

Starting a Corporation in the Yukon

The information contained in this memo is accurate as of the date written (March 2006). Please ensure that any fees quoted herein should be verified with the Government of Yukon, Corporate Affairs. Items identified in [] are specific sections of the Business Corporations Act (Yukon).

Note – the Yukon has been quite attractive as a jurisdiction due to its relatively low corporate tax rate and the absence of a residency requirement for directors.

These are some of the things that should be considered before incorporation:

1. **Name** – some clients want a special name that reflects their personality or the type of business they have. To others the name does not matter and a number is sufficient. To request a numbered company you must contact Corporate Affairs indicating that you require the next number in sequence be set aside. If the client is particular about using a name then a federal name search called a NUANS is required. A NUANS ensures that there is not another corporate name in Canada that is identical to or so similar to the chosen name that it can confuse people. The cost of each NUANS search is \$40.00 payable to the Territorial Treasurer. Please note that names should be as specific or identifiable to the client's business as possible such as "Joe's Cleaning Corp." rather than "The Cleaning Corp." Also bear in mind that the Yukon Registrar has certain names that are not acceptable, unless a strong case to the contrary can be provided. Names starting with First, Yukon, Klondike, Gold are likely to be rejected. A corporate name must end in a legal element. Under the Yukon *Business Corporations Act* these can be one of the following: Inc., Incorporated, Corp., Corporation, Ltd., or Limited.
2. **Who will be the directors and how many will there be** – think of directors as the upper management of a corporation. Directors make decisions regarding the operation of the corporation including whether to borrow money, sell shares, purchase property or assets on behalf of the corporation. With the decision making power comes great responsibility and liability. The initial director(s) can be named and subsequently changed after the corporation has been registered. You must have the correct spelling of their names and addresses (where they get their mail or where they could be served with documents). Please note that although some jurisdictions require directors to be residents of that jurisdiction, it is not a requirement in the Yukon.
3. **Who is going to maintain the corporate records/minute book** – in most instances this is a law firm or accountant, but clients may choose to do this themselves.
4. **What is the share structure going to be** – this is a discussion between a solicitor or accountant and the client. There can be any number of shares in any number of classes – common (which are generally voting and have the most 'power'; they can also be non-voting) and preferred (which are generally non-voting but do have dividend rights; they get paid profits before anyone else). All shares in the Yukon must be "without nominal or par value". The number and classes of shares is also dependent on the type of business and the type of shareholders.
5. **Who are going to be the officers** – officers have certain powers delegated to them through the by-laws of the corporation. They are generally given the authority to sign agreements on behalf of the corporation. However, they cannot just arbitrarily proceed, they must be given their authority to act on specific matters through the Board of Directors.

Once you have determined the answers to items 1 through 5, the following documents will need to be prepared: (Note the back of the YTG forms also describe the type of information that is needed).

- a) Articles of Incorporation – this form identifies the name of the corporation, classes of shares, number of directors, etc. *{items 1, 2 & 4}*
http://www.gov.yk.ca/forms/3000/yg3081_b.pdf
- b) Notice of Address – where will the corporate records be kept. *{item 3}*
http://www.gov.yk.ca/forms/3000/yg3082_b.pdf
- c) Notice of Directors and Officers – who will be the directors and officers of the corporation and on what date they become directors or 'upon incorporation'. *{items 2 & 5}*
http://www.gov.yk.ca/forms/files/yg3037_b.pdf

These documents are submitted **in duplicate** to Corporate Affairs along with payment in the amount of \$245.00 (\$225 + \$20 for the Gazette notice). The Gazette is the publication by the Government where it lists when the corporation was incorporated and under what name. Revenue Canada uses this information to contact new corporations. Once the documents have been processed you will receive back a Certificate of Incorporation giving the date and access number of the corporation as well as copies of the documents you submitted indicating that they have been filed. The Certificate & Articles of Incorporation are referred to as the 'constating documents' of the corporation.

Notarially certified copies of these documents may need to be prepared. If the client is opening a bank account or getting a municipal business license you will need to provide the Bank or the municipality with proof of the business name and who the directors and officers are.

Organization of the Corporation

After the Certificate of Incorporation is issued, a meeting of the directors of the corporation should be held at which time the directors may:

- a) Make by-laws. By-laws set out the 'rules' of the corporation and give the directors and officers their authority to act on behalf of the corporation.
- b) Directors Resolution to adopt forms of security*, certificates and corporate records. This document sets up the corporation including identifying who will be the Bank, accountant, whether a seal is required (desk – makes an imprint into the paper of the corporate name or wafer – usually a gold or red seal with the name of the corporation on it), confirms the by-laws, registered office and most importantly, issues shares at a particular price.
- c) Directors Resolution to authorize the issue of securities. This confirms and validates the Share Subscription(s), Share Subscription Receipt and Share Certificates.
 Share Subscription – each person or entity who has been authorized by the directors and has asked to purchase shares in the corporation agrees to pay the purchase price.
 Share Subscription Receipt – An officer of the corporation acknowledges that the shareholder(s) have purchased 'x' number of shares at the price identified. It is important that the officer physically collects the money for the shares and puts the money into the corporation's bank account.
 Share Certificates – based on the Directors Resolution share certificates are prepared to reflect the share issuances. Share certificates are signed by an officer of the corporation and the corporate seal is affixed thereto.
- d) Transact any other business. [s.105]

* Security includes a share or debenture or similar evidence of indebtedness.

All originally executed copies of these documents should be kept with the Certificate and Articles of Incorporation. These are considered the 'corporate records'. Shareholders Ledgers (records the issuances of shares) and Shareholders Registers (a register for each individual shareholder identifying how many shares of which type and/or class they hold) may be prepared.

The corporation has to ensure that its registered office and its records office are accessible to the public during normal business hours and is readily identifiable from the address given. [s.22]

The corporation has to prepare and maintain at its records office certain records:

1. Articles, by-laws and all amendments thereto.
2. Copies of any unanimous shareholder agreements and all amendments thereto.
3. Minutes of meetings and resolutions of shareholders.
4. Copies of all Notices of Directors and Change of Directors.
5. A securities register.
6. Copies of the financial statements, auditor's reports and other pertinent information.
7. A register of director's disclosures. [s.23]

Annual Maintenance

Pursuant to the *Business Corporations Act* (Yukon) there are certain aspects that must occur on a yearly basis.

These include:

Annual Return – this lists the directors and officers of the corporation and is signed by a director or other authorized signatory of the corporation. The Annual Return should be filed after the anniversary date or before the last day of the month following the anniversary month of incorporation. [s.267] Form 1-04 http://www.gov.yk.ca/forms/3000/yg3038_b.pdf The filing fee is \$15.00.

Notice of Change of Directors within 15 days of any change in directors. [s.114] http://www.gov.yk.ca/forms/files/yg3037_b.pdf The filing fee is \$15.00.

Notice of Change of Address within 15 days of any change of registered or mailing address. [s.22] http://www.gov.yk.ca/forms/3000/yg3082_b.pdf The filing fee is \$15.00

Corporations should also, on an annual basis, complete the following:

- Call an annual meeting of shareholders to be held not later than 18 months after the date of incorporation. [s.134]
- At each annual meeting appoint an auditor or, by unanimous approval, not appoint an auditor.
- At least 21 days before each annual meeting of shareholders send a copy of its financial statements to each shareholder. [s.161]
- Directors' Resolutions – these identify who have been appointed as officers for the corporation for the next year.
- Shareholders' Resolutions – these identify who have agreed to act as directors for the corporation for the next year.

Throughout the year the corporation may or may not do any number of things – issue more shares, borrow money, purchase assets – all of which should be directed to the originating solicitor or their designate.

Please note: **All forms submitted to Corporate Affairs must be in duplicate.**