

INCORPORATING UNDER THE BUSINESS CORPORATIONS ACT OF THE NORTHWEST TERRITORIES

The purpose of this package is to help you submit the forms and information required to incorporate a business under the *Business Corporations Act* (BCA).

Forms and instructions are available on our website at:

<https://www.justice.gov.nt.ca/en/nwt-corporations/> . The following sections numbered 1 through 8 will give you some suggestions on filling out and submitting these forms. By ensuring that you provide all the required information with your initial application, you can help the Corporate Registry process your incorporation documents more efficiently.

You should note, however, that this package does not tell you everything you may need to know about incorporation. You may wish to consult with legal counsel or other professional advisors to consider other features that might be desirable in your corporate structure, or advise you on choosing a name for your corporation.

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SECTION 1 – COMMON QUESTIONS

What is the deadline for filing your Annual Return with the Corporate Registry?

Annual returns (Form 17) for all corporations are due by the end of the month following the anniversary date of incorporation/amalgamation.

What are the advantages of incorporation?

- Limited liability: potential loss limited to amount invested in the corporation.
- Perpetual existence: corporation continues on after the death of the individual.
- Tax advantages: accountants will generally recommend incorporation once revenues reach a certain point.
- Raising capital: corporate form of business organization easier to raise capital through the sale of shares.

What are the disadvantages of incorporation?

- It is more expensive and complex to operate.
- There is more of an administrative burden. For example: annual meetings of shareholders must be held, the Corporate Registry requires an annual return (due each year by the end of the month following the anniversary date of incorporation/amalgamation), and notice of change of any information must be filed if applicable, as well. The corporation also requires its own tax return separate and apart from its shareholders.

What kinds of businesses can incorporate under the *Business Corporations Act*?

Almost any type of business may incorporate under the *Business Corporations Act*. However, railway, steamship, air transport, canal, telegraph, telephone, irrigation, mortgage, banking, insurance, loan and trust companies, and other financial institutions, cooperative, Chambers of Commerce as well as not-for-profit corporations are incorporated under different statutes.

There are no restrictions, such as minimum company size, on the businesses that may incorporate under the *Act*.

Can a corporation act as a director on the Board of Directors?

No, directors must be individuals.

Subsection 106(1) of the *Business Corporations Act* disqualifies from being a director:

- anyone who is less than nineteen years of age;
- anyone of unsound mind;
- a person who is not an individual; and
- a person who has the status of bankrupt

SECTION 2 – INCORPORATION

1. What is the First Step to Incorporation?

If you choose to incorporate a numbered company, a Name Search and Reservation is not required. The Registry will assign your distinctive number; however, you must indicate the legal element of your choice within the Articles of Incorporation. Section 3 of this package outlines how this must appear on the submitted forms.

If you choose a specific name (words, rather than a number), verifying the uniqueness of your proposed corporation name in its area of doing business may take some time. Therefore, you may want to have the name searched and reserved against possible use by others within the Northwest Territories **before** you file your Articles of Incorporation. If you do not search and reserve your proposed name in advance, it must still be searched at the time you file your articles. The fee for searching a name is \$25, which must be submitted with the Northwest Territories Name Search and Reservation form.

The Registry will examine your request and determine the distinctiveness of your proposed name to ensure that it meets the name-granting requirements of the *Business Corporations Act* and Regulations. The Registry will then make a decision to grant or reject it. If your name request is granted, you have a reservation of that name for a 90-day period. If the 90-day period lapses before incorporation, you must make a renewed request for a name reservation with the Registry.

2. What Information Must be Filed?

Before you can receive a Certificate of Incorporation, you must submit all of the following supporting materials to the Corporate Registries office:

- A Northwest Territories Name Search and Reservation form, except when requesting a numbered name (\$25)
- FORM 1 - Articles of Incorporation (\$300)
- FORM 2 - Notice of Registered Office
- FORM 4 - Notice of Directors
- Applicable fees

It is not mandatory to use the forms provided. However, substitutes must follow the same format, provide all of the required information in legible printing, and be set out on bond paper measuring 8.5 x 11 in. Original signatures are required; scans or photocopies cannot be accepted. Forms must be mailed in or delivered in person and may not be submitted by fax or by email.

3. How Do I Fill Out Form 1 - Articles of Incorporation?

SECTION 1, Name of Corporation:

If you have chosen a specific name, type or clearly print the name in Section 1. If the name has been reserved by the Registry, ensure that the letter of approval or a copy of the approved Name Search and Reservation is enclosed with your articles. If the name has not been reserved, you must submit a Northwest Territories Name Search and Reservation form along with your other documents. The request will go through the approval process when the articles are filed.

If you are incorporating under a numbered name, leave a blank space on the left hand side, write in the words Northwest Territories or N.W.T. and add the legal element of your choice, such as Inc., Ltd., Corp. etc. (_____ N.W.T. Inc.). If you are incorporating under a bilingual name, both English and French forms of the name should appear here.

SECTION 2, Place of Registered Office:

Enter only the name of the community in the Northwest Territories where the registered office will be located. Do not enter a specific street or postal address.

SECTION 3, Shares

Set out the classes and any maximum number of shares that the corporation is authorized to issue. The share structure of corporations is governed by Part V-Corporate Finance, of the *Business Corporations Act*. Please note:

- all shares must be without nominal or par value,
- the *Business Corporations Act* gives incorporators broad discretion to designate a class of shares as common, preferred or as Class A and Class B or any other designation. Many incorporators designate shares simply as Class A and Class B,
- you do not need to place a limit on the number of shares the corporation is authorized to issue,
- you do not need to specify a maximum aggregate consideration for the issue of shares.

The following sample clauses are often used by incorporators and are acceptable to the Registry to cover some very basic kinds of share structures. The corporation may choose to issue one class of shares only. If two or more classes of shares are issued, you must specify the rights, privileges, restrictions and conditions attached to each class.

e.g.

"The corporation is authorized to issue an unlimited number of shares of one class."

OR

"The corporation is authorized to issue an unlimited number of Class A and Class B shares. The Class A

(contd. 3. How do I fill out Form 1 - Articles of Incorporation?)

shares shall be entitled to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote and to receive such dividend as the directors in their discretion shall declare. Subject to the provisions of the *Business Corporations Act*, the Class B shares shall be non-voting. Upon liquidation or dissolution, the holders of Class A and Class B shares shall share equally the remaining property of the corporation."

For shares in a series, the following clause is acceptable:

"The directors may authorize the issue of one or more series of shares within each class of shares, and may fix the number of shares in each series, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series subject to the limits provided in the articles."

You may use wording similar to the following to specify the redemption of shares. Note that if a fixed price is not stated, a redemption formula that can be determined in dollars must be used.

"The said Class X shares or any part thereof shall be redeemable at the option of the corporation without the consent of the holders thereof (at a price of \$_____ per share) or (at a price equal to the amount paid per share) plus any declared and unpaid dividends."

You may vary the composition and complexity of share structures for particular situations in countless ways. The sample clauses given here are only examples of the usual kinds of share structures used by many incorporators, and are by no means mandatory or exhaustive. You may wish to seek legal advice with respect to other clauses to ensure that they are permitted under the *Business Corporations Act*.

SECTION 4, Restrictions on Share Transfers

Restrictions, if any, on the transfer of shares are normally limited to the consent of the directors and/or shareholders.

e.g.

"No shares of the capital of the Corporation shall be transferred without either (a) the sanction of a majority of the directors of the corporation or alternatively, (b) the sanction of the majority of the shareholders of the corporation."

OR

"No shares of the corporation shall be transferred without the approval of the directors evidenced by resolution of the board, provided that approval of any transfer of shares may be given as aforesaid after the said transfer has been effected upon the records of the corporation, in which event, unless the said resolution stipulates otherwise, the said transfer shall be valid and shall take effect as from the date of its entry upon the books of the corporation."

(contd. 3. How do I fill out Form 1 - Articles of Incorporation?)

You may wish to further restrict the transfer of shares by designating the corporation as "non-distributing" a term that replaces the former concept of "private" corporations. Your corporation in effect will be a "non-distributing" corporation unless you file a prospectus or undertake other related procedures to constitute a public distribution of securities (as specified in section 3 of the *Business Corporations Act*).

SECTION 5, Number of Directors

You may specify a range or a fixed number of directors:

e.g. "A minimum of 1 and a maximum of 7."

OR

"Five directors."

To permit cumulative voting, the number of directors must be fixed. If the corporation is a "distributing" corporation, there must be at least three directors.

SECTION 6, Restrictions on Business

A *Business Corporations Act* corporation has all the rights of a natural person, and normally one would not wish to limit this power. If there are to be no restrictions, simply state "NONE". If there are reasons why you wish to restrict the business of the corporation, the following preamble is suggested: "The business of the Corporation shall be limited to the following: ..."

Note that sections 15 and 16 of the *Business Corporations Act* prohibit corporations from conducting the business of insurance, trust, stock exchange, railway, steamship, air transport, canal, telegraph, telephone or irrigation companies.

SECTION 7, Other Provisions

The *Business Corporations Act* allows you to include a number of additional provisions in the Articles of Incorporation. As well, incorporators occasionally include clauses to satisfy requirements of other legislation or institutions. For example, a provision regarding directors' borrowing powers and their delegation is sometimes used to limit the authority of directors and/or to satisfy lending institutions. Mark the section as "NONE" if there are no such provisions.

SECTION 8, Incorporators

The Articles of Incorporation submitted to the Registry must be originally signed by the incorporator(s). Photocopies, scans, emails or faxes cannot be accepted.

4. How do I Fill Out Form 2, Notice of Registered Office?

SECTION 1:

The proposed corporation name must appear exactly as set out in the Articles of Incorporation.

SECTION 2:

The corporation's registered office address must be a specific civic address within the community specified in Form 1, Articles of Incorporation. Please note that a post office box number is not sufficient; a physical address is required. A physical address can be a street address with house number, or a legal description (lot, block and plan number of the property).

SECTION 3:

This address cannot be the same address as in Section 2 or 4. If the corporation does not have a separate records office this section must be marked not applicable or N/A. Do not leave the section blank.

SECTION 4:

If the corporation designates a post office box in this section, the same post office box cannot be used in Section 2 or 3. Mark the section not applicable or N/A if the corporation does not have a separate service by mail address. Do not leave the section blank.

This form must be dated and originally signed by an incorporator, officer or the solicitor of the company; photocopies, scans, emails or faxes cannot be accepted. The person signing must indicate their relationship to the company in the space provided.

5. How do I Fill Out Form 4, Notice of Directors?

SECTION 1:

The proposed corporation name must appear exactly as set out in the Articles of Incorporation

SECTION 2:

All directors for the corporation must be listed with their complete postal and physical addresses. A physical address can be a street address with house number, or a legal description (lot, block and plan number of the property). The number of directors must correspond with the number in section 5 of Form 1.

(contd. 3. How do I fill out Form 4 – Notice of Directors?)

This form must be dated and originally signed by an incorporator, officer or the solicitor of the company; photocopies, scans, emails or faxes cannot be accepted. The person signing must indicate their relationship to the company in the space provided.

6. What Happens if My Application is Approved? What Happens if it is Deficient?

The Registry will check that your articles are complete and in proper form, and that the name is acceptable. If so, the Registry will issue a Certificate of Incorporation showing the date of incorporation. The corporation will then need to ensure that annual returns are filed with the Registry accordingly.

Deficient applications will be sent back to the applicant with a letter indicating the nature of the deficiency. When deficient articles are returned, the fee will also be returned to the submitter, along with the documents.

SECTION 3 – CONTACTS

Contacting the Corporate Registries Office

Corporate Registries, Department of Justice, Government of the Northwest Territories
1st Floor Stuart M. Hodgson Building, 5009-49 Street
PO Box 1320
Yellowknife NT, X1A 2L9, Canada

Phone: 1 (867) 767-9260

Toll Free: 1 (877) 743-3302

Fax: 1 (867) 873-0243

Email: corporateregistries@gov.nt.ca

Website: <https://www.justice.gov.nt.ca/en/nwt-corporations/>

Hours of Operation: 9:30AM to 4:00PM Monday to Friday

Additional Contact Information

Incorporating your business corporation is only one of the steps involved in organizing your business. Possible agencies which you may contact are listed here; however, the possible requirements and agencies mentioned here are not meant to be a complete checklist. **You are responsible for researching and complying with your company's specific requirements.**

Business Incentive Policy (BIP)

For information regarding The Government of the Northwest Territories' Business Incentive Policy, contact:

[Business Incentive Policy](#)

<http://www.iti.gov.nt.ca/programs-services/business-incentive-policy>

Phone: (867) 767-9212

GNWT, Dept. of Industry Tourism & Investment (ITI)

4190-50 Ave., YK Centre, Yellowknife NT

See website for Sahtu, Beaufort Delta, Dehcho, and South Slave regional office contact information

Business Licence

You will need a business licence either from municipal government/city or town hall, if you are operating within a community; or from Municipal & Community Affairs, if your work does not take place within a specific municipality.

[Business Licensing](#)

<http://www.maca.gov.nt.ca/en/services/business-licensing>

Phone: (867) 767-9161 ext. 21022

GNWT, Dept. of Municipal & Community Affairs (MACA), Consumer Affairs

#600, 5201-50 Ave., Northwest Tower, Yellowknife NT

Employment Standards Laws

If you plan on having employees, you will have to become familiar with, and follow, the labour standards laws applicable to your type of business. For more information, contact:

[Employment Standards](#)

<https://www.ece.gov.nt.ca/en/services/employment-standards>

Phone: (867) 767-9351 ext. 71469 Toll Free: 1-888-700-5707

GNWT, Dept. of Education Culture & Employment (ECE), Labour Development and Standards

5019-52 St., Nova Plaza, Yellowknife NT

Human Rights Laws

It is against the law to harass or discriminate; as described in the Northwest Territories *Human Rights Act*, which protects the equality human rights of everyone in the NWT.

[Northwest Territories Human Rights Commission](#)

<http://nwthumanrights.ca/>

Phone: (867) 669-5575 Toll Free: 1-888-669-5575

5003-49 St., Laing Building, Yellowknife NT

(contd. Additional contact information)

Professional Licensing

If you possess a professional designation or are a member of a professional organization established by legislation, you will need to contact the Registrar of Professional Licensing at:

[Registrar, Professional Licensing](#)

<http://www.hss.gov.nt.ca/en/services/professional-licensing>

Telephone: (867) 767-9067

GNWT, Dept. of Health & Social Services (HSS), Professional Licensing
5015-49 St., Centre Square Tower, Yellowknife NT

Payroll Tax

Every employer must register with the Department of Finance for work or services performed in the NWT.

[Licences, Taxes and Fees](#)

<https://www.fin.gov.nt.ca/en/services/licences-taxes-et-droits/payroll-tax>

Phone: (867) 767-9244 Toll Free: 1-800-661-0820

GNWT, Department of Finance, Payroll Tax
5003-49 St., Laing Building, Yellowknife NT

Workers' Safety and Compensation

You will need to contact the Workers' Safety and Compensation Commission to find out if you need coverage, or if you need clearance from coverage.

[Workers' Safety & Compensation Commission \(WSCC\)](#)

<http://www.wscs.nt.ca/employer-services>

Phone: (867) 920-3888 Toll Free: 1-800-661-0792

5022-49 St., Centre Square Tower, Yellowknife NT

Canada Revenue Agency

You will need to contact the Canada Revenue Agency to obtain a GST number if your business charges Goods and Services Tax (GST), pays employees, pays corporate income tax, or imports and exports goods or services.

[Govt. of Canada, Canada Revenue Agency \(CRA\)](#)

Toll Free: 1-800-959-5525

<https://www.canada.ca/en/revenue-agency.html>

OR: <https://www.canada.ca/en/revenue-agency/corporate/contact-information/getting-changing-personal-tax-information.html>