

CHOOSING FEDERAL OR PROVINCIAL INCORPORATION



Introduction

Incorporating your organization as a co-operative provides some formality and protection to the organization. Incorporation is a process that grants your organization legal rights and recognition under the law - the same rights and privileges that are granted to a person. This gives the co-operative the ability to purchase assets, take on debt and raise capital for projects and operations. It also means that the co-op is now an entity that is subject to any restrictions or rules that are outlined in the legislation they incorporated under.

There is special legislation, both in Ontario and at the federal level, which dictates how co-ops can operate and what is required in order to be considered a co-operative under the law. In Ontario, this legislation is called the *Co-operative Corporations Act*, and at the national level it is the *Canada Cooperatives Act*.

Co-operatives can either incorporate at a provincial level or at a federal level, depending on how your organization meets different criteria about how and where you operate.

The Canada Cooperatives Act

The *Canada Cooperatives Act* is responsible for setting out the appropriate rules and procedures for federally-incorporated co-operatives. Matters that relate to this piece of legislation are administered by the Corporations Branch of Industry Canada, and therefore federally incorporated co-ops are also regulated by this body. However, in many cases, individual co-ops are bound by and responsible to other government agencies as part of their operations – like Revenue Canada for tax issues, or other government agencies that provide permits or regulation on specific parts of a co-op's operation.

The Ontario Co-operative Corporations Act

The *Co-operative Corporations Act* outlines the rules and procedures for co-operatives that incorporate and are

operating in the Province of Ontario. This legislation and the co-op sector in Ontario are regulated by the Financial Services Commission of Ontario, a division of the Ontario Ministry of Finance. As with the federal act, co-ops incorporated in Ontario are subject to this legislation, but may also be subject to other provincial or federal ministries for various aspects of their operations.

What is the Same in Both Acts?

One thing that both pieces of legislation have in common are the general definitions of what constitutes a co-operative and what it means to be organized and operate co-operatively. Both Acts define a co-operative as an organization that:

- Operates on a one-member, one-vote system;
- Has open and voluntary membership;
- Has limited interest paid out on member loans and limited dividends paid out on member shares; and
- Any surplus generated goes to further the objects of the co-op and/or is distributed to the membership based on their use of the service (referred to as patronage dividends or rebates).

No matter which Act you incorporate under, there is the same general commitment to co-operative principles and similar definitions about what being a co-operative means.

Main Difference Between the Two Acts

The main difference between the two acts is related to the geography of where a co-op operates.

In order to incorporate federally, a co-op must carry out operations in at least two provinces, and have fixed offices in more than one province. In comparison, incorporating in Ontario only requires a head office located somewhere in Ontario, with operations centered in Ontario.

It is not necessary for co-ops to incorporate federally just because they are operating and have offices in more than one province. Incorporating federally may however provide additional protection from liability or more opportunities to raise capital and take on debts in more than one jurisdiction.

What Else is Different about Incorporating Under the Two Acts?

Although both Acts are similar in that they have restrictions about who can act as a founder when incorporating a co-operative, there are slight differences in the restrictions between the two acts.

The Canada Cooperatives Act (CAN):

- Requires a minimum of 3 people or corporations.

The Co-operative Corporations Act (ON):

- Requires a minimum of 5 people or corporations.

There are also differences in the forms required in order to incorporate, but both the federal and Ontario regulating bodies require the inclusion of a name search report that shows that the desired name of the co-operative has not been taken by another co-op or corporation or is not too similar to the name of another incorporated organiza-

tion already in existence. The federal incorporation process also requires a declaration that the incorporators will agree to carry on operations as a co-op, whereas the Ontario process does not require this.

The fees to incorporate in the two jurisdictions are also different. In Ontario, the fees are different depending on the form of the co-operative you are creating (with share capital vs. without share capital). The fees are determined by the regulating bodies for each act and are examined yearly and may be subject to change.

References:

Federal information kit and guidelines:

http://corporationscanada.ic.gc.ca/epic/internet/incd-dgc.nsf/en/h_cs02151e.html

Ontario guidelines and information:

http://www.fsco.gov.on.ca/english/regulate/co-ops/register_co-ops.asp

On Co-op has created a Guide to the Ontario Co-operative Corporations Act. Contact our office to learn more.

FOR MORE INFORMATION, CONTACT:

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More resources are available at:
CoopZone Network
www.coopzone.coop

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Quick Facts About Co-operatives in Ontario:

- There are over 1300 co-operatives, credit unions and caisse populaires incorporated and operating in Ontario, with 1900 locations in 400 communities.
- The co-operative sector in Ontario represents a very conservative \$30 billion in assets (2007). Non-financial co-ops had revenues that totaled more than \$2.1 billion in 2004.
- Ontario co-ops employ and provide benefits to 15,500 people (greater than the total number of Ontarians employed in production of goods).
- 1.4 million Ontarians are members of a co-operative, credit union or caisse populaire (more than 10% of the population)
- Over 10,000 board members are actively involved in governing and leading co-ops, credit unions and caisse populaires in Ontario.
- There are some 49,000 co-operative volunteers across Ontario, including board members.
- 50% of Ontario's co-ops are located in central Ontario.
- Housing is Ontario's largest co-op sector (45%), followed by Financial Services (17%), Child care (17%), and Agriculture (6%).