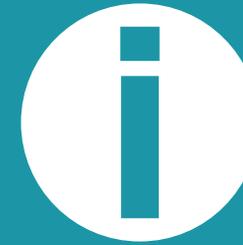


How to Incorporate in Ontario



Introduction

Incorporation is a process that grants your organization legal rights and recognition under the law. Incorporating an organization as a co-operative provides some formality and protection to the organization.

Being incorporated gives the co-operative the ability to purchase assets, take on debt and it can make it easier to raise capital. It is not necessary for a group to incorporate if they wish to operate as a co-op on an informal basis, but in order to have the legal protection that incorporation provides (or to be able to use the word “co-op” or “co-operative” in the name of a group), that must be incorporated formally.

There is special legislation in Ontario, called the *Co-operative Corporations Act* (commonly referred to as *the Act*), which dictates how co-ops can operate and what is required for an organization to be considered a co-op under the law. This process of legal incorporation is regulated by the Financial Services Commission of Ontario (FSCO), an agency of the Ontario Ministry of Finance, and entails specific requirements.

The actual process of incorporation is fairly simple, but there are some things that a potential co-op should do before beginning the incorporation process. A group may wish to engage the services of a lawyer to assist in drafting the articles of incorporation. It may also be advantageous to consult with an accountant as part of the financial planning process associated with incorporation.

Before You Start the Process

Taking Your Idea into Action

Incorporation is a process that requires a minimum number of people. For most types of co-ops, a minimum of five people are required to incorporate (in the case of worker co-ops, the requirement is three). Even though it may only take one or two people to come up with an idea for a co-op and do the initial groundwork, it is important that you involve others in your community from the start. This will encourage other interested people to join and assist in the development of the co-op.

Feasibility of the Idea Behind the Co-op

Despite a co-op’s potential to have a different set of priorities than a typical private corporation, it is still a business enterprise. Therefore, it is important that the group wishing to incorporate does some work to determine the feasibility and financial viability of their idea. It is also important to engage the services of an accountant (or someone with financial experience in co-operatives) to assist in setting up an appropriate share structure. Engaging the services of a Co-operative Developer is also highly recommended. The group will need to be able to answer questions like:

1. **Who are your members?** Are they the people producing the goods and services, or are they the people buying the products?
2. **What products or services are you offering?** How will prices and setting costs be handled and where is the revenue coming from? How will new services or products be evaluated or added to the co-op’s operations?

- There are over 9,000 co-operatives operating in Canada. The Canadian co-operative movement has over \$330 billion in assets and more than 18 million members.
- A federal study has shown that health care co-ops have lower per-capita health care costs than private practice models.
- Canadian co-operatives employ more than 150,000 employees.
- Canada has the world’s largest per-capita credit union membership: about one-third of all Canadians are members of a credit union or caisse populaire.

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- 3. How will your co-op finance its start-up costs?** Solely through member investment or through combinations of sources? What are the co-op's potential sources of income? Does the co-op need to raise equity or borrow money? Is equipment or land required?
- 4. What will your operating costs be?** Where will you be housed? What will be your start-up costs and ongoing costs? Will the revenue be sufficient to cover the ongoing costs?

The group should also prepare income statements, cash flow statements and balance sheets to document the estimated financial situation of the co-operative.

With or Without Share Capital?

This is one of the critical decisions that the co-op will have to make. When a co-op incorporates, there are two choices — incorporating with share capital or without. This decision is based primarily on what the purpose of the co-operative is, and what types of financing is needed for the projects and operations of the co-operative.

Share capital refers to shares offered by the co-operative to members or to outside investors. Share capital is generally referred to as equity financing, and is usually used to buy equipment, land, buildings or other fixed assets that the co-op might need.

When members or investors buy shares, they receive a return on their investment in the form of dividends – provided the co-operative has earned enough surplus to justify them.

Incorporating without share capital means that the co-op may have to rely on debt financing in order to get money. Shares cannot be offered to members or investors to raise money. This type of co-op structure is suited to covering operating expenses such as supply purchasing or inventory requirements. It is possible to purchase equipment and fixed assets using debt, but it can be more difficult to do so.

Co-ops can use a combination of debt and equity to financing their operations, as assets purchased with raised equity can be used as collateral to obtain debt. Understanding what financing will be needed for your operations will dictate whether or not you need to incorporate with share capital or without.

For-Profit or Not-for-Profit?

For-profit and not-for-profit (NFP) organizations are not defined by the Ontario *Co-operative Corporations Act*. These terms refer to tax status and are defined by the Canada Revenue Agency. A not-for-profit entity carries on business with a mandate that does not include providing a benefit to members – any surplus or profit that is generated must be used to carry on the

mission of the co-op. Many day care and housing co-ops operate as NFPs in order to have access to government funding, but there are other co-operatives in Ontario that choose a NFP tax structure as part of their philosophy about operating.

Although not-for-profit status is not regulated by the Ontario *Act*, the decision about whether to operate as a NFP co-op has to be made before incorporation, as there is specific text that must be included in a co-op's Articles to achieve NFP status.

The Process

The actual process of incorporation involves the creation of Articles of Incorporation (which are submitted to FSCO along with name search information), required fees and consent forms for directors that are not serving as incorporators.

The Articles of Incorporation

The Articles of Incorporation include prescribed information about the co-operative:

1. If it is incorporated with share capital or without share capital.
2. Where it is located and operates.
3. The names of the incorporators and details about the board of directors.

- A 2008 study in Quebec found that 62 percent of co-operative enterprises were still operating after 5 years, compared with 35 percent for other business corporations.
- Studies show that co-operative housing costs 71 percent less than public housing projects.
- The global co-operative sector has more than one billion members in more than 90 countries.
- It is estimated that co-operatives account for more than 100 million jobs around the world.

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4. Details on how the co-op finances itself, and expected member contributions.
5. Any special restrictions or provisions that apply to the co-op.

There are two different templates to use, one for co-ops with share capital and another for those without share capital. For the most part, the templates are the same for both types of co-operative, with the sections of the Articles that relate to financing being the major difference between the two.

For co-ops with share capital, the Articles have to outline the price of shares offered by the co-op, the amount of capital being raised by each type of share, membership shares and preference shares. The Articles must also outline the rights, conditions and restrictions associated with each type of share – including how shares can be transferred.

In the case of a co-operative without share capital, the Articles need to outline the cost of the membership fee. Instead of referring to limitations and issuance of shares, this template asks for information on the amount of member loans offered, and the restrictions on transfer of the loans.

If the co-op will be operating as a not-for-profit co-op, there is special language that must be written into the “Special provisions, if any, are:” section of the Articles. There is specific language needed for not-for-profit

housing co-ops. For most other not-for-profits, the language is more general and usually makes reference to the fact that the co-op is carrying on business without the purpose of gain for its members and that surplus will not be distributed to members (it will be retained by the co-op to further its objectives).

Choosing a Name for Your Co-op

It may seem simple to choose a name for your co-op, but there are some external factors that need to be taken into account when choosing the official name. The name chosen for an incorporated entity shouldn't cause confusion with other organizations or companies. Co-ops must also use the word co-operative (or *coopérative* in French) in their official name.

In order to ensure that the name being considered satisfies these requirements, incorporation requires proof of a formal name search (regardless of the type of co-op being incorporated). The group must include proof with their other incorporation documents that this name search has been done appropriately and that the proposed name is acceptable. There is a specific process that is generally acceptable to government agencies and departments for name searching, and is called a Newly Updated Automated Name Search or a NUANS search. These searches can be ordered from a firm or company that

specializes in corporate or incorporation services or specifically in name searches. There is usually a fee involved.

Deciding on the Founding Directors of the Co-op

In most cases, the incorporators of a co-op will form the first Board of Directors. The number of directors listed in the Articles of Incorporation must be equal to the number of directors specified by the Articles, or fall within the range of directors specified.

However, in some cases, the co-op may have some directors serving that do not act as incorporators. For those that will act as directors but will not be listed as incorporators, their names need to be listed under the directors section only. They will also need to sign a form that shows that they have agreed to act as first directors. Those that are listed as both incorporators and first directors are not required to complete this form.

These are the initial directors of the co-op, and they sit on the board from the date of incorporation until the first initial Annual General Meeting of the co-op is held. This first meeting must happen within 18 months of incorporation. At that first meeting, the members of the co-op will elect a slate of directors to the board. The Act requires that once the first meeting has been held, that the membership come together to carry out business, including electing directors, on a

- Financial co-operatives are the largest providers of microfinance services to the poor, reaching 78 million clients living below the poverty line of \$2 per day, and an estimated total of 857 million people worldwide – 13% of the global population.
- The world's 300 largest co-operatives have revenues in excess of \$1.1 trillion, slightly smaller than the size of Canada's economy.

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nearly annual basis. Once the first meeting has been held, the members must meet again within 15 months—and AGMs must be held within 15 months thereafter.

Filing for Incorporation

Once all of the work has been done to prepare the co-op for incorporation, the appropriate forms can be submitted. The incorporators need to prepare:

1. Two copies of the Articles of Incorporation, all with original signatures of the incorporators.
2. Copy of the NUANS name search report.
3. One cheque to cover the fees for incorporating, and one for the reservation of the name, both payable to the Ontario Minister of Finance.
 - a. Fees are reviewed yearly and are subject to change, but can be found at the FSCO website.
4. Two copies of signed declarations for first directors—if there are any directors that are not listed as incorporators, their signed declarations will need to be submitted. If this does not apply to your co-op, these forms do not need to be submitted.

The filing information should be sent to:

Licensing and Market Conduct Division
Financial Services Commission of Ontario
5160 Yonge Street
PO Box 85, 4th Floor
Toronto, ON M2N 6L9

After the information has been processed, a Certificate of Incorporation will be provided to the group, along with a copy of the Articles for the co-op's records. The Certificate of Incorporation provides the incorporation date and the Ontario Business Number, both of which are pieces of information that a co-op will need in its day-to-day operations.

Next Steps

The letter that FSCO will provide with the Certificate of Incorporation will also include some guidance as to next steps. Once you incorporate, the co-operative will have to begin holding Board of Directors meetings and prepare to start operations (if not started already). The co-op will also have to prepare bylaws, hold an initial members meeting and be aware of the requirements to hold an AGM.

The co-op will also have to submit the list of directors and corporate information to the Companies and Personal Property Security Branch of the Ministry of Government

Services. This is called an Initial Return and it has to be filed yearly. After the first submission of the Initial Return, the return is called a Notice of Change and only has to be filed to reflect changes in the board of directors or head office.

FOR MORE INFORMATION, CONTACT

Ontario Co-operative Association
30 Douglas Street
Guelph ON N1H 2S9
Phone: 519.763.8271
info@ontario.coop
ontario.coop

More resources are available at:
CoopZone Network
coopzone.coop

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