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Continuance and Transfer: Transnational Change of Corporate Domicile Under Wyoming Law

*Thomas N. Long**

In recent years Wyoming has become an international gateway for the migration of foreign corporations. This is due to the adoption of relatively unique statutes which permit a foreign corporation to become domiciled in Wyoming (a "continuance"),¹ and permit a Wyoming corporation to become domiciled in a foreign jurisdiction (a "transfer").² Change of domicile may have a material impact upon the business and affairs of a corporation. The laws of the domiciliary jurisdiction define the rules of internal corporate governance, and they determine to some degree the corporation's exposure to taxation, the judicial forums in which the corporation may appear, and other fundamental aspects of the corporation's existence. This article examines the meaning and function of the Wyoming continuance and transfer statutes and certain difficult questions and problems arising in their application.

WYOMING CONTINUANCE AND TRANSFER REQUIREMENTS

Current Statutory Framework

The statutory requirements for a continuance or transfer are set out in relatively straightforward fashion.³ A continuance may be sought by a foreign corporation subsisting under the laws of a jurisdiction which

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1. WYO. STAT. § 17-1-803 (1977).

2. WYO. STAT. § 17-1-804 (1977).

3. WYO. STAT. §§ 17-1-803 to -804 (1977). Fees for the transfer procedure are established under WYO. STAT. § 17-2-101(c) to (d) (1977).

permits a transfer. The corporation must file articles of continuance as set forth in the statute, together with additional information required by the Wyoming Secretary of State (Secretary of State).⁴ Once the necessary documentation has been accepted by the Secretary of State, a certificate of registration is issued and is transmitted to the proper officer in the former jurisdiction.⁵ The effect of the continuance is that of "continuing the foreign corporation in Wyoming as if it had been incorporated in this state."⁶

The transfer procedure under Wyoming Statute section 17-1-804 is the mirror image of the continuance procedure; a transfer exports the corporation from Wyoming while the continuance represents its import into the state. The transfer can be effected to any jurisdiction which authorizes a continuance, and must be accomplished according to the Secretary of State's requirements for notice to creditors and minority shareholders, payment of a special toll charge, and maintenance of a registered agent in Wyoming for one year after the transfer.⁷

Legislative History

Wyoming previously had "domestication" statutes.⁸ These involved the traditional domestication concept, although apparently they were not so administered by the Secretary of State's office.⁹ The continuance statute adopted in 1980¹⁰ contained two important changes. First, a foreign corporation could apply for a continuance in Wyoming only "if it appears to the secretary of state to be so authorized by the laws of the jurisdiction in which it was incorporated."¹¹ The second significant change provides that "[t]he secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the jurisdiction in which the corporation was previously incorporated."¹² The transfer statute when introduced in 1980 was the first legislative structure for exporting Wyoming corporations to other jurisdictions.¹³

These changes were embodied in Senate File No. 63 of 1980.¹⁴ The bill was sponsored by Senators Rex Arney and Robert Frisby at the behest of Ranchmen's Exploration, Inc. and American Oil and Gas Fund, Inc.¹⁵

4. See *infra* text accompanying notes 21-29.

5. WYO. STAT. § 17-1-803(b) (1977).

6. WYO. STAT. § 17-1-803(a) (1977).

7. See *infra* text accompanying notes 30-36.

8. WYO. STAT. §§ 17-1-801 to -802 (1977), adopted 1974 Wyo. Sess. Laws ch. 9 §§ 1, 2, repealed 1980 Wyo. Sess. Laws ch. 50, § 3.

9. According to the records of the Secretary of State's office, there were 31 domestications between May 9, 1974 and May 28, 1980. In each case the Secretary of State's office required the domesticating corporation to renounce its original charter. See *infra* text accompanying notes 45-50 for a discussion of the traditional notion of domestication.

10. WYO. STAT. § 17-1-803 (1977), adopted 1980 Wyo. Sess. Laws ch. 50, § 1.

11. WYO. STAT. § 17-1-803(a) (1977).

12. WYO. STAT. § 17-1-803(b) (1977).

13. WYO. STAT. § 17-1-804 (1977), adopted 1980 Wyo. Sess. Laws ch. 50, § 1.

14. DIGEST OF SENATE JOURNAL OF THE FORTY-FIFTH STATE LEGISLATURE OF WYOMING 86-88 (1980).

15. *Id.* at 86.

Senator Arney addressed a letter dated February 1, 1980 to the Legislative Service Office with a draft of the proposed legislation, which was substantially in the form as finally adopted.¹⁶ The letter made clear the desire of Ranchmen's Exploration, Inc. to transfer to the province of Alberta, Canada. The legislation in some respects parallels Alberta law.¹⁷ During the 1980 Wyoming legislative session, the Secretary of State's office was being advised on this legislation by an Alberta attorney,¹⁸ and it is apparent that Canadian precedent should be given weight in determining the effect of the Wyoming statutes.¹⁹

Technical Requirements

There are no formal regulations which have been adopted by the Wyoming Secretary of State under the Wyoming Administrative Procedure Act²⁰ with respect to either a continuance or a transfer. Nevertheless, some very definite procedures have developed which must be followed in order to obtain a certificate of continuance or a certificate of transfer from the Secretary of State's office.

Continuance

As is statutorily required,²¹ the Secretary of State has a prepared form of application for a certificate of registration and articles of continuance for the submission of information required by the Act.²² The form was first prepared in July 1980, and is identical to the current (April 1987) form in all but one respect. The form was revised in March 1983 to add

16. The letter from Senator Arney attached a proposal from Ranchmen's Exploration, Inc., which included proposed legislation and arguments in favor of its adoption. Copy on file with Land & Water Law Review. Senate File No. 63 was identical to the proposal, and only minor modifications of wording were made prior to its adoption. 1980 Wyo. Sess. Laws ch. 50 § 1.

17. The Alberta continuance provision at that time was section 157 of the Alberta Companies Act, Alta. Stat. ch. 60 § 157 (1970). This was recodified as ALTA. REV. STAT. ch. 20 § 174 (1980). The most significant similarity appears in subsection 174(1) which provides in part:

[A] company incorporated under the laws of any jurisdiction other than Alberta may, if it appears to the registrar to be so authorized by the laws of the jurisdiction in which it was incorporated, apply to the registrar for registration under this Act, continuing it as if it had been incorporated under this Act

Id.

18. The author was informed of this by the Director of Corporations of the Secretary of State's office, at that time Mrs. Jackie Corklin.

19. The Alberta statute was virtually identical to the continuance provisions of § 181 of the federal Canada Business Corporations Act, Can. Stat. ch. 33 (1974-75). According to David Wilder of the British Columbia Bar, the federal continuance provisions were the creation of two gentlemen, John Howard and Robert W. V. Dickerson; Mr. Howard states that the continuance statutes were "made of whole cloth" to deal with certain problems existing in the Canadian business community at that time, and it was unknown to Mr. Howard or Mr. Dickerson if any other jurisdictions had comparable provisions.

20. WYO. STAT. §§ 16-3-101 to -115 (1977).

21. WYO. STAT. § 17-1-803(d) (1977).

22. 1980 Wyo. Sess. Laws ch. 50 § 1. The form, entitled "State of Wyoming Application for Certificate of Registration and Articles of Continuance of _____", (revised April 1987), nearly parallels the statutory list of information required, with the exception of Item 4 on the form which provides:

two additional requirements, one of which was thereafter deleted by the current April 1987 form.²³ The articles of continuance must be completed in English, and duplicate originals must be submitted. The articles of continuance form must be signed by a president or vice-president, attested by a secretary or assistant secretary, and verified in front of a notary public, or other officer authorized by the foreign country to administer oaths and take acknowledgments, by one of the officers signing the application.²⁴

As is statutorily mandated,²⁵ the Secretary of State requires that the articles of continuance be accompanied by a copy of the articles of incorporation and all amendments of the corporation, certified within the last six months. In addition, the Secretary of State's informal procedures require that there must also be a certified copy of the law from the foreign jurisdiction evidencing that jurisdiction's authorization of a continuance in Wyoming.²⁶ The corporation's articles of incorporation and the foreign jurisdiction's law are certified in three layers: first, the documents or statutes must be certified by the proper officer (e.g., Registrar of Corporations or other Secretary of State equivalent); secondly, there must be certification as to the genuineness of the corporations registrar's signature and official position by another government official authorized to so certify (e.g., Minister of Governmental Affairs or other Secretary of State equivalent); and a third certification is required from some consular agent of the United States or consular official of the foreign country

After continuance, the address of its principal place of business will be:

_____ (City)

State of Wyoming.

There is no statutory requirement that a continuing corporation have a principal place of business in Wyoming. The Secretary of State's office has frequently accepted the address of the registered agent in Wyoming in completion of this item.

23. Item 4 on the form, as described in note 22 *supra*, was added in the March 1983 form and has not been deleted. The March 1983 form also provided in Item 14 that: "The corporation further acknowledges that these Articles of Continuance are ineffective as long as the central point of administration activities remains in the former jurisdiction." This sentence was dropped from the April 1987 form. The two additions in March 1983 appear to have been developed as a result of the Secretary of State's concerns over potential abuses of the continuance procedure. The current administration has not expressed similar concerns.

24. Wyoming recognizes acknowledgments of documents by foreign officials if done in compliance with the laws of the foreign jurisdiction. WYO. STAT. § 34-2-118 (1977).

25. WYO. STAT. § 17-1-803(c)(i) (1977).

26. In an April 30, 1982 informal opinion of the Attorney General's office addressed to Secretary of State Thyra Thomson, it was concluded that the foreign jurisdiction must have a transfer statute in order for the corporation organized under its laws to be accepted for continuance in Wyoming. Memorandum from Howard M. Schrinar, Assistant Attorney General, to Thyra Thompson, Wyoming Secretary of State 18 (Apr. 30, 1982) (available from the Wyoming Secretary of State) [hereinafter Memorandum]. The opinion dealt with the request by a Utah corporation to continue in Wyoming; Utah has a "domestication" statute somewhat similar to Wyoming's continuance statute, but has no transfer statute. The Attorney General's office disagreed with the Utah corporation's assertion that Wyoming law only requires that a foreign jurisdiction have a reciprocal continuance-type statute in order for a foreign corporation to continue in Wyoming from that jurisdiction. Memorandum, at 2, 17-18.

assigned or accredited to the United States, vouching for the authenticity of signatures and official position of the first two certifying officers.²⁷

Finally, the articles of continuance must also be accompanied by a copy of the corporate resolution authorizing the continuance of the corporation in Wyoming.²⁸ A fee must accompany all of the documentation, and is calculated on the same basis as the fee for incorporation of a new Wyoming corporation.²⁹ There is no express requirement that the Secretary of State receive proof of completion of any transfer-type filings in the foreign jurisdiction, although typically evidence of the same is received from the foreign jurisdiction by the Secretary of State's office in due course.

Upon fulfillment of all requirements, the Secretary of State will issue two certificates, one a certificate of registration for the corporation as described in the statutes, and the second which also refers to the continuance and describes the corporation as being currently incorporated under the laws of the State of Wyoming.

Transfer

The Secretary of State requires evidence of the corporate resolution referred to by the Act, which must be in the form of a certificate or otherwise verified and must be delivered to the Secretary of State in the original.³⁰ The Secretary of State also requires proof of authorization under the law of the foreign jurisdiction,³¹ which may be supplied by delivering a certified copy of the law.³² The three layers of certification required under the continuance procedures are not applicable to this certification, and it need be certified only by the corporations director of the foreign jurisdiction. Alternatively, the law may be proven by submitting the legal opinion of the Attorney General or equivalent official legal counsel for the foreign jurisdiction.

The notice to the public which the Secretary of State may require under Wyoming Statute section 17-1-804(b) must be accomplished by publication, once a week for two consecutive weeks, in a newspaper in each

27. These requirements are summarized on the form Application for Certificate of Registration and Articles of Continuance (revised April 1987). Alternate methods of certification of foreign public documents are available as a result of implementation of the 1961 Hague Convention. Judicial Procedure Abolishing Requirement of Legalization for Foreign Public Documents, October 15, 1961, T.I.A.S. No. 10072 (the Convention went into force in the United States on October 15, 1981). Under this convention, all countries which are party to the convention have developed a standardized form of certification (an "apostille") for all documents destined for use in the other party countries. The convention eliminates the time and expense involved in having consular officers of the country where the document is to be used legalize such a document. *Id.*

28. This requirement is specifically listed on the form Application for Certificate of Registration and Articles of Continuance (revised April 1987).

29. WYO. STAT. § 17-1-803(e) (1977).

30. WYO. STAT. § 17-1-804(a) (1977) This specific requirement is described in the form Application for Certificate of Transfer (July 1980).

31. WYO. STAT. § 17-1-804(a) (1977) permits transfers only "if authorized by corporate resolution and by the laws of any other jurisdiction."

32. See Application for Certificate of Transfer (July 1980).

county in the State of Wyoming. The publishers' formal affidavits of publication must be submitted to the Secretary of State. The form of the newspaper notice is not specified, but generally must advise creditors and minority shareholders that the corporation will be applying for a certificate of transfer on a date certain to the Secretary of State.

An audited financial report current as of the corporation's most recent fiscal year, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, must also be submitted. The balance sheet portion of the audit report is used to determine the "net actual value of assets" which is the statutorily described basis for the toll charge imposed on transferring corporations.³³ The Secretary of State computes the value based upon book value of assets, less liabilities (but not contingent liabilities). The corporation may elect to have its auditor certify to the Secretary of State the market value of its assets if it chooses not to have its assets valued at book value.³⁴ The corporation must also pay a toll charge according to the statutory schedule.³⁵

The Secretary of State also requires a statement by the corporation's president describing any legal actions which have been instituted by or against the corporation or which are pending. The Secretary of State's form, Application for Certificate of Transfer, which is required to be submitted in English in duplicate, describes the steps necessary for completion of the above requirements and names the agent for services of process which must be maintained within the state for one year from the date of issuance of the certificate of transfer.

After fulfillment of the requirements for transfer, the Secretary of State will issue two certificates, one of which certifies that the application for certificate of transfer was found to conform to law and that the Secretary of State "hereby issues this CERTIFICATE OF TRANSFER," and the other certificate states that the application was made to a specified nation, that the statutes were complied with and that a Certificate of Transfer has been issued. The Secretary of State in prior years had issued a certificate stating that the transfer will be complete if authorized by the laws of the other jurisdiction and requesting that the other jurisdiction accept the transfer under the applicable law of the other jurisdiction. The change to the current form of certificates is in keeping with the Secretary of State's position that the corporation ceases to be a Wyoming corporation upon issuance of the Certificate of Transfer. The Secretary of State drops a corporation from its register of active corporations immediately upon issuance of the Certificate of Transfer. Thereafter, the corporation is not expected to file an annual report or pay the annual licensing fee. Often it is required in other jurisdictions that this certificate be

33. WYO. STAT. § 17-2-101(d) (1977).

34. See Application for Certificate of Transfer (July 1980).

35. WYO. STAT. § 17-2-101(c) (1977). The toll charge can be substantial for large corporations. According to the records of the Secretary of State's office, on June 15, 1987, Homestake Gold Limited paid a toll charge of \$105,000 to transfer to the State of South Australia.

accompanied by a United States Bankruptcy Court certificate of search from the Wyoming District Bankruptcy Court, and sometimes an opinion of local counsel is required as to the effect of Wyoming law.³⁶

HISTORICAL AND COMPARATIVE ANALYSIS

Wyoming adopted the Model Business Corporation Act in 1961.³⁷ Neither the Model Business Corporation Act³⁸ nor the Revised Model Business Corporation Act³⁹ makes any provision for a continuance or transfer procedure. Although continuance and transfer statutes appear in the corporation laws of all Canadian provinces⁴⁰ and the Federal Canada Business Corporations Act,⁴¹ it does not appear that these procedures historically formed a part of American jurisprudence.

Historically it has been held that a corporation must dwell in the place of its creation and cannot migrate to another sovereignty.⁴² No state acting by itself has the power to make its acts of incorporation operate extraterritorially.⁴³ The growth of interstate commerce led to the development of various methods by which a foreign corporation would be permitted to transact business across state lines. A foreign corporation may perform such extraterritorial acts in other jurisdictions as the other jurisdictions may permit upon such terms and conditions as those jurisdictions may impose.⁴⁴

Many of the early statutes required that a foreign corporation become "domesticated" in order to transact business within the jurisdiction.⁴⁵ This type of statute generally required that a corporation take the steps necessary to become a domestic corporation prior to conducting business within the jurisdiction. In some jurisdictions these statutes had the effect of actual incorporation or chartering anew of the foreign corporation under the jurisdiction's laws, thereby creating a new and distinct domestic cor-

36. See, e.g., British Columbia Company Act § 36, B.C. REV. STAT. ch. 59 § 36 (1979). The author has been required to give such opinions on various occasions and has been called upon to obtain a certificate of search from the Wyoming District Bankruptcy Court.

37. 1961 Wyo. Sess. Laws. ch. 85.

38. MODEL BUSINESS CORP. ACT (1960).

39. REV. MODEL BUSINESS CORP. ACT (1984).

40. See the discussion of the various Canadian provincial and territorial continuance statutes in B. WELLING, CORPORATE LAW IN CANADA 248-51 (1984).

41. Canada Business Corporations Act § 181, Can. Stat. ch. 33 (1975).

42. *Turner v. Turner Mfg. Co.*, 184 Wis. 508, 199 N.W. 155, 157 (1924) (following *Canada S. Ry. Co. v. Gebbard*, 109 U.S. 527, 537 (1883)); *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667, 669 (1927); *Bank of Augusta v. Earl*, 38 U.S. (13 Pet.) 519, 588 (1839) ("A corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty.")

43. *Ohio & M.R. Co. v. Wheeler*, 66 U.S. (1 Black) 286 (1862).

44. *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936), *reh'g denied*, 298 U.S. 691 (1936); *Ry. Exp. Agency v. Commonwealth of Va.*, 282 U.S. 440 (1931).

45. A primary example of the use of early domestication statutes was to facilitate the development of interstate railway transportation. See 17 W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS §§ 8302-12 (rev. perm. ed. 1975).

porate entity.⁴⁶ More frequently "domestication" signified simply a process by which a foreign corporation was deemed a domestic corporation for purposes of exercising corporate powers and functions in the state.⁴⁷ The typical domestication statute, not involving creation of a new corporation, does not divest the foreign corporation of its original citizenship.⁴⁸ With those domestication statutes which in effect create a new corporation, two separate and distinct corporate entities thereafter exist, the original foreign one and a new domestic one.⁴⁹ In both cases, the obligations of the domesticated corporation to the state of its creation and the rights of that state against it are unaffected.⁵⁰

The modern and common current method of dealing with a foreign corporation seeking to transact business beyond the boundaries of its state of incorporation is through a licensing or "certificate of authority" procedure similar to that described in sections 17-1-705 through 17-1-706 of the Wyoming Statutes.⁵¹

None of these procedures involves an actual change of domicile; domestication typically involves creation of a second domicile,⁵² and qualification to transact business through licensing or certificate of authority has no effect on domicile. A change of domicile might be available for a corporation which "domesticates" in a state having a structure which in effect demands the creation of a new corporation, if the corporation thereafter relinquishes its original charter. Perhaps a more common method by which United States corporations have changed domicile has been through merger. The typical transaction would involve creating a wholly-owned

46. *Foy & Shemwell v. Georgia-Alabama Power Co.*, 298 F. 643 (D.C. Cir. 1924). This process of chartering a new domestic corporation is sometimes referred to as "reincorporation." See 36 AM. JUR. 2D *Foreign Corporations* §§ 386, 387 (1968).

47. See *Foy & Shemwell*, 298 F. at 645; *Riverdale Cotton Mills v. Alabama and Georgia Mfg. Co.*, 198 U.S. 188 (1905); 36 AM. JUR. 2D *Foreign Corporations* §§ 386, 387 (1968). Discussions of the distinctions between these two types of "domestication" procedures and the effects thereof, can be found in Annotation, *Effect of Domestication of Foreign Corporations*, 18 A.L.R. 130 (1922); Annotation, *Effect of Domestication of Foreign Corporations*, 126 A.L.R. 1503 (1940).

48. 17 W. FLETCHER, *CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS* § 8310 (rev. perm. ed. 1975).

49. See, *Ry. Exp. Agency v. Commonwealth of Va.*, 282 U.S. 440, 444 (1931).

50. *Nashua & L.R. Corp. v. Boston & L.R. Corp.*, 136 U.S. 356, 375 (1890). The Wyoming Secretary of State required domesticated corporations to renounce their original charters. See *supra* note 9. At least one other state also followed this practice. Pennsylvania statutes regarding domestication required renunciation of the previous charter. 15 PA. CONS. STAT. § 909C, *repealed by* 1965 Pa. Laws 1305, § 50(f). It would seem the result of such a renunciation is that the corporation exists as a new corporation, having such rights, privileges, and franchises as are granted by the new charter acquired through domestication.

51. Certificates of authority for foreign corporations to transact business within a jurisdiction typically have the limited purposes of: (1) ensuring that citizens of the state have adequate information about foreign corporations in their transactions with them; (2) requiring that foreign corporations are equally obligated to supply information to the state which is required of domestic corporations; (3) facilitating the foreign corporation's submission to the jurisdiction of state courts; and (4) providing readily accessible evidence of their existence. Such statutes typically recognize that the organization and internal affairs of the foreign corporation are governed by the laws of the foreign jurisdiction. See WYO. STAT. § 17-1-701 (1977); REV. MODEL BUSINESS CORP. ACT § 15.05(c) (1984).

52. See *supra* text accompanying notes 47-50.

subsidiary formed under the laws of another jurisdiction, and merging the parent into the subsidiary corporation with the subsidiary corporation surviving and the parent "disappearing." Under the common statutory scheme, all assets and liabilities, rights of creditors, and other characteristics of the parent corporation are preserved as characteristics of the surviving subsidiary corporation, and the single primary practical consequence of such a merger is a change of domicile.⁵³

However, change of domicile through use of statutory merger procedures has a significantly different effect than a change of domicile by continuance. Although the merger procedure, also known as "reincorporation," protects the rights, privileges, immunities, franchises, liabilities, and obligations of the disappearing corporation, the separate existence of the disappearing corporation is considered to have ceased.⁵⁴ This cessation of the parent corporation's separate existence may provoke unwanted tax or other results which would not occur with a continuance.⁵⁵

In Canada, the change of domicile is almost always accomplished through a continuance procedure. It appears that in Canada there is no such thing as an "inter-jurisdictional amalgamation,"⁵⁶ and only the continuance procedure is available for changing domicile to another jurisdiction.⁵⁷

The Wyoming "domestication" statutes existing from 1974 through 1980⁵⁸ on their face appear to represent the type of domestication statute which would lead to the creation of a second domicile. Wyoming has now reenacted these statutes with the only change being their application solely to United States corporations.⁵⁹ The Secretary of State requires that all

53. Under WYO. STAT. § 17-1-405 (1977), all assets and liabilities and other attributes of a corporate party to a merger are preserved in the surviving corporation. This statute was formerly expressly incorporated in the provisions regarding merger of foreign and domestic corporations, WYO. STAT. § 17-1-406(b) (1977), but this incorporation by reference was later repealed, 1979 Wyo. Sess. Laws ch. 153 § 3. By adopting this amendment, the Wyoming Legislature was simply enacting changes made in section 77 of the Model Business Corporation Act. Comments made by the draftsmen indicate that language contained in section 76 of the Model Business Corporation Act (which is identical to WYO. STAT. § 17-1-405 (1977)) is intended to cover the mergers of domestic and foreign corporations, and is not limited to only mergers between domestic corporations. See Comm. on Corp. Laws, Section of Corporation, Banking and Business Law of the ABA, *Final Changes in the Model Business Corporation Act Revising Sections 63, 73, 74, 76, 77, 80 and Adding a New Section—72-A*, 31 BUS. LAW. 1747, 1753 (1976).

54. WYO. STAT. § 17-1-405(b)(ii) (1977).

55. It is almost axiomatic to state that the parent corporation, having been formed in the original jurisdiction, cannot be the surviving corporation in the new jurisdiction. Unfortunately, there seems to be little case law on this point, although such appears to be the holding of *Lee v. Atlantic Coastline Ry. Co.*, 150 F. 775 (1906).

56. The Canadian concept of amalgamation is similar, but not identical, to that of a merger. See 15 W. FLETCHER, *CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS* § 7042 (rev. perm. ed. 1975). Amalgamations can only occur between or among domestic corporations in the provinces of Canada or under the federal Canada Business Corporations Act.

57. There is one exception under Alberta law for the inter-jurisdictional amalgamation between an Alberta corporation and a non-Alberta corporation, one of which must be wholly owned by the other. ALTA. REV. STAT. ch. 20, § 173(1) (1980). Such an amalgamation will cause a change of domicile in effect.

58. WYO. STAT. §§ 17-1-801 to -802, repealed by 1980 Wyo. Sess. Laws ch. 50, § 3.

59. WYO. STAT. §§ 17-1-1101 to -1102 (1977).

corporations domesticating under these statutes surrender their corporate charter in their domiciliary jurisdiction. Thus, the transaction has the appearance of a "continuance," rather than a "domestication" in the traditional sense. The practice of the Secretary of State's office is somewhat at odds with an informal Wyoming Attorney General's opinion submitted to it in 1982 with respect to the meaning of the predecessor statutes which permitted domestication by international corporations as well.⁶⁰

The State of Delaware adopted its own continuance statute.⁶¹ The Delaware statute permits a continuance only by a "non-United States corporation."⁶² The Delaware statute also describes its procedure as "domestication" but it is in fact a continuance statute.⁶³ However, Delaware has no transfer statute, and therefore its continuance procedures are unavailable to corporations currently domiciled in those jurisdictions requiring reciprocity for continuance. Among the Canadian provinces, only British Columbia apparently requires reciprocity at present,⁶⁴ and it should not be surprising to know that the great plurality of continuances in Wyoming have been from British Columbia.⁶⁵

Utah adopted a domestication-type statute in 1974.⁶⁶ The Utah statutory scheme requires no proof that the continuance is authorized by a foreign jurisdiction and does not make any reference to relinquishment of the charter in the non-Utah jurisdiction. It therefore appears these statutes are much like the Wyoming domestication statutes which are applicable only to United States corporations.

Louisiana also has somewhat similar statutes.⁶⁷ However, the language of the Louisiana statutes makes it fairly clear that a corporation does not

60. Memorandum, *supra* note 26. The memorandum analyzed the prior domestication statutes and the current continuance statute. The Attorney General's office acknowledged the Secretary of State's practice of requiring surrender of non-Wyoming charters under the domestication statute, and also noted the opinion of Ranchmen's Exploration, Inc. that its proposed continuance statute made "no change of substance" in the domestication statutes. *Id.* at 13. The Attorney General's office nevertheless concluded that the continuance statute indeed was a change, citing case law to the effect that a change in legislation must be interpreted as involving some change of substance. *Id.* at 14-18. The analysis appears to conclude that the prior domestication statutes involved simple issuance of a second charter, although the express question dealt with in the memorandum involved the requirement that the non-Wyoming jurisdictions have a transfer-type statute in order to qualify a corporation for continuance in Wyoming. *Id.* at 18-19.

61. DEL. CODE ANN. tit. 8, § 388 (1986 Supp.), enacted by 64 Del. Laws ch. 321 (1984), amended by 65 Del. Laws ch. 127 (1985).

62. DEL. CODE ANN. tit. 8, § 388(b) (1986 Supp.).

63. Although the word "domestication" is used throughout the statute, it clearly provides that a complete change of domicile occurs and that the corporation once in Delaware will be treated as if it had been in Delaware from the very beginning of its existence. See DEL. CODE ANN. tit. 8, § 388(d) (1986 Supp.).

64. B.C. REV. STAT. ch. 59, § 37(3) (1979).

65. The records of the Secretary of State's office indicate the following breakdown of jurisdictions from which foreign corporations were continued in Wyoming: 20 from unspecified Canadian jurisdictions, 9 from British Columbia, 5 from Ontario, 3 from the federal Canadian jurisdiction, 2 from Manitoba, 1 from Quebec, and 1 from Liechtenstein.

66. UTAH CODE ANN. §§ 16-10-51.5 to -7 (1985).

67. LA. REV. STAT. ANN. tit. 12, § 164 (West 1988 Supp.).

"continue" in Louisiana, but rather is treated as a new corporation once its domicile has been changed to Louisiana.⁶⁸

PURPOSE AND FUNCTION OF CONTINUANCE AND TRANSFER

A true continuance procedure causes a change in a corporation's domicile. Following continuance, the corporation is treated as having always been incorporated in the new jurisdiction. It would be much like an individual moving to a new state; the individual's age and personal history certainly would not change even though the person's domicile has changed. This result is expressly provided in the Delaware statute.⁶⁹ The Wyoming statutes do not set this forth as clearly, providing only that completion of the statutory steps will result in "continuing the foreign corporation in Wyoming as if it had been incorporated in this state."⁷⁰ However, the very nature of the word "continue" would tend to lead to such an understanding of the effect of the statute. This is clearly the result under Canadian precedent.⁷¹ The legislative history of the Wyoming statute would make the Canadian precedent highly persuasive in Wyoming.⁷²

The law of the domicile of a corporation is applicable for various purposes. For example, courts in the state of a corporation's domicile have personal jurisdiction over the corporation.⁷³ Domicile might also affect a corporation for taxation purposes.⁷⁴ Perhaps the most significant consequence of domicile is the applicability of the internal rules of corporate governance contained in the corporations laws of the jurisdiction of domicile.

Thus, a common reason a corporation seeks to continue in another jurisdiction is to alter the rules which must be followed with respect to its structure and relation to its shareholders. For example, a public cor-

68. The statutory procedure requires the filing of documents amounting to articles of incorporation, with the result that a certificate of incorporation is issued. The statutes expressly provide that a corporation is deemed to be incorporated solely under Louisiana law "effective as of the time of filing such documents with the Secretary of State." LA. REV. STAT. ANN. tit. 12, § 164C (West 1988 Supp.).

69. DEL. CODE ANN. tit. 8, § 388(d) (1986 Supp.).

70. WYO. STAT. § 17-1-803(a) (1977).

71. Literature on Canadian law describes the continuance as involving a simple change of jurisdiction under which a corporation is governed without any alteration in the corporation's identity or existence. See Canada Corp. L. Rep. (CCH Canadian Limited) ¶ 10,300; B. WELLING, CORPORATE LAW IN CANADA 248 (1984). Ruling TR-1 dated June 24, 1974 of the Department of National Revenue, Taxation, in Canada held that the continuance of a pre-1960 Ontario company in Alberta at that time would not result in the corporation being considered to have incorporated in Alberta after April 26, 1965 (even though the continuance occurred after that date). It is important to note that under § 174(1) of the Alberta Companies Act, ALTA. REV. STAT. ch. 20, § 174(1) (1980), the effect of a continuance is described as causing the corporation to be treated "as if it had been incorporated under this Act." *Id.* Note the similarity of this language to the language of WYO. STAT. § 17-1-803(a) (1977).

72. See *supra* notes 16-19 and accompanying text.

73. 8 W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 4029 (rev. perm. ed. 1975).

74. *Id.* at § 4042.

poration may seek to continue to a jurisdiction having more favorable "anti-takeover" laws and less protection for minority shareholders.⁷⁵ This very aspect of a continuance requires substantial consideration of the corporation's articles of incorporation, charter, or constitution and its operation under the laws of the new jurisdiction. This may be an extremely difficult task if the move is between jurisdictions whose corporate laws are fashioned on radically different premises.⁷⁶

Other motivations for change of domicile by continuance have been observed in practice. One which has been acknowledged in literature and in legislation is the threat of confiscation by enemy powers. The legislative history of the Wyoming statutes indicates that the statutes were intended to provide protection against economic or political security threats to European financial interests.⁷⁷ In Delaware, a companion to the continuance statute was adopted to provide for a temporary transfer of domicile in the event of "emergency condition" such as war, revolution, threat of expropriation, etc.⁷⁸ In May 1976, a law was adopted in the New Hebrides providing for expedited transfer of legal domicile in order to facilitate flight by a corporation from war or political instability.⁷⁹ A prime example of the usefulness of continuance for this purpose is apparent from the acts of the United States itself under section two of the Trading with the Enemy Act.⁸⁰ Under this law, during World War I the United States

75. When certain Canadian provinces began modernizing their corporate statutes, it was thought corporations would flee, by continuance, to jurisdictions having a more rigid British registration-type structure in order to avoid having increased rights in their shareholders. This exodus did not materialize. B. WELLING, *CORPORATE LAW IN CANADA* 248 (1984).

76. The jurisdictions approved to date by the Secretary of State's office for continuance and transfer have a decidedly British commonwealth character: British Virgin Islands, South Australia, British Columbia, Ontario, Manitoba, Quebec, federal Canada jurisdiction, and Liechtenstein. British corporation law has had three periods: the "letters patent" era in which companies such as the Hudson's Bay Company and the East India Company were granted franchises amounting to monopolies, the "registration" era brought about the reforms of 1884 (see the English Joint Stock Companies Act, 1884, 7 & 8 Victoria ch. 110), and the more modern system existing in various parts of the former commonwealth nations today. In Canada the modern era generally began with the adoption of the Ontario Business Corporations Act, ONT. REV. STAT. ch. 53 (1970), which was taken in large part from New York State law. This approach was refined in the federal Canada Business Corporations Act, Can. Stat. ch. 33 (1974-75). The modern approach seems to prevail in all Canadian jurisdictions with the exception of Nova Scotia, which follows the English "registration" form, and in British Columbia which has a hybrid type of "registration" scheme of legislation. British Columbia and Nova Scotia appear to be the only two Canadian jurisdictions which treat a corporation's constitution as a contract among its shareholders. In British Columbia, Nova Scotia, and Newfoundland, a "memorandum of association" or "articles of association" are to be filed, which correspond roughly to articles of incorporation plus some broad initial bylaws plus some provisions which exist by virtue of statutory law in Wyoming governing internal corporate affairs. A move between a "registration" jurisdiction and a "modern" jurisdiction will involve adding or deleting substantial provisions because one jurisdiction relies upon its corporate documents for corporate governance while the other jurisdiction relies upon statutory law for the same. For a further discussion of the basic concepts of corporation law in Canada, see B. WELLING, *CORPORATE LAW IN CANADA* 83-124, 248-51 (1984).

77. The letter from Ranchmen's Exploration, Inc., *supra* note 16 and accompanying text, speculates that this would be one of the uses of the Wyoming statute.

78. DEL. CODE ANN. tit. 8, § 389 (1986 Supp.).

79. See discussion of this law in Theroux, *Transferred Corporate Domicile: A New Hebrides Refuge From War And Other Calamities*, 25 AM. J. COMP. LAW 405 (1977).

80. Trading with the Enemy Act, ch. 106, 40 Stat. 411 (1917).

looked at the state of domicile of a corporation in order to determine if its assets were controlled by the "enemy." The threats of revolution, independence of a colony, partition of a country, nationalization, or other forms of confiscation all may cause a corporation to seek to change its domicile.

There are obviously some tax motivations which have led certain corporations to continue in Wyoming.⁸¹ Certain categories of tax motivation can be distinguished. The first and most obvious is the interplay between foreign tax rates and tax rates in the United States. The effect of the United States credit for foreign taxation also may create incentives for a change of domicile. Another factor may be introduced if the foreign jurisdiction has been granting graduated or deferred tax rates which become more penalizing in later stages of the corporation's existence, at which time it may seek to change its domicile. Also, certain property taxes or property tax rates are based upon the domicile of the property's owner, and may be reduced by a change of domicile.⁸² The Internal Revenue Service has apparently in the past treated a continuance as a constructive transfer of assets, although tax-free as an "F"-type reorganization.⁸³ Later rulings have construed these changes of domicile as constructive exchanges of stock, to which Section 1036 of the Internal Revenue Code would also apply.⁸⁴ Canadian tax treatment of continuance in Wyoming of a Canadian corporation would deem the corporation's tax year to end immediately and would deem the corporation to have disposed of all of its properties at fair market value and reacquired them at that amount immediately prior to year end, and would subject the "net surplus" of the corporation to a 25 percent tax.⁸⁵

Frequently, the motivation for a continuance is simply geographical. For example, the purported reason Ranchmen's Exploration, Inc. sought enabling legislation in Wyoming was to permit it to more effectively segregate its United States and foreign oil and gas reserves. The ownership of mineral concessions in a foreign jurisdiction may be motivation for a United States corporation to transfer its domicile to that jurisdiction.

81. A full discussion of all of the tax aspects of a continuance or transfer is beyond the scope of this article. A useful discussion of some of the basic United States income tax considerations involved can be found in Plambeck, *Domestication of Foreign Corporations: Tax Planning in the Net Of Internal Revenue Code Section 7701(b)*, 11 N.C.J. INT'L L. & COM. REG. 131 (1986). A discussion of the Canadian tax aspects of continuance or transfer can be found in Boulton, *The Taxation Of Corporate Reorganizations*, 32 CAN. TAX J. 792 (1984).

82. For example, the author was advised by a Swiss trust officer that one continuance in Wyoming was motivated by a French property tax. France adopted a real estate tax which applied to real estate owned by certain "tax haven" corporations such as those incorporated under the laws of Panama, Liechtenstein, or Switzerland. A continuance in Wyoming by such a corporation served to avoid this tax.

83. I.R.C. § 368(a)(1)(F) (1982). See, e.g., Priv. Ltr. Rul. 7753074, I.R.S. Letter Rul. Rep. (CCH) (Sept. 30, 1977).

84. See Priv. Ltr. Rul. 8329023, I.R.S. Letter Rul. Rep. (CCH) (April 15, 1983). This approach by the Internal Revenue Service has the theoretical flaw of deeming any exchange to have occurred. See the general discussion of continuances in Gen. Couns. Mem. 38,989, reprinted in 19 TAX NOTES 881, 885, 886 (June 6, 1983).

85. Boulton, *The Taxation Of Corporate Reorganizations*, 32 CAN. TAX J. 792 (1984).

A corporation may seek to continue in Wyoming in order to obtain resident status for purposes of contract bidding preference.⁸⁶ The Public Works and Contracts Act⁸⁷ provides that a corporation "organized under the laws of the state"⁸⁸ and meeting certain other qualifications is entitled to the five percent resident bid preference. Although the Wyoming statute enabling intra-national "domestication" in Wyoming expressly provides that the procedure does not permit the domesticating corporation to obtain the bid preference,⁸⁹ the continuance statute contains no such prohibition.

PROBLEMS AND PITFALLS

Certain difficulties obviously arise in attempting to change domicile across international boundaries. The differing legal cultures create some problems in communication between counsel, and many issues must be resolved. Simple compliance with the technical requirements described above does not always produce the best result for the corporation, and some planning must be undertaken in order to prevent a wide variety of problems.

With respect to a continuance, a significant question arises as to what is contained in the articles of incorporation of the corporation once it has continued in Wyoming. Many other jurisdictions have provided in their continuance statutes that the articles of continuance shall become the articles of incorporation of the continuing corporation;⁹⁰ this would not work in Wyoming as our legislation is currently structured because the articles of continuance lack many vital pieces of information. The question of the construction of a corporation's constitution is extremely difficult with respect to corporations continuing from English registration-type jurisdictions,⁹¹ in which the basic corporate charters are often 50 pages long and spell out many items which are contained in Wyoming law or in directors' bylaws.

For example, the shares of the corporation may acquire preemptive rights following the continuance if the corporate charter did not expressly negate them in the prior jurisdiction, even though the laws of the prior jurisdiction denied preemptive rights.⁹² As another example, the foreign jurisdiction may permit an unlimited number of shares to be authorized in the articles of incorporation; what is the filing fee in such an event?

86. Memorandum, *supra* note 26. The memorandum specifically dealt with the request of a Utah corporation, Circle G, Incorporated, to continue in Wyoming in order to be deemed a "resident" for purposes of obtaining the bid preference bestowed upon Wyoming residents for public contracts. *Id.* at 2-3.

87. WYO. STAT. §§ 16-6-101 to -120 (1977 & Cum. Supp. 1987).

88. WYO. STAT. § 16-6-101(a)(1)(C), to (D) (Cum. Supp. 1987).

89. WYO. STAT. § 17-1-1101 (1977) provides that "a corporation does not become a resident for the purpose of [WYO. STAT.] 16-6-101 through 16-6-118 solely because it becomes a domestic corporation under this section."

90. See, e.g., B.C. REV. STAT. ch. 59, § 36(3) (1979).

91. See *supra* note 76.

92. WYO. STAT. § 17-1-123 (1977).

It is often prudent to have legal counsel in the foreign jurisdiction review typical articles of incorporation under Wyoming law and incorporate the necessary provisions by amendment of the corporation's charter at the same time the resolution for the continuance is adopted.

Another problem which should be addressed in planning is whether the corporation can thrive under Wyoming law once the continuance is complete. There are many provisions currently existing in the Wyoming Business Corporation Act which are distasteful to certain corporations, especially publicly-traded companies. Some of these provisions are summarized below.

First, mandatory cumulative voting. Wyoming law provides that each shareholder *shall* have the right to cumulate votes for the election of directors if the shareholder is entitled to vote at all.⁹³

Second, possible requirement of shareholder vote to mortgage or pledge all or substantially all assets outside of the ordinary course of business. Prior to June of 1988, it was generally believed that Wyoming law required a shareholder vote in order to properly authorize a mortgage of all or substantially all assets of a corporation outside of its ordinary course of business.⁹⁴ On June 2, 1988, the Wyoming Supreme Court disagreed with this assumption, and held that under Wyoming law a mortgage is always presumed to be in the ordinary course of business.⁹⁵ The majority was composed of only three of the five supreme court members, one of whom has now retired.⁹⁶ If the holding is reversed, the law is quite clear that mortgages are not always to be considered as within the ordinary course of business.⁹⁷

Third, two-thirds shareholder vote required for amendments to articles of incorporation,⁹⁸ and two-thirds shareholder vote required for a merger.⁹⁹

Fourth, 50-day record date. Wyoming permits a maximum 50-day notice of a shareholders' meeting,¹⁰⁰ and a maximum 50-day closing of the transfer books prior to a meeting.¹⁰¹ Many jurisdictions have a 60-day

93. WYO. STAT. § 17-1-130(d) (1977).

94. See, e.g., 8 Z. CAVITCH, BUSINESS ORGANIZATIONS WITH TAX PLANNING § 163.03[1] (1987); 2 MODEL BUSINESS CORP. ACT ANN. 2D §§ 78, 79 ¶ 3.02 (1971).

95. Carroll v. Wyoming Prod. Credit Ass'n, No. 87-33, slip op. at 5 (Wyo. Supreme Court June 2, 1988).

96. Justice C. Stuart Brown retired June 30, 1988. Justice Michael Golden has been appointed to fill the position.

97. It is generally considered that a mortgage of corporate assets is outside of the ordinary course of business if it is not the corporation's business to market or deal in such property or assets. Spoerri, *Statutory Requirements For Authorization of Corporate Mortgage*, 18 BUS. LAW. 731, 734 (1963); *In re James Calvin Belk Constr. Co.*, 4 Bankr. 132 (Bankr. N.D. Miss. 1980).

98. WYO. STAT. § 17-1-302(a)(iii) (1977).

99. WYO. STAT. § 17-1-403(b) (1977).

100. WYO. STAT. § 17-1-126 (1977).

101. WYO. STAT. § 17-1-127 (1977).

notice and record date provision, which permits additional time for a public corporation to prepare and receive approval of the necessary proxy statements.

There are other provisions of Wyoming law which a corporation may find archaic, confusing, or overly burdensome.¹⁰²

All of these problems frequently lead a corporation to desire to continue in Wyoming and thereafter immediately merge with a subsidiary previously formed in another, more favorable, jurisdiction. This desire to merge raises a thorny question with respect to public companies or corporations which are unable to take shareholder action upon waiver of notice. In either case, due to the desire to avoid the large expense of public shareholders meetings or the time involved in giving notice of shareholders' meetings, the corporation may attempt both to continue and merge upon authority granted in a single shareholders' meeting. This raises a theoretical problem: how can the foreign corporation's shareholders resolve to continue in Wyoming, and at the same time resolve to merge a Wyoming corporation with a corporation of another state? It would seem that the second vote must be taken at such time as the corporation is indeed a Wyoming corporation. Simply adopting two separate resolutions, the second perhaps made contingent upon the issuance of a certificate of continuance, may be unsound as a matter of law. However, the issue likely would not arise in dealings with governmental authorities, and the various necessary certificates of continuance and merger would be received. Nevertheless, it would seem more prudent to have all the work done in advance and have agents standing by in the necessary governmental offices during the shareholders' meeting, in order to permit adjournment after the first resolution, during which the necessary filings could be made and certificates received, and thereafter reconvene the meeting a few minutes later in order to adopt the second resolution. This requires some cooperation from the governmental entities, and the Wyoming Secretary of State's office has been quite cooperative in meeting exigencies such as this.

This question of taking two votes at the same time also arises when the corporation may wish to conform its articles of incorporation to the

102. See Comment, *Wyoming Business Corporation Act: Is It Time For A Change?* 22 LAND & WATER L. REV. 523 (1987). Although the comment argues in favor of adoption of the Revised Model Business Corporation Act as preferable to the current Wyoming Business Corporation Act, some provisions of the Revised Model Act may likewise be distasteful to a large public company concerned with the takeover laws of the jurisdiction of its domicile. For example, section 6.01(a) of the Revised Model Business Corporation Act continues to require that all shares of a class have identical rights; it is therefore not clear if this would permit the use of a discriminatory self-tender and exchange offer as was involved in *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985). The same problem exists currently under WYO. STAT. § 17-1-113(a) (1977). The Revised Act retains in section 702, the provision currently appearing in WYO. STAT. § 17-1-125(c) (1977), permitting a ten percent shareholder to call a special meeting, and this ten percent figure may not be increased by alteration of the articles of incorporation. Section 7.27(b) of the Revised Act would require that any provisions in articles of incorporation requiring a "super majority" vote be adopted only if approved by the same super majority; Wyoming law currently does not have such a requirement. See WYO. STAT. § 17-1-1004 (1977).

requirements of Wyoming law. Technically this should not be done before the continuance, because the Wyoming articles of incorporation would be inappropriate in the foreign jurisdiction. However, again it must be asked how a foreign corporation can amend its articles of incorporation in Wyoming before the Secretary of State has issued the certificate of continuance. The procedures and timing suggested above would again seem most prudent.

The transfer procedure, being far simpler, has fewer technical obstacles to be overcome. It should be noted that Wyoming may be unique among all jurisdictions having transfer procedure in that a shareholders' resolution is not required, nor is there provision for dissenters' rights.¹⁰³ Again, however, a shareholders' meeting may be required in order to adjust the corporation's charter to the requirements of the new jurisdiction. Because of the steep toll charge levied,¹⁰⁴ the corporation may wish to consider divesting itself of certain assets by partial liquidation or other means, or it may wish to take steps which will cause unrealized losses to be recognized on its books.

The corporation must also plan for the transition by taking into account matters of timing. Because the Wyoming Secretary of State deems Wyoming domicile to cease upon issuance of the certificate of transfer,¹⁰⁵ counsel must consider the effect of any possible delay in obtaining the necessary certificate of continuance from the foreign jurisdiction. It would be prudent to minimize the transaction of business during this interim when the corporation might be in a legal "twilight zone" in which it arguably lacks the good standing necessary to validly contract or otherwise conduct business.¹⁰⁶ This sort of problem might also occur during

103. Under WYO. STAT. § 17-1-804 (1977), and pursuant to the Secretary of State's form Application for Certificate of Transfer, it is only required that the corporation submit a "copy of the corporate resolution authorizing the transfer from the State of Wyoming to the new jurisdiction." The Secretary of State's office, following informal consultation with the Attorney General's office, has concluded that only a directors' resolution is required. This is in keeping with the theory that shareholders only have such rights as are expressly set forth in the statute, and there is no express statutory requirement for a shareholder vote. For example, section 37(4) of the British Columbia Company Act, B.C. REV. STAT. ch. 59, § 37(4) (1979) requires a shareholder vote, and § 175 of the Alberta Companies Act, ALTA. REV. STAT. ch. 20, § 175 (1980) requires a "special resolution," which requires a 75% majority as defined in ALTA. REV. STAT. ch. 20, § 1(y)(i)(B) (1980).

104. WYO. STAT. § 17-2-101(c) (1977).

105. See *supra* text accompanying note 36.

106. In the event the foreign jurisdiction is dissatisfied with the transfer certificate or other documentation presented by the corporation (for example if the foreign jurisdiction requires proof of the corporation's charter or its application for certificate of transfer, and deems some of the provisions thereof unacceptable), there is no direct provision for the corporation to take remedial action in the capacity of a domestic corporation. The records of the Secretary of State indicate an instance in which a corporation attempted to amend its application for certificate of transfer after the certificate of transfer was issued; the corporation was not treated as a domestic corporation. In order to avoid questions of the authorization of any amendment to the transfer documents after the certificate has been issued, it would appear most prudent to have the foreign jurisdiction review and informally approve all documents in advance.

a continuance procedure, depending upon the provisions of the law of the foreign jurisdiction.¹⁰⁷

CONCLUSION

Attorneys making use of Wyoming law for emigration or immigration of corporations must carefully assess the desirability of the same and carefully plan to assure that the desired results will be accomplished. A change of corporate domicile may be desirable for geographical, tax, or other reasons peculiar to a corporation, or the corporation may simply deem it desirable to change its domicile to a jurisdiction having laws which provide for more favorable regulation of the internal affairs of the corporation. Counsel must consider at great length the differences in the corporation laws of the existing and proposed jurisdictions, and consider changing the corporation's charter or bylaws to account for differing laws in the two jurisdictions.

107. In other jurisdictions, the transfer may not be deemed complete until proof of acceptance in the foreign jurisdiction is received. For example, Alberta provides that the transfer from Alberta to another jurisdiction is not complete until the "instrument of continuation" is issued by the other jurisdiction. ALTA. REV. STAT. ch. 20, § 175 (1980).