

Canada Business

New Brunswick



Entreprises Canada

Nouveau-Brunswick

1-888-576-4444

Articles and Bylaws Regarding Co-operatives

Last verified: 2010-09-16

Depending on the applicable co-operative statute (the *Act*), the document which creates the co-operative is either referred to as articles, memorandum, or letters of incorporation. The incorporating document and the by-laws define a co-operative's basic financial and organizational structure, and set out the rules by which it is governed.

This factsheet is a guide for directors, members, and managers of existing and developing co-operatives. It explains how to develop and amend the articles, memorandum or letters of incorporation and by-laws to tailor them to the unique needs of an individual co-operative and to meet legal requirements in general.

This publication provides general guidance and should be used in consultation with the *Act* plus appropriate legal, technical and managerial advice and support.

Incorporating Document

The articles, memorandum or application for letters of incorporation are drawn up and signed by the incorporators of a co-operative and must be sent to the appropriate government authority in the prescribed form, with required fees. Subject to the approval or filing of the document, together with the by-laws, as the case may be, a certificate or letters of incorporation will be issued.

The incorporating document may only be amended by a special resolution, which requires a majority determined by the *Act*, usually at least two-thirds or three-fourths of the votes cast at a general meeting. Members must receive adequate notice, usually not fewer than ten days' notice, of the intention to propose the special resolution at such a meeting. Proposals for the amendments may be presented by the board or by any member of the co-operative. Amendments must be filed with and/or approved by the authority administering the *Act*. Fees may be applicable.

The incorporating document may include the following:

1. *The name of the Co-operative:* A co-operative's name must usually include the word "Co-operative" (or "Coopérative"), and the last word must usually be "Limited" or "Ltd." ("limitée" or "Itée"). The name must not be the same as or similar to that of another corporation.

2. *Share Capital:* When a co-operative is organized with share capital, shares are with par value or, in some cases, without par value. The par value is the fixed purchase price of a share. When shares with par value are repurchased by the co-operative (when a member withdraws from membership, for example), the shares are usually repurchased at a price not exceeding par value or book value, whichever is less. In some cases, the *Act* allows co-operatives to have two or more classes of shares. The designation, par value (or price formulae if there is no par value), special preferences, rights, conditions, restrictions, limitations and prohibitions attached to shares of each class must be provided in the incorporating document.
3. *No Share Capital:* In some cases, the *Act* allows the incorporation of co-operatives without share capital. The responsibility of members is limited to either the membership fees or loan, as specified in the incorporating document.
4. *First Directors:* The incorporating document should include the names in full and place of residence of the first directors. In some cases, the *Act* imposes either a minimum or a range for the number of directors.
5. *Objects:* In some cases, the *Act* provides that the incorporating document contain a concise statement (usually one paragraph) describing the objects or purpose for which a co-operative is established. This paragraph usually begins with the wording "The objects for which the Association is established are to carry on a co-operative basis..."
6. *Restrictions:* In some cases, the *Act* provides that the incorporating document include a statement outlining restrictions, if any, on the business of the co-operative. If a co-operative includes a restriction, any involvement in the restricted activity is prohibited.
7. Articles, memorandum or letters of incorporation may also include any provisions permitted by the *Act* to be set out in the by-laws.

By-laws

By-laws set out the basic rules and guidelines, consistent with the *Act*, by which a co-operative governs itself. By-laws are first developed by the incorporators of a co-operative, and if applicable, submitted to the appropriate government authority. In some cases, the *Act* requires that the by-laws must also be ratified at the first general meeting of a co-operative within a few months of incorporation.

By-laws Contents

In some cases, the *Act* requires that the by-laws contain at least certain elements. In general, the required by-laws include the following:

Finance

- Fiscal year-end
- Share capital or membership fee requirements
- Borrowing

Membership

- Qualifications for membership
- Withdrawal of members
- Termination of membership
- Joint membership
- Classes of membership
- Membership meeting notice and quorum

Board of Directors

- Qualifications of directors
- Number of directors
- Number of meetings
- Election
- Vacancies
- Term of office
- Removal of directors

Officers

- District boundaries, if applicable
- Delegate structure, if applicable
- Dissolution

Optional by-laws may include other elements that do not conflict with any provisions of the *Act*.

For example:

- Distribution of surplus
- Procedure for by-law amendment
- Execution of documents
- Adoption of rules of order
- Committees, such as nominating committee

The incorporating document, the by-laws and the policies form a hierarchy within the internal regulatory structure of a co-operative. Articles, memorandum or letters of incorporation are at the top of the hierarchy. They are more difficult to amend, usually requiring a special majority and approval or filing with government authorities. By-laws, at the second level, may require a lesser majority vote to amend. In some cases, the *Act* also requires the by-laws be approved or filed with government authorities administering the *Act*. Policies, at the third level, generally are developed and amended by the Board of Directors. This hierarchy is important when you

decide which issues, other than those required by the *Act*, should be addressed by either the incorporating document, the by-laws or the policies of your co-operative.

Members may at any annual or special meeting called for this purpose, make, amend, repeal or replace any by-laws, and if the *Act* provides so, confirm by-laws already adopted by the board of directors. Members must receive notice of the proposed action. In some cases, by-laws only come into effect at the time of the approval by government, as specified in the *Act*. Some fees may apply.

Membership

Membership is core to any co-operative. The International Co-operative Alliance's *Statement of Co-operative Identity* includes "Voluntary and Open Membership" as its first principle. This principle further states that membership in co-operatives is "open to all persons able to use their services and to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination."

Membership provisions in the *Act* generally adhere to this principle. Subject to the *Act*, co-operatives must include by-laws regulating membership qualifications, withdrawal and termination of membership.

Qualifications for Membership

The following five factors should be considered in determining who is qualified for membership in any co-operative and in developing by-laws to address this issue:

- Ability to use the services of the co-operative;
- Capacity of the co-operative to provide service;
- Payment of any fees or purchase of any shares required;
- Agreement to abide by the by-laws and accept responsibilities of membership; and
- Approval by the Board of Directors of the co-operative.

There are generally two approaches to formulating by-laws relating to the qualifications of members. The first is to formulate a by-law stating specifically who is eligible to apply for membership in the co-operative.

Example:

Membership in the co-operative shall be open to all tomato producers in the co-operative's territory willing to deliver tomatoes for processing by the co-operative.

To become a member of the co-operative, a person must apply in writing on a form prescribed by the Board of Directors, and the application must be approved by the board and recorded in the minutes.

A second approach is to simply define eligibility as being able to use the services of the co-operative. Co-operatives which do not have special requirements of members (such as retail and community service co-operatives) generally take this simpler approach.

Example:

Membership in the co-operative shall be open to anyone who can use the services of the co-operative. To become a member of the co-operative, a person must apply in writing on a form prescribed by the Board of Directors and the application must be approved by the board and recorded in the minutes.

This approach may also be used by co-operatives with more specialized membership but, in such cases, this approach delegates to the board greater authority in approving applications for membership.

To support the implementation of its by-laws relating to membership, a co-operative should have, in addition to standardized membership application forms, policies and procedures for processing them. Applications should clearly state all conditions relating to membership, including a statement that the member agrees to abide by the by-laws of the co-operative and accepts the responsibilities of membership.

Withdrawal of Members

Co-operatives, as voluntary organizations, must also have by-laws relating to the withdrawal of members.

These by-laws should address the following issues:

- the requirement of a member to provide notice;
- the period of notice required;
- the maximum time allowed for the co-operative to repay equity or other money credited to the withdrawing member, which period may be provided in the Act;
- restrictions on equity repayment, such as impairment of financial stability, which may be provided in the Act.

Example:

A member may withdraw from the co-operative by giving to the secretary of the co-operative ___ days notice of intention to withdraw.

The board, by resolution, may accept any application to withdraw upon shorter notice.

Subject to the Act, the co-operative shall pay all amounts held to the credit of a member within ___ days (months) of the board's acceptance of the member's application to withdraw. The Board may not permit such payment if it would impair the financial stability of the co-operative.

Termination of Membership

In some cases, the *Act* requires that by-laws set out the rules respecting the termination or exclusion of a member.

The *Act* provides that the Board of Directors or, in some cases, the members of a co-operative, may order the termination of a membership. The by-laws relating to this issue should include the following:

- the process by which a termination of membership may be made;
- the amount of notice required to be given to the member;
- the process by which a member may appeal; and
- the requirement for repaying the member any share capital or other amounts held to the member's credit;
- restrictions on equity repayment, such as impairment of financial stability, which may be provided in the *Act*.

Example:

The directors may, by at least a two-thirds' vote at a meeting duly called, order the termination of a member from the co-operative.

The secretary of the co-operative shall notify the member in writing of the order, stating the reasons therefore and setting forth a date not sooner than ___ days upon which his or her termination from membership shall be effective.

The member may appeal the order to the next general meeting of the co-operative by giving written notice of the intention to appeal to the secretary within ___ days from the date notice was sent . Where the member makes the appeal, the question shall be submitted to a vote, which will confirm or rescind the order.

If the termination of a membership is effective in accordance with the provisions of this by-law, the co-operative shall pay to the member all amounts held to his credit within ___ days (months) of the members retirement, subject to the Act. The Board may not permit such payment if it would impair the financial stability of the co-operative.

When the termination of a membership is initiated and voted on by the general membership, there is no second or further appeal by the member to the general membership.

Joint Membership

In some cases, the *Act* requires or allows a co-operative to have a by-law respecting joint membership. Joint membership refers to situations where two or more persons (usually members of one family) are party to a single membership. Joint membership does not apply to organizational memberships because organizations or corporations are considered to have the legal status of a person, and therefore apply for membership in the same manner as an individual person.

A co-operative that permits joint membership must set out the conditions in which two or more persons may apply for joint membership, including the rights and obligations of each party to the joint membership with respect to voting and other issues.

Example:

Two or more persons may apply for joint membership in the co-operative. Only one of the parties to a joint membership may vote at any meeting. Only one party to the joint membership may hold office as a director at any one time. Each party to a joint membership shall have the right of survivorship.

Joint survivorship refers to the right of each party of the joint membership to continue as a member in the event of the death or withdrawal of one of the other parties.

Classes of Membership

Most co-operatives have a single class of members, each having the same qualifications, rights and obligations. However, some choose to divide their members into different classes. The by-laws must set out the qualifications and terms of membership in each class and the means of transferring from one class to another. For example, a food processing co-operative could be owned by a combination of agricultural producers, employees, and consumers, each group forming a class with different qualifications for membership, equity financing obligations, and rights regarding distribution of the surpluses of the co-operative.

Example:

There shall be three classes of members—producer members, employee members and consumer members—with the following rights and qualifications:

Producer member:

Must be an individual engaged in the production of _____ who has purchased ___ shares in the co-operative and signed a contract to deliver ___ units to the co-operative.

Employee member:

Must be an employee of the co-operative who has purchased at least ___ shares in the co-operative.

Consumer member:

Must be a patron of the co-operative who has purchased at least ___ shares in the co-operative.

Applications for membership must state the class of membership for which the individual is applying. A qualified member may apply to the Board of Directors to convert his membership from one class to another class.

Share Capital or Membership Fee Requirements

The by-laws must set out specific requirements respecting the purchase of shares, payment of fees or any other financial requirement of membership.

Co-operatives with Share Capital

The amount of shares or equity investment required of each member relates directly to the capital requirements of the particular co-operative. Co-operatives require capital to purchase assets and to initiate operations. These can be funded by share capital contributions, and additionally by member loans, preferred shares in some cases, debentures, and loans from financial institutions. When establishing a co-operative, the incorporators must estimate the co-operative's total capital requirements and determine the amount which can be raised from compulsory sale of shares to members. For example, if a co-operative wishes to raise \$500,000 from the sale of membership shares, and can provide services to only 100 members, it must be able to attract 100 members willing and able to pay \$5,000 to join the co-operative.

Example:

Each application for membership must be accompanied by a payment of ___\$ for the purchase ___ shares in the co-operative.

Some co-operatives, particularly agricultural producer co-operatives, link share purchase requirement to the rights and obligations to deliver a defined product to the co-operative for processing. Different members will have different levels of investment according to the amount of delivery rights they purchase.

Co-operatives without Share Capital

Co-operatives without share capital generally require members to pay a membership fee to join the co-operative and sometimes require an annual fee to maintain membership. The amount of the fee or fees is determined by each co-operative and must be set out in the by-laws.

Example:

Each application for membership must be accompanied by a membership fee payment of ___\$.

Board of Directors

The number of directors, or in some cases the minimum and maximum number of directors a co-operative may have, will be set out in the incorporating document or in some cases in the by-laws. The by-laws will establish the qualifications, means of election, term of office and may also provide for the procedures for removal of directors from office.

Qualifications of Directors

The Act provides that a director of a co-operative must be an individual and, in general, either a member of the co-operative or a duly appointed representative of a member that is a partnership, association, firm, body corporate or public body. The by-laws may provide for specific qualifications for directors. Qualifications may relate to such things as levels of patronage, eligibility of employees of the co-operative, and class of membership. These

conditions must be clearly stated and not be based on gender, social, racial, political or religious status.

By-laws may either permit or restrict employee directors. In some cases, the *Act* permits certain co-operatives such as consumer co-operatives to limit to one-third the number of directors who are employees. By-laws may extend this to include more or all of the directors in certain other co-operatives. Such a provision is common in worker co-operatives, for example.

Example:

Employees are eligible to be elected to the Board of Directors, but not more than 50 per cent of the directors may be employees.

Election of Directors

By-laws should state the process for nomination of candidates for election as directors and other specific rules a co-operative wishes to adopt respecting the election of directors.

Example:

Candidates for the position of director shall be nominated by a nominating committee appointed by the board at least 30 days previous to the meeting at which the election takes place. Additional candidates may be nominated from the floor of the meeting. Directors hold office until the conclusion of the meeting at which their successors are elected.

Term of Office

By-laws should specify the length of the term for which directors are to be elected and any limits on the number of consecutive terms a director may serve. In some cases, the *Act* requires the rotation of terms of office. For example, if there is a three-year term, one-third of the directors' terms would expire each year. This requires the election of some of directors for shorter terms at the first general meeting.

Example:

Directors shall be elected for a three-year term. To permit a rotation in office, at the first general meeting of the co-operative, one third of the directors shall be elected for a one-year term, one third shall be elected for a two-year term, and one third shall be elected for three-year term. In subsequent years, all directors being elected to fill a term that has expired shall be elected for a three-year term. Directors shall be eligible for re-election.

The by-laws should also include provisions with respect to the filling of vacancies. In some cases, the *Act* may allow a quorum of directors to *Act* or require the remaining directors to fill the vacancy until the next annual meeting.

Example:

Where there is a vacancy on the board, and where there is a quorum of directors, the remaining directors may exercise all the powers of the directors, or fill the vacancy until the next annual

meeting; and where there is not a quorum of directors, the remaining directors shall call a general meeting for the purpose of electing members to fill any vacancies.

Example:

Where there is a vacancy on the board, the remaining directors shall fill the vacancy until the next annual meeting.

Removal of Directors

Directors may be removed from office by a resolution of members or, in some cases, by the remaining directors. The by-laws may provide for the process to be used and the vote required, subject to the Act.

Example:

The members of a co-operative may, by a resolution approved by two-thirds of the votes cast at a general meeting, remove a director from office.

Appointment of Officers

The by-laws must also provide for the appointment or election of officers by the board, such as a president, vice-president, secretary and treasurer or secretary-treasurer. The by-laws may also provide for other officers to be appointed.

Example:

The Board of Directors shall:

- *Elect a president and a vice-president from among their number;*
- *Elect (or appoint) a secretary and treasurer, or a secretary-treasurer who may, but need not be, a director;*
- *Designate the officers of the co-operative, appoint persons as officers, specify their duties, and delegate to them the necessary powers to manage the business affairs of the co-operative.*

District Boundaries

Some co-operatives have by-laws that divide the territory in which the members reside into districts. This provision can be useful when electing delegates within a large region. By-laws must set out the procedure for establishing and altering district boundaries.

Example:

The directors shall, from time to time, divide the area served by the co-operative into not fewer than ___ and not more than ___ districts.

Delegate Structures

By-laws may also provide for the election of delegates, defining the powers, duties, method of election, voting rights and proceedings for removal of delegates. Usually delegates represent a

district or a class of members. The Act permits the members at any annual meeting or special meeting called for that purpose to amend the by-laws to eliminate a delegate structure.

Example:

Each member group (district, class, et cetera) shall hold a delegate selection meeting each year, at least ___ days prior to the annual general meeting of the co-operative. At this meeting, the members shall elect ___ delegates who shall have all the powers of membership at any general meeting of the co-operative.

The member group that elects a delegate may, at a delegate selection meeting or special meeting called for that purpose, remove the delegate by a vote of ___ (minimum, simple majority).

Dissolution

A by-law respecting dissolution must set out how any assets remaining, after creditors and members have been paid, should be distributed. Subject to the Act, the by-law may simply provide for all decisions to be made respecting distribution of remaining assets at dissolution or the by-law may specify that surpluses be distributed in a defined manner. Some co-operatives (such as community service co-operatives) are established to provide services on a not-for-profit basis and therefore do not permit surpluses to be distributed to members either in the form of patronage dividends or at dissolution or liquidation. Such co-operatives often state in their by-laws that surpluses at dissolution be distributed to specific co-operatives, non-profit corporations or charities.

Example:

Upon the dissolution of the co-operative, the unallocated surplus shall be distributed as resolved by the members at dissolution.

Upon dissolution of the co-operative, the unallocated surplus shall be donated to _____. (State non-profit corporation(s), association(s), or co-operative(s) established for charitable or benevolent purposes, or to another co-operative(s) with similar objects.)

Optional By-laws

Members may decide to have additional by-laws to address other issues than the ones in the previous section. There are two reasons for the inclusion of other provisions in by-laws. One is to provide for restatement or clarification of provisions included in the Act, providing members with an easy reference on issues that commonly affect the co-operative. Examples include provisions relating to voting, the distribution of surplus, and by-law amendments. A second reason is to provide for member control over a particular issue. Enshrining a provision in the by-laws ensures it can only be changed with the consent of the members.

Following are some subjects that, while not required by the Act, are addressed in the by-laws of many co-operatives.

Voting

Subject to the Act, by-laws set out the rules for voting at board and general meetings. The Act and co-operative principles prescribe one-member-one-vote and do not permit proxy voting. By-laws must be consistent with these principles and can also include provisions such as rules for determining when a secret ballot is required.

Example:

Members or delegates shall vote by a show of hands or, where three members entitled to vote at a meeting so demand, by secret ballot.

Election of directors shall be by secret ballot.

The chairman shall have the right to vote but shall not be entitled to cast a second vote in the event of a tie. In the case of a tie, the motion shall be declared lost.

Distribution of Surplus

Surplus is defined as the amount that remains after deducting all expenses from the total revenue of the co-operative. There are several issues that should be addressed in developing by-laws relating to the distribution of surpluses. First, a co-operative must determine if it is legally able to distribute its surplus to its members. If it is a community service co-operative or if its objects define its activities to be of a not-for-profit nature, it cannot distribute any surpluses to members and it may specify this in its by-laws.

Example:

Any surplus resulting from the operations of the co-operative will be placed in reserve and cannot be distributed to the members of the co-operative.

Co-operatives that are permitted to distribute surpluses will do so according to the level of patronage by individual members.

Example:

Any surplus arising from the yearly operations of the co-operative shall be divided among the members in proportion to the volume of business of each member after providing for reserves.

Amendment of By-laws

Co-operatives may also include provisions on amending by-laws.

Example:

Members of the co-operative may, at any annual meeting or any special meeting called for the purpose, enact, amend, repeal, replace (or confirm, if the Act provides for this) any by-laws by a majority of ___ votes cast at the meeting, where written notice of the proposed action is forwarded to each member of the co-operative with the notice of the meeting.

Assembling By-laws

By-laws should be organized in a clear and concise document so related by-laws are together and specific references can be located quickly. They are usually organized according to subject and are numbered for easy reference. A multi-tiered system is often used with either a combination of letters and numbers (1., A., a.) or decimals (1, 1.1, 1.2).

The document often includes a section that gives definitions of key legal terms used in interpreting by-laws such as "Act", "regulations", and "directors". This section can be developed by reviewing the contents of the by-laws and identifying the words that require definition. Many key definitions are provided in co-operative legislation and regulation.

Prepared initially by the Government of Saskatchewan