
Professional Corporations – Frequently Asked Questions

Below is a list of questions that are asked frequently as members decide whether to form a professional corporation. The information provided is general in nature. You are encouraged to obtain independent legal advice or other specialists' opinions.

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1. *With the new provisions for forming professional corporations what name change implications do I have to take into consideration? Does the term professional corporation need to be in the name, and on all business communications? What is the statutory reference for this requirement?*

The name of the professional corporation must include the words 'Professional Corporation' or 'Societe professionnelle', in accordance with provision 3.2(2)3 of the Business Corporations Act. Naming a professional corporation must also comply with the requirements of the Institute bylaw, and rules of professional conduct. Council interpretations 401 and 404.1 provide more detail.

2. *Can I use a holding company or other company to hold the shares of my professional corporation?*

No. Under Section 3.2 (2)1 of the OBCA, all shares must legally and beneficially held by one or more members of the same profession. In addition, OBCA Section 3.2(2)2 states that all officers and directors of the corporation shall be shareholders of the professional corporation.

3. *Can I use a holding company to temporarily hold the shares before I transfer them?*

The OBCA does not distinguish between temporary ownership and long-term ownership. Consequently, it is not permissible to have a holding company temporarily hold the shares even for a short period of time.

4. *Can I use a holding company if all of the shares in the holding company are held by a member?*

Again, this is not permitted.

5. *What are the implications of selling shares (assuming that the sale is to another member)?*

There is no restriction on the transfer or sale of shares as long as the sale or transfer is to another member.

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6. *In the articles of the corporation, is it possible to have clauses that permit the corporation to purchase shares for cancellation?*

Generally, under the OBCA corporations are permitted to purchase their own shares for cancellation, subject to the articles of the corporation. However, members should consult their legal counsel to ensure that the appropriate wording is used to allow for purchase, cancellation/redemption. Remember that Section 3.2 (2)1 of the OBCA, requires that all shares must legally and beneficially held by one or more members of the same profession.

7. *What if the sole shareholder dies?*

The shares are automatically vested in the estate trustee or executor. The OBCA contains provisions to deal with this situation. Members and firms are urged to consult with their legal counsel and other professional advisors for specific advice.

8. *What is the effect of forming a professional corporation on the benefits provided in my member services? For example, does the disability insurance count dividends paid as income in calculating the amount of disability paid out if a claim is made?*

Contact your insurance provider directly.

9. *What happens when members of a partnership wants to form a professional corporation but not all partners agree?*

The structure of the professional corporation is flexible. Members of the Institute can form a professional corporation together, or each individual can form a professional corporation which then forms a partnership. A partnership can have both members and professional corporations in its structure.

10. *Can a professional corporation be a partner in a firm?*

Yes. A professional corporation may be a partner in a general partnership firm or in a limited liability partnership (LLP) firm. However, there are a number of taxation, liability and other issues associated with partnerships that have one or more professional corporations as partners. Members and firms are urged to consult with their legal counsels and other professional advisors in regard to such matters.

11. *Must I change the sign outside my building, and letterhead, and business cards to include professional corporation?*

In every instance where you present the professional corporation, the name of the corporation, which must include the term 'Professional Corporation' must appear. Rule 401 and 404.1 provides more information about names (see 1 above).