

Part 15

Authority of Foreign Corporation to Transact Business

16-10a-1501 Authority to transact business required.

- (1) A foreign corporation may not transact business in this state until its application for authority to transact business is filed by the division. This applies to foreign corporations that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.
- (2) The following, nonexhaustive list of activities does not constitute "transacting business" within the meaning of Subsection (1):
 - (a) maintaining, defending, or settling in its own behalf any legal proceeding;
 - (b) holding meetings of the board of directors, shareholders, or otherwise carrying on activities concerning internal corporate affairs;
 - (c) maintaining bank accounts;
 - (d) maintaining offices or agencies for the transfer, exchange, and registration of its own securities or maintaining trustees or depositories with respect to those securities;
 - (e) selling through independent contractors;
 - (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (g) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;
 - (h) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;
 - (i) owning, without more, real or personal property;
 - (j) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
 - (k) transacting business in interstate commerce;
 - (l) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in such security, or any combination of such transactions; and
 - (m) any other activities not considered to constitute transacting business in this state in the discretion of the division.
- (3) Nothing in this section limits or affects the right to subject a foreign corporation which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign corporation any process, notice, or demand required or permitted by law to be served upon a corporation pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

Amended by Chapter 79, 1996 General Session

16-10a-1502 Consequences of transacting business without authority.

- (1) A foreign corporation transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.
- (2) The successor to a foreign corporation that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign corporation or its successor.
- (3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay the proceeding until the required application for authority to transact business has been filed by the division.
- (4) A foreign corporation that transacts business in this state without authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of \$5,000 for each year. Each officer of a foreign corporation who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign corporation who transacts business in this state on behalf of a foreign corporation that is not authorized is subject to a civil penalty, payable to this state, not exceeding \$1,000.
- (5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in an appropriate court in Salt Lake County or in any other county in this state in which the corporation has a registered, principal, or business office or in which it has transacted business. Upon a finding by the court that a foreign corporation or any of its officers or agents have transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any corporate rights and privileges in this state. Upon issuance of the injunction, the foreign corporation shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign corporation has otherwise complied with the provisions of this part.
- (6) Notwithstanding Subsections (1) and (2), the failure of a foreign corporation to have authority to transact business in this state does not impair the validity of its corporate acts, nor does the failure prevent the corporation from defending any proceeding in this state.

Amended by Chapter 184, 1993 General Session

16-10a-1503 Application for authority to transact business.

- (1) A foreign corporation may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:
 - (a) its corporate name and its assumed name, if any;
 - (b) the name of the state or country under whose law it is incorporated;
 - (c) its date of incorporation and period of its corporate duration;
 - (d) the street address of its principal office;
 - (e) the information required by Subsection 16-17-203(1);
 - (f) the names and usual business addresses of its current directors and officers;
 - (g) the date it commenced or expects to commence transacting business in this state; and
 - (h) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.

- (2) The foreign corporation shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the lieutenant governor or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate of existence shall be dated within 90 days before the day on which the application for authority to transact business by the division is filed.
- (3)
 - (a) The division may permit a tribal corporation to apply for authority to transact business in this state in the same manner as a foreign corporation incorporated in another state.
 - (b) If a tribal corporation elects to apply for authority to transact business in this state, for purposes of this chapter, the tribal corporation shall be treated in the same manner as a foreign corporation incorporated under the laws of another state.

Amended by Chapter 43, 2010 General Session

16-10a-1504 Amended application for authority to transact business.

- (1) A foreign corporation authorized to transact business in this state shall deliver an amended application for authority to transact business to the division for filing if the foreign corporation changes:
 - (a) its corporate name or its assumed corporate name;
 - (b) the period of its duration;
 - (c) the state or country of its incorporation; or
 - (d) any of the information required by Subsection 16-17-203(1).
- (2) The requirements of Section 16-10a-1503 for obtaining an original application for authority to transact business apply to filing an amended application for authority to transact business under this section.

Amended by Chapter 364, 2008 General Session

16-10a-1505 Effect of filing an application for authority to transact business.

- (1) Filing an application for authority to transact business authorizes the foreign corporation to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this part.
- (2) A foreign corporation authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic corporation of like character. Except as otherwise provided by this chapter, a foreign corporation authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.
- (3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Enacted by Chapter 277, 1992 General Session

16-10a-1506 Corporate name and assumed corporate name of foreign corporation.

- (1) Except as provided in Subsection (2), if the corporate name of a foreign corporation does not satisfy the requirements of Section 16-10a-401, which applies to domestic corporations, the foreign corporation, in order to obtain authority to transact business in this state, shall assume for use in this state a name that satisfies the requirements of Section 16-10a-401.

- (2) A foreign corporation may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for filing either:
 - (a) a written consent to the foreign corporation's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or
 - (b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign corporation to use the requested name in this state.
- (3) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:
 - (a) has merged with the other corporation; or
 - (b) has been formed by reorganization of the other corporation.
- (4) If a foreign corporation authorized to transact business in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-10a-401, it may not transact business in this state under the changed name but shall use an assumed corporate name that does meet the requirements of this section and shall deliver to the division for filing an amended application for authority to transact business pursuant to Section 16-10a-1504.

Amended by Chapter 378, 2010 General Session

16-10a-1507 Registered name of foreign corporation.

- (1) A foreign corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic corporation under Section 16-10a-401. If the foreign corporation's corporate name would not be available for such use, then the foreign corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 16-10a-401: "corporation," "incorporated," "company," "corp.," "inc.," or "co."
- (2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:
 - (a) setting forth its corporate name, the name to be registered which shall meet the requirements of Section 16-10a-401 that apply to domestic corporations, the state or country and date of incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign corporation is in existence or has authority to transact business under the laws of the state or country in which it is organized.
- (3) The name is registered for the applicant upon the effective date of the application, and the initial registration is effective until the end of the calendar year in which it became effective.
- (4) A foreign corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2), between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.

- (5) A foreign corporation that has in effect registration of its corporate name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign corporation by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application shall meet the requirements of this part.
- (6)
 - (a) A foreign corporation that has in effect registration of its corporate name may terminate the registration at any time by delivering to the division for filing a statement of termination setting forth the corporate name and stating that the registration is terminated.
 - (b) A registration automatically terminates upon the filing of an application for authority to transact business in this state under the registered name.
- (7) The registration of a corporate name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to transact business in this state under the registered name, but the authorization is subject to the limitations applicable to corporate names as set forth in Section 16-10a-403.

Amended by Chapter 378, 2010 General Session

16-10a-1510 Resignation of registered agent of foreign corporation.

- (1) The registered agent of a foreign corporation authorized to transact business in this state may resign the agency appointment by delivering to the division for filing a statement of resignation, which shall be signed by the resigning registered agent and accompanied by two exact or conformed copies of the statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The statement of resignation filed by the registered agent shall include a declaration that notice of the resignation has been given to the corporation.
- (2) After filing the statement of resignation, the division shall deliver one copy of the resignation to the registered office of the foreign corporation and the other copy to its principal office.
- (3) The agency appointment terminates, and the registered office discontinues if so provided, on the 31st day after the filing date of the statement of resignation.

Amended by Chapter 378, 2010 General Session

16-10a-1511 Service on foreign corporation.

- (1) Except as provided in Subsection (3), the division may serve a foreign corporation by first-class, postage prepaid United States mail.
- (2) The registered agent of a foreign corporation authorized to transact business in this state is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.
- (3)
 - (a) If a foreign corporation authorized to transact business in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign corporation may be served by mail that is:
 - (i) registered or certified;
 - (ii) return receipt requested; and
 - (iii) addressed to the foreign corporation at its principal office.

- (b) Service is perfected under this Subsection (3) at the earliest of:
 - (i) the date the foreign corporation receives the process, notice, or demand;
 - (ii) the date shown on the return receipt, if signed on behalf of the foreign corporation; or
 - (iii) five days after mailing.
- (4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation authorized to transact business in this state.

Amended by Chapter 220, 1999 General Session

16-10a-1520 Withdrawal of foreign corporation.

- (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until its application for withdrawal has been filed by the division.
- (2) A foreign corporation authorized to transact business in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:
 - (a) its corporate name and its assumed name, if any;
 - (b) the name of the state or country under whose law it is incorporated;
 - (c) the address of its principal office, or if none is to be maintained, a statement that the corporation will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1521;
 - (d) that the corporation is not transacting business in this state and that it surrenders its authority to transact business in this state;
 - (e) whether its registered agent will continue to be authorized to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and
 - (f) any additional information that the division determines is necessary or appropriate to determine whether the corporation is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.
- (3) A foreign corporation's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations have been paid and the division has received a tax clearance certificate from the State Tax Commission.

Enacted by Chapter 277, 1992 General Session

16-10a-1521 Service on withdrawn foreign corporation.

- (1) A foreign corporation that has withdrawn from this state pursuant to Section 16-10a-1520 shall either:
 - (a) maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal; or
 - (b) be considered to have authorized service of process on it in connection with any cause of action by registered or certified mail, return receipt requested, to:
 - (i) the address of its principal office, if any, set forth in its application for withdrawal or as last changed by notice delivered to the division for filing; or
 - (ii) the address for service of process that is stated in its application for withdrawal or as last changed by notice delivered to the division for filing.
- (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

- (a) the date the withdrawn foreign corporation receives the process, notice, or demand;
 - (b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign corporation;
or
 - (c) five days after mailing.
- (3) Subsection (1) does not prescribe the only means, or necessarily the required means, of serving a withdrawn foreign corporation.

Amended by Chapter 364, 2008 General Session

16-10a-1530 Grounds for revocation.

The division may commence a proceeding under Section 16-10a-1531 to revoke the authority of a foreign corporation to transact business in this state if:

- (1) the foreign corporation does not deliver its annual report to the division when it is due;
- (2) the foreign corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (3) the foreign corporation is without a registered agent in this state for 30 days or more;
- (4) the foreign corporation does not inform the division by an appropriate filing within 30 days of the change or resignation that its registered agent has changed or that its registered agent has resigned;
- (5) an incorporator, director, officer, or agent of the foreign corporation signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or
- (6) the division receives a duly authenticated certificate from the lieutenant governor or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the corporation has dissolved or disappeared as the result of a merger.

Amended by Chapter 364, 2008 General Session

16-10a-1531 Procedure for and effect of revocation.

- (1) If the division determines that one or more grounds exist under Section 16-10a-1530 for revoking the authority of a foreign corporation to transact business in this state, the division shall mail to the foreign corporation written notice of:
 - (a) the division's determination that one or more grounds exist for revocation; and
 - (b) the grounds for revocation.
- (2)
 - (a) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign corporation's authority to transact business in this state.
 - (b) If a foreign corporation's authority to transact business in this state is revoked under Subsection (2)(a), the division shall mail to the foreign corporation written notice of:
 - (i) revocation; and
 - (ii) the effective date of the revocation.
 - (c) The division shall mail a copy of the notice to:
 - (i) the last registered agent of the foreign corporation; or
 - (ii) if there is no registered agent of record, at least one officer of the corporation.

- (3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the division's certificate revoking the corporation's certificate of authority.
- (4) Revocation of a foreign corporation's authority to transact business in this state does not terminate the authority of the registered agent of the corporation.
- (5) A notice mailed under this section shall be:
 - (a) mailed first-class, postage prepaid; and
 - (b) addressed to the most current mailing address appearing on the records of the division for:
 - (i) the registered agent of the foreign corporation, if the notice is required to be mailed to the registered agent; or
 - (ii) the officer of the foreign corporation that is mailed the notice, if the notice is required to be mailed to an officer of the foreign corporation.

Amended by Chapter 386, 2009 General Session

16-10a-1532 Appeal from revocation.

- (1) A foreign corporation may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered or principal office of the corporation was located or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 16-10a-1531. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the corporation's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.
- (2) The court may summarily order the division to reinstate the authority of the foreign corporation to transact business in this state or it may take any other action it considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

Amended by Chapter 131, 2000 General Session

16-10a-1533 Domestication of foreign corporations.

- (1)
 - (a) Any foreign corporation may become a domestic corporation by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if the board of directors of the corporation adopts, and its shareholders approve, the domestication.
 - (b) The adoption and approval of the domestication shall be in accordance with the consent requirements of Section 16-10a-1003 for amending articles of incorporation.
- (2)
 - (a) The articles of domestication shall meet the requirements applicable to articles of incorporation set forth in Sections 16-10a-120 and 16-10a-202, except that:
 - (i) the articles of domestication need not name, or be signed by, the incorporators of the foreign corporation; and
 - (ii) any reference to the corporation's registered office, registered agent, or directors shall be to the registered office and agent in Utah, and the directors then in office at the time of filing the articles of domestication.
 - (b) The articles of domestication shall set forth:
 - (i) the date on which and jurisdiction where the corporation was first formed, incorporated, or otherwise came into being;
 - (ii) the name of the corporation immediately prior to the filing of the articles of domestication;

- (iii) any jurisdiction that constituted the seat, location of incorporation, principal place of business, or central administration of the corporation immediately prior to the filing of the articles of domestication; and
 - (iv) a statement that the articles of domestication were adopted by the corporation's board of directors and approved by its shareholders.
- (3)
- (a) Upon the filing of articles of domestication with the division, the corporation shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter, and shall continue as if it had been incorporated under this chapter.
 - (b) Notwithstanding any other provisions of this chapter, the existence of the corporation shall be considered to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being.
- (4) The articles of domestication, upon filing with the division, shall become the articles of incorporation of the corporation, and shall be subject to amendments or restatement the same as any other articles of incorporation under this chapter.
- (5) The domestication of any corporation in this state may not be considered to affect any obligation or liability of the corporation incurred prior to its domestication.
- (6) The filing of the articles of domestication does not affect the choice of law applicable to the corporation, except that from the date the articles of domestication are filed, the law of Utah, including the provisions of this chapter, shall apply to the corporation to the same extent as if the corporation had been incorporated as a corporation of this state on that date.

Amended by Chapter 378, 2010 General Session

16-10a-1533.5 Transfer to another state.

- (1) A domestic corporation may transfer to or domesticate in a jurisdiction other than this state if:
- (a) that jurisdiction permits the transfer to or domestication of the corporation in the jurisdiction; and
 - (b) the transfer is approved by the shareholders as provided in the corporation's bylaws or, if the bylaws do not so provide, by all of the shareholders.
- (2)
- (a) A domestic corporation transfers to or domesticates in a jurisdiction other than this state by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2)(b).
 - (b) Articles of transfer shall state:
 - (i) the name of the corporation;
 - (ii) the date of filing of the corporation's original articles of incorporation with the division;
 - (iii) the jurisdiction to which the corporation is to be transferred or in which it is to be domesticated;
 - (iv) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;
 - (v) that the transfer or domestication has been approved by the shareholders;
 - (vi) that the existence of the corporation as a domestic corporation of this state shall cease when the articles of transfer become effective;
 - (vii) the agreement of the corporation that it may be served with process in this state in any proceeding for enforcement of any obligation of the corporation arising while it was a corporation under the laws of this state; and

- (viii) if the corporation does not apply for authority to transact business in this state as a foreign corporation pursuant to Section 16-10a-1503, the address to which a copy of service of process may be made under Subsection (2)(b)(vii).
- (3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and after payment to the division of the fees prescribed under this chapter, the corporation shall cease to exist as a domestic corporation of this state. Thereafter, a certificate of the division as to the transfer is prima facie evidence of the transfer or domestication by the corporation out of this state.
- (4) Transfer or domestication of a corporation out of this state in accordance with this section and the resulting cessation of its existence as a domestic corporation of this state may not be considered to affect:
 - (a) an obligation or liability of the corporation incurred before the transfer or domestication or the personal liability of any person incurred before the transfer or domestication, including, any taxes owing to this state; or
 - (b) the choice of law applicable to the corporation with respect to matters arising before the transfer or domestication.

Enacted by Chapter 184, 2012 General Session