**8777. How is a C corporation formed?**

The requirements that apply in forming a corporation vary from state to state. Several states have adopted the Model Business Corporation Act, which can serve to illustrate the basic provisions generally found in individual state statutes.

While a partnership is governed by its partnership agreement, a corporation is governed by its certificate of incorporation (also known as its charter) and bylaws. In the past, for the protection of investors and the general public, business conducted by the corporation was limited strictly to those types of transactions specifically authorized by the corporate charter. Today, most states only require that the purpose of the business, as stated in the charter, be to engage in any lawful business activity. Subject to state law and the terms of the charter, most basic corporate activities are governed by an official set of bylaws.

**Planning Point**: The by-laws set forth the mechanics as to how the corporation is to function. For example, how directors are elected; how meetings are called and whether business can be conducted without the formality of a meeting. The by-laws can set forth the specific authority of the directors and the officers. Typically, the statutes for the state where the corporation is formed will fill in any gaps which the by laws may not address.

To obtain the authority to conduct business as a corporation, the person organizing the corporation must file certain information with the state of incorporation. Generally, filing requirements include articles of incorporation, a filing fee and written appointment of a statutory agent (for service of process) within the state of incorporation. Most states will provide copies of the relevant forms on a governmental website. Delaware, which is an extremely common state for corporate formations partially because of its well-developed case law and streamlined formation process, provides links to PDF documents that must be filed based on the type of corporation that will be formed (e.g., stock corporations, public benefit corporations, close corporations, non-profit corporations).[[1]](#footnote-1)

The following elements typically must be included in the articles of incorporation, however, each state may vary this information to some extent:

(1) Name of corporation. The selected corporate name must not be in present use within the state, and must be one which connotes a corporate status (e.g., ABC Company, Inc.; XYZ Corporation). Many states provide a separate process by which a corporation may reserve a corporate name;

(2) Place of business. The complete address of the principal place of business and, often, the address of a registered agent within the state of formation, must be included;

(3) Purpose of business. The essential purpose of the business can be briefly stated (with reliance upon broadly-written state statutes, which generally grant broad operating authority), or a lengthy description of numerous operations may be included. Generally, it seems advisable to add to the present business purpose those closely related operations that might reasonably be entered into at some future date. As a result, should the corporation later broaden its activities, such operations will not constitute *ultra vires* acts of the corporation, nor serve as a basis for dissenting minority stockholder suits. The Delaware forms pre-fill this information with “any lawful act or activity for which corporations may be organized.” Other states permit similar approaches;

(4) Number of authorized shares. This means the number of shares that the corporation is permitted to authorize. This does not mean “issued” shares or sold shares, but rather the total number of shares that can be issued at a later date. Often times, the documentation may authorize 1,000 shares and have 100 shares being issued at the inception of the corporation. The 100 issued shares allow the ownership to be held in percentage increments, and there are still 900 shares which can be issued at a later date if necessary. This clause should further state whether the authorized shares carry a par or non-par value;

(5) Minimum stated capital. Some state statutes prescribe a minimum stated capital for the business, usually $500, before the corporation can commence business. Operating before this stated capital is deposited exposes incorporators to personal liability.

Optional Provisions

In addition to the essential information that must be included in a filing, in some states, the additional information may be optional, and is most commonly provided in the corporation’s bylaws:

(1) Express terms of shares. Where all of the authorized shares are common stock, it is unnecessary to define their terms. However, if there is more than one class of stock, it is important that the following terms be defined (often in the corporation’s bylaws): rights to dividends; voting rights; preference on liquidation; preemptive rights to purchase additional stock;

(2) Self-dealing of stockholders. In a closely held business, it is not unusual for stockholders or directors to sell property to or purchase property from the corporation. To preclude dissenting minority stockholder suits, specific authority for such acts should be included in the Articles;

(3) Corporate authority to purchase its own shares. Though many state statues permit the corporation to purchase its own shares, by director action, these permitted purchases are rather narrowly defined. To add flexibility for the stockholders, specific language can be added providing broad authority for such purchases.

1. . Delaware filing forms may be accessed at http://corp.delaware.gov/corpformscorp09.shtml (last accessed June 5, 2014). [↑](#footnote-ref-1)