

The Basics of Incorporating a Business

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Many Manitobans create a corporation to conduct their business. This applies to those who are starting a new business and those who are already conducting business and decide to change the legal structure of their enterprise. At law a corporation has the same powers and rights as a living person. A corporation can provide a great deal of advantages in carrying on a business, both large and small.



To create a new corporation, it is necessary to file Articles of Incorporation with the Companies Office. To do that critically important decisions must be made that include determining the name of the corporation, establishing the first directors of the corporation, and specifying any restrictions on the corporation's business activities and the transfer of shares. This is just to name a few of the considerations required when filing Articles of Incorporation. The Articles of Incorporation will create the corporation. What happens to your corporation from the point the Articles are approved by the Companies Office is up to the incorporators.

The name of the corporation may either be an eight-digit number followed by the word "Manitoba" or a name selected by the individual submitting the Articles of Incorporation. All names must have a corporate designator at the end of the name, such as "Ltd." or "Inc.". Prior to using a proposed name, the Companies Office must approve the name. There are certain limitations on the selection of a business name. The proposed name must not be objectionable or likely to mislead the public.

Another important aspect of the Articles of Incorporation includes the classes and maximum number of shares that can be issued. As shares represent the ownership of the corporation, it is important that the available share structure for the corporation is set up to provide flexibility. All corporations must have shares with the right to vote, the right to receive dividends, and the right to receive property upon the dissolution of the corporation. The choices to be made at the time of incorporation include identifying the number of classes of shares that will be needed and describing the share rights that will apply to each class.

The establishment of a corporation does not end with the filing of Articles of Incorporation. The first directors must issue the initial shares after receiving a subscription for those shares

by the shareholders. The directors and shareholders then work together to create the organizational resolutions for the corporation and to prepare and adopt corporate by-laws. These documents (Articles of Incorporation, organizational resolutions, by-laws) form the basic legal structure for a corporation.

There are three main roles in a corporation: directors, officers, and shareholders. It is possible for one person to act in all three roles. It is also possible for a number of people to fill these roles. Their roles can be described very basically as follows:

1. Shareholders are the owners of the corporation.
2. Directors set the policies for the corporation and make the overarching management decisions. Directors are elected by the shareholders of the corporation.
3. Officers carry out the day-to-day functions of the corporations and are elected by the directors of the corporation. Officer positions include President, Vice-President, Secretary, Treasurer.

An important consideration in incorporating a business is setting the fiscal year-end. When incorporated, a year-end for the corporation may be selected other than 31 December, which is the fiscal year-end for all individuals. The fiscal year-end will be an important date for the filing of the corporation's annual tax return and the holding of an Annual General Meeting or the preparation of Annual Resolutions. Just as an individual must file an annual income tax return, a corporation is required to file an annual tax return as well.

Once the corporation is created, the business will be conducted in the name of the corporation. This includes buying assets, entering into contracts, and advertising the business. The corporation will need its own bank account(s) and once authorized by the directors, the corporation may pledge its credit and incur loans in the corporate name.

Although a corporation has the rights of a person, it is not a living person. It is for that reason that proper record keeping and documentation is of the utmost importance when conducting a business through a corporation. One example of the importance of proper record keeping can be found in the taxation of the corporation. The corporation can potentially be entitled to a small business rate of taxation. This preferential tax treatment is one reason for incorporating a business. However, if the corporation is audited and Canada Revenue Agency determines that the corporate records were not adequately maintained, the business may be denied preferential tax treatment and be subject to interest charges and penalties.

Creating a corporation is usually seen as a long-term plan. In addition to the tax benefits that may be received on a yearly basis, there is also the potential of utilizing a capital gains exemption if a shareholder decides to sell their shares to an arm's length third-party purchaser. If a succession plan involves bringing in children or non-family partners to take over, dividing shares is much simpler than selling assets of an unincorporated business. Another potential advantage is that farm corporations have the potential to bring children in as shareholders on a tax-deferred basis.

Like any business investment, there will be initial costs to create a corporate structure for your business. It is important that if you choose to go this route that you receive sound legal and business advice to assist you. The lawyers at Christianson TDS would be happy to speak with you and answer any questions that you may have about incorporating your business.

Mason is a lawyer in our Portage la Prairie (204-857-7851) and Neepawa (204-704-4000) offices. Although Mason has a particular interest in corporate and commercial matters and assisting local businesses in managing their legal affairs, he maintains a broad practice and is able to serve clients in many different aspects of the law. Additional practice areas include municipal law, real estate transactions, wills, estates, and succession planning. Mason also looks after the Christianson TDS branch office in MacGregor. Mason's email address is **MKJB@tdslaw.com**.

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