



INCORPORATION 101

Part II: How to Incorporate your Business

by Courtney N. Wowryk

Last week, in Part I of our three part series on corporate law, we examined the basic concept of the corporation. This week in Part II we're looking at the process of incorporating, and defining some important terms everyone interested in incorporating should know.

Incorporating is a relatively simple process. The first step is deciding whether to incorporate federally or provincially. A federally incorporated company can legally carry on business across Canada, as long as it has registered in each province and territory in which it does business. Provincially incorporated companies on the other hand are legally entitled to operate within their home provinces. If a Provincially incorporated company decides to operate in more than one province or territory however, its Directors have two options. The first is to register the corporation to carry on business in the other Province or territory while remaining a provincial corporation. The second option is to become a federal corporation.

Step two of incorporating is

registering a name. In Manitoba name registration can be done online at the Manitoba Corporation's Website for a \$40 fee. All Corporate names must include either "Limited", "Incorporated" or "Corporation" or one of their respective abbreviations, so that individuals and businesses know they are dealing with a limited liability entity.

Proposed names are subject to approval by the Corporations Branch, and must be distinctive in nature and effectively identify the type of business the corporation will conduct. Also, the name cannot mislead the public as to the corporation's purpose, nature, organization and affiliation with other businesses, and cannot be so similar to existing corporations or trademarks that it is likely to create confusion. To avoid the registration process altogether and thereby save both time and money, companies can simply operate using a number, which is assigned by the Companies Office.

The third step is to file the Articles of Incorporation with the Companies Office. For

Provincial corporations this form is found on the Manitoba Corporation's Website in two different styles – one for corporations with shares and one for non-share corporations (non-share corporations are non-profit or community based corporations). The Articles of Incorporation are essentially the Corporation's birth certificate, and set out basic information about the company, including its name (if applicable) and address of the Registered Office. The Registered Office is where all important documents will be maintained, and where all documents will be sent from the government. Company's often list their lawyer's office as the Registered Office to avoid losing these important documents and to avoid missing any filing dates. Other information included in the Articles is the number of Directors (those individuals who oversee the management of company), and the names and addresses of the First Directors and the Incorporators. For corporations with shares the Articles must also state the classes of shares and the rights attached to them, and any

restrictions on the transfer of those shares. For non-share corporations the Articles must set out the corporation's purpose, and state what will happen to the corporation's remaining property upon dissolution.

Once completed, the Articles are sent to the Companies Office, along with the incorporation fee. For corporations with shares the fee is \$300, while non-share corporations pay \$100. If all goes well and the Article aren't rejected for any reason, you can expect a filed copy of the Articles to return within three weeks to one month, at which time you can begin operating as a corporation. If don't have time to wait however, law firms often have shelf companies on hand with which you can immediately begin operating.

For a more in depth discussion of how incorporating will affect you and your business, be sure to contact your lawyer and accountant. To learn about avoiding problems with the Canada Revenue Agency and maintaining limited liability, please read next week's Legal Briefs.