



I Have Decided To Incorporate – Now What?

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Once you have determined that a corporation is the best vehicle to carry out your business, there are many considerations in the set up and organization of your corporation. Online services have made it appear quick and easy to incorporate a business, but don't necessarily walk you through issues that should be considered prior to incorporation. The following is a list of issues which you should understand and address prior to your incorporation.

Jurisdiction

One of the first questions to address that will help determine how to proceed is where to incorporate. Odds are that you will either require a corporation incorporated pursuant to the laws of Ontario and the *Ontario Business Corporations Act* or pursuant to the laws of Canada and the *Canada Business Corporations Act*. There are advantages and disadvantages to both so it is important to pick the best fit for your need. Some examples of questions that will help you determine the proper place to incorporate are; what is the business of the corporation, where will the corporation carry out business, will you conduct business in multiple provinces and where do the directors reside.

Name

Choosing a name can often be one of the hardest aspects of incorporating. Not only can a corporate name be important to the entrepreneur, but a name is subject to various legislative requirements depending on the jurisdiction chosen for incorporation. The most common restriction is that the name cannot be identical to, or cause confusion with, an existing corporate or business name. All names must have a distinctive element, setting it apart from existing names, and a legal ending, such as "Inc." or "Ltd.". Many names choose to use a descriptive element as well, to help indicate to the consumer what the business is about. Corporations can be incorporated as a numbered corporation, where a number is issued as opposed to the actual business name, for example, 111111 Ontario Inc., where the name is not important. A trade name can be used and/or registered by the numbered corporation at a later date.

Articles of Incorporation

The Articles of Incorporation is the document filed setting out the corporate purpose and other important matters such as the approved number of directors, type of shares and share attributes. While samples are readily available, Articles of Incorporation are not cookie cutter and should be tailored to your individual corporate needs. For example, you may only require common shares on incorporation but your Articles of Incorporation can set out a number of different classes of shares which may be useful for future planning purposes, potential investors, raising capital or bringing in family members to the business. Arriving at the proper share attributes is also important to ensure that you are on side with legislation, future planning and various accounting needs. The Articles of Incorporation also have the ability to restrict the conduct of the business as well as the ownership and transferability of shares.

Organization

Once the Articles of Incorporation have been filed and the corporation has been established, organizational work and corporate resolutions are still required to properly set up your corporation. A corporate lawyer can assist in organizing the corporation and preparing the corporate minute book. While there is no requirement by law to compel corporations to keep minute books, the legislation does require certain corporate records to be prepared and stored. A minute book is a convenient vehicle for the organization and storage of all of your corporate documents. To properly set up your corporation, by-laws must be prepared and executed, shares must be properly issued with the resulting share certificates, proper resolutions of the shareholders, directors must be approved and the officers and directors must be appointed and an initial filing must be done with the Ministry confirming the officers and directors. Moving forward, annual filings must be done with the Ministry and minutes of directors and shareholder meetings must be prepared annually. A minute book will also regularly house a share register showing the names and addresses of all shareholders and details of the shares held. The proper establishment of corporate records and the corporate minute book will aid the ongoing business of the corporation and is imperative should you be audited by Revenue Canada, to obtain bank financing or to sell your corporation in the future. Once again, templates of by-laws and corporate resolutions can be found, but are not necessarily tailored for your individual business and you should therefore consult a corporate lawyer to ensure that your corporate documentation meets your needs.

Other Considerations

In addition to all of the documentation mentioned above, there are additional considerations to contemplate prior to incorporating. A corporate lawyer can help make you aware of the potential liabilities which may attach to directors and officers and ensure that you aren't taking risks outside of your expectations. Another crucial element to consider, should there be more than one shareholder in the business, is the negotiation of a Shareholders' Agreement. Although many people do not want to consider a Shareholders' Agreement at incorporation, they often prove extremely valuable in situations of conflict or the exit of one shareholder from the business.

Corporations can be valuable vehicles to help shield business owners from liability and obtain preferential tax treatment. There are however many legislative requirements to setting up and operating a corporation and a large volume of documents that need to be settled and executed. A lawyer can help you address all of these items and ensure that you have a properly incorporated corporation that fits your personal and business needs moving forward.