



**Lancaster, Brooks & Welch** LLP  
Niagara's Lawyers Since 1882

# Starting your business



## Accessibility and Convenience

**Lancaster, Brooks & Welch LLP** have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

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***It has been our experience at Lancaster Brooks & Welch LLP that people trying to start a business have many questions on different types of business structures. This pamphlet is designed to assist you in this area of law.***

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## What is a sole proprietorship?

A person carrying on business as the only owner is operating a sole proprietorship – the simplest form of business organization. It can be under one's own name or a business name, which will need to be registered under the *Business Names Act*. The owner is responsible for all business debts and entitled to all profits. Their personal assets, unrelated to business, are at risk to satisfy business debts, so it's often preferred to conduct business in some other fashion.

## What is a partnership?

When two or more people or entities carry on business together, they sometimes do so in partnership (unless they elect to incorporate, as discussed later in this pamphlet), which is governed by the *Partnerships Act*. They often have an agreement, which sets out specific terms under which to conduct their business. Without such agreement, the Partnership Act sets all the ground rules, prescribing for dissolution and procedures which may not suit the partners.

## Are all partners equal?

All partners are presumed equal by the *Partnership Act*, unless by agreement they decide otherwise. For example, if one partner invests 75% of the funds put into the business and the other 25%, they would want to set out their unequal interests in an agreement.

## What are the responsibilities of a partner?

Each partner is responsible for all partnership debts. This is a difficult, yet important, aspect of partnership. In the

75%/25% example, the partner with the 25% interest is still responsible for 100% of the partnership debt. Although within the partnership, there is a different arrangement, the public is not bound by this internal understanding. It is also important to remember that all of one's personal assets are at risk to satisfy partnership debts if the business venture fails. This is a prime reason people often prefer to carry on business in another manner.

## What is a partnership name?

The partnership will carry on business under a firm name. That name must be registered under the *Business Names Act* so members of the public can confirm the people involved in a particular business.

## What is a limited partnership?

In a limited partnership, interests of the various partners are unequal, so some may not be liable for all partnership debts. They are therefore limited in their responsibility. By





the registration of this partnership under the *Limited Partnerships Act*, the public is aware of this limitation. This format is not an incorporation. Limited partnership options are rarely used for small businesses.

### **What is a joint venture?**

When two or more business entities or individuals come together for one specific purpose, they are carrying on a joint venture. If they want to embark on a number of new business ventures, usually they incorporate a new company or enter into a partnership.



### **What is a corporation?**

An incorporated business is the most common and safest way to carry on business. The sole proprietor or the partnership may elect, either from the outset or at some point once the business is established, to incorporate the business entity. When this is done, a new legal "person" is actually created. Put in its simplest terms, the incorporated company becomes responsible for business debts. As such, the liability of the individuals is limited to their investment in the company. A business person, therefore, does not put all of his/her personal assets at risk. Also, income tax considerations may dictate that the incorporated format is preferred. You must be aware that incorporation involves additional costs, both initially and on a year-to-year basis.

### **Is there personal liability when a business is incorporated?**

Although incorporation limits personal liability in many instances, there are areas where it still exists. Directors of a corporation may be responsible for HST and deductions withheld from employees. Also, an increasing number of statutes, such as environmental protection legislation, impose personal responsibility on directors of corporations.

### **What is a numbered company?**

A company must have a name plus the words "Incorporated," "Corporation," "Limited" or their abbreviations added to that name to indicate the business is incorporated. Currently, so many corporations exist, it is difficult to find a name not already in use. For this reason, more companies are simply being incorporated by a number assigned by the Ministry of Government Services. Then, the numbered company carries on business under a business name that must be registered under the *Business Name Act*.

## **Commercial Law Group**

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Provincial License is required to conduct business outside the province of origin.

### **What is a Not for Profit (NFP) Corporation?**

A NFP Corporation generally does not have shares issued to its owners, and is used most frequently for service clubs, social clubs, sports associations and other community groups who do not operate a business for profit. Sometimes these NFPs may apply for registered charitable status and issue tax receipts to donors.

***At Lancaster Brooks & Welch LLP, we recognize the complexity involved in carrying on business. We strongly recommend you seek legal and accounting advice at the outset to determine the best structure for your particular business. Lawyers in our Commercial Group are happy to answer further questions, without obligation.***

### **What is a federal company?**

Most firms incorporate under provincial legislation because the business is usually local in scope. When business is carried on nationwide or if regional offices are set up in various provinces, it may be advantageous to incorporate a company under federal legislation. In some cases, an Extra

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