

## **CLIENT MEMORANDUM ON INCORPORATION**

### **ADVANTAGES OF INCORPORATION**

There are many advantages of incorporating and all the advantages cannot be set out in this short memorandum. The most important advantage is the limitation of the liability. If all the transactions were conducted through the company, your personal assets and your house would not be in jeopardy if things went wrong with the business.

More tax planning possibilities exist with a corporation than without one. Your accountant will advise you of these possibilities and I will be pleased to discuss the same with you.

### **IMAGE**

An incorporated company creates a much better image in the market place and makes the parties you are dealing with more aware of the fact that you are legally properly organized.

### **FINANCING**

A limited company is a more flexible instrument for arranging your financing. You can borrow money on loan through the company or issue common shares or special shares.

### **SUCCESS OF NEW BUSINESS**

Many new business ventures fail within the first year. It is to your advantage to seek professional advice from an accountant, a lawyer and where possible from other sources for the conduct of your type of business. Community colleges and the Federal Business Development Bank now provide business courses.

### **NAME OF CORPORATION**

You should avoid using general names such as investments, holding company etc. It is helpful to have a geographic designation or initials or parts of your name incorporated into the name of your company. It is no longer necessary to obtain the approval of the ministry for your name and the *RESPONSIBILITY* for ensuring that the name does not conflict with a similar existing business name now lies with you.

You should carefully check the telephone book and other sources of information to ensure that in the market place in which you would be dealing with, there is no other company using the same or similar name, which can confuse the public. Where there is a doubt, I will review the question with you and you should let me know what names exist in the market.

A company may have one name and can still do business under a different name. This is called a style name. Where such style name is used, a separate registration is required. When you intend to do this, you should let me know.

If you were selling a particular product under a brand name or the name of your company, it would be advisable to register a trademark. If you have this situation please discuss it with me.

### **ONTARIO OR FEDERAL CORPORATION**

In most cases, an Ontario corporation is adequate for residents of Ontario because the head office will be located within Ontario. The only time you really need to consider a Federal company is where you intend to set up in different provinces. If you are only dealing with Quebec, a treaty covers Quebec and an Ontario company can operate in Quebec without limitations. An Ontario company can also have an operation in another province and can do so by obtaining an extra provincial licence. Such a licence is not required if you are simply trading with other provinces or with any part of the world.

### **HEAD OFFICE**

The head office is usually the place of your business. It is possible to keep your home address as the legal head office of the company provided that you are not infringing the by-laws of your municipality. If you are not manufacturing or disturbing the neighbours with your business activity, no complaints or breach of by-law is likely to occur. A change of head office requires a by-law or a resolution if you decide to move the address of your head office from one place to another. If you do so you should discuss it with me.

### **DIRECTORS**

The present 1982 Business Corporations Act of Ontario allows you to have a maximum and a minimum amount of directors. This avoids the need to change the articles of your corporation each time you change the number on your board. You are required to designate a maximum and a minimum number of directors.

The directors of the corporation are re-elected each year by a majority vote of the shareholders. The directors are responsible for the day-to-day management of the Corporation.

### **OFFICERS**

The officers are the president, vice-president and Secretary/Treasurer and they are appointed amongst the directors of the corporation. In a small company it does not usually make a big difference as to who holds what position.

If there is a change in the address of any of the directors or officers, you are required to notify the Ministry within 10 days time.

### **SHAREHOLDERS' AGREEMENT**

It is common and also very advisable to have a shareholders' agreement. The new act allows a unanimous shareholders' agreement, which can limit the powers of the directors.

The usual items contained in a shareholders' agreement are the rights and obligations of the shareholders when one shareholder wishes to withdraw or dies.

If you do not provide for a shareholders' agreement or fail to sign an agreement, which has been prepared, a party may take the company to court to wind up. The usual result in such cases is loss of profits and value of the company in the time it takes the matter to go before the court.

### **AUTHORIZED CAPITAL**

It is now possible to have an unlimited amount of authorized capital. In a small company the authorized capital does not have any major significance.

### **ISSUED CAPITAL**

In a small company it is initially desirable to issue a total of about 100 shares. Each common share gives one vote. Most special shares (previously called preferred shares) do not carry a vote. 51% of the votes carry the majority and such party can elect the directors and can substantially control the affairs of the company. Where you are providing for equality of shares you should also provide for a casting vote in the event of a tie. You should discuss this question with me where there is any doubt.

### **OBJECTS CLAUSE**

Before the 1982 Business Corporations Act, it used to be necessary to write out a list of all the activities that the company planned to do. This is no longer required.

### **BANK**

You should choose a bank most convenient to you. A bank manager and your relationship with him are usually more important than the name of the bank. Each bank manager varies in specific limited amounts of lending powers and he may have to refer your application to borrow to the head office located usually in Toronto.

Each new company is required to operate a bank account. You should ask your bank to complete the banking forms, which will include the forms called, agreement to operate an account, declaration of the names of your officers, a by-law to borrow and signature cards. You should ask your bank to complete these forms and you should indicate to them how you want one or more officers of the company to sign the cheques. You will require the corporate seal on these documents and for that purpose you should ask your bank to forward the completed documents to my office, or you can bring them to my office and I will place the corporate seal on the documents for you. If you see any new or different documents such as the assignment of book debts, guarantee etc, you should review these documents with me before signing them. You will become personally responsible for any borrowing if you sign a personal guarantee.

### **ACCOUNTANT**

The Business Corporations Act requires you to have an auditor unless all the shareholders consent to waive the requirements of an audit. In most small companies, it is not necessary to have an auditor but you should have an accountant who will complete your accounts and complete your tax returns.

### **FISCAL YEAR END**

The fiscal year end is usually the anniversary of the date of incorporation. Your accountant should advise you on a suitable year-end. If you decide to change the fiscal year end, a resolution for the

company is required to be passed and you should obtain consent from Revenue Canada.

### **SALE OF ASSETS AGREEMENT**

If you have owned assets or purchased them prior to incorporating, you will require an agreement to transfer the assets to the company. This transfer is completed under section 5 of the Income Tax Act. Which allows you to make the transfer without payment of tax, provided that you file what are called election forms. Your accountant completes these forms. The agreement will be prepared by me. Your accountant will need to work closely with me if this is required.

### **CLIENT | LAWYER RELATIONSHIPS**

I will need to work with you closely on a number of matters even after you have incorporated. After I have sent the report on incorporation to you, it will be your responsibilities to make sure that you arrange a meeting to come into sign the first resolutions. Where you have given instructions to me to prepare the shareholders' agreement, again it will be your responsibility to ensure that all the shareholders have signed it. I will not be sending reminders to you to ask you to come in to sign the documents. The documents enclosed with the first report are only copies, which may be signed if you wish, but the originals will be kept in the minute book in my office and they should be signed in my office.

Over the course of the year, I will get to know you and your company and will be pleased to act for you on an ongoing basis.

The minute book will be kept in my office along with the seal and each year I will be sending you a reminder for the preparation of the minutes of your annual meeting and I will at the same time review all your records and report on it.

Building up a long term relationship is more important than bargaining for the last dollar, as the lawyer who is watching your long term interest can give you his comments which can substantially affect the protection of your company and your assets. Our fees are very comparable with the other lawyers with similar qualifications and expertise. We act regularly for about 250 companies and 25 years experience in this field.

### **FEES**

Our fees will depend on whether we need to advise you on the shareholder's agreement, rollover agreement and estate planning, liability planning and other matters which should be reviewed at the time of incorporation.

**Chauhan & Associates  
Barristers and Solicitors  
330 Hwy. No. 7 East, Suite 309  
Richmond Hill, Ontario  
L4B 3P8  
Tel. (905) 771-1235  
Fax (905) 771-1237  
Email: [globalmigrations@hotmail.com](mailto:globalmigrations@hotmail.com)**