

CHARITABLE ORGANIZATION
CLIENT'S MEMORANDUM ON CORPORATIONS WITHOUT SHARE CAPITAL

ADVANTAGES OF INCORPORATION

Incorporation creates a new legal person and after it has been done the corporation alone is responsible for the liabilities. This avoids personal liabilities of the members and directors.

The corporation can also hold real estate in its own name without having to designate persons to hold property as trustees.

A corporation without share capital can make a registration with income tax as a charity and when this has been done the corporation can issue receipts to donors who can write-off their contribution from their income taxes.

As the corporation without share capital is not for profit and so no income can be given to the members. No income tax is payable for the income of this type of a corporation.

The usual type of an organization can be done under either Federal laws or provincial laws. The incorporation of a body as a corporation without share capital has bylaws, which give the organization a formal structure for election of its directors, and this minimizes the conflicts within the membership.

NAME

The corporation without share capital cannot use the word "limited" but it can be called "club", "society", "foundation" or "association" etc.

The name should be checked out and approved by the Federal or the Provincial authorities before an application is made. Private search houses now do this. They charge a cost for doing this search. The Ministry must approve the name.

HEAD OFFICE

It is important to choose a location as an address for the head office carefully because the police will check out the address and in future if it is to be changed it must be done by a formal application to the Ministry. If you have changed the head office, please advise and I will be glad to give you further particulars on the requirements of the change of head office.

OBJECTS

The objectives of the organization must be set out in the application and in the case of a corporation without share capital it must state that it is not for any profit or pecuniary gain. The objects should be set out as religious, charitable, educational, artistic, athletic or as the case may be and should be specifically defined in as much detail as possible.

Where the registration of the organization is to be made with the income tax department to issue tax receipts special clauses should be inserted for this purpose from the beginning. You should advise me if your intention is to make a registration and I will insert the appropriate clause for this purpose.

CAPITAL

A corporation without share capital does not raise capital by way of sale of shares. Such organizations would obtain annual dues, donations, or may borrow money, if properly authorized. Special clauses authorizing the corporation to borrow money must be included in the articles and the by-laws.

MEMBERSHIP

The requirements of becoming a member should be clearly stated in the by-laws of the corporation. Where there is more than one class of the members, it should be stated in the by-laws and the definition of each class should be clear in the by-laws. A list of members should be up-dated from time to time and it is a good practice to review the membership each year at the annual meeting. This will ascertain who is entitled to vote at the annual meeting to elect the new directors. If the annual dues have not been paid and the by-laws require such dues to be paid the member should be struck-off the list.

ANNUAL MEETINGS

A notice of the annual meetings must be sent out to the members and to the auditor each year. The notice must be sent out to the members in good standing at the last known address. There are time limits for the giving of notice of the annual meeting and this should be stated in your by-laws.

DIRECTORS

At the annual meetings of the members by a majority vote the directors are elected. Even if these directors are defined as governors or trustees they are under the Act known as "directors".

From the directors there should be appointed office bearers who are usually the President, the Vice-President, and the Secretary/Treasurer.

BOOKS AND RECORDS

Corporations without share capital must hold their annual meeting and this record should be kept in the minute book of the corporation, which may be kept with the solicitor of the organization. Such corporations are required to keep minutes of all the proceedings at other meetings as well including meetings of directors and executive committees.

It is advisable to appoint a committee or a person responsible for legal matters in the board of directors who should be in touch with me from time to time to ensure that the formalities are properly observed.

LEGAL COMMITTEE

The best way for a corporation without share capital to keep its records and books and proper legal organization is to have a legal committee or a person on the board of directors responsible for legal formalities. The committee or the person should keep in touch with the lawyer.

NOTICE OF CHANGE

If the directors change their address at any time notice must be given to the Ministry within 10 days on the form provided by the ministry. If this happens please advise me and I will complete the form

for you.

BY-LAWS

With the application for incorporation you will need to submit your first by-law, which is the organizational by-law of the corporation.

The first by-law of the corporation should include the following:

(a) requirements and qualifications of membership, and the qualifications of different types of memberships if there are different categories.

(b) the fees and dues of membership per annum, if any;

(c) the suspension or termination of membership;

(d) the officer bearers including the directors, President, Secretary/Treasurer and Vice-President;

(e) provisions of the annual meetings and meetings of the board of directors;

It is desirable not to make the by-law too complicated. The first bylaw is the constitution of the organization. The bylaws should be drafted to ensure that the objectives of the organization are properly achieved.

ANNUAL FINANCIAL RETURNS

Your accountant must file annual financial returns showing the organization's financial statements. In some cases the financial statements may have to be filed with the Public Trustee of Ontario.

REGISTRATION AS A CHARITY

The formalities of incorporation are quite different that registration as a charity under Income Tax Act. If you wish to register the organization as a charity to provide receipts for tax exemption purposes for donations, you will need a separate application to the Ministry of Revenue. It is therefore important to have the objectives approved by the Tax Department before you submit the articles for incorporation.

The objectives of the organization must be for the relief of poverty, advancement of education, advancement of religion or similar charitable purpose.

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