

SOLE PROPRIETORSHIP, PARTNERSHIP & CORPORATION?

Before registering your business, you should consider the different options available to you. From a legal point of view, there are three common types of businesses: Sole Proprietorship, Partnership, and Corporation. Each structure has different and important implications for liability, taxation, and succession. What are the advantages for your business of incorporating a company versus registering a partnership or a sole proprietorship? We suggest you contact a lawyer or accountant if you are not sure which type of business structure will meet your needs. Please note that sole proprietorship and partnership names have no statutory name protection. If name protection is important to you, you may wish to incorporate your business or to register for a trademark at www.cipo.gc.ca

ADVANTAGES & DISADVANTAGES OF SOLE PROPRIETORSHIP

Starting a sole proprietorship is the simplest way to set up a business. The sole proprietor is said to be self-employed. As a sole proprietor you would be fully responsible for all debts and obligations related to your business. A creditor with a claim against a sole proprietor would normally have a right against the sole proprietor's assets, whether business or personal. This is known as unlimited liability.

In a sole proprietorship, you would perform all the functions required for the successful operation of the business. These include: Securing the capital, Establishing and operating the business, Assuming all risks and Accepting all profits and losses.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Low start-up costs 	<ul style="list-style-type: none"> • Unlimited liability
<ul style="list-style-type: none"> • Greatest freedom from regulation 	<ul style="list-style-type: none"> • Lack of continuity in business organization in absence of owner
<ul style="list-style-type: none"> • Owner in direct control of decision making 	<ul style="list-style-type: none"> • Difficulty in raising capital
<ul style="list-style-type: none"> • Minimal working capital required 	<ul style="list-style-type: none"> • No name protection
<ul style="list-style-type: none"> • Tax advantages to owner 	
<ul style="list-style-type: none"> • All profits to owner 	

ADVANTAGES & DISADVANTAGES OF GENERAL PARTNERSHIP

A partnership is an agreement in which you and one or more people combine resources in a business with a view to making a profit. In a General Partnership, you and one or more other owners would share the management of a business, and each partner would be personally liable for all debts and obligations incurred. This means that each partner is responsible for, and must assume, the consequences of the actions of the other partner(s).

In order to establish the terms of the Partnership and to protect yourself in the event of a disagreement or dissolution of a Partnership, a partnership agreement should be drawn up. You would share in the profits according to the terms of the partnership agreement.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • Ease of formation 	<ul style="list-style-type: none"> • Unlimited liability
<ul style="list-style-type: none"> • Low start-up costs 	<ul style="list-style-type: none"> • Divided authority
<ul style="list-style-type: none"> • Additional sources of investment capital 	<ul style="list-style-type: none"> • Difficulty in raising additional capital
<ul style="list-style-type: none"> • Possible tax advantages 	<ul style="list-style-type: none"> • Hard to find suitable partners
<ul style="list-style-type: none"> • Limited regulation 	<ul style="list-style-type: none"> • Possible development of conflict between partners
<ul style="list-style-type: none"> • Broader management base 	<ul style="list-style-type: none"> • Partners can legally bind each other without prior approval
	<ul style="list-style-type: none"> • Lack of Continuity

ADVANTAGES & DISADVANTAGES OF INCORPORATION

A corporation, also known as a limited company, is a legal entity that is separate and distinct from its members (shareholders). Companies are incorporated in BC according to the provisions of the Business Corporations Act.

When a company is incorporated, it acquires all of the powers of an individual, an independent existence – separate and distinct from its shareholders, and an unlimited life expectancy. In other words, the act of Incorporation gives life to a legal entity known as the corporation, commonly referred to as a company. A company can acquire assets, go into debt, enter into contracts, sue or be sued. Ownership interests in a corporation are usually easily changed. Shares may be transferred without affecting the corporation’s existence or continued operation.

The following characteristics distinguish a corporation from a partnership or sole proprietorship:

Limited Liability: normally no member can be held personally liable for the debts, obligations or acts of the corporation beyond the amount of share capital the members has subscribed. Each shareholder has limited liability. A creditor with a claim against the assets of the company would normally have no rights against its shareholders, although in certain circumstances shareholders may be held liable. We recommend that you seek professional legal advice.

Perpetual Succession: because the corporation is a separate legal entity, its existence does not depend on the continued membership of any of its members.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> Limited liability 	<ul style="list-style-type: none"> Closely regulated
<ul style="list-style-type: none"> Possible tax advantage (if you qualify for a small business tax rate) 	<ul style="list-style-type: none"> Most expensive form of business to organize
<ul style="list-style-type: none"> Specialized management 	<ul style="list-style-type: none"> Charter restrictions
<ul style="list-style-type: none"> Ownership is transferable 	<ul style="list-style-type: none"> Extensive record keeping necessary
<ul style="list-style-type: none"> Continuous existence 	<ul style="list-style-type: none"> Possible double taxation of profits
<ul style="list-style-type: none"> Separate legal entity 	<ul style="list-style-type: none"> Shareholders (directors) may be held legally responsible in certain circumstances
<ul style="list-style-type: none"> Easier to raise capital 	<ul style="list-style-type: none"> Personal guarantees undermine limited liability advantages
<ul style="list-style-type: none"> Name protection 	

If you decide to start a business in Ontario and you choose a corporation as your legal form of ownership, you can either [incorporate your company federally or provincially](#). If you choose to incorporate your company provincially, there are three methods of incorporation for the do-it-yourselfer.

- Articles of incorporation can be filed electronically – BACD can give you that information.
- Articles of Incorporation can be submitted in person or by mail to the Companies and Personal Property Security Branch, 393 University Ave., Suite 200, Toronto ON M5G 2M2.

It will cost you approximately \$400 to register Articles of Incorporation online plus any fees that the contracted services providers charge for their service. If you choose this route you will provide everything they need in digital form. The service providers’ websites will walk you through the process. Those of you choosing the paper route, can [download forms here](#). You will need to either provide or mail you:

- Articles of Incorporation
- Ontario-biased NUANS
- Fee of \$360
- A covering letter which includes your contact information
- Any other support documents

Name Search

Unless you choose to have your company given a numbered name (known as a “numbered company”, ie. 123456789

Ontario Ltd.) you will need to conduct an Ontario-biased NUANS name search through a third party provider as only federal name searches can be conducted directly on Industry Canada's website. A [list of online NUANS name search service providers can be found here](#). The cost for this name search will be about \$25 but the price may vary as service providers add their own fees on top of the government's fees for providing this service. This search is only good for 90 days so don't do it too far in advance of submitting your Articles of Incorporation. Your corporation cannot have the same name as another company so if someone has already used the name you've planned to use, you'll have to pick another. If the name you have chosen is not being used in Ontario, it doesn't mean you are necessarily in the clear.

From the provincial government's website: Please note that although a Federal corporation with an identical name to a proposed Ontario corporate name may not be currently operating or active in Ontario it is entitled to commence activities in Ontario at any time in the future. Incorporators who incorporate with the same or similar name are therefore assuming the risk of an objection to their corporate name, which may result in a name hearing under section 12 of the Business Corporations Act.

For this reason, you may want to consider incorporating federally. A federal corporation provides name protection Canada wide, except in the Province of Québec, which does not provide data to the NUANS system.

Consider Using A Lawyer

While you can incorporate your business by yourself, it's not recommended unless you've done it before. Creating all the documents you need can be challenging. We recommend hiring a lawyer to do this for you. Look at our Access to Professionals here if you need help: <http://bacd.ca/services/access-professionals/> Lawyer's fees are normally worth the expense because doing things right at the beginning can save you a lot of money later on. If you are on a tight budget and don't feel you can afford the fees, use a service like [Legal Zoom.ca](http://LegalZoom.ca). They won't give you service and advice tailored to your personal situation like a lawyer would but they'll give you a good set of basic documents. A lawyer or an online incorporation service can also do the name search for you.

Incorporating a company can seem like a big, complicated process if you've never done it before but it really isn't that difficult, particularly if you use a lawyer or a service to do it for you.