

OPERATING A CORPORATION

This document contains general information only and is not intended be legal advice.

Separate Legal Entity

The Corporation is a separate legal entity incorporated under the *Business Corporations Act (Alberta)* (the “Act”). The Corporation is capable of contracting, suing and being sued and carrying on business in its own name as an entity distinct from its owners. As such, the Corporation is responsible for its own actions and the actions of its employees and agents.

Limited Liability of Shareholders

The Shareholders of the Corporation are generally not liable for the debts and actions of the Corporation which is why the shareholders of the Corporation are said to have “limited liability”.

Under principles of corporate law, a shareholder may incur personal liability in the following circumstances:

- (a) if a shareholder personally guarantees the debts of the Corporation;
- (b) if a dividend has been paid to a shareholder when the Corporation did not satisfy certain financial solvency tests specified under the Act;
- (c) in the event that shares are repurchased or redeemed by the Corporation at a time the Corporation did not satisfy the financial solvency tests specified under the Act;
- (d) if a shareholder receives a form of financial assistance that is prohibited by the Act, whether as a result of not satisfying the financial solvency tests or otherwise;
- (e) if, upon liquidation or dissolution of the Corporation, money or other assets were received by a shareholder to the prejudice of a creditor; and

- (f) if there is a unanimous shareholders' agreement that transfers powers from the directors to the shareholders, to the extent that the shareholders exercise the powers of the directors pursuant to such agreement, the shareholders shall have the debts and liabilities applicable to directors any may be liable as though they are directors.

Accordingly, if a court decides that a shareholder has received a benefit as a result of a Corporation doing anything that is oppressive or that unfairly disregards the interest of any creditor, another shareholder, officer or director of a corporation, then the court has the powers to direct the shareholder to pay to the prejudiced party an amount equal to such benefit.

Capacity and Powers

The Corporation has the power and capacity of a natural person of full capacity within the Province of Alberta to the extent permitted by the laws of the Province of Alberta and in any jurisdiction outside Alberta to the extent that the laws of such jurisdiction permit. The Articles of Incorporation may contain restrictions on the business it may carry on but usually no such restrictions are in place.

If the Corporation wishes to carry on business in another Province, the Corporation may need to be extra-provincially registered in the Corporate Registry of that other Province.

Use of Corporation Name

The legal name of the Corporation is set out in the latest Certificate of Incorporation, Certificate of Amendment, Certificate of Amalgamation or Certificate of Continuance, as the case may be.

The Corporation is required to set out its corporate name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the Corporation. *The failure of the Corporation to properly identify itself as a limited corporation to any such third parties may result in the shareholders losing the limited liability protection of the Corporation.*

Minute Books and Registered and Records Office

Under the Act, the Corporation must have a registered office, which is where any legal process may be served on the Corporation. The records of the Corporation required by the Act to be kept must be kept at the records office of the Corporation, unless otherwise designated from time to time by the directors. Usually the registered and the records office are at the same place.

When a law firm acts as the registered and records office, the law firm will make sure the Annual Return is filed, prepare and draft the required annual resolutions of the shareholders and directors, ensure that the Minute Book is kept safe and up to date, ensure that the Minute book is available for viewing at the times required under the Act and will accept service of all legal proceedings.

Pursuant to the provisions of the Act, the registered and records office must

- (a) be accessible to the public during normal business hours;
- (b) be readily identifiable from the address in the Notice of Address filed with Alberta Corporate Registry;
- (c) maintain corporate records containing:
 - i. the articles and by-laws, all amendments to the articles and by-laws, a copy of any unanimous shareholders' agreement, if any;
 - ii. minutes of meetings and resolutions of directors and shareholders;
 - iii. copies of all notices of election and changes of directors; and
 - iv. a register of all classes of outstanding securities.

The Act contains a list of rules about who can view which records of the Corporation. Under the provisions of the Act, *the penalty for failing to maintain proper records at the registered office of a corporation is a fine against a Corporation not exceeding \$5,000.00.*

The above records are kept in a Minute Book. Without an up-to-date and complete Minute Book it can be impossible to determine if shares have been properly issued, if directors have been properly appointed, if dividends have been properly declared or if contracts were properly approved. Therefore, *without a proper Minute Book, it can be extremely onerous*

for a Corporation to satisfy a potential purchaser, lender, contractor, or taxation authority that the Corporation's ownership and affairs are as the Corporation is claiming them to be.

Traditionally, Minute Books have been kept in a physical binder which was very easy to misplace but now it is possible to have a “virtual” Minute Book. A virtual Minute Book contains digital copies of all the required documents, can be accessed remotely online without having to obtain a physical Minute Book and is always easy to locate.

Address of the Corporation

The Registered and Records office is the legal address of the Corporation and is always used as the address for serving any legal actions. However, the Corporation can use its business location address or other address for all its other business purposes including income tax filings. Most government agencies such as WCB, the CRA etc will continue to use the Registered and Records office address unless they are advised of a different address. Therefore, it is useful to review periodically which address is on file with such government agencies to ensure that any correspondence is delivered to the appropriate address.

Annual Return

The Act requires that the Corporation file an Annual Return at the Corporate Registry in order to keep the Corporation in good standing. *Failure to file Annual Returns will result in the Corporation being “struck” and effectively dissolved.* The Corporation can be revived after being struck within five years of the date of dissolution. The Annual Return is due no later than the last day of the month following the anniversary of incorporation, Amalgamation or continuance, as the case may be. For example, if the corporation was incorporated in June 2016, its annual return would be due no later than July 31, 2017 and all years ending July 31 thereafter.

The Corporate Registry sends a notice of the requirement to file the Annual Report each year to the Registered Office of the Corporation about two months prior to the filing

deadline. The Corporate Registry will generally give a Corporation about 18 months to file a delinquent Annual Return before commencing the dissolution process.

Annual Maintenance of Corporations

The Act requires the Shareholders of a Corporation to hold an annual general meeting. No actual meeting needs to be held if all the shareholders entitled to vote at such meeting consent in writing (often called “consent resolutions”) to all the business that is required to be transacted at that meeting.

The Corporation must hold its first annual general meeting not more than eighteen months after the date of incorporation and subsequent annual general meetings must be held not more than fifteen months after the last annual general meeting. The Corporation must present financial statements of the Corporation at each annual general meeting, such statements to be made up to a date not more than six months before the meeting. The directors are required by section 159 to send copies of the financial statements to each shareholder not less than 21 days prior to each annual meeting, unless a shareholder has informed the corporation in writing that he or she does not want a copy of these statements.

Generally, at the annual general meeting the board of directors is elected for the following year and the appointment of the auditor is either approved or waived.

Similarly, the directors should also hold a meeting, or pass consent resolutions, to approve the appointment of the officers of the Corporation each year in conjunction with the annual general meeting.

Financial Year End

The financial year-end of the Corporation can be established at any time in the first 53 weeks of the existence of the Corporation. If a specific year end date is desired, the Corporation may have a shortened first financial year in order to establish that year end. Generally, the year end designated by the Corporation in its first corporate tax return will be the financial year-end going forward as the Corporation will need the consent of the

Canada Revenue Agency (“CRA”) to change it once it is established and the CRA does not ordinarily give that consent.

The financial year-end must not be confused with the year-end for the purposes of holding annual general meetings and filing Annual Returns with the Corporate Registry. That year end is always the anniversary of the incorporation date, continuance date or amalgamation date, as the case may be.

Books of Account, Tax Returns and Business Numbers

The Corporation must maintain its own books and records and keep accounts entirely separate from the personal accounts of the directors, officers and shareholders.

The Corporation must file its own tax returns and obtain its own identification number when dealing with Income Tax, GST, Payroll, WCB, etc. In order to file a tax return the Corporation must prepare proper financial statements.

In order to apply for a business number from the CRA for income tax, GST and payroll purposes, a director or other person authorized by the Corporation can apply online at <http://www.cra-arc.gc.ca/esrvc-srvce/tx/bsnss/menu-eng.html>. A federal tax return (T2) is required to be filed within six months of the financial year end.

Corporations incorporated in Alberta or incorporated elsewhere and extra -provincially registered in Alberta are also required to file a separate Alberta Corporate Tax Return at the same time as the T2. The business number for the Alberta corporate tax purposes is the Corporate Access Number assigned by the Corporate Registry at the time the Corporation is incorporated, amalgamated, continued or extra-provincially registered in Alberta. The Corporate Access number appears on the Certificate of Incorporation/Amalgamation etc. and on most other correspondence from the Corporate Registry.

Authorized Capital

The authorized capital of the Corporation is set out in the Articles of the Corporation or in the Schedules to those Articles. The authorized capital represents the number, name and

characteristics of shares that may be issued by the Corporation. Only the directors may authorize the issuance of shares and those shares must be fully paid for before they are properly issued. If the directors attempt to issue shares which are not authorized, that issuance is invalid.

The authorized capital may be changed from time to time by appropriate resolution of the shareholders of the Corporation along with the filing of Articles of Amendment with the Corporate Registry.

Shareholders

The Shareholders are the owners of the Corporation. They subscribe for or purchase the shares of the Corporation and have the power to appoint or elect the directors. A shareholder or group of shareholders who hold the majority of the voting shares is said to control the Corporation. As the shareholders have limited liability, the role of a shareholder is mainly to own the shares and elect the directors.

In a private corporation it is not unusual for a shareholder to also be a director and an officer. Therefore, it is important that the shareholder understands when he or she is acting as a shareholder or as a director or as an officer as their duties and responsibilities will change depending on their role.

Directors and Officers

The directors of the Corporation are appointed or elected by the shareholders to make the major decisions of the Corporation such as issuing shares, approving major transactions, and approving borrowing. The directors also appoint the officers who run the day to day affairs of the Corporation.

The Articles of the Corporation establish a minimum and maximum number of directors. A director does not have to be a shareholder of the Corporation.

Subject to the Corporation's By-laws, the board may from time to time fix the quorum required for the transaction of business at a meeting of the board, and, if not so fixed, the

quorum will be a majority of the number of or minimum number of directors required by the Articles. The notice required for such a meeting is 48 hours unless notice is waived.

No meeting need be held if all directors sign a resolution in writing to the business required to be transacted.

With the consent of all directors, a meeting may be held by a telephone conference call, electronic means or other communication facility that permits all participants to communicate adequately with each other during the meeting.

The Act requires that at least 25% of directors be ordinarily resident in Canada, except for a holding corporation of which nearly all the consolidated gross revenue has a foreign source.

Duties and Liabilities of Directors

Some of the duties and responsibilities, as well as the potential liabilities to a director for a breach of same are:

- (a) each director must act honestly and in good faith with a view to the best interests of the corporation;
- (b) each director must exercise the care, diligence and skill that a reasonable, prudent person would exercise in comparable circumstances;
- (c) a director is personally liable to employees of the corporation for up to six (6) months' wages if the corporation is unable to pay such employees;
- (d) a director may be personally liable to pay amounts that the corporation is required to withhold under the Tax Act and may also be liable for the GST liabilities of a corporation;
- (e) a director may become liable for any income tax evasions, errors or misstatements in any financial statements of a corporation in which he participated or acquiesced;
- (f) a director must comply with the Act, the Articles, the Bylaws and any unanimous

- shareholders' agreement;
- (g) a director may be personally liable if he approves or consents to a resolution authorizing the repurchase, redemption or other acquisition of the corporation's own shares if the various financial solvency tests under the Act were not satisfied at such time;
 - (h) a director may be liable if he approves or consents to a resolution authorizing the issuance of dividends if the various financial solvency tests under the Act for dividends were not satisfied at such time;
 - (i) a director may be personally liable if he approves or consents to a resolution authorizing certain forms of financial assistance to shareholders or related companies which is contrary to the Act;
 - (j) a director may be personally liable if he approves or consents to a resolution authorizing certain indemnity contracts for directors or officers; and
 - (k) a director must disclose any conflict of interest he may have and may not vote on a matter in which he has a conflict.

The foregoing are some of the general duties and related potential liabilities of a director, other obligations in law of a director are imposed by the Act, the Income Tax Act, various other environmental and employment legislation and generally by the common law.

Officers

The officers of the are responsible for the day to day operations of the Corporation. As such, they do not need to pass resolutions or hold formal meetings to make decisions although they are responsible to the directors for their actions. The officers of a Corporation must include a President and Secretary. One person may hold more than one office and an officer does not have to be a shareholder or a director,

Auditors

Pursuant to the Act, the Corporation must appoint an auditor each year unless the shareholders of the Corporation resolve not to appoint an auditor..

Transaction of Business

In a private Corporation, decisions of the directors can be made without a formal meeting as long as all the directors consent in writing to the resolutions. Where a meeting is required or desired, such meetings may be held at any place provided that a quorum is present. It should be noted, however that if a directors meeting is held in another country, there is a possibility that the Corporation may be deemed to be a resident of that country by virtue of the “mind and management” being exercised in that country. Therefore, it is best not to hold directors meeting in other countries without first obtaining legal and tax advice.

The By-Laws will set out the notice and quorum requirements for a directors’ meeting. A director may in any manner waive a notice of a meeting of the directors and attendance of a director at a meeting of the directors is a waiver of notice of such meeting. If the By-Laws allow, a director may participate in a directors meeting by telephone (or other communication facilities) which permit all persons participating in the meeting to hear each other and under such circumstances, the directors are deemed to be present at the meeting.

Similarly, the shareholders need not hold formal meetings as long as all the shareholders entitled to vote consent to the resolutions in writing. Where meetings of the shareholders are required or desired, the meeting may be held at such place within Canada as the directors determine. A shareholders meeting may also be held at a place outside Canada if all the shareholders entitled to vote at the meeting so agree. However, it is wise not to hold such meeting in foreign countries without first obtaining legal and tax advice. The By-Laws of the Corporation will set out the notice and quorum requirements for such meeting.

Banking

If the Corporation opens a bank account, the bank generally requires proof of the existence of the Corporation and the names of the directors. Usually, the Proof of Registration (or

the latest filed Annual Return) and the Certificate of Corporation will be sufficient proof. You can find the Certificate, Proof of Registration and Annual Returns in the Minute Book. The bank will usually provide its own form of directors' resolution approving the bank account.

Seal

A corporate seal is not mandatory under the Act and is very rarely required. Most Corporations never get a Seal and never need one.

Signing Authority

Documents and instruments other than banking documents may be executed by any person or persons authorized by the directors. The directors should pass a resolution providing for such documents to be executed by any director or officer or any two directors or officers, etc.

If you have any questions, please contact Monarch Tax Law at 403-265-7066.

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