

## **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**

#### **Registered office; registered agent**

Sec. 8. 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.

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

#### **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.

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

### **IC 23-18-11-16**

#### **Notice of revocation; failure to cure deficiencies; consequences**

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.

(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.*

### **IC 23-18-11-17**

#### **Appeal of revocation determination**

Sec. 17. (a) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority 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 under section 11 of this chapter by doing the following:

- (1) Filing a petition with the court to set aside the revocation.
- (2) Attaching to the petition copies of its certificate of authority

and the secretary of state's certificate of revocation.

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

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

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

### **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.*