

CORPORATE AFFAIRS - GENERAL INFORMATION

Any person wishing to register or incorporate a business in the Yukon must be of the age of majority, which is 19.

Sole Proprietorship

A person who carries on a business by himself, with or without employees, is called a sole proprietor. It is the simplest way to set up a business, requiring only registration of the "trade" name and a business licence. It is the sole proprietor only who remains responsible for the business. To operate a business in this fashion you simply extend your right as an individual to make contracts and to buy and/or sell property.

The main drawback of this type to business is the proprietor has unlimited liability if the business should fail. All assets, both business and personal, may be seized by creditors and sold to pay outstanding debts. This can include home, car and even household effects.

Limitations on raising capital is another drawback. The sole proprietor may not sell a portion of his profits to an investor, nor can he sell shares to the public to raise money; he must get along on his own capital, plus whatever can be borrowed from family, friends, bank or loan company.

It is only under his own personal name that the sole proprietor can go into business without any formality. If he wishes to trade under another name, he must register the name with Corporate Affairs. There is a **\$25.00** filing fee. The desired name may be refused if it is too similar to any other business already registered or is in conflict with name approval policies. However, if the name chosen by the sole proprietor is registered, he is then similarly protected from the use of the name and goodwill by others in Yukon.

Depending on the nature of the business, the sole proprietor must abide by all applicable laws and regulations, i.e. obtain a business licence, observe public health regulations, etc.

A cessation of use of trade name by a sole proprietor must be filed if:

1. You discontinue doing business under the trade name,
2. You sell the business, or
3. You leave the territory.

There is no fee for filing a cessation.

Partnerships

When two or more persons decide to combine their qualifications, skills, energy and resources to go into business together, they form a partnership.

Each partner may agree to invest the same sum of money in a new enterprise, or each may put up a different amount. One partner may supply money and another only services. Funds may not be solicited from the public. The partners may each take the same share of profit, or the shares may be unequal. Usually, all partners join in making policy and major business decisions.

The partnership is a relatively simple and inexpensive form of setting up a business organization. Essentially it is created by persons who enter into a contract, either written or verbal, that defines the contribution of each and outlines the manner in which the earnings are to be shared. It is similar to the sole proprietorship except it involves more than one owner.

This business structure is useful for all manner of trades, manufacturing and other commercial enterprises. The key point to remember is the members of the partnership are "jointly and severally" responsible for all debts of the partnership. This means creditors may sue any one of the partners, or all of them, to pay the total debts if the assets held within the partnership are insufficient to cover a financial liability. In the case of bankruptcy, the personal possessions and holdings of all the partners may be seized and sold.

Each partner is the agent of the other. Any one partner can commit his fellow partners to a deal or an expenditure, even without the others' consent. In addition, if one partner commits an offense, for example fraud or steals the money of clients, then all partners may be held responsible even if they had no idea what was going on.

All partnerships must be registered with Corporate Affairs. There is a **\$25.00** filing fee.

In registering a partnership, a declaration must be giving full names and addresses of all partners, the name under which business will be transacted and a confirmation that the partners who are named, are, in fact, the only partners. All partners must sign the declaration. The partnership name may be refused if it too closely resembles the name of any business already registered in Yukon or does not comply with name approval policies.

Income tax law does not regard a partnership as either person or as a company as far as the collection of taxes is concerned. Each partner must include his share of the partnership profit on his individual income tax return. The partnership's net income - in other words, the profit remaining after deducting all charges, outlays and losses - is taxable to the partners individually in the year in which it is earned. The flip side to this is that losses may be applied by individuals against income earned from other sources. It is often advantageous to operate a business as a partnership during its initial years so the partners may use their share of the loss as an income tax deduction.

Except in the case of a change of limited partners, a partnership is dissolved whenever a new partner is added or when an old partner withdraws. This does not necessarily mean the business is discontinued, but it may have severe income tax consequences.

When a partnership is dissolved, the partner leaving must ensure two matters are taken care of. They are:

1. The filing of a notice of dissolution of partnership with Corporate Affairs, and
2. The giving of written notice to all creditors of the partnership that they are withdrawing.

Until these matters are completed all the persons who signed the first form as partners may be held liable for the partnership's debts and liabilities. The dissolution form calls for particulars similar to those on the registration form. There is no fee for filing a declaration of dissolution.

Limited Partnership

This type of partnership consists of one or more limited partners and at least one general partner. A limited partner is personally responsible to all creditors up to the amount of capital he has agreed to invest in the partnership but his liability ceases at that level. In this instance the general partner must be limited company and has unlimited liability.

A limited partner must not have anything to do with the management of the enterprise, nor can his name be used by the partnership. He can only share in the profits in a way determined in the partnership agreement.

The limited partnership would appeal to the investor who has full confidence in the general working partners and is content to risk his capital without having any legal say in the conduct of the business.

The Private Corporation

A corporation is an entity separate from that of the individual owners, whose responsibility as shareholders for the corporation's debts is restricted to the amount of their investment. Legal action brought against the corporation does not involve the shareholders personally. However, directors of the corporation may, in certain circumstances be held personally liable for negligence and liable to pay the wages of employees.

Incorporating a business should not be done without professional assistance. Although there are many books and brochures available that will tell you how to go about it, there are many aspects of incorporation which are not easily understood by a lay person. It would be wise for the novice to proceed with incorporation with advice from experts on such technical matters as share structure, both authorized and issued, special provisions in the articles and internal organization. An accountant can explain how incorporation could affect the taxation picture.

The private corporation is different from the public corporation in that:

1. The right to transfer shares is restricted in some manner.
2. The number of shareholders is generally limited to 15.
3. The public may not be invited to buy shares.
4. The financial statements are private documents.

The private corporation structure is mainly used for incorporating small and medium sized businesses, where the number of investors is limited and the need for capital is not massive.

There is a widespread notion that incorporation confers a host of tax advantages. This is not always the case. Income tax, as it relates to individuals, is determined from a set of graduated rates, based on the individual's "ability to pay". The "top bracket" can pay at a tax rate of approximately 46%. In the separate schedule of income tax levied on the net profits of business corporations, the maximum rate normally runs at 50% depending on the type of business. Some small private corporations will pay only 25% on active business income, avoiding the highest tax brackets of the graduated rate structure.

This may be a valuable concession for the business person, but it must be remembered that he will first have to pay the graduated rate on any salary he takes from his business and, secondly, he will have to pay personal tax on any dividends he is paid from the profits declared after corporate tax has been taken off.

One must also be aware that to obtain tax benefits through incorporation, extra costs are incurred such as preparation of annual returns, corporate minute books and financial statements. There is a threshold amount which a corporation must earn in order to make the incurring of these extra costs economically viable. This threshold amount will vary from individual to individual. An accountant should be consulted if this is of concern to you.

When incorporating, you may save considerable time and expense by seeking name approval with Corporate Affairs before you send in the document for incorporation. The name you select must comply with name approval policies, not already be in use by another company in Canada or be close to another already registered name as to make confusion by the public possible. All corporate names must end with "Limited" or "Ltd", "Incorporated" or "Inc." or "Corporation" or "Corp." This tells the public that the liability of the owners of the business is limited to the amount of their investment.

If a corporation transacts business under one or more trade names, all the trade names must also be registered.

The by-laws of a corporation are the detailed operating rules for conducting day-to-day affairs. They deal with the number and qualifications of directors, their terms of office, the required notice to be given for meetings of the board of directors, the categories of executive officers, provisions for voting by proxy and for the declaration of dividends, and other similar matters.

Every corporation must file an annual return with Corporate Affairs as at the anniversary date of incorporation.

The Public Corporation

The laws that govern a public corporation are basically the same as those that govern private corporations, except with the former there is an added emphasis on shareholder disclosure and protection. The method of incorporation is the same as that of the private corporation.

The public corporation is distinguished from the private corporation in that some of its shares are offered to the public for sale and may be traded on a stock exchange.

Forms required to be filed may be obtained from Corporate Affairs. We are located on the 3rd Floor of the Andrew A. Philipsen Law Centre. You can call us at 667-5442, or from anywhere within the Yukon at 1-800-661-0408 (local 5442). You can write to us at: Corporate Affairs, C-6 P.O. Box 2703, Whitehorse, Yukon Y1A 2C6.