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Au service de tous les Manitobains

CHOOSE A BUSINESS STRUCTURE

GUIDE

UPDATED: August 2021

One of the most important decisions you make when starting a business is the type of legal organization you select for your company. This decision can affect how much you pay in taxes, the type of reporting your business is required to do, the personal liability you face and your ability to borrow money. If you are still unsure of which structure to choose, contact a lawyer or an accountant to assess the specific needs of your business and advise the type of structure most suitable to your business.

FORMS OF BUSINESS STRUCTURE

- Sole Proprietorship
- Partnership
- Corporation
- Co-operative
- Non-Profit

SOLE PROPRIETORSHIP

This is a business which is owned by one person who is solely responsible for its management and capital.

ADVANTAGES

- Easy to set up
- Low start-up costs
- Direct control of decision making
- Possible tax advantages
- Once profitability is established, the operation could be converted to a corporation. (Specific advice should be obtained from an accountant)

DISADVANTAGES

- The owner is personally liable for all business debts. Creditors may be able to recover against the owner's personal assets (e.g. home, car) to satisfy business debts.
- The sole proprietorship is not taxed separately. The proprietor's business income is taxed as part of personal income.
- If the owner passes away, the business becomes part of his or her estate, and there may be immediate tax consequences.

PARTNERSHIP

This business structure exists between two or more persons. To establish the terms of the partnership and to protect partners in case of disagreement or dissolution of the partnership, a partnership agreement should be drawn up with the assistance of a lawyer. Partners share in the profits according to the terms of the agreement. All owners share the management of the business and each is personally liable for all the debts and obligations of the business. This means each partner is responsible and must assume the consequences of the actions of the other partner(s). All partnerships must be registered with the Companies Office.

ADVANTAGES

- Possible tax advantages
- The partners can combine their financial resources and skills.

DISADVANTAGES

- Each partner is liable for all the debts and obligations incurred by the other partners in the course of the partnership business
- Each individual partner is liable both on his own, and with the other partners, for any wrongful acts or omissions by another partner in the course of the partnership business
- The partnership is not taxed as a separate entity. Each partner's share of the business income is taxed as part of that partner's personal income.
- In the absence of a partnership agreement, when a partner leaves or dies, or when there is a dispute which cannot be resolved, the partnership must be dissolved.

CORPORATION

A corporation is a distinct legal entity, separate from its individual shareholders. The assets are owned by the corporation and the liabilities are the responsibility of the corporation, not its shareholders. A corporation is identified by the terms of "Limited", "Ltd". "Incorporated", "Inc", "Corporation" or "Corp." This type of business can be incorporated at the provincial or federal level.

a) Provincial Corporations

When you incorporate your business under *The Corporations Act* in the province of Manitoba, you are only entitled to operate your business in Manitoba and have no name protection outside this province. If your business is and plans to be operating primarily within this province, provincial incorporation may be enough for you.

b.) Federal Corporation

Federal incorporation under *Canada Business Corporation Act* can be an excellent choice if your business needs the nation-wide business name protection that federal incorporation provides, or if your business is or will be operating internationally. If you choose federal incorporation, you will still be required to register your business in Manitoba.

The purpose of the *Guide to Federal Incorporation: Helping small businesses incorporate federally* is to give the reader a general overview of federal corporate law under the Canada Business Corporations Act.

MAIN GROUPS INVOLVED IN A CORPORATION

Shareholders

- They are the owners of the corporation. Common shareholders are entitled to vote at shareholders' meetings on company-related issues such as electing the board of directors and choosing an auditor. Most shareholders are not involved in managing the affairs of the corporation.
- Shareholders' liability for debts of the corporation is limited to the price they paid for the shares they own.
- Shareholders receive a portion of profits based on the type and number of shares they own in the corporation.
- They are entitled to share the assets if the corporation dissolves, after all debt obligations have been satisfied.

Board of directors

- The board of directors is elected by the shareholders to guide the affairs of the corporation.
- Directors owe a fiduciary duty to the corporation and must disclose any personal interest in any business in which the corporation participates.

Officers

- Officers are hired by the board of directors. They are responsible for the day-to-day management of the corporation.
- Unlike shareholders, officers can legally bind the corporation to contracts they sign on its behalf.

ADVANTAGES

- Establish a separate legal entity
- Limit your liability
- Potential tax deferral due to low corporate tax rates (Tax benefits and implications of incorporation, consult the Canada Revenue Agency (CRA) publication Canadian Small Businesses Guide)
- Improve your access to capital
- The life of a corporation is not affected by a shareholder's death
- Can be eligible for Capital Gain Exemption
- Family members can become shareholders and receive dividends

DISADVANTAGES

- It is more expensive to incorporate
- It is more complex to operate. There is more of an administrative burden in that, for example, annual meetings of shareholders must be held, and annual return filings are required by the Manitoba Companies Office
- The corporation requires its own tax return separate and apart from its shareholders
- The director of the corporation assumes some extra personal exposure to the liabilities of the business

COOPERATIVE

A co-operative (or co-op) is an enterprise that is owned and controlled by its members. Like any business, a co-op provides goods or services, but co-ops are governed by a membership where each member has one vote in the co-op's direction and key decisions.

Co-ops fall under different categories:

- **Producer co-ops** are owned and controlled by producers who sell their product through the co-op, like an agricultural co-op run by farmers.
- **Consumer co-ops** are owned and controlled by their consumer members who shop at the co-op, like a gas station or grocery store.
- **Worker co-ops** are owned and operated by people who work at the co-op. Worker co-ops can operate in any sector of the economy and range from manufacturing to restaurants to childcare.
- **Non-profit community service co-ops** provide services on a not for profit basis, for example a child care centre owned and operated by the parents using the centre.
- **Housing co-ops** are owned and managed by their residents.

ADVANTAGES

- Owners and controlled by its members
- One member, one vote
- Limited liability
- Profit distribution (surplus earnings) to members in proportion to use of service
- Surplus may be allocated in shares/cash

DISADVANTAGES

- > Possibility of development of conflict between members
- > Longer decision making process
- > Requires members to participate for success
- > Extensive record keeping necessary
- > Less incentive to invest additional capital

HOW DO I REGISTER MY BUSINESS NAME IN MANITOBA FOR A COOPERATIVE BUSINESS?

The Cooperative Development Services branch provides information on various corporate structures and all matters necessary to submit a request for incorporation of a Cooperative.

Contact: Cooperative Development Services
Toll free: 1.866.479.6155
Email: co-ops@gov.mb.ca

NON-PROFIT

A non-profit organization is created with the intention to not make personal profits. It is formed for non-commercial purposes, for example, to perform community work or to establish a social or athletic club. Any profit that is made is used to further the goal or undertaking of the organization. Profits must not be used by the individuals involved for their own personal financial gain.
While it is not necessary for this type of organization to incorporate or note its name with the Companies Office in order to operate on a non-profit basis, it may be advisable, and legal advice should be obtained in this connection.

ADVANTAGES OF INCORPORATIONG

- > Limited Liability, the individuals who are involved in the corporation are not normally responsible for the legal and financial obligations of the corporation. (There are exceptions to this general rule.)
- > Title to Property, the corporation can own property in its corporate name. Should the membership of the corporation change, the legal ownership of the property lies with the corporation.
- > Funding, if an organization requires funding, some federal, provincial or private funding agencies require that it be incorporated.
- > Continued Existence, the existence of a corporation does not depend on the continued involvement of its individual members or directors. The corporation exists until it is formally dissolved

DISADVANTAGES OF INCORPORATING

- > It is more expensive to incorporate.
- > It is more complex to operate. There is more of an administrative burden in that, for example, an auditor may have to be appointed, and annual return filings are required by the Companies Office.
- > It is more expensive to operate