

Chapter 1 — Why Should I Incorporate?

One of the most frequently asked questions by entrepreneurs starting a new business is: “Should I incorporate?” The answer to this question is usually: “That depends on your particular situation and your particular needs.”

Among the factors to consider in making this decision are the benefits of incorporating (versus operating the business as a sole proprietorship or partnership) and the implications that incorporation may have for the business. Bear in mind, too, that if you decide to incorporate, you will then have to choose between federal and provincial/territorial incorporation.

If you should decide that you are not ready to incorporate at this time, it is important to remember that the factors affecting this decision can change over time. With that in mind, you may find it helpful to keep this guide on hand for future reference.

1.1 Benefits of Incorporating

Separate legal entity

The act of incorporating creates a legal entity called a corporation, commonly referred to as a “company.” A corporation has the same rights and obligations under Canadian law as a natural person. Among other things, this means it can acquire assets, go into debt, enter into contracts, sue or be sued, and even be found guilty of committing a crime. A corporation’s money and other assets belong to the corporation and not to its shareholders.

When a business is incorporated, its separate legal status, property, rights and liabilities continue to exist until the corporation is dissolved, even if one or more shareholders or directors sell their shares, die or leave the corporation.

Limited liability

The act of incorporation limits the liability of a corporation’s shareholders. This means that, as a general rule, the shareholders of a corporation are not responsible for its debts. If the corporation goes bankrupt, a shareholder will not lose more than his or her investment (unless the shareholder has provided personal guarantees for the corporation’s debts). Creditors also cannot sue shareholders for liabilities (debts) incurred by the corporation, even though shareholders are owners of the corporation. Note, however, that if a shareholder has another relationship with the corporation — for example, as a director — then he or she may, in certain circumstances, be liable for the debts of the corporation.

The *Canada Business Corporations Act* (CBCA) places a number of obligations and responsibilities on directors. For example, it says that directors can be held liable for certain acts or failures to act. Chapter 7 of this guide *Organizing Your Corporation: The Directors*, contains further information on the role of directors.

Lower corporate tax rates

Because corporations are taxed separately from their owners, and the corporate tax rate is generally lower than the individual tax rate, incorporation may offer you some fiscal advantages. However, we strongly suggest that you ask a lawyer or accountant to help you assess whether incorporating might save you money.

For more information on:

The tax benefits and implications of incorporation, consult the Canada Revenue Agency (CRA) publication *Canadian Small Businesses Guide*. This publication, which also covers such matters as business and professional income and payroll deductions, is available on the CRA website: www.cra-arc.gc.ca.

1.2 Implications of Incorporating

Higher start-up costs

If you decide to incorporate your business, you will have higher start-up costs than if you carry on the business as a sole proprietorship or partnership. Some of these costs are directly related to the process of setting up the corporation, while others can include professional fees paid for legal and accounting services. Although there is no requirement to obtain legal advice to incorporate, we encourage you to do so, especially if you are considering setting up a company with a complex share structure.

Increased formalities

All federally incorporated businesses must file certain documents with Corporations Canada. Among these are:

- Articles of Incorporation;
 - an Annual Return; and
 - notices of any changes in the board of directors and/or the address of the registered office.
- A federally incorporated business must also:
- maintain certain specified corporate records;
 - file corporate income tax returns; and
 - register in any province or territory where it carries on business.

Greater access to capital

It is often easier for corporations to raise money than it is for other forms of business. For example, while corporations have the option of issuing bonds or share certificates to investors, other types of businesses must rely solely on their own money and loans for capital. This can limit the ability of a business to expand.

Corporations are also often able to borrow money at lower rates than those paid by other types of businesses, simply because financial institutions and other sources of financing tend to see loans to corporations as less risky than those given to other forms of enterprise.

For more information on:

How small businesses can finance their business ventures, consult the Canada Business website: canadabusiness.gc.ca.

Continuous existence

While a partnership or sole proprietorship ceases to exist upon the death of its owner(s), a corporation continues to live on even if every shareholder and director were to die. This is because, in the case of a corporation, ownership of the business would simply transfer to the shareholders' heirs.

This assurance of continuous existence gives a corporation greater stability. This, in turn, allows the corporation to plan over a longer term, thereby helping it obtain more favourable financing.



More complex structure

Because a corporation is a separate legal entity that has no physical form, its activities must be carried out by individuals who have an interest in the corporation and are entitled to act on its behalf. These individuals can be divided into three categories:

1. **Shareholders** — These are the people who own the corporation. They make decisions by voting and passing resolutions generally at a shareholders' meeting. Most importantly, they elect the directors of the corporation.
2. **Directors** — They supervise the management of the corporation's business. A corporation must have at least one director. They are also responsible for appointing the corporation's officers.
3. **Officers** — A corporation's officers hold positions such as president, chief executive officer, secretary and chief financial officer. Although a corporation's officers are appointed by the directors, their duties are normally set out in the by-laws. In general, officers are responsible for managing and executing the corporation's day-to-day business.

An individual may hold more than one of these positions in a corporation. For example, the same individual may be a shareholder, a director and an officer, or even the sole shareholder, sole director and sole officer.

For more information on the roles and responsibilities of shareholders, directors and officers, see Chapter 7 Organizing Your Corporation: The Directors and Chapter 8 Organizing Your Corporation: The Shareholders.

For more information on:

If you are considering a business venture involving more than one shareholder, you may want to obtain legal advice about the benefits of entering into a shareholder agreement. Unanimous shareholder agreements can establish the rules by which the shareholders make decisions and, most importantly, resolve disputes among themselves. Section 8.4, Shareholder Agreements, reviews these documents in very general terms.

1.3 Benefits of Incorporating Federally

Filing Articles of Incorporation and other required documents online

Corporations Canada is always working to make its services more accessible and convenient. For example, with our online service you can:

- file documents with Corporations Canada;
- receive acknowledgements of filings;
- obtain certificates; and
- pay fees.

Filing documents online gives you a number of distinct advantages. Among them:

- **Convenience** — You can file from the office or from your home. The Corporations Canada Online Filing Centre is open seven days a week, 24 hours a day.
- **Low or no delivery costs and delays** — Online submissions eliminate delivery expenses and delays.
- **Immediate acknowledgement of filing** — No more uncertainty about whether your submission has been received.
- **Prompt processing of Articles of Incorporation** — Corporations Canada processes electronic submissions either the same day or the next day, depending on the time of day the documents are filed and the complexity of the application.
- **Reduced filing fee** — \$200 for online incorporation rather than the regular fee of \$250.

Heightened name protection

An approved federal corporate name offers an extra degree of protection of your rights to that name. Specifically, federal incorporation allows your business to operate using its corporate name right across Canada, which is important if you decide to expand your business to other provinces or territories.



Every incorporating jurisdiction in Canada screens proposed corporate names. Most use the NUANS® name search system. However, if you incorporate under the legislation of one province or territory and later want to expand your business to another province or territory, you could find that another corporation is already using a name similar to yours in that other location.

On the other hand, an approved federal corporate name allows your business to operate using its corporate name right across Canada (the Province of Quebec may require that a French version of the name be registered), which is important if you decide to expand your business to other parts of the country.

Location flexibility

Incorporation under the CBCA also gives you a degree of flexibility in choosing a location for your business. This flexibility is not always available under the legislation of other Canadian jurisdictions. For example, the CBCA sets no restrictions on the province or territory where registered offices can be located. Nor does it dictate where corporate records are maintained or where annual meetings are held. In fact, the CBCA even permits meetings to be held electronically or outside of Canada.

Recognition

Corporations incorporated under the CBCA are recognized around the world as Canadian corporations. This means that federal incorporation may be seen as a sign of distinction.

High-quality clientele service

Corporations Canada processes applications and all other service requests with minimal delay. Visit our website to learn more about our standards for processing various types of requests. You can also subscribe to our e-mail Information Bulletin to receive reminder notices and up-to-date news and information from Corporations Canada, including electronic versions of notices from the Director.

The Corporations Canada website is available in both English and French, as are all of our publications. The knowledgeable and helpful staff members of our client services unit are also fully bilingual.

Resources for small businesses

Corporations Canada is a Branch of Industry Canada, a Canadian government department that views small business as a key to jobs and economic growth. However, many people find it difficult to understand the complex laws, such as the CBCA or the provincial/territorial incorporation laws, that have been put into place by governments to regulate businesses. There are also many people starting out in business who cannot afford the fees of professionals to help them meet the wide-ranging requirements of these laws. With this in mind, Corporations Canada has created a library of materials to help the small business person start and operate a corporation. This material is available on the website or by contacting Corporations Canada. You may also wish to consult Links of Interest for Small Businesses at the end of this Guide for listings of other resources available to small businesses.