Information

The Law Society of British Columbia

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Incorporation of a Law Practice

A. Introduction

Amendments to Part II of the *Legal Profession Act* relating to incorporation of law practices came into effect September 15, 1992. Although previously a distinction was made between Personal Law Corporations and Law Corporations, there is now no distinction and a "Law Corporation" is the only approved vehicle. However, you will not be prevented from using or continuing to use the word "personal" as part of the corporate name.

B. Law Corporation

The distinguishing features of a law corporation are set out in s.82 of the *Legal Profession Act:*

82 (1) The executive director must issue a permit to a corporation that is a company, as defined in the Business Corporations Act, and that is in good standing under that Act or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that

(a) the corporation has complied with the rules made under this Part,

(b) the name of the corporation includes the words "law corporation,"

(c) each voting share is legally and beneficially owned by a practising lawyer or by a law corporation,

(d) each non-voting share is legally and beneficially owned by

(i) a practising lawyer,

(ii) a law corporation that is a voting shareholder,

(iii) a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder,

(iv) a corporation, all the shares of which are beneficially owned by one or more of the individuals referred to in subparagraph (i) or (iii), or

(v) a trust, all the beneficiaries of which are individuals referred to in subparagraph (i) or (iii),

(e) all of the directors and the president of the corporation are practising lawyers, and

(f) all of the persons who will be practising law on behalf of the corporation are persons described in section 81 (1).

(2) The executive director may refuse to issue a permit under subsection (1) if

(a) the law corporation has previously had its permit revoked, or

(b) a shareholder of the law corporation was a shareholder of a law corporation or personal law corporation that previously had its permit revoked.

(3) The executive director must inform the Registrar of Companies of the revocation of any permit under this Part or the rules.

(4) Unless the benchers otherwise direct and subject to rules made under this Part, if a law corporation fails to pay the renewal fee set by the benchers by the date it is due, its permit ceases to be valid and the corporation must

(a) immediately surrender its permit to the executive director, and

(b) cease providing legal services to the public.

C. Procedure for obtaining a permit

1. **Reserve a Corporate Name**: apply to the Registrar of Companies, under s.15 of the *Business Corporations Act*, to reserve the intended name. This is strongly recommended, as it will avoid disputes as to entitlement to an intended name. Any dispute as to entitlement to an intended corporate name must be resolved in accordance with sections 15 to 18 of the *Business Corporations Act.* Other laws, including the *Trade Mark Act*, may also apply.

   In choosing a corporate name, remember that:

   a. a law corporation must include in its name the words “law corporation” (s.82(1)(b) of the *Legal Profession Act*);

   b. the corporate name must not be identical with that under which another corporation holds a valid permit (Rule 9-1(a) of the Law Society Rules);

   c. the corporate name must not so nearly resemble the name of another corporation holding a valid permit that it is likely to confuse or mislead the public (Rule 9-1(b) of the Law Society Rules);

d. the name must not be contrary to the best interests of the public or to the maintenance of a high standard of professionalism (Rule 9-1(c) of the Law Society Rules; and Chapter 14, s.4(e) of the *Code of Professional Conduct for BC*).

Please note that these name approvals *do* expire and the following steps should be taken in order that they are completed prior to the expiry of the corporate name approval.

2. **Apply to the Law Society for a Certificate Respecting the Corporate Name**: once you have reserved the intended corporate name with the Registrar of Companies, apply to the Law Society, using the form "*Application - Certificate Respecting Corporate Name*", for a certificate that the Law Society does not object to the intended name for the law corporation. Please include a copy of the name reservation issued by the Corporate Registry.

   In determining whether to issue a certificate, the Law Society will apply the criteria set out in paragraph (1) above. If the Law Society **does** object to your intended name, you may apply in writing to the Ethics Committee for a review (Rule 9-3 of the Law Society Rules).

   When a certificate is issued, it will state only that the Law Society does not object to the intended name. The certificate does *not* reserve the name, and it does *not* imply that the Registrar of Companies has approved the name.

3. **Register the Law Corporation**: once you have received a certificate stating that the Law Society does not object to your intended corporate name, apply to the Registrar of Companies for registration.

   Please note that you cannot start rendering legal services through the law corporation until you have registered with the Registrar and received your permit from the Law Society.

   At this point, you may want to obtain professional advice on setting up the corporate structure to meet your own personal, family, professional and financial planning needs.

   Qualifications of Voting and Non-Voting Shareholders: all voting shares must be owned by (*Legal Profession Act*, s.82):

   i. a practising lawyer; and/or

   ii. by one or more law corporations;

   Non-voting shares may be owned legally or beneficially by (i) or (ii) above *or*

   iii. a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder;

iv. a corporation, all the shares of which are beneficially owned by one or more of the individuals noted above, in (i) or (iii);.or

v. a trust, all the beneficiaries of which are individuals referred to in (i) or (iii).

If any person or law corporation owning shares ceases to qualify as a voting or non-voting shareholder (e.g. through ceasing to be a practising lawyer, or through death, divorce, ceasing to co-habit, etc.), then the corporation will be in breach of the rules, and the permit ceases to be valid (see Law Society Rule 9-5(3)). Accordingly, the irregularity must be corrected.

4. **Apply for a Corporation Permit:** once a law corporation has been registered under the Business Corporations Act, and you wish to carry on any business pursuant to s.81 of the *Legal Profession Act*, you must apply to the Law Society for a permit, using the form "*Application - Law Corporation Permit*".

   The application to the Law Society must include:

   a. a true copy of the **Certificate of Incorporation** from the Registrar of Companies, continuation or registration (as applicable) of the company, and any other certificates which reflect a change in the company's name or status;

   b. a copy of the Law Society's **Certificate Respecting Corporate Name**;

   c. the **permit fee** of $315.00 (by cheque made payable to "The Law Society of British Columbia"; $300 plus GST).

   d. Under Rule 9-8, a law corporation must deliver to the Executive Director copies of its Articles and amendments to its Articles or Notice of Articles ***(please double-side these)***

      (a) when applying for a permit, and

      (b) immediately on adoption of new or amended Articles or Notice of Articles.

   If your application is in order, the Law Society will issue to you a permit entitling the law corporation to carry on the business of providing legal services to the public. Subject to Law Society Rule 9-5(2), a permit is valid from the effective date shown on it for the life of the law corporation.

   No permit that is revoked may be renewed.

   Rule 9-11 deals with the circumstances under which a permit may be revoked.

D. Change of corporate name

To change the name of a law corporation holding a valid permit, the procedure set out in Law Society Rule 9-6 must be followed. It should be noted that there is a fee for this ($75 plus GST).

E. Public disclosure of corporate status (Law Society Rule 9-7)

Law corporations shall disclose on all letterhead and business cards, and in all marketing activities (as defined in the Code of Professional Conduct for BC, Chapter 14(2)), that the legal services are being provided by a law corporation.

If a law firm has a law corporation as a partner or employee, all letterhead, business cards or other advertising shall also disclose that the shareholder is providing legal services on behalf of a law corporation. In addition, you must comply with various disclosure requirements set out in the *Business Corporations Act*.

F. Change in corporate information (Law Society Rule 9-10)

The president, or designate, of a company must promptly advise the Executive Director of the Law Society in writing of any change to the information which was contained in the most recent permit application or renewal permit application to the Law Society.

G. More information

Law Society staff are not qualified to advise you on how to structure your law corporation(s), or on the corporate or commercial issues, income tax or other related considerations which arise from incorporation.

For more information about the procedure outlined in this guide, please contact Member Services:

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