

950 CMR 107.00: FOREIGN CORPORATIONS

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107.01: Purpose

The regulations in 950 CMR 107.00 implement the responsibilities of the Secretary of the Commonwealth under M.G.L. c. 181, concerning foreign corporations.

107.02: Definitions

For the purposes of 950 CMR 107.00 and the forms issued to implement it, unless the context otherwise indicates: "foreign corporation" means a corporation that has been established, organized, or chartered under laws other than those of the Commonwealth.

107.03: Foreign Corporation Certificate

Every foreign corporation within ten days after it commences doing business in the Commonwealth shall file with the Division, a Foreign Corporation Certificate. The clerks of the Division in their examination of the Foreign Corporation Certificate have been directed to check for the following information:

- (a) Exact name of the foreign corporation;
- (b) Location of its principal office;
- (c) Brief description of its activities within the Commonwealth;
- (d) Location of its local office, if any;
- (e) Name and address of its resident agent, if any;
- (f) Names and addresses of its president, treasurer, clerk or secretary, and directors;
- (g) Date of its fiscal year;
- (h) Date of its organization;
- (i) Jurisdiction under the laws of which it is organized;
- (j) Statement of the fees imposed by the laws of the State wherein it is incorporated upon Massachusetts corporations doing business in that State.

The Foreign Corporation Certificate shall be signed under penalties of perjury by the president or vice-president and clerk or assistant clerk, or secretary or an assistant secretary. In addition, through the Foreign Corporation Certificate the foreign corporation shall appoint the Secretary to be its attorney upon whom the services of legal process may be made in certain matters (See 950 CMR 112.00).

107.04: Amendments

Every foreign corporation shall file with the Division an Amended Foreign Corporation Certificate within 60 days of the effective date of any of the following changes in the Foreign Corporation Certificate:

- (a) Change of name;
- (b) Change of principal office;
- (c) Change in description of corporate activities.

107.04: continued

All certificates of condition must be filed up-to-date before any amendments will be accepted for filing with the Division. The Amended Foreign Corporation Certificate shall be signed under penalties of perjury by the president or a vice-president and a clerk or an assistant clerk, or a secretary or an assistant secretary of the foreign corporation.

107.05: Certificate of Condition

Every foreign corporation doing business in the Commonwealth shall annually file with the Division, within six months of the close of its fiscal year, a certificate of condition. The clerks of the Division in their examination of the certificate of condition have been directed to check for the following information:

- (a) Exact name of the foreign corporation;
- (b) Location of its principal office;
- (c) Location of its local office, if any;
- (d) Name and address of its resident agent, if any;
- (e) Names and addresses of its president, treasurer, and clerk or secretary and all the directors and date upon which the term of office of each expires;
- (f) Amount of capital stock authorized and issued, including the number and par value, if any, of its shares, and the amount paid thereon;

The certificate of condition of a foreign corporation shall be signed under penalties of perjury by a responsible officer of the corporation.

Photocopies of certificates of condition are acceptable for filing with the Division, however, photocopied signatures are NOT acceptable. All information on the certificate of condition may be copied, and that copy filed, but the signatures must be original.

The Division shall accept for filing with certificate of condition only the section or sections of the foreign corporation's Annual Report that deal with the requirements of the certificate of condition. The foreign corporation should NOT send its entire Annual Report to the Division for filing with the certificate of condition.

107.06: Extensions For Filing Certificates of Condition

Extensions for the filing of certificates of condition of foreign corporations may be granted by the Division upon receipt of a written request and only for good and adequate cause. Extensions may only be granted for a maximum of 60 days.

107.07: Reservation of Name

The name of a foreign corporation, available for corporate use under the laws of the Commonwealth, may be reserved for a period of 30 days by the filing of a written application or request to reserve a specific name signed by the applicant. The fee shall be two dollars for such a reservation. The reservation may be extended by the Division for an additional 30 days upon the written request of the applicant and the payment of an additional two dollar fee.

A name may be checked relative to its availability for use by telephone but a name may NOT be reserved by a telephone request, and any such attempted reservation shall be considered INVALID by the Division. The reservation of a name becomes effective only upon the receipt by the Division of a written request and the payment of the proper fee.

107.08: Protest of Name; Hearing Procedure

In the event of a controversy arising over the use of a particular name by a foreign corporation, all the parties involved have a right to a hearing before the Division pursuant to M.G.L. c. 181, § 5.

The protest must be in writing and must be filed with the Division within 30 days after the date when an initial certificate, or an amended certificate effecting change of name, of the foreign corporation has been filed with the Division. The regulations governing the hearing procedures followed by the Division are established by 950 CMR 101.00 ("Rules for Adjudicatory Proceedings Conducted by the Corporations Division" which were adopted July 22, 1975). These Rules are available from the Division upon request and payment of a 60¢ fee.

107.09: Certificate of Withdrawal

A foreign corporation no longer doing business in the Commonwealth may withdraw from the Commonwealth by filing with the Division a Certificate of Withdrawal. The clerks of the Division in their examination of the Certificate of Withdrawal have been directed to check for the following information:

- (a) Exact name of the foreign corporation;
- (b) Location of its principal office;
- (c) Names and addresses of its president, treasurer, clerk or secretary and directors;
- (d) Date of its fiscal year;
- (e) Statement that the foreign corporation is not doing business in the Commonwealth.

The Certificate of Withdrawal shall be signed under penalties of perjury by the president or a vice-president, and the clerk or an assistant clerk or the secretary or an assistant secretary or, if the foreign corporation is in the hands of a receiver or trustee, by such receiver or trustee. The Certificate of Withdrawal shall be accompanied by a certificate from the Commissioner of Corporations and Taxation that all taxes due and payable to the Commonwealth have been paid. In addition, all certificates of condition must be filed up-to-date with the Division before the Certificate of Withdrawal may be accepted by the Division.

107.10: Penalties For Failure To File; False Statements

Every foreign corporation which fails to file a Foreign Corporation Certificate as required by M.G.L. c. 181, § 4, and 950 CMR 107.03, or an Amended Foreign Corporation Certificate as required by M.G.L. c. 181, § 4, and 950 CMR 107.04, shall be fined not more than \$500.00 for each such failure and for each year that such failure shall continue.

Every foreign corporation which fails to file an annual report of condition as required by M.G.L. c. 181, § 4, and 950 CMR 107.05, and then fails to file after proper notice is served in accordance with M.G.L. c. 182, § 9, shall be fined not more than ten dollars for each day for fifteen days after the expiration of the 30-day grace period granted by M.G.L. c. 182, § 9, and not more than \$200.00 for each day thereafter during which such default continues, or any lesser sum that the court may deem just and equitable. The Supreme Judicial Court in Suffolk County may issue an injunction restraining further prosecution of the business of the foreign corporation, and further exercise of any corporate rights, privileges or franchises in the Commonwealth, until such penalties, as described above, with interest and cost have been paid and until the foreign corporation has filed the required certificates or reports.

Whoever knowingly makes, executes, files or publishes any report or statement required by law of the Commonwealth or of another state or country to be made, executed, filed, or published by a foreign corporation, which report or statement is false in any material representation shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not more than three years, or both, pursuant to M.G.L. c. 181, §§ 13 and 14.

107.11: Forms and Fees

All fees for filing the particular forms to which they pertain shall be paid, prior to filing, by cash, check, draft, or money order made payable to the "Commonwealth of Massachusetts" in accordance with the following:

107.11: continued

Table 1

(a) Foreign Corporation Certificate (See M.G.L. c. 181, § 8)	\$250.00 Minimum
(b) Amended Foreign Corporation Certificate	\$ 75.00
(c) Certificate of Withdrawal	\$ 75.00
(d) Reservation of Name	\$ 10.00

The Division also issues certain certificates relative to foreign corporations in accordance with the following:

Table 2

(a) Certificate of Registration	\$ 5.00
(b) Certificate of Registration (with one name change)	\$ 10.00
(c) Certificate of Good Standing	\$ 10.00
(d) Certificate of Withdrawal	\$ 10.00

107.12: Public Inspection of Records

The records of the Division pertaining to foreign corporations shall be available for public inspection during regular business hours.

REGULATORY AUTHORITY

950 CMR 107.00: M.G.L. c. 181.