

# Incorporation

## What is a Corporation?

### A corporation:

#### A corporation

- Is a business which is a legal entity separate from the owner or owners of the business. The corporation can enter into contracts, own assets, and take on liabilities in the same manner as individuals do in a Sole Proprietorship or Partnership.
- Is created by the completion of the articles of incorporation and a NUANS (Newly Updated Automated Names Search) report. When the chosen name is accepted for incorporation, one can be assured that a similar name is not being utilized by another business within the relevant jurisdiction. The company may then choose between one of four corporation designations and their respective abbreviations

Limited (Ltd.)

Limited (Ltee.)

Incorporated (Inc.)

Corporation (Corp.)

### A numbered company:

- Is a corporation that uses a number instead of a name; for example 123456 Ontario Ltd. The number is assigned by the Ministry from a consecutive series utilized for corporation file purposes. It is possible to change to a named corporation at a later date, with a NUANS report and relevant fee.
- If a business decides to change from a Provincial to a Federal incorporation, the name search would need to be done on a Federal level plus applicable fees.
- The corporation's name receives protection under the Ontario Corporations Act.

### Trade names:

- are for businesses that want to conduct business under a different name than the incorporated name. This procedure is the same as registering a sole proprietorship. A \$60 fee is required to register the trade name under the corporation umbrella.

## Provincial Incorporation Procedure

### Name Search

An original Ontario-biased NUANS report. A private name search firm (Searcher of Records found in the yellow pages, or an online service provider listed below) must be used in order to access the NUANS system. The NUANS report must be submitted with the articles of incorporation within 90 days of the production of the report.

**A name search is not required if incorporating a number company.**

### Fee

The incorporation fee is \$300.00 paid online + service provider's fee or \$360.00 by cheques made payable to the Minister of Finance. (NUANS costs extra if applicable)

## 1. Incorporate Online

There are two service providers under contract with the Ministry of Government Services.

#### **On Corp Direct**

416-964-2677  
1-800-461-7772

[www.oncorp.com](http://www.oncorp.com)

#### **Carswell Legal Solutions**

1-416-306-3070  
1-800-267-0183

[www.carswelllegalsolutions.com](http://www.carswelllegalsolutions.com)

#### **CAMBRIDGE**

Cambridge City Hall  
50 Dickson St., P.O. Box 669, Cambridge  
ON N1R 5W8 | T: 519.740.4615

#### **KITCHENER**

Kitchener City Hall  
200 King St. W., P.O. Box 1118, Kitchener  
ON N2G 4G7 | T: 519.741.2604

#### **WATERLOO**

Waterloo City Hall  
100 Regina St. S., Suite 170, Waterloo  
ON N2J 4A8 | T: 519.747.6265

## 2. File the articles of incorporation with the Companies Branch or the Land Registry office (in person or by mail)

**Articles of Incorporation** (Form 1, Business Corporations Act): Forms that detail the Corporation name, address, the number of Directors and their names and addresses, business objectives, company structure and the number and value of shares authorized and issued. Completed in duplicate and bearing original signatures on both copies. (Note: all business corporations must have shares; therefore Article 6 must be completed)

**FORM 1:** <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?openform&ENV=WWE&NO=007-07116>

### Covering Letter

The letter should include a contact name, return address and telephone number.

**Other Support Documents** (if required) e.g. Legal opinion

NOTE: Form 2 Consent to Act as First Director, is no longer required to be filed with the branch but must be kept at the corporation.

**Land Registry Office**  
30 Duke Street, 2<sup>nd</sup> Floor  
Kitchener, ON  
519-571-6043

**Ministry of Government Services  
Companies Branch**  
Suite 200, 393 University Ave  
Toronto, ON, M5G 2M2  
1.800.361.3223

## 3. Hire a lawyer to advise and complete the process of incorporation.

Although it is not required, it is recommended that a lawyer be used to incorporate, as it can be a complicated procedure. Before you start your business, you can be advised of important legal advice relating to the corporate structure, shareholder agreements etc.

### Additional Information and Procedures

Other items that need to be attended to are share certificates, minute book, company seal tax reporting requirements etc.

### Federal Incorporation Procedure

This applies to corporations intending to operate offices extensively in more than one province. Articles are filed at Corporations Canada, Industry Canada.

Guide to Federal Incorporation  
[www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca)

### Fee

The incorporation fee is \$200.00 online or \$250.00 by mail (+ NUANS if applicable)

Corporations Canada Industry Canada  
Tel.: 1-866-333-5556

## Corporation Structure

### Who makes up a corporation?

The owners of the corporation are its shareholders. Shareholders elect or appoint the directors to direct and make corporate policies for the management of the corporation. The directors elect or appoint the officers of the corporation such as president secretary and treasurer. The officers can be hired or fired by the directors at any time. In small business, frequently the same people are shareholders, directors and officers.

A shareholder agreement should be prepared prior to the incorporation of the business.

### Directors

Shareholders are not personally liable for any debts or liabilities of the corporation unless the shareholder has signed a personal guarantee. Directors and officers could be still liable. Be cautious about having spouses as directors. Lenders are more likely to ask that all directors sign a personal guarantee for loans. Directors can be individually and collectively liable for the full amount of debt or liability under most statutory regulations.

#### ***Examples of common areas of Director's potential liability:***

\*When deductions are taken off an employee's salary, the funds are remitted monthly to Revenue Canada. If the funds are not remitted, CRA could sue the directors for the amounts outstanding, (The same scenario relates to sales tax and GST collected, and corporate income tax owed.)

\*Issues around employee salary payments, WSIB, or environmental damages are other examples.

\*Directors should protect themselves as much as possible from personal liability. Due diligence in terms of the company's operations is the responsibility of the directors.

### Shares

When forming a corporation, there are various types of shares that can be used. The most usual are:

**Common shares:** all shareholders of the corporation have equal rights to vote and receive dividends.

**Preferred shares:** when issued to shareholders, will give them the right to receive dividends before holders of any other class of shares, or which have cumulative dividend rights, or rights to be redeemed by the corporation for a predetermined value.

### Liability

If the corporation is sued, only the company's assets can be seized to satisfy the claim.

### Income Tax

Corporations are subject to Corporate Income Tax rates. The taxation year of a corporation corresponds with the fiscal year. For tax years ending in 2009 or later, corporations that have a permanent establishment in Ontario have to file a harmonized T2 Corporation Income Tax Return with the CRA (both Federal and Provincial tax applies) The harmonized return includes the following Ontario corporation taxes: corporate income tax, including refundable tax credits, corporate minimum tax, capital tax, and special additional tax on life insurance corporations.

Ontario levies different rates on small business income. The general corporate business rate is:

- 11.5%
- The basic income tax rate will remain at 11.5%. The rate was scheduled to fall to 11% on July 1, 2012 and to 10% on July 1, 2013.

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/whtsnw-eng.html#ONTax>

**Ontario small business deduction** tax rate reduced to 4.5% effective July 1, 2010.

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/prv/on/smlbsnssddctn-eng.html>

Capital losses may be carried back three years. The amount of monthly corporate tax installments required depends on the company's taxes payable from the previous year...some corporations may pay quarterly depending on a number of factors including the amount due and their payment history with CRA. Net income of the business will be taxed at the corporate rate and then monies paid to the owners will be taxed at a personal rate.

## **Salaries and Payroll Deductions**

Shareholders/owners may be employed by the corporation and receive salary. Shareholders can receive profits via dividends. They are paid out after tax and do not reduce the corporation's taxable income.

Employer benefit contributions including CPP and EI must be paid by the corporation (employer) for each employee. This is a deductible expense and can reduce taxable income. There is no legal restriction on hiring family members providing salaries are reasonable. WSIB is required for most employees and Employer Health Tax is required if payroll is over \$400,000.

## **Record Keeping and Reporting**

File any changes with the Ministry of Government Services using Articles of Amendment .Minute book should hold all corporation documents, records, by laws and resolutions etc. Submit regular income tax reports with financial statements (prepared by a qualified professional) Records must be kept for current tax year + 6 years. A permanent record of assets on which capital cost allowance is claimed. Records for RST and GST as well as employee related accounts (benefits, CPP EI ROE etc.)

## **Advantages & Disadvantages of Incorporation**

### **Advantages**

**Limited Liability** – Shareholders are not personally responsible for any of the debts or obligations of the corporation, unless a shareholder has signed a personal guarantee.

**More Financing Options** – Corporations are eligible for government financing incentive programs that may be unavailable to unincorporated businesses. Corporations can attract investors and provide better security to lenders.

**Continuance** – The corporation continues regardless of whether shareholders die or retire, or if the ownership of the business changes. It has an unlimited life span.

**Potential Tax Deferral** –Because you can defer paying some tax until a later time, you may be able to realize tax savings if you are then in a lower tax bracket, or if the tax rates have fallen.

**Income Splitting** – Corporations pay dividends to their shareholders from the company's earnings. Shareholders do not need to be actively involved in the business activities to receive dividends. Your spouse and/or children could be shareholders, giving you the opportunity to redistribute income from family members in higher tax brackets to family members with lower incomes that are taxed at a lower rate.

### **Disadvantages**

**Liability** – Directors could be held personally liable. The prime advantage of incorporating .limited liability may be undercut by personal guarantees and or credit agreements.

**Costs** – Higher cost to establish a corporation and additional costs of maintaining the corporation such as increased accounting costs.

**Operating losses and tax credits remain within the corporation.** - They are not available to individual shareholders if the corporation is unable to utilize them. Corporations are not eligible for personal tax credits.

**Corporation tax return** - You will have to file two tax returns each year, one for your personal income and one for the corporation.

**Increased paperwork** – Corporations must maintain a minute book, (bylaws and meeting minutes) keep up to date the register of directors, the share register and the transfer registry.

## **Professional Corporations**

The proclamation of the professional incorporation provisions allowing a number of regulated professionals to incorporate their practices in Ontario occurred on November 1, 2001. The amendments to the Business Corporations Act (BCA) are available via the Internet. The BCA provides that members of the following professions are eligible to operate a professional corporation:

1. Chartered accountants
2. Certified general accountants
3. Lawyers
4. Health professionals regulated under the Regulated Health Professions Act
5. Social workers and social service workers
6. Veterinarians

Although framework legislation is in effect, the ability to practice by means of a professional corporation will be dependent on when necessary regulations and by-laws are enacted. It is important that regulated professionals who wish to incorporate their practices consult with their governing body for conditions of incorporation specific to their profession and timing of implementation.

Regulated professionals who wish to incorporate their practices have the same service delivery options listed above and must also meet the requirements outlined above. Professionals should contact their governing body for conditions of incorporation specific to their profession.

Alternate formats and accommodations are available upon request.