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 KAVAMATKOT APIKHOIYIT
 DEPARTMENT OF JUSTICE
 MINISTÈRE DE LA JUSTICE

Corporate Registries

Guide

SOCIETIES

About this Document

This document provides information and instructions for incorporating a society pursuant to the *Societies Act* of Nunavut.

These guidelines deal only with the **minimum** requirements to be met to incorporate a society in Nunavut. We strongly recommend that you **consult a lawyer**. Corporate Registries cannot provide legal or business advice.

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Submission Guidelines

Be sure to read the document titled *Corporate Registries –Submissions Guide* (available from our website) so you understand the process, requirements and advantages of submitting your registration via email, and other submission options. The guide also explains how to complete the forms, and how to scan any additional supporting documentation that may be required.

Fees

Please consult the *Societies Act Fee Schedule* for current fees.

About Societies

Societies are non-profit organizations within Nunavut incorporated under the *Societies Act*.

Five or more persons may apply to incorporate a society under the Societies Act (Nunavut) for any benevolent, philanthropic, charitable, religious, provident, scientific, artistic, literary, social, educational, sporting or other useful purpose other than the carrying on of a trade or business.

Incorporating a Society

Although a society does not need to incorporate, there are several advantages to formally incorporating the society, including the following:

- An incorporated society exists as a legal entity apart from its members;
- Generally, the individual members of the incorporated society are not liable for the debts or obligations of the society.
- As a corporation, a society is entitled to acquire property, borrow money and otherwise deal with its property as an individual would deal with their property.

- The public's perception of a society is one having a more permanent status than an unincorporated group;
- An incorporated society may be eligible for government grants and to become a registered charity with Canada Customs and Revenue Agency.
- Incorporation creates a legal entity for the organization and those individuals who are involved with it.

Registration as a Charity

Many societies wish to be registered as a charity for income tax purposes. Once registered as a charity, a society will be exempt from paying tax on income and can issue receipts to donors for donations.

Certain societies that do not qualify for registration as a charity for the purpose of issuing receipts for donations may still qualify for registration as non-profit organizations exempt from the payment of tax. It is not necessary to incorporate in order to be registered as a charity.

Also, not all societies incorporated under the Societies Act will qualify for charitable status for income tax purposes. The onus is on a society wishing to register as a charity to establish objectives which qualify. Applications for registration as a charity can be obtained from Canada Revenue Agency at www.cra-arc.gc.ca.

Any further questions regarding registration as a charity should also be directed to Canada Revenue Agency.

Obligations of a Society

Along with these advantages come certain obligations. The operations of an incorporated society must be more structured than those of unincorporated organizations. Both the by-laws of the society and the *Societies Act* must be adhered to.

The *Societies Act* provides that any society that contravenes the Act is guilty of an offence and liable to a fine.

The Act also provides that the funds of a society can only be used for its objects (i.e. its authorized purposes) and only in accordance with its by-laws and that a society cannot distribute its property among its members during the society's legal existence.

Filing Requirements

Each year, a society is required to file the following documents with the Registrar of Societies within 14 days after its annual general meeting:

1. Financial statements signed by the society's auditor (or by two directors if there is no auditor) containing the following:
 - a. a balance sheet showing the assets and liabilities of the society as at the date of the fiscal year end
 - b. a statement of the receipts and disbursements of the society during the fiscal year;
 - c. any further information the by-laws may require (s.17 & s.18(1))
2. A *Notice of Directors* that lists their names, addresses and occupations. The list of directors must be signed by a director or other authorized officer of the society.

NOTE: In order to file these documents for the current year the Registrar requires the society to submit all filings that are missing for previous years. There is no fee to file these documents with Legal Registries.

3. A society must file a Notice of Registered Office with the Registrar of any changes in its registered address for service within Nunavut; all communications and legal notices will be sent to this registered address (s.19).
4. A society must file with the Registrar every resolution to amend the by-laws or constitution and every extraordinary resolution passed for a purpose under the Act signed by a director or officer (s.20, s.21); an “extraordinary resolution” is a resolution passed by at least a $\frac{3}{4}$ majority vote of members (s.1) and is required for amending the by-laws (other than at the AGM), amending the constitution and for a voluntary dissolution (s.6, s.23, & s.25)

Good Standing under the Societies Act

In order for a society to be considered “in good standing” under the *Societies Act*, all of its required annual filings since its date of incorporation must have been filed at Legal Registries.

The annual filings may be made late for periods when they were not filed. If all of the required filings have been made for each and every year since a Society’s date of incorporation the Registrar will issue a *Letter of Good Standing* upon request.

If a society cannot make the required filings for all previous years because of inadequate records it may file a *Statutory Declaration of Lost Records* to cover the missing periods. The requirements for this declaration are:

1. A *Statutory Declaration of Lost Records* can only be filed once by a society; and

2. The *Statutory Declaration of Lost Records* must be filed with a financial statement and Notice of Directors for the most recent fiscal year.

Other Statutory Duties and Obligations of a Society

Other requirements of a society include the following:

1. A society must hold an Annual General Meeting in Nunavut at which are presented the financial statements for the preceding fiscal year and where any and all business required under the by-laws is carried out (s.17).
2. At the request of a member, a society shall provide a copy of its application and by-laws to the member on payment of a sum not exceeding \$0.50 (s.22).
3. The funds of a society must be used for its objects only in accordance with the by-laws (s. 9(2)); no society shall distribute its property among its members during its existence (s.12); the requirements of the by-laws must be adhered to in order for the society and its officers to be protected from liability for innocent errors regarding the use of funds.
4. Incorporation as a society does not relieve anyone from obtaining any necessary licences or permits that may be required in order to carry out their objects, or from otherwise complying with all laws in force in Nunavut.

How to Incorporate Your Society

To incorporate a society, follow these steps:

1. Obtain an *Application for Incorporation* (Form 1) form.
2. Review and complete the sample bylaws included in the Application. If necessary, amend them in accordance with the Societies Act (our website has a version of the Application in Microsoft® Word format that you can edit). Further information on bylaws appears later in this document.
3. Complete the application form on-screen. See our *Corporate Registries Submission Guide* for information on completing this form on-screen before printing it. Additional information on sections of this form appears later in this document.
4. Print the application, and have at least five applicants who acknowledge their support of the application and by-laws sign the form. Each signature must be witnessed.
5. Obtain the *Notice of Registered Office* and complete it on-screen.

6. Print the *Notice of Registered Office* form and have it signed by one of the applicants of the society.
7. Obtain the *Notice of Directors* form and have it signed by one of the applicants of the society.
8. Scan all documents as Adobe® PDF (Portable Document Format) files at a minimum resolution of 300 dpi.
9. Contact Legal Registries by telephone and place on file a credit card number to which we can charge the registration fee.
10. Email all PDFs of the application, bylaw, constitution, and *Notice of Registered Office* to the email address on this page.

DO NOT INCLUDE CREDIT CARD INFORMATION IN ANY EMAIL CORRESPONDENCE.

Alternatively, the originally signed documents may be forwarded by mail or by hand to Legal Registries at the address on this page (faxed delivery is not accepted). If you are paying by cheque, the cheque must be made payable to the Government of Nunavut.

Additional Information for Completing Forms

Form 1 - Application for Incorporation

The *Application for Incorporation* must be completed with the name of the society, the objects of the society, and the community in Nunavut in which the operations of the society are to be chiefly carried on. These three items will become the constitution of the society and must be considered as separate and distinct from the by-laws.

- The name of the society should be as short and meaningful as possible. The name must not be similar to that of any other society. Once a name is chosen, the exact name must be used in all legal documents.
- The objects must indicate that the society is being incorporated for one of the above purposes. They may not suggest that the society is carrying on a trade or business.
- Only one community in Nunavut should be specified as to where the primary activities and operations of the society will occur, which might be different from place where the society will be administered and where meetings will be held.

The applicants must provide their signatures in the presence of a witness to acknowledge their support of the application and by-laws. The applicants and witnesses must include their complete postal and street addresses (if no street address is available some form of physical address such as a house number in their community is satisfactory).

By-Laws

The sample by-laws in the *Application for Incorporation* have been drafted to satisfy the basic requirements for incorporation. You may choose to use in whole or in part. However, we strongly caution you to ensure that they adequately suit your specific needs before you adopt them or any part thereof, as your own.

A society's by-laws should be prepared with the advice of legal counsel.

A society drafting its own by-laws should use the following checklist to determine if its proposed bylaws meet all the requirements of the *Societies Act* (Nunavut). The by-laws of a society must make provision for all of the following:

- the terms of admission of members and their rights and obligations;
- the withdrawal of members and the manner, if any, in which a member may be expelled;
- the method and time of calling general and special meetings of the society, the quorum at any such meeting, and the voting rights of members at such meetings;
 - the annual general meeting of the members cannot be held until at least 30 days after the expiration of the fiscal year end; and
 - a quorum is the number of persons required to be present before a meeting can proceed. It should be low enough to be practical. It may be set as a percentage of the total number of members in order to ensure that it is always possible for the society to properly function, no matter how low or high the membership may be.
- the appointment and removal of directors and other officers and their duties, powers and remuneration;
- the exercise of borrowing powers;
- the audit of accounts;
 - the Societies Act does not require that accounts be audited, but it does require that the by-laws state whether or not an audit is required.
- the seal of the society and the custody and use of the seal; the name on the corporate seal should be the exact legal name of the society.
- the preparation and custody of minutes of meetings of the society and of the directors and other books and records of the society;

- the time and place, if any, at which the books and records of the society may be inspected by its members; and
- the date on which the fiscal year of the society shall come to an end.
 - in order to provide sufficient time for the preparation of the financial statements, the annual general meeting cannot be held within 30 days of the fiscal year end. It is suggested that the annual general meeting be held within a reasonable period of time after this 30 day period.

Notice of Registered Office

The Notice of Registered Office must be signed by one of the applicants and must include a complete postal and street addresses (if no street address is available some form of physical address such as a house number and community name is satisfactory).

What Will the Registry Do?

If the application and by-laws comply with the *Societies Act*, the Registrar will issue a certificate of incorporation.

Notice of the incorporation will also be published in the Nunavut Gazette.

How to Amend the By-Laws or Constitution of Your Society

The by-laws or constitution of a society may only be amended by an ordinary resolution at the annual general meeting, by an extraordinary resolution, or unanimous resolution in writing.

If by-laws or constitution are amended by ordinary resolution at an annual general meeting, that annual general meeting must be held at the time specified in the by-laws as they exist before the proposed amendments.

An "extraordinary resolution" means a resolution passed by a majority of not less than 3/4 of the members entitled to vote as are present (or where proxies are allowed, by proxy) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given in the manner provided by the by-laws.

A "unanimous resolution in writing" means a resolution signed by all members of a society entitled to vote on the resolution at a meeting of members, and is as valid as if it had been passed at a meeting of the members.

A sample extraordinary resolution form is available at our website.

The resolution(s) must be certified by a director or officer of the society as being properly adopted by the members and a scanned copy of the signed original filed by email with the Societies Registry. See our *Corporate Registries Submissions Guide* for more information.

How to Make Specific Bylaw Amendments

If the proposed changes to your by-laws are not numerous, you may wish to amend only those specific portions while leaving the rest of the by-laws intact. You can remove sections and substitute them with alternative provisions. You can add entirely new sections, or you can remove sections without substituting anything new. However, when amending your by-laws you should be careful that you have not removed a provision which the Societies Act requires. See the section "By-Laws", above. When making specific amendments, please note:

Whole sections or subsections should be repealed and replaced in their entirety by a new section or subsection rather than adding words to and deleting words from the present sections.

Appropriate numbering changes should be made when necessary - it should not be assumed that the numbering changes automatically (e.g. if two sections are replaced by one it should not be presumed that all of the subsequent sections move up in numbering).

The exact wording of the by-law or by-laws being amended must be set out.

Sample Bylaw Amendments

Here are three sample types of specific amendments made by a society:

Repeal and Substitution Amendment

Use this amendment when you remove a section and replace it with another:

Resolved (as an extraordinary resolution) that the by-laws of the Society be amended by repealing Subsection 5.(1) and substituting the following:

"(1) The annual general meeting of the Society shall be held between 31 and 180 days after the end of the fiscal year."

Adding a New Section

Use this amendment when you want to add a new section:

Resolved (as an extraordinary resolution) that the by-laws be amended by adding immediately after Subsection 6.(9) the following subsection:

"(10) Notwithstanding any other provision in these by-laws, the Directors or other officers may be paid travel allowances to compensate them for expenses incurred in the conduct of their duties."

Repealing a Section without Substitution:

Use this amendment when you want to delete a section:

Resolved (as an extraordinary resolution) that the by-laws be amended by repealing Section 13.

How to Make Specific Constitutional Amendments

If the proposed changes to your constitution are not numerous, you may wish to amend only those specific portions while leaving the rest of the constitution intact. You can remove sections and substitute them with alternative provisions. You can add entirely new sections, or you can remove sections without substituting anything new. However, when amending your constitution you should be careful that you have not removed a provision which the Societies Act requires, see the section "What Must Be in the Bylaws and Constitution" above. When making specific amendments, please note:

Whole sections or subsections should be repealed and replaced in their entirety by a new section or subsection rather than adding words to and deleting words from the present sections.

Appropriate numbering changes should be made when necessary - it should not be assumed that the numbering changes automatically (e.g. if two sections are replaced by one it should not be presumed that all of the subsequent sections move up in numbering).

The exact wording of the constitution being amended must be set out.

How to Enact New Bylaws or a New Constitution

The process of making numerous specific amendments to the by-laws may be very cumbersome. In other instances, uncertainty may have developed regarding the by-laws because of the failure of the society to file past amendments. In both cases, the simplest method of ensuring that the by-laws comply with the present wishes of the society is to repeal the existing by-laws entirely and substitute a new set of by-laws.

The new set of by-laws (or constitution) should be labelled as Schedule A and attached to the resolution which has been certified as properly adopted by a director or officer of the society. The originally signed resolution with by-laws attached should then be scanned and filed with the Societies Registry.

Sample forms for the enactment of new bylaws and a constitution are available at our website.

How To File Amendments with Legal Registries

Amendments do not take effect until they are approved and registered by the Registrar of Societies.

In submitting your amendments to the Registrar, you must do the following:

1. Specify the exact wording of the amendment;
2. Certify that the amendments have been passed in an appropriate manner;
3. Pay the amendment filing fee. When submitting amendments via email, this fee can be paid by contacting Legal Registries with a credit card number. **DO NOT INCLUDE CREDIT CARD INFORMATION IN ANY EMAIL CORRESPONDENCE.** Alternatively, the fee may be paid by cheque made payable to the Government of the Nunavut.

How to Dissolve a Society

The steps required to voluntarily dissolve a society are as follows.

An extraordinary resolution is required for the voluntary dissolution of a society. "Extraordinary resolution" is defined in the Societies Act as follows: "extraordinary resolution" means a resolution passed by a majority of not less than 3/4 of those members of a society who are entitled to vote as are present in person, or where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given in the manner provided by the by-laws;

Proper notice of the meeting must be given. A copy of the extraordinary resolution approving the voluntary dissolution must be provided to our office. The document must be certified to be a true copy of the extraordinary resolution and it must be dated and signed by a director of the society. A suggested form of the extraordinary resolution can be found [here](#).

The society must ensure that it has disposed of all of its assets in accordance with its by-laws. The society must also ensure that it has no outstanding debts or liabilities. Statutory declarations of two directors, stating that the society has no outstanding debts or liabilities and stating how the assets, if any, were disposed of, must be filed with our office.

A suggested form of the statutory declarations can be found on our website.

The society must surrender its original certificate of incorporation to the Registrar.

Upon receipt of the documents referred to above, the Societies Registry will be prepared to fix a date from which the society shall be dissolved. If the society wishes to specify a future dissolution date, it can do so, but the extraordinary resolution should refer to this date.

The documents and original Certificate of Incorporation should be sent to Legal Registries at the address on this page.