

QUALIFICATION TO DO BUSINESS IN WASHINGTON

A number of our Canadian friends incorporated as dominion or provincial corporations seek to do business in the State of Washington, either through the original Canadian entity or by forming a Washington State subsidiary. In the event a Washington entity is formed, all Washington statutes and regulations will apply, including the selection of a resident agent to accept service of process, the obligation to file periodic reports and the payment of all applicable federal and state taxes. On the other hand, if the Canadian entity seeks to do business in the State of Washington directly and without the formation of a separate Washington entity, then it will have to evaluate the nature and extent of its proposed business activities in this state in order to determine if it is: (1) subject to taxation by the state, (2) subject to service of process and suit in the state, or (3) required to qualify to do business in the state. With respect to these activities, one clear rule can be stated---if the Canadian corporation's activities in Washington are such as to require qualification in this state as a foreign corporation, then it automatically follows that the Canadian entity will also be amenable to service of process and to being taxed by the state.

In Canada, and as a general rule, corporations organized under the laws of one province or territory must qualify as a foreign corporation before doing business in another province or territory. Every state in the United States has enacted similar laws. As an example, in Washington no foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain a suit or action in any court in the state without first obtaining a certificate of authority. However, in this state, a subsequent qualification of the foreign corporation can remove this disability and permit the corporation to sue in the state's courts based upon activities undertaken before qualification as a foreign corporation.

Every state in the United States has also enacted statutes dealing with the question of what activities will be considered doing business in the state so as to constitute intrastate business and, therefore, require qualification as a foreign corporation. The statutes also list certain business activities which will not require qualification. As an example, in Washington, a foreign corporation maintaining bank accounts in this state will not be deemed to be transacting business in Washington. Similarly, soliciting or procuring orders, whether by mail or through employees or agents, where such orders require acceptance outside of Washington before becoming binding contracts will not be deemed to be transacting business in Washington.

Keep in mind that even if your Canadian corporation's activities in Washington may not require you to qualify as a foreign corporation in this state, they may still subject you to tax obligations and service of process, both of which will involve rather nebulous principles of traditional notions of fair play and substantial justice.

For additional information on this topic, contact Ryan Swanson & Cleveland's Business Group.