end of this period (by filing incorporating documents with the Corporate Registry) or the name reservation will expire. Since your name reservation can be cancelled at any time prior to incorporation, it is prudent to wait until the incorporation process is complete before promoting your business using your name preference.

For more information or to submit a name approval request see the following link: http://www.bcregistryservices.gov.bc.ca/bcreg/corppg/reg46.page.

**Incorporating Your Business**

Incorporating your corporation can be a complex procedure and will often require the services of a lawyer. Nonetheless, being well-informed on the steps involved in the process may save you both time and legal fees:

1) Incorporation agreement: Before a corporation can be formed, each incorporator must sign an incorporation agreement. This is required even where there is only one incorporator. A sample incorporation agreement may be found here: http://www.bcregistryservices.gov.bc.ca/local/bcreg/documents/forms/reg50a.pdf.

2) Corporation Articles: Every corporation must have a set of articles. The corporation’s articles are the rules that govern the internal conduct of the corporation and its shareholders, directors, and officers. A standard set of a corporation’s articles may be found here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_65_2004#Table1.
3) Incorporation Application: In order to incorporate your business, an Incorporation Application must be submitted online with the Corporate Registry at www.corporateonline.gov.bc.ca. The associated fee for incorporating is $350.00. Once your application has been processed, an incorporation number will be assigned and incorporation will be complete.

4) Maintain Incorporation Documents: Within three to five working days after incorporation is complete, the Corporate Registry will send you the original Certificate of Incorporation, a certified copy of the Incorporation Application and a certified copy of the Notice of Articles. These documents must be kept by the corporation, along with other corporate documents, as part of its corporate records.

5) Other Records: Other documents should be prepared at the time of incorporation (such as opening resolutions, share certificates, register of directors, and a central securities register) as required under the Business Corporations Act.

More information on the main steps to incorporate may be found here: http://www.bceregistryservices.gov.bc.ca/local/bcreg/documents/forms/reg50.pdf.

**More General Information**

More information about corporations may be found here: http://www.bceregistryservices.gov.bc.ca/bcreg/corppg/companies/index.page.

A list of frequently asked questions may be found here: http://www.bceregistryservices.gov.bc.ca/bcreg/corppg/companies/faq.page.

**Other Considerations for the Business**

**Registering**
The above process of Incorporation or forming a partnership includes registering your business in B.C.. However, the City of Victoria also requires that every business operated in the city have a Victoria Business License. This process involves choosing a properly zoned location, preparing the required paperwork and business application form. A business licence application takes approximately 10 working days to process. The steps are laid out at the following website: http://www.victoria.ca/EN/main/business/permits-licences/business-licences.html
Introduction to Securities Law

Every company that issues shares is subject to regulations under the Securities Act. The definition of a security includes shares among other tradable corporate assets such as bonds and options, but also debentures, notes or other evidence of indebtedness. In the context of this memorandum, a security will refer to a share and a company issuing shares will be referred to an “issuer.” There are mainly two requirements that issuers need to be aware of: the registration requirement and the prospectus requirement.

Registration Requirement
The registration requirement states that any person who trades a security must be a registered dealer under section 34 of the Securities Act of BC. This is to provide the investor (either a person or company) with the trust and confidence they require to acquire securities. This requirement is targeted at brokerage houses and firms dealing with securities trades. Section 8.4(1) of the National Instrument 31-103 provides that an exemption exists if the issuer is (i) not engaged in the business of trading securities (ii) does not hold itself out as engaging in the business of trading in securities or exchange contracts as principal or agent.

Prospectus Requirement
The prospectus requirement states that a person must not distribute a share unless that person has filed a prospectus with the executive director under the Securities Act, received a receipt for that prospectus and has delivered a copy of that prospectus to the potential investor.

Share distribution may occur when the company issues shares from the treasury, when a shareholder who acquired shares under an exemption sells those shares to another person and when a shareholder with sufficient shares is deemed a “control person” and sells his, her or its shares to another person (usually, when that person holds 20% or more of the voting rights of the company or is designated in the article as a control person).

An exemption to the prospectus requirement exists if it can be determined that the investor does not need to be provided with a prospectus. Usually, this is in the context of financial institutions that have the means and knowledge to determine if there is enough information to decide whether or not to invest. A common exemption also exists if the company qualifies as a “private issuer”, which is an issuer that:

- Is not a reporting issuer, mutual fund or pooled fund,
- Has less than 50 security holders, excluding employees and former employees
- Has restrictions on the transfer of its securities in its articles, memorandum, bylaws, or its shareholders agreement

Other exemptions also exist and further information can be found on the BC Securities Commission website; we however strongly encourage you to seek the advice of a securities lawyer if you wish to incorporate and issue shares.

Again, the information provided in this memo is at a very general level. If you require business law information or assistance, please leave a message with the Business Law Clinic at 250-472-4522 or send an email to blc@uvic.ca. A BLC representative will reply to your message as soon
as possible. If your particular issue or legal question suits the objectives of the program, the clinic will schedule an interview so you can discuss your situation with a UVic Law student.

Also the link to our website is: https://www.uvic.ca/law/admissions/lawclinics/businessclinic/index.php