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Guide to Federal Incorporation
to help small businesses
incorporate federally

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Preface

This guide gives business owners a general overview of federal corporate law under the *Canada Business Corporations Act* (CBCA). In preparing the Guide, we have assumed that you have passed the initial business concept stage and that you have either made the decision to incorporate or are in the process of making that decision. Although much of the information in this guide is aimed at single-owner corporations, it is important to note that the content applies equally to all businesses with fewer than 50 shareholders.

This guide provides essential information on:

- how to incorporate your business;
- filing Articles of Incorporation and other forms online;
- a number of administrative formalities, such as registration with provincial and territorial authorities;
- the internal organization of your corporation;
- the duties of directors and shareholders;
- how to keep your corporation in good standing;
- examples of a number of completed forms, such as Articles of Incorporation, organizational resolutions, by-laws and minutes of a shareholders' meeting; and
- how to contact Corporations Canada plus other links of interest.

You should note that this guide does not offer information on distributing corporations, commonly called public corporations. It also does not deal with organizations such as banking, insurance, loan and trust companies, or with non-profit corporations since, in Canada, all of these are incorporated under statutes other than the CBCA.

Because this Guide deals with a statute of the Government of Canada — the CBCA — a great deal of the language used is rooted in legal terminology. With this in mind, a glossary of terms and expressions has been included. We urge you to consult it regularly to avoid errors in filing your documents.

As you read through this Guide, you may find that some sections contain more information than you currently need. Regardless, we suggest that you keep it on hand for future reference as your business develops.

IMPORTANT

This guide is not legal advice. It does not discuss all federal and provincial/territorial laws that affect CBCA corporations and those who run them, nor does it deal exhaustively with the CBCA. It does, however, provide the basic knowledge and tools that a small business owner will need in order to incorporate and operate a corporation under the CBCA.



Chapter 1 — Why Should I Incorporate?

One of the most frequently asked questions by entrepreneurs starting a new business is: “Should I incorporate?” The answer to this question is usually: “That depends on your particular situation and your particular needs.”

Among the factors to consider in making this decision are the benefits of incorporating (versus operating the business as a sole proprietorship or partnership) and the implications that incorporation may have for the business. Bear in mind, too, that if you decide to incorporate, you will then have to choose between federal and provincial/territorial incorporation.

If you should decide that you are not ready to incorporate at this time, it is important to remember that the factors affecting this decision can change over time. With that in mind, you may find it helpful to keep this guide on hand for future reference.

1.1 Benefits of Incorporating

Separate legal entity

The act of incorporating creates a legal entity called a corporation, commonly referred to as a “company.” A corporation has the same rights and obligations under Canadian law as a natural person. Among other things, this means it can acquire assets, go into debt, enter into contracts, sue or be sued, and even be found guilty of committing a crime. A corporation’s money and other assets belong to the corporation and not to its shareholders.

When a business is incorporated, its separate legal status, property, rights and liabilities continue to exist until the corporation is dissolved, even if one or more shareholders or directors sell their shares, die or leave the corporation.

Limited liability

The act of incorporation limits the liability of a corporation’s shareholders. This means that, as a general rule, the shareholders of a corporation are not responsible for its debts. If the corporation goes bankrupt, a shareholder will not lose more than his or her investment (unless the shareholder has provided personal guarantees for the corporation’s debts). Creditors also cannot sue shareholders for liabilities (debts) incurred by the corporation, even though shareholders are owners of the corporation. Note, however, that if a shareholder has another relationship with the corporation — for example, as a director — then he or she may, in certain circumstances, be liable for the debts of the corporation.

The *Canada Business Corporations Act* (CBCA) places a number of obligations and responsibilities on directors. For example, it says that directors can be held liable for certain acts or failures to act. Chapter 7 of this guide *Organizing Your Corporation: The Directors*, contains further information on the role of directors.

Lower corporate tax rates

Because corporations are taxed separately from their owners, and the corporate tax rate is generally lower than the individual tax rate, incorporation may offer you some fiscal advantages. However, we strongly suggest that you ask a lawyer or accountant to help you assess whether incorporating might save you money.

For more information on:

The tax benefits and implications of incorporation, consult the Canada Revenue Agency (CRA) publication *Canadian Small Businesses Guide*. This publication, which also covers such matters as business and professional income and payroll deductions, is available on the CRA website: www.cra-arc.gc.ca.



Greater access to capital

It is often easier for corporations to raise money than it is for other forms of business. For example, while corporations have the option of issuing bonds or share certificates to investors, other types of businesses must rely solely on their own money and loans for capital. This can limit the ability of a business to expand.

Corporations are also often able to borrow money at lower rates than those paid by other types of businesses, simply because financial institutions and other sources of financing tend to see loans to corporations as less risky than those given to other forms of enterprise.

For more information on:

How small businesses can finance their business ventures, consult the Canada Business website: canadabusiness.gc.ca.

Continuous existence

While a partnership or sole proprietorship ceases to exist upon the death of its owner(s), a corporation continues to live on even if every shareholder and director were to die. This is because, in the case of a corporation, ownership of the business would simply transfer to the shareholders' heirs.

This assurance of continuous existence gives a corporation greater stability. This, in turn, allows the corporation to plan over a longer term, thereby helping it obtain more favourable financing.

1.2 Implications of Incorporating

Higher start-up costs

If you decide to incorporate your business, you will have higher start-up costs than if you carry on the business as a sole proprietorship or partnership. Some of these costs are directly related to the process of setting up the corporation, while others can include professional fees paid for legal and accounting services. Although there is no requirement to obtain legal advice to incorporate, we encourage you to do so, especially if you are considering setting up a company with a complex share structure.

Increased formalities

All federally incorporated businesses must file certain documents with Corporations Canada. Among these are:

- Articles of Incorporation;
- an Annual Return; and
- notices of any changes in the board of directors and/or the address of the registered office.

A federally incorporated business must also:

- maintain certain specified corporate records;
- file corporate income tax returns; and
- register in any province or territory where it carries on business.



More complex structure

Because a corporation is a separate legal entity that has no physical form, its activities must be carried out by individuals who have an interest in the corporation and are entitled to act on its behalf. These individuals can be divided into three categories:

1. **Shareholders** — These are the people who own the corporation. They make decisions by voting and passing resolutions generally at a shareholders' meeting. Most importantly, they elect the directors of the corporation.
2. **Directors** — They supervise the management of the corporation's business. A corporation must have at least one director. They are also responsible for appointing the corporation's officers.
3. **Officers** — A corporation's officers hold positions such as president, chief executive officer, secretary and chief financial officer. Although a corporation's officers are appointed by the directors, their duties are normally set out in the by-laws. In general, officers are responsible for managing and executing the corporation's day-to-day business.

An individual may hold more than one of these positions in a corporation. For example, the same individual may be a shareholder, a director and an officer, or even the sole shareholder, sole director and sole officer.

For more information on the roles and responsibilities of shareholders, directors and officers, see Chapter 7 Organizing Your Corporation: The Directors and Chapter 8 Organizing Your Corporation: The Shareholders.

For more information on:

If you are considering a business venture involving more than one shareholder, you may want to obtain legal advice about the benefits of entering into a shareholder agreement. Unanimous shareholder agreements can establish the rules by which the shareholders make decisions and, most importantly, resolve disputes among themselves. Section 8.4, Shareholder Agreements, reviews these documents in very general terms.

1.3 Benefits of Incorporating Federally

Filing Articles of Incorporation and other required documents online

Corporations Canada is always working to make its services more accessible and convenient. For example, with our online service you can:

- file documents with Corporations Canada;
- receive acknowledgements of filings;
- obtain certificates; and
- pay fees.

Filing documents online gives you a number of distinct advantages. Among them:

- **Convenience** — You can file from the office or from your home. The Corporations Canada Online Filing Centre is open seven days a week, 24 hours a day.
- **Low or no delivery costs and delays** — Online submissions eliminate delivery expenses and delays.
- **Immediate acknowledgement of filing** — No more uncertainty about whether your submission has been received.
- **Prompt processing of Articles of Incorporation** — Corporations Canada processes electronic submissions either the same day or the next day, depending on the time of day the documents are filed and the complexity of the application.
- **Reduced filing fee** — \$200 for online incorporation rather than the regular fee of \$250.

Heightened name protection

An approved federal corporate name offers an extra degree of protection of your rights to that name. Specifically, federal incorporation allows your business to operate using its corporate name right across Canada, which is important if you decide to expand your business to other provinces or territories.



Every incorporating jurisdiction in Canada screens proposed corporate names. Most use the NUANS® name search system. However, if you incorporate under the legislation of one province or territory and later want to expand your business to another province or territory, you could find that another corporation is already using a name similar to yours in that other location.

On the other hand, an approved federal corporate name allows your business to operate using its corporate name right across Canada (the Province of Quebec may require that a French version of the name be registered), which is important if you decide to expand your business to other parts of the country.

Location flexibility

Incorporation under the CBCA also gives you a degree of flexibility in choosing a location for your business. This flexibility is not always available under the legislation of other Canadian jurisdictions. For example, the CBCA sets no restrictions on the province or territory where registered offices can be located. Nor does it dictate where corporate records are maintained or where annual meetings are held. In fact, the CBCA even permits meetings to be held electronically or outside of Canada.

Recognition

Corporations incorporated under the CBCA are recognized around the world as Canadian corporations. This means that federal incorporation may be seen as a sign of distinction.

High-quality clientele service

Corporations Canada processes applications and all other service requests with minimal delay. Visit our website to learn more about our standards for processing various types of requests. You can also subscribe to our e-mail Information Bulletin to receive reminder notices and up-to-date news and information from Corporations Canada, including electronic versions of notices from the Director.

The Corporations Canada website is available in both English and French, as are all of our publications. The knowledgeable and helpful staff members of our client services unit are also fully bilingual.

Resources for small businesses

Corporations Canada is a Branch of Industry Canada, a Canadian government department that views small business as a key to jobs and economic growth. However, many people find it difficult to understand the complex laws, such as the CBCA or the provincial/territorial incorporation laws, that have been put into place by governments to regulate businesses. There are also many people starting out in business who cannot afford the fees of professionals to help them meet the wide-ranging requirements of these laws. With this in mind, Corporations Canada has created a library of materials to help the small business person start and operate a corporation. This material is available on the website or by contacting Corporations Canada. You may also wish to consult Links of Interest for Small Businesses at the end of this Guide for listings of other resources available to small businesses.

Chapter 2 — Incorporating

This chapter will help you prepare your incorporation application. However, we remind you that not all provisions of the CBCA are dealt with here.

Documents to file with Corporations Canada

Once you have decided to incorporate, you must file the following completed forms with Corporations Canada:

(Use this as a checklist to help ensure that your application is complete.)

- ☐ Articles of Incorporation
- ☐ Initial Registered Office Address and First Board of Directors form

You must pay the prescribed fees:

- ☐ Online filing: \$200
- or**
- ☐ By mail, fax, e-mail or in person: \$250

If you are seeking approval of a corporate name, you must also provide:

- ☐ a NUANS® report (the Canada-biased NUANS® search report). The report must not be dated more than 90 days prior to the filing date.
- ☐ information about the proposed name. We **strongly suggest** that you complete a Corporate Name Information Form.

2.1 The Role of Corporations Canada

When Corporations Canada receives your Articles of Incorporation, we will make sure that they have been properly completed and that the proposed name is acceptable. If so, we will then send you a Certificate of Incorporation, showing the name of the corporation, the corporation number and the date of incorporation, along with your Articles of Incorporation.

The date of incorporation is the date on which Corporations Canada receives the completed Articles of Incorporation and the fees. For administrative purposes, you may wish to request a later incorporation date when you file your articles.

Your corporation's name, incorporation date and other information will then be listed on the Corporations Canada website.

The original filing date cannot be preserved when an application is rejected for being incomplete. In other words, the original effective date is forfeited. An application is incomplete if it does not have all the necessary forms and schedules attached or it is not signed. The following are two common examples of incomplete applications: an application for incorporation that does not include the Initial Registered Office Address and First Board of Directors form or when item 4 of the Articles of Incorporation indicates that the information is on Schedule 1 and the application fails to include Schedule 1. In such cases, we will send you a notice indicating that the application is incomplete.

Where an application is complete but is rejected for being deficient (e.g. missing a consent for a corporate name), the effective date of the certificate can be the date of receipt of the original application provided that the applicant expressly requests this date when the application is resubmitted with the deficiency corrected.

2.2 How to File Your Articles of Incorporation

You can file your Articles of Incorporation and other related documents:

- online through the Corporations Canada Online Filing Centre. You will find helpful information about the online filing process on the website.
- by mail, fax, e-mail or in person. Our addresses and fax numbers are in the Contacts section.

For more information on:

Information on the incorporation process, including the required forms, are available through the Corporations Canada website. For a paper copy, contact Corporations Canada (see the Contacts section).

How to file your Articles of Incorporation online?

It's easy!

1. On the Corporations Canada website, go to the Corporations Canada Online Filing Centre by clicking on "Online Filing."
2. If this is your first visit, you must register as a new user with Strategis to access the Online Filing home page. If you are already registered, click on "Go to Online Filing."
3. From the menu, select "Articles of Incorporation," then choose one of the four incorporation options available:
 - incorporation of a numbered name corporation (Corporations Canada will assign you the next number available);
 - incorporation of a corporation with a name pre-approved by Corporations Canada (you must indicate the request number that appears in the right-hand corner of the Name Decision Letter);
 - incorporation of a corporation where you want Corporations Canada to approve a name (you must provide the number and the date of the NUANS® report); or
 - incorporation of a numbered name corporation that has been pre-reserved. (Please choose this option only if your numbered name has been pre-reserved.)
4. Follow the menus provided to complete the necessary documents online.
5. Pay the \$200 filing fee through the secure online payment facility, using your American Express®, Visa® or MasterCard® account.

2.3 How to Complete the Articles of Incorporation

In this section, you will find advice to help you prepare your Articles of Incorporation. Items are presented in the order of appearance in the Articles of Incorporation. The provisions proposed in this chapter are those that are commonly used by incorporators and are not mandatory in any way. They are intended to serve as examples only. In addition, since these examples do not deal with all aspects of the CBCA, they should not be seen as a complete list of all possible provisions. Accordingly, you may wish to consult with legal counsel or other professional advisors before applying for incorporation.

Please see annexes A and B for examples of completed Articles of Incorporation.

Articles of Incorporation

2.3.1 The Corporation Name

Indicate the proposed corporation's name

or

If you want a numbered name:

- online: choose the option "Incorporation of a numbered name corporation," and follow the instructions
 - in paper form: leave a blank space on the left, write in the word "Canada," and add the legal element of your choice, such as Inc., Ltd., Corp., etc.
Example: _____ CANADA Inc.
-

Every corporation must have a name; it may be a corporate name or a numbered name. This name must be distinct from the names of all other corporations. Corporations Canada applies very rigorous standards when granting names. Note that numbered names are dealt with at the end of this section.

For more information on:

The documents Choosing a Name and the Name Granting Guidelines have more information to help you choose a name for your corporation. You can obtain these documents from the Corporations Canada website or by contacting Corporations Canada.

What's in a name?

A corporate name contains three elements:

- a distinctive element (such as a surname or other unique term);
- a descriptive element (e.g. Manufacturing, Consulting, Trading); and
- a mandatory legal element (e.g. Corp., Inc., Ltd.).

Name request

If you want Corporations Canada to assign to you the exclusive use of a corporate name in Canada, you must provide two things:

1. A NUANS® Report — You must submit a Canada-biased NUANS® report. Note that a NUANS® report is valid for 90 days from the date of the report. If you do not apply to incorporate within this period, you will have to obtain a new report.

There are two ways to get a NUANS® report:

- a) You can order a federal NUANS® report online and pay the \$20 fee by credit card (American Express®, MasterCard® or Visa®).

The system provides direct access to the NUANS® search service. However, it does not provide the professional assistance and recommendations often available from a registered NUANS® search house. Because of this, you should be sure that you understand the requirements you must meet before Corporations Canada will approve a name. The name in your NUANS® report may be rejected if it does not comply with CBCA name regulations.

- b) You can ask for a report from a search house. A search house is an independent, private-sector business that charges a fee for advice on the availability of your corporate name choice. You can find a list of these firms on the NUANS® website or in the Yellow Pages of your telephone directory under “Searchers of Records.”

2. Information about the name — The approval of the name may be facilitated if you provide information about your reasons for choosing the name. We strongly recommend that you use the Corporate Name Information form (available on our website). However, instead of this form, you may also submit a letter describing the corporation’s activities, products and services, target clientele, where you expect the corporation to operate, and the origin of the distinctive element of the corporate name.

If you intend to do business in the Province of Quebec, please note that the Province of Quebec does not currently provide corporate name data to NUANS®. It is your responsibility to search the Quebec corporations’ database (CIDREQ) to verify that the chosen corporate name is not used in Quebec by another business. You do not have to provide a CIDREQ report with your Articles of Incorporation.

Is the name acceptable?

Corporations Canada will review your proposed name to determine if it can be assigned to you. The decision will be based on several criteria. For example:

- Does the proposed name contain any prohibited words or phrases, such as “Parliament Hill,” “RCMP,” “Cooperative,” “Air Canada,” and “United Nations”?
- Is it obscene?
- Is it too general?
- Is it only a geographical name such as North West Inc., or only an individual’s name such as Joe Smith Inc.?
- Is it so similar to the trade-mark or official name of another corporation that both names appear to refer to the same business? Or is it so similar that it appears to be related to the other business?
- Does the proposed corporation have a foreign affiliate with a similar name? If so, you may need to provide us with written consent from the foreign affiliate and add an element to your proposed name to distinguish it, such as ABBA Consulting Canada Inc.



If your name is refused

Corporation founders are sometimes surprised to learn that Corporations Canada has refused to grant a proposed name, particularly if a NUANS® report appears to indicate that no similar names exist. However, we must reject a proposed name if we do not have enough background information on which to base a decision.

If Corporations Canada rejects your proposed name, the application for incorporation is also rejected. In this case, we will send you a letter stating the reasons for the rejection. You can then submit a revised application using the same corporate name, or a completely different name, and provide the additional information described in the rejection letter.

In a case like this, you do not need to pay the fees again because Corporations Canada retains the fees paid at the time of the first request in the expectation that you will submit supplemental information. However, you may need to obtain a new NUANS® report if the report date is beyond the 90-day limit or the name you are proposing is different from the name proposed in the original application.

Pre-approval of name

If you would like us to approve the corporate name you have chosen before you file your Articles of Incorporation, you may write to us (see the Contacts section) requesting a Name Decision Letter. This request should be accompanied by your NUANS® report. We strongly recommend that you also submit a completed Corporate Name Information Form at the same time. If we accept the

name you choose, we will let you know by letter that the selected name is reserved for 90 days from the date of the NUANS® report. You may then prepare your Articles of Incorporation.

If, on the other hand, we do not accept the name you have chosen, you will be spared the effort of compiling and submitting the Articles of Incorporation with that name.

Numbered name

Instead of asking Corporations Canada to approve a name for your corporation, you can also choose to have a number assigned (e.g. 1234567 Canada Ltd.) when we process your Articles of Incorporation. In such cases, Corporations Canada simply assigns the next available number when processing the articles. You must ask for a number name when you apply for your Articles of Incorporation. A NUANS® report is not needed.

Many firms choose this option when a corporate name is not important to their business. This ensures faster processing and saves the expense of a NUANS® report.

Another option is to apply for a number name and ask for a name change later. To replace a number name by a corporate name, you must amend your Articles of Incorporation by filing Articles of Amendment and paying the \$200 fee. In this case, a NUANS® report is required.

Some incorporators choose this option when they want to incorporate a business but do not have enough time to obtain approval for a corporate name.

2.3.2 The Registered Office

Indicate the province or territory in Canada where the corporation's registered office will be located.

Every corporation must have a registered office within Canada. This is primarily so that Corporations Canada, shareholders, directors and the public can send documents to the corporation. A post office box cannot take the place of a registered office.

When you complete your Articles of Incorporation, you need only indicate the province or territory in Canada where the registered office is to be located. You do not have to provide a street address.

2.3.3 Description of the Classes of Shares

Describe the classes of shares of the corporation and the maximum number of shares the corporation is authorized to issue (usually unlimited) for each class. If there is more than one class of shares, you must specify the rights, privileges, restrictions and conditions for each.

An incorporated business must issue at least one class of shares. Shares represent an ownership interest in the corporation. They are property, much like a car or a house. Share owners can transfer (sell) their shares and the rights that go with them (you may hear the phrase “rights that are attached to the shares”). Such a transfer must conform to any conditions or restrictions that apply to the shares.

For more information on:

Any “person” may hold shares in a corporation. In addition to an individual, a “person” may include a legal entity such as a trust, a mutual fund or another corporation.

Classes of shares

Generally, shares have three inherent rights:

- the right to vote;
- the right to receive dividends (if the board of directors has declared any); and
- the right to receive the remaining property of the corporation after it is dissolved.

All shares are without nominal or par value; that is, no specific value is attributed to them and no value appears on the share certificate.

You may vary the composition and complexity of your corporation’s share structure in a number of ways to suit your circumstances. Your Articles of Incorporation may allow for one or more classes of shares. There is no limit on the number of classes of shares you may set out in the Articles of Incorporation. You may describe shares using class names such as preferred or common, or use letters, such as Class A, Class B, etc.

Where there is more than one class, you must set out the rights, privileges, restrictions and conditions for each class. You must assign the rights set out above (voting rights, the right to receive dividends, the right to receive the corporation’s remaining property on dissolution) to at least one class of shares but one class does not need to have all three. If you create only one class of shares, that class will carry all these rights.

Articles of Incorporation with more than one class of shares often provide for unlimited common and preferred shares. Usually the common shares have the right to vote, the right to receive dividends after preferred shareholders, and the right to share in the property upon dissolution. Preferred shares usually have no voting rights but are given the right, ahead of the common shares, to receive dividends and to share in the property on dissolution. If the Articles of Incorporation describe only one class of shares, they are usually referred to as common shares.

These differences in rights can be useful if you have investors with different objectives. Voting shares are often issued to the person(s) actually running the company (control shares), whereas preferred shares may be issued to partners or investors who are not involved in running the business but who have invested money in the company with the expectation of profit (investment shares). Thus, the common shareholder (having votes) runs the company (with the power to elect directors, approve all major activities, etc.) but may only be entitled to receive dividends after the preferred shareholders.

For more information on:

A new corporation may not need different classes of shares at the time of incorporation. If your corporation becomes a success and then needs a more complex share structure, you should seek professional advice to make sure you have the best structure and to properly prepare any changes to your Articles of Incorporation.

2.3.4 Restrictions on Share Transfers

Indicate the restrictions on share transfers, if any.

When you are incorporating your business, you must decide whether to restrict the transfer of your corporation's shares. Such restrictions enable the shareholders and directors to control who holds shares in a corporation by limiting the ability of shareholders to resell their shares. These restrictions must be described on share certificates issued to shareholders.

The most frequent share transfer restriction prevents a shareholder from transferring shares without the prior consent, by way of resolution, of the board of directors or a majority of the shareholders.

For more information on:

For your corporation to avoid being designated as a reporting issuer under provincial securities legislation and consequently as a distributing corporation under the CBCA, you must include in your Articles of Incorporation a statement that restricts the transfer of the corporation's securities without the consent of the majority of the directors or shareholders. Distributing corporations must comply with the registration and prospectus filing requirements and other related procedures set out in the CBCA and in provincial/territorial securities law.

To restrict the transfer of shares, you should include the following statements in your Articles of Incorporation:

- at the item entitled Restrictions on shares transfers — a statement restricting the transfer of the corporation's shares; and
- at the item entitled Other provisions — a statement restricting the transfer of the corporation's securities.

If you later decide to offer shares publicly, you will have to remove these restrictions by submitting Articles of Amendment and paying the \$200 filing fee. All previous share issuances would remain valid, however, because your corporation would not have been subject to the registration and prospectus requirements under securities law.

2.3.5 Number of Directors

Indicate the minimum and maximum number of directors.

In your Articles of Incorporation, you must indicate a minimum and maximum number of directors, or a fixed number. We recommend that you provide for a minimum and maximum number of directors rather than a fixed number. This will offer more flexibility and may help you avoid the expense of submitting Articles of Amendment if you decide to change the number at some time in the future. Note, however, that your corporation must have at least one director.

2.3.6 Restrictions on Activities

Indicate any limits imposed on a corporation's business activities.

Set out the restrictions, if any, on the corporation's business activities. Most corporations do not provide any restrictions and simply write "None."

If for some reason you want to limit the commercial activities of the corporation, we recommend that you use this preamble: "The business of the corporation shall be limited to the following: ..." Complete the preamble by defining the limits you want to impose on the corporation.



2.3.7 Other Provisions

Indicate other applicable provisions, if any.

You may want to include other provisions in your Articles of Incorporation. For example, some incorporators decide to include clauses in the articles that will satisfy the requirements of other legislation or institutions.

Here are some examples of such provisions. Please note that these are examples, not a complete list. Note, too, that there is no requirement to include provisions like these in your Articles of Incorporation.

- A provision restricting the transfer of the corporation's securities. As we said in Section 2.3.4 Restrictions on share transfer, if you want your corporation to avoid designation as a distributing corporation under provincial securities legislation, then you must include a statement that restricts the transfer of the corporation's securities.
- A provision regarding directors' borrowing powers and the delegation of those powers to limit the authority of directors and/or to satisfy the requirements of lending institutions.
- A provision that increases the size of the majority required when shareholders vote.
- A provision that specifies the form of your corporate name for use outside Canada. Do not use this item to designate the English or French form of the corporate name for use in Canada. For this, use the item entitled Corporation Name.
- A provision that prescribes how shareholders will fill a vacancy on the Board of Directors.
- A provision that specifies what constitutes a quorum of directors.



2.3.8 Sign Your Articles of Incorporation

The Articles of Incorporation must provide the name, address and telephone number of each incorporator. The incorporator(s) must also sign the articles.

Articles of Incorporation must be signed by the incorporator(s), all of whom must be competent, at least 18 years of age and not in a state of bankruptcy. Although incorporators may be directors or shareholders of the corporation after it is organized, there is no legal requirement for them to assume such roles.

If the incorporator is a body corporate (i.e. another corporation), the name provided must be the name of the body corporate; the address must be its registered office; and the Articles must be signed by a person authorized to sign on behalf of the body corporate.

If you are filing forms through Corporations Canada's Online Filing Centre, you must provide the name of the incorporator in printed form in the appropriate box. You must also retain printed and signed copies of the documents in the records of the corporation. Forms sent by mail must bear the original signatures of the incorporators. A typed name is not adequate as a signature. Where Articles of Incorporation are sent by fax, the signature on the articles is considered to be original. However, this signature cannot be in printed form.

2.4 How to Complete the Initial Registered Office Address and First Board of Directors Form

In this section, you will find advice to help you prepare the Initial Registered Office Address and First Board of Directors form. Items are presented in the order of appearance in the form. Please see annexes A and B for examples of completed Initial Registered Office Address and First Board Directors form.

2.4.1 The Corporation Name

Indicate the proposed name or if you choose a numbered name, leave this section blank.

You must provide the same name that is indicated in the Articles of Incorporation.

2.4.2 Address of Registered Office

Indicate the address of the registered office. This must be a street address; a post office box number is not sufficient. Provide a mailing address if this is different from the registered address.

You must provide the street address of the registered office, and a mailing address, if different from the street address. These addresses allow Corporations Canada to contact you for various reasons, such as to send you reminder notices regarding the Annual Return or information that can affect the business of your corporation.

Please see Section 5.2 Change of Address of a Registered Office for information on what to do if your corporation changes its address after its incorporation.

2.4.3 Choosing the Directors

Indicate the first name, last name and residential address of each director. Indicate whether or not each director is a resident Canadian.

It is important to indicate the residential address of each director. This information allows Corporations Canada and others to send notices to the directors if required. Corporations Canada does not publish the residential addresses of directors on its website. However, this information is provided upon written request.

2.4.4 Signature

The signature of only one incorporator is required, together with that person's name and telephone number.

The form must be signed by one incorporator. If the person signing is a body corporate (i.e. another corporation), then the form must be signed by a person authorized to sign on behalf of the body corporate.

If you are filing forms through Corporations Canada's Online Filing Centre, you must provide the name of the incorporator in printed form in the appropriate box. You must also retain printed and signed copies of the documents in the records of the corporation. Forms sent by mail must bear the original signatures of the incorporators. A typed name is not adequate as a signature. Where Articles of Incorporation are sent by fax, the signature on the articles is considered to be original. However, this signature cannot be in printed form.

2.5 Pay the Filing Fee

Filing fees to incorporate a business

- Through the Corporations Canada Online Filing Centre: \$200; or
- By mail, fax, e-mail or in person: \$250

You may pay your fees:

- online or by fax: using a credit card (American Express®, MasterCard®, or Visa®)
- by mail: using a credit card (American Express®, MasterCard®, or Visa®) or cheque (made payable to the Receiver General for Canada)
- in person: using a credit card (American Express®, MasterCard®, or Visa®), cheque (made payable to the Receiver General for Canada) or cash.

When you pay through the Corporations Canada Online Filing Centre, you can be confident that the Strategis Secure Online Electronic Commerce System will process your transaction with complete security.

Chapter 3 — Other Formalities

3.1 Provincial and Territorial Registration

You will likely have to register your corporation in any province or territory where you carry on business. Registration is different from incorporation. A corporation may incorporate only once, but it may register to carry on business in any number of jurisdictions. Carrying on business in a province or territory can mean running a business there; having an address, a post office box or phone number there; or offering services or products there in order to make a profit. Provinces and territories often require corporations to register within a few weeks after incorporation. You may have to pay a fee for registration. We suggest you contact the local corporate law administration office in each province or territory where you plan to do business to determine their filing requirements. Consult the Corporations Canada website for contact information.

For more information on:

To save you time and simplify your paperwork, Corporations Canada has joint registration agreements with some provinces. These agreements allow corporations that incorporate online to apply for provincial registration online. For more information, visit the Corporations Canada website.

3.2 Business Number (BN)

The Business Number (BN) is part of a unique federal government numbering system that identifies your business and the accounts you maintain with the Canada Revenue Agency (CRA). Generally, CRA uses a BN for the following business accounts:

- Goods and Services Tax/Harmonized Sales Tax (GST/HST);
- payroll deductions;
- corporate income tax; and
- import/export duties and taxes.



When Corporations Canada incorporates your business, we will ask CRA to issue a BN for your corporation. CRA will then register your corporation and send you a letter confirming your BN and the accounts registered, as well as a summary of the information you provided.

You will find more information about the BN on the CRA website.

3.3 Permits and Other Formalities

You may have to fulfill a number of other requirements in order to carry on business. For example, some municipalities ask you to obtain a permit to carry on business in the municipality. You may also need a provincial permit to carry on business in a particular sector; for example if you operate a restaurant, you may need a liquor permit to serve alcoholic beverages.

Corporations Canada does not provide information on such requirements. Instead, we suggest you check with the appropriate municipal, provincial, territorial or federal government agencies, as well as professional organizations.

You might also wish to consult the BizPal website at www.bizpal.ca. BizPal is an online service that will help you generate a personalized list of the business documents required by the government agencies you may have to deal with — local, provincial/territorial and federal — in order to start up or grow your business. If your business is already operating, BizPal can help you verify that you have all the correct permits and licences.

Chapter 4 — Next Steps in Organizing Your Corporation

Now that your business is incorporated, the next step is to complete the internal organization of the corporation.

4.1 First Directors

When you incorporated, you filed a form entitled Initial Registered Office Address and First Board of Directors with Corporations Canada. This form lists the first members of the board of directors of the corporation.

The mandate of these directors begins on the date Corporations Canada issues the certificate of incorporation and ends at the first meeting of shareholders. At that first meeting, the shareholders elect the corporation's directors. Elected directors may be chosen from the first directors or they can be entirely new.

4.2 Organizational Meeting

Early in the life of a corporation, an incorporator or a director will usually call an “organizational meeting.” The notice for this meeting must go out at least five days before the meeting to each director listed in the Initial Registered Office Address and First Board of Directors form filed with the Articles of Incorporation. This notice must indicate the date, time and place of the meeting.

At this meeting, the directors may:

- make by-laws (these by-laws will have to be approved by shareholders at the first annual meeting);
- adopt forms of security certificates and corporate records;
- authorize the issuance of shares and other types of securities;
- appoint officers;
- appoint an interim auditor to hold office until the first meeting of shareholders;
- make banking arrangements; and
- transact any other business.

By-laws

By-laws are rules that govern the internal operations of a corporation. For example, you may want your corporation to have certain rules that are not dealt with in the CBCA. You could also want to modify some of the rules that are in the CBCA, so long as the changes you wish to make are permitted by the Act.



Among other things, corporate by-laws can:

- set the date of a corporation's financial year-end;
- make banking arrangements;
- address the appointments, qualifications and duties of officers;
- delegate the responsibility for setting the salaries of directors and officers;
- establish the salaries or other remuneration of directors and officers;
- set down the procedures for calling and conducting directors' and shareholders' meetings;
- establish the minimum number of people required at directors' and shareholders' meetings to establish quorum; and
- make rules limiting the modifications that can be made to the powers given to corporate directors under the CBCA (e.g. the by-laws could make all share issuances subject to shareholder approval).

Consult Section 7.6 Making By-Laws for more information on by-laws. You will also find an example of by-laws in Annex C.



Issuing shares

One of a corporation's first activities following incorporation is to issue shares. A person becomes a shareholder when a corporation "issues" shares in that person's name or records a transfer of previously owned shares to the person. Generally, unless you indicate differently in your Articles of Incorporation or by-laws, your corporation's board of directors can issue shares whenever it wishes, to whomever it chooses, and for whatever value it decides.

Directors may decide to issue shares by majority vote. The directors' decision (called a resolution) to issue shares must be recorded in the corporation's minute books.

The corporation cannot issue a share until it actually receives full consideration (payment) for that share. This consideration is generally in the form of money, although it can also be in the form of services or property given to the corporation. A person's payment for the share(s), in a form agreed upon by the directors, represents that person's investment in the corporation.

Once a share has been issued, the shareholder is entitled to a share certificate. This certificate must state:

- the corporation's name, as set out in the Articles of Incorporation;
- the name of the shareholder; and
- the number and class of shares it represents.

If your Articles of Incorporation contain restrictions on the transfer of shares (as do the Articles of most small corporations; see Section 2.3.4 Restrictions on Share Transfers), the share certificate itself must refer to these restrictions.

Shares are issued without nominal or share value. A share certificate does not set out a monetary value.

Appoint officers

Officers are appointed by the directors, and with the directors form the management of the corporation. Officers can take any position that you want them to fill (e.g. president, secretary or any other position). They are responsible for the day-to-day operations of the corporation.

Any individual may be an officer of your corporation. Officers may or may not be shareholders, and they may or may not also be directors of the corporation. One person may act as a director, officer and shareholder at the same time. In many small businesses, one individual is the sole director, the sole officer and the sole shareholder.

4.3 First Meeting of Shareholders

The directors of a corporation must call the first shareholders' meeting within 18 months of the corporation's date of incorporation. This meeting is usually held after the first organizational meeting of the directors.

At this meeting, the shareholders:

- elect directors;
- confirm, modify or reject the by-laws established by directors; and
- appoint an auditor. Note that this auditor can either be the same one appointed by the directors or a different one.

Resolution in lieu of a meeting

In a small business where one or two people act as directors, officers and shareholders, meetings are not necessary. Shareholders in these corporations often prefer to act through written resolutions. If every shareholder signs a written record that sets out the terms of the necessary resolutions, then a shareholders' meeting is not needed.

For more information on:

The elected directors may be the same as those indicated on the Initial Registered Office Address and First Board of Directors form filed with the Articles of Incorporation. However, if the directors change, the corporation must file the Changes Regarding Directors form with Corporations Canada within 15 days of the election.

Chapter 5 — Keeping Your Corporation in Good Standing

To make sure that your corporation continues to benefit from incorporation under the CBCA, you need to fulfill certain requirements on an annual or occasional basis.

This section deals only with requirements under the CBCA for corporations that are not distributing corporations. It does not address every possible change you could make to your articles, nor does it deal with requirements from other government agencies that could have an impact on your Articles of Incorporation.

5.1 Filing an Annual Return

The Annual Return is a document that provides information about your corporation. This information lets Corporations Canada make sure that your corporation complies with certain requirements of the CBCA. It also allows Corporations Canada to maintain its database of federal corporations.

The Annual Return can either be completed and filed:

- online at the Corporations Canada website,
- by mail, fax, e-mail or in person: you can download the Annual Return form on the Corporations Canada website. You can also get a paper copy by contacting Corporations Canada directly.

How to file an Annual Return online

It's easy!

1. Go to the Corporations Canada website. Click on "Online Filing."
2. If this is your first visit to the site, you must register as a new user with Strategis to access the Online Filing home page. If you are already registered, go to the next step.
3. Click on "Go to Online Filing."
4. Choose the "Annual Return" option.
5. Follow the instructions.

Every corporation must submit an Annual Return every year to Corporations Canada within 60 days after its anniversary date. The anniversary date is the date the corporation was created or the date the corporation first came under the jurisdiction of the CBCA (i.e. the date of incorporation, amalgamation or continuance). For a corporation that has been revived, the anniversary date remains the date it was created (i.e. the date of incorporation, amalgamation or continuance). For the purposes of filing the Annual Return, the anniversary date consists of the month and day of the month. The anniversary date is generally found at the bottom, right-hand corner of the corporation's Certificate of Incorporation, Amalgamation or Continuance. You can also find it on the Corporations Canada website.

Filing the Annual Return

Annual Return

- File a completed Annual Return

Signature

The annual return may be signed by any individual who has the relevant knowledge of the corporation and who is authorized by the directors. For example:

- a director of the corporation;
- an authorized officer of the corporation; or
- an authorized agent.

Fees for filing an Annual Return

Through the Corporations Canada Online Filing Centre: \$20

By mail, fax or in person: \$40

When to file the Annual Return

Once a year, within 60 days after the anniversary date of the corporation.

Failure to file an Annual Return

A corporation is deemed not to be in good standing with the CBCA if it:

- fails to file its Annual Return for a period of one year;
- fails to pay the required fees; and/or
- submits an incomplete return.

Corporations Canada has the power to dissolve a corporation that has not complied with certain requirements of the CBCA. In such cases, Corporations Canada sends a notice to the corporation and its directors advising them of the Director's intention to dissolve the corporation. If the corporation does not respond, or its response is

inadequate, the Director will issue a certificate of dissolution following the expiration of the deadline stated in the notice.

It is possible to revive a corporation after dissolution. To do so, the corporation, or an interested party (such as a creditor or a shareholder), must file Articles of Revival and pay the \$200 fee. For details on how to do this, see the Information on Revival, available online at the Corporations Canada website.

5.2 Change of Address of a Registered Office

Moving the registered office within the province or territory indicated in the articles

Your corporation must notify Corporations Canada of any change to its registered office address (e.g. if the corporation moves) within 15 days following the change. The corporation must also provide the new mailing address, if any.

This notification is important because it allows Corporations Canada to communicate with you. For example, we may send you a reminder notice concerning the Annual Return, or information on legislative amendments that could affect your corporation. If you do not notify Corporations Canada of the change of address, your corporation will be considered not to have complied with the CBCA. In such cases, Corporations Canada may impose appropriate penalties, as provided by the CBCA.

Moving the registered office into another province or territory other than the one indicated in the articles

If you move your registered office to another province or territory other than the one indicated in the Articles, you must amend your Articles. To do this, you must file Articles of Amendment and pay the \$200 fee. You must also file the Change Regarding the Registered Office form. Please consult the Amendment Policy available on the website or contact Corporations Canada.

If the mailing address is different from the registered office address, you will need to include that address when filing the change to the registered office address.

How to notify Corporations Canada of a change of address of your registered office online

It's easy!

1. Go to the Corporations Canada website. Click on "Online Filing."
2. If this is your first visit, you must register as a new user with Strategis to access the Online Filing home page. If you are already registered, go to the next step.
3. Click on "Go to Online Filing."
4. Choose the option "Change of Registered Office Address and/or mailing address" (or the option "Articles of Amendment," if applicable).
5. Follow the instructions.



Filing the Change of Address of the Registered Office

Change of address within the province or territory that is indicated in the Articles of Incorporation

Note that it is also important to advise Corporations Canada of a change in the mailing address.

- File a completed Change of Registered Office Address form.

Signature

By any individual who has relevant knowledge of the corporation and who is authorized by the directors. For example:

- a director of the corporation;
- an authorized officer of the corporation; or
- an authorized agent.

When to file the Change of Registered Office Address form

Within 15 days following change to a corporation's registered office address.

There is no fee for filing the Change of Registered Office Address form.

Change of address to a province or territory other than the one in the Articles of Incorporation

To file:

1. Articles of Amendment
2. Change of Registered Office Address form

If you file the Articles of Amendment online you will be asked to change the registered office address at the same time. If you file by another means you can file both forms together.

Signature

By an officer or director of the corporation.

Fees

\$200

5.3 Changes Regarding Directors

You must notify Corporations Canada of any change in the board of directors within 15 days following the change:

- when new directors are appointed, or
- when individuals cease to be directors.

You must also notify Corporations Canada of any change of residential address of a director within 15 days of being informed of the change. Note that directors must notify the corporation of a change in their residential address within 15 days after moving.

Changes Regarding Directors

- File a completed Changes Regarding Directors form.

Signature

By any individual who has relevant knowledge of the corporation and who is authorized by the directors. For example:

- a director of the corporation;
- an authorized officer of the corporation; or
- an authorized agent.

When to file a Changes Regarding Directors form

- Within the 15 days following the change

There is no fee for filing the Changes Regarding Directors form.

The names of a corporation's directors are public information. You should ensure that Corporations Canada has up-to-date information on file so that other directors, shareholders and third parties can send materials to or serve notice on current directors.

Although Corporations Canada does not publish the residential addresses of directors on its website, this information is available by writing to Corporations Canada.

If a corporation does not notify Corporations Canada of changes regarding its directors (including a change of residential address), Corporations Canada will consider the corporation to be not in compliance with the CBCA and may impose penalties as allowed by the Act.

If the number of directors changes from the number indicated in your corporation's Articles of Incorporation, you must amend your Articles of Incorporation by filing Articles of Amendment and paying a fee of \$200. You must also file the Changes Regarding Directors form.

How to notify Corporations Canada online about Changes Regarding Directors

It's easy!

1. Go to the Corporations Canada website. Click on "Online Filing."
2. If this is your first visit, you must register as a new user with Strategis to access the Online Filing home page. If you are already registered, go to the next step.
3. Click on "Go to Online Filing."
4. Choose the option "Change Regarding Directors."
5. Follow the instructions.

5.4 Certificate of Existence and Certificate of Compliance

At some point, a supplier, banker or some other party may ask you to provide a Certificate of Existence and/or a Certificate of Compliance. These certificates are often needed to support a loan request or to provide assurance to a potential investor that a corporation has not been dissolved.

The Certificate of Existence certifies that, as of a specific date or for a specific period, a corporation:

- has not been dissolved or discontinued; and
- has not changed its structure in such a way as to cause a change to its corporate number (e.g. through an amalgamation).

The Certificate of Compliance certifies that a corporation:

- has not been dissolved;
- has sent to the Director the Annual Returns required under the CBCA; and
- has paid all required fees.

The Director may issue a Certificate of Existence or a Certificate of Compliance to anyone who asks for one. Note that Corporations Canada will not issue a Certificate of Compliance for a corporation that is not in compliance with the CBCA.

More information on obtaining these certificates is available in the Policy Related to the Certificate of Existence and to the Certificate of Compliance. The policy is available at the Corporations Canada website.



Chapter 6 — Other Obligations of the Corporation

6.1 Corporate Records

Your corporation must keep certain corporate records at its registered office or at some other location elsewhere in Canada as set out by the directors.

Upon request, a corporation's shareholders and creditors (such as suppliers) may examine the following records:

- Articles of Incorporation, by-laws and their amendments and any unanimous shareholder agreements;
- minutes of meetings and resolutions of shareholders;
- copies of certain forms that have been filed, for example Initial Registered Office Address and First Board of Directors, Change of Registered Office Address and Changes Regarding Directors; and
- a share register showing the names and addresses of all shareholders and details of shares held.

The corporation must also prepare and maintain accounting records. Although there is no requirement for these accounting records to be available for consultation by shareholders, financial statements must be available for consultation. This ensures that shareholders can obtain information about the financial situation of the corporation, so that they are able to make appropriate decisions regarding the corporation.

For more information on:

Corporations often maintain their corporate records in a single book, referred to as the "Minute Book" of the corporation. While the CBCA does not require it, it is a good practice to maintain a "Minute Book."

6.2 Appointment of Auditors

At the shareholders' meeting, shareholders must, by ordinary resolution, appoint an auditor to audit the corporation's financial statements. However, shareholders may decide by a unanimous resolution (voting and non-voting shares) not to appoint an auditor.

The requirement for an auditor increases the reliability of the financial statements and improves protection for stakeholders.

6.3 Financial Statements

A corporation must prepare financial statements. There is no requirement to file these statements with Corporations Canada.

Financial statements must be prepared in accordance with the Generally Accepted Accounting Principles, as set out in the Canadian Institute of Chartered Accountants Handbook.

You must provide copies of your financial statements to your shareholders at least 21 days before your corporation's annual meeting each year.

6.4 Shareholders' Meetings

The CBCA states that a corporation "... must hold a shareholders' meeting on a date that is no later than 15 months after holding the last preceding annual meeting, but no later than six months after the end of its preceding financial year." Alternatively, shareholders may pass a resolution in lieu of meeting. A resolution in lieu of a meeting may be useful for small corporations that have only one or a few shareholders.

For more information on:

A resolution in lieu of meeting is a written resolution signed by all shareholders who would have been entitled to vote at the meeting that deals with all matters required to be dealt with at a shareholders' meeting. This resolution is just as valid as it would be if passed at a meeting of shareholders. This resolution should be retained in the corporation's records.

The shareholders' meeting (or resolution in lieu of a meeting) allows shareholders to obtain information about the corporation's business and to make appropriate decisions regarding this business. The date of the meeting, or of the resolution, must be indicated on your Annual Return.

Agenda

At minimum, the agenda of an annual meeting must include the following items:

- consideration of the financial statements;
- appointment of an auditor (or a resolution of all shareholders not to appoint an auditor); and
- election of directors.

Often, the agenda includes an additional item, "any other business." This portion of the meeting allows shareholders to raise any other issues of concern to them. If directors want shareholders to consider a matter, it should be listed in the agenda prior to the meeting and not raised as "any other business."

Calling a shareholders' meeting

The directors must notify voting shareholders of the time and place of a shareholders' meeting. They must do so no more than 60 days and no fewer than 21 days before the meeting date. For example, if the meeting is to be held on May 20, the notice of the meeting should be sent no earlier than March 22 and no later than April 30.

Unless otherwise provided by the by-laws or the articles, this notice can be sent electronically to shareholders if they have previously consented to receiving such notices electronically and if they have designated a system for receiving them. You will find an example of a Notice of Annual Shareholders' meeting in Annex D.

Location of the shareholders' meeting

The annual meeting may be held in Canada at a place specified in the by-laws. Or, if the by-laws do not specify a location, directors may choose one. An annual meeting may be held outside Canada only in cases where the corporation's articles permit it or if all voting shareholders agree.

Also, where the corporation's by-laws permit it, the directors of a corporation may decide that a meeting of shareholders will be held entirely by means of a telephonic, electronic or other communication means that will permit all participants to communicate adequately with each other during the meeting. In such cases, it is the responsibility of the corporation to make these facilities available.

Unless otherwise provided by the by-laws, a corporation can allow shareholders to attend the meeting electronically. The communications system used must permit all participants to communicate adequately with each other during the meeting.



Other requirements of the shareholders' meeting

Quorum

Unless a quorum of shareholders is present or represented at annual or special shareholders' meetings, no business that is binding on the corporation can be conducted. A quorum is present at a meeting when the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy, regardless of the number of persons actually present at the meeting. Note, however, that a corporation's by-laws can provide for a different type of quorum.

Electronic voting

Unless the corporation's by-laws specifically forbid it, electronic voting is allowed, as long as it is possible to verify the vote without knowing how each shareholder voted.

Minutes of the meeting

The corporation must keep a written record of the meeting. This record usually includes such information as:

- where and when the meeting was held;
- who attended; and
- the results of any voting.

These records are commonly referred to as the "Minutes" of the meeting and are kept in the corporation's Minute Book. (See Section 6.1 Corporate Records.)

You will find an example of Minutes of an Annual Shareholders' Meeting in Annex D.



6.5 Special Meetings

Shareholders may also be called to special meetings. The notice for a special meeting must state the time and place of the meeting and provide shareholders with enough information in advance so that they know what they will be asked to consider and vote on at the meeting.

Agendas for special meetings of shareholders usually deal with specific questions or issues, such as whether to approve a fundamental change proposed by the corporation's directors. A fundamental change could include such actions as amending the Articles of Incorporation to change the corporation's name. Generally, a corporation's directors will call a special meeting of the shareholders when they would like to undertake a particular activity or to consider a special issue that requires shareholder approval.

It is often convenient to combine special meetings with annual meetings. The notice for such a meeting must clearly indicate what special business will be considered.

Chapter 7 — Organizing Your Corporation: The Directors

7.1 Your Corporation's Board of Directors

Your corporation must have at least one director. The number of directors is specified in your Articles of Incorporation. Shareholders elect directors at the shareholders' meeting by a majority of votes. An individual may be the only shareholder, the only director and the only officer.

For more information on:

If you want to increase or decrease the number of directors of your corporation permitted by the articles, you must amend your articles and pay a \$200 fee. Please see Section 5.3 Changes Regarding Directors for more details.

7.2 Who Can Be a Director?

A director must be:

- at least 18 years old;
- of sound mind (i.e. not a person a court has determined to be of unsound mind);
- an individual (a corporation cannot be a director); and
- not in bankrupt status.

Ordinarily, at least 25 percent of the directors of a corporation must be resident Canadians. However, if a corporation has fewer than four directors, then at least one of them must be a resident Canadian. In addition, corporations operating in sectors subject to ownership restrictions (such as airlines and telecommunications) or corporations in certain cultural sectors (such as book retailing, video or film distribution) must have a majority of resident Canadian directors.

Directors may hold shares of a corporation where they are directors. However, the directors of a corporation are not required to hold shares in the corporation unless the Articles of Incorporation make this a requirement for the directors.

7.3 Mandate of the Directors and Vacancy on the Board of Directors

The directors may be elected for terms of up to three years. The length of the mandate of the directors can be set out in the by-laws. If no term is stated, directors hold office until the next meeting of shareholders. Directors need not all be elected at the same time or for the same length of time. A director whose term has expired can be re-elected as a director.

Persons who have been nominated as directors, and who are present at the shareholders' meeting are deemed to have consented to serve as directors, unless they refuse. However, if they are not present at the meeting, they must either: 1) consent to their election, in writing, within 10 days of their election, or 2) act as a director after the election.

Also, a director's term ends when he or she:

- resigns;
- dies; or
- is disqualified/removed by the shareholders.

If a vacancy occurs, the members of the board of directors may continue to exercise all the powers of directors as long as the number of remaining elected directors constitutes a quorum (the minimum number of directors required at a meeting, as specified in your corporation's by-laws).

It is also possible for the remaining directors to name one or more additional directors between shareholder meetings unless the Articles of Incorporation stipulate that vacancies can only be filled following a vote by shareholders.

Shareholders may remove a director they had previously elected, for a variety of reasons. Removing a director is a simple procedure that generally requires the approval of a majority of votes represented at a meeting of shareholders called for the purpose of removing the director.

7.4 Meetings of the Board of Directors

Most boards of directors meet on a regular basis to oversee the business operations of the corporation. Such meetings may be held monthly, quarterly or annually, depending on the needs of the corporation. Directors may also need to meet occasionally to conduct special business.

Meetings of the board can be held whenever and wherever the board wishes, unless the corporation’s by-laws or Articles say otherwise. In all cases, however, a quorum of directors must be present.

Directors may conduct business through signed resolutions instead of meetings. Note, however, that in such situations the signatures of all directors are required. These signed resolutions have the same value as they would have if they were adopted at a meeting of the board of directors. This way of conducting the business of the corporation can be very useful for small companies with only one or a few directors.

Note that it is also possible for one or more directors to participate in a meeting by telephone or electronically, as long as the corporation’s by-laws permit it and as long as all participants in the meeting can communicate fully.

You will find an example of a Resolution of the Directors in Annex E.



7.5 Duties of Directors

The shareholders expect and trust the directors to conduct the corporation’s business in a way that will preserve and enhance the shareholders’ investment.

Directors are responsible for supervising the activities of the corporation and for making decisions regarding those activities. Although some decisions made by the directors require the approval of shareholders, other important decisions can be made without such approval. Here are some examples of these decisions and the level of approval they require:

Decision	Requires shareholder approval?
Approval of financial statements	NO
Creating, changing and revoking by-laws at a shareholders’ meeting	YES
Authority to issue shares	NO
Calling board of directors’ meetings	NO
Calling shareholders’ meetings	NO
Nominating directors	NO
Amending the Articles of Incorporation	YES

7.6 Making By-Laws

Unless your corporation’s by-laws state otherwise, the directors have the power to make, repeal and amend the by-laws. Every new by-law and any by-law change (including the repeal of a by-law) requires shareholder approval at the first regular meeting of shareholders after the directors have passed the new or amended by-law. The effective date of a by-law is the date it is passed by the directors, not the date of approval by shareholders.

Please see Section 4.2 Organizational Meeting for information about making by-laws.

7.7 Appointing Officers

The officers of a corporation are responsible for the day-to-day operation of the corporation. Officers are appointed by the directors and, together with the directors, form the management of the corporation. Officers can fill any position in the corporation that directors want them to fill (president, secretary or any other position).

Any individual can be an officer of your corporation. Officers may or may not be shareholders, and they may or may not also be directors of the corporation. One person could act as a director, officer and shareholder simultaneously. For many small businesses, one individual is the sole director, the sole officer and the sole shareholder.

7.8 Duties and Liabilities of Directors and Officers

Because the scope of authority of the corporation's management (the directors and officers) is so broad, the law imposes a wide range of duties and liabilities on them. In general, these duties and liabilities reflect the position of trust that directors and officers hold in relation to the corporation and its owners, the shareholders. While many of the duties and liabilities of directors and officers are prescribed under the CBCA, others are set out in other federal and provincial/territorial statutes, and still others result from court decisions.

Duty of care

One of the most important duties set out for directors and officers of a corporation in the CBCA is the duty of care. Duty of care requires that, in carrying out their functions, the directors and officers must exercise at least the level of care and diligence that a reasonable person would exercise in similar circumstances; and they must at all times act honestly, in good faith and in the best interests of the corporation as opposed to their own personal interests.



Remaining informed

A corporation's directors and officers cannot avoid liability on the grounds that they did not know what the corporation was doing. In fact, under the CBCA, within the scope of their authority, each director and officer has, at all times, an obligation to remain informed about the corporation's activities and to ensure that the corporation's activities are legal and in the best interests of the corporation.

Directors may rely on expert reports, such as financial statements or legal opinions, in certain circumstances. Directors are not liable if they exercise the same degree of care, diligence and skill that a reasonable, prudent person would exercise in comparable circumstances.

Preventing conflicts of interest

The CBCA tries to prevent conflicts between the interests of the corporation and those of the directors or officers. For example, directors and officers must disclose in writing any personal interest they may have in a contract with the corporation. Failure to make such a disclosure could result in a court setting aside the contract upon application by the corporation or a shareholder.

Specific liabilities

The CBCA also imposes certain specific liabilities on directors and officers of a corporation. In certain circumstances, directors are liable for up to six months' worth of unpaid wages to employees of the corporation, as well as for any unpaid source deductions.

Protection from liability

With this in mind, you may want to consider putting in place some of the following methods that have been developed to protect directors and officers of corporations from certain liabilities that could be imposed upon them.

For example, your corporation could:

- purchase insurance to protect directors and officers against liabilities incurred in the exercise of their duties;
- agree to compensate directors and officers for losses they may suffer or costs they may incur while carrying out their duties — except where the director or officer has failed to act honestly and in the corporation's best interests; or
- in certain circumstances, advance funds to directors and officers to help them pay the costs of defending themselves in legal actions brought against them. Note, however, that in cases where directors or officers fail to defend themselves successfully, they are required to repay the corporation for these advances.

Directors must at all times remain free to assess the best interests of the corporation and to act on this assessment. For this reason, directors may not agree among themselves in advance how they will act in a given situation.

However, shareholders may enter into unanimous shareholder agreements that transfer some or all of a specific director's responsibilities and powers to the shareholders. In such cases, since the power or powers have been transferred away from the director, that director cannot be held responsible for not exercising that power. (Unanimous shareholder agreements are discussed in more detail in Section 8.4 Shareholder Agreements.)



Chapter 8 — Organizing Your Corporation: The Shareholders

A person who owns shares in a corporation is called a **shareholder**. Generally speaking and unless the articles provide otherwise, each share in the corporation entitles the holder to one vote. The larger the number of shares a shareholder holds, the larger the number of votes the shareholder can exercise. The Articles of Incorporation describe the rights attached to each category of shares.

For more information on:

An individual may be a shareholder, director and officer in a corporation. A shareholder who also serves as a director or officer assumes certain liabilities, as described in Section 7.8 Duties and Liabilities of Directors and Officers.

8.1 The Shareholders

Becoming and ceasing to be a shareholder

A person becomes a shareholder by buying shares, either from the corporation or from an existing shareholder. For example, a person may:

- purchase shares not previously issued by the corporation (referred to as “buying shares from treasury”), either on incorporation or later; or
- buy shares from an existing shareholder (according to the terms set out in the Articles of Incorporation) and have the corporation register the transfer.

A person ceases to be a shareholder once his or her shares are sold either to a third party or back to the corporation (in accordance with the terms of the Articles of Incorporation) or when the corporation is dissolved. Please note that there is no need to notify Corporations Canada when a person becomes or ceases to be a shareholder.

Rights and responsibilities of shareholders

After paying for their shares, shareholders have the right to:

- vote at the shareholders’ meeting (according to the class of shares);
- share in the profits (dividends) of the corporation (according to the class of shares);
- share in the property of the corporation upon dissolution;
- be called to and participate in shareholders’ meetings;
- elect and dismiss directors;
- approve by-laws and by-law changes;
- appoint the auditor of the corporation (or waive the requirement for an auditor);
- examine and copy corporate records, financial statements and directors’ reports;
- receive the corporation’s financial statements at least 21 days before each annual meeting; and
- approve major or fundamental changes (such as those affecting a corporation’s structure or business activities).

The shareholders’ liability in a corporation is limited to the amount they paid for their shares; shareholders are usually not liable for the corporation’s debts. At the same time, shareholders usually do not actively run the corporation.

8.2 Shareholder Resolutions

Shareholders exercise most of their influence over how the corporation is run by passing resolutions at shareholders’ meetings. Decisions are made by ordinary, special or unanimous resolutions.

Ordinary resolutions require a simple majority (50 percent plus 1) of votes cast by shareholders. For example, shareholders usually make the following decisions by ordinary resolutions:

- elect directors;
- appoint auditors; and
- approve by-laws and by-law changes.

Special resolutions must have the approval of two thirds of the votes cast. For example, shareholders usually make the following decisions by special resolutions:

- fundamental changes, for example, amending the corporation's name; amending the articles regarding such matters as the province of registered office; restrictions on share transfer restrictions on activities; and changes involving such matters as amalgamation dissolution and continuance; and
- selling all, or substantially all, of the corporation's assets.

Unanimous resolutions must have the approval of all votes cast. For example, where shareholders agree to not appoint an auditor, the decision must be unanimous.

You will find an example of a Resolution of the Shareholders in Annex E.

8.3 Shareholders' Meetings

Shareholders who are entitled to vote can attend an annual shareholders' meeting. A notice of this meeting is sent not more than 60 days and not less than 21 days before the meeting date. For example, if the meeting is to take place on May 20, the notice should be sent no sooner than March 22 and no later than April 30.

Information regarding the first shareholders' meeting can be found in Section 4.3 First Meeting of Shareholders.

At the shareholders' meeting, the shareholders:

- appoint an auditor or waive the appointment of an auditor;
- elect directors;
- consider the corporation's financial statements; and
- raise any other business they wish to address.

A shareholder entitled to vote has the right to appoint a proxy holder to attend and vote on his or her behalf at any shareholders' meeting.

For more information on:

In a small business where one or two people act as directors, officers and shareholders, meetings are not necessary. Shareholders in these corporations often prefer to act through written resolutions. If every shareholder signs a written record setting out the terms of the necessary resolutions, then a shareholders' meeting need not be held.

A shareholder's right to attend and vote at a meeting depends on the rights attached to the class of shares that person holds. As a general rule, shareholders who are entitled to vote at a meeting are entitled to attend the meeting. (The CBCA gives holders of non-voting shares the right to attend certain meetings and vote on certain fundamental issues. These issues are not addressed in this guide.)

Shareholders may also be called to special meetings. The notice for a special meeting must:

- state the time and place of the meeting; and
- provide shareholders with enough information so that they will know in advance what they will be asked to consider and vote on at the meeting.

See Section 6.4 Shareholders' Meetings for further information on this topic.

8.4 Shareholder Agreements

A shareholder agreement is an agreement entered into by some, and usually all, of the shareholders of a corporation. The agreement must be in writing, and must be signed by the shareholders who are a party to it. While shareholder agreements are specific to each company and its shareholders, most of these documents deal with the same basic issues.

The CBCA allows shareholders to enter into written agreements that restrict the powers of the directors to manage or supervise the management of the corporation in whole or in part. However, when shareholders decide, through an agreement, to assume the rights, powers and duties of directors, they should be aware that they are also agreeing to assume the liabilities of those directors to an equal degree.

The relationship among shareholders in a small corporation tends to be very much like a partnership, with each person having a say in the significant business decisions the company will be making. Obviously, a shareholder agreement is not necessary in a one-person corporation. However, you may consider entering into a shareholder agreement if you have more than one shareholder or when you want to bring in other investors as your business grows.

Management of the corporation and relations among shareholders

Under the CBCA, in the absence of a shareholder agreement, the board of directors has control over the management of the corporation. Because directors are elected by ordinary resolution of the shareholders, if one shareholder has more than 50 percent of the votes, that shareholder alone can decide who will sit on the board. In a small corporation, minority shareholders (those with a small stake in the corporation) may not feel adequately protected by a board of directors elected by a majority shareholder and may want to negotiate a shareholder agreement that better protects their investment in the corporation.

A very common shareholder agreement provision for a small corporation is one that gives all the shareholders the right to sit on the board of directors or nominate a representative for that purpose. Each shareholder agrees in the document to vote his or her shares in such a way that each one is represented on the board, thus ensuring all shareholders an equal measure of control.

Shareholder agreements may also provide that certain significant decisions require a higher level of shareholder approval than is set out in the CBCA. For example, an agreement might provide that a decision to sell the business must be approved unanimously by all shareholders, whereas the CBCA requires only a special resolution (approval by two thirds of shareholders).

Shareholder agreements may set rules directing how the future obligations of the corporation will be shared or divided. For instance, each shareholder invests a minimal amount to get the business going, looking to bank loans or other credit for growth. The shareholders may agree that, when other means of raising funds are not available, each shareholder will contribute more funds to the corporation on a *pro rata* basis. This means

simply that the extent of a shareholder's obligation to fund the corporation would be determined by the extent of that shareholder's ownership interest (the percentage of shares held) in the corporation. So, three equal partners starting a corporation (with equal shares held by each) might sign a shareholder agreement that each will be responsible to fund one third of any future obligations of the company through the purchase of more shares.

Other rules often found in shareholder agreements govern the future purchase of shares in a corporation when no funding is needed. In such a case, the shareholders could agree to maintain the same percentage of holdings among themselves. Three equal partners could agree that no shares in the corporation will be issued without the consent of all shareholders/directors. In the absence of such a provision, two shareholders/directors could issue shares by an ordinary or special resolution (because they control two thirds of the votes) to themselves without including or requiring the permission of the third shareholder/director.

Restrictions or prohibitions on share transfer

Restrictions on share transfer are used so that shareholders can control who will become a shareholder in their corporation.

For more information on:

By placing such restrictions in a shareholder agreement instead of in your Articles of Incorporation, shareholders can remove or alter them without the company having to file Articles of Amendment. Note that these are separate from the restrictions placed in your Articles of Incorporation as part of the non-distributing corporation restrictions (see Section 2.3.4, Restrictions on Share Transfer).

Of course, the most effective way to ensure ownership control is to prohibit share transfers entirely or for a certain period of time (such as five years). This is an extreme measure, however, and is rarely seen.

Another provision is the right of first refusal, which basically states that any shareholder who wants to sell his or her shares must first offer those shares to the other shareholders of the company before selling them to an outside party.

Shareholder agreements may also set out rules for the transfer of shares when certain events occur, such as the death, resignation, dismissal, personal bankruptcy or divorce of a shareholder. The restrictions can include detailed plans governing when a shareholder can or must sell his or her shares, or what happens to those shares after the individual shareholder has left. The shareholder agreement, for example, may require that the shares be transferred to the remaining shareholders or to the corporation, often at fair market value. These provisions are complex and usually set out mechanisms to manage the transfer, including notice and how the transfer price will be funded. Operators of small businesses who enter into agreements with this sort of exit provision sometimes purchase life insurance to fund the payment obligations of the party who will be purchasing the shares.

Other shareholder agreement provisions may include non-competition clauses, confidentiality agreements, dispute resolution mechanisms and details respecting how the shareholder agreement itself is to be amended or terminated.

For more information on:

Shareholder agreements are voluntary. If you choose to have one, your shareholder agreement should reflect the particular needs of your company and its shareholders. While undoubtedly the best advice is to keep your agreement as simple as possible, we strongly suggest that you consult your professional advisors before signing any shareholder agreement.



Special agreements

The CBCA also deals specifically with two particular types of shareholder agreements:


- **Pooling agreements:** The CBCA provides that shareholders may, in a written agreement between two or more shareholders, agree on how their respective shares will be voted on any particular matter. Shareholders could enter into an agreement solely for the purpose of determining, for instance, how they will vote their shares to elect directors. Shareholders may also decide to include a pooling provision in a larger shareholder agreement.
- **Unanimous shareholder agreements:** The CBCA also permits all of the shareholders of the corporation to use a written agreement, to transfer all or some of the powers of the directors to the shareholders. Where there is only one shareholder, that person may sign a written declaration that has the same effect as a unanimous shareholder agreement. The wording must be very precise: an agreement signed by all of the shareholders does not fit the definition of a unanimous shareholder agreement if it does not deal with the transfer of powers, and the responsibilities that go along with them, from the directors to the shareholders.

Annex A: Example of Completed Articles of Incorporation (corporate name and one class of shares)

Articles of Incorporation

 Industry Canada / Industrie Canada Canada Business Corporations Act / Loi canadienne sur les sociétés par actions		FORM 1 ARTICLES OF INCORPORATION (SECTION 6)	FORMULAIRE 1 STATUTS CONSTITUTIFS (ARTICLE 6)
1 – Name of the Corporation ABBA Consulting Inc.		Dénomination sociale de la société	
2 – The province or territory in Canada where the registered office is situated Ontario		La province ou le territoire au Canada où est situé le siège social	
3 – The classes and any maximum number of shares that the corporation is authorized to issue An unlimited number of common shares		Catégories et le nombre maximal d'actions que la société est autorisée à émettre	
4 – Restrictions, if any, on share transfers See attached Schedule 1		Restrictions sur le transfert des actions, s'il y a lieu	
5 – Number (or minimum and maximum number) of directors Minimum: 3 Maximum: 7		Nombre (ou nombre minimal et maximal) d'administrateurs	
6 – Restrictions, if any, on the business the corporation may carry on None		Limites imposées à l'activité commerciale de la société, s'il y a lieu	
7 – Other provisions, if any See attached Schedule 2		Autres dispositions, s'il y a lieu	
8 – Incorporators - Fondateurs			
Name(s) - Nom(s)	Address (including postal code) Adresse (inclure le code postal)	Signature	Tel. No. - N° de tél.
Peter Leblanc	567, Main Street, Ottawa, Ontario K1K 1K1		613-123-4567
FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT			

IC 3419 (2007/01)



Schedule 1: Restrictions on Share Transfers

The right to transfer shares of the corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares of the corporation without the approval of:

- (a) the directors of the corporation expressed by resolution passed by the votes cast by a majority of the directors of the corporation at a meeting of the board of directors or signed by all of the directors of the corporation; or
- (b) the shareholders of the corporation expressed by resolution passed by the votes cast by a majority of the shareholders who voted in respect of the resolution or signed by all shareholders entitled to vote on that resolution.

Schedule 2: Other Provisions

- (a) The corporation's securities, other than non-convertible debt securities, shall not be transferred without either:
 - (i) the sanction of a majority of the directors of the corporation, or
 - (ii) the sanction of a majority of the shareholders of the corporation, or alternatively
 - (iii) if applicable, the restriction contained in security holders' agreements.

- (b) If authorized by by-law which is duly made by the directors and confirmed by ordinary resolution of the shareholders, the directors of the corporation may from time to time:
 - (i) borrow money upon the credit of the corporation;
 - (ii) issue, reissue, sell or pledge debt obligations of the corporation; and
 - (iii) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired to secure any debt obligation of the corporation.

Any such by-law may delegate such powers by the directors to such officers or directors of the corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the corporation.

- (c) The directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual general meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual general meeting of shareholders.

Initial Registered Office Address and First Board of Directors



Industry Canada Industrie Canada
Corporations Canada Corporations Canada

Initial Registered Office Address and First Board of Directors

(To be filed with Articles of Incorporation, Amalgamation and Continuance)
(Sections 19 and 106 of the *Canada Business Corporations Act (CBCA)*)

Form 2

Changes to the registered office or the board of directors are to be made by filing Form 3 — Change of Registered Office Address or Form 6 — Changes Regarding Directors.

Instructions

4 At least 25 per cent of the directors of a corporation must be Canadian residents. If a corporation has four directors or less, at least one director must be a Canadian resident (subsection 105(3) of the *Canada Business Corporations Act (CBCA)*).

If the corporation is a "distributing" corporation, there must be at least three directors.

However, the board of directors of corporations operating in uranium mining, book publishing and distribution, book sale or film and video distribution must be comprised of a majority of Canadian residents (subsection 105(3.1) of the *CBCA*). If the space available is insufficient, please attach a schedule to the form.

5 Declaration

In the case of an incorporation, this form must be signed by the incorporator. In the case of an amalgamation or a continuance, this form must be signed by a director or an officer of the corporation (subsection 262(2) of the *CBCA*).

General

The information you provide in this document is collected under the authority of the *CBCA* and will be stored in personal information bank number IC/PPU-049. Personal information that you provide is protected under the provisions of the *Privacy Act*. However, public disclosure pursuant to section 266 of the *CBCA* is permitted under the *Privacy Act*.

If you require more information, please consult our website at www.corporationscanada.gc.ca or contact us at 613-941-9042 (Ottawa region), toll-free at 1-866-333-5556 or by email at corporationscanada@ic.gc.ca.

File documents online
(except for Articles of Amalgamation):
**Corporations Canada Online
Filing Centre:**
www.corporationscanada.gc.ca

Or send documents by mail:
**Director General,
Corporations Canada
Jean Edmonds Tower South
9th Floor
365 Laurier Ave. West
Ottawa ON K1A 0C8**

By Facsimile:
613-941-0999

1 Corporation name

ABBA Consulting Inc.

2 Address of registered office (must be a street address, a P.O. Box is not acceptable)

123 Laurier Ave. West

NUMBER AND STREET NAME

Ottawa

Ontario

K1K 1K1

CITY

PROVINCE/TERRITORY

POSTAL CODE

3 Mailing address (if different from the registered office)

SAME AS ABOVE ☒

ATTENTION OF

NUMBER AND STREET NAME

CITY

PROVINCE/TERRITORY

POSTAL CODE

4 Members of the board of directors

FIRST NAME	LAST NAME	RESIDENTIAL ADDRESS (must be a street address, a P.O. Box is not acceptable)	CANADIAN RESIDENT (Yes/No)
Joe	Smith	123 Main Street, Ottawa, Ontario, K2K 2K2	Yes
Leeve	Jones	234 Main Street, Ottawa, Ontario K3K 3K3	Yes
Peter	Leblanc	567, Main Street, Ottawa, Ontario K1K 1K1	Yes

5 Declaration

I hereby certify that I have relevant knowledge and that I am authorized to sign and submit this form.

Peter Leblanc

SIGNATURE

Peter Leblanc

(613) 123-4567

PRINT NAME

TELEPHONE NUMBER


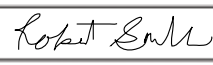
Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the *CBCA*).

Canada


IC 2904 (2006/12)

Annex B: Example of Completed Articles of Incorporation (numbered name and two classes of shares)

Articles of Incorporation

 Industry Canada / Industrie Canada Canada Business Corporations Act / Loi canadienne sur les sociétés par actions		FORM 1 ARTICLES OF INCORPORATION (SECTION 6)	FORMULAIRE 1 STATUTS CONSTITUTIFS (ARTICLE 6)
1 – Name of the Corporation		Dénomination sociale de la société	
Canada Inc.			
2 – The province or territory in Canada where the registered office is situated		La province ou le territoire au Canada où est situé le siège social	
Ontario			
3 – The classes and any maximum number of shares that the corporation is authorized to issue		Catégories et le nombre maximal d'actions que la société est autorisée à émettre	
See attached Schedule 1			
4 – Restrictions, if any, on share transfers		Restrictions sur le transfert des actions, s'il y a lieu	
See attached Schedule 2			
5 – Number (or minimum and maximum number) of directors		Nombre (ou nombre minimal et maximal) d'administrateurs	
Minimum: 3 Maximum: 3			
6 – Restrictions, if any, on the business the corporation may carry on		Limites imposées à l'activité commerciale de la société, s'il y a lieu	
None			
7 – Other provisions, if any		Autres dispositions, s'il y a lieu	
See attached Schedule 3			
8 – Incorporators - Fondateurs			
Name(s) - Nom(s)	Address (including postal code) Adresse (inclure le code postal)	Signature	Tel. No. - N° de tél.
Robert Smith	123, Main Street, Ottawa, Ontario K1K 1K1		613-123-4567
FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT			

IC 3419 (2007/01)



Schedule 1: Share Rights

The corporation can issue an unlimited number of Class A shares and an unlimited number of Class B shares with the rights, privileges, restrictions and conditions set out in Schedule 1.

The holders of Class A shares are:

- (a) entitled to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote;
- (b) entitled to receive the remaining property of the corporation upon dissolution; and
- (c) entitled, subject to the rights and privileges attaching to the Class B shares, to receive dividends as and when declared by the board of directors of the Corporation.

The holders of Class B shares are:

- (a) entitled to a dividend as fixed by the board of directors; and
- (b) entitled, upon the dissolution or liquidation of the corporation, to repayment of the amount paid for such shares (plus any declared and unpaid dividends) in priority to the Class A shares, but they shall not confer a right to any further participation in profits or assets.

The holders of Class B shares shall not be entitled to vote at meetings of the shareholders except as otherwise specifically provided for by the terms of the *Canada Business Corporations Act*.

Schedule 2: Restrictions on Share Transfers

The right to transfer shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares of the Corporation without the approval of:

- (a) the directors of the Corporation expressed by resolution passed by the votes cast by a majority of the directors of the Corporation at a meeting of the board of directors or signed by all of the directors of the Corporation; or

- (b) the shareholders of the Corporation expressed by resolution passed by the votes cast by a majority of the shareholders who voted in respect of the resolution or signed by all shareholders entitled to vote on that resolution.

Schedule 3: Other Provisions

- (a) The corporation's securities, other than non-convertible debt securities, shall not be transferred without either:
 - (i) the sanction of a majority of the directors of the corporation, or
 - (ii) the sanction of a majority of the shareholders of the corporation, or alternatively
 - (iii) if applicable, the restriction contained in security holders' agreements.
- (b) If authorized by by-law which is duly made by the directors and confirmed by ordinary resolution of the shareholders, the directors of the corporation may from time to time:
 - (i) borrow money upon the credit of the corporation;
 - (ii) issue, reissue, sell or pledge debt obligations of the corporation; and
 - (iii) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired to secure any debt obligation of the corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the corporation.

- (c) The directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual general meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual general meeting of shareholders.

Initial Registered Office Address and First Board of Directors



Industry Canada Industrie Canada
Corporations Canada Corporations Canada

Initial Registered Office Address and First Board of Directors

(To be filed with Articles of Incorporation, Amalgamation and Continuance)
(Sections 19 and 106 of the *Canada Business Corporations Act (CBCA)*)

Form 2

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4 At least 25 per cent of the directors of a corporation must be Canadian residents. If a corporation has four directors or less, at least one director must be a Canadian resident (subsection 105(3) of the *Canada Business Corporations Act (CBCA)*).

If the corporation is a "distributing" corporation, there must be at least three directors.

However, the board of directors of corporations operating in uranium mining, book publishing and distribution, book sale or film and video distribution must be comprised of a majority of Canadian residents (subsection 105(3.1) of the CBCA). If the space available is insufficient, please attach a schedule to the form.

5 Declaration

In the case of an incorporation, this form must be signed by the incorporator. In the case of an amalgamation or a continuance, this form must be signed by a director or an officer of the corporation (subsection 262.2 of the CBCA).

General

The information you provide in this document is collected under the authority of the CBCA and will be stored in personal information bank number IC/PPU-049. Personal information that you provide is protected under the provisions of the *Privacy Act*. However, public disclosure pursuant to section 266 of the CBCA is permitted under the *Privacy Act*.

If you require more information, please consult our website at www.corporationscanada.ic.gc.ca or contact us at 613-941-9042 (Ottawa region), toll-free at 1-866-333-5556 or by email at corporationscanada@ic.gc.ca.

File documents online
(except for Articles of Amalgamation):
**Corporations Canada Online
Filing Centre:**
www.corporationscanada.ic.gc.ca

Or send documents by mail:
**Director General,
Corporations Canada
Jean Edmonds Tower South
9th Floor
365 Laurier Ave. West
Ottawa ON K1A 0C8**

By Facsimile:
613-941-0999

1 Corporation name

2 Address of registered office (must be a street address, a P.O. Box is not acceptable)

123 RR3

NUMBER AND STREET NAME

Ottawa

CITY

Ontario

PROVINCE/TERRITORY

K1K 1K1

POSTAL CODE

3 Mailing address (if different from the registered office)

SAME AS ABOVE ☐

M. Robert Smith

ATTENTION OF

P.O. Box 45

NUMBER AND STREET NAME

Ottawa

CITY

Ontario

PROVINCE/TERRITORY

K3K 3K3

POSTAL CODE

4 Members of the board of directors

FIRST NAME

Robert Smith

LAST NAME

RESIDENTIAL ADDRESS (must be a street address, a P.O. Box is not acceptable)
123 Main Street, Ottawa,
Ontario K1K 1K1

CANADIAN
RESIDENT
(Yes/No)

Yes

Telephone

234 Main Street, Ottawa,
Ontario K3K 3K3

Yes

Peter Leblanc

567, Main Street, Ottawa
Ontario K1K 1K1

Yes

5 Declaration

I hereby certify that I have relevant knowledge and that I am authorized to sign and submit this form.

Robert Smith

SIGNATURE

Robert Smith

PRINT NAME

(613) 123-4567

TELEPHONE NUMBER

Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or both (subsection 250(1) of the CBCA).

Canada

IC 2904 (2006/12)

Annex C: Examples of By-Laws

Model By-Laws

By-Law No. *(Indicate the number of the by-law)* *(Indicate the name of the corporation)*

A by-law relating generally to the transaction of the business and affairs of *(indicate the name of the corporation)* (hereinafter referred to as the “Corporation”)

Directors

1. **Calling of and notice of meetings:** Meetings of the board shall be held at such place and time and on such day as the President, Vice President or Secretary or any two directors may determine. Notice of meetings of the board shall be given to each director not less than 48 hours before the time when the meeting is to be held. Each newly-elected board may without notice hold its first meeting for the purposes of organization and the appointment of officers immediately following the meeting of shareholders at which such board is elected.
2. **Votes to govern:** At all meetings of the board, every question shall be decided by a majority of the votes cast on the question; and in case of an equality of votes, the chair of the meeting (*shall/ shall not [indicate one option]*) be entitled to a second or casting vote.
3. **Interest of directors and officers generally in contracts:** No director or officer shall be disqualified by his/her office from contracting with the Corporation nor shall any contract or arrangement entered into by or on behalf of the Corporation with any director or officer or in which any director or officer is in any way interested be liable to be voided nor shall any director or officer so contracting or being so interested be liable to account to the Corporation for any profit realized by any such contract or arrangement by reason of such director or officer holding that office or of the fiduciary relationship thereby established, provided that the director or officer shall have complied with the provisions of the *Canada Business Corporations Act*.

Shareholders' Meetings

4. **Location and quorum:** Meetings of shareholders shall be held at the registered office of the Corporation or elsewhere in the municipality in which the registered office is located or, if the board shall so determine, at some other place in Canada or, if all the shareholders entitled to vote at the meeting so agree, at some place outside Canada. At any meeting of shareholders, a quorum shall be (*any number you decide*) persons present in person and each entitled to vote thereat [and holding or representing by proxy not less than (*any number you decide*) percent of the votes entitled to be cast thereat].

Indemnification

5. **Indemnification of directors and officers:** The Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor, and his/her heirs and legal representatives to the extent permitted by the *Canada Business Corporations Act*.
6. **Indemnity of others:** Except as otherwise required by the *Canada Business Corporations Act* and subject to paragraph 5, the Corporation may from time to time indemnify and save harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or completed activity, suit or proceeding, whether civil, criminal, administrative or investigative (other than an activity by or in the right of the Corporation) by reason of the fact that he or she is an employee or agent of the Corporation, or is or was serving at the request of

the Corporation as a director, officer, employee, agent of or participant in another body corporate, partnership, joint venture, trust or other enterprise, against expenses (including legal fees), judgments, fines and any amount actually and reasonably incurred by him/her in connection with such activity, suit or proceeding if he/she acted honestly and in good faith with a view to the best interests of the Corporation and, with respect to any criminal or administrative activity or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his/her conduct was lawful. The termination of any activity, suit or proceeding by judgment, order, settlement or conviction shall not, of itself, create a presumption that the person did not act honestly and in good faith with a view to the best interests of the Corporation and, with respect to any criminal or administrative activity or proceeding that is enforced by a monetary penalty, had no reasonable grounds for believing that his/her conduct was lawful.

7. **Right of indemnity not exclusive:** The provisions for indemnification contained in the by-laws of the Corporation shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any agreement, vote of shareholders or directors or otherwise, both as to activity in his/her official capacity and as to activity in another capacity, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and legal representatives of such a person.
8. **No liability of directors or officers for certain matters:** To the extent permitted by the by-laws, no director or officer for the time being of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the Corporation or for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or body corporate with whom or which any

moneys, securities or other assets belonging to the Corporation shall be lodged or deposited or for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any other loss, damage or misfortune whatever that may happen in the execution of the duties of his/her respective office or trust or in relation thereto unless the same shall happen by or through his/her failure to act honestly and in good faith with a view to the best interests of the Corporation and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation otherwise than as a director or officer or shall be a member of a firm or a shareholder, director or officer of a body corporate that is employed by or performs services for the Corporation, the fact of his/her being a director or officer of the Corporation shall not disentitle such director or officer or such firm or body corporate, as the case may be, from receiving proper remuneration for such services.

Banking Arrangements, Contracts, etc.

9. **Banking arrangements:** The banking business of the Corporation, or any part thereof, shall be transacted with such banks, trust companies or other financial institutions as the board may designate, appoint or authorize from time to time by resolution and all such banking business, or any part thereof, shall be transacted on the Corporation's behalf by such one or more officers and/or other persons as the board may designate, direct or authorize from time to time by resolution and to the extent therein provided.
10. **Execution of instruments:** Contracts, documents or instruments in writing requiring execution by the Corporation shall be signed by any (*indicate a number*) officers or directors, and all contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The board is authorized from time to time by resolution to appoint any officer or officers or any other person or persons on behalf of the Corporation to sign and deliver either contracts, documents or instruments in writing

generally or to sign either manually or by facsimile signature and deliver specific contracts, documents or instruments in writing. The term “contracts, documents or instruments in writing” as used in this by-law shall include deeds, mortgages, charges, conveyances, powers of attorney, transfers and assignments of property of all kinds (including specifically but without limitation transfers and assignments of shares, warrants, bonds, debentures or other securities), proxies for shares and other securities and all paper writings.

Miscellaneous

11. **Invalidity of any provisions of this by-law:**

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

12. **Omissions and errors:** The accidental omission to give any notice to any shareholder, director, officer or auditor or the non-receipt of any notice by any shareholder, director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any activity taken at any meeting held pursuant to such notice or otherwise founded thereon.

Interpretation

13. **Interpretation:** In this by-law and all other by-laws of the Corporation, words importing the singular number only shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders; words importing persons shall include an individual, partnership, association, body corporate, executor, administrator or legal representative and any number or aggregate of persons; “articles” include the original or restated Articles of Incorporation, Articles of Amendment, Articles of Amalgamation, Articles of Continuance, Articles of Reorganization, Articles of Arrangement and Articles of Revival; “board” shall mean the board of directors of the Corporation; “*Canada Business Corporations Act*” shall mean *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 as amended from time to time or any Act that may hereafter be substituted therefore; and “meeting of shareholders” shall mean and include an annual general meeting of shareholders and a special meeting of shareholders.

Repeal

The next clause should be included only if previous by-laws are being replaced.

14. **Repeal:** By-laws No. (*indicate the number of the by-law*) of the Corporation are repealed as of the coming into force of this by-law, provided that such repeal shall not affect the previous operation of any by-law so repealed or affect the validity of any act done or right, privilege, obligation or liability acquired or incurred under or the validity of any contract or agreement made pursuant to any such by-law prior to its repeal. All officers and persons acting under any by-law so repealed shall continue to act as if appointed by the directors under the provisions of this by-law or the *Canada Business Corporations Act* until their successors are appointed.

Dated: (*indicate the day, month and year*)

President: (*signature*)

Secretary: (*signature*)

Resolution of the Directors and Shareholders of (*indicate the name of the corporation*)

Resolved that the foregoing By-law No. (*Indicate the number of the by-law*) is made a by-law of the Corporation.

The undersigned, being all the directors of (*indicate the name of the corporation*), hereby sign the foregoing resolution.

Dated: (*indicate the day, month and year*)

Director: (*signature*)

Director: (*signature*)

Resolved that the foregoing By-law No. (*Indicate the number of the by-law*) of the by-laws of the Corporation is hereby confirmed.

The undersigned, being all the shareholders of (*indicate the name of the corporation*), hereby sign the foregoing resolution.

Dated: (*indicate the day, month and year*)

Shareholder: (*signature*)

Shareholder: (*signature*)

Annex D: Examples of Notice of Annual Shareholders' Meeting and of Minutes of an Annual Shareholders' Meeting

The Notice and Minutes below provide suggested wording and format that you can adapt to your corporation at its first shareholders' annual general meeting for the election of directors and the appointment of officer(s), auditor(s) and accountant(s). Alternatively, you can proceed by way of written resolution instead, as shown in Annex E.

Example of a Notice of Annual General Meeting

(Indicate the name of the corporation)

Notice is hereby given that the annual general meeting of the holders of *(indicate the name of class of shares)* (the "Corporation") will be held at *(indicate the address of the corporation)* on *(indicate the date)*, at *(indicate the time)*, for the purpose of:

- receiving and considering the annual report and financial statements for the year ended *(indicate the date)* and the report of the auditors thereon;
- electing directors;
- appointing auditors; and
- transacting such further and other business as may properly come before the meeting or any adjournment thereof.

Dated this *(indicate the date)*.

On behalf of the board of directors

Secretary: *(signature)*

Example of Minutes of Annual General Meeting

(Indicate the name of the corporation)

Minutes of the annual general meeting of the shareholders of *(indicate the name of the corporation)* held at *(indicate the address of the corporation)* on *(indicate the date)*, at *(indicate the time)*.

1. Present in Person:

(Indicate the name)

(Indicate the name)

(Indicate the name)

2. Represented by Proxy:

(Indicate the name)

being all of the shareholders of the Corporation.

3. Chair and Secretary

The President, *(indicate the name)*, assumed the Chair and the Secretary, *(indicate the name)*, acted as Secretary of the meeting.

4. Constitution of Meeting

All of the shareholders of the Corporation being present in person or represented by proxy and all the shareholders, directors and auditors of the Corporation having been sent notice of the meeting in the manner required by law, the Chair declared the meeting properly constituted for the transaction of business.

5. Financial Statements

The Chair presented to the meeting the balance sheet of the Corporation as of *(indicate the date)*, and the other financial statements of the Corporation for the financial year ended on such date. At the request of the Chair, the Secretary of the meeting then read to the meeting the auditor's report. Following the reading of the auditor's report, the Chair invited questions and comments from the floor and, there being none, the Chair proceeded to the next item of business.

6. Election of Directors

The Chair stated that it was now in order to proceed with the election of directors. On motion duly made, seconded and unanimously carried, the following resolution was passed:

Resolved that (*indicate the name*) is hereby elected director of the Corporation to hold office for the ensuing year or until a successor is elected or appointed, whichever occurs first.

Choose one text related to Appointment of Auditors only

Option 1

7. Appointment of Auditors

On motion duly made, seconded and unanimously carried, the following resolution was passed:

Resolved that (*indicate the name*), Chartered Accountants, are hereby appointed the auditors of the Corporation to hold office until the close of the next annual general meeting of the shareholders or until a successor is appointed, at such remuneration as may be fixed by the directors, and the directors are hereby authorized to fix such remuneration.

or

Option 2

7. Appointment of Accountants

The Chair stated that the Corporation meets the conditions referred to in section 163 of the *Canada Business Corporations Act* (the “Act”) and that all the shareholders of the Corporation have consented in writing that the Corporation be exempt from the requirements of section 160 of the Act. On motion duly made, seconded and unanimously carried, the following resolution was passed:

Resolved that (*indicate the name*) are hereby appointed the accountants of the Corporation to hold office until the close of the next annual general meeting of shareholders at such remuneration as may be fixed by the directors, and the directors are hereby authorized to fix such remuneration.

8. Confirmation of Proceedings

On motion duly made, seconded and unanimously carried, the following resolution was passed:

Resolved that all by-laws, resolutions, contracts, acts and proceedings of the board of directors, shareholders and officers of the Corporation enacted, passed, made, done or taken since (*indicate the date*) as the same are set forth or referred to in the minutes of the Corporation or in the financial statements submitted to the shareholders of the Corporation on this date are hereby approved, ratified, sanctioned and confirmed.

9. Termination

There being no further business, on motion duly made, seconded and unanimously carried, the meeting was terminated.

President: (*signature*)

Secretary: (*signature*)

Annex E: Example of Resolution of the Directors and of Resolution of Shareholders

1. Resolutions of the Directors of (*indicate the name of the corporation*)

The undersigned, being the director(s) of (*indicate the name of the corporation*), hereby sign(s) the following resolutions:

Designation of Offices

Resolved that the Corporation shall have (*designate offices that will be used: i.e. a Chair of the Board, a President, one or more Vice Presidents, a Secretary and/or a Treasurer*) and may have one or more assistants to those and to any other office hereafter designated by the board of directors.

The above resolution should specifically designate only those offices that are intended to be used.

Duties and Powers of Officers

Resolved that the officers of the Corporation shall exercise the following duties and powers:

- The Chair of the Board shall, when present, preside at all meetings of the board of directors. The President shall, when present, preside at all meetings of the board of directors in the absence of the Chair of the Board and at all meetings of shareholders and shall be responsible for the management of the business and affairs of the Corporation.
- The Vice President, or, if more than one, the Vice Presidents, shall assist the President in the performance of the President's duties and, in order of seniority as determined by the board of directors, may perform the duties and exercise the powers of the President during the absence or inability to act of the President. If a Vice President performs any such duty or exercises any such power, the absence or inability of the President shall be presumed with respect thereto.

■ The Secretary shall give, or cause to be given, all notices required to be given to shareholders, directors, auditors and members of committees of the board of directors. The Secretary shall attend meetings of the board of directors and of the shareholders and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings. The Secretary shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation, if any.

■ The Treasurer shall keep or cause to be kept full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and, under the direction of the board of directors, shall control the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation. The Treasurer shall render an account of the financial position of the Corporation to the board of directors at each meeting of the board of directors, or whenever otherwise required by the board of directors.

■ Officers shall, in addition to those prescribed by this resolution, perform such duties and exercise such powers of management of the business and affairs of the Corporation as may from time to time be prescribed by the board of directors. An assistant to any officer shall assist such officer in the performance of such officer's duties and may perform the duties and exercise the powers of such officer during the absence or inability to act of such officer. If an assistant performs any such duty or exercises any such power, the absence or inability to act of such officer shall be presumed with respect thereto.

The above resolution should deal only with those offices that have been designated. If some offices are designated at a later time, the duties and powers of those positions should be set out at that time.

Appointment of Officers

Resolved that:

(Indicate the name of the Chair of the Board of the Corporation) is appointed Chair of the Board of the Corporation.

(Indicate the name of the President) is appointed President of the Corporation.

(Indicate the name of the Vice President) is appointed a Vice President of the Corporation.

(Indicate the name of the Secretary) is appointed Secretary of the Corporation.

(Indicate the name of the Treasurer) is appointed Treasurer of the Corporation.

Execution of Documents

Resolved that deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by *(indicate any director or officer/any two directors or officers)* of the Corporation. In addition, the directors may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed.

(Indicate the name of class of shares) Share Certificates

Resolved that the form of certificate annexed hereto is approved and adopted as the form of certificate for the *(indicate the name of class)* shares in the capital of the Corporation.

Banking Resolution

Resolved that the banking resolution, in the form required by the *(indicate the name of bank)*, a copy of which is annexed hereto as Schedule “B,” is hereby approved.

Insert the appropriate form of banking resolution, which is provided by your bank, here.

Financial Year End

Resolved that the financial year of the Corporation shall end on *(indicate the day and month)* in each year.

Appointment of Auditors

Resolved that *(indicate the name of the auditor)*, Chartered Accountants, are appointed auditors of the Corporation to hold office until the first annual general meeting of shareholders at such remuneration as may be fixed by the directors.

If you decide to dispense with the audit requirement (which requires the agreement of all shareholders), delete the paragraph above and include the paragraph approving an accountant found in the sample Organizational Resolutions of the Shareholder(s) below.

Corporate Seal

Resolved that the corporate seal of the Corporation is in the form impressed hereon.

There is no requirement for a corporation to have a corporate seal. If you decide not to have one, you should omit this resolution.

Dated: *(indicate the day, month and year)*

Director: *(signature)*

Subscription for One Common Share

To: *(indicate the name of the corporation)*

The undersigned hereby subscribes for one common share in the capital of the Corporation and tenders herewith the sum of *(indicate an amount in dollars)* in full payment of the subscription price for such share.

The undersigned hereby requests that the said share be allotted to the undersigned, that such share be issued as fully paid and non-assessable and that a certificate representing such share be issued in the name of the undersigned.

Dated: *(indicate the day, month and year)*

Director: *(signature)*

Where there is only one director:

Resolution of the Director of (indicate the name of the corporation)

The undersigned, being the sole director of (indicate the name of the corporation), hereby signs the following resolution:

Allotment and issuance of shares to (indicate the name of the directors)

Resolved that:

- The subscription of (indicate the name) for one common share in the capital of the Corporation, which subscription is annexed hereto, is accepted.
- The consideration for the allotment and issue of the said common share subscribed for as aforesaid is fixed at (indicate an amount in dollars).
- One common share in the capital of the Corporation is allotted to (indicate the name).
- The Corporation having received the sum of (indicate an amount in dollars) in full payment of the subscription price for the said common share, such share is issued and shall be held as a fully paid and non-assessable share and a certificate therefore shall be issued to (indicate the name).

Dated: (indicate the day, month and year)

Director: (signature)

**2. Organizational Resolutions of the Shareholder(s)
(indicate the name of the corporation)**

Election of Director(s)

Resolved that the following person(s) is/are hereby elected directors of the Corporation for the ensuing year or until their successor(s) has/have been duly elected:
(Indicate the name of the administrator)

Appointment of Accountants

Resolved that:

- Pursuant to the *Canada Business Corporations Act*, an auditor of the Corporation shall not be appointed; and
- (Indicate the names of the accountants) are hereby appointed accountants of the Corporation to hold office until the first annual general meeting of the shareholders or until their successors have been duly appointed at such remuneration as may be fixed by the directors, the directors being hereby authorized to fix such remuneration.

The undersigned, being all the shareholders of the Corporation, hereby consent, by their signatures, to the foregoing resolutions pursuant to the provisions of the *Canada Business Corporations Act*.

Dated: (indicate the day, month and year)

Shareholders: (signature)

Frequently Asked Questions

Who can form a corporation?

One or more individuals 18 years of age or older who are of sound mind and not in a state of bankruptcy may form a corporation under the *Canada Business Corporations Act* (CBCA). Similarly, one or more corporations or bodies corporate may incorporate a business under the CBCA.

These individuals and corporations (“persons” in the language of the law) are called incorporators. An incorporator (individual or corporation) may form a corporation whose shareholders, officers and directors are other persons. Alternatively, an incorporator may serve as the sole director, officer and shareholder of the corporation. An incorporator is also responsible for start-up activities such as filing the corporation’s Articles of Incorporation and naming the corporation’s first directors.

You can incorporate a business under the laws of only one jurisdiction. You must decide whether to incorporate under federal legislation, the CBCA, or under one of the laws of a province or territory. What you need to do to incorporate depends on where you incorporate; you should contact the jurisdiction under which you want to incorporate for precise details. This guide contains information about the CBCA.

What is the CBCA?

The CBCA is the *Canada Business Corporations Act*, the federal law that regulates the incorporation of businesses.

What kinds of businesses can incorporate under the CBCA?

The CBCA does not place restrictions (such as minimum size) on businesses that may incorporate. Almost any type of business can incorporate under the CBCA. However, banking, insurance, and loan and trust companies, as well as not-for-profit corporations, are incorporated under different laws.

Many small businesses plan to operate in more than one province or territory, either now or in the future. These businesses often choose to incorporate under the CBCA now in order to simplify their business relations later if they decide to expand operations or grow larger.

Should I incorporate?

This depends on your particular situation and your needs. The most common forms of business organizations are sole proprietorships, partnerships and corporations. Each of these forms of business has advantages and disadvantages. The most appropriate form for your business will depend on your particular circumstances.

This guide focuses on incorporation for small businesses under the CBCA. You can learn about some of the benefits of incorporating in Section 1.1 of this guide, Benefits of Incorporating.

Do I need to hire a lawyer to incorporate?

No. A lawyer may provide valuable advice but is not a requirement for incorporation.

If I decide to incorporate, what should I do?

You will have to file Articles of Incorporation with Corporations Canada and pay the required fee. Please consult Chapter 2 of this guide for more information on how to file Articles of Incorporation.

You can file your Articles of Incorporation online. It’s easy, faster and less expensive (\$200 instead of \$250). It is also possible to file your Articles of Incorporation by mail, by fax or in person. You will find contact information in the Contacts section.

If you file your forms properly and pay the appropriate fee, the Director under the CBCA will grant you a certificate of incorporation.

How long does it take to become incorporated?

Corporations Canada operates during normal business hours five days a week. When you file online through the Corporations Canada Online Filing Centre, we can offer very fast (same-day or next-day) service. However, if you mail the forms to our office, we can usually issue your incorporation papers within five business days. Faster service is also available when you deliver your documents by hand.

How much does it cost to incorporate under the CBCA?

You pay less to incorporate if you file your Articles of Incorporation online than through any other means. Fees are now \$200 online and \$250 for all other means. You will also have to pay for a NUANS® Report, unless your corporation is going to request a numbered name (see section 2.3.1 of this guide, The Corporation Name). A NUANS® report can be ordered online or from an independent search house. Of course, if you obtain advice from a lawyer when you are completing your Articles of Incorporation, you will also have to pay legal fees.

Do I have to get a corporate seal?

A corporation under the CBCA is not required to have a seal. If you want to have a corporate seal for your corporation, you may purchase one from a legal stationery store or commercial supplier.

If I incorporate federally, do I have to register or file anything with the provinces or territories?

Yes. Whether you incorporate federally, provincially or territorially, you will likely be required to register your business in any province or territory where you do business. Each province and territory has its own requirements for registering corporations from outside its borders. Industry Canada is working with provincial and territorial officials to decrease this burden. For example, Corporations Canada has joint registration agreements with some provinces allowing corporations that incorporate online to apply for provincial registration online. You should contact the local corporate law administration office in each province or territory where you plan to do business to determine what your corporation needs to do.

Where can I get more information about incorporating?

The Contacts section of this guide contains mailing addresses, phone numbers and other contact information for our offices. It also lists other federal government resources for small businesses.

What are the advantages of incorporating online?

Filing online through the Corporations Canada Online Filing Centre has many advantages:

- it is less expensive (the incorporation and Annual Return filing fees are lower when paid online than when paid through any other means);
- it is convenient (you can file from your office or home 24 hours a day, seven days a week); and
- it is fast (you receive immediate acknowledgement of your filing, and we can usually process your documents on the same day or the next day).

Is it safe to pay fees online?

Yes. There's no need to worry about online payments using your American Express®, MasterCard® or Visa® — the Strategis Secure Online Electronic Commerce System ensures that all transactions are processed with complete security.

How do I file articles of incorporation for a CBCA corporation online?

Go to the Corporations Canada Online Filing Centre. Register with the Strategis Secure Server Facilities to access the Online Filing Home Page, then choose Articles of Incorporation from the menu. Select one of the four incorporation options available: a numbered corporation; a corporation with a pre-approved name; a corporation for which name approval is sought and a NUANS® report attached; or a numbered name corporation that has been pre-reserved. Then follow the user-friendly instructions provided.

Do online documents have to be signed?

When you file documents in electronic format, we do not require an original signature. However, you must maintain original signed copies of all documents in the records of the corporation.

What is a trade-mark?

A trade-mark is a word, a symbol, a design or a combination of these elements used to distinguish the goods or services of one person or organization from those of others in the marketplace. Trade-marks come to represent not only actual goods and services, but the reputation of the producer. As such, they are valuable intellectual property. A registered trade-mark can be protected through legal proceedings from misuse and imitation.

There are three basic categories of trade-marks:

- **Ordinary Marks** are words or symbols (or a combination of these features) that distinguish the goods or services of a specific firm or individual. Suppose you open a courier business you call “Giddy-up,” you could register the words as a trade-mark (assuming all legal requirements were met) for the service you offer.
- **Certification Marks** are owned by one person but licensed to others to identify goods or services that meet a defined standard. Examples include the Woolmark design owned by Woolmark Americas, Ltd. for use on clothing and other goods; and the logo of the Association of Professional Engineers.
- **Distinguishing guise** identifies the shaping of goods or their containers, or is a mode of wrapping or packaging goods. For example, if you manufacture candy moulded to look like butterflies, you might want to register the butterfly shape as a trade-mark under “distinguishing guise.”

For more information, visit the website of the Canadian Intellectual Property Office at www.cipo.gc.ca.

Glossary of Terms

Annual Return: A document (commonly called Form 22) that includes information about a corporation that must be filed within 60 days of the corporation's anniversary date. This form should not be confused with annual financial statements or annual reports.

Articles: Original or restated Articles of Incorporation, Articles of Amendment, Articles of Amalgamation, Articles of Continuance, Articles of Reorganization, Articles of Arrangement, Articles of Dissolution or Articles of Revival, including any amendments.

Articles of Incorporation: A legal document with clauses that govern an incorporated business. To incorporate under the CBCA, a person must correctly complete the Articles of Incorporation and the Initial Registered Office Address and First Board of Directors form and must file the forms with Corporations Canada. The Articles of Incorporation, when filed, create the corporation and set out important matters such as the number of directors and types of shares the corporation will have.

By-Laws: Basically, the agreement between the corporation and its shareholders setting out the internal rules by which the corporation will function. These often deal with matters such as meetings of directors and shareholders.

CBCA: *The Canada Business Corporations Act.* This is the statute that governs federally incorporated business, not including banks, insurance and trust and loans companies.

Corporations Canada: The branch of Industry Canada, a department of the Government of Canada, that administers the CBCA. To incorporate a business, you file Articles of Incorporation with Corporations Canada.

Director: An individual elected by the shareholder(s) to supervise the management of a corporation. Together, all directors of a corporation are referred to as the "board of directors". All federal corporations are required to have one or more directors, a majority of whom must be resident Canadians.

Director Appointed under the CBCA: The individual appointed by the federal Minister of Industry under the provisions of the CBCA to independently administer the statute. This individual is referred to as the "Director under the CBCA," or the "Director."

Dissolution: The act of ending the existence of a corporation, under certain circumstances, by filing the required documents with Corporations Canada. A corporation could also be dissolved by the Director under the CBCA for failure to comply with the legislation.

Distributing Corporation: A corporation that:

- is a reporting issuer within the meaning of any applicable securities legislation, unless it is subject to an exemption from that legislation;
- is not a reporting issuer but has filed a prospectus or similar document in relation to the public distribution of its shares; has securities that are listed and posted for trading on a stock exchange in or outside Canada; is a distributing corporation that is involved in or results from a statutory procedure, such as an amalgamation or reorganization.

The corporation is not subject to an exemption or an order under provincial securities legislation.

Dividend: The share of profit payable to shareholders on their shares.

Federal Incorporation: Incorporation under the CBCA rather than under a provincial or territorial statute.

Incorporation: The act of establishing a corporation by filing the required documents.

Non-distributing Corporation: A corporation that is not a distributing corporation; for example, it does not issue shares to the public. Commonly referred to as a private corporation.

NUANS® Report: A five-page document that includes a list of business names and trade-marks that sound similar to the name an incorporator is proposing. The list is drawn from NUANS®, the national data bank of existing and reserved business names as well as trade-marks registered and applied for in Canada.

Officer: An individual appointed by the director(s) of a corporation to manage the day-to-day business of a corporation, such as president, vice president, secretary, treasurer, etc. The position of officer is distinct from that of director (see above), although in a small corporation one individual very often occupies both positions.

Online Filing Centre: The fastest, most convenient and least expensive method of filing documents with Corporations Canada to incorporate a business federally. You can access the Online Filing Centre through the home page of Corporations Canada's website (www.corporationscanada.ic.gc.ca).

Quorum: The stated minimum number of people entitled to attend a meeting who must be present for business to be conducted. Corporate by-laws may specify the minimum number of directors who must be present at a meeting of the board of directors, or the minimum number of shareholders who must be present at a shareholders' meeting; if the by-laws do not, the quorums set out in the CBCA must be respected.

Resolution: The meaning of the term "resolution" depends on the context. It can mean:

- a written record of decisions taken in lieu of an organizational meeting;
- a decision made at an annual or special meeting based on the required number of votes in favour by shareholders entitled to vote; or
- a document signed by all shareholders in lieu of a meeting of shareholders.

Share: A measure of ownership of a corporation. Some people refer to the share certificate as a stock. Shares are distinguished from securities, which are any type of investment instrument, including shares.

Shareholder: An owner in a corporation; a person holding shares in a corporation. Because shareholders must conduct or approve many corporate activities such as electing directors, an active corporation must have at least one shareholder.

Contacts

Corporations Canada

Website: www.corporationscanada.ic.gc.ca

Client Services Section
Corporations Canada
Industry Canada
9th Floor, Jean Edmonds Tower South
365 Laurier Avenue West
Ottawa ON K1A 0C8
Tel.: 613-941-9042 (National Capital Region)
Toll free number: 1-866-333-5556
Fax: 613-941-0601

Regional Offices:

British Columbia (Vancouver)

Corporations Canada
Industry Canada
Suite 2000
300 West Georgia Street
Vancouver BC V6B 6E1
Tel.: 604-666-9875
Fax: 604-666-4274

Quebec (Montréal)

Corporations Canada
Industry Canada
Suite 700
5 Place Ville-Marie
Montréal QC H3B 2G2
Tel. (local and outside of Quebec): 514-496-1797
Toll free number within the province of Quebec:
1-888-237-3037
Fax: 514-283-2247

Ontario (Toronto)

Corporations Canada
Industry Canada
3rd Floor, 151 Yonge Street
Toronto ON M5C 2W7
Tel.: 416-954-2714
Fax: 416-973-5067

Filing with Corporations Canada

Online filing

Online filing is the easiest, fastest and more economical way to file your Articles of Incorporation. Visit the Corporations Canada Online Filing Centre at www.corporationscanada.ic.gc.ca. Section 2.3 of this guide How to complete the Articles of Incorporation and the Initial Registered Office Address and First Board of Directors form explains the procedure to follow to file online.

Other methods to file your articles and other forms

■ By fax

You can file your Articles of Incorporation and other related documents by fax at 613-941-0999.

■ By mail or by courier

You can file your Articles of Incorporation and other related documents by sending them to Corporations Canada (Ottawa office).

Where the name has been pre-approved or if you are requesting a numbered name, you can send your articles of incorporation and other related documents to a regional office (Montréal, Toronto or Vancouver).

■ By e-mail

You can file your Articles of Incorporation and other related documents by e-mail at: Corporations.efiling@ic.gc.ca. The attachment documents (letter, articles, NUANS® report etc.) must be in PDF format.

■ In person

You may apply in person and file a maximum of four applications for incorporation, from Monday to Friday, between 8:30 a.m. and 2:30 p.m., at the Ottawa office.

If your name has been pre-approved or if you request a numbered name, you may apply in person at a regional office (Montréal, Toronto or Vancouver).

Additional Information

For additional information on Corporations Canada's products and services, please visit Corporations Canada's website at www.corporationscanada.ic.gc.ca or call 1-866-333-5556.

Links of Interest for Small Businesses

Canada Business Corporations Act (CBCA)
laws.justice.gc.ca/en/C-44/index.html

Canada Business Corporations Regulations, 2001
laws.justice.gc.ca/en/C-44/SOR-2001-512/index.html

Completed text of the CBCA and its Regulations.

NUANS®
www.nuans.com

Canada Business
www.canadabusiness.gc.ca

Canada Business is a single point of access where businesses can obtain information about federal and provincial/territorial government services, programs and regulatory requirements.

Canada Revenue Agency
www.cra-arc.gc.ca

The Canada Revenue Agency website organizes taxation information by key business topics, including T2 Corporate Tax Return, payroll, GST, business account registration, and keeping records.

Managing for Business Success
www.strategis.ic.gc.ca/epic/site/mfbs-gprea.nsf/en/home

The Web portal for owners and managers of small and medium-sized businesses who need sources of practical information, tools and advice for just-in-time solutions to their management challenges.

Strategis
www.strategis.gc.ca

Strategis is Canada's business and consumer site. The information on Strategis will help you make critical decisions about opportunities for growth, explore new markets, find partners, form alliances, find and develop new technologies or processes, or assess the risks of new ventures.

Provincial and Territorial Offices that are Responsible for Registration of Corporations

Alberta: www.governmentservices.gov.ab.ca

British Columbia: www.fin.gov.bc.ca/registries

Manitoba: www.companiesoffice.gov.mb.ca/index.html

New Brunswick: <https://www.web11.snb.ca/snb8000/default.aspx?l=e>

Newfoundland and Labrador: www.gov.nf.ca/doingbusiness

Northwest Territories: www.justice.gov.nt.ca/CorporateRegistry/corpregistry.htm

Nova Scotia: www.gov.ns.ca/snsmr/rjsc

Nunavut: www.gov.nu.ca/Nunavut

Ontario: www.mgs.gov.on.ca/english/index.html

Prince Edward Island: www.gov.pe.ca/oag/ccaid-info/index.php3

Quebec: www.req.gouv.qc.ca/default_eng.htm

Saskatchewan: www.saskjustice.gov.sk.ca

Yukon: www.gov.yk.ca

Please consult Corporations Canada's website for other links of interest.