

CO-OPERATIVES IN ONTARIO

INCORPORATING A CO-OPERATIVE IN ONTARIO WITH SHARE CAPITAL

**Financial Services Commission of Ontario
Licensing and Market Conduct Division
5160 Yonge Street, 4th floor
P.O. Box 85
Toronto (ON) M2N 6L9**

Tel: (416) 226-7776
Fax: (416) 226-7838

This package **Incorporating a co-operative in Ontario with share capital** contains the information and forms you need to incorporate a co-operative with share capital.

(Ce document est disponible en français)
May 2011

INCORPORATING A CO-OPERATIVE IN ONTARIO WITH SHARE CAPITAL

This package include all the info required to complete the form

You should also refer to the *Co-operative Corporations Act* and the *Regulations*. You can also view the *Co-operative Corporations Act* on the internet at www.e-laws.gov.on.ca .

The forms are available online on our website under the tab “forms” .

GLOSSARY

Articles of incorporation:

These are the basic legal framework for your co-operative. They set out such things as its name, capital structure, and head office address. Articles of incorporation can be seen as your co-op's "constitution".

Assets:

Anything a co-op owns which has commercial or exchange value: property, accounts receivable, etc.

By-laws:

Rules set by a co-op on how it will manage its business, elect its board of **directors**, and hold meetings.

Debenture:

Paper issued by a co-op stating the terms of a loan, including when it's due and the rate of interest. The loan is usually long term and not guaranteed by the co-op's **assets**.

Deponent:

Someone who gives evidence under oath. Evidence given under oath is called a deposition.

Director:

A person elected by the **members** to represent them on the board of directors. Directors set broad guidelines on how the co-op will run, and hire and supervise managers or co-ordinators.

Dissolution:

The process of closing down a legally incorporated co-operative. Voluntary dissolution must be agreed upon by a majority vote at a general meeting with a majority of the **members** present.

Dividends:

The part of a co-op's surplus which is distributed to shareholders each year.

Share dividends are distributed according to the number of **shares** a person owns.

Cumulative dividends are dividends which, if not paid when due, accumulate until the co-op is able to pay them.

Non-cumulative dividends do not accumulate in this way. If a co-op does not pay a non-cumulative dividend when it's due, shareholders have no right to receive it later.

Incorporation:

The process people follow to form a co-operative. Incorporating allows you to use the word "co-operative" in your name after the incorporation and gives legal status to your co-op. Usually the members of an incorporated co-op are not personally liable for the co-op's debts or actions.

Incorporators:

The people who create a new co-operative. They legally incorporate the co-op, recruit its

first **members**, and appoint its first **directors**.

Member loans:

Loans to a co-op which are a condition of joining the co-op.

Member:

Anyone who meets a co-op's membership requirements, has been approved by its Board of **Directors**, and has bought a membership share.

Multi-stakeholder co-operative:

A type of co-op in which control is shared among various stakeholder groups. Members who share a common interest or live in a defined area may form stakeholder groups in this kind of co-op.

Offering Statement:

Gives people interested in investing in a co-op the information they need to make an informed decision. The offering statement informs prospective investors about the risks involved in purchasing the co-op's **securities**. It also includes, for example, a description of how the co-op will use the money it raises, a description of its business, the names and positions of its directors and officers, how the co-op will finance its operations, and its current financial statements.

Officer:

The main officers of a co-op are the Chair of the Board, President, Vice-President, Treasurer, Secretary, and General Manager.

Redeem:

Action taken by a co-op to buy back **shares** it has sold to its investors.

Membership shares are generally redeemed (bought back) when a **member** leaves a co-op.

Preference shares are redeemed (bought back) only as described in the share conditions of the articles and offering statement.

Securities:

Paper which proves a share in the ownership of a co-op (**shares**) or which proves a debt of a co-op (**member loans**, etc...)

Securities include membership and preference **shares**, **member loans**, **bonds**, **debentures**, and other evidence of a debt.

Shares:

A share is evidence of part of the total capital of a co-operative. Shareholders invest their money in a co-op to be able to benefit from its services or to enjoy some of its surplus (profits). As in other businesses, co-op shares are not secured by any assets and are therefore risk investments. When a co-op dissolves, its shareholders may lose their investment.

Each **class** of shares has specific features. These may include the right to vote, the right to be paid a certain **dividend**, the right to be paid **dividends** before other shareholders, or the right to be repaid before other shareholders when the co-op is dissolved.

Par value shares are shares with a fixed value, which is stated in the articles of incorporation, offering statement, and the share certificate. All co-op shares are par value. As long as a co-op is financially able to redeem its shares, par value shares are worth their original price. Co-ops can now redeem preference shares above or below par value if they have provided for this in their articles.

Membership shares may be held only by members of a co-op and give their holders the right to share in a co-op's surplus, but only after holders of debentures and preference shares have been paid. When a co-op dissolves, holders of membership shares get the value of their investment *after* all the co-op's creditors and the owners of preference shares have been paid.

Preference shares give their holders certain rights which holders of membership shares do not have. These may include the right to be paid a fixed percentage **dividend** before holders of membership shares. Preference shareholders do not have the right to vote on co-op matters except those affecting their shares' rights.

With share capital:

A co-op *with share capital* raises money by issuing and selling **shares** to its **members** and other people who may want to invest in the co-op. Co-ops incorporated with share capital may also borrow money and issue other forms of debt, such as **debentures**, to members and non-members.

Without share capital:

A co-op *without share capital* raises money by accepting loans from, or issuing other forms of debt (**debentures**) to, **members** and non-members.

How do you incorporate a Co-operative with Share Capital?

To incorporate a co-operative with share capital, you need to send to the Financial Services Commission of Ontario, Licensing and Market Conduct Division:

- Proof of a Newly Updated Automated Name Search, or NUANS report
- A cheque or money order for \$15 to reserve the name you have chosen (this is in addition to the incorporation fee noted below)
- Articles of incorporation Co-operatives **with** share capital (2 original copies)
- Consent to act as a first director (if your co-operative has directors who are not incorporators)
- A cheque for \$335.
- Cheques and money orders are to be made payable to the Minister of Finance.

You need to forward 2 completed signed original copies of the articles of incorporation along with a covering page including contact information. You will need to explain the type of co-operative as well as how the members will be served and what will they get from the co-operative.

When reviewing your articles of incorporation, we will contact you with any questions or concerns that may arise. A certificate of incorporation will be issued once FSCO's review has been completed.

Once you receive your certificate of incorporation, you have 60 days to register your co-op with the Ministry of Government Services by filing an "Initial Notice" form. This form includes basic information about your co-op, including its name, date of incorporation, address of its head office, and the names and addresses of its **directors** and **officers**. The form is available from the Ministry of Government Services; form number 007-07200.

STEP 1. The NUANS (Name Search) Report

Before you incorporate, you have to do a name search (NUANS) to be sure your co-operative does not use a name the same as, or similar to, that of another business operating in Canada. You should not send in articles of incorporation until the Commission has accepted your name. This means you won't have to send new articles of incorporation if your name is refused.

A name search must be done by a professional search house. You can find a list of these firms in the yellow pages of your telephone book under the heading Searchers of Records. Prices charged for this service may vary, so we suggest you contact several search houses before choosing one.

You should send the Financial Services Commission of Ontario the **original NUANS report as proof of your name search**, along with a **cheque for \$15**, to reserve the name you have chosen. Once the Commission has approved your name, you have 90 days to send in your incorporation documents. It's a good idea to submit your completed articles of incorporation as soon as your name is approved.

STEP 2. Articles of Incorporation

To incorporate a co-op, you must fill out **Articles of Incorporation** and send them to the Financial Services Commission of Ontario. You will find detailed instructions on how to file the form at the end of this guide. The electronic form is on our website under the tab “forms”.

Together with the *Co-operative Corporations Act*, the articles of incorporation provide the basic legal framework for your co-op. They set out its purpose and how it will finance itself. Articles of incorporation can be seen as the "constitution" of your co-op.

The legal procedure for changing your articles of incorporation requires you to file Articles of Amendment with the Financial Services Commission of Ontario. Each time you file these documents, you must pay \$100.

In comparison, changing the **by-laws** of your co-op is simpler and does not require you to file documents with the Commission or pay a fee. In order to avoid filing Articles of Amendment with the Financial Services Commission of Ontario, most of the basic rules of your co-op should be in its by-laws, rather than in its articles.

These rules would include, for example, membership conditions and how elections work.

It's a good idea to contact an association of co-operatives for advice on what should be included in your by-laws. You will find a list of co-op associations on page 8.

Articles of incorporation include:

- the name and location of the co-operative, as well as the names, addresses, and signatures of the incorporators;

Note: Worker co-operatives may be incorporated by three or more individuals who are at least 18 years of age. All other co-operatives must have at least five incorporators. These incorporators may be individuals who are at least 18 years of age or corporations, including other co-ops.

- the number of directors of the co-operative;
- how the co-op finances itself: by selling shares, accepting loans, or charging membership fees;
- the rights and privileges of the shares, or the terms and conditions of the loans;
- any special restrictions or provisions which apply to your co-op.

Since your co-operative will be raising money by selling shares, you should fill out **Articles of Incorporation for a Co-operative With Share Capital**. You must send the Commission two copies (8 1/2" by 11" paper) of your articles of incorporation and must be typed. Both copies must have original signatures. **Photocopies of signatures will not be accepted.**

STEP 3. Consent to Act as a First Director

The incorporators are the people who set up a new co-operative. They do not have to be the first directors of the co-op. If your co-op has directors who are not incorporators, each of them must complete **Consent to Act as a First Director**. This form must also be signed by a notary public or commissioner of oaths.

The consent confirms that a person who is not an incorporator has agreed to assume the legal obligations of a director.

You will find the **Consent form** on our website under the tab “forms”.

CO-OPERATIVE ORGANIZATIONS

The following co-operative organizations may be able to offer your group help in starting your co-operative:

Ontario Co-operative Association
450 Speedvale Avenue, Suite 101
Guelph ON N1H 7Y6
Phone : (519)763-8271
Fax : (519)763-7239
Toll free: 1-888-745-5521
Website: www.ontario.coop

Co-operative Housing Federation of Toronto
658 Danforth Avenue, Suite 306
Toronto ON M4J 5B9
Phone: (416)465-8688
Fax: (416)465-8337
Website: www.coophousing.coop
Email: info@coophousing.com

Organization for Parent Participation in Childcare and Education Ontario (OPPCEO)
1571 Sandhurst Circle
Box 63512
Toronto ON M1V 1V0
Toll free: 1-888-745-5521
Email: info@oppceo.org

Conseil de la Coopération de l'Ontario
435, boul St-Laurent, Suite 201
Ottawa ON K1K 2Z8
Phone: (613)745-8619
Fax: (613)745-4649
Toll free: 1-866-290-1168
Website: www.cco.coop/fr/
Email: info@cco.coop

Ontario Federation of Food Co-operative and Buying Clubs
5685 McLaughling Road
Mississauga ON L5R 3K5
Phone: (905)507-2021
Website: www.onfc.ca

**ARTICLES OF INCORPORATION FOR A CO-OPERATIVE
WITH SHARE CAPITAL
INSTRUCTIONS**

These instructions will help you fill out **Articles of Incorporation for a Co-operative with Share Capital**.

1. The name of the co-operative is:

The name must include the word "Co-operative" in full and must end with "Incorporated", "Corporation", "Limited", "Inc.", "Corp.", or "Ltd."

Make sure you have done a name search and the name has been approved by the Financial Services Commission of Ontario before you submit the articles.

Sample

<p>1. The name of the co-operative is:</p> <p style="text-align:center">ABC Co-operative Inc.</p>
--

2. The head office is at the:

Show whether the co-op is located in a village, town, city, or township and name that municipality, as well as the county or district of Ontario.

Sample

<p>2. The head office is at the:</p> <p>City _____ (Status of the Municipality)</p> <p>of/ Barrie _____ (Name of Municipality)</p> <p>in the/ County _____ (County, District, or Regional Municipality)</p> <p>of/ Simcoe _____ (Name of County, District, or Regional Municipality)</p>
--

3. The address of the head office is:
Give the full mailing address of the co-op's head office. You cannot use a post office box number.

Sample

3. The address of the head office is:		
123 John Street		
(Street & Number or R.R. Number, if Multi-Office Building give Room No.)		
Barrie, Ontario	A1B 2C3	(Postal Code)
(Name of Municipality or Post Office)		

4. The number (or minimum and maximum number) of directors is:

There must be at least three directors. However, your co-operative may need more. You should decide the fewest and most directors your co-operative might need and enter this range here. You will set the actual number of directors in your by-laws.

Sample

4. The number (or minimum and maximum number) of directors is:
a minimum of three (3) and a maximum of ten (10).

5. The number (or minimum and maximum number) of directors each stakeholder group in a multi-stakeholder co-operative may elect is:

In a multi-stakeholder co-op, each stakeholder group has to elect at least one director to represent it. In this section, you should give the number of directors each stakeholder group may elect. Instead of a number, you may also set a range for the number of directors each stakeholder group may elect. If your co-op is not a multi-stakeholder co-op, indicate "not applicable". For more information about multi-stakeholder co-ops, please refer to the "**Guide to Setting up a Co-operative**" found on FSCO's website

Sample

5. The number (or minimum and maximum number) of directors each stakeholder group may elect is:
Stakeholder Group A: a minimum of two (2) and a maximum of five (5)
Stakeholder Group B: a minimum of two (2) and a maximum of five (5)
Stakeholder Group C: one (1)

6. The first directors are:

Fill in the full names, including middle names (**no initials**), and the complete addresses of all directors. Please do not use post office box numbers. You also have to indicate if the first directors are resident Canadians. Any directors who are not incorporators must complete **Consent to Act as a First Director**.

Sample

6. The first directors are:		
Name in full including all given names	Residence Address, giving Street and Number or R.R. Number and Municipality or Post Office	Resident Canadian State Yes or No
John Richard Doe	#10 - 2nd Avenue, Barrie ON A1B 2C3	Yes

7. Restrictions, if any, on the business the co-operative may carry on or on the powers the co-operative may exercise:

Except as limited by the *Co-operative Corporations Act*, co-operatives have the powers of a natural person. This means co-ops can exercise the same legal powers as individuals. Such powers include the capacity to sue and be sued, as well as to sign contracts and other legal documents in the name of the co-op. If you choose to restrict these powers, you should list the restrictions here. If you would not like to state any restrictions, simply write "None" in this section of the articles.

Sample

7. Restrictions, if any, on the business the co-operative may carry on or on the powers the co-operative may exercise:
<ul style="list-style-type: none"> • the co-operative may not do any business that is not directly or indirectly related to providing marketing services for agricultural products.

8. The authorized capital for each class of share is:

The authorized capital for each class of share is the most money your co-operative may raise by selling that type or class of share. All co-operatives that are incorporating with share capital have to issue membership shares. You may set the authorized capital for membership shares at a specific amount or make it unlimited. The authorized capital for any class of preference shares has to be set at a specific amount. The price of each membership or preference share has to be any multiple of \$1.

The total amount of authorized capital should be based on the planned size of your co-op once it is fully developed. It should not be confused with the amount allowed by a specific offering statement.

If your co-operative grows more than you expected and needs more capital, the authorized capital can be increased by a special resolution. A special resolution is a resolution that has

been passed by the board of directors and approved by at least two-thirds of the members voting at a members' meeting. You must also change your articles of incorporation by filing Articles of Amendment with the Financial Services Commission of Ontario for this change to take legal effect.

Sample

8. The authorized capital for each class of share is:

\$2,000,000 total capital made up of:

- **\$1,000,000 in Membership Shares at a par value of \$100 each, for a total of 10,000 Membership Shares;**
- **\$1,000,000 in Preference Shares divided into:**
 - **\$500,000 in Class A Preference Shares at a par value of \$100 each, for a total of 5,000 Class A Preference Shares, and**
 - **\$500,000 in Class B Preference Shares at a par value of \$50 each, for a total of 10,000 Class B Preference Shares.**

9. The designations, preferences, rights, conditions, restrictions, limitations, or prohibitions attaching to the preference shares, if any, are:

A co-operative may sell one or more classes of preference shares with specific preferences, rights, or restrictions. If your co-op will be issuing preference shares, be sure to describe all their rights and main characteristics here. For example, describe:

- The annual dividend rate on the shares. Include in your description such information as whether the share pays a cumulative or non-cumulative dividend, and any priority over any other class of shares in the payment of dividends.
- Whether or not shareholders have the right to require the co-op to redeem their shares and how this can be done.
- Whether or not shareholders have the right to transfer ownership of the shares to other persons and how shareholders may do so.
- Whether or not the co-op has the right to buy back a particular class of shares without the shareholders' consent.

Recent changes to the *Co-operative Corporations Act* have removed the cap on the dividend that may be paid on preference shares. The dividend that may be paid on membership shares remains capped at the prime interest rate of a financial institution named in your co-op's by-laws plus two percent. If you would like to find out more about the different rights and features your co-op may want to give to its preference shares, please reference the “**Guide to Setting up a Co-operative**” found on FSCO’s website at www.fSCO.gov.on.ca/english/regulate/co-ops/register_co-op.asp.

Sample

9. The designations, preferences, rights, conditions, restrictions, limitations, or prohibitions attaching to the preference shares, if any, are:

CLASS A PREFERENCE SHARES:

Dividend:	Holders of Class A Preference Shares are entitled to receive an annual cumulative dividend of 5% in priority to any dividend being paid on Class B Preference Shares and Membership Shares and in priority to any distribution of patronage returns.
Redemption:	Holders of Class A Preference Shares may require the co-operative to redeem their shares by giving the co-operative six months written notice. The co-operative may redeem all or any part of the Class A Preference shares without the consent of the holders by giving the holder six months written notice of its intention to redeem their shares.
Redemption Price:	The redemption price of Class A Preference Shares is equal to their par value plus any accrued unpaid dividends.
Other Rights:	Class A Preference shareholders have the right to receive notice of and attend members' meetings. Class A Preference Shares do not give the holder any voting rights in the co-operative. On dissolution or winding up of the co-operative, Class A Preference shareholders are entitled to receive, in priority to holders of Class B Preference Shares and Membership Shares, an amount equal to the redemption price of Class A Preference Shares plus any accumulated but unpaid dividends. Holders of Class A Preference shares have no further right to the co-operative's property. None of the rights, privileges, and conditions attaching to Class A Preference Shares may be deleted or changed without the prior approval of two-thirds of the votes cast by Class A Preference shareholders at a meeting of the shareholders called for that purpose.
Notice:	All notices which Class A Preference shareholders are entitled to receive shall be by regular letter post. It is the responsibility of shareholders to ensure that the co-operative is advised of any changes of address.

10. The restrictions on the allotment, issue or transfer of shares are:

By law, the membership shares of a co-operative may not be transferred from one person to another without the approval of the board of directors or a person authorized by the board. Co-ops may want to put restrictions on the sale or transfer of their preference shares. If so, describe all such restrictions here.

Sample

10. The restrictions on the allotment, issue or transfer of shares are:

Preference Shares may be purchased only by members of the co-operative.

Preference Shares may not be transferred without the prior approval of the co-operative's board of directors.

No member shall hold more than "x" Preference Shares without the consent of the directors.

11. The classes of membership, if any, are:

Under the *Co-operative Corporations Act*, every member of a co-op has the right to vote and run for election to the board of directors. However, a co-op may have different classes of membership with different types of involvement with the co-op. For example, a consumer co-op may distinguish between consumer members and employee members, or between members who buy retail and those who buy wholesale. If your co-op has more than one class of members, please list the classes here.

If your co-op has only one class of members, you should indicate "not applicable".

Sample

11. The classes of membership, if any, are:

Three classes of membership:

Consumer members

Farmer members

Corporate members

12. The terms and conditions attaching to each class of membership are:

Indicate the **general** conditions members have to satisfy to belong to a specific class of membership; detailed terms and conditions should be included in your co-op's by-laws.

Sample

12. The terms and conditions attaching to each class of membership are:

Consumer members: Members of this class purchase goods and services from the co-op for personal consumption.

Farmer members: Members of this class operate farms and supply the co-op with agricultural products.

Corporate members: Members of this class purchase the co-op's goods and services for commercial purposes.

13. The stakeholder groups, if any, are:

Under the *Co-operative Corporations Act*, every member of a co-op has the right to vote and run for election to the board of directors. However, some co-ops may require members to belong to a specific stakeholder group, depending on the kind of involvement members may have with the co-op.

For example, if your co-op processes and markets apple products, it may have two stakeholder groups: farmers and processing plant workers. In this example, members of each stakeholder group play a different role in the co-op's business: farmers supply the co-op with apples and the processing plant workers process, pack, and ship apple products.

If this were your co-op you would list the three stakeholder groups in this section. Multi-stakeholder co-ops must have at least two stakeholder groups. If your co-op is not a multi-stakeholder co-op, you should indicate "not applicable".

Sample

13. The stakeholder groups, if any, are:

The co-operative has two stakeholder groups:

Apple farmers' stakeholder group

Processing plant workers' stakeholder group

14. The terms and conditions for membership in each stakeholder group are:

Indicate the **general** conditions for membership in each stakeholder group; detailed terms and conditions should be included in your co-op's by-laws.

Sample

14. The terms and conditions for membership in each stakeholder group are:

Apple farmers' stakeholder group: **Members of this stakeholder group must supply the co-op with at least 25 percent of their annual apple production.**

Processing plant workers' stakeholder group: **Members of this stakeholder group must be employed in the co-op's processing plant.**

15. Special provisions, if any, are:

If your co-op is a worker co-op or a multi-stakeholder co-op, you have to include the appropriate provisions in this section. These provisions are stated, respectively, in the first two samples of this section. The third sample in this section gives an example of special provisions that may apply to any co-op with share capital.

The special provisions section may also cover other key features that are unique to your co-op, such as stating procedures for disposing of assets when the co-operative dissolves.

Sample 1 (FOR WORKER CO-OPS)

15. Special provisions, if any, are:

1. The primary object of the co-operative is to provide employment to its members.

2. It is a condition of membership that, except in circumstances prescribed by the regulations under the *Co-operative Corporations Act*, a member must be employed by the co-operative.

Sample 2 (FOR MULTI-STAKEHOLDER CO-OPS)

15. Special provisions, if any, are:

The co-operative is a multi-stakeholder co-operative for the purposes of the *Co-operative Corporations Act*.

Sample 3

15. Special provisions, if any, are:

Upon dissolution and after the payment of all debts and liabilities, the co-operative's remaining assets shall be distributed among the members in proportion to the patronage returns accrued to members during the five fiscal years prior to dissolution.

16. The shares to be taken by the incorporators are:

List the full names, including middle names (**no initials**) of the incorporators, the number of shares they are buying, the class of these shares, and the total amount to be paid for them.

Worker co-operatives must have at least three (3) incorporators. All other co-operatives must have at least five (5) incorporators. Please note that every incorporator must buy at least one (1) membership share to ensure they are members of the co-op.

Sample

16. The shares to be taken by the incorporators are:			
Incorporators' full names, including all given names	Number of Shares	Class Designation	Amount to be paid
John Richard Doe	Five (5)	Membership	\$500

17. The names and residential addresses of the incorporators are:

Fill in the full names, including middle names (**no initials**), and complete home addresses of all the incorporators. Please do not use post office box numbers.

Sample

17. The names and residential addresses of the incorporators are:	
Full names, including all given names)	Full Residential Address, giving Street and Number or R.R. Number and Municipality or Post Office
John Richard Doe	#10 - 2nd Avenue, Barrie ON A1B 2C3

These articles are signed in duplicate

The original signatures of all incorporators must appear here. Photocopied signatures cannot be accepted.

Signatures of incorporators:

--