

**Social Enterprise Associates
Tip Sheet #5**

**Co-authored with the
International Transactions Clinic
University of Michigan Law School**

Tip sheets #5-8 are a series of 4 annotated commentaries to assist entrepreneurs interested in creating and operating ventures in the United States by providing easy-to-understand explanations for common legal documents.

Incorporating Your Business

Understanding what articles of incorporation really mean when registering a company in the U.S.

Introduction

Taking an idea from conceptualization to inception and finally to market is filled with many challenges. Legal documents in particular are hard for entrepreneurs to understand, so many gloss over them. However, they carry immense importance, as bad or wrong documents can cost a lot of money.

Social Enterprise Associates (SEA) and the International Transactions Clinic (ITC) at the University of Michigan Law School collaborated to produce four annotated commentaries (Social Enterprise Associates Tip Sheets #5-8) to assist entrepreneurs interested in creating and operating ventures in the United States by providing clear and easy-to-understand language that deciphers common business legal documents. These four documents are:

- Tip Sheet #5 – Articles of Incorporation
- Tip Sheet #6 – Articles of Organization (LLC)
- Tip Sheet #7 – Commercial Loan Agreement
- Tip Sheet #8 – Biggest Concerns for Foreign Investment in the U.S.

Articles of Incorporation

To register a company in the U.S., one of the necessary documents are articles of incorporation. Many entrepreneurs take a generic template and fill it out and just seek to get the task done as quickly as possible. This is an important founding and foundational document for the entity. Thoughtful consideration and care is needed in making key decisions. Common legal elements of the document are provided here with easy-to-follow explanations next to them to explain each section.

CORPORATE ARTICLES OF INCORPORATION

These Articles of Incorporation (the "Agreement") are made and effective [DATE],

BY: [YOUR COMPANY NAME] (the "Incorporator"), a corporation organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

The form requires that you choose a name and business address for your entity. The law of the state where you register (incorporate) governs your entity.

AND: [REGISTERED AGENT NAME] (the "Registered Agent"), an individual with his main address located at **OR** a corporation organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

A "Registered Agent" is an individual person or organization you designate to receive documents, such as legal action including lawsuits or summons, this is called 'service of process'. The Registered Agent must be in the state the entity incorporated.

1. ARTICLES OF INCORPORATION OF [CORPORATION NAME]

The undersigned subscriber to these Articles of Incorporation, a natural person competent to contract, hereby forms a corporation under the laws of the [State/Province] of [STATE/PROVINCE].

2. NAME

The name of the corporation shall be:

3. NATURE OF BUSINESS

This corporation may engage in or transact any and all lawful activities or business permitted under the laws of [COUNTRY], the State of [STATE/PROVINCE], or any other state, county, territory or nation.

4. CAPITAL STOCK

The maximum number of shares of stock that this corporation is authorized to have outstanding at any one time is [NUMBER] shares of common stock having a par value of [VALUE] per share.

When drafting the specific capital stock provision, an entrepreneur should consider how much they want to grow the business and how they want to delineate control. For instance, do they want to limit stock transferability to avoid one or more of the stockholders from selling to a random person? This can be avoided by requiring Directors to consent to the transfer or sale of stock. Owners should consider how much control they want relative to one another. If one or more persons is more active in the business, they may be issued more stock as one means to have more control.

5. ADDRESS

The street address of the initial registered office of the corporation shall be: [ADDRESS] and the name of the initial Registered Agent for the corporation at that address is: [NAME]

6. SPECIAL PROVISIONS

The stock of this corporation is intended to qualify under the requirements of Section [NUMBER] of the [LAW OR CODE] and the regulations issued thereunder. Such actions as may be necessary shall be deemed to have been taken by the appropriate officers to accomplish this compliance.

7. TERM OF EXISTENCE

This corporation shall exist perpetually.

8. LIMITATION OF LIABILITY

Each director, stockholder and officer, in consideration for his services, shall, in the absence of fraud, be indemnified, whether then in office or not, for the reasonable cost and expenses incurred by him in connection with the defense of, or for advice concerning any claim asserted or proceeding brought against him by reason of his being or having been a

Limited liability is a significant advantage of a corporate entity. It means the individual directors are not personally liable for liabilities incurred by the entity. The corporation exists as a separate legal "person." If a judgment is against the entity, a court cannot reach the personal assets and wealth of directors. A court can only reach assets of the corporation.

Note: In exceptional circumstances, a court can "pierce the corporate veil" and reach assets of individual directors if the corporate entity is a "sham" or "fraud" designed solely to protect an individual or individuals from liability. incurred by their criminal activity.

director, stockholder or officer of the corporation or of any subsidiary of the corporation, whether or not wholly owned, to the maximum extent permitted by law. The foregoing right of indemnification shall be inclusive of any other rights to which any director, stockholder or officer may be entitled as a matter of law.

9. SELF DEALING

No contract or other transaction between the corporation and other corporations, in the absence of fraud, shall be affected or invalidated by the fact that any one or more of the directors of the corporation is or are interested in a contract or transaction, or are directors or officers of any other corporation, and any director or directors, individually or jointly, may be a party or parties to, or may be interested in such contract, act or transaction, or in any way connected with such person or person's firm or corporation, and each and every person who may become a director of the corporation is hereby relieved from any liability that might otherwise exist from this contracting with the corporation for the benefit of himself or any firm, association or corporation in which he may be in any way interested. Any director of the corporation may vote upon any transaction with the corporation without regard to the fact that he is also a director of such subsidiary or corporation.

Entrepreneurs should consider whether they want to allow Directors to vote on matters in which they are "interested". This means the Director has a personal financial interest in addition to his or her interest as a corporate director. Whether or not to allow this depends on the individuals involved and the nature of the business.

This corporation shall have a minimum of [NUMBER] director(s). The initial Board of Directors shall consist of:

[NAME] and [FUNCTION]
[NAME] and [FUNCTION]

10. DESIGNATION OF AND ACCEPTANCE BY REGISTERED AGENT

See above for an explanation of 'Registered Agent'.

The Registered Agent agrees and accepts service of process; to keep the office open during prescribed hours; to post my name (and any other officers of said corporation authorized to accept service of process at the above designated address) in some conspicuous place in the office as required by law.

IN WITNESS WHEREOF, the parties hereto have
executed this Agreement on the date first above written.

INCORPORATOR

REGISTERED AGENT

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title

ACKNOWLEDGMENT

State of [STATE]

County of [COUNTY]

On [DATE] before me, [NAME OF NOTARY], notary, personally appeared [NAME OF PERSON(S) INVOLVED], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature _____

Notary

(Seal)

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Social Enterprise Associates, a registered "B Corporation," is an U.S. consulting firm applying business and market principles to social, environmental and community efforts seeking to 'do well by doing good.' Management team has decades of experience in for-profit and non-profit organizations, developing strategy, raising capital, implementing new programs, and marketing core concepts. Reach the company at 202-256-2692 or drew@socialenterprise.NET.



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www.law.umich.edu/clinical/internationaltransactionclinic

The International Transactions Clinic at the University of Michigan Law School is the first law school clinic to train highly qualified lawyers who graduate already experienced representing clients' interests in transactional matters with international focus. ITC's major clients are socially responsible investors who want to see their investments create financial, social, and environmental returns in emerging markets. Reach ITC at 734-763-9377.