

# Law Society of Nunavut



Webinar Session Presented by Gowling WLG to the Law Society of Nunavut

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# SPEAKERS



**Cam Cameron (Commercial)**

613-786-8650 | [cam.cameron@gowlingwlg.com](mailto:cam.cameron@gowlingwlg.com)



**Pierre Alary (Tax)**

613-786-0132 | [pierre.alary@gowlingwlg.com](mailto:pierre.alary@gowlingwlg.com)



**Connor McGarry (Corporate)**

613-786-0093 | [connor.mcgarry@gowlingwlg.com](mailto:connor.mcgarry@gowlingwlg.com)



**Briana Donnelly, CBV (Litigation)**

613-786-8688 | [briana.donnelly@gowlingwlg.com](mailto:briana.donnelly@gowlingwlg.com)

# OVERVIEW

TOPICS
Incorporating your business
Pros and Cons of Incorporation
Steps to Incorporating
Tax Considerations
Federal vs. Territorial Incorporation
Incorporating in Nunavut
Federal Procurement in Nunavut
Value Drivers

# INCORPORATING YOUR BUSINESS

“When is the right time to incorporate?”

## Consider:

- Financial circumstances;
- Organizational factors (namely, separate legal personality);
- Strategic goals;
- Nature of the business.

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# ADVANTAGES OF INCORPORATION

Separate  
Legal Identity

Clear  
Structure

Limited  
Personal  
Liability

Better  
Access to  
Capital

Credibility

No Life Limit

Tax

Name  
Protection



# DISADVANTAGES OF INCORPORATION

- 1) Higher Start Up and Maintenance Costs
- 2) More Requirements and Increased Formality
- 3) Use of Losses
- 4) No Personal Tax Credits

# STEPS TO INCORPORATING

## 1. Name (or Number)

- A numbered name is simplest. You can use a different name to conduct business, if you register that name under the *Business Names Act*,

## 2. Articles of Incorporation

- Name
- Shareholders, share structure and classes of shares
- Directors and permanent addresses
- Any restrictions
- Language
- Other provisions

## 3. Registered Office and Board of Directors

- Registered office is where the corporation will typically receive government mail
- Articles must set out the number of directors, or a range setting out min. and max. number of directors

# OBLIGATIONS OF AN INCORPORATED BUSINESS

**Annual Corporate Compliance:** a vital part of an operation for business owners, regardless of the company's size or industry.

## Obligations:

- Annual return filing with provincial and federal government;
- Notice of a corporate name change;
- Notice of a registered address change.
- Keep corporate records updated:
  - a) Any changes to the board of directors;
  - b) Payment of the corporate dividends;
  - c) Issuance or transfer of shares;
  - d) Approval of the financial statements and appointment of directors; and
  - e) Approval of significant contracts and crucial hiring of strategic employees.



# Tax Considerations – CRA Audits

- The Canada Revenue Agency (CRA) is a highly active tax administration with increasing audit sophistication
- Corporations are audited under different CRA workflows than individuals (e.g., payroll, GST/HST reviews)
- Common CRA audit focus for small businesses:
  - Expenses incurred to earn business income
  - Shareholder benefits & appropriations (e.g., personal expenses booked in the corporation)
  - Personal use of corporate vehicles (mileage log?)
- Normal reassessment period: 3 years for CCPCs, 4 years for other Canadian corporations
  - CRA can assess beyond period if error attributable to carelessness, neglect or wilful default
  - Burden is on the CRA
- Gross negligence penalties (163(2) of ITA): 50% of assessed tax

# Tax Considerations – Director Liability

## Where Directors Can Still Be Personally Liable

- Source deductions (CPP, EI, income tax) – directors may be personally assessed if remittances are not made
- GST/HST remittances

## Three basis rules of directors' liability:

- CRA must demonstrate its inability to recover the amounts directly from the corporation;
- CRA must issue the assessment against the directors within two years from the time they last ceased to be directors; and
- the directors did not exercise the degree of care, diligence, and skill (“due diligence”) required to prevent the failure to deduct, withhold, remit, or pay.

# Tax Considerations – s. 160 Assessments

## Transfers to non-arm's length parties (s. 160 ITA)

- Transfers of property to related parties can create joint liability for the recipient if the corporation owes tax.
- Recipient becomes jointly liable for the transferor's tax debt, up to the value of what they received
- Example: Paying a dividend to a shareholder when the corporation has an outstanding CRA debt can expose the shareholder to CRA collection.

# FEDERAL VS. TERRITORIAL INCORPORATION

FEDERAL	TERRITORIAL
<ul style="list-style-type: none"><li>• Governed by the <i>Canadian Business Corporations Act</i>.</li><li>• Federal incorporation permits Canada-wide business, provided registration in each province or territory of operate.</li><li>• Federal incorporation prevents other corporations in Canada from using the registered name.</li></ul>	<ul style="list-style-type: none"><li>• Governed by the Business Corporations Act (<i>i.e. Nunavut Business Corporations Act</i>).</li><li>• Nunavut incorporation limits permissions and protections to that jurisdiction.</li><li>• Subject to name availability, extra-provincial registration is allowed.</li></ul>

# FEDERAL VS. TERRITORIAL INCORPORATION

Regardless of the jurisdiction of incorporation, a business must register to 'do business' in each province/territory they operate.

## **Things to ask yourself when incorporating federally or territorially:**

- 1) Am I looking to expand into other territories or territories in Canada?
- 2) Do I want name protection across Canada or just Nunavut?
- 3) What resources do I have available to undertake incorporation?
- 4) What are my future business growth goals?

# INCORPORATING IN NUNAVUT

- Incorporated under the *Nunavut Business Corporations Act*
- **Legal requirements:**
  1. At least one director
  2. Director(s) must be at least 19, not bankrupt, and of sound mind
  3. Registered Office in Nunavut
- **Depending on the type of business, consider registering with:**

NTI	IBD	NNI
Inuit firms	Indigenous businesses	Nunavut businesses (Inuit and non-Inuit)

# OPPORTUNITIES FOR INDIGENOUS BUSINESSES IN NUNAVUT

## NTI

*Nunavut Tunngavik Incorporated*

- Access to government contracts
- Preferential bid adjustments
- Visibility and credibility

## IBD

*Indigenous Business Directory*

- Registration is easy & fast; approval typically within 2 business days.
- Procurement opportunities

## NNI

*Nunavummi Nangminiqaqtunik  
Ikajuuti*

- Registration is free; approval typically within 6 weeks
- Preferential bid adjustments

# NTI: REGISTRATION CRITERIA

- Must comply with the legal requirements to carry on business in the Nunavut Settlement Area, **and** either be:
  - a) a limited company with at least 51% of the company's voting shares beneficially owned by Inuit, **or**
  - b) a cooperative controlled by Inuit, **or**
  - c) an Inuk sole proprietorship or partnership
- **Classes of Inuit Ownership:**

Class 1	Class 2	Class 3
51-75% Inuit Ownership	76-99% Inuit Ownership	100% Inuit Ownership



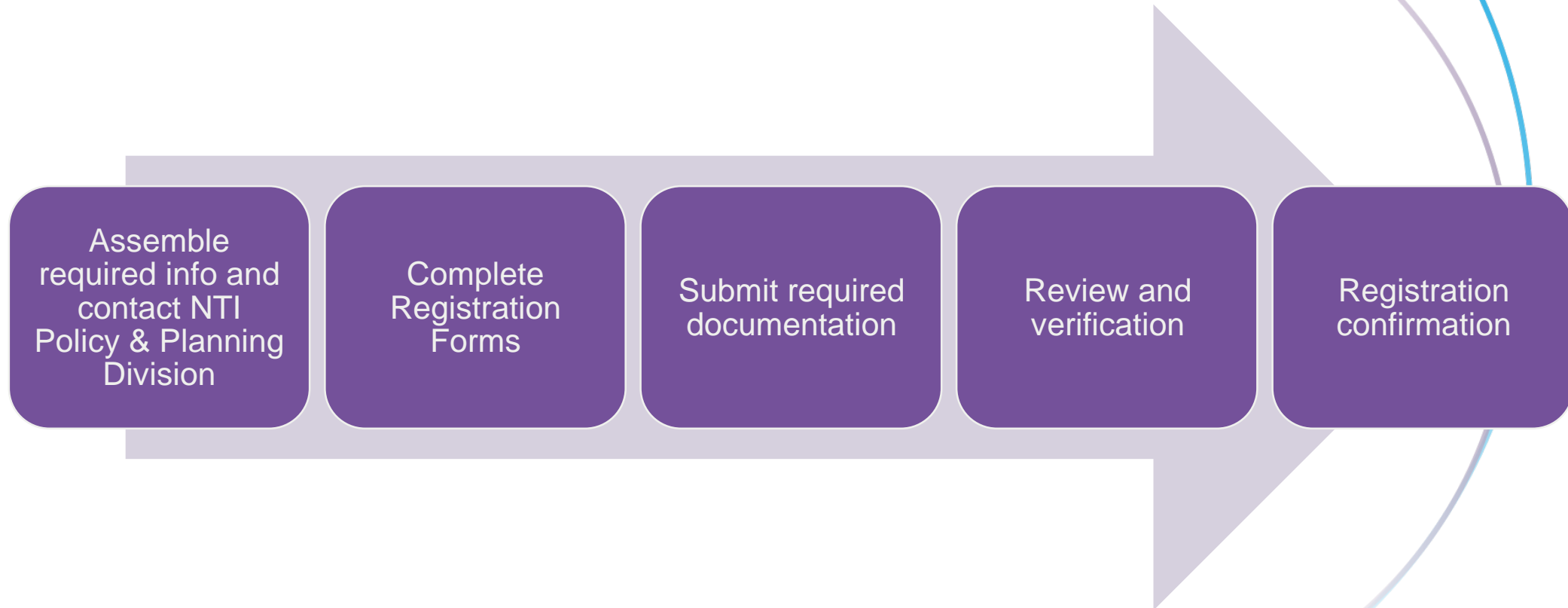
# LEGAL REQUIREMENTS TO CARRY ON BUSINESS IN NUNAVUT

1. **Register with Nunavut Legal Registries** (*depends on business type & location*)
2. **Business licence** (*depends on business type & location*)
3. **Workers' Safety and Compensation Commission (WSCC)**
4. **Business Number from Canada Revenue Agency**

**Note:** This is not a complete list of legal requirements.

Requirements may vary depending on your business' location (e.g., municipal business tax), whether you have employees (e.g., payroll tax), etc.

# NTI: STEPS TO REGISTER



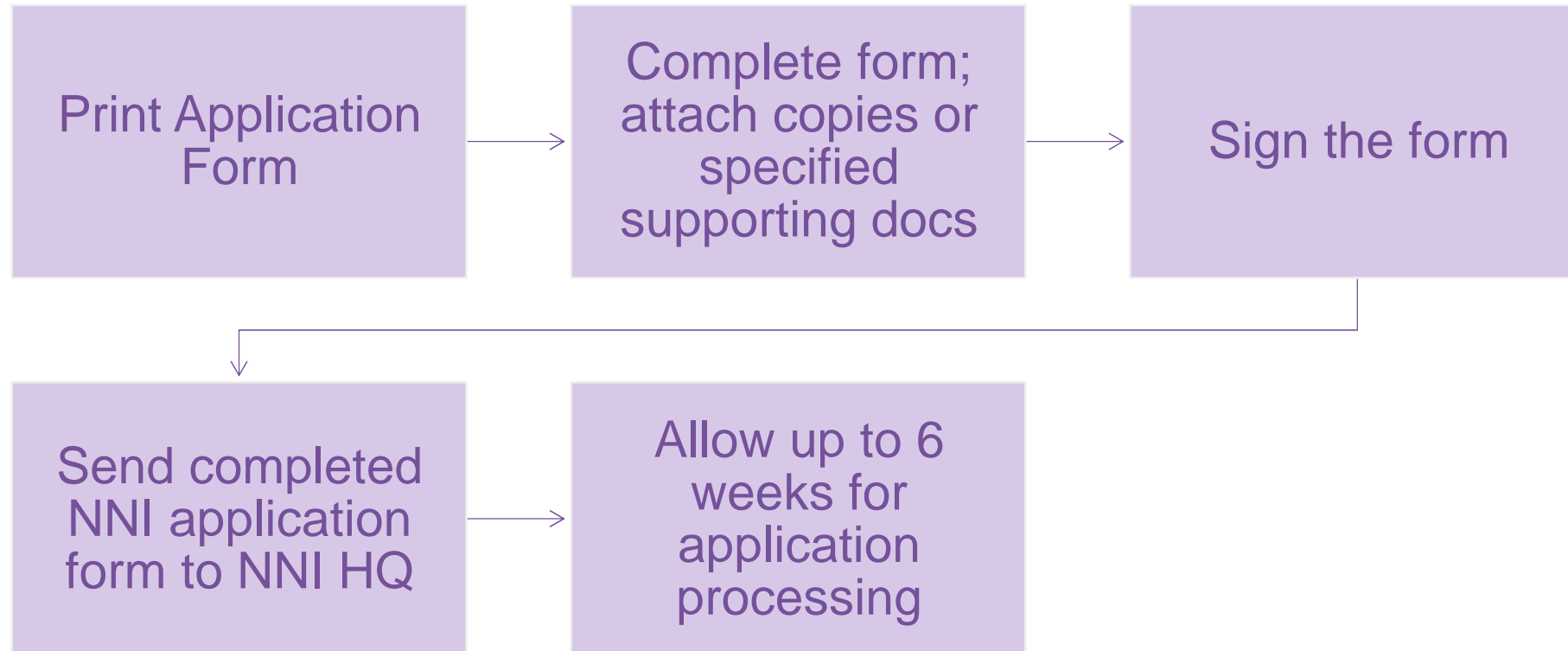
# NTI: BID CRITERIA & WEIGHTING

Criterion	Default weight for bids limited to Inuit Firms	Default weight for bids <u>not</u> limited to Inuit Firms
Inuit ownership	5%	10%
Inuit employment	10%	10%
Inuit training	10%	10%
Location in Nunavut	5%	5%
<b>Total</b>	<b>30%</b>	<b>35%</b>

# NNI: REGISTRATION CRITERIA

- Must comply with legal requirements to carry on business in Nunavut **and** meet one of the following criteria:
  - 1) For profit limited company with 100% shares beneficially owned by one or more Nunavut Residents and/or Businesses;
  - 2) Co-operative controlled by Nunavut Residents and/or Businesses;
  - 3) Sole-proprietorship, the proprietor being a Nunavut Resident;  
**OR**
  - 4) Partnership, with all partners being Nunavut Residents and/or Business

# NNI: STEPS TO REGISTER



# FEDERAL INDIGENOUS PROCUREMENT



The **Procurement Strategy for Indigenous Business (PSIB)** is the Government of Canada's policy to support Indigenous businesses with procurement opportunities.



Federal departments are required to award at least 5% of their total contracting value to eligible Indigenous businesses; set-asides are one way to meet this quota.



The PSIB is open to all Indigenous businesses. To be considered an Indigenous business, at least 51% of the firm must be owned and controlled by Indigenous people.

# FEDERAL PROCUREMENT IN NUNAVUT

**December 20, 2019** - New Directive governing federal procurement in the Nunavut Settlement Area took effect

1

Increased participation in government contracts by Inuit Firms properly registered with NTI

2

Strengthened bid evaluation criteria

3

Provides Inuit firms with a fair and reasonable opportunity to submit bids

# FROM INCORPORATION TO ECONOMIC OPPORTUNITIES

Choosing where to incorporate – federally or territorially – sets the legal foundation for a business.

Communities also look at the opportunities a business can create:

- Can it help support local employment and skills development?
- Can it provide reliable, community-focused services?
- Can it be successfully carried forward to future generations?

Valuation helps assess these opportunities by showing a business's financial position, potential, and long-term sustainability within Nunavut's unique operating environment.



# FACTORS AFFECTING VALUE

## **Key factors that influence value in the North:**

- Cost structure: high shipping, fuel, and labour costs affect profitability
- Revenue stability: seasonality, population size, and availability of government or project-based work
- Permits, land access, and Inuit partnerships: these are key intangible assets that can enable or accelerate growth, especially in resource-based projects.
- Market competition: fewer players often means more stability

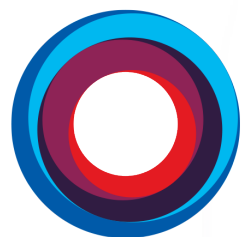
**Businesses with diversified revenue, resilient supply chains, and adaptability to climate and policy change are viewed as lower risk and more valuable**

# WHEN VALUE SUPPORTS DECISIONS

- Succession planning for family or community-operates businesses.
- Evaluating partnerships or joint ventures, and federal contracts
- Assessing economic loss when operations are interrupted or delayed
- Planning expansions or major purchases, such as equipment, facilities or infrastructure
- Monitoring performance of enterprises over time, including alignment with community priorities and local benefits.

Valuation supports **informed decision-making**, **community benefit**, and **long-term economic resilience** in Nunavut.

# QUESTIONS?



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