

COMPARATIVE CHART QBCA / CBCA

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STATUTE ABBREVIATION KEY

<i>Act respecting the legal publicity of enterprises</i> , CQLR, c P-44.1	LPE
<i>Act respecting the special powers of legal persons</i> , CQLR, c P-16	SPLP
<i>Act respecting the transfer of securities and the establishment of security entitlements</i> , CQLR, c T-11.002 (“Québec Securities Transfer Act”)	QSTA
<i>Canada Business Corporations Act</i> , R.S.C. (1985), c C-44 (Unless otherwise identified, sections cited under the CBCA column refer to the CBCA)	CBCA
<i>Canada Business Corporations Regulations (2001)</i> , SOR/2001-512	CBCR
<i>Charter of the French Language</i> , CQLR, c C-11	CFL
<i>Civil Code of Québec</i> , CQLR 1991, c 64	CCQ
<i>Business Corporations Act</i> , CQLR, c C-31.1 (Unless otherwise identified, sections cited under the QBCA column refer to the QBCA)	QBCA
<i>Regulation 45-106 respecting prospectus exemptions</i> , c V-1.1, r 21	RPE
<i>Regulation respecting the application of the Act respecting the legal publicity of enterprises</i> , CQLR c P-44.1, r. 1	RLPE
<i>Regulation respecting names of companies governed by Part 1A of the Companies Act</i> , CQLR c S-31.1, r 1.02	RNCCA
<i>Securities Act</i> , CQLR, c V-1.1	QSA
<i>Winding-up Act</i> , CQLR, c L-4	WUA

1.00 INCORPORATION

1.01 Qualification of Founders

One or more individuals may incorporate a corporation, so long as each of them is not disqualified for the office of director of a corporation under the CCQ or is not declared incompetent by a decision of a court of another jurisdiction.

(ss 3, 4 para 1, 108; art 327 CCQ)

The founder of a corporation may be a legal person.

(s 4, para 2)

One or more individuals, not one of whom is less than eighteen (18) years of age, is incompetent or has the status of bankrupt, may incorporate a corporation.

(s 5(1))

A body corporate may incorporate a corporation.

(s 5(2))

1.02 Procedures

The incorporator(s) must file the articles with the Enterprise Registrar accompanied by a list of the directors of the corporation that includes their names and domiciles, a notice of the address of the corporation's head office, a declaration stating that reasonable means have been taken to ensure that the name chosen complies with the law, unless a designating number has been requested as well as any other document that the Minister may require and the prescribed fees.

However, the list of directors and the notice of the address of the head office are not required to be filed if the initial declaration required under the LPE is filed with the articles.

(ss 8 and 9)

On receiving the articles and other documents required by this Act, the Enterprise Registrar will record the date of receipt, issue the appropriate certificate and assign a date to it, deposit the articles and related certificate and the accompanying documents with the Enterprise Registrar, and send a copy of the articles and certificate to the corporation or its representative.

(s 472)

The incorporator(s) must send the articles of incorporation, a notice of registered office or change of registered office, list of directors and a request to reserve a corporate name. The director may reserve the corporate name for a period of NINETY (90) days.

(ss 7, 11(1), 19(2) and 106(1))

The Director must, upon receiving the articles or the statement in the prescribed form, as well as any required documents and prescribed fees, record the filing date, issue the appropriate certificate, file the certificate and the articles or statement (or a copy, image or photographic, electronic or other reproduction thereof), send the certificate (or a copy, image or photographic, electronic or other reproduction thereof) to the corporation or its agent or mandatary, and

A corporation comes into existence on the date and, if applicable, the time shown on the certificate of constitution issued by the Enterprise Registrar.

(s 10)

The persons concerned are responsible for verifying the lawfulness and accuracy of the articles and documents sent to the Enterprise Registrar for deposit in the enterprise register under the QBCA. The persons concerned are responsible for verifying the lawfulness of the articles and documents. Upon the motion of an interested person, a court may dissolve a corporation that has been illegally incorporated, cancel its articles and the related certificate or take any other measure the court thinks fit.

(ss 469, 461)

If the articles do not contain the contents required by the QBCA, if they are not filed in the prescribed form, if the articles specify a corporate name that is not in compliance with subsections 16(1)-(6) and 16(8), if the documents required under the QBCA have not been sent to the Enterprise Registrar or if the fee has not been paid, the Enterprise Registrar will refuse to issue the appropriate certificate.

(s 474)

Illegalities or irregularities or any other error other than an obvious error is corrected by filing articles of amendment in accordance with sections 243 and 244. An obvious error in the articles of the corporation is corrected by means of a correction request addressed to the Enterprise Registrar or, if applicable, by means of articles of amendment concurrently with a correction made under section 252 for a correction that is not obvious.

publish a notice of the issuance of the certificate in a publication generally available to the public

(ss 8(1) and 262(2))

A corporation comes into existence on the date shown in the certificate of incorporation.

(s 9)

The Director may apply to a court for directions before refusing the filing.

(s 244)

Any aggrieved person may apply to a court to appeal the Director's decision.

(ss 246-248)

The Director may refuse to file articles, if the notice of registered office or change of registered office or the list of directors indicates that the corporation, if it came into existence, would not be in compliance with the CBCA. In such case, the Director must give written notice of the reasons for his refusal within TWENTY (20) days of receiving the documents.

(ss 8(2), 245(1))

If there is an error in the articles, a notice, certificate or other document the Director may, in order to make the correction(s), require the directors or shareholders of the corporation to pass the resolutions and send the Director the requisite documents under the CBCA and to take any other measures as the Director may reasonably require.

The Director may proceed with the correction

(ss 252, 253)

request if he is satisfied that the correction(s) will not prejudice any of the corporation's shareholders or creditors.

At the request of the corporation or any other interested person, the Director may accept a correction to any of the documents referred to in subsection (1) if:

- the correction is approved by the directors of the corporation, except for an error that is obvious or if made by the Director;
- the Director is satisfied that the correction would not prejudice any of the corporation's shareholders or creditors and that it reflects the original intention of the corporation/incorporators.

(s 265)

1.03 Content of Articles

The articles must set out:

- the corporate name, unless a designating number in lieu of a name has been requested from the Enterprise Registrar;

(ss 16-24)

- the address of the head office;
- the name and address of each founder or the founding legal person and an exact reference to the Act under which it is constituted;
- the amount to which the share capital is limited, if applicable;
- the par value of the shares, if applicable;
- where there are two or more classes of shares, the rights and restrictions attaching to the shares of each class;
- if a class of shares may be issued in series, the authority given to the Board to determine,

The articles must set out:

- the name of the corporation;

(ss 10-13, 173(1)(a); ss 17-34 CBCR)

- the province where the registered office is to be situated;
- the classes and any maximum number of shares that the corporation is authorized to issue;
- the rights, privileges, restrictions and conditions attaching to each class of shares, where such is the case;
- if a class of shares may be issued in series, the authority given to the directors to fix the

before issue, the number of share in, the designation of the shares of, and the rights and restrictions attaching to the shares of, each series.

- any restrictions on the transfer of the shares;
- the fixed number of directors (or the minimum and maximum number);
- the restrictions on its business activities.

(s 5)

The articles may set out any other provision in the by-laws that is permitted under the QBCA.

(s 6 para 1)

In the event of a conflict, the provisions of the articles of the corporation prevail over those in the by-laws.

(s 6 para 2)

The articles may increase the number of votes required for the directors or shareholders to take any action.

However, for the purposes of removing a director, the articles may not require a greater number of votes than that required by the QBCA.

(s 7)

number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

- the restrictions, if applicable, on the issue, transfer or ownership of the shares;
- the fixed number of directors (or the minimum and maximum number);
- any restrictions on the businesses that the corporation may carry on.

(s 6(1))

The articles may set out any provisions in the by-laws that are permitted under the CBCA or by law .

(s 6(2))

The articles may require a greater number of votes than that required by the CBCA to effect any action, except to remove a director, by the directors or shareholders.

(ss 6(3)-(4))

1.04 Amendments to Articles

An amendment to the articles must be authorized by special resolution, unless otherwise provided in the QBCA. By that resolution, the shareholders authorize a director or an officer of the corporation to sign the articles of amendment.

(ss 240-245)

A director or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 137, make a proposal to amend the articles. The shareholders must pass a special resolution to amend the articles.

(ss 137, 173(1), 175(1), 176)