

### Corporations, partnerships and other organizations

Our firm provides assistance in a variety of corporate matters, including the formation of corporations, partnerships and other organization.

At Auld Allen, we will discuss with you the considerations relevant to your decision as to whether or not it is of advantage to carry on business in an incorporated company, partnership or other form of association. Such considerations may include the following:

1. Advantages of limited liability;
2. Income/losses that you anticipate the business will experience;
3. Income/loss splitting requirements;
4. Financing requirements and whether the financier insists on a personal guarantee;
5. Possible advantages of other business association forms, such as partnership, trust or society;
6. Cost of incorporation and ongoing filing requirements.

In order to incorporate a company in Nova Scotia, the provisions of the Companies Act of Nova Scotia must be followed. The Companies Act does not contain any restrictions on business that the company can carry on, provided such business is not restricted at law. The company has the capacity of a natural person and, subject to the Act, the rights, powers, capacity and privileges of a natural person.

It will be necessary to appoint a president, secretary and a minimum of one and up to ten directors who must be of legal age and are not required to hold shares in order to be appointed to the board of directors. You will also need to appoint a recognized agent, service upon whom of any writ, summons, process or notice shall be considered service on the company.

Since directors are entrusted with the management of the assets of the company, they are subject to fiduciary duties. This means the director must always put the interest of the company (and its shareholders) before his or her own interest. In addition to their fiduciary duties, directors must exercise care and skill in managing the affairs of the company.

It is important to also remember that the directors may have personal liability for certain financial obligations, including, but not limited to, withholding remittances for Revenue Canada, including unemployment insurance premiums and CPP deductions as well as provincial health services taxes and harmonized sales tax.

### Shareholders' Agreements


It is common for two or more companies or individuals to decide to carry on business together, whether as partners, co-owners or shareholders of a company. Often, it is advisable to

define and advance the relationship between the parties and their respective obligations to the business and to each other. Sometimes, it may be difficult to convince the parties that an agreement is necessary, but they will recognize this need the first time the dispute arises.

A *Shareholders' Agreement* is one tool available in implementing the business agreement between the shareholders and the company. Potentially, it is an instrument which fills in the cracks between the provisions of the Companies Act of Nova Scotia and the memorandum and articles of the company. Certain considerations or understandings amongst the shareholders might be set forth in a *Shareholders' Agreement*. These include:

1. Control over who the other shareholders in the company are to be;
2. What happens on the death of a shareholder;
3. Dispute resolution and the liquidity of the shareholder's investment in the company;
4. A shareholders ability to participate in the management of the company in general;
5. The financial contribution of the shareholders.

An advantage of having a *Shareholders' Agreement* is the exercise of having the parties discuss with their solicitor their understanding of the business agreement amongst them



with respect to the conduct of the affairs of the company. This gives the shareholders the opportunity to set forth their understanding of the business agreement and obtain advice with respect to the organization of the business.

### **Minority and Descending Shareholders**

Until recently, there was very little statutory protection in Nova Scotia against oppression of minority shareholders. There was little, if anything, a minority shareholder could do in the event that the majority of shareholders determined that the company should pursue a certain objective. Recent amendments to the *Companies Act* effected by the *Investment Protection Act of Nova Scotia* conferred significant protection upon minority shareholders in Nova Scotia. You may wish to discuss with your solicitor your minority shareholder rights.

### **Corporate Administration**

Our firm also assists companies and other entities in preparing minutes of annual meetings as well as maintaining compliance with annual filing and registration requirements pursuant to the *Corporations Registration Act* of Nova Scotia. We also carry out extra-provincial registrations of companies carrying on business in Nova Scotia.

### **Corporate and Commercial Matters**

In addition to the formation of corporations, partnerships and other organizations, Auld Allen provides advice with respect to a variety of other business law matters, including, amalgamations, continuances, dissolutions, as well as the acquisition, divestiture or refinancing of businesses.

### **Corporate Searches**

Business law services also include the carrying out of various searches, including, bankruptcy, corporate status, history, profile, trademarks, name reservations and certificates of status and certified copies. We can also carry out *Personal Property Security Act* (PPSA) searches, verification statements, PMSI registrations and notices.

At Auld Allen, we would be pleased to meet with you to discuss your business law requirements.