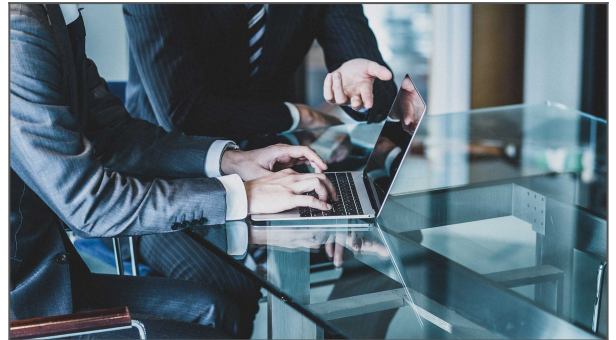


Maintaining Your Manitoba Corporation

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Did you know that your corporation is required to complete certain annual resolutions and filings every year? This article provides an overview of how to maintain a corporation incorporated under *The Corporations Act* (Manitoba) (the “Act”). Most other jurisdictions in Canada, including those incorporated federally under the *Canada Business Corporations Act*, have the same or similar requirements.



Annual Resolutions

The Act requires that the directors of the corporation call an annual meeting of the shareholders not later than 18 months after the corporation comes into existence, and subsequently not later than 15 months after holding each preceding annual meeting.

If the directors and shareholders of the corporation prefer to dispense with a meeting, they have the option to pass written resolutions provided that the directors’ resolutions are signed by all of the directors of the corporation and the shareholders’ resolutions are signed by all of the shareholders of the corporation. If a shareholder or director is not willing or able to sign a resolution, then a meeting is required.

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Financial Statements

As part of the annual resolutions, the directors of the corporation must approve the financial statements and the financial statements must be executed by one or more directors.

Section 152(1) of the Act provides that the directors of a corporation shall approve the financial statements and the approval shall be evidenced by the signature of one or more directors.

Once approved, section 149(1) of the Act provides that the directors of a corporation shall place before the shareholders at every annual meeting:

- comparative financial statements as prescribed relating separately to

- the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and
- the immediately preceding financial year;
- the report of the auditor, if any; and
- any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

Election of Directors

As part of the annual resolutions, the shareholders of the corporation are responsible for electing the directors of the corporation for the ensuing year.

Section 101(2) of the Act provides that the shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election.

Appointment of Officers

While the shareholders are tasked with the responsibility of electing the directors of the corporation, the directors of the corporation are responsible for appointing the officers of the corporation.

Section 116 of the Act provides that subject to the articles and by-laws, and any unanimous shareholder agreement

- the directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation;
- a director may be appointed to any office of the corporation; and
- two or more offices of the corporation may be held by the same person.

Appointment of Auditor or Accountant

The shareholders of a corporation will either appoint an accountant or appoint an auditor for the ensuing year. Many private corporations choose not to have their financial statements audited and will instead have them prepared by the corporation's accountant. In order for the corporation to dispense with audited financial statements, all of the shareholders of the corporation must consent to not appointing an auditor.

Section 156(1) of the Act provides that subject to section 157, the shareholders of a corporation shall by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next

annual meeting.

Section 157(1) of the Act provides that the shareholders of a corporation that is not required to comply with section 154 (i.e. a public corporation), may resolve not to appoint an auditor.

Annual Returns

In addition to the foregoing requirements, all Manitoba corporations are required to file an annual return with the Manitoba Companies Office.

The purpose of the annual return is to update the corporation's records and to keep the corporation active and in good standing. The corporation's annual return will include the following information for the corporation:

- mailing address
- main type of business of the corporation
- registered office
- directors
- officers
- shareholders
- attorney for service (only required for Manitoba corporations that do not have a resident director)

A corporation must file its annual return as of the last day of the anniversary month of its incorporation or amalgamation. For example, a corporation incorporated on January 1, 2021 will file its annual return no later than January 31 in each year. The annual return must be filed by the prescribed date and must be accompanied by the Manitoba Companies Office filing fee.

This article is not intended to be an exhaustive review of the annual requirements for maintaining a Manitoba corporation. There are other legal and tax matters that need to be taken into consideration. If you need assistance with any of these matters, please **contact TDS** and ask to speak to one of our corporate and commercial lawyers.

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