

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2  
3 In the Matter of the Collection Agency License  
Application of:

4 **EXLSERVICE PHILIPPINES, INC.**  
5 **c/o Rohit Kapoor, President**  
6 **280 Park Avenue, 38<sup>th</sup> Floor**  
**New York, NY 10017**

Petitioners.

No. 15F-BD001-BNK

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the  
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated  
9 herein by this reference, adopts the Administrative Law Judge's Findings of Undisputed Fact,  
10 Conclusions of Law and modifies the Recommended Order to correct the statute reference as  
11 follows:

12 **ORDER**

13 **IT IS ORDERED** terminating the Department's June 20, 2014 denial of Petitioner's  
14 Application for License. It is also ordered that the Department continue processing Petitioner's  
15 Application to determine whether it meets the other requirements set forth in A.R.S. §§32-1051 and  
16 32-1053.

17 **NOTICE**

18 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final  
19 unless Petitioners submit a written motion for rehearing no later than thirty (30) days after service  
20 of this decision. The motion for rehearing or review must specify the particular grounds upon  
21 which it is based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties  
22 to the hearing, including the Attorney General, if the Attorney General is not the party filing the  
23 claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to  
24 A.R.S. § 41-1092.08(H).

25 DATED this 30th day of December 2014.

26  
27   
28 Lauren W. Kingry  
Superintendent of Financial Institutions

1 ORIGINAL filed this 30th day of December, 2014 in the office of:

2 Lauren W. Kingry, Superintendent of Financial Institutions  
3 Arizona Department of Financial Institutions  
4 ATTN: June Beckwith  
5 2910 North 44th Street, Suite 310  
6 Phoenix, Arizona 85018

7 Copy of the foregoing e-filed this  
8 30th day of December, 2014, in the office of:

9 Diane Mihalsky, Administrative Law Judge  
10 Office of the Administrative Hearings  
11 1400 West Washington, Suite 101  
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed/emailed this  
14 30th day of December, 2014, to:

15 Heidi McNeil Staudenmaier, Esq.  
16 SNELL & WILMER LLP  
17 One Arizona Center  
18 400 East Van Buren  
19 Phoenix, AZ 85004-2202  
20 [hstaudenmaier@swlaw.com](mailto:hstaudenmaier@swlaw.com)  
21 Attorneys for Petitioner

22 Craig Raby, Assistant Attorney General  
23 Office of the Attorney General  
24 1275 West Washington  
25 Phoenix, AZ 85007  
26 [Craig.raby@azag.gov](mailto:Craig.raby@azag.gov)

27 Richard Fergus  
28 Licensing Manager  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018  
[Rfergus@azdfi.gov](mailto:Rfergus@azdfi.gov)

AND COPY MAILED SAME DATE by Certified Mail, Return Receipt Requested, to:

Mr. Rohit Kapoor  
President  
ExlService Philippines, Inc.  
280 Park Avenue, 38<sup>th</sup> Floor  
New York, NY 10017

By: 



1 application, EXL's principal office is in the Philippines. On October 22, 2013, the  
2 Arizona Corporation Commission issued a Certificate of Good Standing to EXL.<sup>3</sup>

3 3. EXL specializes in business process outsourcing and operations  
4 management services, among other lines of business, for global clients in a variety of  
5 highly regulated business sectors, including the insurance, health care, energy, and  
6 financial services industries.<sup>4</sup> EXL has been licensed as a collection agency by 21  
7 different jurisdictions in the United States, including 19 states.<sup>5</sup>

8 4. On January 9, 2014, EXL submitted a Collection Agency License Application  
9 ("Application") to the Department.<sup>6</sup> The Application stated that EXL's president, CEO,  
10 and Active Manager is Rohit Kapoor.

11 5. Mr. Kapoor is a United States citizen.

12 6. The Application further stated that Mr. Kapoor's address was in New York  
13 City, New York, and that he was previously the Active Manager for EXLService.com  
14 (India) Private Limited, whom the Department had licensed from March 26, 2012,  
15 through July 25, 2013.

16 7. The Department's Collection Agency Supplement License Application  
17 Instructions explains that to be qualified for licensure, "[t]he individual applicant or, if  
18 the applicant is other than an individual, the individual who will be the Active Manager  
19 of the applicant shall: a) Be a citizen of the United States . . . ."<sup>7</sup>

20 8. On June 20, 2014, the Department issued a letter denying EXL's Application  
21 under A.R.S. § 32-1023(A)(1) because EXL "is not a US citizen."<sup>8</sup> EXL filed a timely  
22 appeal.<sup>9</sup>

23 9. The Department's August 1, 2012 Substantive Policy Statement # GE-1 sets  
24 forth various factors that the Department must consider when it evaluates applications  
25

26  
27 <sup>3</sup> See the Department's Exhibit 3 at 7.

28 <sup>4</sup> See EXL's Exhibit 4.

29 <sup>5</sup> See EXL's Exhibit 5.

30 <sup>6</sup> See the Department's Exhibit 1.

<sup>7</sup> EXL's Exhibit 1.

<sup>8</sup> The Department's Exhibit 4 at 1.

<sup>9</sup> See the Department's Exhibit 5.

1 for a license.<sup>10</sup> The factors mentioned do not include a company's place of  
2 incorporation or the Active Manager's citizenship. The Department has not alleged that  
3 EXL or Mr. Kapoor does not meet any other requirements for licensure, only that EXL  
4 does not meet the requirement in A.R.S. § 32-1023(A)(1) because it is a foreign  
5 corporation.

6 10. The Department currently licenses as collection agencies two Canadian  
7 companies and one Indian company.<sup>11</sup> These collection agencies will remain licensed  
8 at least until the end of 2014.

9 **CONCLUSIONS OF LAW**

10 1. This matter lies within the Department's jurisdiction.<sup>12</sup>

11 2. EXL bears the burden of proof to establish that it meets statutory  
12 qualifications to be licensed as a collection agency.<sup>13</sup> The parties agree that the issue  
13 in this case is purely legal. The proponent of a legal position bears the burden to  
14 establish the merits of that position.<sup>14</sup>

15 3. A.R.S. § 32-1023 includes among the qualifications required for licensure as  
16 a collection agency the following:

17 A. An applicant for a license issued under this chapter shall:

18 1. *Be a citizen of the United States* and be of good moral  
19 character.

20 2. Not have been convicted of a crime involving moral  
21 turpitude.

22 3. Not have defaulted on payment of money collected or  
23 received for another.

24 4. Not have been a former licensee under the provisions of  
25 this chapter whose license was suspended or revoked and  
26 not subsequently reinstated.

27 <sup>10</sup> See EXL's Exhibit 3.

28 <sup>11</sup> See EXL's Exhibit 2.

29 <sup>12</sup> See A.R.S. § 6-122(A0).

30 <sup>13</sup> See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*,  
74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>14</sup> See A.A.C. R2-19-119(B)(3).

1 B. If the applicant for a license is a firm, partnership,  
2 association or corporation, the qualifications required by  
3 subsection A of this section shall be required of the individual  
4 in active management of the firm, partnership, association or  
5 corporation.

6 C. When a licensed agency ceases to be under the active  
7 management of a qualified person, as defined in rules,  
8 notice of this fact shall be given to the superintendent within  
9 ten days. The licensee shall have ninety days after the  
10 termination of the services of the acting manager to replace  
11 the qualified person and notify the superintendent of the  
12 qualified replacement. . . .

13 (Emphasis added.)

14 4. An agency “is not bound to deal with all cases at all times in the same  
15 manner as it had dealt with some past cases that might seem comparable.”<sup>15</sup> Although  
16 the Department implies that past alien corporations to whom it granted collection  
17 agency licensure “[had] a United States residence,” unlike EXL,<sup>16</sup> the Department cites  
18 no authority to support any distinction between alien non-resident corporations and  
19 alien resident corporations in the context of licensing decisions made under Arizona  
20 Revised Statutes, Title 32, Chapter 9.<sup>17</sup>

21 5. If the Department made a mistake in licensing the two Canadian companies,  
22 the Indian company, and EXLService.com (India) Private Limited as collection  
23 agencies, despite the requirements of A.R.S. § 32-1023(A)(1), its previous mistakes do  
24 not estop it from denying EXL’s license application.<sup>18</sup>

25 6. In Arizona, because administrative agencies’ interpretations of the statutes  
26 that they are charged with implementing are entitled to deference,<sup>19</sup> ambiguities in

27 <sup>15</sup> See *Bishop v. Law Enforcement Merit Sys. Council*, 119 Ariz. 417, 422, 518 P.2d 262, 267 (App.  
1978).

28 <sup>16</sup> See the Department’s Legal Brief in Lieu of Administrative Hearing at page 3 note 3 and page 5 line 3.

29 <sup>17</sup> The Department cites several statutes contained in Arizona Revised Statutes, Title 10, relating to  
30 corporations and associations. None of these statutes relate to an agency’s licensing decisions under  
Arizona Revised Statutes, Title 32.

<sup>18</sup> See *Thomas and King, Inc. v. City of Phoenix*, 208 Ariz. 203, 210, 92 P.3d 429, 436 (App. 2004).

<sup>19</sup> See, e.g., *Bridgestone Retail Tire Operations v. Industrial Commission*, 227 Ariz. 453, 456 ¶¶ 12, 258  
P.3d 271, 274 (2011).

1 statutes must be resolved according to the implementing agency's interpretation.<sup>20</sup>

2 Notably, the Department does not argue that A.R.S. § 32-1023 is ambiguous; instead,  
3 the Department argues that A.R.S. § 32-1023(A)(1) requires that both individual and  
4 corporate license applicants must be United States citizens and that A.R.S. § 32-  
5 1023(B) requires that the active manager of a corporate licensee must also be a United  
6 States citizen.

7 7. An agency may not disregard clear statutory directives or legislative intent.<sup>21</sup>

8 "A cardinal rule of statutory interpretation is to give full effect to each statutory word or  
9 phrase so that no part is rendered void, superfluous, contradictory or insignificant."<sup>22</sup>

10 The plain language of A.R.S. § 32-1023(A)(1) requires that an applicant for collections  
11 agency licensure must be a citizen of the United States and be of "good moral  
12 character." Because an artificial business entity such as a corporation can have no  
13 moral character, the Department's construction renders superfluous the requirement of  
14 a "good moral character" for a corporate applicant.

15 8. Fundamental to statutory construction is the presumption that "what the  
16 Legislature means, it will say."<sup>23</sup> A.R.S. § 32-1023(B) begins with the conditional  
17 phrase, "[i]f the applicant . . . is a firm, partnership, association or corporation," then the  
18 requirements of A.R.S. § 32-1023(A) must be satisfied by the active manager. The  
19 Department's construction of A.R.S. § 32-1023(B) inserts the additional condition that if  
20 the applicant is an alien corporation, then the applicant must be a citizen, but the active  
21 manager must be both a citizen and satisfy the remaining qualifications required in  
22 A.R.S. § 32-1023(A). But that is not what the legislature said.<sup>24</sup>

23 9. "[A] statute should be explained in conjunction with other statutes to the end  
24 that they may be harmonious and consistent; . . . if statutes relate to the same subject

25 <sup>20</sup> See, e.g., *Eaton v. Arizona Health Care Cost Containment System*, 206 Ariz. 430, 434 ¶ 16, 79 P.3d  
26 1044, 1048 (2003).

27 <sup>21</sup> See, e.g., *Cochise County v. Arizona Health Care Cost Containment System*, 170 Ariz. 443, 445, 825  
28 P.2d 968, 970 (App. 1991).

29 <sup>22</sup> *Westburne Supply, Inc. v. Diversified Design and Construction, Inc.*, 170 Ariz. 598, 600, 826 P.2d  
30 1224, 1226 (App. 1992).

<sup>23</sup> *Canon School Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994).

1 and are thus *in pari materia*, they should be construed together with other related  
2 statutes as though they constituted one law.”<sup>25</sup> The Department cites A.R.S. § 32-1024  
3 as supporting its construction of A.R.S. § 32-1023(A) and (B).<sup>26</sup> A.R.S. § 32-1024  
4 concerns Licensing Out-of-State Collection Agents and provides as follows:

5 The superintendent shall issue a license to operate a  
6 collection agency to a person who holds and presents with  
7 the person’s application a valid and subsisting license to  
8 operate a collection agency issued by another state or an  
9 agency of another state if:

- 10 1. Requirements for securing the license were, at the time of  
11 issuance, substantially the same or equal to requirements  
12 imposed by this chapter.
- 13 2. The state concerned extends reciprocity under similar  
14 circumstances to licensed collection agents of this state.
- 15 3. The application is accompanied by the fees and financial  
16 and bonding requirements set forth in this chapter.

17 Although EXL is licensed in 19 other states, it did not submit its application for  
18 licensure under A.R.S. § 32-1024. The Legislature’s decision to create a more  
19 streamlined application procedure in A.R.S. § 32-1024 for out-of-state applicants who  
20 are licensed in other states does not change the plain language of A.R.S. § 32-1023(A)  
21 and (B) or support the Department’s construction of A.R.S. § 32-1023.

### 22 **RECOMMENDED ORDER**

23 Based on the foregoing, it is recommended that the Department rescind its June  
24 20, 2014 denial of EXL’s Collection Agency License Application and continue  
25 processing EXL’s Application to determine whether EXL meets the other requirements  
26 set forth in A.R.S. § 32-1153.

---

27  
28 <sup>24</sup> See *Stuart v. Winslow Elementary School District No. 1*, 100 Ariz. 375, 383, 414 P.2d 976, 984 (1966)  
29 (All parts of a statute relating to the same subject shall be construed together, including a condition  
30 precedent for an action or requirement).

<sup>25</sup> *Pima County by City of Tucson v. Maya Const. Co.*, 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988).

<sup>26</sup> See the Department’s Legal Brief in Lieu of Administrative Hearing at page 4 line 12 to page 5 line 12.

