



TRANSITIONING YOUR BUSINESS TO A CORPORATION

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Whether you are incorporating a company prior to opening a new business, or you are transitioning from a sole proprietorship or partnership to a corporation, there are new requirements which will affect how you operate as a corporation. This article sets out five of the most important things to remember after you incorporate. This is not intended to be an exhaustive list and you should always consult your lawyer for any specific questions you may have.

1. Use of Legal Identifier

Often, the most compelling reason for individuals to incorporate their business is to avoid the personal liability which comes with operating as a sole proprietor or partnership. However, this benefit could potentially be forgone if you fail to include the proper corporate identifiers.

Pursuant to the Business Names Act, a corporation is required to identify itself to the public under its corporate name or the name registered by it. Furthermore, a corporation is required to set out both its registered name (if it has one) and the corporate name on all contracts, invoices, negotiable instruments and orders involving goods or services issued or made by the corporation. Importantly, the corporation must use the full corporate name, including the legal identifier (ex., “Inc.”, “Ltd.”, “Limited”, etc.). The failure to comply with these requirements could lead to both fines under the Business Names Act and the courts holding individuals personally liable for corporate liabilities.

2. Proper Execution of Corporate Contracts

It is important that all contracts entered into by the corporation are signed by individuals with authority to bind the corporation and that such individual(s) sign on behalf of the corporation and not themselves. Signing authority for corporations is determined by the by-laws of the corporation and resolutions passed by directors of the corporation.

For example, if John Smith is the Secretary-Treasurer of Smith Inc. and is authorized to enter into contracts on behalf of Smith Inc., the signature line on the contract should be formatted as follows:

SMITH INC.

Per:

John Smith, Secretary-Treasurer

And if Smith Inc. is operating under the business name Smith Supplies, which it has registered, then the following formatting should be used:

SMITH SUPPLIES

a division of Smith Inc.

Per:

John Smith, Secretary-Treasurer

3. Apply for CRA Business Numbers

A corporation will be issued its own unique business number by CRA and will not keep the same number of a former sole proprietorship or partnership. The corporation will need to register for new sub-account numbers (HST, payroll, import-export) as a separate and distinct legal entity using its unique nine digit business number issued.

If the corporation will be offering goods or services to the public, the payment for such goods or services will, in most circumstances, be subject to HST. If the corporation will not exceed \$30,000 of revenue over any given four consecutive calendar quarters, it is not required to register for an HST number. If the corporation will exceed the \$30,000 revenue threshold, then it is mandatory that the corporation register for an HST number. The HST number should be included on all invoices rendered by the corporation.

4. Open New Bank Accounts for the Corporation

Generally, at the time of incorporation, the first directors will pass a resolution adopting a particular branch of a particular bank to be the designated bank for the corporation. The designated bank may be changed from time to time by resolution.

Even in the event that the unincorporated business had a separate bank account prior to incorporation, the corporation should open a new account under its name which will be utilized for all revenue and expenses of the corporation. The money in the corporate bank account should be used solely for expenses associated with the business of the corporation and not for personal expenses. In the event that personal expenses of an individual are paid from corporate money, such amounts may be treated as the income of the individual and be taxable to that person.

5. Annual Financial Statements and Filings

All corporations have an obligation to complete annual financial statements. The type of engagement (i.e., Notice to Reader, Review Engagement, or Audit) will vary from corporation to corporation. Regardless of the type of engagement the corporation may require, a Chartered Professional Accountant should be retained to complete the statements on an annual basis.

Upon completing the annual statements, the directors of the corporation or their lawyers pass the necessary approving resolutions and update the minute book of the corporation. Annual corporate information filings with the appropriate level of government are also required on an annual basis, and are separate and distinct from annual tax filing obligations. Corporations which fail to file their annual return with the government (a) are unable to participate in litigation; and (b) can be administratively dissolved by the government.

If you are interested in incorporating or have any questions related to an existing corporation, please call us to book an appointment for a consultation.

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