

cise the same powers in all provinces without discrimination, subject to provincial legislation. The Canada Business Corporations Act is the general statute governing federal incorporation. When contemplating operations in more than one province it is usually preferable to incorporate under federal authority.

The Canada Business Corporations Act makes provision for individuals or corporations to file articles of incorporation and receive a certificate of incorporation for any legal purpose. It is permissible for one or more corporations to incorporate a new corporation. Exceptions are businesses such as insurance, loan and trust companies, the business of banking, and the issue of paper money.

It is not necessary to state the new corporation's objectives in the articles of incorporation but the articles may set out any restrictions on the business which the corporation is planning to conduct.

The following documents must be completed and forwarded to the Director of Corporations, Department of Consumer and Corporate Affairs, Ottawa/Hull, Canada K1A 0C9: the articles of incorporation, a notice of the corporation's registered office, a notice of directors. Detailed information on incorporation procedures, a copy of the "act", and a free client information kit incorporating guidelines for incorporation are available from the Information Section of the Corporations Branch, Department of Consumer and Corporate Affairs, Ottawa/Hull, Canada K1A 0C9.

Articles of Incorporation

When articles of incorporation are filed they must contain: the proposed corporate name; any restrictions on the type of business the new corporation may undertake; the Canadian location of the corporation's registered office; details of capital stock; the number of directors; and the full names, addresses and signatures of the applicants.

It must be noted that one of the words Limited, Incorporated, or Corporation should be the last word in the company name. It is permissible to use the abbreviations Ltd., Inc., or Corp. The Corporations Branch, Department of Consumer and Corporate Affairs, will conduct a name search (and reserve the name if approved) for a fee of \$5.00 per name. As a part of the application process the Corporations Branch must ensure that there is no conflict between the proposed name of the new corporation and existing corporations. The Corporations Branch may refuse a particular name on the grounds that it is misleading as to the particular nature of the proposed business. For these reasons, it is advisable to ask for a search in advance.

Corporations may use the word (Canada) in their name when they are the subsidiary of a concern with

an identical name organized under the law of a foreign country, or a Canadian province. The use of (Canada) is not permitted under other circumstances, although the words "Canada", "of Canada" or "Canadian" may be used without brackets if there is no connotation of federal government participation.

A federal corporation must have its registered office in Canada. The company's books, recording its charter, bylaws, shareholders, and directors must be kept at the registered office. In certain cases it is possible to keep statutory records at a transfer agent's office.

Corporations may have any number of shares of one or more classes. When there is more than one class at least one must have full voting rights. All shares must be registered without nominal or par value. The charge for federal incorporation is a flat fee of \$200.

Section 183 of the Canada Business Corporations Act permits a corporation's directors to borrow money based on credit issue obligations, and to mortgage or pledge the corporation's property, subject to the articles of incorporation, the corporation's bylaws, or the unanimous agreement of the shareholders.

There are no regulations in the Act with regard to the beneficial ownership of the shares or debentures of a corporation incorporated under the Act, except where a constrained share corporation is required. In this case, Articles of Amendment must be filed (under section 168 of the Act). Up to 100 percent of the issued capital of a corporation can be held in any country or by persons of any nationality or residence, and the corporation in question is not placed under any disability. However, there are exceptions in connection with commercial aviation, fishing, coastal shipping and broadcasting companies. The requirements for share ownership in these cases have been laid down in legislation, or have been developed in the course of administrative practice.

The Notice of Directors which accompanies the Articles of Incorporation, must name the first, or provisional, directors. A majority of directors must be resident Canadians. A resident Canadian is defined as a person who is:

- a. A Canadian citizen ordinarily resident in Canada.
- b. A Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons.
- c. A landed immigrant, under the Immigration Act, and ordinarily resident in Canada. Immigrants who have not applied for Canadian citizenship within one year of eligibility are not considered resident Canadians.

A unique feature of the Act is the unanimous shareholders' agreement. This permits the shareholders of a company, by unanimous written agreement, to restrict the powers of the directors. A shareholder who is a party to an agreement of this type has the rights, and duties