

STEPS TO INCORPORATING AN UNLIMITED LIABILITY COMPANY IN BRITISH COLUMBIA

INTRODUCTION

There are different ways to form a business in B.C., each with its own advantages and disadvantages. Companies can officially incorporate, or they can register as a sole proprietorship or a partnership. The decision to incorporate depends on the specific needs of the persons involved and the goals of the company.

Companies are incorporated in B.C. according to the provisions of the *Business Corporations Act*. Corporate Registry staff are pleased to provide information and help you to file documents, but cannot give business or legal advice. Remember, there is no substitute for sound, independent and professional advice.

The provincial government, in partnership with business development groups, provides a wealth of information on starting up or expanding a business. For more information, visit the website www.smallbusinessbc.ca. There is also information available on incorporating a company at OneStop service delivery locations, local Chambers of Commerce, stationery stores and on various related websites.

When a company is incorporated, it acquires all of the powers of an individual, as well as an independent existence – separate and distinct from its shareholders – and an unlimited life expectancy. In other words, the act of incorporation gives life to a legal entity known as the corporation, commonly referred to as a “company”. A company can acquire assets, go into debt, enter into contracts, sue or be sued.

The liability of the shareholders of an unlimited liability company incorporated in B.C. differs greatly from the liability of shareholders for a regular limited company. Refer to section 51.3 of the *Business Corporations Act* for information regarding liability of shareholders of unlimited liability companies.

Compared to registering a sole proprietorship or a partnership, incorporating a company includes higher start-up costs related to professional fees for legal and accounting services. Carrying on business as a company will increase the number of filings you are required to make with the Corporate Registry. For instance, the *Business Corporations Act* requires all companies to file an annual report and also to file any changes to the location of the company offices and its directors. The company is also required to maintain certain corporate records.

LIABILITY OF SHAREHOLDERS OF UNLIMITED LIABILITY COMPANIES

Section 51.3 of the *Business Corporations Act*

This section of the Act sets out the extent of unlimited liability company shareholder liability and describes when the liability accrues.

Shareholders of unlimited liability companies are essentially liable for all of the debts and liabilities of the company, but the liability does not crystallize unless and until the company dissolves. Shareholder liability is “joint and several”, which means that one shareholder can be sued and held liable for the entire debts and liabilities of the company.

Section 51.3 of the Act also sets out the rules for the liability of former shareholders of an unlimited liability company. The potential liability of these shareholders only lasts for one year following the date that they ceased to be shareholders of the unlimited liability company.

Lastly, the section sets out the continuing liability of shareholders of unlimited liability companies that “transform” either through amalgamation or by alteration of their notice of articles to become limited companies. Generally, in these cases, the liability of shareholders for the debts of the former unlimited liability companies continues as if there had been no transformation.

To review this section of the Act, go to <https://www.corporateonline.gov.bc.ca/WebHelp/section51.htm>

STEPS TO INCORPORATING AN UNLIMITED LIABILITY COMPANY

To incorporate an unlimited liability company in B.C., one or more persons (called “the incorporators”) may form a company by completing the following steps:

- 1) reserve the company’s name with the Corporate Registry;
- 2) enter into an incorporation agreement;
- 3) establish the company’s articles; and
- 4) file an Incorporation Application with the Corporate Registry.

This information package covers only the four basic steps to incorporating a company and is not intended to be a complete guide.

There are many other steps that must be considered when incorporating, for example setting up minute or records books, establishing a central securities register, issuing share certificates, getting consents from directors, etc.

Again, Corporate Registry staff are pleased to help you file the incorporation application, but cannot provide you with guidance or advice on these other essential steps.

STEP ONE RESERVING THE COMPANY'S NAME

If the company intends to use a specific name, that name must be approved and reserved by the Corporate Registry. This is to ensure the company's name can be distinguished from the names of other incorporated companies and that the name meets specific guidelines established by the registrar of companies.

An unlimited liability company must have the words "Unlimited Liability Company" or the abbreviation "ULC" as part of and at the end of its name. An unlimited liability company must not have the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." as part of and at the end of its name.

Note: Approval of a name by the registrar for the incorporation of a business does not provide a proprietary right or interest in the name. The approval is solely intended to prevent names of incorporated businesses from being so similar as to confuse or mislead the public.

This means another business operating in B.C. or elsewhere, that is not incorporated or registered with the Corporate Registry could use the same or similar name as your business.

If it is important that you protect your name outside B.C. or from any other unregistered or unincorporated business in B.C., then you should contact Industry Canada for information on trademarks. Their website address is www.strategis.ic.gc.ca.

The name reservation is for a period of 56 days. The other steps in the incorporation process must be completed and the Incorporation Application must be electronically filed before the 56 day period ends.

A company can also choose to use as its name, the incorporation number of the company followed by "B.C. Unlimited Liability Company" (example, 123456 B.C. Unlimited Liability Company). If you choose to use the incorporation number as the company's name, you do not need a name approval and reservation. The incorporation number is assigned by the Corporate Registry at the time the Incorporation Application is electronically filed with the Corporate Registry.

The Name Approval Request form attached allows you to make a maximum of three choices of names, in descending order of preference. Please read the Name Approval Request Instructions sheet carefully before making your three choices. The filing fee for this form is \$30.

You can apply for the company's name in the following ways:

OVER THE INTERNET:

If you wish to submit your Name Approval request electronically to the Name Reservation Unit for examination, at the Corporate Registry, phone **1 877 526-1526** for instructions regarding Name Requests Online at www.bcregistrynames.gov.bc.ca. Payment is by credit card. There is online information you can access to help you through the process. The fee to submit online is \$30 and a BC OnLine service fee of \$1.50.

BY SERVICE BC CENTRE:

Visit your local Service BC Centre office. Upon payment of the specified fee, they can provide you with the Name Approval Request form and will submit your request to the Name Reservation Unit for examination, at the Corporate Registry. For a location near you, go to www.servicebc.gov.bc.ca

BY ONESTOP SERVICE DELIVERY LOCATION:

Visit your local OneStop service delivery location. Upon payment of the specified fee, they can provide you with the Name Approval Request form and will submit your request to the Name Reservation Unit for examination, at the Corporate Registry. User fees may apply. For a location near you, go to www.bcbusinessregistry.ca

Note: OneStop service delivery locations are able to assist with some business start-up information. Once your business has been established, the OneStop locations are a great source for business resource materials.

BY BC ONLINE:

If you have a BC OnLine account you can submit your request electronically.

BY MAIL:

Submit your Name Approval Request form, with fee by cheque or money order payable to the Minister of Finance, to the Corporate Registry, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

For information regarding completion of your Name Approval Request form, contact the Corporate Registry at **1 877 526-1526**. Corporate Registry staff **cannot** provide legal or business advice.

STEP TWO ENTER INTO AN INCORPORATION AGREEMENT

Before a company can be formed there must be an incorporation agreement signed by each incorporator. This is required even if there is only one incorporator. Usually the incorporator(s) will also be the shareholder(s) and director(s) once the company is incorporated. The *Business Corporations Act* specifies that this incorporation agreement must contain:

- the agreement of each incorporator to take one or more shares of the company;
- the signature of each incorporator opposite their full name, along with the date each incorporator signed the agreement; and
- the number of shares of each class being taken by each incorporator.

Refer to Appendix A for a sample incorporation agreement.

The incorporation agreement must be kept by the company as part of the company's records.

STEP THREE ESTABLISH THE COMPANY'S ARTICLES

Every company must have a set of articles. The company's articles are the rules that govern the conduct of the company and its shareholders, directors and officers.

For small companies, namely those that have only one shareholder or where the officers are all family members, the standard set of Table 1 Articles prescribed in the Business Corporations Regulation is usually a suitable set of articles.

Refer to Appendix A for a sample of the Table 1 standard set of articles from the Business Corporations Regulation.

Important Information: The Table 1 Articles are meant to be adopted without amending the document. If you want to customize the articles for the company, it is recommended you seek legal advice.

The articles must be kept by the company as part of the company's records.

Note: The Notice of Articles for a B.C. unlimited liability company must contain a statutory description of shareholder liability. The following statement will appear on the Notice of Articles issued by the registrar, and the company must also put this statement on the face of each share certificate issued by it:

The shareholders of this company are jointly and severally liable to satisfy the debts and liabilities of this company to the extent provided in section 51.3 of the Business Corporations Act.

STEP FOUR FILE AN INCORPORATION APPLICATION

The next step in the process of incorporating a company is to file an Incorporation Application with the Corporate Registry.

The Incorporation Application must be submitted electronically over the Internet by visiting Corporate Online at www.corporateonline.gov.bc.ca. The Corporate Online site includes online help information to assist you with completing and filing the online application form. When the filing is completed, the company is incorporated and you will be assigned an incorporation number at that time.

At the end of the electronic filing, you will be asked to set a password for the company that will let you file other forms for the company using Corporate Online. You should also set a password "hint" that can be displayed back to you if you forget your password. It is also recommended you enter an email address. That way if you forget the password, it can be emailed to you. Otherwise, the only way to retrieve the password for the company is to have it mailed to the company's registered office mailing address.

It is recommended that you complete the paper version of the Incorporation Application first and use it for reference when you electronically file the Incorporation Application. Refer to Appendix B for the form and instructions on completing the paper version of the Incorporation Application.

If you are not able to file electronically, you may prepare the forms on paper and, once the forms are completed, contact a law firm or registry agent to submit the forms on your behalf. The law firm or registry agent will charge you a service fee, in addition to the Corporate Registry's fees for filing the form. BC Registry Services' Preferred Service Provider is Dye & Durham, which can be contacted at **1 800 665-6211** or at their website.

The mailing address for Dye & Durham is:

Dye & Durham
734 Broughton Street
Victoria BC V8W 1E1

For more information call toll free at 1 800 665-6211 or visit their website at www.dyedurhambc.com

STEP FIVE REVIEW AND KEEP THE INCORPORATION DOCUMENTS

After you have filed the Incorporation Application electronically and the company is incorporated, the Corporate Registry will send you the original Certificate of Incorporation, a certified copy of the Incorporation Application and a certified copy of the Notice of Articles.

These documents must be kept by the company as part of the company's records.

An incorporation number for the company is displayed in the upper right hand corner of the Certificate of Incorporation and on the cover sheet accompanying the documents. You will need the incorporation number of the company when filing other documents with the Corporate Registry. You will also be prompted for the company password when filing any changes to the company on Corporate Online.

The cover sheet also includes the **Business Number** issued by Canada Revenue Agency. This is a nine-digit number followed by a six-digit number. It is the first nine digits that are important to other agencies, you may be asked for this number if dealing with Ministry of Finance for PST, WorkSafeBC or applying for a GST number or other accounts at Canada Revenue Agency.

FEES

The fee to incorporate an unlimited liability company by filing an Incorporation Application using Corporate Online is \$1,000.00 and a BC OnLine service fee of \$1.50. You will need a valid credit card and you will be asked to enter the credit card information at the end of the transaction.

For information regarding fees and procedure for BC Registry Services' Preferred Service Provider Dye & Durham to file on your behalf, go to their website at www.dyedurhambc.com or call **1 800 665-6211**. You should contact Dye & Durham to confirm the total fees required, before sending your documents for filing.

ADDITIONAL INFORMATION

For information regarding completion of your documentation, contact the Corporate Registry at **1 877 526-1526**. Corporate Registry staff cannot provide legal or business advice.

NAME APPROVAL REQUEST INSTRUCTIONS

IMPORTANT – READ CAREFULLY

RESEARCH YOUR CHOICES!

The Names Examiner searches the Corporate Register only. This register includes the names of corporations incorporated or registered extraprovincially in British Columbia. It does not include names of British Columbia firms, trademarks or corporations registered outside British Columbia. If you want to ensure your name is not used outside of British Columbia, you could also access the Trademarks database at www.strategis.ic.gc.ca, or you may wish to search other jurisdictions in Canada. Most public business and trademark registers in Canada are reflected in the NUANS database, which may be searched for a fee through private search firms.

The approval of any name is at the discretion of the Registrar. You are paying for three choices. **Do not commit to any name before it is approved.** Provide three choices for each company you wish to name, in descending order of preference. Check them out for potential conflicts through telephone listings, business directories and other publications.

Occasionally this office will reject all three of your choices. If that happens, it will be necessary for you to complete another Name Approval form with three more choices and submit it to this office with another reservation fee.

GENERAL

This form is used for the approval of all corporate and business names in British Columbia.

The first step in incorporation (company, society, cooperative association, financial institution) or registration of firms (partnership, proprietorship) or extraprovincial companies, is the approval of the name through the Name Reservation Section of the Corporate Registry.

Once your name is approved, it is reserved for you for a period of 56 calendar days. Any renewals of the reservation period will require payment of another reservation fee.

If you need assistance call our help telephone number **1 877 526-1526**.

Once your name is reserved, the next step is to submit the necessary information to incorporate a company or society, register a proprietorship, partnership or limited partnership or register a foreign entity as an extraprovincial company.

Please go to the Corporate Registry's website for information on how to incorporate or register, as well as information on other services provided by the Corporate Registry.

The website address is: www.bcregistryservices.gov.bc.ca

Approval of a name by the Registrar for either a corporation or a firm does not provide a proprietary right or interest in the name under any circumstances. It is intended solely to protect the public interest by:

- preventing names of corporations which are so similar as to confuse or mislead; and
- providing a record which allows the public to determine which individuals are associated with a corporation or firm name.

A corporation or a firm name may be registered under the same name as another firm. As a result there are many duplications of firms names, however, a firm or a corporation name will **not** be accepted if it can be confused with another corporate name.

FIRM NAMES (partnership, proprietorship, limited partnerships, limited liability partnership)

Registration of a firm does not provide any protection for that name and does not mean that the name will be available if you decide to incorporate a company using this name.

Fees

The payment of fees in advance is a mandatory requirement of doing all business with the Corporate Registry office. The fee to submit a Name Request to the Corporate Registry by mail is \$30.00

Applicants are urged to consult the current Fee Schedule. Payment of the wrong amount is a common cause for the rejection of name requests. Cheques and money orders are to be made payable to the Minister of Finance.

PRIORITY SERVICE

Names are processed in the order of time of receipt. Upon request and on payment of an additional fee, an application will be processed in priority to others, normally within 24 hours of receipt.

PROCESS

This form allows you to make a maximum of three choices, in order of preference, for each name approval. If you wish to have more than one name approved, you must complete an additional form and pay another fee. Your first choice for a name may be approved, if available, and held for a period of 56 calendar days. Any renewals of the reservation period will require payment of another reservation fee. **Your 2nd and 3rd choices are not examined unless the initial choice of name is not available.** Regardless of whether your three choices are all examined or not, the full fee is charged.

A name approval request may be made on this form, or in writing with the same information as is required on this form.

You can apply for your name in the following ways:

OVER THE INTERNET: Go to Name Requests Online at www.bcregistrynames.gov.bc.ca to submit your Name Approval Request electronically, for examination by the Name Reservation Unit at the Corporate Registry. Payment is by credit card. There is online information you can access to help you through the process. The fee to submit online is \$30 and a BC OnLine service fee of \$1.50.

BY SERVICE BC CENTRE: Visit any Service BC Centre who will transmit the request to the Registrar. For locations go to www.servicebc.gov.bc.ca.

BY ONESTOP SERVICE DELIVERY LOCATION: Visit your local OneStop service delivery location. They will transmit the request to the Registries. User fees may apply. For locations go to www.bcbusinessregistry.ca.

BY MAIL: Names Reservation Section, Corporate Registry
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3

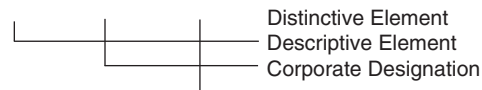
You can also apply for your name by visiting the Names Unit located on the 2nd Floor, Suite 200, 940 Blanshard Street, Victoria, BC V8W 3E6.

Results will be confirmed in the same manner as the application was made.

NAME COMPONENTS

In assessing names, the Registrar's staff analyze them according to their constituent components. The form of name acceptable in principle consists of a distinctive element, followed by a descriptive element and ending with a corporate designation (if applicable).

e.g. ABC Manufacturing Ltd.



DISTINCTIVE ELEMENT

The distinctive element serves to differentiate names having identical or similar descriptive elements, and for that reason, is the **most important** element to be examined in the name.

Names such as "Tire Shop Ltd." and "Shoe Store Ltd." lack an appropriate distinctive element and would be rejected for that reason.

They would be acceptable, if prefixed with an additional distinctive element (e.g. coined word, geographical location or personal name) that would distinguish them from all the other tire shops and shoe stores.

e.g. **Vancouver** Tire Shop Ltd. **Sandell's** Shoe Store Ltd.

Coined and made-up words are acceptable distinctive elements, provided they do not conflict with others already registered.

e.g. **Intertex** Enterprises Ltd. **Fabuform** Diet Centre Ltd.

A uniquely coined word, used in addition to a geographical location (e.g. Altrex Canada Ltd.), is normally considered sufficiently distinctive by itself that a descriptive element is not usually required.

DESCRIPTIVE ELEMENT

The descriptive element is useful in describing the nature of the business as well as expanding the options available. It allows for use of identical or similar distinctive elements, which might be desirable in developing a particular presence in the marketplace.

e.g. Victoria **Brake Shop** Ltd. Victoria **Stationery** Ltd.

CORPORATE DESIGNATION

Incorporating companies **must have as the last word in the name**, the corporate designation, "Limited", "Limitee", "Incorporated", "Incorporee" or "Corporation".

For all purposes, using the abbreviations of these words (e.g. "Ltd.", "Ltee.", "Inc." or "Corp.") is acceptable.

Extrajurisdictional companies may have "Limited Liability Company" or "LLC." as the last word in their name.

The corporate designation is **not** applicable to a firm name, society or cooperative name.

Firm names for partnerships and proprietorships **cannot** use "Ltd.", "Inc." or "Corp." in their names, but they may use "Company" or "Co."

Firm names for limited partnerships **must** use "Limited Partnership" at the end of the name.

Firm names for limited liability partnerships **must** use "Limited Liability Partnership" or "LLP." at the end of the name.

Societies should have the designation "Society" or "Association" as the last word in their name. Companies are precluded from the use of these words in their names.

Cooperatives should use the word "Cooperative" in their name and may also use "Association", "Society", "Union" and "Exchange".

SINGLE WORD NAMES

Single word names (such as International Limited) are normally not sufficiently distinct from other names containing the same word and generally will not be approved.

An exception may be allowed if the proposed, single-word name contains a coined word that has been trademarked and evidence of the trademark is presented with the name request. Each case will be determined on its merits.

Obvious contractions of common words (e.g. Petrochem, being a contraction of petroleum and chemical) are not considered to be coined words for the purposes of single-word names.

NUMBER NAMES

Numerals may be used in company names as the distinctive element. A year may be used in a name provided that it is the year of incorporation, amalgamation, change of name, or registration.

e.g. 123456 Enterprises Ltd. Pacific Enterprises (1997) Ltd.

The incorporation number may be used as the name of a British Columbia company. The accepted format is "345678 B.C. Ltd."

A name reservation or fee is not required for B.C. companies using just their incorporation number. The name will be given according to the next available number at the time of incorporation.

Numbered companies from other jurisdictions, continuing into British Columbia and wishing to retain their numbered names, will be required to conform with the name requirements of this province.

PERSONAL NAMES

In most cases, a natural person's full name will be considered to be sufficiently distinctive and therefore acceptable.

e.g. Bill Brown Ltd. John Smith Inc.

Two surnames, or initials with a surname, are normally accepted.

e.g. Brown, Green Inc. J.R. Black Corp.

WELL KNOWN NAMES

Names, which include well known trade names and trademarks, will not be allowed without the advance written consent of the holder.

e.g. Exxon, Xerox, Coke

EXTRAJURISDICTIONAL NAMES

Special consideration will be given to established extrajurisdictional companies applying for registration in the province, provided there is not a direct conflict in names.

SPECIAL CHARACTERS

The use of special characters (such as % or *) should be avoided in corporate and business names.

Some special characters may not be recognized by computer, will not print accurately and may not be allowed.

The "ç" symbol will not be approved in a name under any circumstances.

NO SUGGESTION OF GOVERNMENT CONNECTION

The word "government" (in either its English or French form) will not be allowed. Other words which might imply connection with, or endorsement by, any government require written consent of that government. Examples of other words which imply government connection are "ministry", "bureau", "secretariat", "commission" and "certified".

The use of "British Columbia" or "BC" as the distinctive element in any name is considered to imply connection with the Government of the Province of British Columbia. Use will be accepted only on the written consent of that government, usually obtained from the Protocol Office, Intergovernmental Relations Secretariat, after the name has been approved by the Registrar.

Use of the words "British Columbia" and "BC" will be accepted without consent, if they are placed at the end of a name and before the corporate designation.

e.g. Pacific Warehouse Storage BC Ltd.

NO SUGGESTION OF CONNECTION WITH CROWN OR ROYAL FAMILY

A name which suggests or implies a connection with the Crown, any living member of the Royal family, or endorsement by the Crown or Royal family will not be accepted without the written consent from the appropriate authority after the name has been approved by the Registrar.

e.g. Prince Charles Tea Room Ltd.

This does not apply to references in a name to geographical locations such as Prince George, Prince Rupert and references to New Westminster as the Royal City.

The use of the words "Crown" or "Royal" in combination with another word(s) that does not imply connection with the Crown or Royal family may be allowed.

e.g. Triple Crown Painting Ltd. Royal Star Holdings Ltd.

OBJECTIONABLE NAMES

Names that are considered to be objectionable on public grounds will not be accepted.

A name will not be approved if it includes a vulgar expression, obscene word or connotation, racial, physical or sexual slur.

The use of names of public figures will not be accepted without the advance written consent of the person named.

GUIDELINES

This abbreviated information is provided for convenience only. Corporate and business law is complicated, and there can be no substitute for sound professional advice. The Corporate Registry cannot accept responsibility for any errors or omissions in this information.

HELP IS AVAILABLE

For assistance or further information, please call 1 877 526-1526.



NAME REQUEST

NAME APPROVAL NUMBER NR

Important: Use this number on all documents and in the electronic submission of documents.

Telephone: 1 877 526-1526 www.bcregistryservices.gov.bc.ca

Mailing Address: PO Box 9431 Stn Prov Govt Victoria BC V8W 9V3

Location: 200 - 940 Blanshard Street Victoria BC V8W 3E6

INSTRUCTIONS:

- Please retain a copy for your records. If the request is mailed, the Name Reservation section will notify you by letter or email once your request is completed. Please type or print clearly. SHADED AREAS ARE FOR OFFICE USE ONLY.

Freedom of Information and Protection of Privacy Act (FOIPPA): Personal information provided on this form is collected, used and disclosed under the authority of the FOIPPA and the Business Corporations Act, Cooperative Association Act, Partnership Act or Society Act for the purposes of assessment. Questions regarding the collection, use and disclosure of personal information can be directed to the Executive Coordinator of the BC Registry Services at 1 877 526-1526, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

PRIORITY REQUEST - Additional fee required
YES - This is a priority request and I have enclosed an additional fee for this service.
ROUTING SLIP NO. DEBIT BCOL ACCOUNT NO.
FOLIO NO. DEPOSIT ACCOUNT TRANSACTION NO.
GOVT. AGENT TRANSACTION DATE DATE RECEIVED
GOVT. AGENT TRANSACTION NO. GOVT. AGENT AMOUNT COLLECTED

APPLICANT SURNAME FIRST NAME AND INITIALS

ADDRESS

CITY PROVINCE POSTAL CODE

APPLICANT PHONE NO. COMPLETE THIS SECTION FOR RESULTS BY EMAIL CONTACT PERSON NAME
EMAIL ADDRESS

Indicate what the name request is for: (In order for this request to be completed, one box must be ticked)
CORPORATION (INCLUDES A FOREIGN CORPORATION) PROPRIETORSHIP/PARTNERSHIP SOCIETY FINANCIAL INSTITUTION COOPERATIVE ASSOCIATION

Is this request for a foreign corporation incorporated in another province or country? IF YES, ENTER THE JURISDICTION NATURE OF BUSINESS

ADDITIONAL INFORMATION

Name Request (first choice) PLEASE TYPE OR PRINT CLEARLY

Name Request (second choice) PLEASE TYPE OR PRINT CLEARLY

Name Request (third choice) PLEASE TYPE OR PRINT CLEARLY