

# FAQ

## Extra-Provincial Registration in Ontario

### WHAT IS EXTRA-PROVINCIAL REGISTRATION<sup>1</sup>?

Extra-provincial registration means obtaining a licence from the Government of Ontario and/or filing any other required information, to carry on business in Ontario.

All corporations incorporated (or continued) under laws other than an Ontario statute (such as the Ontario *Business Corporations Act* or “OBCA”) are required to file at least some information with the Government of Ontario before they carry on business in Ontario.

### OUR CORPORATION WANTS TO START DOING BUSINESS IN ONTARIO. WHEN IS EXTRA-PROVINCIAL REGISTRATION REQUIRED?

An active corporation that was incorporated (or continued) under the laws of any jurisdiction outside of Canada must obtain an extra-provincial licence to operate in Ontario. This extra-provincial licence must be obtained before the corporation carries on business in Ontario.

“Carrying on business” is defined very broadly to cover most business/commercial activities. It includes, but is not limited to, having an agent, representative, warehouse, office, and/or an interest in real property (other than a security interest, such as a mortgage) in Ontario.

An active corporation that was incorporated (or continued) under the Canada *Business Corporations Act* (“CBCA”), or under the laws of a Canadian province other than Ontario, does not need to obtain an extra-provincial licence in order to operate within Ontario.

Although domestic corporations do not require extra-provincial licences, they must still file corporate information with the Companies and Personal Property Security Branch of the Government of Ontario (the “Companies Branch”).

### WILL OUR CORPORATION NEED TO OBTAIN AN EXTRA-PROVINCIAL LICENCE IF IT IS ONLY CONDUCTING A SINGLE TRANSACTION IN ONTARIO?

A single transaction in Ontario may constitute “carrying on business”. If it does, then the non-Ontario corporation involved will need an extra-provincial licence and/or may be required to file information with the Government of Ontario before the transaction begins.

If your corporation is considering doing any business in Ontario, then please speak with us before the project or transaction begins. We can help you determine whether a license is required.

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<sup>1</sup> Extra-provincial registration is only one requirement for a foreign corporation doing business in Ontario. Please speak to us about your corporation and any other requirements which might apply.

## **WHAT ARE SOME ADVANTAGES AND DISADVANTAGES TO SETTING UP A NEW CORPORATION IN ONTARIO VERSUS EXTRA-PROVINCIAL REGISTRATION OF AN EXISTING CORPORATION?**

One major advantage of setting up a new corporation in Ontario is that it can help shield other parts of your existing business from claims relating to doing business in Ontario.

However, if a corporation only intends to do limited business in Ontario (or intends to complete any business within a few years), then it may not be worth the time and/or cost of setting up and maintaining a new Ontario corporation.

There may be other advantages or disadvantages depending on your situation. Please discuss this with us.

## **CAN OUR EXTRA-PROVINCIAL CORPORATION OPERATE UNDER ITS CURRENT CORPORATE/ BUSINESS NAME IN ONTARIO?**

Yes, unless that corporate and/or business name is already used by a corporation carrying on a similar business in Ontario and using your corporate or business name would be “likely to deceive”. To satisfy this condition, corporations will need to do a name search (called NUANS).

If your corporation’s business name is different from your corporation’s corporate name (e.g. your corporation is “1234567 Alberta Limited” but your corporation’s business name is “Dinosaur Diner”), then your corporation will need to register that business name for use in Ontario. This applies for all corporations doing business in Ontario. A business name registration is valid for five years.

Please bear in mind that there are some words which cannot be used in a name. If you would like to discuss this further, please let us know.

## **WHAT WILL HAPPEN IF OUR EXTRA-PROVINCIAL CORPORATION CARRIES ON BUSINESS IN ONTARIO WITHOUT OBTAINING AN EXTRA-PROVINCIAL LICENCE?**

Failing to register can have very serious consequences, including a fine on of up to \$2,000 for individuals or up to \$25,000 for corporations.

If a foreign corporation that violates extra-provincial registration rules, then it will not be capable of starting or defending a lawsuit or other legal proceeding until the violation has been remedied by the corporation.

As well, if a foreign corporation carries on business here but does not have an extra-provincial licence, then it cannot own an interest in or sell land in Ontario except a mortgage.

## **WHAT’S INVOLVED IN REGISTRATION?**

***For Canadian corporations which are not from Ontario:***

Canadian non-Ontario corporations do not require extra-provincial licences to operate and carry on business in Ontario. However they must do the following:

- 1) Perform an Ontario name search report (called NUANS);
- 2) File an “Initial Return/Notice of Change” (showing its registered office and other details) with the Companies Branch within 60 days of beginning to carry on business in Ontario or within 15 days after the change or changes take place. There is no fee for the filing of the Initial Return or Notice of Change;
- 3) Provide a photocopy of the corporation’s Articles (the incorporation document) and any amendments to the Articles to the Companies Branch;
- 4) Provide any future amendments to their Articles and updates to corporate information previously provided to the Companies Branch.

Canadian non-Ontario corporations may be required to pay taxes in Ontario. The relevant information should be provided on the corporation's T2 Annual Return. Other than tax filings, there are no annual filing requirements for Canadian non-Ontario corporations.

If a Canadian non-Ontario corporation later decides to stop carrying on business in Ontario, the corporation is required to file a notice with the Companies Branch.

### ***For non-Canadian corporations:***

For non-Canadian corporations, registration is more complicated. Non-Canadian corporations will be required to do the following:

- 1) Complete and submit two original, signed copies of the "Application for Extra-Provincial Licence;
- 2) Appoint an agent for service;
- 3) Perform (and submit) an Ontario name search report (called NUANS);
- 4) Provide original "Certificates of Status" issued by the corporation's home governments (and signed by a properly authorized official of that government).

The Certificate of Status must include:

- (a) the name of the corporation;
  - (b) the date of incorporation or amalgamation;
  - (c) the jurisdiction to which the corporation is subject (e.g. State of Delaware); and
  - (d) a statement indicating that the corporation is a valid and subsisting corporation.
- 5) If the government of the corporation's home jurisdiction will not issue an original Certificate of Status, then the corporation will be required to submit a legal opinion from a lawyer authorized to practise in that jurisdiction, which confirms all of this information.

After an extra-provincial licence is obtained, the non-Canadian corporation holding the licence will be required to file an "Initial Return/Notice of Change" within 60 days after beginning to carry on business in Ontario (much like a domestic, non-Ontario corporation).

If any of that information changes, the corporation must notify and update the Companies Branch within 15 days. Key changes could include changes to a corporation's name, changing a corporation's home jurisdiction, changing a corporation's agent for service, and/or changing a registered office address.

If a non-Canadian corporation decides to stop carrying on business in Ontario, the corporation must complete and submit several forms to the Companies Branch.

### **WHAT DOES IT COST TO OBTAIN AN EXTRA-PROVINCIAL REGISTRATION FOR OUR CORPORATION?**

Costs for obtaining an extra-provincial licence will include the name search and the actual filing with the government. The government's filing fee is \$330.00 as of January 2011.

Our legal fees will depend on:

- a) Whether you require some analysis of whether your corporation is "carrying on business" or some other substantive legal issue;
- b) Any delays not caused by us; and
- c) Urgency.

### **HOW LONG IS EXTRA-PROVINCIAL REGISTRATION VALID? CAN A CORPORATION LOSE THE RIGHT TO CARRY ON BUSINESS IN ONTARIO?**

If a non-Canadian corporation with an extra-provincial licence does not carry on any business in Ontario for a period of two years, then its licence can be cancelled.

Further, if a non-Canadian corporation has failed to amend its licence, has failed to comply with other legislation (i.e. by filing the information noted above) and/or has been convicted of a provincial or federal offence, then its licence can be cancelled.

A corporation incorporated or continued under another Canadian province's laws can also be barred from operating a business in Ontario if it has breached federal or Ontarian legislation.

### **WHAT IS AN AGENT FOR SERVICE?**

An agent for service will act as the corporation's "contact" in Ontario and will be served with any claims against the corporation relating to business done in Ontario (and in turn, will inform the corporation of any such claim). All non-Canadian corporations seeking an extra-provincial licence will require an agent for service in Ontario.

### **HOW DO WE FIND AN AGENT IN ONTARIO IF WE DON'T HAVE ANY EMPLOYEES OR CONTACTS IN THE PROVINCE?**

Even if no one in your corporation knows anyone in Ontario, your corporation can still hire certain companies (for a monthly or annual fee) to act as your corporation's registered agent. We can help you find an agent for service if you do not know anyone in Ontario.

### **DOES OUR CORPORATION NEED A BUSINESS ADDRESS IN ONTARIO?**

No, but if the corporation for other reasons chooses to have a physical location for its principal place of business in Ontario, you may consider renting a virtual office. A virtual office space is a rented address to be used for the receipt, and handling of mail. Depending on the service package selected, your corporation can rent physical space if desired, have a telephone number, automated call answering, etc.

Whichever address you select as your principal place of business in Ontario, take care to ensure that it is a real address in Ontario, as post office box addresses do not qualify,

### **ARE THERE SPECIAL RULES FOR LIMITED LIABILITY COMPANIES (LLCS)?**

Yes, there are special rules for limited liability companies (LLCs):

- A limited liability company (LLC) is essentially a hybrid between a corporation (in that it offers limited liability to stakeholders) and a partnership (for some tax benefits).
- LLCs cannot be created under Ontario law. Foreign LLCs are able to carry on business in Ontario, but the requirements seem to be different for them than for foreign corporations.
- While an LLC is usually regarded as an "unincorporated organization" for corporate purposes in Ontario, it may still be treated like a corporation for tax purposes.
- The treatment of LLCs is not always clear. If you act for an LLC seeking to carry on business in Ontario, please speak with us about your particular situation.

### **OTHER CONSIDERATIONS:**

In addition to speaking to a lawyer, you should also consult with an Ontario accountant. The accountant may recommend that your corporation obtain a harmonized sales tax ("HST") registration number, and may have other tax-related advice. If no one in your corporation knows an accountant in Ontario, we can recommend an accountant to you.

\*Worksheet on Extra-Provincial Registration also available on [www.houserhenry.com](http://www.houserhenry.com).

## ABOUT HOUSER HENRY & SYRON LLP

Your business grows. You expand into new markets, hire new people, move into larger facilities, launch new products or services – and face new legal issues and challenges.

Since 1934, Houser Henry & Syron LLP has provided legal services to private businesses, helping them deal with the complexity that comes with growth and success. We understand the needs of mid-sized businesses and their owners and managers and we have the breadth of expertise and the depth of experience necessary to meet those needs.

We offer this booklet as a handy reference and as an overview of some of the questions you may face when registering a business in Ontario.

For more information, please contact one of the lawyers with our firm. You may also wish to visit our website, [www.houserhenry.com](http://www.houserhenry.com), for an overview of our team and our services.

## CONTACT US

If you would like more information about this or any area of corporate law, please contact us:

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