

COMPANY LAW**CONTENTS****RESTORATION**

[§15.01]	General	107
	1. Introduction	107
	2. Assets of Dissolved Company	107
	3. Restoration Discretion	107
	4. Who Can Apply	107
	5. Reasons for Applying	108
	6. Time Limits	108
[§15.02]	Procedure for Restoration	108
	1. Publication and Mailing of Notice	108
	2. Form and Content of Application to Restore	108
	3. Consent of the Registrar	108
	4. Limited Restorations	109
	5. Court Order	109
[§15.03]	Effect of Restoration	109

Chapter 15

Restoration¹

For further information on this topic, see Chapter 12 of the *British Columbia Company Law Practice Manual*, 2nd edition (Vancouver: CLE).

All legislative sections cited in this chapter and all references to the “BCA” are to the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended, unless otherwise stated. References to “Reg.” are to provisions in B.C. Regulation 65/2004, as amended.

[§15.01] General

1. Introduction

The registrar can restore a dissolved company or the registration of an extraprovincial company whose registration has been cancelled (s. 356). The court can order that a dissolved company, or the registration of an extraprovincial company whose registration has been cancelled, be restored (s. 360).

The restoration may be a full restoration or, where the applicant is not a “related person”, restoration for a limited period (ss. 356(2) and 360(2)). After that period expires, the company is again dissolved, or the extraprovincial company’s registration is again cancelled (ss. 359(1) and 361(1)), unless the restoration period is extended. Alternatively, a “related person” may apply for a limited restoration to be converted to a full restoration (ss. 359(2)(a) and 361(2)(a)).

2. Assets of Dissolved Company

When a company ceases to exist while it still has assets, those assets will become the property of the government through the doctrine of escheat (in the case of land) or under s. 344(2) of the *Business Corporations Act* (in the case of all other assets). Assets held in joint tenancy vest in the other joint tenant at the date of dissolution (s. 344(2)(a)).

When a corporation holding land in British Columbia is dissolved, the land immediately escheats under the *Escheat Act*. Land held by a British Columbia company in a federal territory or another province will escheat under the common law Crown prerogative (which is regulated by the

Escheats Act (Canada)) or a provincial statute. The British Columbia *Escheat Act* and the *Business Corporations Act* work in tandem to return land located in British Columbia to a restored company in a reasonably convenient way.

If a company is restored within two years after its dissolution, any land in British Columbia that had escheated to the government vests in the company, subject to the terms of any court order, as though the company had not been dissolved. In the case of a restoration after that two-year period, the return of the escheated land requires an order of the court, notice of the application for that order having been served on the government.

In the case of assets other than land, their title passes immediately to the government on the dissolution of a company (s. 344(2)). If money or other assets of a dissolved company have vested in the government as a result of its dissolution, upon restoration of the company any such assets not disposed of by the government vest in the company automatically (s. 368(1)(a)). The government must return to the company any assets in its custody, and pay to the company the amount of any money it received and the amount of any money realized from the disposition of any of the assets.

Conflicts of laws principles provide that title to assets is governed by the laws of the jurisdiction in which they are situated, so other assets located outside British Columbia will be governed by local laws, which will determine what happens to ownership of them when the company is dissolved.

3. Restoration Discretion

The registrar has no discretion to deny restoration if an application is filed under s. 356, unless a court order to the contrary is filed with the registrar (s. 358(1)). The court has discretion to order a restoration if it is satisfied that a restoration is appropriate (s. 360(5)); therefore the court has discretion to deny the application if it considers the restoration inappropriate.

4. Who Can Apply

Any person can apply for a limited restoration, but only a related person can apply for a full restoration (ss. 356(2), 359(2), 360(2), 361(2)). A related person means, in the case of a dissolved company, a director, officer or shareholder at the time of dissolution, or the heir or personal or other legal representative of a deceased shareholder (ss. 354(2)(a)(i) and (ii)). In the case of an extraprovincial company which has had its registration cancelled, a related person means the entity itself or a director, officer or shareholder (or,

¹ John O.E. Lundell, QC, using Chapter 12 of the *British Columbia Company Law Practice Manual*, 2nd edition (Vancouver: CLE) contributed by Mary N. Childs and Peter D. Fahey of McCarthy Tétrault, kindly contributed this chapter to PLTC in January 2004 and updated it in November 2004 and November 2005.

for a limited liability company, a manager or member) (ss. 354(2)(b)(i) and (ii)).

In an application to the court (but not to the registrar) for a full restoration, or conversion of a limited restoration to a full restoration, “related person” also includes any person the court orders an appropriate person to make the application (s. 354(2)(a)(iii) and (b)(iii)).

Any person is free to apply later for an extension of the period of a limited restoration (ss. 359(2)(b) and 361(2)(b)).

5. Reasons for Applying

Assets of a dissolved company vest in the government, so it will be necessary to restore the company to reacquire these assets. A dissolved company is also incapable of paying debts and discharging liabilities. A dissolved company’s assets, other than land in British Columbia, that vested in and were received by the government, are available to judgment creditors who apply to the minister for recovery against those assets within two years of the date of its dissolution (s. 349). Creditors may, therefore, seek to restore the company in order to realize against assets or otherwise collect after the two-year period.

Legal actions can only be taken against a dissolved company within two years after its dissolution (s. 346(1)(b)). Therefore, a party wishing to proceed against a company (or against someone else in circumstances in which judgment must first be obtained against the company) after that two-year period must have the company restored.

6. Time Limits

In the case of a company which was dissolved or an extraprovincial company which had its registration cancelled, before the coming into force of the *Business Corporations Act*, an application for restoration cannot be made to the registrar more than ten years after the dissolution or cancellation (s. 356(4)). In such a case, the application must be made to the court under s. 360. Otherwise there are no time limits on restoration.

[§15.02] Procedure for Restoration

1. Publication and Mailing of Notice

Before applying for restoration, the applicant must publish notice of the application in the Gazette (s. 355(2)(a)).

The applicant must also mail notice of the application to the last address or mailing address of the registered office of the dissolved company or, in the case of an extraprovincial company, of its

attorney (or, if none, to the last address in British Columbia of its head office), all as shown in the corporate register (s. 355(2)(b)).

When a restoration is as a result of an application to the registrar under s. 356, the restoration cannot take place until 21 days after the later of publication in the Gazette or mailing of notice to the last address shown in the corporate register (s. 363(1)).

2. Form and Content of Application to Restore

The requirements for a restoration application made to the registrar are largely set out in s. 357. All restoration applications must contain the date on which notice was published in the Gazette (s. 357(1)(a)) and the date on which the notice required under s. 355(2)(b) was mailed (s. 357(1)(b)).

When an application is for restoration of a company, it must contain details of the name reservation (or that the name will be the incorporation number plus “B.C. Ltd.”) and, in the case of a full restoration, a statement explaining the applicant’s status as a related person and the addresses of the proposed registered and records offices of the company (s. 357(2)).

A restoration application for an extraprovincial company must contain details of the name reserved or, in the case of a federal corporation, the name of the corporation. For a full restoration application, a statement must also be included giving the nature of the applicant’s status as a related person. An application for a full restoration must also include addresses for the post-restoration head office of the foreign entity and for each of the attorneys it will have following restoration (s. 357(3)).

If the required application is filed, the registrar has no discretion to deny restoration (s. 358). However, the registrar has a very broadly worded power to require an applicant for restoration to submit any records and information the registrar may require (s. 356(3)(b)). This probably is to be used to require applicants to file missing annual reports and similar records.

3. Consent of the Registrar

Sections 360(3) and 361(3) require that notice and a copy of any documents filed in the court for the application for a restoration or for the conversion of a limited restoration to a full restoration be sent to the registrar, and that the registrar must consent to the restoration. The consent must be provided to the court (ss. 360(4)(b) and 361(3)(d)(ii)). The registrar may make such consent subject to any terms and conditions the registrar considers appropriate.

In the case of an extraprovincial company, the registrar may also require a certificate of status from the home jurisdiction of the extraprovincial company confirming its continued existence.

4. Limited Restorations

Section 354(1) defines “limited restoration” to mean a restoration of a company, or of the registration of an extraprovincial company, for a limited period (up to two years). When the limited period of restoration expires, the company is dissolved or the registration of the extraprovincial company is cancelled (ss. 359(1) and 361(1)). The registrar will then publish notice of the dissolution or cancellation of registration on a government website (s. 359(4) and Reg. s. 6).

When there has been a limited restoration by the registrar, an application may be filed with the registrar within the limited period of restoration to either convert it to a full restoration, if the application is made by a related person (s. 359(2)(a)), or to extend the period to any later date the registrar considers appropriate, if the application is made by any person (s. 359(2)(b)). An applicant for a full restoration must comply with the notice requirements for an initial restoration application (s. 359(3)).

The court may similarly extend or convert a limited restoration, whether the limited restoration was by the court or the registrar (s. 361(2)). In the case of conversion of a limited restoration to a full restoration, the applicant must provide the registrar with notice of the application and copies of the records filed with the court (s. 361(3)(b)) and obtain the registrar’s consent to the conversion (s. 361(3)(c)). Only a related person can apply to convert the limited restoration to a full restoration (s. 361(2)(a)).

5. Court Order

Unless the order states otherwise, the restoration of the company will be without prejudice to the rights of any third party who has acquired any rights before the company’s restoration (see s. 360(7)). The same applies to a restoration by the registrar (s. 358(2)).

Promptly after a court order is made under s. 360 or 361, the applicant must file with the registrar a restoration application, including a statement that an entered court order has been obtained under s. 360(5) or 361(2)(a) or (b), as the case may be, and any other records the registrar may require (s. 362(1)). Upon receipt of that application the registrar must, unless an entered court order to the contrary has been filed with the registrar, restore the extraprovincial company, restore the registration,

extend the restoration, or convert a limited to a full restoration, as applicable (s. 362(2)).

Section 360(5) provides that the court can make an order restoring a company or the registration of an extraprovincial company subject to the conditions and on the terms the court considers appropriate.

Section 360(6) provides that the court may give directions and make provisions it considers appropriate for placing the company or extraprovincial company and every other person in the same position, as nearly as may be, as if the company had not been dissolved or the registration of the extraprovincial company had not been cancelled.

[§15.03] Effect of Restoration

Upon completion of a restoration, the company is deemed to have continued in existence as if it had not been dissolved and proceedings may be taken as if it had not been dissolved (s. 364(4)).

Similarly, if the registration of an extraprovincial company is restored, the registration is deemed not to have been cancelled and proceedings may be taken as if the registration had not been cancelled (s. 365(3)).

After the restoration, the registrar publishes a notice on a government website and issues a certificate of restoration (s. 367(1) and Reg. s. 6). The restoration is effective at the time and date shown in the corporate register (s. 364(1)).