Ontario Business Incorporation

Articles of Incorporation, Form 1 under the Ontario *Business Corporations Act* (OBCA) must be completed and filed to incorporate a business corporation in Ontario.

METHODS OF INCORPORATION

There are three service delivery choices available to clients who wish to incorporate a business corporation in Ontario:

1. File Articles of Incorporation electronically via the Internet through one of the Service Providers under contract with the Ministry of Government and Consumer Services.
2. For over-the-counter service, articles may be filed in person at the Toronto office or at **London ServiceOntario Centre**, 100 Dundas Street, Tel: 1 800 267-8097.
3. Submit Articles of Incorporation by mail to the Companies and Personal Property Security Branch, 393 University Ave., Suite 200, Toronto ON M5G 2M2.

ELECTRONIC INCORPORATION

Electronic filing of Articles of Incorporation, OBCA Form 1, is available through Service Providers under contract with the Ministry of Government and Consumer Services. The Ministry's fee to file Articles of Incorporation electronically is $300. The Service Providers charge an additional fee for the immediate online service they provide.

- **Cyberbahn** http://www.cyberbahn.ca, 1-800-806-0003 or
- **OnCorp Direct Inc**. at http://www.oncorp.com, 1-800-461-7772

INCORPORATION IN PERSON OR BY MAIL

To incorporate a business corporation in Ontario, the following documentation must be submitted:

1. **Articles of Incorporation** (Form 1 approved by the Minister under the Regulations to the *Business Corporations Act*), completed in duplicate and bearing original signatures on both copies.
2. **Ontario-biased NUANS** (for a proposed name). NUANS is a computerized search system that compares a proposed corporate name or trade-mark with databases of existing corporate bodies and trade-marks. This comparison determines the similarity that exists between the proposed name or mark and existing names in the database, and produces a listing of names that are found to be most similar. A NUANS search is not required if incorporating a number company.
3. **Fee** of $360. Make cheque payable to the Minister of Finance.
4. **Covering letter** giving a contact name, return address and telephone number. If a future date of incorporation (up to 30 days ahead) is required it must be set out in the covering letter.
5. **Other support documents**, if required (e.g. legal opinion). Please note: Consent to Act as First Director is no longer required to be filed with the Branch but it must be kept at the corporation's registered office.

FORMS

Articles of Incorporation, Form 1, and Consent to Act as First Director, Form 2 are available on the ServiceOntario website at www.ServiceOntario.ca. The forms may also be purchased from most legal stationers or name search houses. Legal stationers and name search houses are listed in the Yellow Pages under "Legal Forms" and "Searchers of Records" respectively.

NAME SEARCH

Unless the corporation will have a number name, an original Ontario-biased NUANS name search report must be obtained from a private name search company and be submitted with the Articles of Incorporation. The NUANS report cannot be dated more than 90 days prior to the submission of the articles. For example, articles submitted on November 28th could be accompanied by a NUANS name search report dated as early as August 30th, but not dated earlier. The Companies and Personal Property Security Branch does not provide this search.

Suppliers are listed in the Yellow Pages under the heading "Searchers of Records" or visit Industry Canada's NUANS site at, www.nuans.com for a list of registered search houses that can assist you with obtaining a NUANS search report and filing your corporate documents with the Ministry of Government and Consumer Services.

GENERAL INFORMATION

Please be advised that the Branch CANNOT GIVE LEGAL ADVICE. This information is intended as a general guide only. For further assistance or legal information, please consult private legal counsel.

If you need a lawyer, you may wish to contact the Lawyer Referral Service of the Law Society of Upper Canada. You will be referred to a lawyer for up to a half-hour free legal consultation, either in person or over the phone. Please note that this is a toll service and phoning the Lawyer Referral Service line will automatically generate a $6.00 charge on your phone bill, in the month following your call. You must be 18 years of age to access this service. The number is 1-900-565-4577 (1-900-565-4LRS).

Please refer to the ***Business Corporations Act*** for details governing business corporations in Ontario. The *Business Corporations Act* is available on the Internet at www.e-laws.gov.on.ca or can be purchased through Publications Ontario at (416) 326-5300 or toll-free at 1-800-668-9938. The website for Publications Ontario is www.publications.gov.on.ca.

CORPORATION NAME

It is the responsibility of the incorporators to ensure the name for an Ontario business corporation complies with the *Business Corporations Act* and its Regulations.

Legal Element

The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the corresponding abbreviations "Ltd.", "Ltée", "Inc." or "Corp." shall be part of the name of every corporation, but a corporation may be legally designated by either the full or the abbreviated form (S.10 (1)).

Number Company

If an applicant wishes to incorporate with a number name, a name search is not required. The Companies and Personal Property Security Branch will assign a number. When completing the forms leave 9 empty boxes (for the number) and then the word "ONTARIO" followed by a legal element (see above).

Other Business Names

A corporation may carry on its business activities under a name other than its corporate name, provided that the name is registered under the Business Names Act. For more information about registering the operating name see the "Registering Your Business Name in Ontario" information sheet at www.serviceontario.ca.

DIRECTORS

The directors shall manage or supervise the management of the business and affairs of the corporation. The board of directors of a corporation must consist of at least one individual, and in the case of an offering corporation, not fewer than three individuals (S.115 (2)).

The Articles of Incorporation may set out a fixed number of directors or a minimum and maximum number of directors (floating board), but each director must be at least 18 years of age (S.118 (1)).

At least 25 per cent of the directors must be resident Canadians (if 25% of the directors is not a whole number round up to the nearest whole number). Where a corporation has less than four directors, at least one must be a resident Canadian (S. 118(3))

Directors' Liability
Please refer to Sections 130 and 131 of the *Business Corporations Act* for details on directors' liability and Sections 136 and 138 for information on indemnification of directors and insider liability.

Directors of a corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages and up to 12 months' vacation pay (S.131).

Every director must act honestly and in good faith with the best interests of the corporation in mind when exercising powers and discharging duties (S134(1)).

Every director and officer of an Ontario business corporation must comply with the *Business Corporations Act*, the Regulations to the *Business Corporations Act*, the Articles and bylaws of the corporation and any unanimous shareholder agreement (S.134(2)).

Other Potential Liability
There may also be potential liability under Federal and other provincial statutes (e.g. Income Tax Act, Employment Standards Act and environmental statutes). If you have any questions about your potential liability as a director or officer, please contact your lawyer.

SHAREHOLDERS
Please note that all business corporations must be authorized to issue shares. Therefore, Article 6, "The classes and any maximum number of shares that the corporation is authorized to issue," of the Articles of Incorporation form must be completed (e.g. "unlimited common shares").

EFFECTIVE DATE
When Articles are filed with the Companies and Personal Property Security Branch they are endorsed with a certificate and are effective on the date set out in the certificate. Articles cannot be endorsed until all requirements under the *Business Corporations Act* have been met under the policy of Endorsement as of Right.

An effective date of up to 30 days later than the earliest date the Articles can be endorsed may be requested **in writing on a cover letter using bold or highlighted letters**, upon submission of the Articles to the Branch. If you are presenting your Articles in person and require a future effective date, **you must verbally bring this request to the attention of the counter clerk who endorses your Articles**.

ONTARIO CORPORATION NUMBER (OCN)
Upon incorporation, the Branch assigns every corporation a number, which is unique to that corporation. It cannot be transferred to another corporation, nor can a corporation ever change its corporation number. When corporations amalgamate, the amalgamated corporation is assigned a new number.

CORRECTIONS TO DOCUMENTS
Any changes or corrections made to documents prior to submission to the Companies and Personal Property Security Branch may be crossed out and/or added bearing the initials of the appropriate officer of the corporation authorized to make changes. However, no visible corrections are permitted on page 1 of the Articles. Liquid paper corrections are not acceptable; however, corrected pages can be photocopied as long as they bear original signatures. Documents must be clearly legible at all times.

PROFESSIONAL CORPORATIONS
The proclamation of the professional incorporation provisions allowing a number of regulated professionals to incorporate their practices in Ontario occurred on November 1, 2001.
The *Business Corporations Act* allows a number of regulated professionals to incorporate their practices. The following professions are eligible to operate a professional corporation:

- Chartered accountants
- Certified general accountants
- Lawyers
- Health professionals regulated under the Regulated Health Professions Act
- Social workers and social service workers
- Veterinarians

Although framework legislation is in effect, the ability to practice by means of a professional corporation will depend on whether the profession in question has had the necessary regulations and by-laws enacted. It is important that regulated professionals who wish to incorporate their practices consult with their governing body for conditions of incorporation specific to their profession and timing of implementation.

Regulated professionals who wish to incorporate their practices have the same service delivery options listed above and must also meet the requirements outlined above. Professionals should contact their governing body for conditions of incorporation specific to their profession.

Under subsection 3.2(2.1) of the *Business Corporations Act* a professional corporation that has a name that includes the words "société professionnelle" is not required to include any additional legal element under subsection 10(1) of the *Business Corporations Act*.

Ontario Regulation 665/05 under the Ontario *Business Corporations Act* (OBCA) relating to health profession corporations came into force on January 1, 2006 along with the amendments to the *Business Corporations Act* contained in Bill 197, Budget Measures Act, 2005.

This regulation allows family members to become non-voting shareholders of a dentist or physician corporation. A "family member" is a spouse, child or parent of a voting shareholder who is a member of the profession. Non-voting shares may be held in trust for a minor child who is a family member. Persons who wish to acquire shares in these types of corporations should seek legal and/or financial advice from a lawyer or an accountant to determine whether they qualify under the new regulation.

For further information about professional corporations, please view the Information Bulletin available on the ServiceOntario website at **www.ServiceOntario.ca.**

- Registering your Business Name in Ontario
- Offices That Endorse Articles Submitted Under the *Business Corporations Act*

Contact(s):

Ministry of Government Services (MGS)

Registering by Mail:
Companies and Personal Property Security Branch
Ministry of Government Services (MGS)
393 University Avenue, Suite 200
Toronto, ON M5G 2M2
Telephone: (416) 314-8880 **Fax:** (416) 314-4852
Toll-free (information): 1-800-361-3223

Registering in person (processing over the counter):
London ServiceOntario Centre
100 Dundas Street, Main Floor
London, ON N6A 5B6
Telephone: 1-800-267-8097

Document Source: http://www.ontario.ca/en/business/STEL02_163189

Please be advised that neither the Companies and Personal Property Security Branch nor the Small Business Centre can give legal advice. The following information is intended as a general guide only. For further assistance or legal information, please refer to the publications listed above and/or consult legal counsel.