

**INCORPORATION AND ORDINARY CORPORATE PROCEDURES
PRINCE EDWARD ISLAND
*Companies Act of Prince Edward Island (PEICA)***

**Stewart McKelvey
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INCORPORATION OF *for-profit* COMPANIES IN PRINCE EDWARD ISLAND

Companies Act

A significant difference in incorporating in PEI is that this is a Letters Patent jurisdiction as opposed to filing Articles of Incorporation. Incorporation is governed by the Prince Edward Island *Companies Act* and administered by Consumer, Labour and Financial Services of the Department of Environment, Labour and Justice (the "Registry"). A company in PEI can be formed with only one director.

Residency Requirements

Another significant feature is that there is no requirement in PEI for directors or shareholders to be resident Canadians.

Disclosure of Shareholders

The application for incorporation requires the names and addresses of the beneficial owners of the shares of the company to be set forth and the total number of shares to be subscribed by each beneficial owner. It should be noted that the names of the shareholders are reported on the Registry's corporate website.

Capital

Where the shares are to be of more than one class, the special rights, preferences, restrictions, conditions and limitations attaching to each class of shares are to be set forth upon incorporation.

Corporate Seal

A corporate seal is required in Prince Edward Island. However, any contract, agreement, engagement or instrument executed on behalf of a company by a director, officer or agent of the company is not invalid merely because a corporate seal has not been affixed.

RESERVING A CORPORATE NAME

A NUANS is required for the proposed corporate name and the Registry will indicate whether or not the name is acceptable for incorporation. The Registry follows similar guidelines for name approvals as used by Corporations Canada. If requested prior to incorporation, a number may be obtained from the Registry, e.g. 199999 P.E.I. Inc. A consent to the use of the name would only be required if there was an existing registration in P.E.I. by a sole proprietorship or general partnership. In that event, an undertaking to dissolve the prior registration should be provided with the application for incorporation.

There is no provision under the PEICA for a pre-incorporation contract as permitted in Ontario.

OBTAINING LETTERS PATENT

PEI does not provide for on-line filing. All applications for incorporation must be completed in the prescribed form and signed in duplicate. The applicable forms are Form 1, Application for Incorporation, Form 2, Affidavit, and Form 3, Attorney's Statement (see attached).

Highlights of Form 1— Application for Incorporation

- (Section 1) A minimum of one applicant is required who must be an individual. A lawyer or agent may act as applicant on behalf of the proposed company.
- (Section 5) The following wording is often used for Schedule "A" - Restrictions on Share Transfers:
 - No share or shares of the capital stock shall be transferred to a person without previous consent of the directors of the Company evidenced by a resolution passed at a meeting of the directors or by the consent in writing of the majority of the directors of the Company.
 - The directors shall have unfettered discretion to withhold consent for any transfer, but shall not withhold if the transfer shall be in due course of descent or distribution to the personal representative or legatees or next of kin of a deceased shareholder.
- (Section 6) As a Letters Patent jurisdiction, the objects and purposes of the company must be set forth in Schedule "A" to the application. A good reference source for specific powers and objects is Carwell's Canadian Corporation Precedents, Vol.1. Along with the specific objects of the company, Schedule "A" may include objects for a general holding and investment company, as well as a guarantee provision, incidental powers, standard objects and purposes set forth in the PEICA and to allow the company to exercise all rights and privileges of a private individual.
- (Section 8) Unless otherwise stated, the standard practice of our Firm is to incorporate with five classes of common shares and five classes of preferred shares to allow for future transactions. Shares may have a par value or a mix of par value and no par value shares, in which case this would affect the amount of capital of the company set forth in section 8. Where the shares are to be of more than one class, the special rights, preferences, restrictions, conditions and limitations attaching to each class of shares may be set forth, or wording such as "the terms and conditions of the various classes of Preferred shares shall be determined by by-law at the time of issuance" is permissible.
- (Sections 9 and 10) The full name, address and occupation of each director is to be set forth. Similarly, the full name and address of the beneficial owner(s) of shares and the number and type of shares is to be set forth.
- (Section 11) The applicant may apply to have embodied in the Letters Patent any provision that could under the Act be contained in a bylaw of the company. However, such provision may only be repealed or altered by applying for Supplementary Letters Patent.

NB: *It should be noted that professional corporations differ somewhat with respect to restrictions on share transfers, objects and purposes, etc., and special clauses for Schedules "A" and "B" may be required depending on the Act under which the professional corporation is governed.*

Form 2 — Affidavit

The applicant is required to swear an affidavit before a commissioner of oaths or notary public as to the accuracy of the information contained in the application and to the name.

Form 3 — Attorney's Statement

This form is to be completed by an attorney practicing in the Province of Prince Edward Island.

REQUIRED DOCUMENTS

Once the application for incorporation has been completed and signed in duplicate, the documents are filed under cover letter to the Registry, together with the filing fee of \$265 payable to the Provincial Treasurer PEI. It is not necessary to attach a copy of the NUANS if the name was searched by the PEI Registry.

INCORPORATION PROCESS

Letters Patent cannot be backdated. However, a future date may be assigned upon request. If everything is in order, Letters Patent will be issued dated the date of filing or the requested future date. We do not have expedited service in PEI but confirmation can usually be obtained within 24 hours of filing. A notice of the issuance of Letters Patent will appear in the next issue of the Royal Gazette.

ORGANIZING THE COMPANY

- Seal and Minute Book - PEI companies are still required to affix a corporate seal to many documents so we obtain a corporate seal for all our companies. A PEI minute book is also obtained.
- Organizational Minutes - Our Act does not contemplate the passing of resolutions in writing signed by directors or shareholders. Accordingly, the enactment of general bylaws, borrowing and banking bylaws, and the allotment of shares, are approved at a general meeting of the provisional directors immediately following incorporation. A special general meeting of the shareholders is subsequently held to ratify the bylaws and fix the number of and elect the directors. A consent to act as a director is optional and not a requirement. This meeting is followed by a meeting of the permanent directors to elect officers and transact any other business.
- Share Certificates — The form of share certificate may be approved and the certificates signed by the President and Secretary.
- Registers and Ledgers — The directors and shareholders are recorded in the Company's Minute Book.

MAINTAINING THE COMPANY

- Annual Return - The company is required to file an Annual Return with the Registry within six months of its fiscal year end. After the initial return, a form is generated annually by the Registry. The cost of the annual filing fee is \$30.00.
- Annual Meeting - The annual meeting of the shareholders must be held within the province within the time frame set by the bylaws of the Company. The, business conducted usually consists of:
 - approving the financial statements
 - election of directors
 - appointment of the auditor or chartered accountants
 - ratification of the acts of the directors
 - any other business
- Corporate Changes — There is no requirement to report changes in directors, officers or shareholders until the filing of the next annual return. However, as a matter of policy our office reports any significant changes by filing a letter with the Director and requesting that their website be updated. To report a change in registered office, Form 9 is to be completed and filed.
- Change of Name — Upon the passing of a special resolution approved by a vote of at least two-thirds of the total shareholders of the company at a general meeting called for that purpose, a company may apply to change its name by filing Form 5, Application for Change of Name, in duplicate. A name search and filing fee is required.
- Supplementary Letters Patent — Any other changes to the Letters Patent, e.g. change of authorized capital, change of objects and purposes, etc., must be obtained by filing an application for Supplementary Letters Patent, Form 7, and approved by special resolution of at least two thirds of the total shareholders at a meeting called for that purpose. There is no requirement to obtain Supplementary Letters Patent for changes to the by-laws of the company unless the change affects the information set forth in the Letters Patent.
- Minutes/Minute Books – There is no requirement to execute formalized minutes following every meeting of the directors or shareholders of a corporation; however, it is our firm’s advice that annual minutes be prepared for the company and that the Minute Book be updated on an annual basis, as well as after any significant changes to the company.

CORPORATE RECORDS

CONTACT

Staff at the Registry can be reached during business hours at

Consumer, Labour and Financial Services
Department of Environment, Labour and Justice
4th Floor, 95 Rochford Street
P.O. Box 2000
Charlottetown, PE
CIA 7N8

Tel: (902) 368-4550

Estimate of Costs for Incorporation:

Legal Fees	\$750.00-\$900.00 (depending on complexity and time recorded)
Disbursements - Photocopies: \$12.00 - Minute Book: \$30.00 - Corporate Supplies: \$10.00 - Corporate Seal: \$46.00	\$98.00
Non-taxable Disbursements - Filing Fee: \$265.00 - Name Search: \$40.00	\$305.00
HST (14%) on Fees & Disbursements	