

IC 23-18-11

Chapter 11. Foreign Limited Liability Companies

IC 23-18-11-1

Law governing; denial of registration; prohibited business

Sec. 1. (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization, internal affairs, and the liability of members.

(b) A foreign limited liability company may not be denied registration by reason of a difference between the laws of the state or other jurisdiction where it was organized and Indiana law.

(c) A foreign limited liability company may not do any kind of business in Indiana that Indiana law prohibits a domestic limited liability company from doing.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-2

Certificate of authority; activities not constituting transaction of business

Sec. 2. (a) A foreign limited liability company may not transact business in Indiana until it obtains a certificate of authority from the secretary of state.

(b) Activities that do not constitute transacting business within the meaning of subsection (a) include the following:

- (1) Maintaining, defending, or settling a proceeding.
- (2) Holding meetings of the managers or members or carrying on other activities concerning internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's interests or other securities or maintaining trustees or depositaries with respect to those securities.
- (5) Selling through independent contractors.
- (6) Soliciting or obtaining orders, including those by mail or through employees or agents if the orders require acceptance outside Indiana before the orders become contracts.
- (7) Making loans or creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- (9) Owning real or personal property.
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not in the course of repeated transactions of a like nature.
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-3

Transaction of business without certificate of authority; sanctions

Sec. 3. (a) A foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a court proceeding in Indiana until it obtains a certificate of authority.

(b) The successor to a foreign limited liability company that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a court proceeding in Indiana based on that cause of action until the foreign limited liability company or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until the court determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If the court determines that a certificate of authority is needed, the court may stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

(d) A foreign limited liability company is liable for a civil penalty of not more than ten thousand dollars (\$10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in Indiana.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-4

Application for certificate of authority; contents; certificate of existence

Sec. 4. (a) A foreign limited liability company may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state for filing. The application must set forth the following:

- (1) The name of the foreign limited liability company, or if its name is unavailable for use in Indiana, a name that satisfies the requirements of section 7 of this chapter.
- (2) The name of the state or country under whose law it is organized.
- (3) The date of its organization and the latest date, if any, upon which it is to dissolve.
- (4) The street address of its principal office.
- (5) The address of its registered office in Indiana and the name of its registered agent at that office.
- (6) If the organizational documents of the foreign limited liability company provide for a manager or managers, a statement to that effect.

(b) The foreign limited liability company must deliver, with the completed application, a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of business records of the foreign limited liability

company in the state or country where the foreign limited liability company was organized.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-5

Amended certificate of authority

Sec. 5. (a) A foreign limited liability company authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it does any of the following:

- (1) Changes its name.
- (2) Changes the latest date, if any, upon which it is to dissolve.
- (3) Changes the state or country of its organization.
- (4) Converts to a different form of entity.

(b) The requirements of section 4 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.3; P.L.130-2006, SEC.34.

IC 23-18-11-6

Revocation of certificate of authority; powers and duties of foreign company with valid certificate

Sec. 6. (a) A certificate of authority authorizes the foreign limited liability company to transact business in Indiana. The state may revoke the certificate as provided in this article.

(b) Except as provided by this article, a foreign limited liability company with a valid certificate of authority has the same rights and privileges and is subject to the same duties, restrictions, penalties, and liabilities as a domestic limited liability company of like character.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-7

Name

Sec. 7. (a) If the name of a foreign limited liability company does not satisfy the requirements under IC 23-18-2-8, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in Indiana:

- (1) may add the words "limited liability company" or the abbreviations "L.L.C." or "LLC" to its name for use in Indiana; or
- (2) may use a fictitious name to transact business in Indiana if the company's real name is unavailable.

(b) Except as authorized by subsections (c) and (d), the limited liability company name, including a fictitious name, of a foreign limited liability company must be distinguishable upon the records of the secretary of state from the following:

- (1) The name of a limited liability company organized or authorized to transact business in Indiana.
- (2) A name reserved under IC 23-18-2-9.
- (3) The fictitious name of another foreign limited liability

company authorized to transact business in Indiana.

(c) A foreign limited liability company may apply to the secretary of state for authorization to use in Indiana the name of another limited liability company organized or authorized to transact business in Indiana that is not distinguishable from the name applied for. The secretary of state must authorize use of the name applied for if:

(1) the other limited liability company consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a circuit or superior court establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign limited liability company may use in Indiana the name, including the fictitious name, of another domestic or foreign limited liability company that is used in Indiana if the other limited liability company is organized or authorized to transact business in Indiana and the foreign limited liability company:

(1) has merged with the other limited liability company;

(2) has been formed by reorganization of the other limited liability company; or

(3) has acquired all or substantially all of the assets, including the name, of the other limited liability company.

(e) If a foreign limited liability company authorized to transact business in Indiana changes its name to a name that does not satisfy the requirements under IC 23-18-2-8, it may not transact business in Indiana under the changed name until it adopts a name satisfying the requirements and obtains an amended certificate of authority under section 5 of this chapter.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-8

Maintenance of registered office and registered agent; agent's consent; communications contact information; resignation

Sec. 8. (a) Each foreign limited liability company authorized to transact business in Indiana must continuously maintain in Indiana the following:

- (1) A registered office.
- (2) A registered agent, who may be:
 - (A) an individual who resides in Indiana and whose business office is identical with the registered office;
 - (B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or
 - (C) a foreign limited liability company, foreign corporation, or foreign nonprofit corporation authorized to transact business in Indiana whose business office is identical with the registered office.

(b) Each foreign limited liability company that qualifies after June 30, 2014, to do business in Indiana shall file with the secretary of state:

- (1) the registered agent's written consent; or
- (2) a representation that the registered agent has consented.

(c) Each foreign limited liability company qualified to do business in Indiana shall provide to the foreign limited liability company's registered agent, and update from time to time as necessary, the name, business address, and business telephone number of a natural person who is:

- (1) an officer, a director, an employee, or a designated agent of the foreign limited liability company; and
- (2) authorized to receive communications from the registered agent.

The natural person is considered to be the communications contact for the foreign limited liability company.

(d) A registered agent shall retain, in paper or electronic form, the information provided by a foreign limited liability company under subsection (c).

(e) If a foreign limited liability company fails to provide the registered agent with the information required under subsection (c), the registered agent may resign, as provided in section 10 of this chapter, as the registered agent for the foreign limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.36.

IC 23-18-11-9

Change of registered office or agent

Sec. 9. (a) A foreign limited liability company authorized to transact business in Indiana may change its registered office or

registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

- (1) Its name.
- (2) The street address of its current registered office.
- (3) If the current registered office is to be changed, the street address of its new registered office.
- (4) The name of its current registered agent.
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent or a representation that the new registered agent has consented to the change either on the statement or attached it to the appointment.
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company that the registered agent serves by notifying the limited liability company in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing, a statement of change that complies with the requirements of subsection (a) and states that the limited liability company has been notified of the change.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-10

Resigning agency appointment

Sec. 10. (a) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-18-12 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office, if the registered office is not discontinued. The secretary of state shall mail one (1) copy to the foreign limited liability company at its principal office address shown on the records of the secretary of state.

(c) The agency appointment is terminated, and the registered office is discontinued if so provided, thirty-one (31) days after the statement is filed.

As added by P.L.8-1993, SEC.301. Amended by P.L.228-1995, SEC.27.

IC 23-18-11-11

Service of process; perfection

Sec. 11. (a) The registered agent of a foreign limited liability company authorized to transact business in Indiana is the limited liability company's agent for service of process, notice, or demand

required or permitted by law to be served on the foreign limited liability company.

(b) A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority or as shown on the records of the secretary of state if at least one (1) of the following conditions apply to the foreign limited liability company:

- (1) It does not have a registered agent or its registered agent cannot with reasonable diligence be served.
- (2) It has withdrawn from transacting business in Indiana under section 13 of this chapter.
- (3) Its certificate of authority was revoked under section 16 of this chapter.

(c) Service is perfected under subsection (b) at the earliest of the following:

- (1) The date the foreign limited liability company receives the mail.
- (2) The date shown on the return receipt if signed on behalf of the foreign limited liability company.
- (3) Five (5) days after deposit in the United States mail if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-12

Withdrawal from state

Sec. 12. A foreign limited liability company authorized to transact business in Indiana may not withdraw from Indiana until it obtains a certificate of withdrawal from the secretary of state.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-13

Certificate of withdrawal; application

Sec. 13. A foreign limited liability company authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth the following:

- (1) The name of the foreign limited liability company and the name of the state or country under whose law it is organized.
- (2) That it is not transacting business in Indiana and that it surrenders its authority to transact business in Indiana.
- (3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in Indiana.
- (4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under

subsection 3.

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-14

Service of process on secretary of state; withdrawn companies

Sec. 14. After the withdrawal of the limited liability company is effective, service of process on the secretary of state under this chapter is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth in its application for withdrawal.

As added by P.L.8-1993, SEC.301.

IC 23-18-11-15

Revocation of certificate of authority; grounds

Sec. 15. The secretary of state may commence a proceeding under section 16 of this chapter to revoke the certificate of authority of a foreign limited liability company authorized to transact business in Indiana if at least one (1) of the following applies:

(1) The foreign limited liability company does not deliver its biennial report to the secretary of state within sixty (60) days after the biennial report is due.

(2) The foreign limited liability company is without a registered agent or registered office in Indiana for at least sixty (60) days.

(3) The foreign limited liability company does not inform the secretary of state under section 9 or 10 of this chapter that its:

(A) registered agent or registered office has changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued;

within sixty (60) days of the change, resignation, or discontinuance.

(4) A member, a manager, or an agent of the foreign limited liability company signed a document the member, manager, or agent knew was false in a material respect with the intent that the document be delivered to the secretary of state for filing.

(5) The secretary of state receives an authenticated certificate from the secretary of state or other official having custody of business entity records in the state or country under whose laws the foreign limited liability company is organized stating that it has dissolved or disappeared as the result of a merger.

(6) The foreign limited liability company fails to pay franchise taxes or penalties imposed by this article or another law within sixty (60) days after the date the franchise taxes or penalties are due.

As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.4; P.L.11-1996, SEC.28; P.L.63-2014, SEC.37.

IC 23-18-11-16

Notice of revocation; failure to correct; service of process; authority or registered agent

Sec. 16. (a) If the secretary of state determines that one (1) or more grounds exist under section 15 of this chapter for revocation of a certificate of authority, the secretary of state shall, under section 11 of this chapter, serve the foreign limited liability company with written notice of the determination unless the secretary of state:

- (1) receives a receipt showing failure of service of process upon the foreign limited liability company's registered agent at the address of the registered office; and
- (2) determines that the secretary of state's office has no record of the foreign limited liability company's principal office address.

(b) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist not more than sixty (60) days after service of the notice is perfected under section 11 of this chapter, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign limited liability company under section 11 of this chapter.

(c) The authority of a foreign limited liability company to transact business in Indiana ceases on the date shown on the certificate revoking the certificate of authority.

(d) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state the foreign limited liability company's agent for service of process in a proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at its principal office shown in the most recent communication received from the corporation stating the current mailing address of its principal office or, if it is not on file, in its application for a certificate of authority.

(e) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the limited liability company.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.38.

IC 23-18-11-16.5

Application for reinstatement; effective date of reinstatement

Sec. 16.5. (a) A foreign limited liability company that has had its certificate of authority revoked under section 16 of this chapter may apply to the secretary of state for reinstatement. The application for reinstatement must include all the following:

- (1) The name of the foreign limited liability company.
- (2) The effective date of the revocation of the foreign limited liability company's certificate of authority.
- (3) A statement that the ground or grounds for revocation of the foreign limited liability company's certificate of authority either did not exist or have been eliminated.
- (4) A statement that the foreign limited liability company's name satisfies the requirements of IC 23-18-2-8 or section 7 of this chapter.
- (5) A certificate from the department of state revenue stating that all taxes owed by the foreign limited liability company have been paid.

(b) If the secretary of state determines that the application contains the information required under subsection (a) and that the information is correct, the secretary of state shall:

- (1) cancel the certificate of revocation; and
- (2) prepare a certificate of reinstatement that states:
 - (A) that the certificate of revocation has been canceled; and
 - (B) the date that the reinstatement is effective;
- (3) file the original certificate of reinstatement; and
- (4) serve, as provided in section 11 of this chapter, a copy of the certificate of reinstatement on the foreign limited liability company.

(c) When the certificate of reinstatement is effective, the certificate of reinstatement relates back to and is considered to take effect as of the effective date of the revocation of the foreign limited liability company's certificate of authority and the foreign limited liability company resumes carrying on its business as if the revocation of the foreign limited liability company's certificate of authority had never occurred.

As added by P.L.63-2014, SEC.39.

IC 23-18-11-17

Denial of application for reinstatement; written notice; appeal

Sec. 17. (a) If the secretary of state denies a foreign limited liability company's application for reinstatement following revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company under IC 23-18-11-11 with a written notice that explains the reason or reasons for the denial.

(b) A foreign limited liability company may appeal the secretary of state's denial of reinstatement to the circuit or superior court of the county where the foreign limited liability company's registered office is located not more than thirty (30) days after service of the certificate of revocation is perfected. If the foreign limited liability company appeals to the court to set aside the revocation, the foreign limited liability company shall attach to the petition copies of the:

- (1) secretary of state's certificate of revocation of the limited liability company's certificate of authority;
- (2) foreign limited liability company's application for reinstatement; and

(3) secretary of state's notice of denial.

(c) The court may order the secretary of state to reinstate the certificate of authority or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.8-1993, SEC.301. Amended by P.L.63-2014, SEC.40.

IC 23-18-11-18

Uniform Partnership Act company

Sec. 18. A foreign limited liability company authorized to transact business in Indiana under the Indiana Revised Uniform Partnership Act (IC 23-16-10.1) (before its repeal July 1, 1993), is subject to this article, but is not required to obtain a new certificate of authority under this article to continue to transact business in Indiana.

As added by P.L.8-1993, SEC.301.