

---

## **Your Corporate Share Structure – Setting your Course for Success**

### **David Stout and Aaju Peter, Nelligan O'Brien Payne LLP**

---

(Originally published in the *EntrepreNews* Newsletter – January 2006)

For those who are about to incorporate and have yet to do so, it is important you give appropriate consideration to establishing a proper share structure. In doing so you will likely save time, money and administrative difficulties as your business grows. While you are only required, in law, to have one class of shares (common), it is best to provide additional classes of shares so that you will have the needed flexibility in the future to attract new investors; to afford an opportunity of income splitting between family members; and possibly to make use of a family trust. Ultimately, if truly successful, you will also be in a position to take advantage of significant tax savings if the appropriate classes of shares have been in existence and have been held by the shareholders for a sufficient period of time (2 years).

Putting in place the correct share structure provides a number of advantages:

1. **Income Splitting** – This can be an effective tax saving device if you and your spouse hold different classes of shares. This affords you an opportunity to issue dividends and/or bonuses in a tax efficient manner.
2. **Key Employees** – Issuing shares to key employees can promote and maintain loyalty to ensure ongoing involvement of top level employees. The shares to be offered to key employees can either be voting or non-voting common shares or voting or non-voting special shares so long as such shares are part of the share structure.
3. **Family Trusts** – The use of family trusts and the issuing of the appropriate shares to beneficiaries of the family trust can be an effective tax and succession planning device.
4. **Succession Planning** – With the appropriate share structure in place it is possible to establish a cost effective and tax effective succession regime.
5. **Raising Investment Capital** – While it is common that an investor will have certain requirements concerning the share structure, it is possible to envisage many if not all such requirement in advance and this may facilitate a successful due diligence process.
6. **Administrative and Legal Fees** – Establishing an appropriate share structure at the outset can avoid the time and expense of preparing needed Articles of Amendment in the future.



**NelliganO'BrienPayne**

Lawyers/Patent and Trade-Mark Agents  
Avocats/Agents de brevets et de marques de commerce

## **Amending the Share Structure**

If you are an existing corporation needing to change your share structure, the process is fairly straight forward. Under both the Federal and Provincial Business Corporations Act, what is required is the filing of Articles of Amendment. This document sets out the existing share structure and stipulates the changes to be made to the share structure (i.e., the various classes of shares that are to be added). The cost of filing Articles of Amendment is as follows:

Canada Business Corporations Act	-	\$200.00
Ontario Business Corporations Act	-	\$150.00

In addition to filing costs you will likely incur legal fees for the preparation of the Articles of Amendment and all of the necessary corporate resolutions to authorize the corporation to file the Articles of Amendment so as to amend the share structure.

## **Conclusion**

When incorporating your business it is important to be mindful of setting up an appropriate share structure. In doing so, hopefully you will be able to avoid amending the articles within the first four or five years of your business. There is no additional cost at the time of incorporating for setting out a more expansive share structure than simply one class of common shares. As well, it is important to review your share structure on an ongoing basis to ensure you are in a position to take advantage of various possible tax savings and to afford you flexibility from a corporate perspective.



**NelliganO'BrienPayne**

Lawyers/Patent and Trade-Mark Agents  
Avocats/Agents de brevets et de marques de commerce