

BRITISH COLUMBIA COMPANY LAW  
PRACTICE MANUAL

## EXCERPT FROM CHAPTER 12

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**Dissolution and Restoration**

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**III. Restoration and Reinstatement [§12.61]**

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**B. PROCEDURES FOR RESTORATION AND REINSTATEMENT [§12.71]****I. PRELIMINARIES [§12.72]**

The first step is to search the corporate register to verify that the company or extraprovincial company has been dissolved or has had its registration cancelled, and the date of dissolution or cancellation.

The search will also indicate how stale-dated the information in the corporate register is, and accordingly what annual reports and other documents (for example, notices of directors) may be required to be filed to bring the records up-to-date.

If the registrar requires the applicant to provide filings to bring the company up to date, these further documents will need to be prepared and filed. The registrar has powers under ss. 356(3) and 362 to require that records be provided for a restoration and under s. 364.1(3) that records be provided for a reinstatement. It is not clear how there can be changes in, for example, directors and officers of a non-existent company (that is, after it has been dissolved), other than, perhaps, resulting from death, but the registrar will accept filings reflecting changes during that period, regardless of their dubious validity, justifying such practice, in part, by the fact that the restoration order with respect to a company, when made, will have a retroactive effect; see §12.78.

It will be necessary to apply for approval and reservation of the company's name, or, in the case of a foreign entity, its own name or an assumed name (ss. 355(2)(c) and 364.1(2)(c), respectively). If the old name is no longer available, the company will have to be restored under a different name acceptable to the registrar, or under the name created by adding "B.C. Ltd.", or if the company is a community contribution company, "B.C. Community Contribution Company Ltd." or, in the case of an unlimited liability company, "B.C. Unlimited Liability Company" after its incorporation number (s. 366(1)) (see chapter 3 (Corporate Names)). The registrar must not reinstate the registration of an extraprovincial company, other than a federal corporation, unless the reservation of its name or assumed name is in effect at the date of the restoration

(s. 364.4(2) and (3)). As long as that name reservation is in effect, the extraprovincial company's registration will, if reinstated, be under the name included in the reinstatement application.

If the company had any registered interests in land in British Columbia, a land title office search will also be necessary (see §12.81).

## **2. PUBLICATION AND MAILING OF NOTICE [§12.73]**

Before applying for restoration or reinstatement, the applicant must publish notice of the application in the Gazette (ss. 355(2)(a) and 364.1(2)(a), respectively). This requirement applies whether the application is made to the registrar under s. 356 or 364.1 or to the court under s. 360.

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 a foreign entity, of its attorney (or, if none, to the last address in British Columbia of its head office), all as shown in the corporate register (ss. 355(2)(b) and 364.1(2)(b), respectively). Subject to any changes to B.C. Reg. 216/2015, the applicant will also have to mail notice of the application to the address or prescribed address of each individual who was a director of the company at the time of the dissolution, if and when that regulation comes into force.

If 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 (latest mailing, effective November 28, 2016 under s. 279 of the *Societies Act*, S.B.C. 2015, c. 18) of notice to the last address shown in the corporate register (s. 363). The standard form for notice of restoration is reproduced at FP 117, and is available on the Crown Publications website. Similarly, a reinstatement of the registration of an extraprovincial company under s. 364.2 cannot take place until 21 days after the later of publication in the Gazette or mailing of notice (s. 364.4(1)).

## **3. FORM AND CONTENT OF APPLICATION TO RESTORE OR REINSTATE [§12.74]**

The requirements for a restoration application and a reinstatement application made to the registrar are largely set out in ss. 357 and 364.1 respectively, although ss. 356(3)(a) and 364.1(3) each state that the application is to be in the form established by the registrar. The relevant forms are Form 28 and Form 28U for limited restorations and Form 30 and Form 30U for full restorations. These forms are included behind the "Business Corporations Act Forms" tab.

All restoration and reinstatement applications must contain the date on which notice was published in the Gazette (ss. 357(a) and 364.1(4)(a)) and the date (the "latest date", effective November 28, 2016, per s. 276 of the *Societies Act*, S.B.C. 2015, c. 18) on which the notice required under s. 355(2)(b) was mailed (ss. 357(b) and 364.1(4)(b)). The remaining requirements are divided into those for restorations of British Columbia companies (s. 357(c) to (f)) and those for reinstatements of extraprovincial companies (s. 364.1(4)(c) to (f)).

If an application is for restoration of a company, it must contain details of the name reservation (unless proceeding as a numbered company) and, in the case of a full restoration, a statement explaining the applicant's status as a "related person", information about where the records are being kept (if they are available) and the mailing and delivery addresses of the proposed registered and records offices of the company.

Although these requirements are set out in a section titled "Contents of application to the registrar for restoration" (s. 357), they apply also to restoration applications made to the court (ss. 360(4)(a) and 361(3)(d)(i)).

A reinstatement application for an extraprovincial company must contain details of the name or assumed name reserved (s. 364.1(4)(c)) or, in the case of a federal corporation, the name of the corporation. For a full reinstatement application, a statement must also be included giving the nature of the applicant's relationship with the foreign entity (as a "related person") (s. 364.1(4)(d)). An application for a full reinstatement must also include mailing and delivery addresses for the post-reinstatement head office of the foreign entity and for each of the attorneys it will have following the reinstatement (s. 364.1(4)(e) and (f)).

If the required application is filed, the registrar has no discretion to deny restoration or reinstatement, unless the court orders otherwise (ss. 358(1) and 364.2(1)). However, in addition to the application requirements expressly set out in the Act, ss. 356(3)(b) and 364.1(3) give the registrar very broadly worded powers to require an applicant for restoration or reinstatement to submit any records and information the registrar may require. Presumably this is to be used to require applicants to file missing annual reports and similar records, but there is no such limitation placed on this power by the Act itself.

Samples of various documents required for a restoration application to the court (requisition, affidavit, draft order) are included at FP 116 to FP 121. For further information about court-ordered restorations, see the Chief Justice's February 4, 2013, Practice Direction included at §12.84.

#### **4. CONSENT OF THE REGISTRAR [§12.75]**

Section 360(3)(a) requires that the notice of application for restoration of a company and a copy of any documents filed in the court for the application for restoration be sent to the registrar. The registrar must consent to the restoration (s. 360(3)(b)). The consent must be provided to the court on an application for restoration (s. 360(4)(b)). The consent of the registrar is also required for the conversion of a limited restoration to a full restoration (s. 361(3)(c)), and the registrar must be provided with notice of such application (s. 361(3)(b)).

The registrar may make such consent subject to any terms and conditions the registrar considers appropriate (s. 360(4)(b) and (8)); under the former *Company Act*, the registrar would only consent on the condition that the company or extraprovincial company rectified whatever caused the company to be dissolved in the first place. This requirement normally meant filing all delinquent annual reports up to the date of application for restoration, with fees and other materials required. However, these filings were not required where the applicant for the restoration of a company was a creditor of the company and the restoration was only for a two-year period; this approach likely applies as well under the *BCA*.

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.

A sample letter to the registrar requesting consent is included at FP 115 (British Columbia company).

#### **5. LIMITED RESTORATIONS AND REINSTATEMENTS [§12.76]**

Section 354(1) defines "limited restoration" to mean a restoration of a company for a limited period (usually two years). There is no similar definition for a limited reinstatement of registration of an extraprovincial company, but this is clearly contemplated in s. 364.1(1) and (5) and s. 364.3. When the limited period of restoration or reinstatement expires, the company is dissolved or the registration of the extraprovincial company is cancelled, as applicable (ss. 359(1), 361(1), and 364.3(1)(a)). The registrar will then publish notice of the dissolution or cancellation of registration on the government website (ss. 359(4), 361(4), 364.3(2), and Regulation, s. 6).

If there has been a limited restoration of a company by the registrar under s. 358, 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)). Any such applicant must comply with the notice and application requirements for an initial restoration application (s. 359(3)).

The court may similarly extend or convert a limited restoration of a company, whether the limited restoration was by the court or the registrar (s. 361(2)). In such circumstances 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 extension or conversion (s. 361(3)(c)). Again, the notice and application requirements for an initial restoration must be complied with (s. 361(3)(a) and (d)). Only a related person can apply to convert a limited restoration to a full restoration.

In the case of a limited reinstatement of the registration of an extraprovincial company, any person may apply to extend the limited period of reinstatement to any later date the registrar considers appropriate (s. 364.3(1)(b)). Any such applicant must comply with the notice and application requirements for an initial reinstatement application (ss. 364.1(4) and (5)). There is no provision for converting a limited reinstatement to a full reinstatement.

## **6. COURT ORDER [§12.77]**

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

Unless the order states otherwise, the restoration of a company by the court 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)).

Sample restoration orders for full and limited restorations are included at FP 121 and 122, respectively.

Promptly after a court order is made under s. 360 or 361, the applicant must file with the registrar a restoration application in Form 28 for a limited restoration (Form 28U for an unlimited liability company), or Form 30 for a full restoration (Form 30U for an unlimited liability company), 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, either restore the company, extend the restoration, or convert a limited restoration to a full restoration (s. 362(2)).

## **7. REGISTRAR'S DUTIES [§12.77A]**

After the restoration or reinstatement, the registrar publishes a notice on the government's website and issues a certificate of restoration or reinstatement, respectively. The registrar will furnish the certificate of restoration or the certificate of reinstatement to the company or extraprovincial company, as the case may be, and a copy to the applicant. The registrar will, if requested, also furnish to the company a certified copy of the restoration or reinstatement application and, if requested to do so, a certified copy of the notice of articles, if applicable (s. 367(1) and (2)). The restoration is effective on the date and at the time, if any, shown in the corporate register. A notation in the corporate register that a company has been restored is conclusive evidence for the purposes of the Act and for all other purposes that the company has been duly restored (s. 364(1)).

A reporting letter to a client is included at FP 123.

## **8. COURT ORDER—RETROSPECTIVE RESTORATION [§12.78]**

Section 360(6) provides that the court may give directions and make provisions it considers appropriate for placing the company and every other person in the same position, as nearly as may be, as if the company had not been dissolved. Unless the court otherwise orders, the order shall be without prejudice to the rights of parties acquired before the date on which the company is restored (s. 360(7)).

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