

ARTICLE 17

Business Corporations; Foreign Corporations

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53-17-1. Admission of foreign corporation.

No foreign corporation shall transact business in this state until it has procured a certificate of authority to do so from the commission [secretary of state]. No foreign corporation shall procure a certificate of authority under the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] to transact in this state any business which a corporation organized under the Business Corporation Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority because the laws of the state or country under which the corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in the Business Corporation Act authorizes this state to regulate the organization or the internal affairs of such corporation. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of the Business Corporation Act, by reason of carrying on in this state any one or more of the following activities:

- A. maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- B. holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
- C. maintaining bank accounts;
- D. maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- E. effecting sales through independent contractors;
- F. soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this state before becoming binding contracts;
- G. creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interest in real or personal property;
- H. securing or collecting debts or enforcing any rights in property securing them;
- I. transacting any business in interstate commerce;
- J. conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature; or
- K. investing in or acquiring, in transactions outside New Mexico, royalties and other nonoperating mineral interests and the execution of division orders, contracts of sale and other instruments incidental to the ownership of the nonoperating mineral interests.

53-17-2. Powers of foreign corporation.

A foreign corporation which has received a certificate of authority under the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] shall, until a certificate of revocation or of withdrawal, has been issued as provided in the Business Corporation Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued; and, except as otherwise provided in the Business Corporation Act, is subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

53-17-3. Corporate name of foreign corporation.

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of the corporation:

(1) contains the word "corporation," "company," "incorporated" or "limited," or contains an abbreviation of one of these words, or the corporation, for use in this state, adds at the end of its name one of these words or an abbreviation thereof;

(2) does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation, or that it is authorized or empowered to conduct a business which a corporation organized under the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] is not permitted to transact; and

(3) is not the same as, or confusingly similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in the Business Corporation Act, or the name of a corporation which has in effect a registration of its name as provided in the Business Corporation Act.

B. The provisions of Paragraph (3) of Subsection A of this section shall not apply if the foreign corporation applying for a certificate of authority files with the commission [secretary of state] any one of the following:

(1) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state which fictitious name is not confusingly similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved or registered as provided in the Business Corporation Act; or

(2) the written consent of such other corporation or holder of a reserved or registered name to use the same or confusingly similar name and one or more words are added to make such name distinguishable from such other name; or

(3) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

53-17-4. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state, or has otherwise complied with the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

53-17-5. Application for certificate of authority.

A. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application to the commission [secretary of state], which application shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) if the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of these words, the name of the corporation with the word or abbreviation that it elects to add thereto for use in this state;

(3) the date of incorporation and the period of duration of the corporation;

(4) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different;

(5) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(6) the purpose of the corporation that it proposes to pursue in the transaction of business in this state;

(7) the names and respective addresses of the directors and officers of the corporation who have consented to serve;

(8) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes and by series, if any, within a class;

(9) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class;

(10) an estimate expressed in dollars of:

(a) the gross amount of business that will be transacted by it during its current fiscal year at or from places of business located in the state;

(b) the gross amount of business that will be transacted by it during its current fiscal year, wherever transacted;

(c) the value of all property to be owned by it and located in the state during its current fiscal year; and

(d) the value of all property to be owned by it during its current fiscal year, wherever located; and

(11) additional information necessary or appropriate in order to enable the commission [secretary of state] to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

B. The application shall be made on forms prescribed by the commission [secretary of state] or on forms containing substantially the same information as forms prescribed by the commission [secretary of state] and shall be executed by the corporation by an authorized officer of the corporation.

53-17-6. Filing of application for certificate of authority.

A. A corporation applying for a certificate of authority shall deliver to the commission [secretary of state]:

(1) an original of the application of the corporation for a certificate of authority together with a copy, which may be signed, photocopied or conformed;

(2) a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated, current within thirty days and which has not expired at the time of receipt by the commission [secretary of state]; and

(3) a statement executed by the designated registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation.

B. If the commission [secretary of state] finds that the application and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application, the statement and the copy of the articles of incorporation and amendments thereto; and

(3) issue a certificate of authority to transact business in this state to which it shall affix the file-stamped copy.

C. The certificate of authority, together with the file-stamped copy of the application affixed to it shall be returned by the commission [secretary of state] to the corporation or its representative.

53-17-7. Application for readmission.

The commission [secretary of state] may waive the filing of articles of incorporation or other documents by a corporation making application for a certificate of authority if the documents were filed in connection with a previous application for a certificate of authority.

53-17-8. Effect of [certificate of] authority.

Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the application for a certificate of authority to the commission [secretary of state], the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or revoke the authority as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

53-17-9. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

A. a registered office which may be, but need not be, the same as its place of business in this state; and

B. a registered agent, which agent may be either an individual resident in this state whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with the registered office.

53-17-10. Change of registered office or registered agent of foreign corporation.

A. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission [secretary of state] a statement setting forth:

(1) the name of the corporation;

(2) the address of its registered office;

(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;

(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of

the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the public regulation commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], it shall file the statement in its office, and upon the filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent of a foreign corporation may resign as agent upon filing a written notice of resignation with the public regulation commission [secretary of state], which shall mail immediately a copy of it to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission [secretary of state].

D. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of this section but need not be responsive to Paragraph (5) of Subsection A of this section and recites that the corporation has been notified of the change.

53-17-11. Service of process on foreign corporation.

The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

53-17-12. Repealed.

53-17-13. Merger or conversion of foreign corporation authorized to transact business in this state.

Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger or conversion permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger or conversion becomes effective, file with the commission [secretary of state] a copy of the articles of merger or conversion duly authenticated by the proper officer of the state or country under the laws of which the statutory merger or conversion was effected. It is not necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state or unless the surviving corporation is to transact business in New Mexico but has not procured a certificate of authority to transact business in this state.

53-17-14. Amended certificate of authority.

A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to

pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission [secretary of state]. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission [secretary of state], the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

53-17-15. Withdrawal of foreign corporation.

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the commission [secretary of state] a certificate of withdrawal. In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the commission [secretary of state] an application for withdrawal, which shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) a statement that the corporation is not transacting business in this state;

(3) a statement that the corporation surrenders its authority to transact business in this state;

(4) a statement that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in an action, suit or proceeding based upon a cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on the corporation by service thereof on the secretary of state;

(5) an address to which the secretary of state may mail a copy of a process against the corporation that may be served on it;

(6) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by class and by series, if any, within each class, as of the date of the application;

(7) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class, as of the date of the application; and

(8) additional information as necessary or appropriate in order to enable the commission [secretary of state] to determine and assess any unpaid fees payable by the foreign corporation.

B. The application for withdrawal shall be made on forms prescribed by the commission [secretary of state] or on forms containing substantially the same information as forms prescribed by the commission [secretary of state] and shall be executed by the corporation by an authorized officer of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee.

53-17-16. Filing of application for withdrawal.

A. An original of an application for withdrawal together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the application conforms to the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of withdrawal to which it shall affix the file-stamped copy.

B. The certificate of withdrawal, together with the file-stamped copy of the application for withdrawal affixed to it, shall be returned by the commission [secretary of state] to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

53-17-17. Revocation of certificate of authority.

A. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

- (1) the corporation has failed to file its annual report timely or has failed to pay any fees or penalties thereon when they became due;
- (2) the corporation has failed to appoint and maintain a registered agent in this state as required by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978];
- (3) the corporation has failed, after change of its registered office or registered agent, to file in the office of the commission [secretary of state] a statement of the change as required by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978];
- (4) the corporation has failed to file in the office of the commission [secretary of state] any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]; or
- (5) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

B. A certificate of authority of a foreign corporation shall not be revoked by the commission [secretary of state] unless:

- (1) it has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state]; and
- (2) the corporation fails, prior to revocation, to file the annual report or pay the fees or penalties or file the required statement of change of registered agent or registered office or file the articles of amendment or articles of merger or correct the misrepresentation.

53-17-18. Issuance of certificate of revocation; reinstatement.

A. Upon revoking a certificate of authority, the commission [secretary of state] shall:

- (1) issue a certificate of revocation in duplicate;
- (2) file one of the certificates in its office; and
- (3) mail a notice of revocation accompanied by one of the certificates to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state].

B. Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state shall cease.

C. A corporation administratively revoked under Section 53-17-17 NMSA 1978 may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application shall:

- (1) recite the name of the corporation and the effective date of its administrative revocation;
- (2) state that the ground or grounds for revocation either did not exist or have been eliminated; and
- (3) state that the corporation name satisfies the requirements of Section 53-17-3 NMSA 1978.

D. If the commission [secretary of state] determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its

determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

53-17-19. Application to corporations heretofore authorized to transact business in this state.

Foreign corporations which are authorized to transact business in this state at the time the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] takes effect, for a purpose or purposes for which a corporation might secure such authority under the Business Corporation Act, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under the Business Corporation Act, and from the time the Business Corporation Act takes effect, the corporations are subject to all the limitations, restrictions, liabilities and duties prescribed in the Business Corporation Act for foreign corporations procuring certificates of authority to transact business in this state under the Business Corporation Act.

53-17-20. Transacting business without certificate of authority.

A. No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until the corporation has obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of the corporation on any right, claim or demand arising out of the transaction of business by the corporation in this state, until a certificate of authority has been obtained by the corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of the corporation, and does not prevent the corporation from defending any action, suit or proceeding in any court of this state.

C. A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed upon the corporation had it applied for and received a certificate of authority to transact business in this state as required by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], and thereafter filed all annual reports required by it, plus all penalties for failure to pay the fees and franchise taxes, plus a civil penalty of two hundred dollars (\$200) for each offense.

53-17-21. Repealed.