

COMPANY LAW**CONTENTS****EXTRAPROVINCIAL COMPANIES**

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Chapter 16

Extrajurisdictional Companies¹

For further information on this topic, see Chapter 13 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.

[§16.01] The Registration Requirement

Section 375(1) of the *Business Corporations Act* requires every foreign entity (with the exceptions below) to register as an extrajurisdictional company under the *Business Corporations Act* within two months after the foreign entity begins to carry on business in British Columbia.

1. Foreign Entities Exempted from Registration

The extrajurisdictional company provisions of the *BCA* do not apply to a foreign entity if it is a bank or if the only business that it carries on in the province is constructing and operating a railway (s. 375(3)(a) and (b)).

A foreign entity whose principal business consists of the operation of one or more ships is not required to be registered under the *BCA* if the foreign entity does not maintain in the province a warehouse, office or place of business under its own control, or under the control of a person on behalf of the foreign entity (s. 375(4)). Every resident agent or representative of such an entity must file a notice containing the information required by s. 375(5).

2. Carrying on Business

Section 375(2) of the *BCA* states that a foreign entity is deemed to carry on business in British Columbia if

- (a) its name, or any name under which it carries on business, is listed in a telephone directory
 - (i) for any part of British Columbia, and

¹ **John O.E. Lundell**, QC, using Chapter 13 of the *British Columbia Company Law Practice Manual*, 2nd edition (Vancouver: CLE) contributed by Bruce Tattrie, Fasken Matineau DuMoulin, kindly contributed this chapter to PLTC in January 2004 and updated it in November 2004 and November 2005.

- (ii) in which an address or telephone number in British Columbia is given for the foreign entity,
- (b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address or telephone number in British Columbia is given for the foreign entity,
- (c) it has, in British Columbia,
 - (i) a resident agent, or
 - (ii) a warehouse, office or place of business, or
- (d) it otherwise carries on business in British Columbia.

Even if clauses (a), (b) and (c) do not apply, there is also clause (d), which requires consideration of the extensive jurisprudence relating to the common law tests of carrying on business to determine whether by some other test the foreign entity is carrying on business within the province. Because it is not always clear whether a foreign entity is carrying on business, and because failure to register is an offence under s. 426(1)(b), if there is any doubt, it is normally prudent to register.

Section 375(3)(c) provides that a foreign entity is not deemed to carry on business in the province merely because it has an interest as a limited partner in a limited partnership carrying on business in the province. By implication, if a corporation is a general partner of a limited partnership or is a partner of a regular partnership, and the partnership carries on business in the province, then the foreign entity is subject to the extrajurisdictional company provisions of the *BCA*.

3. Effect of Registration

Section 378(1) provides that a notation in the corporate register that a foreign entity has been registered as an extrajurisdictional company is conclusive evidence that it has been duly registered on the date and time shown.

No act of a foreign entity, including any transfer of property to, or by, the foreign entity, is invalid by reason only that the foreign entity was not, at the time of that act, registered as an extrajurisdictional company (s. 378(4)(b)).

Registration will protect the name of the foreign entity to the extent that other corporations with the same or similar names will not be able to incorporate or register extrajurisdictionally in British Columbia (except for federal corporations).

4. Limited Liability Companies

Many American states provide for the formation of limited liability companies (often referred to as LLCs). These are statutory unincorporated associations that combine certain elements of corporations, such as limited liability of owners, and certain elements of partnerships.

The definition of “foreign entity” expressly includes a limited liability company (s. 1(1)) (as well as foreign corporations). Accordingly, limited liability companies are subject to the same rights, restrictions and obligations as are granted to, and imposed on, foreign corporations by the *BCA*.

[§16.02] Registration Procedure

1. Name

A name reservation should be obtained before submitting the registration statement. An extraprovincial company will not be registered by a name that does not comply with the Regulation and with the other requirements of the *BCA* (s. 22(4)). An exception to this provision is a federal corporation seeking extraprovincial registration in British Columbia

2. Assumed Name

If the name of a foreign entity contravenes the Regulation or any of the requirements set out in the *BCA*, the foreign entity must, if it wants to be registered as an extraprovincial company, reserve an assumed name (s. 26(1)). This rule does not apply to federal corporations (s. 26(5)).

The foreign entity must provide an undertaking to the registrar that the foreign entity will carry on all of its business in British Columbia under that assumed name. On registration, the extraprovincial company is deemed to have adopted the assumed name (s. 26(2)).

An extraprovincial company that has adopted an assumed name under the *BCA* must acquire all property, rights and interests in British Columbia under its assumed name, is entitled to all property, rights and interests acquired, and is subject to all liabilities incurred, under its assumed name, as if the property, rights and interests and the liabilities had been acquired and incurred under its own name, and may sue or be sued in its own name, its assumed name or both (s. 26(3)).

No act of an extraprovincial company, including transferring or acquiring any property, rights or interests, is invalid merely because the

extraprovincial company did not do so under its assumed name (s. 26(4)).

3. Registration Requirements

Every extraprovincial company that requires registration under the *BCA* must:

- (1) complete and file with the registrar a registration statement (s. 376(1)(c)(i)); and
- (2) submit to the registrar any other records the registrar may require (s. 376(1)(c)(ii)), including a certificate of status (or other proof of existence) for foreign entities incorporated or organized outside Canada.

Every extraprovincial company that is not registered as required by the *BCA* commits an offence (s. 426(1)(b)) and is liable to a fine not exceeding \$100 for each day that the offence continues (s. 428(3) and Reg. s. 35).

4. Registration

When the foreign entity has filed the registration statement and other records as required by s. 376 in satisfactory form and paid the necessary fees, the registrar must, if the foreign entity is a federal corporation, and may in any other case, register the foreign entity (s. 377(1)) and issue a certificate of registration showing that the foreign entity is registered as an extraprovincial company under the *BCA* (s. 377(2)). The certificate will show the date and time of registration in British Columbia. The registrar must also publish a notice on the government website (s. 377 and Reg. s. 6).

[§16.03] Duties of an Extraprovincial Company

1. Attorneys

Unless the extraprovincial company has, under its charter, its head office within the province, an extraprovincial company is required to have an attorney (s. 386(1)). The attorney must be either an individual who is resident in British Columbia, or a British Columbia company (s. 386(2)). Each attorney is deemed to be authorized by the extraprovincial company to accept service of process on its behalf in each legal proceeding by or against it in British Columbia, and to receive each notice to it (s. 388). See also s. 9(2).

The mailing and delivery addresses of an attorney must be:

- (a) in the case of an attorney that is an individual, the address of the office in

British Columbia at which the individual can usually be reached during statutory business hours (s. 386(3)(a)); or

- (b) in the case of an attorney that is a company, the address of the company's registered office (s. 386(3)(b)).

The initial attorney or attorneys for an extraprovincial company are those specified in its registration statement (s. 387). Thereafter, an extraprovincial company may appoint one or more persons to be attorneys by filing a notice of appointment of attorney (s. 389(1)).

When an attorney intends to change the attorney's mailing or delivery address or both, the extraprovincial company or the attorney must file with the registrar a notice of change of address of attorney (s. 391(1)).

An extraprovincial company may revoke the appointment of an attorney by filing with the registrar a notice of revocation of appointment of attorney (s. 393(1)). A revocation of the appointment of an attorney does not take effect until the extraprovincial company has appointed one or more replacement attorneys (unless under its charter its head office is in British Columbia, in which case it does not need to appoint an attorney) (s. 393(3)).

An attorney of an extraprovincial company who intends to resign must provide a written resignation to the extraprovincial company at its head office at least two months before the date on which the resignation is to take effect (s. 395(1)(a)). Promptly after complying with this obligation, the attorney must file with the registrar a notice of resignation of attorney (s. 395(1)(b)).

2. Annual Reports

Every extraprovincial company registered under the *BCA* is required to file an annual report within two months after each anniversary of the date of its registration (s. 380(1)(a)) unless another date has been prescribed, in which case it must be filed within two months after each anniversary of the prescribed date (s. 380(1)(b)).

3. Amalgamations

Under s. 379(1), if a foreign entity that is registered as an extraprovincial company is party to an amalgamation or similar process, the extraprovincial company must provide to the registrar the records and information the registrar may require and must file with the registrar, within two months after the effective date of the amalgamation, a notice of amalgamation of extraprovincial company. From the time of the

amalgamation or similar process, the amalgamated extraprovincial company is seized of and holds and possesses all land of the amalgamating entities that is located in British Columbia (s. 379(4)).

This requirement does not apply if the amalgamation or similar process results in a British Columbia company (for example, the amalgamation of an extraprovincial company with a British Columbia company to create a British Columbia company under s. 269(b)).

4. Change of Name

If an extraprovincial company changes its name, the extraprovincial company must file with the registrar a notice of change of name of extraprovincial company and any other records the registrar may require (s. 382(1)(a)). Before filing the records, the extraprovincial company must either reserve its new name under s. 22 or, if its new name contravenes any of the requirements of the Regulation or of the *BCA* and the extraprovincial company does not have an assumed name under which it intends to continue to carry on business in British Columbia, adopt an assumed name (s. 382(1)(b)). The requirement to obtain a name reservation or to use an assumed name does not apply to a federal corporation (s. 382(4)).

An extraprovincial company that has adopted an assumed name under the *BCA* may either cancel its assumed name and carry on business in British Columbia under its own name, if the name becomes available, (by filing with the registrar an application to change assumed name) or change its assumed name to another assumed name (by obtaining a name reservation and by filing an application to change assumed name (s. 383(1)).