SILICON VALLEY LAW GROUP
A LAW CORPORATION

One N. Market St., Suite 200
San Jose, CA 95113

BERNARD J. VOGEL, III

TELEPHONE: 408-573-5700
FAX: 408-573-5701

VOGEL@SVLG.COM

FREQUENTLY ASKED CALIFORNIA BUSINESS INCORPORATION QUESTIONS (FAQ)

(February 11, 2022)

Disclaimer Warning: **This FAQ is published as a general informational resource and is not intended to constitute legal advice regarding any particular matter or any specific facts. Transmission of this FAQ does not constitute legal advice for the reader and does not create an attorney-client relationship.**	
Should a corporation be formed in California, Delaware, Nevada, or another state?	The optimal state of incorporation for a new business requires an analysis of, among other things, the business plan of the corporation, the desire to avoid shareholder derivative suits, the likelihood of institutional or venture capital investors, indemnification issues, the willingness to pay both California taxes and another states taxes, and other matters which are beyond the scope of this FAQ. Readers are encouraged to review publications on this matter at www.svlg.com.
Are there corporate name restrictions or corporate names which cannot be used?	Corporations **cannot** use (i) corporate names previously taken by other businesses, or (ii) names that conflict closely with or resemble[1] a name of a corporation in good standing or (ii) the following words without satisfying certain requirements or obtaining governmental approval[2]: • "bank", "trust," or "trustee" • "cooperative" or abbreviations thereof, • "Olympic," or Olympiad," or • "national," "federal," "United States," "reserve," "deposit insurance," or certain words referring to "credit unions".
Do I need to have "Inc.", "corporation" or some other version in the corporate name?	California law allows flexibility in choosing a corporate name. In most cases, the words "corporation," "incorporated, "or abbreviations, such as "Inc.", do not have to be included in a corporate name **unless**:

[1] Pursuant to California Corporation Code ("CCC") Section 201(b), the California Secretary of State shall not file articles or amendments if the proposed corporate name is likely to mislead the public or resembles closely, or is the same as, any California corporation in good standing, foreign corporation qualified to do business in California and in good standing, or corporate names under reservation.

[2] Requirements, necessary governmental approvals, and procedures are beyond the scope of this FAQ

	o the corporation will be a statutory "Close Corporation[3]," o an individual's name is used in the corporate name, or o certain types of professional corporations, such as law, accounting, medical, architectural, or engineering.[4] However, use of such word is recommended to clearly signify a company's corporate existence.
How can I check if a corporate name is available?	A quick way of checking the availability of a corporate name is to perform a "Business Search" on the California Secretary of State website; however, you cannot be absolutely certain that the name is available without reserving the corporate name. This is because (i) the Secretary of State database is not current due to delays in processing submitted corporate documents, (ii) there can be a conflicting corporate name which is the same or has similar pronunciation (but different spellings), and (iii) there can be corporate names already under a reservation.
Can my proposed corporate name be reserved?	Due to the abundance of existing corporate names and the slow processing of the articles of incorporation, you consider submitting a name availability inquiry or reserving a corporate name at the California Secretary of State's website. For a filing fee of $10 per name, a corporate name can be reserved for 60 days.
Does the corporation have to qualify or register in states outside a California?	Although each state has its own rules, regulations and exemptions, before a corporation transacts business in another state, it should investigate the need to be qualified or registered in such state. As a general prophylactic rule, a corporation should assume that it will need to qualify or register if the corporation is going to transact business or have a presence (assets, employees or sales - each of which have their own implications which are beyond the scope of this FAQ) in another state.
How many Board of Directors are required?	California Corporation Code Section 212 (a) requires that if there is only one shareholder the number of Directors must be at least one (1); or when there are two (2) shareholders, there

[3] A "Close Corporation" is a unique statutory California entity which is generally restricted to smaller closely held corporate ownership and has extremely limited uses, which is beyond the scope of this FAQ.
[4] Each Governmental Regulatory Agency has specific regulations which are beyond the scope of this FAQ.

	must be at least be two (2) Directors. If there are more than two (2) shareholders, the number of Directors must be three (3) or more. Delaware only requires one (1) or more directors.
What is "par value" and is it required?	Par value is an antiquated concept for establishing minimum legal capital, which has been eliminated in California for many years. California, like Delaware, permits, but does not require, the issuance of stock with or without par value. Many common stocks are issued with "No-Par Value or extremely low par values of between $.01 to $.00001.
If Delaware does not require stock to be issued with "par value", then why is "par value" important?	Both California and Delaware permits the issuance of stock either with or without a par value, but by assigning an extremely low par value, a Delaware corporation may significantly reduce its Delaware franchise tax liability.
What is and does a California corporation need a "corporate seal"?	A corporate seal is a stamp, generally metal, but can be rubber, of a corporate signature which contains the corporate name, state and date of incorporation. However, corporate seals have fallen out of use. Even banks and insurance companies, which have requested or require corporate seals in the past, have discontinued the practice of requesting them. Corporate seals are considered relics in California and New York. Although California statute gives corporations the authority to use and adopt them, corporate seals have no effect on the validity of any corporate document or instrument.[5]
What factors should be considered before issuing stock of the corporation?	Before founders or management issue any stock or securities of a corporation, they should identify and evaluate the characteristics of such potential shareholders. Analysis should include what consideration (cash, intellectual property, future employment, etc.) is being exchanged for the securities, whether there will be any restrictions on the transfer or sale of the stock, whether the ownership of the stock will vest over time, whether there will be voting restrictions or options to repurchase the stock, and whether the securities offering needs to be registered with the Securities Exchange

[5] California Corporation Code Section 207 provides that a corporation shall have "the power to: (a) Adopt, use and at will alter a corporate seal, but ***failure to affix a seal does not affect the validity of any instrument***." [Emphasis added]

	Commission (SEC) or the state of California, or other states in which shareholders live.
Does the offering of securities require registration with the SEC?	Unless there is an exemption, all securities sold in the United States by corporations must be registered with the SEC. Such registration involves, among other things, the delivery of financial statements and other important information regarding the securities to the investors and the preparation of a registration statement, all of which can be extensive, costly, and time-consuming.
Are there exemptions from the federal registration of securities?	Most companies want to avoid the costs and challenges of filing a registration with the SEC. The most common transactional exemptions are the Regulation D Exemption, Regulation A Exemption, Interstate Offering Exemption, and Private Offering Exemption, all of which have extensive requirements and restrictions which are beyond the scope of this FAQ. Readers are encouraged to review publications on this matter at www.svlg.com.
What state security regulations should be of concern?	In addition to complying with the SEC's registration requirements, a company must also register and comply with Blue Sky Laws of each State, in which the investor or shareholder resides. Founders, management and corporate legal counsel need to carefully monitor and analyze the residence, financial condition and sophistication of potential shareholders before any securities offering to determine whether the securities must be registered with the state of the potential shareholder's residence, and whether there is an exemption under such Blue-Sky Laws. Violations of a state's Blue-Sky Laws can result in the issuance of cease-and-desist letters, injunctions, rescission offerings, costly penalties or other expensive legal proceedings.
Should I issue stock outright?	Consideration should always be given to issuing stock on a vesting or earned over time basis (i.e., vesting schedule) to avoiding unnecessary windfalls, encourage completion of a shareholder's obligations and/or commitments, and ensure retention of founders and employees.
Should the Corporation be a C Corporation or an S	"C Corporations" are treated as a separate taxable entity and upon the sale of the corporation's assets can be subject to

Corporation for income tax purposes?	taxation at both the corporation level and the shareholder level; commonly known as "double taxation". A "S Corporation" is generally treated as a pass-through entity [6]which reports income, deductions, credits and information to the federal and state income tax authorities and provides tax information to its shareholders for reporting on their personal tax returns. Whether a corporation should be a "C Corporation" (default status) or elect to be treated[7] as an "S Corporation" is a complex **question beyond the scope of this FAQ**. The relevant analysis requires, among other things, examination of the nature of the corporation's business, the likelihood of institutional or venture capital investors, shareholders' citizenship, potential number of shareholders, shareholder nature, characteristics and criteria, future plans for raising capital, future potential liquidity (i.e., potential sale in the future), and other variables and considerations.
What should I do if I receive notice or letter from a company soliciting to prepare annual minutes, file statement of information or file corporate documents?	You should provide your corporate attorney with a copy of such notice or letter. California companies have been receiving official looking solicitation letters or notices, warning of defaults and penalties, requesting information about a corporation payment of fees and costs, and completion of forms. In general, these solicitations are not made by the California Secretary of State's office and are **not** made by, or on behalf of, any governmental agency. These companies have no authority and are generally viewed as fraudulent solicitations.
Does the Corporation need to have an accounting firm?	The identification of an accountant or accounting firm is not immediately necessary at the time of incorporation; however, founders and management should engage an accounting firm as soon as possible for financial and tax purposes. If you do not have an accountant or an accounting firm and need a

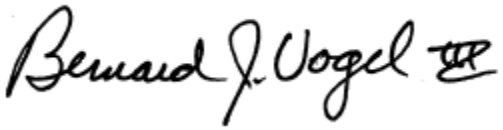
[6] A common misperception in the public is a S Corporation is a corporation treated as a partnership for income tax purposes. This is a dangerous oversimplification. For example, unlike a partnership, the distribution or transfer of assets out of a S Corporation is deemed to be a sale of such assets at their fair market value, which can result, and often times does, in a surprising recognition of income or gain to the shareholder.

[7] In order for a corporation to be treated as an S Corporation, all of the then current shareholders (and their spouses) must sign and file the Election To Be Treated As a Small Business Corporation (IRS Form 2553) and additional eligibility requirements **beyond the scope of this FAQ** must be satisfied

	referral, please contact Bernie Vogel of our law firm, and we will supply you with two (2) referrals.
What should be the Corporation's Fiscal/Calendar Year End	The Corporation's Tax and Accounting Year End must be December 31 for all corporations electing to be treated as an S Corporation. However, for C corporations, the Fiscal Year End can be December 31 or other dates during the year. If you are contemplating using a non-December 31 year end, please discuss this matter with your accountant and have them explain the restrictions and ramifications for such a year-end.

This FAQ is intended to give the reader general information about various issues surrounding the formation of a Corporation. If you desire a more extensive discussion and analysis on any of the topics listed above or any other corporate and legal matters, please contact the undersigned.

Sincerely,



Bernard J. Vogel, III

Vogel@svlg.com