

BORDER CROSSINGS

ARE YOU PROPERLY REGISTERED AND LICENSED TO DO BUSINESS OUTSIDE OF YOUR HOME TURF?

By Steven Borlak & Joy Avzar

Consider the situation of Joe Broker Inc., a brokerage incorporated in Ontario and licensed by the Registered Insurance Brokers of Ontario (RIBO). What if Joe Broker Inc. advertises in Prince Edward Island or has a telephone number listed in Alberta? What if Joe Broker Inc. has provided insurance to a client in Ontario relating to property in Saskatchewan?

If Joe Broker Inc. has failed to register in another province and has not obtained the necessary insurance licences, is the firm carrying on illegally? What are the rules?

In other words, when does a corporation need to be registered extra-provincially to undertake business in a province other than its jurisdiction of incorporation? Also, when must an insurance broker be licensed to sell insurance in another province?

While it would be helpful if there were simple and consistent answers to these questions, the reality is otherwise. For non-resident brokers, the rules and regulations for corporate extra-provincial registration and the requirements for insurance licensing vary widely. As a result, it is very likely that many brokers are unknowingly conducting business illegally in one or more other provinces.

EXTRA-PROVINCIAL REGISTRATION

Whether or not a corporation needs to be registered in a province in which it is not resident is generally determined by whether or not it is considered to be 'doing business' in that jurisdiction. Unfortunately, what constitutes 'doing business' differs significantly from province to province. Considerations include whether or not the corporation solicits business in that province; holds title or an interest in land in that province; maintains an office, warehouse, place of business or telephone in that province; advertises, or has a resident agent or representative in that province.

Another factor is whether a corporation wants a broker's licence in another province. In most instances, an insurance licence cannot be issued until a firm is first extra-provincially registered in the province from which it seeks an insurance licence.

An application for registration must be made to that province, but advice should first be sought as to what other steps are required by the jurisdiction in question in order to authorize such registration.

“Are brokers required to obtain an extra-provincial registration or insurance licence when venturing beyond their home turf? Simply put the answer is not always obvious. Recently, there has been some movement towards standardization of the licensing process among the provinces and territories, including the creation of a somewhat uniform application by the Canadian Council of Insurance Regulators. But we are not quite there yet. It is up to insurance brokers to seek advice.”

LICENSING

An insurance broker’s licence may either be issued to a corporation or an individual. The process may differ notably between the two. For the purpose of this article, we will not delve into the specifics, but merely touch upon some general criteria.

To answer the question of whether or not you need to be licensed in other provinces, the issue must first be addressed of when is a contract for insurance deemed to be made in the subject province? Again, different jurisdictions have their own criteria. Considerations include whether the contract for insurance covers a person domiciled or resident in that province as at the date the contract is made, and whether the contract for insurance involves property, or an interest in property, that is located in that province?

To further complicate the issue, the guidelines in other provinces may not relate to the contracts for insurance, but instead may involve other concerns such as when is an insurance broker deemed to be ‘doing business’ in that province? In these circumstances, the following questions are relevant:

- Do you undertake or offer to undertake insurance in that province?
- Did you set up or cause to be set up any sign containing the business name?
- Do you maintain or operate either in your

own name or in the name of an agent or other representative any office for the transaction of the business of insurance?

- Do you distribute, publish, or cause to be distributed or published, any proposal, circular, card, advertisement, printed form or like document?
- Do you make or cause to be made any written or oral solicitation for insurance?
- Do you issue or deliver any policy of insurance or interim receipt; collect, receive or negotiate for or cause to be collected, received or negotiated for any premium for a contract of insurance, or inspect any risk or adjust any loss under a contract of insurance?
- Have you prosecuted or maintained any action or proceeding in respect of a contract of insurance?

Based on this, the simple act of circulating an advertisement in a province where you are not licensed to act as a broker may put you offside the legal requirements imposed by statute.

Once you have determined whether an insurance licence is mandated either individually or corporately, you must also ascertain what additional requirements are imposed by the province from which you seek to obtain the insurance licence.

CERTIFICATE OF AUTHORITY/NON-RESIDENT ENDORSEMENT

One thing that appears to be consistent throughout the provinces is that non residents seeking to obtain a licence will not be required to write any tests or take any courses. As long as a ‘certificate of authority/non-resident endorsement’ is provided from the home jurisdiction, licensing will be granted at a level equivalent to that held in the province of residence.

The terms ‘certificate of authority’ and ‘non-resident endorsement’ are, for the most part, interchangeable. The document provides details of an active

broker's current licence status and the classes of insurance that the insurance broker is authorized to sell.

ERRORS AND OMISSIONS

Some jurisdictions require brokers to carry errors and omissions insurance coverage although the policy limits and conditions vary. It is the applicant's responsibility to determine, obtain and maintain the appropriate E&O coverage throughout the term of the licence.

CRIMINAL BACKGROUND CHECK

In most provinces, a criminal background check is a standard part of the screening procedure. Any misrepresentation will result in significant delays in application processing. It may even necessitate a public hearing and could well result in possible charges under the law in the jurisdiction to which you are applying. Some provinces maintain responsibility for obtaining their own criminal background checks of applicants.

OTHER CONSIDERATIONS

Non-residents are often expected to comply with the continuing education requirements of the licensing province unless they can provide evidence that they are already in compliance within their home jurisdiction. Certain provinces will also require that a business plan be submitted to gain a licence while others mandate that an insurance broker maintain a consumer protection bond.