

Incorporating an Unlimited Liability Company

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 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.

STEPS TO INCORPORATING A COMPANY

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

1. Request name approval and reservation;
2. Establish your company's articles;
3. Prepare an incorporation agreement;
4. File an Incorporation Application; and
5. Keep documents as part of your company's records.

This information package covers only the five 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 1: REQUEST NAME APPROVAL AND RESERVATION

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.

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 to 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.

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 abbreviation "Ltd.", "Ltée", "Inc." or "Corp." as part of and at the end of its name.

A company can also choose to use as its name, the incorporation number of the company followed by "B.C. Unlimited Liability Company" ("0123456 B.C. Unlimited Liability Company" for example). 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 \$30.00.

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

ONLINE OPTIONS:

- Submit your Name Approval Request electronically through 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 \$30.00 and a BC OnLine service fee of \$1.50.
- If you have a BC OnLine account you can submit your request electronically at www.bconline.gov.bc.ca.

IN-PERSON OPTIONS:

- Visit your local Service BC Centre. Once you've paid the fee, they will submit your request to the Corporate Registry. For a location near you, go to www.servicebc.gov.bc.ca.

MAILING OPTIONS

- Mail your Name Approval Request form along with a cheque or money order for \$30.00 payable to the Minister of Finance, to:

Corporate Registry
PO Box 9431 Stn Prov Govt
Victoria BC V8W 9V3.

For information regarding completing your Name Approval Request form, contact the Corporate Registry at 1 877 526-1526.

Corporate Registry staff cannot provide legal or business advice.

STEP 2: ESTABLISH YOUR 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.

A sample of the Table 1 standard set of articles from the Business Corporations Regulation is attached.



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.



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 3: PREPARE 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.

A sample incorporation agreement is attached.

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

STEP 4: FILE AN INCORPORATION APPLICATION

The next step in the process of incorporating company is to file an Unlimited Liability Company 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. A copy of this form is attached.

If you are not able to file electronically, you may prepare the forms on paper and, once the forms are completed, visit bcregistry.gov.bc.ca/filing for your service options. Please note that Service BC does not provide legal or financial advice.

STEP 5: KEEP DOCUMENTS AS PART OF YOUR COMPANY'S RECORDS

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 government agencies, you may be asked for this number if dealing with the Ministry of Finance for PST, WorkSafeBC or applying for a GST number or other accounts at Canada Revenue Agency.

FEES

The fee to incorporate a 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.

If you are filing with paper forms, visit bcregistry.gov.bc.ca/filing for your service options. Please note that lawyers and registry agents may charge additional fees.

STILL HAVE QUESTIONS?

For more information about completing your filings and documentation, contact the Corporate Registry at 1 877 526-1526.

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