

INCORPORATION

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EXPLANATION

This chapter of the *Guide* deals with the formation of a company. For a general explanation of what a company is and how it differs from other organizations, see the **Overview** chapter.

Before instructing the law firm to incorporate the company, the client should obtain professional advice from an accountant or tax advisor to assist him or her in making decisions such as:

- the best way to structure the company for tax planning;
- whether any public securities matters should be considered; or
- whether a specialized share structure (e.g. multiple classes of shares) should be utilized.

In order to obtain the basic information from the client, many law firms use an *Incorporation Information Form*. This can be used during a telephone interview with the client, at a conference in the lawyer's office or by faxing, emailing, or mailing the form to the client for completion.

NAME

One of the first things to determine is the name that the client has chosen for the company.

Unless the name is so distinctive that it is unlikely to conflict with any other name, the client is asked to provide one or two alternate names in case the first choice is unavailable. In some cases, if the chosen name conflicts with the name of an existing company, the client will be required to obtain the written consent of the existing company. This may occur when one person is the owner of both companies or the companies are related in some way. Once the name is chosen, the law firm reserves the name with the Registrar (see **Name Reservation** in this chapter).

In addition, the proposed incorporation number followed by "B.C. Ltd." may be used as the name of the company: (e.g. 123456 B.C. Ltd.). In this case, no reservation is necessary.

PROFESSIONAL PRACTICE COMPANIES

If a company is to be incorporated as a vehicle for an individual to practice his or her profession (e.g. lawyer, accountant, dentist, medical doctor, etc.), the client will have to obtain the consent of the authority regulating such profession, for example:

- the College of Dental Surgeons of B.C.;
- the Law Society of British Columbia; or
- the College of Physicians and Surgeons of British Columbia.

(see **Incorporation of Professional Practice Companies** (page 23)).

REGISTERED AND RECORDS OFFICE

The client will also be asked to designate the registered and records offices for the company. Section 34 of the Act requires that every company maintain:

- a **registered office** where legal documents may be served on the company; and
- a **records office** where the company's registers and documents described in section 42 of the Act are kept.

Both offices must be situated in British Columbia and may be at the same location.

The address for the registered and records offices may be comprised of two elements:

- the **mailing address**: e.g. a post office box (location where mail can be delivered); and/or
- the **delivery address**: a street address – the location of that office identified by an address that describes a unique and identifiable location that is accessible to the public during statutory business hours for the delivery of records, but does not include a post office box.

The address of both the registered and records offices may be that of the incorporating law firm. However, in certain circumstances, the client may designate the business address of the company or some other address as the registered and records office.

AUTHORIZED SHARE STRUCTURE

Pursuant to section 52 of the Act, the authorized share structure of the new company must be agreed upon and must consist of:

- either shares **without** par value (i.e. no stated value) or shares **with** par value (i.e. they contain a stated value), or a combination of both.

If the authorized share structure consists of both kinds of shares (i.e. without par value and with par value), they must be of different classes (for example: Class A without par value and Class B with a par value of \$1.00 per share).

The stated value on par value shares is the minimum price at which the shares may be sold. Tax planners often use par value shares as a means of settling the amount that is paid on each share. For shares that are without par value there is no minimum price at which they may be sold.

If the shares are par value shares, the value must be expressed in a currency and, if the currency is not Canadian currency, the type of currency must be stated – for example: French francs.

- one or more classes of shares.

A class of shares is a group of shares of the same kind that have in common the same name, the same par value (if shares are with par value), and the same characteristics and attributes i.e. special rights and restrictions (see explanation below). For example: Class A shares without par value may be common, voting and participating and Class B shares with a par value of \$1.00 each may be preferred, non-voting and non-participating.

The company may be authorized to issue a limited number of shares of a class or an unlimited number (for example, a maximum of 10,000 Class A shares or an unlimited number of Class A shares).

The class of shares may be described with a letter in quotation marks (Class “A”), by the letter without quotation marks (Class A) or by a designation (Common; Preferred). All are correct and you should follow the policy of your firm in this regard. Ensure that you are consistent and do not mix the descriptions. The most common share structure for a company is to have only one class of shares called Common shares.

If it is provided for in the special rights and restrictions attached to a class of shares, it is possible to include one or more series of shares within that class of shares at any time after the incorporation of the company.

If necessary, it is possible to alter the authorized share structure of the company after incorporation – see the **Authorized Share Structure** chapter)

SPECIAL RIGHTS AND RESTRICTIONS

If the company has more than one class of shares, the shares will usually have special rights and restrictions attached to them. Each class of shares will have a different designation, such as “Common” or “Preferred”. The designation “Preferred” means that this class has some advantage or preference over the common shares or some other class of shares. In a complex share structure where there may be several kinds of common and preferred shares, a letter is often added to the designation of each class of shares (e.g. Class A Common, Class B Common, Class C Preferred, Class D Preferred and so on).

The special rights and restrictions must be carefully drafted to ensure that they reflect the intentions of the clients and/or their financial or tax advisors. For a detailed explanation of special rights and restrictions, see the **Authorized Share Structure** chapter. Some of the most common special rights and restrictions attached to shares are:

- the right to vote at meetings of the shareholders;
- the right to participate in the profits of the company (usually by way of dividends);
- the right to redemption by the company which entitles the company at some future date to repurchase some or all of the shares from the shareholder and sets out the procedure for doing so;
- the right to retraction by the shareholder which entitles the shareholder to force the company under certain circumstances to repurchase some or all of the shares held by that shareholder and sets out the procedure to do so;
- restrictions on allotment of shares; such as a requirement that before offering shares of the company to an outsider the directors must first offer them proportionately to existing shareholders;
- rights of conversion or exchange;
- rights on liquidation or winding-up of the company.

The same special rights or restrictions may be attached to shares of more than one class or series of shares, or a company may create one or more classes of shares **without** special

rights or restrictions, subject to section 60 (4), or one or more series of shares without special rights or restrictions. Section 60(4) states that each share of a series of shares must have the same special rights or restrictions as are attached to every other share of that series of shares, and the special rights or restrictions attached to shares of a series of shares must be consistent with the special rights or restrictions attached to shares of the class of shares of which the series of shares is a part.

Each law firm usually has some standard clauses that it uses for various special rights and restrictions, but care must be taken to ensure that the shares are properly described in each clause and that there are no inconsistencies.

FIRST DIRECTORS

The next step is that the client will be requested to provide the names of the first directors of the company, as well as their respective residential addresses or business delivery addresses. Pursuant to section 120 of the Act, a company must have at least one director (or if a public company, at least three).

The first directors of a company will hold office as directors from the incorporation of the company until they cease to hold office (s. 121(1)) (see the **Directors and Officers** chapter).

Note: The Incorporators (see below) are not deemed to be the first directors. Before being appointed as the first director of a company:

- if the prospective director is also an Incorporator, that person must sign the *Incorporation Agreement* and the *Articles* of the Company (s. 121(2)(a) (i)); or
- if the prospective director is **not** an Incorporator, that person must consent in writing to act as a director (s. 121(2)(a)(ii)) (see **Directors and Officers** chapter – *Consent to Act as Director*). Although the director is not required to consent in advance to act as a director, it is the policy of most law firms to obtain a consent in writing before appointing a person as a director. Most law firms will ask the prospective director to sign a *Consent to Act as a Director* whether or not the person is also an Incorporator.

INCORPORATORS

The client will also be requested to provide the names and mailing addresses of the **Incorporator(s)** of the company. The Incorporators can be one or more individuals or corporations.

The Act defines an **Incorporator** as each person who signs the *Incorporation Agreement* before an *Incorporation Application* is submitted to the Registrar for filing. Both of these documents are required to incorporate the company and are described below. In addition, the Incorporator(s) must agree in the *Incorporation Agreement* to take at least one share of the company and so become the company's first shareholder(s). The number and the class of shares, as well as the price for each share taken by each Incorporator must be set out in the *Incorporation Agreement*.

The Incorporators must also sign the *Articles* of the company.

In order to expedite the incorporation, the solicitor for the company may act as the Incorporator. The solicitor will then sign the *Incorporation Agreement* and the *Articles*. The solicitor will become the first shareholder of the company (but not necessarily its first director). The solicitor will usually transfer his or her share(s) once the company is incorporated (see the **Organization** chapter).

Note: The client must always be the Incorporator in the case of a professional practice company.

OTHER BUSINESS ISSUES

It is also usual at this time for the lawyer to discuss with the client:

- the general nature of the client's business;
- whether or not a *Shareholders' Agreement* will be required;
- whether the client wishes to apply for any trademarks;
- any tax or estate planning issues that need to be dealt with; and
- other business issues such as employee stock options.

COMPLETING PARTY

Section 1(1) of the Act defines the **completing party** as an individual who:

- completes the required information on a form when a record is filed with the Registrar in paper form;
- completes the record when a record is submitted to the Registrar by any other prescribed method (for example, by electronic filing); or
- provides the required information to an agent who completes the record when a record is submitted to the Registrar by an agent.

The law firm must designate a member of its staff if a staff member is to complete the *Incorporation Application* and the *Notice of Articles* and file them with the Registrar to incorporate a company. (See Appendix **B – Electronic Filings**)

The completing party to the *Incorporation Application* and the *Notice of Articles* is certifying that the *Incorporation Agreement* and *Articles* have been signed by the Incorporators (s. 15(1)). It is therefore essential that these documents be signed before completing the electronic filing.

INCORPORATION DOCUMENTS

Once the name has been approved and reserved, and the law firm has all the required information, the four documents set out below must be prepared. For a detailed explanation regarding the form of these documents, their contents and preparation, see the sample documents and their preparation instructions later in this chapter.

1. An ***Incorporation Agreement*** (s. 10(2)) is a short agreement between the Incorporators and the company. It sets out the number and kind and class of shares that each Incorporator agrees to take once the company is incorporated. The ***Incorporation Agreement*** is **not** filed with the Registrar but the signed original should be placed in the company's ***Record Book***. A detailed explanation regarding the contents and execution of the ***Incorporation Agreement*** is set out on page 30 opposite the precedent for this document.

Note: The ***Incorporation Applications*** ((Forms 1. 1U, 1CCC and 1BEN)) (page 34) and ***Notice of Articles*** (page 38) may be attached as **Schedule 1** and the ***Articles*** (page 8) as **Schedule 2** to the ***Incorporation Agreement***.

2. An ***Incorporation Application*** (s. 10(3)) is a document established by the Registrar. It contains the following:
 - the name as reserved and the reservation number given for it (unless the company is to be a “numbered” company – see the section **Name Reservations** – page 18);
 - the Incorporators' names and mailing addresses;
 - a statement by the completing party pursuant to section 15 of the Act that the ***Incorporation Agreement*** and ***Articles*** have been prepared and properly signed by the Incorporators; and
 - a ***Notice of Articles*** that reflects the information that will apply to the company on its incorporation.
3. A ***Notice of Articles*** (s. 11) is e-filed along with the ***Incorporation Application***. It is a prescribed form and sets out:
 - the company's name;
 - any translation of the name to be used outside Canada;
 - the authorized share structure (see above);
 - whether there are special rights and restrictions attached to any of the shares;
 - whether the pre-existing company provisions apply to the company;
 - the addresses (delivery and/or mailing) of the registered and records offices of the company; and
 - the names and residential or business delivery addresses of the directors.

4. The **Articles** (s. 12) are the rules and regulations for the conduct of the company, and set out:
- any restrictions on the business of the company or the powers that the company may exercise; and
 - the special rights and restrictions attached to the shares of the company.

On its incorporation, a company has as its **Articles**, the **Articles** that are signed by one or more of the incorporators as attested to by the Completing Party in the **Incorporation Application**. However, if the **Articles** are not signed by the Incorporator(s) when the **Incorporation Application** is filed with the Registrar, the company is deemed to have the Table 1 Articles included in the Regulations to the Act as its **Articles** (s. 16(b)).

If a company has Table 1 Articles as its Articles, or if a provision of Table 1 is adopted by reference in the Articles of a company, any regulation that amends Table 1 or that provision will, at the time that the amendment comes into force, effect a corresponding alteration to the company's Articles, without the Company having to pass a resolution to make that alteration (S. 261(2)).

If special rights and restrictions are to be attached to the shares of the company, the **Articles** (whether Table 1 Articles, the Continuing Legal Education Society of BC's model **Articles** or your own firm's custom **Articles**) must be amended to include those special rights and restrictions and the **Articles** must be signed by one or more of the incorporators in order to adopt such special rights and restrictions (see page 8 – **Articles**).

The **Articles** are not filed with the Registrar, but must be signed by the Incorporators and placed in the Records Book of the company.

INCORPORATION PROCESS

Once the incorporation documents have been prepared, approved and signed, as applicable, the **Incorporation Application** and **Notice of Articles** are e-filed with the Registrar's office (using the law firm's BC OnLine account – see the preparation instructions on pages 34 and 38 and **Appendix B – Electronic Filings**).

If so desired, the client may choose a future effective date for the incorporation date of the company. The incorporation date will be either (s. 13(1)):

- the date and time that the **Incorporation Application** is filed with the Registrar; or
- a specified date and/or time if the **Incorporation Application** specifies a date and/or time on which the company is to be incorporated (which date and/or time must be later than the date and time on which the **Incorporation Application** is filed), or if no time is specified, at the beginning of the specified date. Note that the specified date may be no more than 10 days later than the date of filing the **Incorporation Application** (s. 410(2)).

Notes: There is an additional priority filing fee for selecting a date in the future.

If a future date (and/or time) is specified in the *Incorporation Application*, an *Incorporation Application* may be withdrawn (s. 14) before the effective date and before a company is incorporated by filing a *Notice of Withdrawal* (Form 19) (see the **Miscellaneous** chapter).

COMPLETION OF INCORPORATION

When the incorporation documents have been processed, the Registrar must:

- issue a *Certificate of Incorporation* (s. 13(2)) which sets out:
 - the company's incorporation number which remains the same no matter how many times the company changes its name;
 - the company's name which may be changed many times over the life of the company; and
 - the company's incorporation date which cannot be changed.

Note: Only one *Certificate of Incorporation* will ever be issued so it must be safeguarded carefully. If it is lost, copies may be obtained but never another original.

- issue certified copies of the *Incorporation Application* and *Notice of Articles*; and
- issue a password for the company. The password will be forwarded to the company at its registered office and must be used in order to e-file documents. (See Appendix B – **Electronic Filings**).
- provide a **Business Number** which will be set out on the *Cover Sheet* accompanying the documents sent by the Registrar.

Once the company has been incorporated it must be organized as provided in the client's instructions. The organization is the subject of the next chapter, **Organization**.

BUSINESS NUMBER

When a company has been incorporated, Corporate OnLine automatically requests a Business Number ("BN") from Canada Revenue Agency who generates the BN and sends it to the Corporate Registry. The Corporate Registry will, in turn, provide the BN to the new company on the *Cover Sheet* forwarded to the new company with the certified copy of the *Incorporation Application* (see **Completion of Incorporation** above).

Canada Revenue Agency will also send a letter to the company's registered office confirming the BN.

For a detailed explanation of the BN, see the **Overview** chapter.

UNLIMITED LIABILITY COMPANIES

Part 2.1 of the Act permits the incorporation in British Columbia of unlimited liability companies using the corporate designation ““Unlimited Liability Company” or “ULC” at the end of their name.

Unlimited liability companies are a hybrid body corporate. Unlike a **limited liability company** where, in the event of the company’s failure, the maximum amount that an individual shareholder could lose would be the amount that the individual originally paid for his or her shares, the shareholders of the ULC are jointly and severally liable to satisfy the debts and liabilities of the ULC on dissolution or liquidation.

The incorporation of an unlimited liability company, or ULC, requires the use of **Form IULC – Incorporation Application**, instead of Form 1. The **Notice of Articles** must contain the following statement:

The shareholders of this company are jointly and severally liable to satisfy the debts and liabilities of this company to the extent provided in section 51.3 of the Business Corporations Act.

Unlimited liability companies are generally incorporated as a vehicle for tax planning, usually in conjunction with United States companies. Because the shareholders of these companies have unlimited liability for the obligations of the company, these companies should only be incorporated after specific consultation and instruction from a lawyer and/or tax accountant. A BC ULC has an advantage over a partnership or some ULC’s in other jurisdictions inasmuch as the liability of shareholders of a BC ULC arises only if the BC ULC is unable to pay its debts and liabilities on dissolution or liquidation and the liability does not extend over the entire length of operation and existence of the ULC.

The incorporation fee for a BC ULC is **\$1,000.00**, which is much higher than a regular incorporation.

COMMUNITY CONTRIBUTION COMPANIES

Part 2.2 of the Act permits the incorporation in British Columbia of community contribution companies using the words “Community Contribution Company” or “CCC” as **part** of their name.

Community Contribution Companies are hybrids that fall between for-profit businesses and not-for-profit enterprises. These companies are quite rare. For the explanation of this kind of companies, see the **Overview** chapter.

The incorporation of a community contribution company or CCC requires the use of **Form ICCC – Incorporation Application**, instead of Form 1. The **Notice of Articles** in **Form ICCC** of a community contribution company contains the following statement:

This company is a community contribution company, and, as such, has purposes beneficial to society. This company is restricted, in accordance with Part 2.2 of the Business Corporations Act, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.

BENEFIT COMPANIES

Part 2.3 of the Act permits the incorporation in British Columbia of benefit companies. There is no unique corporate designation to distinguish a benefit company from a regular company.

A benefit company is a for-profit company that commits to conducting its business in a responsible and sustainable way. It must also promote one or more public benefits. These companies are quite rare. For the explanation of this kind of companies, see the **Overview** chapter.

The incorporation of a benefit company requires the use of *Form IBEN – Incorporation Application*, instead of Form 1. The *Notice of Articles* in *Form IBEN* of a benefit company contains the following statement:

This company is a benefit company and, as such, is committed to conducting its business in a responsible and sustainable manner and promoting one or more public benefits.

Benefit companies choose what type of public benefit they want to promote. Public benefits must have a positive effect for a group of people (other than business shareholders), communities, organizations, or the environment. The benefits could include any of the following activities: artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological.

The Articles of a benefit company must include in its **Articles** a benefit provision that specifies the public benefits to be promoted by the benefit company, and sets out the commitments to conduct the benefit company's business in a responsible and sustainable manner to promote the public benefits.

NWPTA REGISTRATION

NWPTA (New West Partnership Trade Agreement) between British Columbia, Alberta, Saskatchewan and Manitoba (the “NWPTA Partners”) permits British Columbia companies to register with one or more NWPTA Partners at the time of incorporation. Alternatively, you may choose to register with the NWPTA Partner after incorporation.

British Columbia companies which require registration with one or all of the NWPTA Partners at the time of incorporation must first obtain a name reservation in the appropriate jurisdiction. The most expedient way is to obtain the reservation through B.C. Online at the time of incorporation. However, there is no priority service for a NWPTA Partner search. The other option is to conduct your own NUANS search (Alberta) or Name Reservation

(Saskatchewan) (see the **Extrajurisdictional Chapter** and **Electronic Filings** chapter for more information).

If the company will register in one or more NWPTA Partner's jurisdictions at the time of incorporation, one or more attorneys in each jurisdiction must be selected prior to incorporating online.

PROCEDURE/CHECKLIST

1. Receive instructions from client (or accountant for client) and open file
2. Complete the ***Incorporation Information*** form (page 10)
3. Reserve name (page 18). If the company is to be registered with one (or all) of the NWPTA partners, order a NUANS search (Alberta), Saskatchewan or Manitoba Registry search by checking the appropriate Partner's ☐ on BC Online. You may also perform the NUANS search yourself and/or apply online for the Saskatchewan name reservation
If the company will be registering with a NWPTA Partner, obtain the name and address of the attorney or attorneys in that jurisdiction
4. Confirm to client that the name has been reserved for 56 days from the date of reservation
Letter to Client (Confirming Reservation of Company's Name) page 26)
5. Diarize a date which is two weeks before the expiry of the name reservation and if the incorporation has not been filed, check with the client or the lawyer whether the name reservation should be renewed. You may renew the reservation up to three times. If you need to renew it more than that, check with the Registry
6. Prepare the following consents (if applicable):
 - (a) ***Consent to Act as Director*** for every director (**Directors and Officers** chapter)
 - (b) ***Consent (of Company with Similar Name)*** (page 28)
 - (c) Consent from a governing authority (e.g. professional associations for dentists, doctors, chartered professional accountants, professional engineers, etc.)
7. Prepare incorporation documents:
 - (a) ***Incorporation Agreement*** with Schedules 1 and 2 (if applicable) (page 30)
 - (b) ***Incorporation Application*** (page 34).
 - (c) ***Notice of Articles*** (page 38)
 - (d) ***Articles*** (page 8)⁽¹⁾
8. Make sufficient photocopies of all documents
9. Arrange for ***Incorporation Agreement*** and ***Articles*** to be signed by the Incorporators – clients or solicitor – ensuring that each copy of the document is originally signed
10. Electronically draft, save and print the ***Incorporation Application*** and ***Notice of Articles***. Arrange to have the draft documents approved by the client and the supervising solicitor
11. When approved, electronically file the following:
 - (a) the Incorporation Application and NWPTA Partner registration, if applicable
 - (b) the Notice of ArticlesIf you require the Certificate of Incorporation immediately, see **Email Notification Option for Certificates and Certified Copies – Electronic Filing** chapter
12. Registration with NWPTA Partners may be filed online with B.C. Online, either at the time of incorporation, or after incorporation. If the company will be registering extraprovincially in any jurisdictions other than NWPTA, arrange with agents in those jurisdictions to file the extraprovincial registrations
13. Order a seal (if the client has requested one)
14. Type or write the incorporation number on the first page of the ***Articles***, as well as on the page where the actual ***Articles*** start (to the right and above the word “Articles”) if the first page is a table of contents
15. When the company is incorporated proceed to organize the company (see the **Organization** chapter)

⁽¹⁾ Generally, no modification of the standard ***Articles*** is required for a ULC.

INCORPORATION INFORMATION FORM

General Notes

The *Incorporation Information* form is designed for completion by the lawyer during the interview with the principal of the proposed company, or by the legal assistant taking instructions from the lawyer or client. Some firms forward a form to the client for completion. All initial information regarding the company should be contained in this form. Its use ensures that instructions are taken in an organized and comprehensive manner, that important information is not forgotten and, most importantly, that the client's wishes are accurately recorded and communicated to the person drafting the incorporation documents.

The form shown on the following pages is a sample only, and contains the most essential information. You should check with the supervising solicitor or your corporate supervisor to find out if your firm has a standard form. If not, you may wish to set up a form for future use. Checklists of various kinds are always evolving and periodically change for various reasons so they need to be reviewed, expanded and updated from time to time. Once the form is developed, the legal assistant should ensure that a form is completed for each incorporation and a copy kept in the file.

Note: Some of the information collected is for the *Transparency Register* – see **Transparency Register – Chapter 5 - Records**

Preparation

Before the interview, you may complete any information that is already known (such as the proposed name of the company, name and address of client, etc.).

- ① See **Name Reservation** on the following pages. If there are more than three choices, attach a schedule. Once the name is reserved, check off the name under which the company will be incorporated.
- ② Diarize the expiry date for 56 days.
- ③ Describe the authorized share structure and special rights and restrictions. If space is insufficient, continue the description on a separate page.
- ④ (See page 14) The company may appoint officers and may specify their duties. The Act does not require that the company have a president and a secretary, or that the president be a director of the company.

Processing

Diarize the expiry date of the name for about one week before the reservation expiry date (which is 56 days after the date of reservation).

{NAME OF LAW FIRM} INCORPORATION
INFORMATION

Date of interview: _____ Supervising solicitor: _____

File Number: _____

NAME OF COMPANY TO BE RESERVED⁽¹⁾: (choices in order of preference)

Available
and reserved

- | | | |
|---|----------|--------------------------|
| ① | 1. _____ | <input type="checkbox"/> |
| | 2. _____ | <input type="checkbox"/> |
| | 3. _____ | <input type="checkbox"/> |

Name Reservation: Number _____ Expiry date: ② _____

Will the Company be registered in other jurisdictions? Yes: No:

If so, where _____ Reserve name in those jurisdictions? Yes: No:

If Company is to be registered with a NWPTA partner^X, insert name and address of attorney for each partner province:

<i>Name</i> _____	<i>Address</i> _____
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Is a trademark search required? Yes: No:

If yes, type of business _____

In Canada Yes: In the U.S. Yes: Other Yes: Specify: _____

MAILING AND BUSINESS ADDRESS:

_____ Postal Code: _____

Contact Person: _____ E-Mail: _____

Tel: _____ Fax: _____ Cell Phone: _____

	Delivery Address ⁽²⁾	Mailing Address ⁽³⁾ (if different)
REGISTERED OFFICE		
RECORDS OFFICE		

⁽²⁾ Street Address (accessible during statutory business hours for delivery of records) ⁽³⁾ may be PO Box

AUTHORIZED SHARE STRUCTURE:

Maximum Authorized or Unlimited	Class of Shares	Par Value or NPV	Special Rights and Restrictions (Yes/No)
③			

CASTING VOTE: Chairman to have casting vote: Yes: No:

Shareholders: Yes: No:

Directors: Yes: No:

ARTICLES: Public company Yes: No:

Special Rights and Restrictions: _____

⁽¹⁾ Include the French version or any translation of the name, if applicable, and Unlimited Liability Corporation or ULC, if applicable.

INCORPORATORS		
Name	Address: Residential (R) or business delivery (B)	Number and Class of Shares taken
	Delivery address: R <input type="checkbox"/> B <input type="checkbox"/>	
	Mailing address (if different):	
	Delivery address: R <input type="checkbox"/> B <input type="checkbox"/>	
	Mailing address (if different):	

DIRECTORS	
Name	Address: Residential (R) or business delivery (B)
	Delivery address: R <input type="checkbox"/> B <input type="checkbox"/>
	Mailing address (if different):
	Delivery address: R <input type="checkbox"/> B <input type="checkbox"/>
	Mailing address (if different):

OFFICERS		
Name	Position	Address
④ (see previous page)		Delivery:
		Mailing:
		Delivery:
		Mailing:

ADDITIONAL SHARE ALLOTMENTS		
Name and Address	No. and Class of Shares	Consideration

If the new shareholder is a significant individual, complete the information below for each significant individual or complete the *Questionnaire* (see **Transparency Register – Chapter 5 – Records**).

Full legal name and last known address of shareholder	Date of Birth	Canadian Citizen or permanent Resident of Canada	If “no” every country or state of which the shareholders is a citizen
<i>{Name}</i>	<i>{date}</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>{Country}</i>
Is the shareholder a resident in Canada for the purposes of the Income Tax Act (Canada)	Date the shareholder becomes a significant individual	If applicable, how is the shareholder a significant individual	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<i>{date}</i>	<i>{describe}</i>	

TRANSPARENCY REGISTERS:

law firm to maintain

client will maintain

AUDITORS Waived: Appointed: Name: _____

ACCOUNTANTS:

Name: _____

Address: _____

Contact person: _____ Tel: _____ Fax: _____

BANK:

Name: _____

Address: _____

Contact person: _____ Tel: _____ Fax: _____

Signing Authority for banking documents: _____

FISCAL YEAR END: _____

NAME RESERVATION

In order to ensure that the name is available in British Columbia, it must first be reserved with the **Name Requests Online** department of BC Registry Services (“NRO”).⁽¹⁾

There are several important steps to the name reservation process: the choice of name, research to determine the availability of the name, the actual reservation through the BC Online Name Request Online site (“NRO”) (see Chapter 21 – Appendix B, **Electronic Filing – Name Requests Online**), and rejections or appeals.

NRO has well developed online help features. For further information of this service, visit the website (logon to the Corporate Online website).

Form of Name

Before submitting the name for reservation, you must ensure that its form is acceptable to the Registrar and that the name includes three components:

- **Distinctive Element**

This element serves to differentiate names with similar or identical descriptive elements and may be a made-up or coined word, geographical location, personal name or initials.

For example: Abracadabra, Smith, Vancouver, Kitsilano, A.B.C.

- **Descriptive Element**

This element describes the nature of the business and may be common to many companies.

For example: Enterprises, Manufacturing, Holdings, Plumbing, Hair Salon, Bakery.

Step 2 of NRO provides a thesaurus for descriptive words, or groupings of similar descriptive words for examples of specific industries that would be considered too similar. For example: “restaurant” and “eatery” would be considered too similar.

- **Corporate Designation**

All incorporated companies must have this element as the last word in the name (s. 23).

The only corporate designations allowed are: Limited, Ltd. Incorporated, Inc., Corporation, Corp. Limitee, Ltee, Incorporée and the French versions have no accents.

An **unlimited liability companies**, must have the corporate designation “Unlimited Liability Company” or the abbreviation “ULC” at the end of a company’s name and these designations are interchangeable. In the case of a numbered company, under section 10(3)(d)(ii)(B), “B.C. Unlimited Liability Company” will be added to the incorporation number (i.e. you will not have the option of shortening to “ULC”).

A **community contribution company** must have the corporate designation “Community Contribution Company” or the abbreviation “CCC” as part of its name.

⁽¹⁾ If the client has already reserved the name himself and has provided you with the reservation number, you do not require a consent to use that name from the client.

and the words “Community Contribution Company” are interchangeable with the abbreviation “CCC”.

The **distinctive element** is the most important part of the name as it serves to differentiate names having identical or similar descriptive elements. For instance, names such as “Hair Salon Inc.” or “Wool Store Ltd.” will be rejected by the Registrar since, without a distinctive element, they cannot be distinguished from other hair salons or wool stores. Adding a prefix such as “Abracadabra” to “Hair Salon Inc.” or “Kitsilano” to “Wool Store Ltd.” will make it unique and, therefore, acceptable. A coined word used in addition to a geographical location (Intraflox Vancouver Ltd.) may be accepted if it does not conflict with another company already incorporated as it is considered sufficiently distinctive.

Numerals may form a part of the name of a company and there are several ways in which they may be used:

- a year may be used as part of the name provided it is the year of incorporation, amalgamation or continuation (e.g. A.B.C. Holdings (1996) Inc.);
- a number may be used as a distinctive element (9999 Holdings Ltd.). However, the number must consist of a maximum of four digits;
- the incorporation number may be used as part of the name of the company: (123456 B.C. Ltd.) No reservation is necessary for companies that use their incorporation number as the beginning of their name, followed by “B.C. Ltd.”. These companies are sometimes referred to as “numbered companies”.⁽¹⁾ Law firms may incorporate numbered companies to sell to clients who require an existing company. These numbered companies are often referred to as “shelf companies”.

There are several other considerations to bear in mind when choosing and reserving a name for a company. In general, the Registrar will either reserve the name and advise you of any further requirements, or decline a reservation and advise you of the reason:

- the name may contain up to 200 characters;
- personal names may be accepted if they are sufficiently distinctive (Joe Dimchuk Ltd. may be accepted, John Smith Inc. may not);
- well known trademarked names will not be accepted without the prior written consent of the trademark holders (Kodak, Xerox, Esso). The Registrar does not conduct a trademark search, therefore if the existence of a trademark with the same or a similar name is a concern, a trademark search should be conducted by an agent or your firm’s trade mark department. A search of the Canadian Trademarks Database can be conducted online and at no charge at www.strategis.gc.ca. Many firms perform a free Preliminary-NUANS search through Industry Canada’s website at www.nuans.com which will identify all registrations of the descriptive name in Canada (excluding Quebec), including trademarks – apply for a NUANS search, print the search results and exit before paying (see page 21);

⁽¹⁾ If the first numeral of that incorporation number is a zero, the name may be abbreviated by removing that zero, and the abbreviated name is, for all purposes, interchangeable with the unabbreviated name. For example a company with the name 0777777 B.C. Ltd. may also be referred to as 777777 B.C. Ltd. (Regulation 7.1)

- special characters (such as *, ~, £, ø) that are not recognized by computers will not be accepted;
- French characters are not recognized (e.g. “Limitée”);
- words and names that are objectionable on public grounds (such as obscene, vulgar or swear words, or words with a connotation of sexual, physical or racial slur) are not accepted;
- names of public figures are not accepted without that person's prior written consent;
- words that imply a connection with, or an endorsement by, any government (e.g. ministry, bureau, secretariat, commission and certified) will not be accepted without the prior written consent of the appropriate government. The word “government” is not acceptable;
- the word “B.C.” is acceptable as the descriptive element in a “numbered” company but when the words “British Columbia” or “B.C.” are used as the distinctive element they are considered to imply a connection with the Government of British Columbia. For example, if the client chose “British Columbia Aquatics Ltd.”, a consent would have to be obtained from the Protocol and Events Office of the Ministry of Intergovernmental Relations (tel: 1-250-387-1616 – website: www.protocol.gov.bc.ca) **after** the name has been approved by the Registrar;
- the words “British Columbia” or “B.C.” are acceptable if they are placed – without brackets – just before the corporate designation (e.g. Fraser Valley Florists B.C. Inc.);
- on the other hand, if the words “(British Columbia)” or “(B.C)” imply that the company is affiliated with or is a subsidiary of another company with a similar name in another jurisdiction (i.e. outside British Columbia), these words must be placed in brackets and confirmation must be provided to the satisfaction of the Registrar of such affiliation;
- if a word or words imply a connection with, or patronage by, the Crown, or a living member of the Royal Family, they will only be accepted with prior written consent of the appropriate authority;
- however, if a word such as “Crown” or “Royal” is used in combination with another word or words and does not imply a connection with the Crown or the Royal Family, it may be acceptable (e.g. “Triple Crown Ranch Ltd.” or “Royal Street Cleaners Inc.”);
- the incorporation of a professional practice company requires the consent of the college or association that governs that profession (page 17).

Pre-reservation enquiries

When selecting the name and before submitting the name for approval, you should ensure that the name is distinctive and is not in conflict with an existing company. There are several ways to ascertain this:

- checking the telephone book;
- searching the internet;

- using Step 2 – “**Research your choices**” of NRO which is a free search tool that compares the proposed name with existing names on the BC Corporate Register. Using this search tool and using the other links listed in this step will help ensure that the first name choice is approved for use in British Columbia. The search includes all existing companies and current reservations.
- conducting a free **Preliminary Nuans Search** (see Chapter 21 – Appendix B, **Electronic Filing – Nuans**). NUANS (“New Updated Automated Name Search”) is a computerized search system (owned by Industry Canada) that compares a proposed corporate name with databases of existing corporate names registered in any province or territory in Canada (but does not include Quebec names or business names in British Columbia, the Northwest Territories, Nunavut or the Yukon).
- conducting a preliminary trademark search of the name. A search of the Canadian Trademarks Database can be conducted online and at no charge at www.strategis.gc.ca⁽¹⁾. Word trademarks will also be shown on Preliminary NUANS Searches. In the NUANS search, the proposed trademark will be compared with databases of existing word trademarks.
- checking if a domain name is available if the client is planning to create a website using all or part of the proposed name.

Submitting the Name for Approval

There are several ways of reserving a company name, the usual ones being:

- through BC OnLine if the law firm has an account; or
- online using your credit card.

The procedure for reserving the name and monitoring the name reservation is described in Appendix B – **Electronic Filings – Name Requests Online**.

The name reservation fee includes **three** choices. So even if the client has only one name in mind, two alternative choices (in descending order of preference) should be requested in case the first name is not available. If you submit only one name and it is rejected, the next attempt at a reservation will cost an additional name reservation fee.

A name may be reserved to incorporate different business structures: B.C. Companies, extraprovincial registrations of foreign corporations in British Columbia, limited liability partnerships (LLC’s), general partnerships, proprietorships, limited liability partnerships, societies, cooperatives, unlimited liability companies as well as their name changes, amalgamations, restorations, and any other transaction for which a name must be reserved. The type of the business structure must be indicated when submitting the request.

If the client intends to do business in Alberta and/or Saskatchewan, when reserving the name online through BC OnLine, you may also submit the name for reservation in Alberta and/or Saskatchewan.

The registration of a firm name (partnership or proprietorship) under the *Partnership Act* does not protect the name against later reservation and use by a person or firm seeking to incorporate, amalgamate or continue a company under the same or a similar name.

⁽¹⁾ Trademark law is complex and if the client wishes to apply for a trademark, a detailed search and report by a trademark agent should never be replaced by an online search conducted by a corporate legal assistant.

The Registrar will not refuse to register a name that has previously been registered as a firm name, but an earlier registration of a firm name could present a problem if the client ever wishes to register a trademark. The use of a pre-existing firm name might even expose the company to litigation.

Name reservations are processed in the time order the BC Registry Services receives them and may take up to three weeks. To obtain the name reservation the same day, you may request **priority service**. There is an additional fee for this service (see Appendix F – **Fee Schedule**).

Once the name has been submitted for approval and before it has been processed you may:

- change or correct the requested name;
- cancel a request prior to examination; or
- upgrade a request to priority status; or
- resend a copy of the search results to yourself.

Approval

While the request is being processed, you may monitor online ⁽¹⁾ the status of your request. When the name has been approved (or rejected), you will be able to access the “Result of Name Request” which shows which name is approved (and any further requirement), the rejections and the reasons therefore, the name approval number (NR) and the expiry date of the reservation.

If a name is approved subject to a condition, for example obtaining consents from:

- an existing company if the proposed name conflicts with the name of that existing company; or
- from a professional association for a professional practice⁽²⁾; or
- Protocol and Events Office of the Ministry of Intergovernmental Relations or other government branch as specified by the Registrar;

the Consent should only be forwarded to the NRO when the name has been approved.

When in doubt, you may obtain information from the Registrar on the procedure to follow to secure the necessary name approval.

When the Consent has been sent to the Registrar, you can check online if it has been received by the NRO department and the condition has been removed.

Once a name is approved, it is reserved for a period of **56** days. On rare occasions a reservation may be cancelled during the reservation period because of a possible conflict (usually with an extra-provincial company), so it is important to submit the incorporation documents as soon as possible.

Diarize the name reservation for two weeks before expiry of the reservation period to allow time for renewal if necessary. The renewal is not automatic and may take several weeks. You may renew the reservation up to three times. If you need to renew it more than that, check with the Registry

(1) If you included your email, the Result of Name Request will be emailed to you by NRO Department.

(2) Check with the professional organization regarding time to process application. Some professional organizations take several months to complete

Appeal

If the name has been rejected and the supervising solicitor is of the opinion that it should have been approved, you or the supervising solicitor can **appeal** the rejection as follows:

- first, telephone the examiner (his or her name will be on the Results of Name Request) and discuss the matter with the examiner;
- if you are unsuccessful, appeal to the NRO supervisor; and lastly;
- write a formal letter of appeal to the Registrar of Companies setting out the reasons that the name should be approved.

Remember, before appealing the rejection, check that all preliminary searches have been performed and there is no exact match or conflict and that all the rules for name reservations have been followed (see above).

Proceed to incorporation

In most cases, the client requests that the name be reserved and if the name is available, instructs the solicitor to proceed to incorporate the company. However, in some cases, the client will instruct the law firm to reserve the name before he or she is ready to incorporate. It is therefore important to diarize the reservation so that it may be renewed before the expiry date.

If you have not received instructions to incorporate about a week before the expiry date, bring the matter forward to remind the supervising lawyer and the client of the expiry date.

TRANSLATION OF NAME

The use of the French version of the company's name is not considered to be a "translation" since Canada is bilingual. However, if you wish to use the French version of the name in addition to the English version, it should be shown on the name reservation with a forward slash ("/") after the English version of the name. If the company is adopting a translation of its name in order to enable the company to register in a foreign country the translation of the name must also be shown on the name reservation form following the English version, and must be in English or French characters (i.e. not in Russian or Chinese characters).

INCORPORATION OF PROFESSIONAL PRACTICES

When incorporating a company for members of certain professions (such as a company for a medical doctor, chartered professional accountant, professional engineer, chiropractor, etc.), the consent of the professional association must first be obtained.

When reserving the name for a professional practice company, you should mention in the box "**Additional Information**" in the "**Add a Name Approval Request**" the fact that a written consent from the applicable professional organization has been requested. Some professional organizations take quite a long time to provide a consent so you should also enquire as to turn around time.

For a list of professional practices, their addresses, websites and telephone numbers, see **Appendix C – Addresses**.

You should then telephone the professional association in question and:

- obtain a list of their requirements;
- obtain the appropriate forms;

- request an estimate of the time required to obtain the consent; and
- determine the amount of any fee payable.

Some professional colleges and associations require the *Articles* of professional corporations to contain a paragraph specifically referencing sections in the Act governing that profession or the bylaws of the association or college. Almost all professional corporations have restrictions as to who may hold voting and non-voting shares, as well as restricting as to who may act as director and officer. Generally, a member of the profession or a holding company controlled by the professional must be the only voting shareholder, and related people, such as family members, can only hold non-voting shares. Usually only the professional can be a director and officer. It is important to check the website of the professional association or college for specific rules. Therefore, the incorporator of the Company must be a member of the profession who is going to hold voting shares, and accordingly, a lawyer cannot be the incorporator (unless it is for the incorporation of a law corporation).

If the lawyer is incorrectly shown in the *Incorporation Application* as the incorporator, it may be possible to correct the error by filing a *Form 47* as long as one is able to provide the Registrar with a signed copy of the *Incorporation Agreement* showing that the incorporator was not the lawyer, but a member of the profession.

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LETTER TO CLIENT
(Confirming Reservation of Company's Name)

General Notes

A name reservation is valid for **56** calendar days. If the name reservation expires, it can be renewed or re-reserved for a further period of 56 days if it is still available. It is therefore important that:

- the client be advised promptly that the name has been reserved; and
- all incorporation documentation be prepared, signed and electronically filed with the Registrar as soon as possible.

Many law firms have a policy not to register the incorporation until a retainer is received from the client. Check with the supervising solicitor or your corporate supervisor to determine your firm's policy with respect to retainers.

When the name is reserved, the supervising solicitor may request that, instead of mailing the letter opposite, the legal assistant telephone, fax or email the client letter confirming the name reservation.

At this time, you may include the *Incorporation Information Form* (page 14) and the *Significant Individual Questionnaire* (see the Records chapter).

Preparation

- ① Insert the name of the company exactly as reserved.
- ② Insert the expiry date that is given to you at the time of reservation.
- ③ Insert the reservation number that is also given to you at the time of reservation.
- ④ Delete this sentence if the company will not be registered in Alberta or Saskatchewan. Adjust if the company will only be registered in one other province.

Insert the amount of the retainer you will be requesting. Omit the whole paragraph if you will not be requesting a retainer at this time.

Processing

Diarize the file for two weeks and if you have not heard from the client, follow-up with a reminder.

File No. _____

{date}

*{name and address of client
– not the name of the proposed company}*

Dear _____:

Re: Proposed incorporation of *{name of company}* ^① (the “Company”)

The above name has been reserved with the Office of the Registrar of Companies until *{date}* ^②, under No. ^③. ^④We have also applied to reserve the name in Alberta, Saskatchewan and Manitoba for extraprovincial registration at the time of the Company’s incorporation in British Columbia.

We would appreciate receiving your instructions to proceed with the incorporation of the Company and set up of the corporate records. Unless we hear from you on or before *{date}* ^②, we will take no further action and the reservation will lapse.

At the same time, we would ask you to provide us with a retainer of \$^⑤ which will be placed in our trust account and will be applied towards fees and disbursements incurred on your behalf for the incorporation of the Company.

Please call us if you have any questions with respect to the incorporation of the Company.

Yours truly,

{NAME OF LAW FIRM}

CONSENT **(of Company with Similar Name)**

General Notes

When reserving a company name, you may be advised by the Registrar's office that the consent of another company with a similar name is required. For example, you may be incorporating a company for a client who already has several companies that contain his or her name as part of the company's name. To illustrate, supposing that Mr. Joe Dimchuk has a company called "Joe Dimchuk Holdings Ltd.". If another company is incorporated for this client, for example, "Joe Dimchuk Enterprises Ltd.", the Registrar would require the consent of Joe Dimchuk Holdings Ltd.

The Consent opposite must be obtained before the documents are filed electronically.

Preparation

- ① Insert the name of the company exactly as reserved.
- ② The date of incorporation must be copied from the Certificate of Incorporation (or Certificate of Amalgamation or Certificate of Restoration) of the existing company.
- ③ The incorporation number is found in the upper right hand corner of the Certificate of Incorporation.

Processing

This Consent must be signed by a director or officer of the existing company and returned to the law firm either by mail or by fax.

The Registrar of Companies must receive a signed copy of the Consent either by mail, email, courier or fax, before the *Incorporation Application* may be filed.

The contact addresses are as follows:

- Fax: 1 250-356-8923
- Email: [**consent.letters@gov.bc.ca**](mailto:consent.letters@gov.bc.ca)

Notes: Do not send the Consent until the name is approved.

If emailing the Consent to the Registrar, you will have to scan it first and ensure that it is in .pdf format.

Once the Consent is received and approved by the Registrar's office, the Registrar of Companies will release the hold on the incorporation, allowing the electronic registration of the incorporation to proceed.

CONSENT

{date}

Registrar of Companies
2nd Floor
Waddington Building
940 Blanshard Street
Victoria, B. C.
V8W 3E6

Dear Sirs:

Re: Proposed Incorporation of *{Name of Proposed Company}* ①

{NAME OF EXISTING COMPANY} incorporated under the laws of the Province of British Columbia on ②, under No.③, consents to the proposed incorporation of a company under the name of *{NAME OF PROPOSED COMPANY}* ① or any variation thereof acceptable to the Registrar of Companies.

Yours truly,

{NAME OF EXISTING COMPANY}

Per: _____

INCORPORATION AGREEMENT

General Notes

The *Incorporation Agreement*, together with the *Articles*, constitutes a contract between the company and the company's present and future shareholders.

One of the documents required by the Act (s. 10) for the incorporation of a company is the *Incorporation Agreement*. In addition to the company's name, the *Incorporation Agreement* must contain the following (s. 10(2)):

- the agreement of each Incorporator to take, in his/her or its name, one or more shares of the company;
- for each Incorporator:
 - a signature line with the full name of that Incorporator set out **legibly** under the signature line; and
 - opposite the signature line of that Incorporator,
 - the date of signing by that Incorporator, and
 - the number of shares of each class and series of shares being taken by that Incorporator.

Preparation

- ① Insert the effective date of the Incorporation Agreement, or leave blank if you have not received instructions as to the effective date. The date must be before the incorporation date.
- ② Insert the name of the company exactly as reserved.
- ③ If you have not reserved a name and will be using the incorporation number of the company plus "B.C. Ltd." replace with the words:

"The name of the Company will be its incorporation number followed by 'B.C. Ltd.'"
- ④ This paragraph is optional. Check your law firm's policy and delete if necessary.
If there will be more than one Incorporator, substitute:

"We agree to take the number and class of shares in the Company set opposite our names."
- ⑥ Insert the description of the authorized share structure. The description must match the description of shares in this Agreement and the *Notice of Articles* (page 38).
- ⑦ If you know the name of the Incorporator, insert his or her full name and remove the words "Please print legibly". If you do not know the name, leave the spaces blank for completion when the Agreement is signed. If there is more than one incorporator, copy the row containing the incorporator's signature and complete the information regarding the other Incorporator(s), if known.
- ⑧ Insert the number and description of shares being taken by each Incorporator. Be careful that the share or shares taken by the Incorporators are voting shares. The description must match the description of shares in this Agreement and the *Notice of Articles* (page 38).

Processing

Make two copies and arrange to have both copies signed by each Incorporator. Ensure that each copy is properly signed and that the full name of each Incorporator is printed **legibly**.

Keep one copy in the company's *Records Book* and forward the other copy to the client when you report on the incorporation (see the **Organization** chapter).

INCORPORATION AGREEMENT

This Incorporation Agreement dated for reference the ①{Date}.

- 1 The undersigned wish(es) to form a company under the *Business Corporations Act*.
- 2 The name of the Company will be “{NAME OF COMPANY}”② (the “Company”)③.
- 3 ④The undersigned adopts as the Articles of the Company the Articles as set out in Schedule 1 to this Incorporation Agreement and the Notice of Articles as set out in Schedule 2 to this Incorporation Agreement.
- 4 ⑤The authorized share structure of the Company is:
 - (a) {insert the authorize share structure}
- 5 ⑥/The undersigned agrees to take the number and class of shares in the Company set out opposite his/her/its name.

Name and signature of Incorporator	Date signed	Number and class of shares being taken
<hr/> <i>Signature of Incorporator</i>	<i>{date}</i>	⑧{number and class of shares taken by this Incorporator}
⑦ (Name of Incorporator – Please print legibly)		

ARTICLES

General Notes

The *Articles* contain the rules and regulations governing the operation of the company.

Section 12 of the Act requires that a company must have *Articles* that:

- set rules for its conduct;
- are mechanically or electronically produced; and
- are divided into consecutively numbered or lettered paragraphs;
- set out every restriction, if any, on:
 - the businesses that may be carried on by the company, and
 - the powers that the company may exercise,
- set out, for each class and series of shares, all of the special rights or restrictions that are attached to the shares of that class or series of shares.

Preparation

A company may adopt as its *Articles*, by reference or by restatement, with or without alteration, all or any of the provisions of the Table 1 Articles included in the Regulations to the Act (s. 12(4)). Aside from the Table 1 Articles, the Continuing Education Society of BC (“CLE”) has developed a set of Articles for use by the profession. To assist our customers, we have formatted both the Table 1 Articles and the CLE Articles (in MS Word) for your use. However, most law firms have *Articles* in electronic format that are printed or photocopied for each company. Check with the supervising solicitor to determine what form of *Articles* your firm uses and complete as follows:

PAGE 1 Insert the name of the Company exactly as reserved

LAST PAGE Set out signature line and name of each Incorporator

Check with the supervising solicitor or corporate supervisor to determine whether any special rights and restrictions should be attached or any other special provisions such as restrictions on transfer should be included in the Articles (see the **Authorized Share Structure** chapter for a description of special rights and restrictions). You may have a standard set of special rights and restrictions that will suit the share structure the client has specified, or special rights and restrictions may have to be drafted to suit a special situation. Note that the Articles of professional practice companies require special drafting. It is generally not necessary to amend the standard *Articles* for an unlimited liability company.

Processing

Make two copies and have both copies signed by each Incorporator. Ensure that each copy is properly signed and that the name of each Incorporator is printed **legibly**.

Keep one copy in the company’s *Records Book* and forward the other copy to the client when you report on the incorporation (see the **Organization** chapter).

After the incorporation, you may insert the incorporation number and the company name into the company’s *Articles*. This can be done with or without an enabling resolution authorizing such (s. 12(5)).

ARTICLES

Incorporation Number
_____*{NAME OF COMPANY}*

TEXT OF THE ARTICLES

The *Articles* of a **benefit company** include a provision that:

- specifies the public benefits to be promoted by the benefit company;
Example of public benefits are the following activities: artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological.
- sets out the following commitments to:
 - conduct the benefit company's business in a responsible and sustainable manner; and
 - promote the public benefits specified above.

Date: *{Date}*

(Signature of Incorporator)

Name of Incorporator: _____
(Please print legibly)

INCORPORATION APPLICATION (Forms 1, 1U, 1CCC and 1BEN)

General Notes

The *Incorporation Applications (Forms 1, 1U, 1CCC and 1BEN)* are e-filed with the Registrar, along with the *Notice of Articles* (page 38).

Form 1ULC is used for unlimited liability companies and contains the following statement:

“The shareholders of this company are jointly and severally liable to satisfy the debts and liabilities of this company to the extent provided in section 51.3 of the Business Corporations Act.”

Form 1CCC is used for community contributions companies and contains the following statement:

“This company is a community contribution company, and, as such, has purposes beneficial to society. This company is restricted, in accordance with Part 2.2 of the Business Corporations Act, in its ability to pay dividends and to distribute its assets on dissolution or otherwise.”

Form 1BEN is used for benefit companies and contains the following statement:

“This company is a benefit company and, as such, is committed to conducting its business in a responsible and sustainable manner and promoting one or more public benefits”

The application must be in the prescribed form and must contain the following (s. 10(3)):

- a completing party statement referred to in section 15 (see below);
- the full names and mailing addresses of the Incorporators. Note – you may not use initials;
- the name reserved for the company (s. 22), and the reservation number given for it; or
- if a name is not reserved, a statement that the name by which the company is to be incorporated is the name created by adding “B.C. Ltd.” after the incorporation number of the company, and
- a *Notice of Articles* that reflects the information that will apply to the company on its incorporation (see page 38).

Before the *Incorporation Application* is submitted to the Registrar, the completing party must examine the *Incorporation Agreement* and the *Articles* to ensure that (s. 15(2)):

- both contain a signature line for each signatory with the name of that signatory set out legibly under the signature line;
- an original signature has been placed on each of those signature lines; and
- the completing party has no reason to believe that the signature placed on a signature line is not the signature of the person whose name is set out under that signature line.

Preparation

The instructions printed in the form are complete, however the additional explanations set out below are included for those items that may be confusing.

- ITEM A** Insert the name of the company exactly as reserved
- ITEM B** Complete the appropriate box depending on whether or not the incorporation is to be effective when the Application is filed or in the future
- ITEM C** Insert the full names and mailing addresses of the Incorporators (see the Incorporation Agreement)

Continued ...



BC Company
INCORPORATION APPLICATION
 BUSINESS CORPORATIONS ACT, section 10

Telephone: 1 877 526-1526
 www.bcreg.ca

Mailing Address: PO Box 9431 Stn Prov Govt
 Victoria BC V8W 9V3

Courier Address: 200 - 940 Blanshard Street
 Victoria BC V8W 3E6

DO NOT MAIL THIS FORM to BC Registry Services unless you are instructed to do so by registry staff. The Regulation under the *Business Corporations Act* requires the electronic version of this form to be filed on the Internet at www.corporateonline.gov.bc.ca

Freedom of Information and Protection of Privacy Act (FOIPPA): Personal information provided on this form is collected, used and disclosed under the authority of the FOIPPA and the *Business Corporations Act* for the purposes of assessment. Questions regarding the collection, use and disclosure of personal information can be directed to the Manager of Registries Operations at 1 877 526-1526, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

A NAME OF COMPANY – Choose one of the following:

- The name _____ is the name reserved for the company to be incorporated. The name reservation number is _____, OR
- The company is to be incorporated with a name created by adding "B.C. Ltd." after the incorporation number of the company.

B INCORPORATION EFFECTIVE DATE – Choose one of the following:

- The incorporation is to take effect at the time that this application is filed with the registrar.
 YYYY / MM / DD
- The incorporation is to take effect at 12:01a.m. Pacific Time on _____ being a date that is not more than ten days after the date of the filing of this application.
 YYYY / MM / DD
- The incorporation is to take effect at _____ a.m. or _____ p.m. Pacific Time on _____ being a date and time that is not more than ten days after the date of the filing of this application.

C INCORPORATOR NAME(S) AND MAILING ADDRESS(ES)

If an incorporator is a corporation or firm, enter the full name of the corporation or firm. Attach an additional sheet if more space is required.

CORPORATION OR FIRM NAME

LAST NAME FIRST NAME MIDDLE NAME

MAILING ADDRESS PROVINCE/STATE COUNTRY POSTAL CODE/ZIP CODE

CORPORATION OR FIRM NAME

LAST NAME FIRST NAME MIDDLE NAME

MAILING ADDRESS PROVINCE/STATE COUNTRY POSTAL CODE/ZIP CODE

CORPORATION OR FIRM NAME

LAST NAME FIRST NAME MIDDLE NAME

MAILING ADDRESS PROVINCE/STATE COUNTRY POSTAL CODE/ZIP CODE

INCORPORATION APPLICATION
(Forms 1. 1U, 1CCC and 1BEN)

Preparation (Continued)

The instructions printed in the form are complete, however the additional explanations set out below are included for those items that may be confusing.

ITEMS D and E Insert the **completing party's name** – this is usually a member of the support staff of the law firm – and his or her mailing address – this can be the mailing address of the law firm.

ITEM F Repeat the name of the completing party and arrange for party's signature.

Processing

Both the *Incorporation Application* and the *Notice of Articles* should be drafted online, saved and printed. A copy of the draft may be given to the supervising lawyer for review. The supervising lawyer may wish to forward a copy of the draft application to the client for approval. Once the draft has been approved, you may complete the electronic filing.

Note: Once drafted and saved online, you will have approximately three months to complete the incorporation before the draft documents are purged from the Registrar's database (see **Appendix B – Electronic Filings**).

When the documents have been electronically filed, the Registrar will forward the *Certificate of Incorporation* and a certified copy of the *Notice of Articles* to the company and a certified copy of the *Incorporation Application* to the completing party (s. 13(3)). You may choose to have the Certificate of Incorporation and certified *Notice of Articles* emailed to you or to the supervising solicitor. If you do so, save these documents in the client directory, the company's Virtual Minute Book on your system, or a designated directory for electronic corporate documents.

A notice of the incorporation will be published on the government's website. These documents should be placed in the *Records Book* (see the **Organization** chapter).

D COMPLETING PARTY – The completing party must be an individual, not a corporation or a firm.
 LAST NAME FIRST NAME MIDDLE NAME

E MAILING ADDRESS OF COMPLETING PARTY
 PROVINCE/STATE COUNTRY POSTAL CODE/ZIP CODE

F COMPLETING PARTY STATEMENT
 FIRST NAME MIDDLE NAME LAST NAME

I, _____
 the completing party, have examined the Articles and Incorporation Agreement applicable to the company that is to be incorporated by the filing of this Incorporation Application and confirm that:

- (a) the Articles and Incorporation Agreement both contain a signature line for each person identified as an incorporator in the Incorporation Application with the name of that person set out legibly under the signature line,
- (b) an original signature has been placed on each of those signature lines, and
- (c) I have no reason to believe that the signature placed on a signature line is not the signature of the person whose name is set out under that signature line.

NAME OF COMPLETING PARTY	SIGNATURE OF COMPLETING PARTY	DATE SIGNED
	X	YYYY / MM / DD

NOTICE OF ARTICLES

General Notes

The *Notice of Articles* along with the *Incorporation Application* and any required *Consents* are the only documents filed publicly with the Registrar on incorporation.

The *Notice of Articles* forms part of the *Incorporation Application* ((Forms 1. 1U, 1CCC and 1BEN)) and must be in the form established by the Registrar (s. 11) and must:

- set out the **name of the company**;
- set out the full name and prescribed mailing and delivery address of each of the directors (see the **Directors and Officers** chapter);
- identify the registered office of the company by its mailing address and its delivery address;
- identify the records office of the company by its mailing address and its delivery address;
- set out, in the prescribed manner, any translation of the company's name that the company intends to use outside Canada;
- describe the authorized share structure of the company (s. 53);
- set out, in respect of each class and series of shares, whether there are special rights or restrictions attached to the shares of that class or series of shares; and
- set out whether the *Articles* impose any restrictions on the ability of the company to allot or issue shares.

All existing companies that were incorporated prior to the Act coming into force must also file a *Notice of Articles* with the Registrar. This must be done within two years of the Act coming into force (s. 437). The risk of not doing this is that the company may be dissolved by the Registrar (s. 422).

Preparation

The instructions printed in the form are complete, however the additional explanations set out below are included for those items that may be confusing.

- ITEM A** Insert the name of the company exactly as reserved
- ITEM B** Insert the translation of the company's name for use outside Canada (it must first be reserved). If there is none, leave the box blank (do **NOT** insert "NOT APPLICABLE")
- ITEM C** Insert the full names, delivery addresses (and if different, mailing addresses) of the ongoing permanent Directors (see the **Directors and Officers** chapter for an explanation)

Continued...

NOTICE OF ARTICLES

A NAME OF COMPANY

Set out the name of the company as set out in Item A of the Incorporation Application.

B TRANSLATION OF COMPANY NAME

Set out every translation of the company name that the company intends to use outside of Canada.

C DIRECTOR NAME(S) AND ADDRESS(ES)

Set out the full name, delivery address and mailing address (if different) of every director of the company. The director may select to provide either (a) the delivery address and, if different, the mailing address for the office at which the individual can usually be served with records between 9 a.m. and 4 p.m. on business days or (b) the delivery address and, if different, the mailing address of the individual's residence. The delivery address must not be a post office box. Attach an additional sheet if more space is required.

LAST NAME	FIRST NAME	MIDDLE NAME	PROVINCE/STATE	COUNTRY	POSTAL CODE/ZIP CODE
DELIVERY ADDRESS					
MAILING ADDRESS					
DELIVERY ADDRESS					
MAILING ADDRESS					
DELIVERY ADDRESS					
MAILING ADDRESS					
DELIVERY ADDRESS					
MAILING ADDRESS					
DELIVERY ADDRESS					
MAILING ADDRESS					

NOTICE OF ARTICLES**Preparation (Continued)**

ITEMS D and E You should complete all four boxes, that is the delivery and mailing address for the Registered Office and the delivery and mailing address for the Records office – see the **Registered & Records** chapter for an explanation.

ITEM F Copy the authorized share structure from the *Incorporation Information Form*– page 14 and ensure that it matches the authorized structure in the Incorporation Agreement.

Processing

As the *Notice of Articles* forms part of the *Incorporation Application* ((Forms 1. 1U, 1CCC and 1BEN)), it is processed concurrently with it – see page 34.

D REGISTERED OFFICE ADDRESSES

DELIVERY ADDRESS OF THE COMPANY'S REGISTERED OFFICE

PROVINCE	POSTAL CODE
BC	

MAILING ADDRESS OF THE COMPANY'S REGISTERED OFFICE

PROVINCE	POSTAL CODE
BC	

E RECORDS OFFICE ADDRESSES

DELIVERY ADDRESS OF THE COMPANY'S RECORDS OFFICE

PROVINCE	POSTAL CODE
BC	

MAILING ADDRESS OF THE COMPANY'S RECORDS OFFICE

PROVINCE	POSTAL CODE
BC	

F AUTHORIZED SHARE STRUCTURE

Identifying name of class or series of shares	Maximum number of shares of this class or series of shares that the company is authorized to issue, or indicate there is no maximum number.		Kind of shares of this class or series of shares.			Are there special rights or restrictions attached to the shares of this class or series of shares?	
	THERE IS NO MAXIMUM (✓)	MAXIMUM NUMBER OF SHARES AUTHORIZED	WITHOUT PAR VALUE (✓)	WITH A PAR VALUE OF (\$)	Type of currency	YES (✓)	NO (✓)

