

CT Corporation

What constitutes doing business

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by Wolters Kluwer

What constitutes doing business

By a corporation in states foreign to the state of its incorporation

Articles, statutory provisions and cases dealing with the necessity of qualification by corporations doing business in foreign states, selected from the records of CT Corporation System, and presented for the convenience of members of the Bar.

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Introduction

When a corporation does business outside of the state in which it was organized, it may be required to "qualify" — i.e., to obtain a certificate of authority and to appoint a resident agent upon whom process may be served. (The term "registration" is used by some statutes instead of "qualification". The terms are synonymous in the context of requiring a foreign corporation to obtain authority to do business. However, this publication will, for the most part, use the term "qualification".) Although the corporation laws of every state require foreign corporations doing business in the state to qualify, no law contains a comprehensive definition of the term "doing business." What constitutes doing business within the meaning of qualification requirements is the question which this book attempts to answer.

The risks of failure to qualify are great. In all states, unqualified foreign corporations doing intrastate business are denied access to state courts. An unqualified foreign corporation is also subject to fines, and, in several states, its directors, officers or agents may be fined. These sanctions are discussed under the heading "Penalties for Failure to Qualify."

The statutes of most states list certain activities in which a corporation may engage without qualifying. Some states also define activities which will require qualification. These statutory provisions are reproduced in this book and should be examined before a decision is reached as to whether or not qualification is required.

Most states have adopted either the Model Business Corporation Act or the Revised Model Business Corporation Act. Therefore, the provisions of both of these Model Acts dealing with activities requiring qualification and penalties for not qualifying are set forth and discussed in the following chapters.

In addition to what constitutes doing business within the United States, this book contains chapters on doing business in Canada, Guam, Puerto Rico and the Virgin Islands. The statutes defining certain activities that do or do not require qualification for Canada, the Canadian provinces, and territories, Puerto Rico and the Virgin Islands are reproduced.

To a very large extent, the answers to doing business questions are found in court decisions. These decisions have been accumulated and analyzed and form the basis for the articles in the section entitled, "Specific Doing Business Activities."

There are three kinds of doing business questions. One question is whether a foreign corporation doing business in a state will be subject to the personal jurisdiction of the state's courts. The second is whether a foreign corporation will be subject to taxation. The third is whether it will be subject to the state's qualification requirements. The first chapter, "Three Kinds of Doing Business," looks at the differences between these three types.

It may be noted that business corporations are not the only type of business entity that are required to qualify before doing business in a foreign state. Nonprofit corporations, limited liability companies, limited partnerships and limited liability partnerships are among others that are subject to a qualification requirement. The chapter entitled "Limited Liability Companies" contains citations to the doing business definitions and penalty provisions of LLC statutes as well as citations to selected judicial decisions. However, this book deals mainly with foreign business corporations, although the chapters do have some references to LLC case law. When dealing with any other business entity the statutes and case law dealing with the issue of what constitutes doing business and the penalties for failure to qualify for that specific business entity type must be consulted.

What Constitutes Doing Business is presented as a service to the Bar. The information it contains has been gathered together to provide a convenient reference in a difficult area. It is hoped that it will prove helpful both to the attorney familiar with the field and to the attorney who is only occasionally concerned with corporate work.

Three kinds of doing business

When a corporation does business outside of its state of incorporation, it may find itself: (1) subject to taxation by the state, (2) subject to service of process and suit in the state, or (3) required to qualify to do business in the state. The level of business activity that will constitute doing business is different for each category. In *Filmakers Releasing Organ. v. Realart Pictures,*[1] the court noted that "This much seems to be clear . . . the greatest amount of business activity is required to subject a corporation to the state's statutory qualification requirements."[2] Therefore, where a corporation's activities in a state are sufficient to require qualification, it follows that the corporation will also be amenable to service of process and to being taxed by the state.

Some corporation laws specifically state that their doing business definitions should not be used in determining if a corporation is doing business for any other purpose. Georgia, Kentucky, Michigan, Nebraska, New Jersey, North Dakota, Oklahoma, and Vermont provide that their doing business definition sections do not apply in determining the contacts or activities that may subject a foreign corporation to service of process or taxation in the state.[3] Colorado, Delaware, and Utah state that their doing business definitions do not apply to the question of whether a foreign corporation is subject to service of process and suit.[4] Nevada and Virginia exclude personal jurisdiction from their definition.[5] Minnesota and New Hampshire exclude taxation.[6] The District of Columbia, Florida, Idaho, Kansas, Pennsylvania, and Washington exclude service of process, taxation or regulation under state law and

1. 374 S.W. 2d 535 (Mo. App. 1964).

2. See also: *Wagner and Wagner Auto Sales, Inc. v. Tarro,* 889 A.2d 875 (Conn. App. 2006), *Sinewellan Corp. v. Farmers Bank of Delaware*, 345 A. 2d 430 (Del. Super. 1975); *Alliance Steel, Inc. v. Piland*, 134 P.3d 669 (Kan. App. 2006); *Marco Leather Co. v. Argentinas*, 617 N.Y.S. 2d 617 (Sup. 1994); *Ronson Art Metal Works, Inc. v. Brown & Bigelow, Inc.*, 104 F. Supp. 716 (S.D.N.Y. 1952); *State v. Ford Motor Co.*, 38 S.E. 2d 242 (S.C. 1946); *Questech, Inc. v. Liteco*, AG, 735 F.Supp. 187 (E.D. Va. 1990); *contra; Marcus v. J.R. Watkins Co.*, 188 So. 2d 543 (Ala. 1966).

3. Code of Georgia Annotated, Sec. 14-2-1501; Kentucky Revised Statutes, Sec. 14A.9-010; Michigan Compiled Laws, Sec. 450.2012; Revised Statutes of Nebraska, Sec. 21-20,105; New Jersey Statutes Annotated, Sec. 14A:13-3; North Dakota Century Code Annotated, Sec. 10-19.1-143; Oklahoma Statutes Annotated, Title 18, Sec. 1132; Vermont Statutes Annotated, Title 11A, Sec. 15.01.

4. Colorado Revised Statutes, Sec. 7-90-801; Delaware Code, Title 8, Sec. 373;; Utah Code Annotated, 1953, Sec. 16-10a-1501.

5. Nevada Revised Statutes, Sec. 80.015; Code of Virginia, 1950, Sec. 13.1-757.

6. Minnesota Statutes Annotated, Sec. 303.03; New Hampshire Revised Statutes Annotated, Sec. 293-A:15.01.

New York excludes service of process.[7] Tennessee simply states that its doing business definition applies only for purposes of its qualification requirement, and for no other purpose.[8]

A state's power to tax or to assert jurisdiction over a nonresident corporation is limited by the Constitution. Generally, it can be stated that the question of service of process on an unqualified foreign corporation turns on "traditional notions of fair play and substantial justice."

Whether a state may tax an unqualified foreign corporation engaged in interstate commerce generally depends on the corporation's "nexus" with the state. In *Northwestern States Portland Cement Co. v. Minnesota,*[9] the Supreme Court sustained Minnesota's right to impose properly apportioned nondiscriminatory net income tax on an unlicensed foreign corporation operating exclusively in interstate commerce, where the corporation had a sufficient nexus or connection with the state. Without "some definite link, some minimum connection" between the state and the corporation's activities therein, the imposition of such a tax would violate the due process clause of the 14th Amendment. Since that decision, local activities, such as the maintenance of an office, have been relied upon by the courts as constituting the necessary nexus.

In *Complete Auto Transit, Inc. v. Brady,*[10] the Supreme Court held that the Commerce Clause will not prevent a state from taxing interstate commerce if the tax is applied to an activity with a substantial nexus to the state, and the tax is fairly apportioned, nondiscriminatory, and related to services provided by the State.

In 2018 the U.S. Supreme Court decided *South Dakota v. Wayfair, Inc*[11] a case in which the Court held that a state can require out-of-state sellers to collect and remit sales taxes even if they have no physical presence. The *Wayfair* Court overturned a physical presence rule that had existed for 50 years.

A state may not subject an unqualified foreign corporation to the jurisdiction of its courts unless there is a statutory basis for asserting jurisdiction and the assertion satisfies the requirements of due process. In order to assert jurisdiction over unqualified foreign corpo-

7. District of Columbia Code, Sec. 29-105.05; Florida Statutes Annotated, Sec. 607.1501Idaho Code, Sec. 30-21-505; Kansas Statutes Sec. 17-7932; Pennsylvania Statutes Title 15, Sec. 403; Washington Revised Code, Sec 23.50.370; New York Business Corporation Law, Sec. 1301.

8. Tennessee Code Annotated, Sec. 48-25-101.

9. 358 U.S. 450 (1959).

10. 430 U.S. 274 (1977).

11. 138 S.Ct. 2080 (2018).

rations, all states and the District of Columbia have passed long arm statutes to define the activities that will support jurisdiction.

Long arm provisions vary from state to state. Some list activities. Other simply say a court of that state may exercise jurisdiction on any basis not inconsistent with the Constitution of the state or of the United States.

Once a court determines that jurisdiction exists under the statute, it will turn to the question of whether the assertion of jurisdiction would violate the due process clause of the Fourteenth Amendment. In the landmark case of *International Shoe Co. v. State of Washington*[12] the U.S. Supreme Court ruled that a state court could exercise in personam jurisdiction over a foreign corporation which had "certain minimum contacts with [the forum] such that the maintenance of suit does not offend traditional notions of fair play and substantial justice."

In its 1980 decision in *World-Wide Volkswagen v. Woodson*[13] the Supreme Court rejected the argument that due process requirements were satisfied by the foreseeability that a car sold in New York would cause injury in Oklahoma. Rather, the Court held that the foreseeability relevant to due process was whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*,[14] a suit was filed in North Carolina arising out of a bus accident that occurred in France. The tire alleged to have caused the accident was manufactured and sold abroad by the foreign corporate defendants. Some of their tires, though made abroad, had reached North Carolina through "the stream of commerce". The Supreme Court held that a connection so limited between the forum and the foreign corporation was an inadequate basis for the exercise of general jurisdiction. Such a connection does not establish the "continuous and systematic" affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation's contacts with the State.

In *Daimler AG v. Bauman*[15], the Court expanded upon in decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*. In holding that California did not have general jurisdiction over a Germany company, the Court stated that the inquiry is whether the foreign corporation's affiliations with the forum State are so continuous and systematic as to

12. 326 US 310 (1945).

13. 444 US 286 (1980).

14. 564 US 915 (2011).

15. 571 US 117 (2014).

render it essentially at home in the forum state. The Court then stated that it would only be in an exceptional case that a corporation's operations in a forum other than its place of incorporation or its principal place of business would be so substantial as to render the corporation at home there.

In *Mallory v. Norfolk Southern Railway Co.*,[16] the U.S. Supreme Court, in a 5-4 decision, held that a Pennsylvania statutory provision that requires foreign corporations that register to do business in Pennsylvania to agree to appear in its courts on any cause of action against them (a "consent by registration" statute), does not violate the Due Process Clause of the Fourteenth Amendment.

The Court held that this case was controlled by a 1917 US Supreme Court decision - *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Mill Co.* – which upheld the constitutionality of a similar "consent by registration" provision and which the U.S. Supreme Court never explicitly overruled.

The general rule concerning what constitutes doing business so as to require a foreign corporation to qualify has been stated as follows: "It is established by well considered general authorities that a foreign corporation is doing, transacting, carrying on, or engaging in business within a state when it transacts some substantial part of its ordinary business therein."[17] Doing business is really not subject to definition and each case must be considered and decided in the light of its distinctive factual situation.

The first step to determining if a corporation must qualify in a state is to examine the state's corporation law. Most state laws list certain intrastate activities, such as maintaining bank accounts or holding board meetings, that a foreign corporation may engage in without having to qualify. When there is a statutory statement covering the corporation's particular situation, the statute will hold. Otherwise, the issue is for judicial determination.

The issue of whether a foreign corporation is required to qualify in a state usually comes before a court when the corporation brings an action in the state's courts. Because unqualified foreign corporations transacting intrastate business may be barred from maintaining an action in a state's courts, the defendant will assert the plaintiff's unqualified status as a defense. The court must then determine if the plaintiff's activities in the state constituted "doing business" so that the corporation would have been required to qualify under the corporation law.

16. No. 21-1168 (6/27/2023)

17. *Royal Insurance Co. v. All States Theatres*, 6 So. 2d 494 (Ala. 1942).

Penalties for failure to qualify

Suits by Unqualified Foreign Corporations

Few corporations confine their activities to their home states. In order to protect their interests in foreign states, corporations must have access to those states' courts. However, an unqualified foreign corporation may be prevented from bringing or maintaining an action in the courts of a state in which it does intrastate business.[18] Because of the Constitution's Commerce Clause, a state may not prevent an unqualified corporation from using its courts if the corporation is engaged exclusively in interstate commerce.[19]

Every state has enacted a statute denying unqualified foreign corporations access to state courts. Some states have provisions similar to Sec. 124 of the Model Business Corporation Act, which states that "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 such corporation shall have obtained a certificate of authority." The states that have adopted similar provisions are Alaska, Colorado, Illinois, Minnesota, New Jersey, New Mexico, North Carolina, North Dakota, and Rhode Island.

Other states have adopted a provision similar to Sec. 15.02 of the Revised Model Business Corporation Act (1984) which provides that "A foreign corporation transacting business in this state without a

18. Proof that an unlicensed foreign corporation had been doing business in the state as to other transactions has been held not to prevent the corporation from maintaining an action arising out of a transaction or series of transactions in interstate commerce. *Brown Broadcast, Inc. v. Pepper Sound Studios, Inc.*, 242 Ark. 701 416 S.W. 2d 284 (1967); *Newspaper Publishers, Inc. v. St. Charles Journal, Inc.*, 406 S.W. 2d 801 (St. Louis (Mo.) Ct. of App. 1966).

19. *SGB Construction Services Inc. v. Ray Sumlin Construction Co., Inc.*, 644 So. 2d 892 (Ala. 1994); *Johnson v. MPL Leasing Corp.*, 441 So. 2d 904 (Ala. 1983); *Camaro Trading Co., Ltd. v. Nissei Sangyo America, Ltd.*, 628 So. 2d 463 (Ala. 1993); *Joison Limited v. Taylor*, 567 So.2d 862 (Ala. 1990); *Inland Casino Corp. v. Superior Court*, 10 Cal. Rptr. 2d 497 (Cal. App. 4 Dist. 1992); *Imex International, Inc. v. Wires Engineering,* 583 S.E. 2d 117 (Ga. App. 2003); *International Capital Equipment Limited v. Computer Atlanta, Inc.*, 715 F. Supp. 371 (N.D. Ga. 1989); *Mass Transfer Inc. v. Vincent Const. Co.*, 585 N.E.2d 1286 (Ill. App. 5 Dist. 1992); *Goodwin Bros. Leasing, Inc. v. Nousis*, 373 Mass. 169, 366 N.E. 2d 38 (1977); *Shulton, Inc. v. Consumer Value Stores, Inc.*, 352 Mass. 605, 227 N.E. 2d 482 (1967); *Simplified Tax Records, Inc. v. Gantz*, 333 S.W. 2d 328 (St. Louis (Mo.) Ct. of App. 1960); *Invacare Corp. v. John Nageldinger & Son, Inc.*, 576 F. Supp. 1542 (E.D.N.Y. 1984); *SCS/Compute, Inc. v. Meredith*, 864 P.2d 1292 (Okl. App. 1993); *Statler Hotels v. Herbert Rosenthal Jewelry Corp.*, 351 S.W. 2d 579 (Tex. Civ. App. 1961); *L.B. Foster Co. v. Nelson Bros. Const. Co.*, 424 P.2d 881 (Utah 1967).

certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority," or Sec. 15.02 of the Model Business Corporation Act (2016), which states that "a foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state."

The states that adopted similar provisions are Arizona, Arkansas, Georgia, Hawaii, Iowa, Kentucky, Maine, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

The statutes of Alabama, California, Delaware, District of Columbia, Florida, Idaho, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Montana, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, and Washington, also provide that unqualified foreign corporations doing business in their states may not use their courts.

Because an unqualified corporation is denied access to state courts, it cannot enforce contracts it made in the state.[20] But an unqualified corporation doing intrastate business may be permitted to enforce a contract in a state court if the contract was entered into outside of that state.[21] However, in an Alabama case, the plaintiff contracted to provide

20. The Maryland statute prohibits suit by a foreign corporation which "is doing or has done any intrastate, interstate, or foreign business in this State without [qualifying]." Annotated Code of Maryland, Corporations and Associations, Sec. 7-301.

21. *Holder v. Aultman, Miller & Co.*, 169 U.S. 81, 18 S.Ct. 269 (1898); *Shook and Fletcher Insulation Co. v. Panel Systems*, 784 F.2d 1566 (11th Cir. 1986); *Genesco Employees' Credit Ass'n v. Cobb*, 411 So.2d 151 (Ala. Civ. App. 1982); *Nelms v. Morgan Portable Bldg. Corp.*, 808 S.W. 2d 314 (Ark. 1991); *Moore v. Luxor (North America) Corp.*, 742 S.W. 2d 916 (Ark. 1988); *Rose's Mobile Homes, Inc. v. Rex Financial Corp.*, 383 F. Supp. 937 (W.D. Ark. 1974); *United Press International Inc. v. Hernreich*, 241 Ark. 33, 406 S.W. 2d 317 (1966); *United Press International, Inc. v. Hernreich*, 241 Ark. 33, 406 S.W. 2d 322 (1966); *Roberts v. American Machine Co.*, 347 P.2d 75 9 (Idaho 959); *Land Development Corp. v. Canaday*, 74 Idaho 233, 258 P.2d 976 (1953); *Bonham National Bank v. Grimes Pass Placer Mining Co.*, 18 Idaho 629, 111 pac. 1078 (1910); *Furst-McNess Co. v. Kielly*, 233 Iowa 77, 8 N.W. 2d 730 (1943); *Burch Mfg. Co. v. McKee*, 231 Iowa 730, 2 N.W. 2d 98 (1942); *Richards-Wilcox Mfg. v. Talbot & Meier*, 252 Mich. 622, 233 N.W. 437 (1930); *Show Counselors, Ltd. v. American Motors Corp.*, 211 N.W. 2d 111 (Mich. Ct. App. 1973); *Behlen Manufacturing Co. v. Andries-Butler, Inc.*, 52 Mich. App. 317, 217 N.W. 2d 125 (1974); *Taylor & Martin, Inc. v. Hiland Dairy, Inc.*, 676 S.W. 2d 859 (Mo. App. 1984); *Merrimack Paving Corporation v. Southwick*, 207 A.2d 438 (N.H. 1965); *Manhattan Overseas Co. v. Camden County Beverage Co.*, 125 N.J.L. 239, 15 A.2d 217 (N.J. Supreme 1940); *Don J. Cummings Co., Inc. v. Aluminum Manufacturing Corp.*, 371 F. 2d 118 (10th Cir. [N.M.] 1967); *Trans-radio Press Service, Inc. v. Whitmore*, 47 N.M. 95, 137 P.2d 309 (1943); *Kosson & Sons v. Carleton*, 272 N.Y.S. 2d 81 (A.D. 2 Dept. 1966); *Max Factor & Co. v. Janel Sales Corp.*, 298 F.2d 511 (2d Cir. [N.Y.] 1963); *Bertolf Bros., Inc. v. Leuthardt*, 261 App. Div. 981, 26 N.Y.S. 2d 114 (2d Dept. 1941); *Shoenterprise Corporation v. Butler*, 329 S.W. 2d 361 (Tenn. App. 1959); *New England Road*

advertisements to be broadcast in Alabama. The court held that where the primary purpose of a contract between the plaintiff and defendant was for services that had to be performed in Alabama, the unqualified corporate plaintiff could not use Alabama's courts even though the contract was entered into out of state.[22] A contract made in the forum state which would not be enforceable because of the disabling statute is not made enforceable by a provision in the contract stating that it shall be deemed to have been made outside that state.[23]

Many states have held that a defense asserting that an unqualified foreign corporation is barred from maintaining an action must be timely interposed or it will be deemed waived.[24] For example, a Texas court held that a defendant had waived the issue of the plaintiff foreign corporation's capacity to sue by first raising the issue in a motion to set aside judgment that was filed 20 days after the judgment was signed.[25] And, where an unqualified foreign corporation filed a counterclaim against the plaintiff, and the plaintiff did not raise the issue of the corporation's failure to obtain a certificate of authority until 14 months after the counterclaim was filed, and one week after the trail began, an Illinois court held that the plaintiff had waived the right to raise that issue.[26] However, in a New York case, a California corporation cross-claimed against a third-party defendant. The defendant was unaware that the California corporation was doing business in New York without having qualified until hearing testimony to that effect at an examination before trial. The defendant was permitted to amend its

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Machinery Co. v. Calkins, 149 A.2d 734 (Vt. 1959).

22. *Competitive Edge, Inc. v. Tony Moore Buick-GMC, Inc.*, 490 So.2d 1242 (Ala. Civ. App. 1986). See also, *Pembroke Steel Co. v. Energy Resources Imports & Exports, Inc.*, 477 So.2d 355 (Ala. 1985).

23. *Allen Industries, Inc. v. Exquisite Form Brassiere, Inc.*, 221 N.Y.S. 2d 619 (Sup. Ct. 1961), aff'd 15 A.D. 2d 760, 224 N.Y.S. 2d 579 (1st Dept. 1962).

24. *King v. Petroleum Services Corp.*, 536 P.2d 116 (Alaska, 1975); *Debonne v. Debonne*, 2022 Cal. App. Unpubl. LEXIS 6834; *Safwat v. U.S. Leasing Corp.*, 268 S.E.2d 395 (Ga. App. 1980); *Exchange Lumber and Mfg. Co. v. Thomas*, 233 P.2d 406 (Idaho, 1951); *Amerco Field Office v. Onoforio*, 317 N.E. 2d 596 (Ill. App. 1974); *West Publishing Co. v. Intrastate Pipeline Corp.*, 254 So. 2d 643 (La. App. 1971), writ den. (mem.) 256 So. 2d 290 (La. 1972); *Mid-Continent Refrigerator Co. v. Hurst*, 205 So. 2d 734 (La. App. 1967); *Iowa-Mo Enterprises, Inc. v. Avren*, 639 F.2d 443 (8th Cir. [Mo.] 1981); *Poston Springfield Brick Co. v. Brockett*, 183 S.W. 2d 404 (Mo. App. 1944); *Hot Roll Mfg. Co. v. Cerone Equipment Co., Inc.*, 38 A.D. 2d 339, 329 N.Y.S. 2d 466 (3rd Dept. 1972); *P.K. Springfield, Inc. v. Hogan*, 621 N.E.2d 1253 (Ohio App. 2 Dist. 1993); *Steele v. The Maccabees*, 53 P.2d 232 (Okla., 1935); *Chet Adams Co. v. James F. Pedersenn Co.*, 413 S.E. 2d 827 (S.C. 1992); *Gosch v. B & D Shrimp, Inc.*, 822 S.W. 2d 802 (Tex. App.-Houston [1st Dist.] 1992); *Continental Supply Co. v. Hoffman*, 144 S.W. 2d 253 (Tex. Comm'n App. 1940).

25. *Gosch v. B & D Shrimp, Inc.*, 830 S.W. 2d 652 (Tex. App.-Houston [1st Dist] 1992).

26. *Cox v. Doctor's Associates, Inc.*, 613 N.E.2d 1306 (Ill. App. 5 Dist. 1993).

answer to plead the failure of the corporation to qualify as an affirmative defense. The court found that the defendant could not have known the extent of the corporation's intrastate activities before the pretrial examination.[27] Nebraska's courts have held that an objection to the maintenance of a lawsuit by an unauthorized corporation may be raised at any time during the litigation.[28]

Where the defendant raised the issue of the plaintiff's failure to qualify for the first time in its motion to vacate, a New Mexico court held that it waived the issue.[29] In a Minnesota case,[30] the court held that a defendant that failed to challenge a foreign corporation's capacity to sue in its answer, and instead challenged it when opposing a motion for summary judgment, had waived the defense. However, an Ohio court ruled that where a corporation filed notice of an appeal of an administrative ruling the defendants did not waive the defense of the plaintiff's unlicensed status by raising it as a defense to the court appeal and not the administrative proceeding.[31]

Some courts have also held that a defense asserting that the plaintiff is an unqualified foreign corporation is an affirmative defense and must be pleaded as such or it will be waived. In a New York case, the defendant stated in an affidavit in support of his motion to dismiss that the plaintiff may not have complied with the state's qualification requirements. The court held that this statement was insufficient to raise the affirmative defense of failure to qualify and therefore the defense was waived.[32] A Maine court held that a foreign corporation is presumed to have complied with the qualification statute and it is therefore incumbent on the defendant to raise by affirmative defense that the plaintiff was doing business without authority. The court thus rejected the argument that the plaintiff had an affirmative duty to present evidence of its authority in order to maintain its suit.[33] A Kansas court held that the plaintiff company's lack of capacity to sue had to be raised by a specific denial and rejected the defendant's argument that it was raised

27. *Tynon v. D.R. McClain & Son*, 499 N.Y.S.2d 354 (Sup. 1986).

28. *Christian Services, Inc. v. Northfield Villa, Inc.*, 385 N.W.2d 904 (Neb. 1986); *Rigid Component Systems v. Nebraska Component Systems, Inc.*, 276 N.W. 2d 659 (1979).

29. *Capco Acquisub, Inc. v. Greka Energy Corp.*, 198 P.3d 354 (N.M. App. 2008).

30. *Fin AG, Inc. v. Hufnagle, Inc.*, 700 N.W.2d 510 (Minn. App. 2005).

31. *LV Reis, Inc. v. Board of Revision*, 2017 Ohio Appeal LEXIS 3953.

32. *RCA Records, Div. of RCA Corp. v. Weiner*, 564 N.Y.S.2d 89 (A.D. 1 Dept. 1990). See also *Bank of America , N.A. v Ebro Foods, Inc.*, 948 N.E.2d 685 (Ill. App. 1 Dist. 2011); *Career Concepts, Inc. v. Synergy*, 865 N.E.2d 385 (Ill. App. 1 Dist. 2007); *Cadle Company v. Hoffman*, 655 N.Y.S.2d 635 (A.D. 2 Dept. 1997).

33. *Clearwater Artesian Well v. LaGrandeur*, 912 A.2d 1252 (Me. 2007).

by consent when his attorney asked questions about the company's lack of registration. The questions did not mention the closed door statute and no reasonable person would be aware the defendant was contesting the plaintiff's capacity to sue.[34]

However, in a federal court decision, the court noted that the defendant had failed to raise the plaintiff's failure to qualify as an affirmative defense. Nevertheless, the court granted the defendant leave to amend his pleading, noting that the federal rules of civil procedure discourage the sacrifice of potentially meritorious claims, that the motion to amend was made in good faith, and that the plaintiff would not be prejudiced.[35]

In an Oklahoma case,[36] the defendant moved for summary judgment on the grounds that the plaintiff was a foreign corporation transacting business in Oklahoma without having qualified. The trial court denied the motion and then, at trial, refused to allow the defendant to question the corporation's witness on whether it was transacting intrastate business. The appellate court held that the trial court erred in refusing to allow the defendant to develop evidence relating to whether the foreign corporation was barred from bringing suit. This refusal, according to the appellate court, gave res judicata to the pretrial order, and materially affected the defendant's ability to establish a possible defense.

Where a corporation is duly qualified in a state while it transacts business there, and then gives up its qualification after ceasing to operate in that state, the penalty of losing access to the state's courts is inapplicable. It is intended to punish a foreign corporation for doing business without authority — if no business is done, no authority is needed.[37] A Missouri court stated that the penalty provision "has no purpose to exclude foreign corporations generally from access to Missouri courts but is applicable in only those situations where a foreign corporation seeks to conduct business intrastate in Missouri without complying with certification requirements of the statute."[38]

An Alabama court rejected a foreign corporation's argument that equity barred the defendant from asserting the door closing statute,

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34. *Douglas Landscape and Design, LLC v. Miles*, 355 P.3d 700 (Kan. App. 2015).

35. *Posadas De Mexico, S.A. de C.V. v. Dukes*, 757 F.Supp. 297 (S.D.N.Y. 1991).

36. *SCS/Compute, Inc. v. Meredith*, 864 P.2d 1292 (Okl. App. 1993).

37. *Wild Turkey Ranch, Inc. v. Wilhelm Nursing Home, Inc.*, 677 S.W. 2d 871 (Ark. App. 1984); *Gorham Jewelers Inc. v. A. Cohen & Sons Corp.*, 299 S.E.2d 156 (Ga. App.1983); *Ceres Fertilizer, Inc. v. Beekman*, 290 N.W.2d 199 (Neb. 1980); *Custom Metals Systems, Ltd. v. Tocci Building Corp.*, 57 A.3d 674 (R.I. 2013)..

38. *Benham v. Cox*, 677 S.W.2d 429, 431 (Mo. App. 1984).

noting that while the result was harsh the statute provided that the foreign corporation could not assert any theory sounding in contract, whether equitable or legal.[39]

A foreign corporation was held to be unable to maintain a suit in Pennsylvania courts where it was doing business without a certificate of authority, even though its application for such a certificate had been denied by the state.[40]

In a Florida case,[41] an unqualified foreign corporation made the novel argument that its inability to sue on a cause of action arising out of the intrastate business it conducted in Florida should have ended when it stopped doing business there. The case began when a Rhode Island corporation brought suit contesting the tax assessment on an apartment complex it owned and operated in Florida. Three years later, defendants moved for summary judgment on the ground that plaintiff was doing business in the state without authority, and was thus barred from maintaining the suit. Plaintiff declined to comply with the qualification requirement, claiming that it was no longer doing business in Florida and should no longer be barred. The court rejected this argument and dismissed the complaint.

In a case where jurisdiction is based on diversity of citizenship, federal courts are required to apply the applicable state law, and a foreign corporation barred by state law from suing in the state courts would find itself barred from the federal courts as well.[42] However, if the unqualified foreign corporation is attempting to enforce a federal statutory or constitutional right, so that jurisdiction is based on the existence of a federal question, the federal court may entertain the action.[43] A Florida

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39. *Tradewinds Environmental Restoration, Inc. v. Brown Bros. Constr., LLC,* 999 So.2d 875 (Ala. 2008).

40. *University of Dominica v. Pennsylvania College of Podiatric Medicine*, 301 Pa. Super. 68, 446 A.2d 1339 (1982).

41. *Industrial National Mortgage Co. v. Blake*, 406 So.2d 103 (Fla. App. 1981).

42. *Woods v. Interstate Realty Co.*, 337 U.S. 535, 69 S.Ct. 1235 (1949); *S&H Contractors, Inc. v. A.J. Taft Coal Co., Inc.*, 906 F.2d 1507 (11th Cir. 1990); *Pellerin Laundry Machine Sales Company v. Hogue*, 219 F.Supp. 629 (W.D. Ark. 1963); *ILC Corp. v. Latino Newspaper Inc.*, 747 F.Supp. 85 (D.D.C. 1990); *Lawson Products, Inc. v. Tifco Industries, Inc.*, 660 F.Supp. 892 (M.D. Fla. 1987); *Hinden/Owen/Engelke, Inc. v. Wailea Kai Charters*, 949 F. Supp. 775 (D.Hawaii 1996); *Woodmont Corp. v. Rockwood Center Partnership*, 852 F.Supp. 948 (D. Kan. 1994); *Storwal Intern., Inc. v. Thom Rock Realty Co., L.P.*, 784 F.Supp. 1141 (S.D.N.Y. 1992); *Expense Reduction Services, Inc. v. Jonathan Woodner Co., Inc.*, 720 F.Supp. 262 (S.D.N.Y. 1989); *Williams Erectors of Suffolk County v. Mulach Steel Corp.*, 684 F.Supp. 357 (E.D.N.Y. 1988); *Azuma N.V. v. Sinks*, 646 F.Supp. 122 (S.D.N.Y. 1986).

43. *Harms, Inc. v. Tops Music Enterprises, Inc.*, 160 F.Supp. 77 (S.D. Cal., 1958); *Hoeppner Construction Co. v. United States for Use of Magnum*, 287 F.2d 108 (10th Cir. [Colo.] 1960);

case allowed an unqualified foreign corporation to sue in state court where a federal constitutional right was involved.[44] A district court in Wyoming held that a corporation's failure to comply with state qualification requirements did not bar a federal copyright infringement action.[45] A district court in Illinois held that the corporation law did not apply to a claim of a violation of federal trademark law.[46]

Some courts have held that a national bank cannot be required by a state to qualify.[47] A Tennessee court noted that Tennessee's qualification requirement infringes on a national bank's right to sue in any court as fully as natural persons as provided in the National Bank Act and thus is preempted by federal law.[48]

In another transfer situation, the plaintiff moved to transfer a diversity suit from New York to Georgia after Georgia defendants moved to dismiss for lack of personal jurisdiction. The transfer was granted despite defendants' opposition. Defendants then successfully moved to dismiss on the ground that plaintiff was doing business in Georgia without authority. The federal court dismissed the case without prejudice, even though plaintiff had, by that time, obtained a certificate of authority, because Georgia law, at that time, required a foreign corporation to have a certificate when commencing an action.[49]

Under Nevada law, an unqualified foreign corporation may bring an action for an "extraordinary remedy," such as attachment or garnishment. However, the corporation must qualify within 45 days of

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Public Citizen, Inc. v. Miller, 813 F.Supp. 821 (N.D. Ga. 1993); *International Society for Krishna Consciousness, Inc. v. Lake County Agric. Society*, 521 F.Supp. 8 (N.D. Ind. 1980); *Lisle Mills, Inc. v. Arkay Infants Wear, Inc.*, 90 F.Supp. 676 (E.D.N.Y. 1950); *Aetna Casualty and Surety Company v. United States*, 365 F.2d 997 (8th Cir. [S.D.] 1966); *Embassy Pictures Corporation v. Hudson*, 226 F.Supp. 421 (W.D. Tenn. 1964); *United States for Use of James F. O'Neil Company v. Malan Construction Corporation*, 168 F.Supp. 255 (E.D. Tenn. 1958); *United States of American for Use and Benefit of Bernadat v. Golden West Construction Company*, 194 F.Supp. 371 (D. Utah 1961).

44. *Overstreet v. Fredrick B. Cooper Co.*, 134 So.2d 225 (Fla., 1961).

45. *Ocasek v. Hegglund*, 673 F.Supp. 1084 (D. Wyo. 1987).

46. *Coach Inc. v Sunstart Video, LLC*, 2013 U.S. Dist LEXIS 190660.

47. *JPMorgan Chase Bank, N.A. v. Johnson*, 2012 U.S. Dist. LEXIS 66149 (Bankr. E.D. Ark. 2012); *Wells Fargo Bank, NA v. Baker*, 139 Cal.Rptr.3d 502 (Cal. App. 2012); *Kennedy v. City First Bank of DC, NA*, 88 A.3d 142 (DC 2014); *77OPPR, LLC v. TJCV Land Trust*, 30 So.3d 613 (Fla. App. 2010); *Williams v. Chase Bank USA, N.A.*, 390 S.W.3d 824 (Ky. App. 2012); *Indiana National Bank v. Roberts*, 326 So.2d 802 (Miss. 1976); *Sylver v. Regents Bank, N.A.*, 300 P.3d 718 (Nev. 2013); *In re Hibernia National Bank*, 21 SW3d 908 (Tex. App. 2000).

48. *Cadence Bank, NA v. Alpha Trust*, 473 S.W.3d 756 (Tenn. App. 2015).

49. *Durkan Enterprises, Inc. v. Cohutta Banking Co.*, 501 F.Supp. 350 (N.D. Ga. 1980).

commencing the action or it will be dismissed without prejudice.[50] An Alabama court held that an unqualified foreign corporation could sue in detinue in an Alabama court as long as the corporation was not relying on a contract that was made or had to be performed in Alabama.[51] The U.S. District Court in Massachusetts upheld the constitutionality of Massachusetts' statutory provision preventing foreign LLCs doing business without authority from maintaining an action. The provision does not deprive foreign LLCs of due process or violate equal protection.[52] A Maryland court held that the statutory bar to an unregistered foreign corporation's maintaining a suit does not preclude a corporation from maintaining a proceeding for attorney's fees pursuant to Maryland court rules. Such a proceeding is triggered by filing a motion in an existing civil action, not by initiating a lawsuit.[53]

Effect of Subsequent Qualification

When a foreign corporation is barred from bringing a lawsuit because it transacted business without a certificate of authority, the next question is whether subsequent qualification will cure the disability and enable it to bring suit.

In most cases, a foreign corporation can remove the bar by qualifying at any time before suit and in many states, even during the suit itself.[54]

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50. Nevada Revised Statutes, Sec. 80.055.

51. *Crowe v. Interstate Safety Systems, Inc.,* 853 So.2d 255 (Ala. Civ. App. 2002).

52. *BoylstonD3 LLC v. Galvin*, 496 F. Supp.3d 692 (D. Mass. 2020).

53. *Johnson v. Spireon, Inc.*, 338 A.3d 748 (Md. App. 2025)

54. *Capin v. S & H Packing Co., Inc.*, 130 Ariz. 441, 636 P.2d 1223 (1981); *Johnny's Pizza House, Inc. v. Huntsman*, 844 S.W.2d 320 (Ark. 1992); *Jack Tar of Ark., Inc. v. National Wells Television, Inc.*, 351 S.W.2d 848 (Ark. 1961); *Noldan Corp. v. District Court*, 716 P.2d 120 (Colo. 1986); *Stauffer Chemical Co. v. Keysor-Century Corp.*, 541 F.Supp. 239 (D. Del. 1982); *Hudson Farms, Inc. v. McGrellis*, 620 A.2d 215 (Del. 1993); *Super Products, LLC v. Intracoastal Envtl., LLC*, 252 So.3d 329 (Fla. App. 2018); *Adkins v. Fischer*, 520 P.3d 277 (Hawaii App. 2022); *Charles W. Smith & Sons Excavating, Inc. v. Lichtefeld-Massaro, Inc.*, 477 N.E.2d 308 (Ind. App. 1985); *Inn Operations, Inc. v. River Hill Motor Inn Company*, 152 N.W.2d 808 (Iowa 1967); *J.R. Watkins Co. v. Floyd*, 119 So.2d 164 (La. App. 1960); *Shannon Sales Co., Inc. v. Williams*, 490 N.W.2d 436 (Minn. App. 1992); *Christian Services, Inc. v. Northfield Villa, Inc.*, 385 N.W.2d 404 (Neb. 1986); *Rigid Component Systems v. Nebraska Component Systems, Inc.,* 202 Neb. 658, 276 N.W.2d 659 (1979); *Menley & James Laboratories Ltd. v. Vornado, Inc.*, 217 A.2d 889 (N.J. Super., Ch. Div. 1966); see also *York & York Construction Co. v. Alexander*, 296 A.2d 710 (D.C. App. 1972); *Williamson-Dickie Apparel Mfg. Co. v. Hanger, Inc.*, 422 So.2d 602 (La. App. 1982); *Moose Run, LLC v. Libric*, 2019 U.S. Dist. LEXIS 44488 (D. Nev.); *Marchman v. NCNB Texas National Bank*, 898 P.2d 709 (N.M. 1995); *Maro Leather Co. v. Argentinas*, 617 N.Y.S. 2d 617 (Sup. 1994); *In the Matter of Knoll North America, Inc.*, 601 N.Y.S.2d 224 (Sup. 1993); *Caspian Investments, Ltd. v. Vicom Holdings, Ltd.,* 770 F.Supp. 880 (S.D.N.Y. 1991); *Pergament*

The Michigan statute specifically provides: "An action commenced by a foreign corporation having no certificate of authority shall not be dismissed if a certificate of authority has been obtained before the order of dismissal." [55]

Sec. 15.02(c) of the Revised Model Business Corporation Act states that "A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate of authority". This provision, or a substantially similar one, has been adopted by Arizona, Arkansas, Colorado, Florida, Hawaii, Kentucky, Maine, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

There are many examples of foreign corporations being allowed to maintain an action once they qualified. In one case, a Washington corporation filed a breach of contract action in California. The defendant raised as a defense that the plaintiff was not qualified in California. Plaintiff contended it was not transacting intrastate business. All issues were tried in a single trial and the court ruled in favor of plaintiff on the breach of contract claim. The court also found that plaintiff was

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Home Centers, Inc. v. Net Realty Holding Trust, 567 N.Y.S.2d 292 (A.D. 2 Dept. 1991); *Beer v. F.W. Meyers & Co., Inc.*, 552 N.Y.S.2d 796 (A.D. 4 Dept. 1990); *Fine Arts Enterprises, N.V. v. Levy*, 539 N.Y.S.2d 827 (A.D. 3 Dept. 1989); *Intermar Overseas, Inc. v. Argocean S.A.*, 503 N.Y.S.2d 736 (A.D. 1 Dept. 1986); *Tinterorias Ibericas De Peleteria, S.A. v. Gafco, Inc.*, 494 N.Y.S.2d 318 (A.D. 2 Dept. 1985); *Oxfor Paper Co. v. S.M. Liquidation Co., Inc.*, N.Y.S.2d 395 (Sup. Ct. 1965); *P.K. Springfield, Inc. v. Hogan*, 621 N.E.2d 1253 (Ohio App. 2 Dist. 1993); *Step Plan Services, Inc. v. Koresko*, 12 A.3d 401 (Pa. Super. 2010); *International Inventors, Inc., East v. Berger*, 363 A.2d 1262 (Pa. Super. 1976); *Empire Excavating Co. v. Maret Development Corp.*, 370 F.Supp. 824 (W.D. Pa. 1974); *Cost of Wisconsin, Inc. v. Shaw*, 357 S.E.2d 20 (S.C. 1987); *Video Engineering Co. v. Foto-Video Electronics, Inc.*, 154 S.E.2d 7 (Va. 1967); *Dieter Engineering Services, Inc. v. Parkland Development, Inc.*, 483 S.E.2d 48 (W.Va. 1996). There is, however, some authority for the proposition that the statute of limitations will continue to run until the corporation has qualified. See *Kitchen v. Himelfarb*, 254 A.2d 694 (Md. App. 1969), in which a mechanic's lien filed by an unqualified foreign corporation was regarded as null and void, and the filing of an amended lien was held to constitute a new action which was barred because the statutory time for filing a lien had expired. *In Gratrix v. Pine Tree, Inc.*, 677 P.2d 1264 (Alaska 1984), the court permitted a foreign corporation to amend its complaint to allege compliance with qualification and tax requirements, since a dismissal would have been without prejudice, the statute of limitations had not expired, and plaintiff had cured its failure to qualify, so that it would simply have refiled its action if the court had denied permission to amend and dismissed the case.

55. Michigan Comp. Laws, Sec. 450.2051.

required to qualify. Following the issuance of the memorandum of decision, plaintiff qualified and was able to recover.[56]

However, in Wisconsin, a suit brought by an unqualified foreign corporation was dismissed where the corporation paid for and filed the required certificate of authority before the trial court rendered its decision, but the Secretary of State's office did not issue the certificate of registration until after the court's decision and after other parties filed appeals.[57]

In many of the states in which the disability may be removed by subsequent qualification, there are statutory provisions for the payment of specific penalties in connection with a belated qualification. These penalties may be exacted in addition to penalties for failure to file reports and pay taxes due under various statutes.[58]

Many courts have held that when a foreign corporation brings a suit that is subject to dismissal because the corporation is not qualified, the corporation will be given a reasonable amount of time to comply with the qualification provision before dismissal.[59] A Georgia court held that a foreign corporation that qualified ten months after filing suit could maintain the suit as any reason for dismissal ceased to exist when it qualified.[60] However, a North Carolina court held that it did not have to continue a suit to permit a foreign corporation to obtain a certificate of authority where one and one half years had passed between the filing of the motion to dismiss and the court's dismissal of the suit.[61]

The Nevada Supreme Court held that the concern that without the penalty of dismissal there would be no incentive for unqualified foreign corporations to qualify, did not justify the extraordinarily harsh penalty of dismissal. First, the court explained, staying an action that has been commenced by an unqualified foreign corporation will provide suffi-

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56. *American Retail Management, Inc. v. Bakersfield Food City, Inc.*, 247 Cal. Rptr. 689 (Cal. App. 5 Dist. 1988).

57. *South Carolina Equipment, Inc. v. Sheedy*, 120 Wis.2d 119, 353 N.W.2d 63 (1984).

58. *Transportation Insurance Co. v. El Chico Restaurants,* 524 S.E. 2nd 486 (Ga. 1999).

59. *Nasso v. Seagal,* 263 F.Supp.2d 596 (E.D.N.Y. 2003); *Showcase Limousine, Inc. v. Carey,* 703 N.Y.S. 2d 22 (A.D. 1 Dept. 2000); *Transportation Insurance Co. V. El Chico Restaurants,* 524 S.E.2nd 486 (Ga. 1999); *Uribe v. Merchants Bank of New York,* 697 N.Y.S.2d. 279 (A.D. 1 Dept. 1999); *Associated Comm. &Research Services, Inc. v. Kansas Personal Comm. Services, Ltd.,* 31 F.Supp.2d 949 (D. Kan.1998); *Corco, Inc. v. Ledar Transport, Inc.,* 946 P.2d 1009 (Kan. App. 1997).

60. *Health Horizons, Inc. v. State Farm Mut. Auto Ins. Co.,* 521 S.E.2d 383 (Ga.App. 1999).

61. *Harold Lang Jewelers, Inc. v. Johnson,* 576 S.E.2d 360 (N.C. App. 2003).

cient incentive to encourage compliance. Second, the corporation law sets forth its own penalties and the judiciary need not impose penalties beyond those. Third, the determination of whether a foreign corporation is actually doing business involves a fact-intensive and often nebulous inquiry and the failure to qualify can be the result of a bona fide disagreement regarding the scope of the qualification requirements. Finally, the fact that the Secretary of State will forgive the fault and allow the corporation to qualify indicates that the failure to qualify is not so egregious that it warrants dismissal with prejudice.[62]

A Colorado court held that a corporation that was not qualified when it obtained a mechanics lien, could maintain a proceeding to enforce the lien once it qualified, as the failure to qualify did not impair the validity of corporate acts.[63]

A Texas court denied a foreign entity's petition for a writ of mandamus to set aside an order abating its lawsuit until it qualified, holding that mandamus was not appropriate because the entity had control over whether it qualified, had chosen not to, and thus had not demonstrated that it did not have an adequate remedy by appeal.[64]

A federal court in New Mexico held that a foreign corporation's failure to qualify before filing a petition for removal was not a fatal jurisdictional problem and because the corporation subsequently qualified remand was not required.[65] A federal court in New Jersey held that a foreign corporation that qualified after filing its suit for breach of a lease agreement could maintain its action. Although there was no clear indication from New Jersey courts as to the effect of subsequent qualification the court stated it would follow the practice of other courts that permit plaintiffs to cure the deficiency during the pendency of litigation.[66]

A North Carolina court held that a foreign LLC could have obtained a certificate of authority at any time before a jury was empaneled, which included time after the summary judgment phase. Therefore, the trial court's granting the defendant's motion for summary judgment deprived the LLC of its legislatively allotted time to obtain a certificate of authority.[67]

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62. *Executive Management, Ltd. v. Ticor Title Insurance Co.*, 38 P.3d 872 (Nev. 2002).

63. *Bob Blake Builders, Inc. v Gramling,* 18 P.3d 859 (Colo. App. 2001).

64. *In re Immobiliere Jeuness Establissement,* 2014 Tex. App. LEXIS 1336.

65. *Strickland v. Madden Sales and Service, Inc.*, 2020 US Dist LEXIS 50144 (D. N.M. 2020)

66. *Clyde Associates, LLC v. McKesson Corporation*, 2020 U.S. Dist LEXIS 245126 (D.N.J. 2020)

67. JDG Environmental, LLC v. BJ & Associates, Inc., 894 S.E.2d 253 (N.C. App. 2023).

Defense of Suits

Although unqualified foreign corporations doing intrastate business are denied the right to sue in state courts, these corporations are permitted to defend themselves.[68]

Section 24 of the Model Business Corporation Act provides that: "The failure of a foreign corporation to obtain a certificate of authority to transact business in this State. . .shall not prevent such corporation from defending any action, suit or proceeding in any court of this State." Section 15.02(e) of the Revised Model Act (1984) and Sec. 15.02 (c) of the MBCA (2016) also provide that the failure to qualify does not prevent a corporation from defending itself.

The following states have adopted a provision permitting the defense of an action: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Vermont's statute provides that a foreign corporation transacting business without a certificate of authority may not raise an affirmative defense. Otherwise, its failure to qualify will not prevent it from defending a proceeding.

The statutes that make no mention of the right to defend suits grant the right by implication. It has been held that in the absence of a specific statutory denial, an unlicensed foreign corporation does have the right to defend suits brought against it.[69] In a federal court decision holding that an unlicensed foreign corporation had the capacity to defend suits against it where the statute was silent, the court observed: "Indeed, there would be some doubt as to the validity of such a closing

68. *Greenspan v. Qazi*, 2021 U.S. Dist. LEXIS 13586 (N.D. Cal); Kinkle v. First Tennessee Bank, NA, 2020 Cal. App. Unpub. LEXIS 4806; *Groeper v. Fitts Management Group, Inc.*,2019 Ill. App. Unpub. LEXIS 333; *Carson v. McNeal,* 375 F.Supp.2d 509 (S.D. Miss. 2005); *Buddy Gregg Motor Home Inc. v. Motor Vehicle Board*, 179 S.W.3d 589 (Tex. App. — Austin 2005).*Southern Christian Leadership Conference v. Shannon,* 613 S.E.2d596 (Va. 2005).

69. *American DeForest Wireless Telegraph Co. v. Superior Court of City and County of San Francisco*, 96 Pac. 15 (Cal. 1908); *Brecht v. Bur-Ne Co.*, 91 Fla. 345, 108 So. 173 (1926); *Carolina Mfg. Corp. v. George S. May, Inc.*, 312 Mich. 487, 20 N.W.2d 283 (1945), cited in *Gill v. S.H.B. Corp.*, 34 N.W.2d 526 (Mich., 1948); *Colegrove v. Handler*, 517 N.E.2d 979 (Ohio App. 1988).

of the courts of this state to a corporation defendant of another state if the statute attempted it."[70]

In an Illinois case,[71] an unqualified foreign corporation was brought into an action in state court through impleader. The court held that the corporation could "defend" itself in the case, even though it was awarded the sum being held by the court. The court maintained that "If the [foreign corporation] is to be bound by the court's adjudication it should have the right to assert a defense which is inherent in the nature of the issues to be resolved." In a Texas case,[72] a corporation was allowed to intervene in a garnishment proceeding and move to dissolve or modify the writ obtained by the garnishor, even though the corporation was not qualified in Texas. The court found that the intervention was not in the nature of a plaintiff's petition and was therefore not barred.

In another Texas case[73] an unqualified foreign corporation was allowed to appeal an order issued against it by a state board on the grounds that it was not prohibited from defending itself.

In a Washington case,[74] a foreign corporation unsuccessfully defended an action in which it was claimed that the corporation converted shareholders' stock. The court held that the corporation could appeal the decision even though it was not qualified in Washington. In Florida, a foreign corporation whose certificate of authority had been revoked was held to have standing to set aside a default judgment since such a corporation is allowed to defend itself.[75]

The New York appellate division has held that an unqualified corporate defendant may maintain a third-party action for indemnification or contribution. The court stated that in the absence of an express statutory provision to the contrary, a corporation forced to defend itself in a state court may not only defend the suit but also litigate any question arising out of the transaction that was the basis of the plaintiff's suit.[76]

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70. *Marquette Bailey Lumber Co. v. Dexter Lumber & Flooring Co.*, 2 F.Supp. 3 (D. N.J. 1933), *affirmed sub nom. Chase Nat. Bank of City of New York v. Gannon*, 66 F2d 937 (3rd Cir. 1933). *But see: Vornado, Inc. v. Corning Glass Works*, 255 F.Supp. 216 (D. N.J. 1966).

71. *McLaughlin v. Rainville Co.*, 316 N.E.2d 819 (Ill., 1974).

72. *A. Wolfson's Sons, Inc. v. First State Bank of Bank of Corpus Christi*, 697 S.W.2d 753 (Texas App. 1985).

73. *Buddy Gregg Motor Home Inc. v. Motor Vehicle Board*, 179 S.W.3d 589 (Tex. App. – Austin 2005).

74. *Frisch v. Victor Industries, Inc.*, 753 P.2d 1000 (Wash. App. 1988).

75. *New England Rare Coin Galleries Inc. v. Robertson*, 506 So.2d 1161 (Fla. App. 1987).

76. R*eese v. Harper Surface Finishing Systems*, 517 N.Y.S.2d 522 (App. Div. 1987); See also, *Williams Erectors of Suffolk County v. Mulach Steel Corp.*, 684 F.Supp. 357 (E.D.N.Y. 1988).

The New York appellate division also held that a nonqualified corporation being sued in a plenary action could move to compel arbitration because by so moving the corporation was exercising its right to defend against the action.[77]

The Fifth Circuit Court of Appeals has stated that the failure to qualify does not prevent a defendant from requesting a stay of a lawsuit, because such request is in the nature of a defensive maneuver.[78] A California court held that a forum selection clause in a contract is not defeated by a corporation's failure to register with the Secretary of State. A corporation may defend itself even if not qualified and the corporation's defense included a motion to dismiss on forum non conveniens grounds.[79]

A North Dakota court held that an unregistered foreign corporation could not only defend itself, but was entitled to attorney's fees and costs when the underlying action was found to be frivolous.[80] A Michigan court held that a foreign corporation could intervene in a garnishment proceeding in which the corporation claimed to hold a superior security interest to the plaintiff as it would be a defendant in the garnishment and therefore did not need a certificate of authority.[81]

Validity of Corporate Acts

Section 15.02(e) of the Revised Model Act states "the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts". The following states have adopted that, or a similar provision: Arizona, Colorado, Georgia, Hawaii, Kentucky, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

The statutes of Maryland, Ohio, and Utah are among those that provide that the failure to qualify does not impair the validity of a foreign corporation's contracts.

The statutes of Alabama, Alaska, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New

77. *Ruti v. Knapp*, 598 N.Y.S.2d 50 (A.D. 2 Dept. 1993).

78. *Ommani v. Doctor's Associates, Inc.*, 789 F.2d 298 (5th Cir. 1986).

79. *Resolute Transp. Inc. v. Shofur, LLC*, 2017 Cal. App. Unpub. LEXIS 2186

80. *Jensen v. Zuern,* 523 N.W.2d 388 (N.D. 1994).

81. *Domestic Uniform Rental v. Falcon Transport Co.*, 2020 Mich. App. LEXIS 7582

York, North Dakota, Oklahoma, Pennsylvania, Rhode Island and Washington provide that the failure to qualify does not impair the validity of the foreign corporation's contracts or corporate acts. Sec. 15.02(c) of the MBCA (2016) provides that "the failure of a foreign corporation to register to do business in this state does not impair the validity of a contract or act of the foreign corporation.

Montana provides "A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to register to do business as required under [section 207(4)] is voidable by the state, the contracting state agency, or the contracting political subdivision."

A federal court in Mississippi stated that the failure of a foreign corporation to obtain a certificate of authority before lending money to homeowners would not render the loan invalid pursuant to the provision of the corporation law stating that the failure to qualify does not impair the validity of a foreign corporation's acts.[82]

The Idaho Supreme Court held that the fact that a foreign corporation was not qualified when it entered into a lease/buy-sell agreement did not mean it could not convey the property once it qualified, nor did it excuse the defendant's breach.[83] A Wisconsin court held that the fact that a foreign LLC was not registered when it obtained title and sold property did not invalidate the sale.[84]

In a suit against foreign corporations based on disputed trade and service marks, the court held that the fact that the corporations were doing business without authority did not abrogate their common law rights to the marks.[85]

Counterclaims

Although the statutes of nearly every state permit unqualified corporations to defend themselves in state courts, the statutes are generally silent as to whether the corporations may also bring counterclaims. Vermont's statute provides that "A foreign corporation transacting business in this state without a certificate of authority may not maintain. . .a counterclaim . . . until it obtains a certificate of authority."[86]

82. *Carson v. McNeal,* 375 F.Supp.2d 509 (S.D. Miss 2005).

83. *McGimpsey v. D&L Ventures, Inc.,* 443 P.3d 219 (Idaho 2019).

84. *IJS Storage, LLC v. Fagan*, 2026 Wisc. App. LEXIS 622.

85. *Southern Christian Leadership Conference v. Shannon,* 613 S.E.2d 596 (Va. 2005).

86. Vermont Statutes Annotated, Title 11A, Sec. 15.02.

However, in the other states this question has been left for judicial determination.

Generally, courts examine this question on a case-by-case basis. If a counterclaim is equivalent to a defense to the action, and arises out of the same transaction as the main claim, a court will allow it.[87] Thus, in a Tennessee case, where the plaintiffs alleged infringement of a name, the court allowed the defendant to maintain its counterclaim alleging the plaintiffs maliciously prevented it from registering under the name. The defendant was merely asserting its counterclaim as a defense to the action filed against it.[88] If, however, the counterclaim is entirely independent of the main claim, so that bringing it amounts to maintaining a separate action, a court will usually refuse to allow it.[89] An Ohio court held that a foreign corporation that was being sued for breach of an agreement to sell trucks to the plaintiff could not maintain a counterclaim that involved the sale and financing of trucks in Ohio.[90]

New York has long followed this general rule. In *Jones v. Wells Fargo Co. Express,*[91] the New York Supreme Court held that when a defendant is "brought into court and thus made to defend, it should be allowed . . . not only to defend, but also to litigate any question arising out of the transaction that has been made the basis of the plaintiff's complaint." In a later case, a landlord suing an unqualified foreign corporation discontinued his suit. The court nevertheless allowed

87. *Alaska Mines and Minerals, Inc. v. Alaska Ind. Bod.*, 354 P.2d 376 (Alaska 1960); *Stauffer Chemical Co. v. Keysor-Century Corp.*, 541 F.Supp. 239 (D. Del. 1982); *Clayton Carpet Mills, Inc. v. Martin Processing, Inc.*, 563 F.Supp. 288 (N.D. Ga. 1983); *Burley Newspapers, Inc. v. Mist Publishing Co.*, 90 Idaho 515, 414 P.2d 460 (1966); *Cox v. Doctor's Associates, Inc.*, 613 N.E.2d 1306 (Ill. App. 5 Dist. 1993); *Finch v. Hughes Aircraft Co.*, 57 Md. App. 190, 469 A.2d 867 (1984); *Johnson & Anderson, Inc. v. Barlow Assoc. Mgt. Consultants, Ltd.*, 528 F.Supp. 417 (E.D. Mich. 1981); *Flakne v. Metropolitan Life Ins. Co.*, 270 N.W. 566 (Minn., 1936); *Smith v. Kincade*, 232 F.2d 306 (5th Cir. [Miss.] 1956); *Doll v. Major Muffler Centers, Inc.*, 687 P.2d 48 (Mont. 1984); *American Ink Co. v. Riegel Sack Co.*, 79 Misc. 421, 140 N.Y.S. 107 (Sup. Ct., App. Term, 1st Dept. 1913); *James Howden & Co. of America v. American C. & E. Corp.*, 194 App. Div. 164, 185 N.Y.S. 159 (1st Dept. 1920), aff'd (mem.) 231 N.Y. 627, 132 N.E. 915 (1921); *J.R. Alsing Co. v. New England Quartz & Spar Co.*, 66 App. Div. 473, 73 N.Y.S. 347 (1st Dept. 1901), aff'd (mem.) 174 N.Y. 536, 66 N.E. 1110 (1903); *E & S Industries Inc. v. Crown Textiles, Inc.*, 342 S.E.2d 397 (N.C. App. 1986); *Aberle Hosiery Co. v. American Arbitration Ass'n.*, 337 F.Supp. 90 (E.D. Pa., 1972); *Arcata Graphics Co. v. Hiedelberg Harris, Inc.*, 874 S.W.2d 15 (Tenn. App. 1993). Contra, see: *Hightower Petroleum Corp. v. Story*, 236 S.W.2d 679 (Tex. Civ. App. 1951); *Kutka v. Temporaries, Inc.*, 568 F.Supp. 1527 (S.D. Tex. 1983).

88. *Battery Alliance, Inc. v. Allegiant Power, LLC,* 2017 Tenn. App. LEXIS 53.

89. *Levitt Multihousing Corp. v. District Ct. of El Paso County*, 534 P.2d 1207 (Colo. 1975).

90. *Stepp v. Proficient Transport, Inc.,* 2017 Ohio App. LEXIS 4324.

91. 83 Misc. 508, 145 N.Y.S. 601 (Sup. Ct. 1914).

the defendant to maintain its counterclaim which arose out of the landlord-tenant relationship, holding that the discontinuance did not change its status to that of plaintiff.[92] A Texas court relied on the New York cases, noting the similarity between the Texas and New York statutory provisions.[93]

In contrast, in another New York case,[94] a New Jersey corporation sued its tenant in New York. Defendant interposed a counterclaim and then moved to dismiss because plaintiff was doing business in New York without authority. The trial court granted dismissal, but then also granted the New Jersey corporation leave to assert its original causes of action as counterclaims to the tenant's severed counterclaim, which had succeeded to the status of a complaint when the original complaint was dismissed. On appeal, in dicta, the court observed that the New Jersey corporation should not have been allowed to counterclaim because a foreign corporation should not be allowed to circumvent the New York qualification statute because of the fortuitous circumstance that a defendant chose to assert a counterclaim.

The Minnesota Supreme Court has held ". . .a statute such as ours does not prevent a foreign corporation which has not complied with the statute from defending a suit brought against it, interposing and recovering upon a counterclaim arising out of the transaction in suit, or prosecuting an appeal or writ of error from a judgment recovered against it."[95]

Some courts have not allowed unqualified foreign corporations to interpose counterclaims in reliance on a strict construction of statutory language.[96] The Supreme Court of Utah refused to allow a defendant to interpose a counterclaim not arising out of the same transaction as the plaintiff's claim, stating that the language of the qualification statute was "so broad and so rigid as to close against this appellant every

92. *Bellak v. Bon Specialty Co., Inc.*, 80 N.Y.S.2d 248 (Sup. Ct. App. Term, 1st Dept. 1948); see also *Williams Erectors of Suffolk County v. Mulach Steel Corp.*, 684 F.Supp. 357 (E.D.N.Y. 1988); *James Howden & Co. of Amer. v. American Condenser and Engineering Corp.*, 194 App.

93. *State v. Cook United, Inc.*, 463 S.W.2d 509 (Tex. Civ. App. 1971).

94. *Tri-Terminal Corp. v. CITC Industries, Inc.*, 78 A.D.2d 609, 432 N.Y.S.2d 184 (1st Dept. 1980).

95. *Flakne v. Metropolitan Life Ins. Co.*, 270 N. 566 (Minn. 1936).

96. *Roberts v. Cat-Nak Mfg. Co.*, 216 Ill. App. 245 (1919); *Gibraltar Const. & E. v. State National Bank of Bethesda*, 265 Md. 530, 290 A.2d 79 (Md. App. 1972); *Luna v. Iowa-Mo Enterprises, Inc.*, 597 S.W.2d (Mo. App. 1980); *Bozzuto's Inc. v. Kantrowitz and Sons, Inc.*, 283 A.2d 907 (N.J.

possible avenue of escape, resulting in an injustice to it which the court is powerless to avoid."[97]

Federal courts in Mississippi have permitted unqualified foreign corporations doing business in the state to bring compulsory counterclaims and third-party complaints because such claims were defensive in nature.[98] A Montana court allowed an unlicensed foreign corporation to bring a counterclaim, stating that "The counterclaim is just one aspect of the defense which they are entitled to raise and can therefore be brought."[99]

Suits by Assignees and Successors

Generally, if a state denies the use of its courts to unqualified foreign corporations doing business within its borders, it will also deny the use of its courts to the corporations' assignees and successors.

Section 124 of the Model Business Corporation Act provides: "Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such [unqualified] corporation on any right, claim or demand arising out of the transaction of business by such corporation in this State, until a certificate of authority shall have been obtained by such corporation which has acquired all or substantially all of its assets."

The statutory provisions in Alaska, District of Columbia, Illinois, Minnesota,[100] New Mexico, North Carolina, and Rhode Island are substantially the same as the Model Act.

Sec. 15.02 of the Revised Model Business Corporation Act provides: "The successor to a foreign corporation that transacted business in this state without a certificate of 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 the foreign corporation or its successor obtains a certificate of authority."

Arizona, Arkansas, Connecticut, Florida, Hawaii, Kentucky, Maine, Mississippi, Missouri, Nebraska, New Hampshire, Oregon, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia,

97. *Dunn v. Utah Serum Co.*, 65 Utah 527, 238 P. 245 (1925).

98. *Environmental Coatings, Inc. v. Baltimore Paint and Chemical Co.*, 617 F.2d 110 (5th Cir. [Miss.] 1980); *Park v. Cannco Contractors, Inc.*, 446 F.Supp. 24 (N.D. Miss. 1977).

99. *Wortman v. Griff,* 651 P.2d 998, 1000 (Mont. 1982).

100. The Minnesota statute adds that "If such assignee shall be a purchaser without actual notice of such violation by the corporation, recovery may be had to an amount not greater than the purchase price." (Minnesota Statutes Annotated, Sec. 303.20)

Wisconsin and Wyoming have adopted provisions with a similar effect to Sec. 15.02.

Georgia's law provides that successor corporations and assignees may not maintain a proceeding in any state court "unless before commencement of the proceeding, the foreign corporation or its successor obtains a certificate of authority."[101]

A Georgia court held that an assignment by an unqualified foreign corporation to a resident individual did not avoid the requirement that the corporation obtain a certificate of authority before suit was filed, even though the statute by its terms applied only to corporate assignees. The court noted that an assignee can acquire no greater rights than his assignor had, and is subject to any defenses existing between the assignor and the debtor.[102]

In a North Carolina case, a foreign corporation that was qualified in North Carolina could not enforce a judgment based on a lease agreement where the lease agreement was assigned to it by a foreign corporation that was not qualified in North Carolina.[103]

In an Iowa case,[104] it was held that an assignee of an out-of-state judgment against an Iowa corporation could maintain a suit on the judgment in Iowa even though the assignor was an unqualified foreign corporation allegedly doing business in Iowa. The Iowa Supreme Court found that the suit was not on a "right, claim or demand" arising out of the foreign corporation's transaction of intrastate business, but was merely a suit on a judgment of a sister state. As such, it was entitled to full faith and credit, and could not be barred.

In a Connecticut case, a foreign corporation brought a breach of contract action. Instead of obtaining a certificate of authority it assigned its contractual rights to a newly formed Connecticut corporation. The trial court denied the defendant's motion to compel the foreign corporation to qualify. However, the appellate court reversed, holding that the trial court's apparent assumption that the assignee's status as a Connecticut corporation exempted it from compliance with the qualification requirement could not be reconciled with the mandates of the remedial statute.[105]

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101. Code of Georgia Annotated, Sec. 14-2-1502.

102. *Healey v. Morgan*, 219 S.E.2d 628 (Ga. Ct. App. 1975).

103. *Leasecomm Corp. v. Renaissance Auto Care, Inc.*, 468 S.E.2d 562 (N.C. App. 1996).

104. *The American Title Insurance Co. v. Stoller Fisheries, Inc.*, 227 N.W.2d 374 (Iowa 1975).

105. *Trevek Enterprises, Inc. v. Victory Contracting Corporation,* 945 A.2d 1056 (Conn. App. 2008).

Vermont's statute provides that successors and assignees "may not maintain a proceeding or raise a counterclaim, crossclaim or affirmative defense" until a certificate of authority has been obtained, while in New York, the prohibition applies to "any successor in interest of such [unqualified] foreign corporation."[106]

Maryland's statute provides that a foreign corporation may not maintain a suit unless "the foreign corporation or a foreign corporation's successor to it has complied with the [qualification] requirements. . ."[107] Under Colorado law, no foreign corporation "nor anyone on its behalf may maintain proceeding until qualifying.[108]

In Delaware, Kansas and Oklahoma the statutes specifically exclude from the prohibition "any successor in interest of such foreign corporation."[109]

In New Jersey, it is provided that the statutory prohibition applies to "(a) any successor in interest of such [unqualified] foreign corporation, except any receiver, trustee in bankruptcy or other representative of creditors of such corporation; and (b) an assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this State."[110] In Michigan a substantially similar provision has been adopted.[111]

Texas law provides that a foreign corporation's legal representative may not maintain an action, suit or proceeding. However, it also provides that this prohibition "does not affect the rights of an assignee as the holder in due course of a negotiable instrument; or the bona fide purchaser for value of a warehouse receipt, security or other instrument made negotiable by law."[112]

A trustee in bankruptcy of an unqualified foreign corporation has been held not to be an assignee of the bankrupt but a representative of the court, and suit by the trustee was not barred.[113]

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106. Vermont Statutes Annotated, Title 11A, Sec. 15.02; New York Business Corporation Law, Sec. 1312.

107. Annotated Code of Maryland, Corporations and Associations, Sec. 7-301.

108. Colorado Revised Statutes, Sec. 7-90-802.

109. Delaware Code, Title 8, Sec. 383; Kansas Statutes Annotated, Sec. 17-7307(a); Oklahoma Statutes Annotated, Title 18, Sec. 1137.

110. Revised Statutes of New Jersey, Sec. 14A:13-11.

111. Michigan Compiled Laws Annotated, Sec. 450.2051.

112. Texas Business Organizations Code, Sec. 9.051.

113. *Okin v. A.D. Gosman, Inc.*, 174 A.2d 650 (N.J. Super. Ct., Law Div. 1961).

Many other cases of interest in this area have been decided.[114]

Personal Liability

Most states impose monetary penalties on foreign corporations that do business without qualifying. In a number of states, however, liability is not limited to the corporate entity, but is imposed on individuals acting on behalf of the corporation.

California, Delaware, North Dakota, Ohio, Oklahoma, Virginia, and Washington have statutory provisions imposing fines on individuals acting for noncomplying foreign corporations.

Upon whom the sanctions fall varies from state to state. California penalizes any person who does unauthorized intrastate business in California "on behalf of a foreign corporation."[115] This provision would seem to prescribe penalties regardless of the position held by the individual. In Virginia it is a misdemeanor "for any person to transact business in this Commonwealth as a corporation or to offer or advertise to transact business in this Commonwealth as a corporation unless the alleged corporation is. . .a foreign corporation authorized to transact business in this Commonwealth."[116] Fines are also imposed on each officer, director and employee who transacts business for an unqualified corporation in Virginia, knowing that qualification was required.

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114. *Casa Investments Co. v. Boles,* (Ala Civ. App. 2005); *Leasing Service Corporation v. Hobbs Equipment Company*, 707 F.Supp. 1276 (N.D. Ala. 1989); *Dews v. Halliburton Industries, Inc.*, 708 S.W.2d 67 (Ark. 1986); *B&P., Inc. v. Norment*, 411 S.W.2d 506 (Ark. 1967); *Widmer v. J.I. Case Credit Corporation*, 419 S.W.2d 617 (Ark. 1967); *Thorner v. Selective Cam Transmission Co.*, 180 Cal.App.2d 89, 4 Cal.Rptr. 409 (1960); *Poly-Pak Corp. of America v. Barrett*, 468 A.2d 1260 (Conn. 1983); *Carrier411 Services, Inc. v. Insight Technology, Inc.,* 744 S.E.2d 356 (Ga. App. 2013); *Mfrs. Nat. Bank of Detroit v. Tri-State*, 410 S.E.2d 808 (Ga. App. 1991); *Credit Industrial Company v. Happel, Inc.*, 106 N.W.2d 667 (Iowa 1960); State ex. rel. *Carlund Corp. v. Mauer*, 550 S.W.2d 357 (Mo.App.W.D. 1993); *Flinn v. Gillen*, 10 S.W.2d 923 (Mo. 1928); Cadle Co. v. Proulx, 725 A.2d 670 (N.H. 1999); *Ensign v. Christiansen*, 109 A. 857 (N.H. 1920); *Franklin Enterprises Corporation v. Moore*, 34 Misc.2d 594, 226 N.Y.S.2d 527 (Sup. Ct. 1962); *New York Factors, Inc. v. Seid*, 28 Misc.2d 753, 213 N.Y.S.2d 294 (Sup.Ct. 1961); *Crites v. Associated Frozen Food Packers, Inc.*, 227 P.2d 821 (Ore. 1951); *Information System Services v. Platt,* 920 A.2d 846 (Pa. Super. 2006); *A Fast Photo Express, Inc. v. First Nat. Bank of Chicago*, 630 S.E.2d 285 (S.C. App. 2006); *Washington-Dean Co., Inc. v. Crow Bros.*, 1 S.W.2d 914 (Tex. Civ. App. 1928); *Thorp Finance Corporation v. Wright*, 399 P.2d 206 (Utah 1965); *Chase Commercial Corp. v. Barton*, 571 A.2d 682 (Vt. 1990); *Zimmerman v. Kyte*, 765 P.2d 905 (Wash. App. 1988); *Association Collectors, Inc. v. Hardman*, 98 P.2d 318 (Wash. 1940); *Technical Tape Corp. v. Slusher*, 358 P.2d 304 (Wash. 1961).

115. California Corporations Code, Sec. 2259.

116. Code of Virginia, 1950, Secs. 13.1-613 and 13.1-758.

Delaware and Oklahoma provide for the liability of agents wrongfully doing business.[117] It is by no means clear that the term "agent" is sufficient to establish the liability of all those who act for a corporation. In some states, a distinction has grown up between officers, who manage the corporate affairs and agents.[118] There is also law to the effect that a director may be considered a special corporate individual possessing certain characteristics of both officers and agents.[119]

In Washington, "every person representing or pretending to represent such corporation as an officer, agent or employee thereof. . ." shall be guilty of a gross misdemeanor.[120] Ohio imposes penalties against officers.[121] In North Dakota, "each director and each officer or agent who authorizes, directs, or participates in the transaction of business" on behalf of an unqualified corporation is subject to a civil penalty penalty not to exceed $1,000.[122]

The monetary penalties can also be harsh. California imposes a fine of from $50 to $600 but the individual must have guilty knowledge.[123] In Delaware and Oklahoma, the fine ranges from $100 to $500 "for each offense."[124] Offenders in Virginia may be subject to fines ranging from $500 to $5,000.[125]

In the enforcement of these penalties, jurisdictional problems may arise. In a case decided before the enactment of the 1989 Kentucky corporation law, suit was instituted against the corporation and officers in the Franklin County Circuit Court for doing business without a license. The jurisdictional basis of the action was challenged, since neither the corporation nor its officers were active in Franklin County. The Court of Appeals of Kentucky held that exclusive jurisdiction rested in Bell County, the only county where the corporation and its officers operated their business.[126]

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117. Delaware Code Annotated, Title 8, Sec. 378; Oklahoma Statutes Annotated, Title 18, Sec. 1134.

118. 2 Fletcher Cyclopedia Corporations 10, Sec. 266, (perm. ed).

119. *Id.*, n.2.

120. Revised Code of Washington, Sec. 9.24.040.

121. Page's Ohio Revised Code Annotated, Secs. 1703.30 and 1703.99.

122. North Dakota Century Code, Sec. 10-19.1-142.

123. California Corporations Code, Sec. 2259.

124. Delaware Code Annotated, Title 8, Sec. 378; Oklahoma Statutes Annotated, Title 18, Sec. 1134.

125. Code of Virginia, 1950, Sec. 13.1-613 and 13.1-758(D).

126. *Kentucky Strict Creek Coal Co. et al. v. Commonwealth*, 200 S.W.2d 470 (Ky. App. 1947).

When a corporation is doing business in more than one county of a state, are the individuals acting on behalf of that corporation subject to separate actions and separate penalties with respect to each county in which the corporation did business? In an Arkansas Supreme Court case, decided prior to the enactment of the Arkansas Business Corporation Act of 1987, the court held that where the corporation had qualified after the first penalty was imposed, it was not subject to the statutory penalty with respect to the unauthorized business in which it had engaged in other counties.[127] The case involved a corporation's liability, not that of individuals. Nevertheless, the rationale of the decision would seem to apply at least as forcefully to individuals acting for the corporation, and they would probably not be subject to greater liability than the corporation.

Section 146 of the Model Business Corporation Act provides: "All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof." While the aim of this section is "to negate the possibility of a de facto corporation,"[128] it has been construed to apply to agents of unqualified foreign corporations as well.[129]

A Florida court has held that "in the absence of statutory sanction, the officers and shareholders of a foreign corporation cannot be held personally liable for corporate debts incurred within the state by reason of the failure to qualify to do business in Florida."[130] Similarly, a Missouri court held that "The sole fact that a foreign corporation has not complied with Missouri law [by qualifying to do business] is not sufficient of itself to authorize judgment against the stockholders of the corporation under contracts executed in the name of the corporation."[131]

Monetary Penalties

In addition to closing their courts to unqualified foreign corporations doing intrastate business, most states subject such corporations to fines.

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127. *Alexander Film Co. et al. v. State*, for use of Phillips County, 201 Ark. 1052, 147 S.W.2d 1011 (1941).

128. Model Bus. Corp. Act Ann. 2d §146 Par. 2. See *National Ass'n of Credit Management v. Burke*, 645 P.2d 1323 (Colo. App. 1982), and *Cargill, Inc. v. American Pork Producers, Inc.*, 415 F.Supp. 876 (D.S.D. 1976).

129. *Kessler Distributing Co. v. Neill*, 317 N.W.2d 519, 522 (Iowa App. 1982).

130. *Mysels v. Barry*, 332 So.2d 38 (Fla. App. 1976), citing *A. Tasker, Inc. v. Amsellem*, 315 A.2d 178 (D.C. App. 1974).

131. *Service Drywall Supply, Inc. v. Sharp*, 842 S.W.2d 564 (Mo.App. W.D. 1992).

Several states have statutory provisions based on Section 124 of the Model Business Corporation Act, which states:

"A foreign corporation which transacts business in this State without a certificate of authority shall be 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 by this Act upon such corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this Act and thereafter filed all reports required by this Act, plus all penalties imposed by this Act for failure to pay such fees and franchise taxes. The Attorney General shall bring proceedings to recover all amounts due this State under the provisions of this Section."

This provision, or a similar one, has been adopted by Alaska, Connecticut, District of Columbia, Florida, Illinois, Louisiana, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Texas, West Virginia, Wisconsin and Wyoming. The provision of Tennessee is similar to the Model Act section, except that it requires payment of three times the required fees, penalties and taxes, plus interest.

The Model Act provision has also been adopted by Arizona, Colorado, Hawaii, North Dakota, Oregon, Vermont and Washington except that these states impose liability based on fees only, rather than on fees and franchise taxes.

Alaska, Arizona, Colorado, Connecticut, Florida, Illinois, Louisiana, New Mexico, North Carolina, North Dakota, Ohio, Vermont, Wisconsin and Wyoming use the Model Act approach but also impose an additional monetary penalty.

The fines for failure to qualify vary substantially from state to state. Fines may be based on the number of years, months, or even days, during which the foreign corporation transacted business in the state without a certificate of authority. Alaska imposes a fine of up to $10,000 per year; California's equals $20 per day and the corporation is guilty of a misdemeanor, which is punishable by a fine of not less than $500 nor more than $1,000; Florida, $500 to $1,000 per year; Illinois, $200 plus $5 per month or fraction thereof, or 10% of the filing fees, license fees and franchise taxes that would have been due, whichever is greater; Massachusetts, up to $500 per year; Michigan, $100 to $1,000 per month, but not over $10,000; Minnesota, to $1,000 plus $100 per month; New Jersey, $200 up to $1,000 per year for not more than five years; North Dakota, not exceeding $5,000; and Vermont, $50 per day, but not over $10,000 per year.

In some states, the amount of the fine is based on the number of transactions of the unqualified foreign corporation in the state, or on the number of offenses. (Delaware, $200 to $500 per offense; Louisiana, not more than $1,000 per violation; New Mexico, $200 for each offense; and Oklahoma, $200 to $500 per offense.)

Other jurisdictions that impose fines for failure to qualify include Arizona (up to $1,000), Arkansas (not to exceed $5,000 per year), Colorado (not to exceed $100 per year plus a civil penalty not to exceed $5,000), Connecticut ($300 per month), Georgia ($500), Indiana (not exceeding $10,000), Kentucky ($2 per day), Maine ($500 per year or portion thereof), Maryland ($200), Mississippi ($10 per day up to a maximum of $1,000 per year), Missouri (not less than $1,000), Nebraska ($500 per day, not to exceed $10,000 per year), Nevada (not less than $1,000 nor more than $10,000), North Carolina ($10 per day up to a maximum of $1,000 per year), Ohio ($250 to $10,000), South Carolina ($10 per day up to a maximum of $1,000 per year), South Dakota ($100 per day, not to exceed $1,000 per year), Wisconsin (50% of all fees and charges that would have been imposed or $5,000, whichever is less) and Wyoming ($5,000).

In a case that arose in Maine[132] the defendant asserted that the plaintiff foreign corporation had not paid the statutory penalties for having done business in the state without authority. It therefore claimed that plaintiff could not maintain the action, even though it had qualified in Maine after bringing the suit. The court pointed out that the state had not assessed any penalty against plaintiff, and stated that the statute plainly contemplates a preliminary determination that the foreign corporation's activities in the state required qualification. Thus, the fact that no penalties had been assessed meant that none were due. To hold otherwise would be to presume that the Attorney General had failed to do his statutory duty to pursue recovery of amounts due the state. Further, the court expressed doubt that the legislature intended that the adversary of a foreign corporation be permitted to demand payment of penalties never demanded by the state. The court denied the motion to dismiss, but noted that if penalties were later assessed and not paid, and if plaintiff's authority were therefore to be revoked, the action could then be dismissed.

An Illinois court upheld the imposition of a penalty on a foreign corporation that transacted business without authority equaling 10% of the amount owed for the filing fee, license fee, and franchise tax as provided by the corporation law. However it did not owe interest for each

132. *Jerold Panas & Partners, Inc. v. Portland Society of Art,* 535 F.Supp. 650 (D. Maine 1982).

month in which it failed to pay the initial franchise tax as that penalty was not authorized by the corporation law.[133]

Statutory Citations

The following is a list of the statutory provisions discussed in the preceding sections, relating to the penalties imposed upon unqualified corporations that are doing business in the state:

Alabama. Sec. 10A-1-7.21, Code of Alabama.

Alaska. Secs. 10.06.710 and 10.06.713, Alaska Statutes.

Arizona. Sec. 10-1502, Arizona Revised Statutes.

Arkansas. Sec. 4-27-1502, Arkansas Code of 1987 Annotated.

California. Secs. 2203, 2258 and 2259, California Corporations Code.

Colorado. Sec. 7-90-802, Colorado Revised Statutes.

Connecticut. Sec. 33-921, Connecticut General Statutes Annotated.

Delaware. Title 8, Secs. 378, 383 and 384, Delaware Code.

District of Columbia. Secs. 29-105.02, 29-101.06, District of Columbia Code.

Florida. Sec. 607.1502, Florida Statutes Annotated.

Georgia. Secs. 14-2-122 and 14-2-1502, Code of Georgia Annotated.

Hawaii. Sec. 414-432, Hawaii Revised Statutes.

Idaho. Sec. 30-21-502, Idaho Code.

Illinois. Ch. 805, Sec. 5/13.70, Illinois Compiled Statutes Annotated.

Indiana. Sec.23-0.5-5-2, Burns Indiana Statutes Annotated.

Iowa. Sec. 490.1502, Iowa Code Annotated.

Kansas. Secs. 17-7307, Kansas Statutes Annotated.

Kentucky. Sec. 14A.9-020.

Louisiana. Secs. 12:314 and 12:314.1, Louisiana Statutes Annotated.

Maine. Title 13-C, Sec. 1502, Maine Revised Statutes Annotated.

133. *Global Mail, Inc. v. White,* 2019 Ill. App. Unpub. LEXIS 2221.

Maryland. Secs. 7-301, 7-302 and 7-305, Annotated Code of Maryland, Corporations and Associations.

Massachusetts. Ch. 156D, Sec. 15.02, Massachusetts General Laws Annotated.

Michigan. Secs. 450.2051 and 450.2055, Michigan Compiled Laws Annotated.

Minnesota. Sec. 303.20, Minnesota Statutes Annotated.

Mississippi. Sec. 79-4-15.02, Mississippi Code 1972 Annotated.

Missouri. Sec. 351.574, Missouri Revised Statutes Annotated.

Montana. Sec. 35-14-1502, Montana Code Annotated.

Nebraska. Sec. 21-2,204, Revised Statutes of Nebraska.

Nevada. Secs. 80.055, Nevada Revised Statutes.

New Hampshire. Sec. 293-A:15.02, New Hampshire Revised Statutes Annotated.

New Jersey. Sec. 14A:13-11, New Jersey Statutes Annotated.

New Mexico. Sec. 53-17-20, New Mexico Statutes Annotated.

New York. Sec. 1312, Business Corporation Law.

North Carolina. Sec. 55-15-02, General Statutes of North Carolina.

North Dakota. Sec. 10-19.1-142, North Dakota Century Code.

Ohio. Secs. 1703.28, 1703.29, 1703.30 and 1703.99, Page's Ohio Revised Code Annotated.

Oklahoma. Title 18, Secs. 1134 and 1137, Oklahoma Statutes Annotated.

Oregon. Sec. 60.704, Oregon Revised Statutes.

Pennsylvania. Title 15, Sec. 411, Purdon's Pennsylvania Consolidated Statutes Annotated.

Rhode Island. Sec. 7-1.2-1418, General Laws of Rhode Island.

South Carolina. Sec. 33-15-102, Code of Laws of South Carolina.

South Dakota. Secs. 47-1A-1502, 47-1A-1502.1 and 47-1A-1502.2, South Dakota Codified Laws.

Tennessee. Sec. 48-25-102, Tennessee Code Annotated.

Texas. Secs. 9.051 and 9.052, Texas Business Organizations Code.

Utah. Sec. 16-1a-503, Utah Code Annotated (effective October 1, 2026).

Vermont. Title 11A, Sec. 15.02, Vermont Statutes Annotated.

Virginia. Secs. 13.1-613 and 13.1-758, Code of Virginia.

Washington. Secs. 9.24.040 and 23.95.505, Revised Code of Washington Annotated.

West Virginia. Sec. 31D-15-1502, West Virginia Code Annotated.

Wisconsin. Sec. 180.1502, Wisconsin Statutes Annotated.

Wyoming. Sec. 17-16-1502, Wyoming Statutes Annotated.

Statutory "doing business" definitions applicable to ordinary business corporations

Every state requires foreign corporations doing business in the state to qualify. Every state has enacted a statute dealing with the question of what activities will be considered doing intrastate business. These statutory provisions usually include a list of specific activities which, separately or together, will not require qualification. In a few instances, there are positive statements to the effect that certain activities will require qualification.

These statutory definitions, as well as the definitions contained in the Model Business Corporation Act, the Revised Model Business Corporation Act (1984) and the Model Business Corporation Act (2016) and the relevant provisions of the Provinces and Territories of Canada, Puerto Rico and the Virgin Islands, are set forth below.

The Model Act Provision

The following provision has been adopted in California, New Mexico, and Rhode Island. A substantial portion of the Model Act provision has also been incorporated into the statutes, quoted below, of Alaska, Georgia, Louisiana, Maryland, Minnesota, and North Carolina.

"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 this 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 such orders require acceptance without this State before becoming binding contracts.

"(g) Creating evidences of debt, mortgages or liens on real or personal property.[134]

"(h) Securing or collecting debts or enforcing any rights in property securing the same.

"(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." (Model Business Corporation Act, Sec. 106).

The Revised Model Act Provision

The Model Act was revised in 1984. The Revised Model Act's "doing business" definition is slightly different from that of the earlier Model Act. The Revised Model Act definition has been adopted by Arkansas, Connecticut, Hawaii, Idaho, Indiana, Iowa, Kentucky, Michigan, Mississippi, Nebraska, New Hampshire, Oregon, South Carolina and Wyoming. A substantial portion of the Revised Model Act has also been incorporated into the statutes of Arizona, Colorado, Illinois, Maine, Missouri, Nevada, North Dakota, Vermont, West Virginia and Wisconsin.

The Revised Model Act provides:

"(b) the following activities, among others, do not constitute transacting business within the meaning of subsection (a):

"(1) maintaining, defending, or settling any proceeding;

"(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) maintaining bank accounts;

"(4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

"(5) selling through independent contractors;

134. Subsection (g) was revised in 1973 to read: "Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property". States that have adopted this revision are noted below.

"(6) 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;

"(7) 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, without more, real or personal property;

"(10) 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;

"(11) transacting business in interstate commerce.

"(c) The list of activities in subsection (b) is not exhaustive." (Revised Model Business Corporation Act, Sec. 15.01)

The Model Business Corporation Act (2016) Provision

The MBCA was updated and revised in 2016. The MBCA (2016) provision was adopted in whole or in part by Florida, Iowa, Montana, and Virginia.

"(a) Activities of a foreign corporation that do not constitute doing business in this state for purposes of this chapter include:

"(1) maintaining, defending, mediating, arbitrating, or settling a proceeding;

"(2) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or "board of directors;

(3) maintaining accounts in financial institutions;

"(4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

"(5) selling through independent contractors;

"(6) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

"(7) creating or acquiring indebtedness, mortgages, or security interests in property;

"(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;

"(9) conducting an isolated transaction that is not in the course of similar transactions;

"(10) owning, protecting and maintaining property; and

"(11) doing business in interstate commerce." (Model Business Corporation Act, Sec. 15.05)

Alabama

"A foreign corporation, insofar as it acts in a fiduciary capacity in this state pursuant to the provisions of this division, shall not be deemed to be transacting business in this state, but no foreign corporation acting in a fiduciary capacity in this state pursuant to the provisions of this division without registering to transact business in this state pursuant to this title or other applicable provisions of law shall establish or maintain in this state a place of business, branch office or agency for the conduct of business as a fiduciary. Nothing contained in this division shall diminish the authority of out-of-state banks and trust companies to establish or acquire and maintain trust offices or representative trust offices, or both, under the provisions of Chapter 11A of Title 5." (Code of Alabama, 1975, Sec. 10A-2A-15.13)

Alaska

"Without excluding other activities that may not constitute transacting business in this state, a foreign corporation is not considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

"(1) maintaining, defending, or settling an action, suit, or administrative or arbitration proceeding, or the settlement of claims or disputes;

"(2) holding meetings of directors or shareholders of the corporation, or carrying on other activities concerning the internal affairs of the corporation;

"(3) maintaining bank accounts;

"(4) maintaining an office or agency for the transfer, exchange, and registration of securities of the corporation, or appointing and maintaining a trustee or depositary for the securities of the corporation;

"(5) making sales through independent contractors;

"(6) soliciting or procuring orders by mail, through employees, agents, or otherwise, if the orders require acceptance outside the state before becoming binding contracts;

"(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;

"(8) securing or collecting debts, or enforcing rights in property securing debts;

"(9) transacting business in interstate commerce;

"(10) conducting an isolated transaction completed within a period of 30 days not in the course of a number of repeated transactions of like nature." (Alaska Statutes, Sec. 10.06.718)

Arizona

Arizona has adopted the Revised Model Act provision and has added the following subsection:

"12. Being a limited partner of a limited partnership or a member of a limited liability company." (Arizona Revised Statutes, Sec. 10-1501)

Arkansas

Arkansas has adopted the Revised Model Act provision. (Arkansas Code of 1987 Annotated, Sec. 4-27-1501)

California

"(a) For the purposes of Chapter 21 (commencing with Section 2100), "transact intrastate business" means entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce.

"(b) A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or merely because of its status as any one or more of the following:

"(1) A shareholder of a domestic corporation.

"(2) A shareholder of a foreign corporation transacting intrastate business.

"(3) A limited partner of a domestic limited partnership.

"(4) A limited partner of a foreign limited partnership transacting intrastate business.

"(5) A member or manager of a domestic limited liability company.

"(6) A member or manager of a foreign limited liability company transacting intrastate business.(California Corporations Code, Sec. 191(a) and (b))

In addition, California has adopted the Model Act provision, except that subsections (h) and (i) have been omitted and the time period for an isolated transaction has been increased to 180 days. (California Corporations Code, Sec. 191(c))

Colorado

"(2) A foreign entity shall not be considered to be transacting business or conducting activities in this state within the meaning of subsection (1) of this section by reason of carrying on in this state any one or more of the following activities:

"(a) Maintaining, defending, or settling in its own behalf any proceeding or dispute;

"(b) Holding meetings of its owners or managers 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 own securities or owner's interests, or maintaining trustees or depositories with respect to those securities or owner's interests;

"(e) Selling through independent contractors;

"(f) Soliciting or obtaining orders, whether by mail or electronic transmission 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;

"(h) Creating, as borrower or lender, or acquiring, mortgages or other security interests in real or personal property;

"(i) Securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;

"(j) Owning, without more, real or personal property;

"(k) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

"(l) Transacting business or conducting activities in interstate commerce." (Colorado Revised Statutes, Sec. 7-90-801)

Connecticut

Connecticut has adopted the Revised Model Act provision. (Connecticut General Statutes Annotated, Sec. 33-920)

Delaware

"Exceptions to requirements. (a) No foreign corporation shall be required to comply with the provisions of §§371 and 372 of this title, under any of the following conditions:

"(1) If it is in the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside this State, and filling them with goods shipped into this State;

"(2) If it employs salesmen, either resident or traveling, to solicit orders in this State, either by display of samples or otherwise (whether or not maintaining sales offices in this State), all orders being subject to approval at the offices of the corporation without this State, and all goods applicable to the orders being shipped in pursuance thereof from without this State to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this State are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this State;

"(3) If it sells, by contract consummated outside this State, and agrees by the contract, to deliver into this State, machinery, plants, or equipment, the construction, erection or installation of which within this State requires the supervision of technical engineers or skilled employees performing services not generally available, and as a

part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

"(4) If its business operations within this State, although not falling within the terms of paragraphs (1), (2) and (3) of this section, or any of them, are nevertheless wholly interstate in character;

"(5) If it is an insurance company doing business in this State;

"(6) If it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property;

"(7) If it secures or collects debts or enforces any rights in property securing the same." (Delaware Code, Tit. 8, Sec. 373)

District of Columbia

"(a) Without excluding other activities that do not have the intra-District presence necessary to constitute doing business in the District under this title, a foreign filing entity or foreign limited liability partnership shall not be considered to be doing business in the District under this
title solely by reason of carrying on in the District any one or more of the following activities:

"(1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

"(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

"(3) Maintaining accounts in financial institutions;

"(4) Maintaining offices or agencies for the transfer, exchange, and registration of interests of the entity or maintaining trustees or depositories with respect to those interests;

"(5) Selling through independent contractors;

"(6) Soliciting or obtaining orders by any means if the orders require acceptance outside the District before they become contracts;

"(7) Creating or acquiring indebtedness, mortgages, or security interests in property;

"(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

"(9) Conducting an isolated transaction that is not in the course of similar transactions; and

"(10) Doing business in interstate commerce. "

"(c) A person does not do business in the District solely by being an interest holder or governor of a foreign entity that does business in the District."

(District of Columbia Code, Sec. 29-105.05)

Florida

"(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

"(a) Maintaining, defending, mediating, arbitrating, or settling any proceeding.

"(b) Carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors.

"(c) Maintaining bank accounts in financial institutions.

"(d) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositaries with respect to those securities.

"(e) Selling through independent contractors.

"(f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.

"(g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property.

"(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired.

"(i) Transacting business in interstate commerce.

"(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) Owning and controlling a subsidiary corporation incorporated in or limited liability company formed in, or transacting business within,

this state; voting the shares of any such subsidiary corporation; or voting the membership interests of any such limited liability company, which it has lawfully acquired.

"(l) Owning a limited partnership interest in a limited partnership that is transacting business within this state, unless the limited partner manages or controls the partnership or exercises the powers and duties of a general partner.

"(m) Owning, protecting, and maintaining, without more, real or personal property."

(Florida Statutes Annotated, Sec. 607.1501)

Georgia

"(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this Code section:

"(1) 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;

"(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

"(3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

"(4) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with respect to its securities;

"(5) Effecting sales through independent contractors;

"(6) 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 and where the contracts do not involve any local performance other than delivery and installation;

"(7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

"(8) Securing or collecting debts or enforcing any rights in property securing the same;

"(9) Owning, without more, real or personal property;

"(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;

"(11) Effecting transactions in interstate or foreign commerce;

"(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this State;

"(13) Owning (directly or indirectly) an interest in or controlling (directly or indirectly) another entity organized under the laws of, or transacting business within, this state; or

"(14) Serving as a manager of a limited liability company organized under the laws of, or transacting business, within this state." (Code of Georgia Annotated, Sec. 14-2-1501)

Hawaii

Hawaii has adopted the Revised Model Act provision. (Hawaii Revised Statutes, Sec. 414-431).

Idaho

"(a) Activities of a foreign filing entity or foreign limited liability partnership that do not constitute doing business in this state under this chapter include:

"(1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

"(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

"(3) Maintaining accounts in financial institutions;

"(4) Maintaining offices or agencies for the transfer, exchange and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;

"(5) Selling through independent contractors;

"(6) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

"(7) Creating or acquiring indebtedness, mortgages or security interests in property;

"(8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting or maintaining property so acquired;

"(9) Conducting an isolated transaction that is not in the course of similar transactions;

"(10) Owning, without more, property; and

"(11) Doing business in interstate commerce.

"(b) A person does not do business in this state solely by being an interest holder or governor of a foreign entity that does business in this state. (Idaho Code, Sec. 30-21-505)

Illinois

"Without excluding other activities that may not constitute doing business in this State, a foreign corporation shall not be considered to be transacting business in this State, for purposes of this Article 13, by reason of carrying on in this State any one or more of the following activities:

"(1) maintaining, defending, or settling any proceeding;

"(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) maintaining bank accounts;

"(4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

"(5) selling through independent contractors;

"(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if orders require acceptance outside this State before they become contracts;

"(7) (blank)

"(8) (blank)

"(9) owning, without more, real or personal property;

"(10) conducting an isolated transaction that is completed within 120 days and that is not one in the course of repeated transactions of a like nature; or

"(11) having a corporate officer or director who is a resident of this State." (Illinois Compiled Statutes Annotated, Ch. 805, Sec. 5/13.75)

Indiana

"Activities of a foreign entity which do not constitute doing business in Indiana under this article include:

"(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

"(2) carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governing persons;

"(3) maintaining accounts in financial institutions;

"(4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;

"(5) selling through independent contractors;

"(6) soliciting or obtaining orders by any means if the orders require acceptance outside Indiana before they become contracts;

"(7) making loans or otherwise creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

"(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;

"(9) conducting an isolated transaction completed within thirty (30) days that is not conducted in the course of repeated transactions of a like nature;

"(10) owning, without more, property;

"(11) doing business in interstate commerce; and

"(12) if the entity is a nonprofit corporation, soliciting funds if otherwise authorized by Indiana law.

"(b) A person does not do business in Indiana solely by being an interest holder or governing person of a foreign entity that does business in Indiana."

"(Burns Indiana Statutes Annotated, Sec. 23-0.5-5-5)

Iowa

Iowa has adopted the Model Business Corporation Act (2016) provision. (Iowa Code Annotated, Sec. 490.1505)

Kansas

"(a) Activities of a foreign covered entity which do not constitute doing business within the meaning of K.S.A. 2014 Supp. 17-7931, and amendments thereto, include:

"(1) Maintaining, defending or settling an action or proceeding;

"(2) holding meetings or carrying on any other activity concerning its internal affairs;

"(3) maintaining bank accounts;

"(4) maintaining offices or agencies for the transfer, exchange or registration of the covered entity's own securities or maintaining trustees or depositories with respect to those securities;

"(5) selling through independent contractors;

"(6) 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;

"(7) selling, by contract consummated outside the state of Kansas, and agreeing, by the contract, to deliver into the state of Kansas machinery, plants or equipment, the construction, erection or installation of which within the state requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

"(8) creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

"(9) securing or collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

"(10) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of like nature; and

"(11) transacting business in interstate commerce.

"A person shall not be deemed to be doing business in the state of Kansas solely by reason of being a member, stockholder, limited partner or governor of a domestic covered entity or a foreign covered entity." (Kansas Statutes Annotated, Sec. 17-7932)

Kentucky

Kentucky has adopted the Revised Model Act provision except that the term "entity" is used instead of "corporation" and Sec. (2) reads as follows: "Holding meetings of the board of directors, shareholders, partners, members, managers, beneficial owners, or trustees or carrying on any other activity concerning the internal affairs of the foreign entity"(Kentucky Revised Statutes, Sec. 14A.9-010).

Louisiana

"*Acts not considered transacting business.* Without excluding other activities which may not constitute transacting business in this state, a foreign corporation or a business association shall not be considered to be transacting business in this state, for the purpose of being required to procure a certificate of authority pursuant to R.S. 12:301, 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. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, if such orders require acceptance outside this State before becoming binding contracts, including all preliminary incidents thereto.

"F. Creating evidences of debt, mortgages or liens.

"G. Securing or collecting debts or enforcing any rights in property securing the same.

"H. Transacting any business in interstate or foreign commerce.

"I. Conducting an isolated transaction completed within a period of thirty days, and not in the course of repeated transactions of like nature.

"J. Acquiring and disposing of property or a property interest, not as a part of any regular business activity." (Louisiana Statutes Annotated, Sec. 12:302)

Maine

Maine has adopted the Revised Model Act provision except for subsection (9), which reads as follows: "I. Owning, without more, real or personal property other than agricultural real estate", and Maine adds the following:

"L. Engaging as a trustee in those actions defined by Title 18-A, Sec. 7-105 as not in themselves requiring local qualification of a foreign corporate trustee; or

"M. Owning and controlling a subsidiary corporation incorporated in or transacting business within this State." (Maine Revised Statutes Annotated, Title 13-C, Sec. 1501)

Maryland

"In addition to any other activities which may not constitute doing intrastate business in this state, for the purposes of this article, the following activities of a foreign corporation do not constitute doing intrastate business in this state:

"(1) Maintaining, defending, or settling an action, suit, claim, dispute, or administrative or arbitration proceeding;

"(2) Holding meetings of its directors or stockholders or carrying on other activities which concern its internal affairs;

"(3) Maintaining bank accounts;

"(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities;

"(5) Appointing and maintaining trustees or depositaries with respect to its securities;

"(6) Transacting business exclusively in interstate or foreign commerce; and

"(7) Conducting an isolated transaction not in the course of a number of similar transactions." (Annotated Code of Maryland, Corporations and Associations, Sec. 7-103)

Massachusetts

"(b) The following activities, among others, do constitute transacting business within the meaning of subsection (a):

"(1) the ownership or leasing of real estate in the commonwealth;

"(2) engaging in the construction, alteration or repair of any structure, railway or road; or

"(3) engaging in any other activity requiring the performance of labor.

"(c) The following activities, among others, without more, do not constitute transacting business within the meaning of subsection (a):

"(1) maintaining, defending, or settling any proceeding;

"(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) maintaining bank accounts;

"(4) maintaining offices or agencies for the transfer, exchange, and registration of the corporations own securities or maintaining trustees or depositories with respect to those securities;

"(5) selling through independent contractors;

"(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the commonwealth before they become contracts;

"(7) [Stricken]

"(8) [Stricken]

"(9) conducting an isolated transaction that is not one in the course of repeated transactions of a like nature;

"(10) transacting business in interstate commerce; or

"(11) performing activities subject to regulation under chapter 167 (banks) or chapter 175 (insurance companies), if the foreign corporation has complied with the applicable chapter." (Massachusetts General Laws Annotated, Ch. 156D, Sec. 15.01)

Michigan

Michigan has adopted the Revised Model Act provision. (Michigan Compiled Laws Annotated, Sec. 450.2012)

Minnesota

". . .Without excluding other activities which may not constitute transacting business in this state, and subject to the provisions of sections 5.25 and 543.19, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter solely 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) Holding title to and managing real or personal property, or any interest therein, situated in this state, as executor of the will or administrator of the estate of any decedent, as trustee of any trust, or as guardian of any person or conservator of any person's estate;

"(f) Making, participating in, or investing in loans or creating, as borrower or lender, or otherwise acquiring indebtedness or mortgages or other security interests in real or personal property;

"(g) Securing or collecting its debts or enforcing any rights in property securing them; or

"(h) Conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature." (Minnesota Statutes Annotated, Sec. 303.03)

Mississippi

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

"(1) Maintaining, defending or settling any proceeding;

"(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) Maintaining bank accounts;

"(4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

"(5) Selling through independent contractors;

"(6) 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;

"(7) 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, without more, real or personal property;

"(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

"(11) Transacting business in interstate commerce;

"(12) Being a shareholder in a corporation or a foreign corporation that transacts business in this state;

"(13) Being a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state;

"(14) Being a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state."

"(d) A foreign corporation which is general partner of any general or limited partnership, which partnership is transacting business in this state, is hereby declared to be transacting business in this state." (Mississippi Code 1972 Annotated, Sec. 79-4-15.01)

Missouri

"The following activities, among others, do not constitute transacting business within the meaning of subsection 1 of this section:

"(1) Maintaining, defending, or settling any proceeding;

"(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) Maintaining bank accounts;

"(4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

"(5) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

"(6) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

"(7) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

"(8) Transacting business in interstate commerce." (Missouri Revised Statutes Annotated, Sec. 351.572)

Montana

"(1) Activities of a foreign corporation that do not constitute doing business in this state for purposes of [qualification] include:

"(a) maintaining, defending, mediating, arbitrating, or settling a proceeding;

"(b) carrying on any activity concerning the internal affairs of the foreign corporation, including holding meetings of its shareholders or board of directors;

"(c) maintaining accounts in financial institutions;

"(d) maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign corporation or maintaining trustees or depositories with respect to those securities;

"(e) selling through independent contractors;

"(f) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

"(g) creating or acquiring indebtedness, mortgages, or security interests in property;

"(h) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

"(i) owning real or personal property that is acquired incident to activities described in subsection (1)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a corporate function;

"(j) conducting an isolated transaction that is completed within 30 days and that is not in the course of repeated transactions of a similar nature; and

"(k) doing business in interstate commerce."

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(4) Except as provided in subsection (1) a foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must register to do business under [sections 203 through 214] before entering into the contract. This subsection does not apply to contracts for goods fully prepared or services fully performed out of state for delivery or use in this state (Montana Code Annotated, 35-14-1505).

Nebraska

"(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

"(1) Maintaining, defending, or settling any proceeding;

"(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) Maintaining bank accounts;

"(4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

"(5) Selling through independent contractors;

"(6) 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;

"(7) 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, without more, real or personal property;

"(10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

"(11) Transacting business in interstate commerce; or

"(12) Acting as a foreign corporate trustee to the extent authorized under section 30-3820. (Revised Statutes of Nebraska, Sec. 21-2,203)

Nevada

"For the purposes of this chapter, the following activities do not constitute doing business in this state:

"(a) Maintaining, defending or settling any proceeding;

"(b) Holding meetings of the board of directors or stockholders or carrying on other activities concerning internal corporate affairs;

"(c) Maintaining bank accounts;

"(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

"(e) Making sales through independent contractors;

"(f) Soliciting or receiving orders outside of this state through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this state and filling them by shipping goods into this state;

"(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

"(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

"(i) Owning, without more, real or personal property;

"(j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;

"(k) The production of motion pictures as defined in NRS 231.020;

"(l) Transacting business as an out-of-state depository institution pursuant to the provisions of Title 55 of NRS; and

"(m) Transacting business in interstate commerce." (Nevada Revised Statutes, Sec. 80.015)

New Hampshire

New Hampshire has adopted the Revised Model Act provision. (New Hampshire Revised Statutes Annotated, Sec. 293-A:15.01)

New Jersey

"(2) 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 purpose of this act, by reason of carrying on in this State any one or more of the following activities:

"(a) maintaining, defending or otherwise participating in any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting the settlement thereof or the settlement of claims or disputes;

"(b) holding meetings of its directors or shareholders;

"(c) maintaining bank accounts or borrowing money, with or without security, even if such borrowings are repeated and continuous transactions and even if such security has a situs in this State;

"(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." (Sec. 14A:13-3, New Jersey Statutes Annotated)

New Mexico

New Mexico has adopted the Model Act provision with the 1973 revision to subsection (g) and has added a subsection (k): "investing in or acquiring, in transactions outside New Mexico, royalties and other non-operating mineral interests and the execution of division orders, contracts of sale and other instruments incidental to the ownership

of the non-operating mineral interests." (Sec. 53-17-1, New Mexico Statutes Annotated)

New York

"(b) Without excluding other activities which may not constitute doing business in this state, a foreign corporation shall not be considered to be doing business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

"(1) Maintaining or defending any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting settlement thereof or the settlement of claims or disputes.

"(2) Holding meetings of its directors or its shareholders.

"(3) Maintaining bank accounts.

"(4) Maintaining offices or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities." (Sec. 1301(b), New York Business Corporation Law)

North Carolina

"(b) 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 this Chapter, by reason of carrying on in this State any one or more of the following activities:

"(1) 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.

"(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

"(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions.

"(4) 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.

"(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts.

"(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State.

"(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same.

"(8) Transacting business in interstate commerce.

"(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

"(10) Selling through independent contractors.

"(11) Owning, without more, real or personal property." (General Statutes of North Carolina, Sec. 55-15-01)

North Dakota

"1. The following activities of a foreign corporation, among others, do not constitute transacting business within the meaning of this chapter:

"a. Maintaining, defending, or settling any proceeding;

"b. Holding meetings of its shareholders or carrying on other activities concerning internal affairs;

"c. Maintaining bank accounts;

"d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign corporation's own securities or maintaining trustees or depositaries 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 or acquiring indebtedness, mortgages, and security interests in real or personal property;

"h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

"i. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

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"3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state." (North Dakota Century Code Annotated, Sec. 10-19.1-143)

Ohio

The pertinent statute provides that the qualification requirement will not apply to "corporations engaged in this state solely in interstate commerce, including the installation, demonstration, or repair of machinery or equipment sold by them in interstate commerce, by engineers, or by employees especially experienced as to such machinery or equipment, as part thereof; to credit unions, title guarantee and trust companies, bond investment companies, and insurance companies; or to public utility companies engaged in this state in interstate commerce." (Page's Ohio Revised Code Annotated, Sec. 1703.02)

Oklahoma

"No foreign corporation shall be required to comply with the provisions of . . . this act, if:

"1. it is in the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside this state, and filling them with goods shipped into this state; or

"2. it employs salesmen, either resident or traveling, to solicit orders in this state, either by display of samples or otherwise, whether or not maintaining sales offices in this state, all orders being subject to approval at the offices of the corporation without this state, and all goods applicable to the orders being shipped in pursuance thereof from without this state to the vendee or to the seller or his agent

for delivery to the vendee, and if any samples kept within this state are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this state; or

"3. it sells, by contract consummated outside this state, and agrees by the contract, to deliver into this state, machinery, plants or equipment, the construction, erection or installation of which within this state requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation; or

"4. its business operations within this state are wholly interstate in character; or

"5. it is an insurance company doing business in this state; or

"6. it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property; or

"7. it secures or collects debts or enforces any rights in property securing the same." (Oklahoma Statutes Annotated, Title 18, Sec. 1132)

Oregon

Oregon has adopted the Revised Model Act provision. (Oregon Revised Statutes, Sec. 60.701)

Pennsylvania

"Activities of a foreign filing association or foreign limited liability partnership that do not constitute doing business in this Commonwealth under this chapter shall include the following:

"(1) Maintaining, defending, mediating, arbitrating or settling an action or proceeding.

"(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors.

"(3) Maintaining accounts in financial institutions.

"(4) Maintaining offices or agencies for the transfer, exchange and registration of securities of the association or maintaining trustees or depositories with respect to the securities.

"(5) Selling through independent contractors.

"(6) Soliciting or obtaining orders by any means if the orders require acceptance outside of this Commonwealth before the orders become contracts.

"(7) Creating, acquiring, or incurring obligations, indebtedness, mortgages or security interests in property.

"(8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting or maintaining property so acquired.

"(9) Conducting an isolated transaction that is not in the course of similar transactions.

"(10) [Repealed by amendment]

"(11) Doing business in interstate or foreign commerce.

"(12) Acquiring, owning, holding, leasing as a lessee, conveying and transferring, without more and whether as fiduciary or otherwise:

"(i) real estate and mortgages and other liens thereon; or

"(ii) personal property and security interests therein.

"(13) Conducting operations or performing work or services in good faith in response to a disaster or emergency event.

"(b) Participation in other associations.

"Being an interest holder or governor of a foreign association that does business in this Commonwealth shall not by itself constitute doing business in this Commonwealth." (Purdon's Pennsylvania Consolidated Statutes Annotated, Title 15, Sec. 403)

Rhode Island

"(b) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation is not considered to be transacting business in this state, for the purposes of this chapter, because of carrying on in this state any one or more of the following activities:

"(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement of the suit or the settlement of claims or disputes.

"(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

"(3) Maintaining bank accounts.

"(4) 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.

"(5) Effecting sales through independent contractors.

"(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside of this state before becoming binding contracts.

"(7) Creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property.

"(8) Securing or collecting debts or enforcing any rights in property securing the debts.

"(9) Transacting any business in interstate commerce.

"(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

"(11) Acting as a general partner of a limited partnership which has filed a certificate of limited partnership as provided in § 7-13-8 or has registered with the secretary of state as provided in § 7-13-49.

"(12) Acting as a member of a limited liability company which has registered with the secretary of state as provided in § 7-16-49."

(General Laws of Rhode Island, Sec. 7-1.2-1401)

South Carolina

South Carolina has adopted the Revised Model Act provision and has added a subsection (12), which reads as follows: "owning and controlling a subsidiary corporation incorporated in or transacting business within this State" and a subsection (13), which reads as follows: "owning, without more, an interest in a limited liability company organized or transacting business in this State." (Code of Laws of South Carolina, Sec. 33-15-101)

South Dakota

South Dakota has adopted the Revised Model Act provision. (South Dakota Codified Laws, Sec. 47-1A-1501)

Tennessee

"The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

"(1) Maintaining, defending or settling any proceeding, claim, or dispute;

"(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) Maintaining bank accounts;

"(4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or appointing and maintaining trustees or depositories with respect to those securities;

"(5) Selling through independent contractors;

"(6) 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;

"(7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or personal property;

"(8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;

"(9) Owning, without more, real or personal property; provided, however, that for a reasonable time the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust shall also not be considered transacting business if the owner is attempting to liquidate his investment and if no office or other agency therefor, other than an independent agency, is maintained in this state;

"(10) Conducting an isolated transaction that is completed within one (1) month and that is not one in the course of repeated transactions of a like nature;

"(11) Transacting business in interstate commerce." (Tennessee Code Annotated, Sec. 48-25-101)

Texas

"For purposes of this chapter, activities that do not constitute transaction of business in this state include:

"(1) maintaining or defending an action or suit or an administrative or arbitration proceeding, or effecting the settlement of:

"(A) such an action, suit, or proceeding; or

"(B) a claim or dispute to which the entity is a party;

"(2) holding a meeting of the entity's managerial officials, owners, or members or carrying on another activity concerning the entity's internal affairs;

"(3) maintaining a bank account;

"(4) maintaining an office or agency for:

"(A) transferring, exchanging, or registering securities the entity issues; or

"(B) appointing or maintaining a trustee or depositary related to the entity's securities;

"(5) voting the interest of an entity the foreign entity has acquired;

"(6) effecting a sale through an independent contractor;

"(7) creating, as borrower or lender, or acquiring indebtedness or a mortgage or other security interest in real or personal property;

"(8) securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;

"(9) transacting business in interstate commerce;

"(10) conducting an isolated transaction that:

"(A) is completed within a period of 30 days; and

"(B) is not in the course of a number of repeated, similar transactions;

"(11) in a case that does not involve an activity that would constitute the transaction of business in this state if the activity were one of a foreign entity acting in its own right:

"(A) exercising a power of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a court of this state; or

"(B) exercising a power of a trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of this state, or by one or more foreign entities;

"(12) regarding a debt secured by a mortgage or lien on real or personal property in this state:

"(A) acquiring the debt in a transaction outside this state or in

interstate commerce;

"(B) collecting or adjusting a principal or interest payment on the debt;

"(C) enforcing or adjusting a right or property securing the debt;

"(D) taking an action necessary to preserve and protect the interest of the mortgagee in the security; or

"(E) engaging in any combination of transactions described by this subdivision;

"(13) investing in or acquiring, in a transaction outside of this state, a royalty or other nonoperating mineral interest;

"(14) executing a division order, contract of sale, or other instrument incidental to ownership of a nonoperating mineral interest; or

"(15) Owning, without more, real or personal property in this state."(Texas Business Organizations Code, Sec. 9.251)

"(16) Acting as a governing person of a domestic or foreign entity that is registered to transact business in this state"(Texas Business Organizations Code, Sec. 9.251)

Utah

(1) The following activities of a filing foreign entity do not constitute doing business in this state:

(a) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(b) carrying on an activity concerning the filing foreign entity's internal affairs, including holding meetings of the filing foreign entity's interest holders or governors;

(c) maintaining an account in a financial institution;

(d) maintaining an office or an agency for the transfer, exchange, and registration of the filing foreign entity's or the foreign limited liability partnership's securities;

(e) maintaining a trustee or a depository for the filing foreign entity's securities;

(f) selling through an independent contractor;

(g) soliciting or obtaining an order by any means if the order requires acceptance outside this state before the order becomes a contract;

(h) creating or acquiring indebtedness, a mortgage, or a security interest in property;

(i) securing or collecting a debt;

(j) enforcing a mortgage or a security interest in a property;

(k) holding, protecting, or maintaining property the filing foreign entity acquires by enforcing a mortgage or a security interest;

(l) conducting an isolated transaction that is outside the scope of the filing foreign entity's ordinary course of business;

(m) owning real property; and

(n) doing business that constitutes interstate commerce.

(2) A person does not do business in this state by being an interest holder or a governor of a foreign entity that does business in this state. (Utah Code Annotated, Sec. 16-1a-506 (effective Oct. 1, 2026)

Vermont

Vermont has adopted the Revised Model Act provision except that sections (8), (10), and (11) read as follows:

"(8) without limiting the generality of the other provisions of this section, making, purchasing and servicing loans if the corporation is a foreign savings bank or a foreign corporation doing a banking business and it participates with a banking corporation or a trust company of this state;

"(10) owning real or personal property;

"(11) conducting an isolated transaction that is not one in the course of repeated transactions of a like nature." (Vermont Statutes Annotated, Title 11A, Sec. 15.01)

Virginia

"The following activities, among others, do not constitute transacting business within the meaning of subsection A:

"1. Maintaining, defending, mediating, arbitrating, or settling any proceeding;

"2. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"3. Maintaining accounts in financial institutions;

"4. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

"5. Selling through independent contractors;

"6. Soliciting or obtaining orders, by any means, if the orders require acceptance outside this Commonwealth before they become contracts;

"7. Creating or acquiring indebtedness, deeds of trust, or security interests in property;

"8. Securing or collecting debts or enforcing deeds of trust or security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

"9. Owning, protecting, and maintaining property;

"10. Conducting an isolated transaction that is completed within 30 consecutive days and that is not one in the course of similar transactions;

"11. For a period of less than 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution;

"12. Serving, without more, as a general partner of, or as partner in a partnership which is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.

"13. Transacting business in interstate commerce." (Code of Virginia, 1950, Sec. 13.1-757)

Washington

"(1) Activities of a foreign entity that do not constitute doing business in this state under this chapter include, but are not limited to:

"(a) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding, or settling claims or disputes;

"(b) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

"(c) Maintaining accounts in financial institutions;

"(d) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;

"(e) Selling through independent contractors;

"(f) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become binding contracts and where the contracts do not involve any local performance other than delivery and installation;

"(g) Creating or acquiring indebtedness, mortgages, or security interests in property;

"(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts;

"(i) Conducting an isolated transaction that is completed within thirty days and that is not in the course of repeated transactions of a like nature;

"(j) Owning, without more, property;

"(k) Doing business in interstate commerce; and

"(l) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with subsection (2) of this section.

"(m) Employing a remote worker who resides in Washington state.

"(2) In addition to those acts that are specified in subsection (1) of this section, a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:

"(a) Owns and controls an incorporated branch campus in this state;

"(b) Pays the expenses of tuition or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or

"(c) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.

"(3) A person does not do business in this state solely by being an interest holder or governor of a domestic entity or foreign entity that

does business in this state." (Revised Code of Washington Annotated, Sec. 23.95.520.)

West Virginia

"(b) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (a) of this section:

"(1) Maintaining, defending or settling any proceeding;

"(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

"(3) Maintaining bank accounts;

"(4) Selling through independent contractors;

"(5) 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;

"(6) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

"(7) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts: Provided, That this exemption does not include debts collected by collection agencies as defined in subdivision (b), section two [§ 47-16-2], article sixteen, chapter forty-seven of this code;

"(8) Owning, without more, real or personal property;

"(9) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

"(10) Conducting affairs in interstate commerce;

"(11) Granting funds or other gifts;

"(12) Distributing information to its shareholders or members;

"(13) Effecting sales through independent contractors;

"(14) The acquisition by purchase of lands secured by mortgage or deeds;

"(15) Physical inspection and appraisal of property in West Virginia as security for deeds of trust, or mortgages and negotiations for the purchase of loans secured by property in West Virginia;

"(16) The management, rental, maintenance and sale or the operating, maintaining, renting or otherwise dealing with selling or disposing of property acquired under foreclosure sale or by agreement in lieu of foreclosure sale;

"(17) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state; and

"(18) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia. Provided, that the foreign corporation does not produce goods, services or otherwise conduct business in the State of West Virginia.

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

"(d) A foreign corporation is deemed to be transacting business in this State if:

"(1) The corporation makes a contract to be performed, in whole or in part, by any party thereto in this State;

"(2) The corporation commits a tort, in whole or in part, in this State; or

"(3) The corporation manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this State notwithstanding the fact that the corporation had no agents, servants or employees or contacts within this State at the time of the injury."(31D-15-1501)

Wisconsin

"(2) Activities that for purposes of sub. (1) do not constitute transacting business in this state include but are not limited to:

"(a) Maintaining, defending or settling any civil, criminal, administrative or investigatory proceeding.

"(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

"(c) Maintaining bank accounts.

"(d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign corporation's securities or maintaining trustees or depositaries 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) Lending money or creating or acquiring indebtedness, mortgages and security interests in property.

"(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

"(i) Owning, without more, 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." (Wisconsin Statutes Annotated, Sec. 180.1501)

Wyoming

Wyoming has adopted the Revised Model Act provision. (Wyoming Statutes Annotated, Sec. 17-16-1501(b))

Wyoming also provides that: "A foreign corporation. . .which is either an organizer, a manager or member of a [limited liability] company is not required to obtain a certificate of authority to undertake its duties in these capacities." (Wyoming Statutes Annotated, Sec. 17-16-1501(d))

Puerto Rico

"(a) The following activities, without this list being thorough, shall not constitute doing business transactions in the Commonwealth:

"(1) Initiate, defend or settle any judicial process.

"(2) Conduct meetings of the board of directors, or shareholders, or other activities related to the internal corporate affairs.

"(3) Have bank accounts.

"(4) Keep offices and agencies for the transfer, exchange, and registration of the corporation's own securities or keep trustees or depositories with respect to such securities.

"(5) Sell through independent contractors.

"(6) Request or obtain orders, whether by mail or by employees or agents or otherwise, if such orders are to be accepted outside of the Commonwealth before the contractual obligation arises.

"(7) Create or acquire debts, mortgages, or real property securities.

"(8) Guaranty or collect debts or foreclose on mortgages, or securities on the properties which guaranty such debts.

"(9) Own title to real or personal property.

"(10) Conduct an isolated transaction which is completed within a thirty (30)-day period, which is not part of a series similar in nature. (Laws of Puerto Rico Annotated, Title 14, Sec. 3805)

Virgin Islands

"Exceptions to requirements. No corporation created by the laws of any foreign country or any State of the United States, or the laws of the United States shall be deemed to be doing business in the Virgin Islands, nor shall the corporation be required to comply with the provisions of sections 401 and 402 of this title under the following conditions, or any of them, namely if—

"(1) it is in the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside the Virgin Islands and filling them with goods shipped into the Virgin Islands from without same;

"(2) it sells, by contract consummated outside the Virgin Islands, and agrees, by the contract, to deliver into from without the Virgin Islands, machinery, plants or equipment, the construction, erection or installation of which within the Virgin Islands requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation." (Virgin Islands Code Annotated, Title 13, Sec. 403)

Alberta

"(1) For the purposes of this Part, an extra-provincial corporation carries on business in Alberta if:

"(a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of Alberta,

"(b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in Alberta is given for the extra-provincial corporation,

"(c) it has a resident agent or representative or a warehouse, office or place of business in Alberta,

"(d) it solicits business in Alberta,

"(e) it is the owner of any estate or interest in land in Alberta,

"(f) it is licensed or registered or required to be licensed or registered under any Act of Alberta entitling it to do business,

(g) it is, in respect of a commercial vehicle as defined in the Traffic Safety Act, unless it neither picks up nor delivers goods or passengers in Alberta,

(h) it is the holder of a certificate as defined in section 130 of the Traffic Safety Act, unless it neither picks up nor delivers goods or passengers in Alberta, or

"(i) it otherwise carries on business in Alberta.

(Business Corporations Act, Revised Statutes of Alberta, Ch. B-9, Sec. 277)

British Columbia

"(2) For the purposes of this Act and subject to subsection (3), a foreign entity is deemed to carry on business in British Columbia if

"(a) its name, or any name under which it carries on business, is listed in a telephone directory

"(i) for any part of British Columbia, and

"(ii) in which an address or telephone number in British Columbia is given for the foreign entity,

"(b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address or telephone number in British Columbia is given for the foreign entity,

"(c) it has, in British Columbia,

"(i) a resident agent, or

"(ii) a warehouse, office or place of business, or

"(d) it otherwise carries on business in British Columbia.

"(3) A foreign entity does not carry on business in British Columbia

"(a) if it is a bank,

"(b) if its only business in British Columbia is constructing and operating a railway, or

"(c) merely because it has an interest as a limited partner in a limited partnership carrying on business in British Columbia.

"(4) A foreign entity need not be registered under this Act or comply with this Part other than subsection (5) of this section, and may carry on business in British Columbia as if it were registered under this Act, if

"(a) the principal business of the foreign entity consists of the operation of one or more ships, and

"(b) the foreign entity does not maintain in British Columbia a warehouse, office or place of business under its own control or under the control of a person on behalf of the foreign entity." (Business Corporation Act, Statutes of British Columbia, 2002, Ch. 57, Sec. 375)

Manitoba

"(2) Carrying on business. For the purposes of this Part, a body corporate is deemed to be carrying on its business or undertaking in Manitoba if

"(a) it has a resident agent or representative, or a warehouse, office or place of business in Manitoba; or

"(b) its name or any name under which it carries on business, together with an address for the body corporate in Manitoba, is listed in a Manitoba telephone directory; or

"(c) its name or any name under which it carries on business, together with an address for the body corporate in Manitoba, is included in any advertisement advertising the business or any product of the body corporate; or

"(d) it is the registered owner of real property situate in Manitoba; or

"(e) it otherwise carries on its business or undertaking in Manitoba." (The Corporations Act, Consolidated Statutes of Manitoba, Ch. C-225, Sec. 187)

New Brunswick

"(1) For the purposes of this Part, an extra-provincial corporation carries on business in New Brunswick if

"(a) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in New Brunswick is given for the extra-provincial corporation;

"(b) it has a resident agent or representative or a warehouse, office or place of business in New Brunswick;

"(c) it solicits business in New Brunswick;

"(d) it is the owner of any estate or interest in land in New Brunswick;

"(e) it is licensed or registered or required to be licensed or Registered under any Act of New Brunswick entitling it to do business;

"(f) it is the holder of a certificate of registration under the Motor Vehicle Act;

"(g) it is the holder of a license issued under the Motor Carrier Act; or

"(h) it otherwise carries on business in New Brunswick.

"(2) Where an extra-provincial corporation has its name or any name under which it carries on business listed in a telephone directory for any part of New Brunswick, that corporation shall be deemed, in the absence of evidence to the contrary, to be carrying on business in New Brunswick.

"(2.1) An extra-provincial corporation is not carrying on business in New Brunswick by reason only that it is a general or limited partner in a limited partnership or an extra-provincial limited partnership that has filed a declaration under the Limited Partnership Act." (Business Corporations Act, Revised Statutes of New Brunswick, 1980, Ch. B-9.1, Sec. 194)

"(2.2) An extra-provincial corporation is not carrying on business in New Brunswick by reason only that it is a member or an associate of a New Brunswick limited liability partnership or an extra-provincial limited liability partnership."

(Business Corporations Act, Revised Statutes of New Brunswick, 1981, Ch. B-9.1, Sec. 194)

Newfoundland

"(2) For the purposes of this Part, an extra-provincial company is carrying on an undertaking in the province where

"(a) it holds title to land in the province or has an interest other than by way of security in land;

"(b) it maintains an office, warehouse or place of business in the province;

"(c) it is licensed or registered or required to be licensed or registered under a law of the province that entitles it to do business or to sell securities of its own issue;

"(d) it is the holder of a certificate of registration issued under The Highway Traffic Act respecting a public service vehicle; or

"(e) in another manner it carries on an undertaking in the province.

"(3) For the purposes of subsection (2), where an extra-provincial company is listed with a number under the name of the extra-provincial company in a telephone directory published by a telephone company for use in this province, that extra-provincial company is presumed, in the absence of proof to the contrary, to be carrying on an undertaking in this province." (Corporations Act, Revised Statutes of Newfoundland, 1990, Ch. C-36, Sec. 431)

Northwest Territories

"(1) For the purpose of this Part, an extra-territorial corporation carries on business in the Northwest Territories if

"(a) its name, or any name under which it carries on business or operations, is listed in a telephone directory for any part of the Northwest Territories;

"(b) its name, or any name under which it carries on business or operations, appears or is announced in any advertisement in which an address in the Northwest Territories is given for the extra-territorial corporation;

"(c) it has a resident agent or representative or a warehouse, office or place of business or operations in the Northwest Territories;

"(d) it solicits business in the Northwest Territories;

"(e) it is the owner of any estate or interest in land in the Northwest Territories;

"(f) it is licensed or registered or required to be licensed or registered under any Act of the Northwest Territories entitling it to do business or carry on operations; or

"(g) it otherwise carries on business or operation in the Northwest Territories." (Business Corporations Act, Statutes of the Northwest Territories, 1996, Ch. 19, Sec. 279)

Nova Scotia

"In this Act . . . (b) 'carry on business' means the transaction of any of the ordinary business of a corporation, whether by means of an employee or an agent and whether or not the corporation has a resident agent or representative or a warehouse, office or place of business in the Province." (Corporations Registration Act, Revised Statutes of Nova Scotia, 1989, Ch. 101, Sec. 2)

Nunavut

Nunavut has adopted the Business Corporation Act of the Northwest Territories.

Ontario

"(2) For the purposes of this Act, an extra-provincial corporation carries on its business in Ontario, if,

"(a) it has a resident agent, representative, warehouse, office or place where it carries on its business in Ontario;

"(b) it holds an interest, otherwise than by way of security, in real property situate in Ontario; or

"(c) it otherwise carries on its business in Ontario.

"(3) An extra-provincial corporation does not carry on its business in Ontario by reason only that,

"(a) it takes orders for or buys or sells goods, wares and merchandise; or

"(b) offers or sells services of any type, by use of travellers or through advertising or correspondence." (Extra-Provincial Corporations Act, Statutes of Ontario, 1990, c. E.27, Sec. 1)

"(1) Subject to this act, the Corporations Information Act and any other Act, an extra-provincial corporation within class 1 [corporations formed in other provinces] or 2 [corporations formed under an act of Parliament or under an ordinance of the Yukon or Northwest Territories] may carry on any of its business in Ontario without obtaining a license under this Act." (Extra-Provincial Corporations Act, Statutes of Ontario, 1990, c. E.27, Sec. 4)

Prince Edward Island

"2. For the purposes of this Act, an extra-provincial corporation carries on business in the province if

"(a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of the province;

"(b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in the province is given for the extra-provincial corporation;

"(c) it has a resident agent or representative or a warehouse, office or place of business in the province;

"(d) it solicits business in the province."

"(e) it is licensed or registered or required to be licensed or registered under any Act of the Legislature entitling it to do business; or

"(f) it otherwise carries on business in the province."

(Extra-Provincial Corporations Registration Act, Revised Statutes of Prince Edward Island Ch. E-14, 2002, Sec. 2)

Quebec

"For the purposes of section 21, [registration requirements] a person or partnership who has an address in Québec or, either directly or through a representative acting under a general mandate, has an establishment, a post office box or the use of a telephone line in Québec or performs any act for profit in Québec is presumed to be carrying on an activity or operating an enterprise in Québec."

(An Act Respecting the Legal Publicity of Enterprises, Compilation of Quebec Laws and Regulations, 2010, Ch. P-44.1, Sec. 25)

Saskatchewan

For the purposes of this Part, an extraprovincial corporation is deemed to carry on business in Saskatchewan if:

(a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of Saskatchewan;

(b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in Saskatchewan is given for the extraprovincial corporation;

(c) it has a resident agent or representative or a warehouse, office or place of business in Saskatchewan;

(d) it solicits business in Saskatchewan; (e) it holds any title or interest in land registered in the name of the corporation pursuant to The Land Titles Act, 2000;

(f) it is licensed or registered or required to be licensed or registered pursuant to any Act entitling it to do business;

(g) it is the holder of a certificate of registration pursuant to The Traffic Safety Act, unless it neither picks up nor delivers goods or passengers in Saskatchewan;

(h) it is the holder of a driver's licence pursuant to The Traffic Safety Act, unless it neither picks up nor delivers goods or passengers in Saskatchewan; or

(i) it otherwise carries on business in Saskatchewan. (Business Corporations Act, Revised Statutes of Saskatchewan, Ch. 6, Sec. 20-3)

Yukon Territory

"(1) For the purposes of this Part, an extra-territorial body corporate carries on business in the Yukon if

"(a) its name, or any name it uses or by which it identifies itself, is listed in a telephone directory for any part of the Yukon and gives an address or telephone number in the Yukon;

"(b) its name, or any name it uses or by which it identifies itself, appears or is announced in any advertisement and gives an address or telephone number in the Yukon;

"(c) it has a resident agent, warehouse, office or place of business in the Yukon;

"(d) it acts as a director of a corporation;

"(e) subject to subsection (2), it is a partner in a partnership in respect of which a declaration or certificate is filed or required to be filed under the Partnership and Business Names Act;

"(f) it is the owner or holder of any estate or interest in real property in the Yukon, including any claim or lease under the Placer Mining Act or the Quartz Mining Act and any disposition, lease, license, permit or other interest under the Oil and Gas Act;

"(g) it is authorized by license or permit or required to be so authorized under any enactment entitling it to carry on any profession, business, occupation or calling in the Yukon; or

"(h) it otherwise transacts or carries on business in the Yukon."

(Business Corporations Act, Revised Statutes of the Yukon Territory, 2002, Ch. 20, Sec. 275)

Statutory doing business provisions limited to lending money on security

Most of the statutory "doing business" provisions set forth above included references to lending money on security. In addition to those statutes, some states have enacted laws permitting foreign corporations to lend money to residents without qualifying. These statutes are designed to encourage investment in the state by foreign financial institutions. They are usually exempt from qualification corporations lending money to residents, taking security for such loans in the form of mortgages on real property located in the state, enforcing the security and servicing the mortgages. The statutory provisions vary greatly, however, and the statutes in the particular states concerned should be examined to determine the activities exempted.

These statutes are too extensive to print here in full. The citations to those in force at the time of writing are set forth below.

California—Sec. 191(d), California Corporations Code.

Illinois—Ch. 815, Sec. 125/1, Illinois Compiled Statutes Annotated.

Louisiana—Sec. 12:302(K), West's Louisiana Statutes Annotated.

Maryland—Sec. 7-104, Annotated Code of Maryland, Corporations and Associations.

Michigan—Sec. 450.2013, Michigan Compiled Laws Annotated.

Mississippi—Sec. 81-5-41, Mississippi Code 1972 Annotated.

Nevada – Sec. 80.015 (3) (c), (d), Nevada Revised Statutes.

New Mexico—Sec. 38-1-18, New Mexico Statutes 1978 Annotated.

Washington—Secs. 23B.18.010 to 23B.18.030, Revised Code of Washington Annotated.

Wyoming—Sec. 13-1-202, Wyoming Statutes Annotated.

Specific doing business activities

Introduction

The answers to many doing business questions can be found in judicial decisions. These decisions often involve attempts by unqualified foreign corporations to enforce their contracts in state courts. When the defendant contends that the action is prohibited because the plaintiff has no certificate of authority, the court must determine whether the foreign corporation was transacting intrastate business.

It is not possible to encompass in one definition all of the activities that do or do not constitute doing business. Perhaps the best general description is that:

"It is established by well considered general authorities that a foreign corporation is doing, transacting, carrying on, or engaging in business within a state when it transacts some substantial part of its ordinary business therein."[135]

The following discussions of whether certain specific business activities constitute doing business are based on the accumulated case law and on the current applicable statutory provisions. (Where state laws are referred to but no citation appears, the citation and statute are set forth above, under the heading "Statutory 'Doing Business' Definitions Applicable to Ordinary Business Corporations.") It should be emphasized that, in analyzing doing business problems, all of the relevant facts must be considered. Thus, although a particular act of a corporation may not constitute doing business by itself, it is the cumulative effect of all of its activities which determines the necessity of qualification. Take, for example, a Pennsylvania corporation contracted to supply materials to a company building a house in Maryland. The corporation did not have any property, bank accounts or employees in Maryland. However, the corporation did approximately $500,000 worth of sales in Maryland, which was more than 2% of its total business. It paid sales tax on Maryland deliveries. The corporation's own trucks delivered its products in Maryland. The trucks were registered in Maryland and were sometimes rented to Maryland corporations. Furthermore, the corporation's representatives visited

135. *Royal Insurance Co. v. All States Theatres*, 242 Ala. 417, 6 So.2d 494 (1942).

potential customers in Maryland, accepted orders and visited job sites. The Maryland Court of Appeals found that these activities were sufficient to require the corporation to qualify to do business in the state.[136]

The discussions which follow should be read in light of the general definition of "doing business" set forth above, since the purpose for which a corporation is organized—i.e., its "ordinary business" —may be a decisive factor in resolving a qualification question. For example, in two similar Alabama cases, unqualified foreign corporations leased equipment to Alabama residents. In one case,[137] leasing the machine was found to be incidental to the corporation's interstate activities and the plaintiff was allowed to enforce its contract.

But in the other, later case,[138] the court noted that the plaintiff corporation was engaged in the business of owning and leasing machines. Unlike the plaintiff in the earlier case, owning and leasing property was an indispensable part of the plaintiff's primary business activity—not incidental to another activity. Therefore the plaintiff in the second case was unable to enforce the lease.

An Illinois court stated there was no doubt that in working actively with student groups on Illinois campuses, holding conferences in Illinois and meeting with donors, a Tennessee nonprofit corporation formed to work with students to promote conservative ideas was engaging in the activities or functions for which it was formed and thus required to register.[139]

Interstate and Foreign Commerce

A state's power to require a corporation to qualify is limited by the Commerce Clause of the United States Constitution. Qualification statutes are regulatory and cannot be imposed on corporations engaged exclusively in interstate commerce.[140]

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136. *J.C. Snavely & Sons, Inc. v. Wheeler*, 538 A.2d 324 (Md. App. 1988).

137. *Johnson v. MPL Leasing Corporation*, 441 So.2d 904 (Ala. 1983).

138. *Allstate Leasing Corporation v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989).

139. *Young America's Foundation v. Doris A. Pistole Revocable Living Trust,* 998 N.E. 2d 94 (Ill. App. 2013).

140. *Eli Lilly & Co. v. Sav-on Drugs, Inc.*, 366 U.S. 276, 81 S.Ct. 1316 (1961); *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20, 95 S.Ct. 260 (1974); *Nippert v. City of Richmond*, 327 U.S. 416, 66 S.Ct. 586 (1946); *Best & Co. v. Maxwell*, 311 U.S. 454, 61 S.Ct. 334 (1940); *Anglo-Chilean Nitrate Corporation v. Alabama*, 288 U.S. 218, 53 S.Ct. 373 (1933); *Furst & Thomas v. Brewster*, 282 U.S. 493, 51 S.Ct. 295 (1931); *Ozark Pipe Line Corp. v. Monier*, 266 U.S. 555, 45 S.Ct. 184 (1925); *Real Silk Hosiery Mills v. City of Portland*, 268 U.S. 325, 45 S.Ct. 525 (1925); *Alpha Portland Cement Co. v. Massachusetts*, 268 U.S. 203, 45 S.Ct. 477 (1925); *Dahnke-Walker Milling*

In recognition of this, Model Act §106(1), Revised Model Act §15.01(b)(ii), and Model Act (2016) §15.05 state that "Transacting any business in interstate commerce" does not constitute doing business so as to require qualification. This or a similar provision appears in the statutes of Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. In addition, California, Georgia, Louisiana, Maryland and Pennsylvania provide that transacting business in interstate or foreign commerce does not require qualification.

Even though corporations engaging solely in interstate commerce are not subject to qualification statutes, some states have placed other, less burdensome restrictions on them. Maryland, for example, requires an unqualified foreign corporation to register ". . . before doing any interstate or foreign business in this state."[141] To register the corporation must certify its address and the name and address of its resident agent in Maryland and proof of good standing in its home jurisdiction. In addition, Maryland law provides that with certain exceptions, any "foreign corporation that owns income producing real or tangible personal property in Maryland shall register. . . to do interstate business.[142]

Another example is New Jersey. In New Jersey, "Every foreign corporation which during any calendar or fiscal accounting year . . . carried on

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Co. v. Bondurant, 257 U.S. 282, 42 S.Ct. 106 (1921); *York Mfg. Co. v. Colley*, 247 U.S. 21, 38 S.Ct. 430 (1918); *Western Oil Refining Co. v. Lipscomb*, 244 U.S. 346, 37 S.Ct. 623 (1917); *Davis v. Commonwealth of Virginia*, 236 U.S. 697, 35 S.Ct. 479 (1915); *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 35 S.Ct. 57 (1914); *International Text Book Co. v. Peterson*, 218 U.S. 664, 31 S.Ct. 225 (1910); *Dozier v. Alabama*, 218 U.S. 124, 30 S.Ct. 649 (1910); *International Text Book Co. v. Pigg*, 217 U.S. 91, 30 S.Ct. 481 (1910); *Rearick v. Pennsylvania*, 203 U.S. 507, 27 S.Ct. 159 (1906); *Norfolk & Western Ry. Co. v. Sims*, 191 U.S. 441, 24 S.Ct. 151 (1903); *Caldwell v. North Carolina*, 187 U.S. 622, 23 S.Ct. 229 (1903); *Brennan v. Titusville*, 53 U.S. 289, 14 S.Ct. 829 (1894); *Corson v. Maryland*, 120 U.S. 502, 7 S.Ct. 655 (1887); *Butler Bros. Shoe Co. v. U.S. Rubber Co.*, 156 Fed. 1 (8th Cir. [Colo.] 1907), cert. den. (mem.) 212 U.S. 577, 29 S.Ct. 686 (1908); *Tradewinds Environmental Restoration, Inc. v. Brown Bros. Construction, LLC*, 999 So.2d 875 (Ala. 2008); *Camaro Trading Company, Ltd. v. Nissei Sangyo America, Ltd.*, 628 So.2d 463 (Ala. 1993); *Wise v. Grumman Credit Corporation*, 603 So.2d 952 (Ala. 1992); *Browning, Ektelon Division v. Williams*, 628 N.E.2d 878 (Ill. App. 1 Dist. 1993); *Corporate Recruiters Ltd. v. Norwest Financial, Inc.*, 489 N.W.2d 729 (Iowa 1992); *Harbin Yinhai Tech. Dev. Co. Ltd. v. Greentree Financial Group, Inc.*, 677 S.E. 2d 854 (N.C. App. 2009); *SCS/Compute, Inc. v. Meredith*, 864 P.2d 1292 (Okl. App. 1993).

141. Ann. Code of Maryland, Corps. & Ass'ns, Sec. 7-202.

142. Ann. Code of Maryland, Corps. & Ass'ns, Sec. 7-202.1.

any activity or owned or maintained any property in this State . . . shall be required to file a notice of business activities report" unless it was qualified or filed a Corporation Business Tax or corporation Income Tax return for the period of such activity.[143] The statute specifies some activities that will require the filing of the report, including: maintenance of a place of business or personnel, even if they are independent contractors, or not regularly stationed in the state; ownership of real or tangible personal property directly used by the corporation; receiving payments from New Jersey residents totaling over $25,000; or the derivation of income from any source within the state. Failure to file a report bars the corporation from maintaining any action in New Jersey courts until it files the report and pays all taxes and penalties due.[144] The courts may excuse such a failure if it was caused by "reasonable" ignorance of the requirement and if all state taxes, interest and penalties have been paid.[145] This statute is neither a taxing nor a qualification provision. It was designed to enable New Jersey tax officials to determine if corporations carrying on activities in the state are subject to any state taxes.[146]

Minnesota requires unqualified corporations that "obtained any business from within this state" and have not filed an income tax return or claimed exempt status, to file an annual notice of business activities report.[147]

A state cannot deny an unqualified foreign corporation the right to sue on a transaction or contract involving interstate commerce.[148] Whether

143. New Jersey Statutes Annotated, Secs. 14A:13-14 et seq.

144. *First Family Mortgage Corp. of Florida v. Durham*, 528 A.2d 1288 (N.J. 1987).

145. See *Moyglare Stud Farm, Ltd. v. Due Process Stable, Inc.*, 569 F.Supp. 1565 (S.D.N.Y. 1983).

146. *American Bank & Trust Co. of Pennsylvania v. Lott*, 490 A.2d 308 (N.J. 1985); *Associates Consumer Discount Co. v. Bozzarello*, 149 N.J. Super. 358, 373 A.2d 1016 (App. Div. 1977).

147. Minnesota Statutes Annotated, Sec. 290.371.

148. *Ex Parte Intern. Travel Service, Inc.*, 68 So.3d 823 (Ala. 2011); *Ex Parte Cohen*, 988 So.2d 661 (Ala. 2008); *SGB Construction Services, Inc. v. Ray Sumlin Construction Co., Inc.*, 644 So.2d 892 (Ala. 1994); *Wise v. Grumman Credit Corporation*, 603 So.2d 952 (Ala. 1992); *Joison Limited v. Taylor*, 567 So.2d 862 (Ala. 1990); *Casa Investments Co. v. Boles,* (Ala Civ. App. 2005); *S&H Contractors, Inc. v. A.J. Taft Coal Co., Inc.*, 906 F.2d 1507 (11th Cir. 1990); *Leasing Service Corporation v. Hobbs Equipment Co.*, 707 F.Supp. 1276 (N.D. Ala. 1989); *Green Tree Acceptance, Inc. v. Blalock*, 525 So.2d 1366 (Ala. 1988); *Building Maintenance Personnel, Inc. v. International Shipbuildings, Inc.*, 621 So.2d 1303 (Fla. 1993); *Lawson Products, Inc. v. Tifco Industries, Inc.*, 660 F.Supp. 892 (M.D. Fla. 1987); *Bank of America , N.A. v Ebro Foods, Inc.,* 948 N.E.2d 685 (Ill. App. 1 Dist. 2011); *Alliance Steel, Inc. v. Piland*, 134 P.3d 669 (Kan. App. 2006); *Kayser Roth Co. v. Holmes*, 693 S.W.2d 907 (Mo. App. 1985); *Taylor & Martin, Inc. v. Hiland Dairy, Inc.*, 676 S.W.2d 859 (Mo. App. 1984); *Bayonne Block Co. Inc. v. Porco*, 654 N.Y.S.2d

an activity is local or interstate in nature is a question of fact that must be determined on a case-by-case basis. A great many decisions have been handed down weighing the significance, alone and cumulatively, of innumerable activities. Some activities have been universally held to constitute "doing intrastate business." These include maintaining a stock of goods in a state from which deliveries are regularly made to customers in that state. Other activities, standing alone, have been held to fall short of doing business, e.g., the mere solicitation of orders, or the maintenance of an office in furtherance of the corporation's interstate activities. Contracting with a party located in the forum state is not considered doing intrastate business if the contract was accepted outside the state.[149]

Whether a foreign corporation is doing interstate or intrastate business may turn on whether the corporation has localized its business in the forum state.[150] To determine if a corporation has localized its business, a court will look at such factors as the quantity of business and permanence and number of employees and officers. For example, in a Nevada case,[151] an Oregon corporation sold windows in 30 states. Of its total of $20 million in sales, $3 million came from Nevada. The court held that such a high volume of sales from Nevada would ordinarily subject a corporation to the qualification requirements. However, because the company had only one salesperson and no business office in Nevada, the court found that it had not localized its activities in Nevada to the extent that the activities took on an intrastate quality. Therefore, the corporation was permitted to bring suit without qualifying in Nevada.

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961 (N.Y. City Civ. Ct. 1996); *Contel Credit Corp. v. Tiger Inc.*, 520 N.E.2d 1385 (Ohio App. 1987); *L.V. Appleby, Inc. v. Griffes*, 648 A.2d 808 (Vt. 1993); *Green Thumb, Inc. v. Tiegs*, 726 P.2d 1024 (Wash. App. 1986).

149. *North Alabama Marine, Inc. v. Sea Ray Boats, Inc.*, 533 So.2d 598 (Ala. 1988); *Shook & Fletcher Insulation Co. v. Panel Systems*, 784 F.2d 1566 (11th Cir. 1986); *Nelms v. Morgan Portable Bldg. Corp.*, 808 S.W.2d 314 (Ark. 1991); *Moore v. Luxor (North America) Corporation*, 742 S.W.2d 916 (Ark. 1988); *Budget Premium Co. v. Motor Ways, Inc.*, 400 N.W.2d 60 (Iowa App. 1986); *Massey-Ferguson Credit Corp. v. Black*, 764 S.W.2d 137 (Mo. App. 1989); *Durish v. Panan Intern.*, N.V., 808 S.W.2d 175 (Tex.App.-Houston [14th Dist.] 1991); *Chase Commercial Corp. v. Barton*, 571 A.2d 682 (Vt. 1990).

150. *Union Brokerage Co. v. Jensen*, 322 U.S. 202 (1944); *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20 (1974); *Camaro Trading Company, Ltd. v. Nissei Sangyo America, Ltd.*, 628 So.2d 463 (Ala. 1993); *Hinden/Owen/Engelke, Inc. v. Wailea Kai Charters*, 949 F. Supp. 775 (D. Hawaii); *Tiller Construction Corporation v. Nadler*, 637 A.2d 1183 (Md. 1994); *Shannon Sales Co., Inc. v. Williams*, 490 N.W.2d (Minn. App. 1992); *Prompt Mortgage Providers of North America, LLC v. Zarour*, 2023 N.J. Super. Unpub. LEXIS 2213; *Tetra Technologies, Inc. v. Harter*, 823 F.Supp. 1116 (S.D.N.Y. 1993).

151. *Sierra Glass & Mirror v. Viking Indus., Inc.* 808 P.2d 512 (Nev. 1991).

A New York court, holding that the defendant did not meet its burden of showing that the plaintiff, an unlicensed foreign corporation, had conducted systematic and regular business activities, stated that "the defendant failed to ascertain such pivotal factors as the volume of plaintiff's sales within New York, both in number and dollar amounts."[152] An Ohio court held that a Florida LLC was doing business in Ohio where continuous email communications led to an agreement in which the Florida LLC would procure the sale of products to Ohio customers. The agreement had no end date, further indicating the continuous and regular nature of the relationship.[153]

In the District of Columbia, it has been held that contacts with the Federal Government, which are of uniquely governmental, rather than commercial, nature "do not as such satisfy the 'doing business' criterion of the local jurisdictional statutes,"[154] and hence would not require qualification, either. This "government contacts" exception is necessary because of the unique character of the District of Columbia as the seat of the national government and the need to facilitate access to federal agencies.

A foreign corporation is also permitted to maintain an action on an intrastate activity if the activity was merely a necessary and incidental part of an interstate transaction. In Alabama it was held that a foreign corporation did not have to qualify in order to employ an agent in the state to check inventory and receive payments on a contract made in interstate commerce.[155] Another Alabama case held that a foreign corporation whose only intrastate activities consisted of delivery, set up, and repair work, incidental to a contract entered into in Tennessee, was not required to qualify.[156] An Ohio court held a company did not have to qualify in order to repair machinery sold in interstate commerce.[157] In a Maryland case, a Taiwanese corporation was in the business of transporting goods between the Far East and the United States. The corporation advertised its shipping business and maintained a shipping

152. *Maro Leather Co. v. Argentinas*, 617 N.Y.S. 2d 617 (Sup. 1994).

153. P*roMac Techs., LLC v. Fabrication Automation, LLC,* 2021 Ohio App LEXIS 4176.

154. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808 (D.C. App. 1976); *Siam Kraft Paper Co., Ltd. v. Parsons & Whittemore, Inc.*, 400 F. Supp. 810 (D.D.C. 1975); *Traher v. De Havilland Aircraft of Canada, Ltd.*, 294 F.2d 229 (D.C. Cir. 1961), cert. den. 368 U.S. 954, 82 S.Ct. 397 (1962); *Mueller Brass Co. v. Alexander Milburn Co.*, 152 F.2d 142 (D.C. 1945); compare *Frene v. Louisville Cement Co.*, 134 F.2d 511 (D.C. Cir. 1943).

155. *North Alabama Marine, Inc. v. Sea Ray Boats, Inc.*, 533 So.2d 598 (Ala. 1988). See also *Andrews v. Central Petroleum, Inc.*, 63 So.3d 650 (Ala. Civ. App. 2010).

156. *Billions v. White & Stafford Furniture Co.*, 529 So.2d 878 (Ala. Civ. App. 1988).

157. *Saeilo Machinery, Inc. v. Myers*, 489 N.E.2d 1083 (Ohio Com. Pl. 1985).

agent in Maryland, paid docking fees and bought fuel and provisions in Maryland. The court held that it was not required to qualify because these activities were necessary and essential to its activities in foreign commerce.[158] And in an Iowa case, the court held that a Nebraska corporation that conducted business in Iowa via telephone communication and facsimile transmission from its Nebraska office, was conducting interstate business and not required to qualify.[159]

The Constitution also grants Congress the power to regulate commerce with foreign nations. In determining whether a corporation engaged in foreign commerce must qualify, the same rules will apply as in the case of any other corporation. If the corporation is engaged exclusively in foreign commerce with respect to the state, it cannot be forced to qualify. If the corporation does intrastate business in the state, the fact that it is also engaged in foreign commerce will not protect it from the qualification requirements.

For example, a French corporation that sold works of art in the United States brought an action in the Southern District of New York. The defendants claimed that because the art market in the United States is centered in New York, it must be presumed that the French corporation was conducting regular business in and from New York. The district court rejected this presumption and found that defendants failed to supply any evidence that the corporation had localized its business in New York. Because it was engaged solely in foreign and interstate commerce, the French corporation could bring suit without qualifying.[160]

The United States Supreme Court held that a corporation that cleared goods through customs and paid tariffs was doing intrastate business and required to qualify.[161] However, the New York Supreme Court has held that a foreign corporation, which shipped goods on consignment from a foreign country to its resident agent in New York, was not required to qualify,[162] and a corporation that entered into a contract in New York for the transportation of passengers from New York to Canada was not required to qualify.[163] Where a French publisher had an agent in New York, but orders were accepted in Paris, the publisher was not required to qualify before enforcing its contracts in New

158. *Yangming Marine Transport Corp. v. Revon Products U.S.A., Inc.*, 536 A.2d 633 (Md. 1988).

159. *Corporate Recruiters Ltd. v. Norwest Financial Inc.*, 489 N.W.2d 729 (Iowa 1992).

160. *Galerie Furstenberg v. Coffaro*, 697 F.Supp. 1282 (S.D.N.Y. 1988).

161. *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 64 S.Ct. 967 (1944).

162. *Badische Lederwerke v. Capitelli*, 92 Misc. 260, 155 N.Y.S. 651 (Sup. Ct. 1915).

163. *Erie Beach Amusements, Ltd. v. Spirella Co., Inc.*, 173 N.Y.S. 626 (Niagara Co. Ct. 1918).

York.[164] Where a foreign corporation that owned and operated hotels in Mexico, contracted with New York corporations to handle reservations and hotel deposits on its behalf, the court found that the foreign corporation's efforts to market its Mexican hotel services were purely in furtherance of foreign commerce and did not require qualification in New York.[165]

And where a Bermuda corporation sought to collect on a guaranty executed by New York residents in the course of financing the purchase of a ship in foreign commerce, the New York court held that the guaranty was not separable from the underlying financial transaction. Even if it could have been considered separately, it would have been an isolated transaction. In either case, the foreign corporation did not have to qualify in order to sue on the guaranty.[166] Several other cases involving foreign commerce are cited below.[167]

Isolated Transactions

Section 106(j) of the Model Business Corporation Act provides that ". . .a foreign corporation shall not be considered to be transacting business in this State, for the purposes of [qualification], by reason of. . .[c]onducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature." Section 15.01(b)(10) of the Revised Model Act is substantially the same. This or a similar provision has been adopted in the following states: Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, Nevada, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

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164. *Librairie Hachette, S.A. v. Paris Book Center, Inc.*, 309 N.Y.S.2d 701 (Sup. Ct. 1970).

165. *Posadas De Mexico, S.A. de C.V. v. Dukes*, 757 F.Supp. 297 (S.D.N.Y. 1991).

166. *Netherlands Ship-Mortgage Corp., Ltd. v. Madias*, 717 F.2d 731 (2d Cir. [N.Y.] 1983), rev'g 554 F.Supp. 375 (S.D.N.Y. 1983).

167. *Dant & Russell, Inc. v. Board of Supervisors of Los Angeles County*, 128 P.2d 389 (Cal. App. 1942); *Commodity Ocean Transport Corp. v. Royce*, 633 N.Y.S.2d 541 (A.D. 2 Dept. 1995); *Storwal Intern., Inc. v. Thom Rock Realty Co., L.P.*, 784 F.Supp 1141 (S.D.N.Y. 1992); *Alicanto, S.A. v. Woolverton*, 514 N.Y.S.2d 96 (1987); *National Mercantile Co., Ltd. v. Watson*, 215 Fed. 929 (D. Ore. 1914); *United Fruit Co. v. Department of Labor and Industry*, 344 Pa. 172, 25 A.2d 171 (1942).

The District of Columbia, Georgia, Idaho, Iowa, Maryland, Pennsylvania, and Vermont statutes contain similar provisions, except there is no requirement that the transaction be completed within thirty days. (Similarly, the Model Act (2016) provides that conducting an isolated transaction that is not in the course of similar transactions is not doing business.) Tennessee and North Carolina extend the period to six months, Illinois to 120 days, and California extends it to 180 days.

Transacting some substantial part of its ordinary business in a state is generally considered sufficient to require a foreign corporation to qualify. Because an isolated transaction is less than a "substantial part," it will not require qualification.[168] The difficulty arises in determining what an isolated transaction is.

In a New York Supreme Court case,[169] an unqualified foreign corporation entered into a contract with the defendant in New York for the sale of a freezer. Although this was one of only two contracts made by the corporation in the state, the corporation had advertised in New York papers and had employed an answering service in the state. The Court found it "hard to believe" that the unlicensed foreign corporation would have so acted in connection with a plan to make only one or two sales and concluded that the corporation was doing business in New York. In another case, an unqualified foreign corporation brought an action in New York to enforce a purchase option on an apartment it rented in New York City. In the absence of contrary evidence, the court presumed "that plaintiff maintains the apartment in question for use by its officers and employees while they are in New York to transact the corporation's business, and that the corporation would not maintain a permanent apartment here unless such business consisted of more than a casual, isolated or occasional transaction."[170] The court

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168. *Winston Corporation v. Park Electric Company*, 126 Ga. App. 489, 191 S.E.2d 340 (1972); *Aero Service Corp. (Western) v. Benson*, 374 P.2d 277 (Id. 1962); *Bank of America , N.A. v Ebro Foods, Inc.*, 948 N.E.2d 685 (Ill. App. 1 Dist. 2011); *Long Manufacturing Co., Inc. v. Wright-Way Farm Service, Inc.*, 214 N.W.2d 816 (Mich. 1974); *Behlen Manufacturing Co. v. Andries-Butler, Inc.*, 217 N.W.2d 125 (Mich. App. 1974); *United Mercantile Agencies v. Jackson*, 173 S.W.2d 881 (Mo. 1943); *Reynolds Offset Co. v. Summer*, 156 A.2d 737 (N.J. Super. App. Div. 1959); *Reese v. Harper Surface Finishing Systems*, 517 N.Y.S. 2d 522 (1987); *Peter Matthews, Ltd. v. Robert Mabey, Inc.*, 499 N.Y.S.2d 256 (1986); *Netherlands Ship-Mortgage Corp., Ltd. v. Madias*, 717 F.731 (2d Cir. [N.Y.] 1983); *Walden v. Automobile Brokers, Inc.*, 160 P.2d 400 (Okla. 1945); *American Housing Trust, III v. Jones*, 696 A.2d 1181 (Pa. 1997); *Hoffman Const. Co. v. Erwin*, 331 Pa. 384, 200 A.579 (1938); *Thorp Finance Corporation v. Wright*, 399 P.2d 206 (Utah 1965).

169. *Franklin Enterprises Corp. v. Moore*, 34 Misc.2d 594, 226 N.Y.S.2d 527 (Sup. Ct. 1962), quoting *Mahar v. Harrington Park Villa Sites*, 146 App. Div. 756, 131 N.Y.S. 514 (1st Dept. 1911); rev'd on other grounds, 204 N.Y. 231, 97 N.E. 587 (1912).

170. *Girod Trust Co. v. Kingsdown Corp. N.V.*, 108 Misc.2d 759, 760, 438 N.Y.S.2d 894, 895 (Sup. Ct. 1981).

dismissed the suit, but granted plaintiff leave to renew if it wished to rebut the court's presumption that it was doing business in New York.

Generally, a foreign corporation will not be exempt from qualification, even though only one or two contracts are involved, if the transaction is of long duration or if it indicates a general plan to continue doing business in the state.[171]

Generally, a single contract is considered an isolated transaction.[172] In a case involving a franchise agreement, a Michigan court held that the agreement was an isolated transaction and, where the only services rendered by the foreign corporation were "essential to this isolated agreement," qualification was not required.[173]

A different situation can be found in cases decided in Alabama. There, it has been held that any isolated transaction that is part of the ordinary business of the corporation will constitute doing business, even without any repetition or intent to continue doing business.[174]

The Alabama courts have stated that "the general rule. . .is that a single act of business is sufficient to bring a foreign corporation within the purview of doing business in Alabama."[175] Where a corporation, formed for the purpose of acquiring other corporations, engaged in an "isolated" transaction in which it negotiated in Alabama a contract

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171. *Tiller Construction Corporation v. Nadler*, 637 A.2d 1183 (Md. 1994); *General Highways Systems, Inc. v. Dennis*, 230 N.W. 906 (Mich. 1930); *Palm Vacuum Cleaner Co. v. Bjornstad*, 136 Minn. 38, 161 N.W. 215 (1917); *Peterman Const. and Supply Co. v. Blumenfeld*, 125 So. 548 (Miss. 1930); State ex rel. *Lay v. Arthur Greenfield, Inc.*, 205 S.W. 619 (Mo. 1918); *Franklin Enterprises Corporation v. Moore*, 34 Misc.2d 594, 226 N.Y.S.2d 527 (Sup. Ct. 1962); *National Sign Corp. v. Maccar Cleveland Sales Corp.*, 33 Ohio App. 89, 168 N.E. 758 (1929); *Hoffman Const. Co. v. Erwin*, 331 Pa. 384, 200 A.579 (1938); *Mandel Bros., Inc. v. Henry A. O'Neil, Inc.*, 69 F.2d 452 (8th Cir. [S.D.] 1934); *Interstate Const. Co. v. Lakeview Canal Co.*, 31 Wyo. 191, 224 Pac. 850 (1924); *Gosch v. B&D Shrimp, Inc.*, 822 S.W.2d 802 (Tex. App. Houston [1st Dist.] 1992).

172. *Mfrs. Nat. Bank of Detroit v. Tri-State*, 410 S.E.2d 808 (Ga. App. 1991); *Hinden/ Owen/ Engelke, Inc. v. Wailea Kai Charters*, 949 F. Supp. 775 (D. Hawaii); *Interline Furniture, Inc. v. Hodor Industries Corp.*, 527 N.Y.S.2d 544 (1988); *Gosch v. B&D Shrimp, Inc.*, 830 S.W.2d 652 (Tex. App.-Houston [1st Dist.] 1992).

173. *Dur-Ram Packaging Devices v. Self-Seal Containers*, 170 N.W.2d 473 (Mich. App. 1969).

174. *Royal Insurance Co. Ltd. v. All States Theatres, Inc.*, 242 Ala. 417, 6 So.2d 494 (1942); *Geo W. Muller Mfg. Co. v. First National Bank of Dothan*, 57 So.762 (Ala. 1912); *Alabama Western R. Co. v. Talley-Bates Const. Co.*, 162 Ala. 396, 50 So. 341 (1909); *State v. Bristol Savings Bank*, 18 So. 533 (Ala. 1895); *Farrior v. New England Mortgage Security Co.*, 88 Ala. 275, 7 So. 200 (1890).

175. *Vines v. Romar Beach, Inc.*, 670 So.2d 901 (Ala. 1995); *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989); *Green Tree Acceptance, Inc. v. Blalock*, 525 So.2d 1366 (Ala. 1988).

to purchase shares in an Alabama corporation, it was held to be doing business and the contract was held unenforceable.[176]

A Texas court held that the rental of equipment in Texas was not an isolated transaction where the rental period extended beyond the thirty-day statutory period.[177] Another Texas court held that a sale of a boat was not an isolated transaction where it was implicit in the agreement that transfer of title would not occur within 30 days.[178] But where a foreign corporation entered into an earnest money contract, and where the contract was executed on November 3, the money and the contract were received by the seller on November 7, and the closing date was set for December 5, a Texas court held that the corporation did not have to qualify to sue the seller because the transaction was an isolated transaction that could have been completed within 30 days.[179] The fact that the contract was executed more than 30 days before the closing date did not matter because the contract was not binding until the money and contract were received.

A Georgia court ruled that the sale and delivery of a carillon bell by a foreign corporation was not an isolated transaction where the corporation had made at least four other sales in Georgia and where the corporation's letterhead listed "General offices" within the state.[180]

In another case,[181] a Georgia court held that a foreign corporation's activities in designing, surveying and planning the construction of an alpine slide ride indicated that it was proposing to conduct a continuous business in the state and did not constitute an isolated transaction. However, in a third Georgia case,[182] the court held that an Arizona professional corporation that represented a client in Georgia did not have to qualify, even though it had two previous Georgia clients, because the earlier cases had not been connected to the one in question. Thus, the corporation had not extended its business into the state on a continuous basis, and its representation had constituted an isolated transaction. And, where a corporation whose business was primarily in interstate commerce warehoused products in Georgia during

176. *Continental Telephone Co. v. M.G. Weaver, et al.*, Civil Action No. 67-180, N.D. Ala., May 17, 1968, aff'd 410 F.2d 1196 (5th Cir. 1969).

177. *Jay-Lor Textiles, Inc. v. Pacific Compress Warehouse Co.*, 547 S.W.2d 738 (Tex. Civ. App. 1977).

178. *Gosch v. B&D Shrimp, Inc.*, 830 S.W.2d 652 (Tex. App.-Houston [1st Dist.] 1992).

179. *Durish v. Panan Intern., N.V.*, 808 S.W.2d 175 (Tex. App.-Houston [14th Dist.] 1991).

180. *Van Bergen Belfoundries, Inc. v. Executive Equities, Inc.*, 228 S.E.2d 356 (Ga. Ct. App. 1976).

181. *Barker v. County of Forsyth*, 248 Ga. 73, 281 S.E.2d 549 (1981).

182. *Reisman v. Martori, Meyer, Hendricks & Victor*, 155 Ga. App. 551, 271 S.E.2d 685 (1980).

one Christmas sales season and made sales from that warehouse, the court held that this activity was an isolated transaction that did not require qualification.[183]

Where a Pennsylvania real estate corporation took part in only one sale in Delaware, it was an isolated transaction, and the corporation did not have to qualify in order to bring suit.[184]

A Missouri court held that, where a mortuary corporation's only contact with the state was the transportation of a body to and from Missouri for visitation purposes, it was an isolated transaction and the corporation was not required to qualify.[185] A foreign corporation in the business of finding sources of financing was found not to be doing business in Hawaii under the isolated transaction exception where it entered into a single contract associated with Hawaii and where the contract did not form a long term relationship between the parties or require any performance in Hawaii.[186]

In an Alabama case, a foreign corporation leased an ice cream machine to Alabama residents. In finding that the corporation was doing business and could not enforce the lease in Alabama's courts, the court stated, "this is not an isolated transaction; there have, since 1984, been 31 transactions involving about $350,000."[187] In an Illinois case, evidence that a foreign employee placement company worked with an unknown number of individuals in Illinois was insufficient to show that the company did business on a regular basis as opposed to engaging in occasional and isolated transactions in the state.[188] A Georgia court held that a foreign corporation was not doing business in Georgia under the isolated transaction exception where its sole activity was a single sale of goods to the plaintiff.[189]

In a case involving an LLC the court dismissed claims brought by the foreign LLC arising out of a joint venture to put on a concert in Nebraska. The court held that the LLC was not exempt from qualification under the isolated transactions exception. Although the concert itself may have been an isolated transaction the LLC also engaged in negotiations, promotion and production activities that exceeded 30

183. *Al & Dick, Inc. v. Cuisinarts, Inc.*, 528 F.Supp. 633 (N.D. Ga. 1981).

184. *Coyle v. Peoples*, 349 A.2d 870 (Del. Super. 1975).

185. *Marks Mortuary v. Estate of Koeppel*, 740 S.W.2d 397 (Mo. App. 1987).

186. *Hinden/Owen/Engelke, Inc. v. Wailea Kai Charters*, 949 F. Supp. 775 (D. Hawaii 1996).

187. *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989).

188. *Career Concepts, Inc. v. Synergy*, 865 N.E.2d 385 (Ill. App. 1 Dist. 2007).

189. *Hall v. Sencore, Inc.*, 691 S.E.2d 266 (Ga. 2010)

days.[190] A foreign corporation whose activities in Georgia were limited to coordinating the construction of plant, an isolated project that was not consistent with continuous and ongoing transaction of business in the state, was not required to qualify.[191]

Corporate Secondary Activities

In General

Generally, activities incidental to the foreign corporation's main business do not require qualification. It is difficult, however, to find cases directly on point, since most of the decisions have turned on sets of facts that included more than one activity. Innumerable decisions have held qualification necessary because of the sum total of the corporation's activities in the state, even though the "secondary" activities involved might not have required qualification by themselves.

Where a foreign corporation's intrastate business was limited to one secondary activity, qualification has not been required. For example, a Nevada court held that sending representatives to a convention did not constitute doing business in the state.[192] It has been held that trips into a state to negotiate contracts and troubleshoot were not doing business.[193]

Qualification may not be required even though a corporation engaged in several secondary activities. A New York court held that an Argentine corporation that maintained an office and two bank accounts in New York and employed a New York attorney as authorized signatory of the bank accounts was not engaged in the type of activities that would require qualification.[194]

A foreign corporation is generally not required to qualify to carrying on activities concerning its internal affairs.[195] A Florida court held that a foreign corporation in the process of dissolving and winding up its affairs was not required to qualify to prosecute a suit to recover assets.[196] A New Hampshire court held that a foreign corpo-

190. *Blue Events, LLC v. Lincoln Professional Baseball, Inc.*, 2014 U.S.LEXIS 11518.

191. *Universal Industrial Gases, Inc. v. Action Industries, Inc.*, 864 S.E.2d 121 (Ga. App. 2021)

192. *In the Matter of the Las Vegas Hilton Hotel Fire Litigation*, 706 P.2d 137 (Nev. 1985).

193. *Shook & Fletcher Insulation Co. v. Panel Systems, Inc.*, 784 F.Supp. 1566 (11th Cir. 1986).

194. *Alicanto, S.A. v. Woolverton*, 514 N.Y.S.2d 96 (1987).

195. Model Business Corporation Act, Sec. 106(b); Revised Model Corporation Act, Sec. 15.01(b)(2).

196. *Selepro, Inc. v. Church*, 17 So.2d 1267 (Fla. App. 2009).

ration was not required to register to engage in activities related to its dissolution and passing its assets to its shareholders.[197] A North Carolina court held that a Chinese corporation's attempts to execute a reverse merger to reorganize as a publicly traded company in the United States were excluded by the qualification provision as "carrying on other activities concerning its internal affairs".[198] Texas' statute provides that "acting as a governing person of a domestic or foreign entity that is registered to do business" is not transacting business. Washington's statute provides that employing a remote worker who resides in Washington does not constitute doing business.

Other typical secondary activities include: preliminary acts performed by the corporation to determine whether or not it should begin business in the state, maintaining bank accounts holding directors' meetings, collecting accounts maintaining books and records, and bringing suit. These and other activities are covered more fully in the following sections. For a discussion of sales by a corporation of its own securities, see the section "Sales of Securities."

Advertising

It is specifically provided by statute in Delaware and Oklahoma that certain methods of advertising by a company in the mail order or similar business shall not constitute doing business for qualification purposes.[199]

It has been held that a foreign corporation may enter a state without qualifying for the purpose of soliciting orders for advertisements to appear in a publication printed in another state if the orders are accepted outside the state where they are solicited.[200] A similar conclusion was reached where the material to be published outside the state was a trade catalog prepared for a company in the state in which the foreign corporation was not authorized to do business.[201]

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197. *Brentwood Voluntary Fireman's Assoc. v. Musso*, 986 A.2d 580 (N.H. 2009).

198. *Harbin Yinhai Tech. Dev. Co. Ltd. v. Greentree Financial Group, Inc.*, 677 S.E. 2d 854 (N.C. App. 2009).

199. Delaware Code, Title 8, Sec. 373; Oklahoma Statutes Annotated, Title 18, Sec. 1132.

200. *Alfred M. Best Co., Inc. v. Goldstein*, 1 A.2d 140 (Sup. Ct. Errors, Conn . 1938); *United Newspapers Magazine Corp. v. United Advertising Companies, Inc.*, 297 Ill. App. 637, 17 N.E.2d 345 (1983); *Stevens-Davis Co. v. Peerless Service Laundry*, 170 At. 619 (N.J. 1934); *Bell Telephone Co. of Philadelphia v. Galen Hall Co.*, 72 Atl. 47 (N.J. 1909); *American Contractor Publishing Co. v. Michael Nocenti Co.*, 139 N.Y.S. 853 (Sup. Ct. App. Term 1st Dept. 1913); *American Contractor Publishing Co. v. Bagge*, 91 N.Y.S. 73 (Sup. Ct., App. Term 1904).

201. *Blackwell-Wielandy Co. v. Sabine Supply Co.*, 38 S.W.2d 654 (Tex. Civ. App. 1931).

The furnishing by a foreign corporation of advertising material, such as type, cuts, mats and displays, from without the state, to be used by the purchaser locally, has been held to constitute interstate commerce not requiring qualification on the part of the foreign corporation.[202]

However, when the foreign corporation enters a state to effect the actual advertising itself, the courts have reached a different result. For instance, a foreign corporation has been considered doing business when it agrees to set up signs in a state, brings the signs into the state, puts them in place and maintains them.[203]

Entering into contracts with merchants in a state in which a foreign corporation is not authorized to do business, followed by the exhibition of films advertising the merchants' wares in local theaters, had been ruled to constitute intrastate business requiring qualification, even though the films are produced outside the state.[204]

In a New Mexico case, a corporation involved in financing the purchase of airplanes was not required to qualify because of an exemption for lending money and collecting debts. The court found that certain related activities, including advertising in form letters, leasing an advertising sign, having an employee who made trips to the state to solicit business and holding two seminars for dealers in the state, did not constitute doing business because they were incidental to and directly related to the permitted activity.[205]

A manufacturer was held not to be transacting business in Wisconsin for purposes of qualification by reason of placing 25 advertisements in national magazines widely distributed in the state.[206] A wholesaler

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202. *Norm Advertising, Inc. v. Parker*, 172 So. 586 (La. App. 1937); *Outcault Advertising Co. v. Citizens' State Bank of Roseau*, 180 N.W. 705 (Minn. 1920); In re Dennin's Will, 37 N.Y.S.2d 725 (Supr. Ct. 1942); *Local Trademarks, Inc. v. Derrow Motor Sales Inc.*, 201 N.E.2d 222 (Ohio App. 1963) (but see, contra, *Clare & Foster, Inc. v. Diamond S. Elec. Co.*, 34 N.E.2d 284 (Ohio App. 1940); *Altheimer & Baer, Inc. v. Vergal Bourland Home Appliances*, 369 S.W.2d 478 (Tex. Civ. App. 1963); *Bogata Mercantile Co. v. Outcault Advertising Co.*, 184 S.W. 333 (Tex. Civ. App. 1916).

203. *Imperial Curtain Co. v. Jacob*, 127 N.W. 772 (Mich. 1910); *Western Outdoor Advertising Co. v. Berbigilia, Inc.*, 263 S.W.2d 205 (K.C. (Mo.) App. 1953); *National Sign Corp. v. Maccar Cleveland Sales Corp.*, 33 Ohio App. 89, 168 N.E. 758 (1929); *Motor Supply Co. v. General Outdoor Advertising Co.*, 44 S.W.2d 507 (Tex. Civ. App. 1931); *North American Service Co. v. A.T. Vick Co.*, 243 S.W. 549 (Tex. Civ. App. 1922); *Street Railway Advertising Co. v. Lavo Co. of America*, 198 N.W. 595 (Wis. 1924).

204. *State, for use of Independence County v. Tad Screen Advertising Co.*, 133 S.W.2d 1 (Ark. 1939).

205. *Cessna Finance Corp. v. Mesilla Valley Flying Serv., Inc.*, 462 P.2d 144 (N.M. 1969).

206. *Fields v. Peyer*, 250 N.W.2d 311 (Wis. 1977).

whose business was primarily interstate in nature was found not to be transacting intrastate business in Georgia despite advertising its product in local media and in national magazines sold in Georgia.[207]

A foreign corporation that provided advertising and marketing services to automobile dealers was held to be doing business in Alabama because the ads were broadcast in Alabama, even though the actual production was done in New Mexico.[208] In New Jersey it has been held that the process of soliciting advertising business from a New Jersey corporation and then placing ads in New Jersey newspapers constitutes doing intrastate business.[209] In Maryland, a foreign corporation that solicited business through ads in national magazines and had no other contacts with Maryland was not doing intrastate business.[210]

There are other cases in this area that support the general propositions stated above, and which may be of interest.[211]

Bank Accounts

Section 106(c) of the Model Business Corporation Act and Section 15.01(b)(3) of the Revised Model Act provide that "maintaining bank accounts" will not constitute doing business for the purpose of qualification. The Model Act (2016), Sec. 15.05(a)(3) provides that "maintaining accounts in financial institutions" is not doing business. States that have adopted this provision or one similar to it include Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky,

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207. *Al & Dick, Inc. v. Cuisinarts, Inc.*, 528 F.Supp. 633 (N.D. Ga. 1981).

208. *The Competitive Edge, Inc. v. Tony Moore Buick-GMS, Inc.*, 490 So.2d 1242 (Ala. Civ. App. 1986).

209. *Davis & Dorand, Inc. v. Patient Care Medical Services, Inc.*, 506 A.2d 70 (N.J. Super. L. 1985).

210. *Yangming Marine Transport Corp. v. Revon Products U.S.A., Inc.*, 536 A.2d 633 (Md. 1988).

211. *Union Interchange, Inc. v. Mortensen*, 366 P.2d 333 (Ariz. 1961); *Alexander Film Co. v. State*, 201 Ark. 1052, 147 S.W.2d 1011 (1941) (manufacture and exhibition of films); *Dean v. Caldwell*, 141 Ark. 38, 216 S.W. 31 (1919) (trade campaign); *The Journal Co. of Troy v. F.A.L. Motor Co.*, 181 Ill. App. 530 (1913) (space advertising); *International Transportation Ass'n v. Des Moines Morris Plan Co.*, 215 Iowa 268, 245 N.W. 244 (1932) (preparation of trade catalog); *George H. Cox Co. v. Phonograph Co.*, 208 Ky. 398, 270 S.W. 811 (Ky. Ct. App. 1925) (promotional exhibition); *Standard Fashion Co. v. Cummings*, 187 Mich. 196, 153 N.W. 814 (1915) (advertisement catalog); *Union Interchange, Inc. v. Parker*, 357 P.2d 339 (Mont. 1960); *Brooks Packing Co., Inc. v. Eastman Laboratories, Inc.*, 187 Okla. 344, 103 P.2d 93 (1940); *Blackwell-Wielandy Co. v. Sabine Supply Co.*, 38 S.W.2d 654 (Tex. Civ. App. 1931) (trade catalog); *Ligon v. Alexander Film Co.*, 55 S.W.2d 1030 (Tex. Comm'n App. 1932) (manufacture & exhibition of films).

Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Even in those states without a statutory provision, it appears that maintaining a bank account does not constitute transacting business. Because it is rare to find a case in which a foreign corporation's only activity was maintaining a bank account, the best authority is the cases holding that various activities, including the maintenance of bank accounts, do not require qualification.[212] For example, in a New York case, the only evidence presented to show that the foreign corporation was doing business in New York was that the contract was executed and performed in New York and that the corporation had a New York address and a New York bank account. The court held that this evidence was insufficient to support the allegation that the corporation was doing intrastate business.[213]

Books and Records

Keeping corporate books and records in a state will not in and of itself require qualification.[214] However, maintaining records concerning the corporation's business usually indicates that the corporation is doing business locally. When a corporation engages in local activities in addition to maintaining records, it may be required to qualify.[215]

The Model Acts contain several provisions that may be relevant here. These provisions exclude as a basis for requiring qualification "Holding meetings of its directors or shareholders, or carrying on other activities concerning its internal affairs"[216] and "Maintaining offices or

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212. *United Newspapers Magazine Corp. v. United Advertising Companies, Inc.*, 297 Ill. App. 637, 17 N.E.2d 345 (1938); *Posadas De Mexico, S.A. de C.V. v. Dukes*, 757 F.Supp. 297 (S.D.N.Y. 1991); *Netherlands Ship-Mortgage Corp., Ltd. v. Madias*, 717 F.2d 731 (2d Cir. [N.Y.] 1983); *Badische Lederwerke v. Capitelli*, 92 Misc. 260, 155 N.Y.S. 651 (Sup. Ct. 1915); *Fruit Dispatch Co. v. Wood*, 42 Okla. 79, 140 Pac. 1138 (1914).

213. *Fine Arts Enterprises, N.V. v. Levy*, 539 N.Y.S.2d 827 (A.D. 3 Dept. 1989).

214. *Booth v. Scott*, 276 Mo. 1, 205 S.W. 633 (1918), App. dismissed 253 U.S. 475, 40 S.Ct. 484 (1919); *Chasan v. Cruso Spaghetti Place, Inc.*, 55 F.Supp. 831 (S.D.N.Y. 1943), aff'd per curiam (mem.) 143 F.2d 660 (2d Cir. 1944); 1941 OAG (Ohio) No. 4493.

215. *Critchfield & Co. v. Armour*, 228 Ill. App. 28 (1923); *Erie & Michigan Ry. & N. Co. v. Central Ry. Equipment Co.*, 152 Ill. App. 278 (1909); *Hayes Wheel Co. v. American Distributing Co.*, 257 F. 881 (6th Cir. [Mich.] 1919), cert. denied (mem.) 250 U.S. 672, 40 S.Ct. 13 (1919).

216. Model Business Corporation Act, Sec. 106(b); Revised Model Corporation Act, Sec.

agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities."[217]

Similar provisions have been adopted by Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota (except the statute provides for holding meetings of shareholders only), Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Only the second of these provisions has been adopted in New Jersey and New York.

Maintaining an Office

Whether or not a corporation may maintain an office in a state without being qualified depends upon the function the office serves. It is clearly established that maintaining an office merely to further interstate commerce does not subject a foreign corporation to qualification.[218] Thus, it was held that a foreign corporation maintaining a local office for the purpose of demonstrating equipment sold in interstate commerce was not required to qualify.[219] It is also clear that an office may be maintained for the convenience of salespeople who solicit contracts subject to approval in another state, without subjecting the foreign corporation to qualification.[220]

15.01(b)(2).

217. Model Business Corporation Act, Sec. 106(d); Revised Model Business Corporation Act, Sec. 15.01(b)(4).

218. *Leasing Service Corporation v. Hobbs Equipment Co.*, 707 F.Supp. 1276 (N.D. Ala. 1989); *United Newspapers Magazine Corp. v. United Advertising Companies*, 297 Ill. App. 637, 17 N.E.2d 345 (1938); *Federal Schools, Inc. v. Sidden*, 14 N.J. Misc. 892, 188 A. 446 (Supr. Ct. 1937); *Posadas De Mexico, S.A. de C.V. v. Dukes*, 757 F.Supp. 297 (S.D.N.Y. 1991); *International Text-Book Co. v. Tone*, 220 N.Y. 313 (1917); *Fruit Dispatch Co. v. Wood*, 42 Okla. 79, 140 Pac. 1138 (1914). In Kansas, an apparent exception to the general rule, it is specifically provided by statute that a foreign corporation having "an office or place of business within this state, or a distributing point herein, . . . shall be held to be doing business in this state." (Kansas Statutes Annotated, Sec. 17-7303).

219. *Saeilo Machinery, Inc. v. Myers*, 489 N.E.2d 1083 (Ohio Com. Pl. 1985).

220. *Alfred M. Best Company, Inc. v. Goldstein*, 1 A.2d 140 (Conn. Sup. Ct. Errors 1938); *Roberts v. Chancellor Fleet Corp.*, 354 S.E.2d 628 (Ga. App. 1987); *United Newspapers Magazine Corp. v. United Advertising Companies, Inc.*, 297 Ill. App. 637, 17 N.E.2d 345 (1938); *United Merchants and Manufacturers, Inc. v. David & Dash, Inc.*, 439 F.Supp. 1078 (D. Md. 1977); *Stafford-Higgins Industries v. Gaytone Fabrics, Inc.*, 300 F.Supp. 65 (S.D.N.Y., 1969); *James Talcott, Inc. v. J.J. Delaney Carpet Co.*, 28 Misc. 2d 600, 213 N.Y.S.2d 312 (1st Dept. 1961); *Hovey*

But, if a foreign corporation opens an office in a state and carries on all or most of its business activities within that state,[221] or it carries out the very purposes and objects for which it was created,[222] the corporation is doing business within the state and will be required to qualify.

It has generally been held that qualification is not required when a foreign corporation routes shipments to customers in the state through its local office for convenience in handling and inspection purposes,[223] or when it ships combined orders through its local office to be broken down for delivery to separate customers.[224]

Collection of the purchase price by the local office upon delivery of the goods will not require qualification,[225] but the acceptance and forwarding of installment payments may require qualification.[226]

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v. DeLong Hook & Eye Co., 211 N.Y. 420, 105 N.E. 667 (1914); *The House of Stainless, Inc. v. Marshall & Ilsley Bank*, 75 Wis.2d 264, 249 N.W.2d 561 (1977). But see *Show Counselors, Ltd. v. American Motors Corp.*, 211 N.W.2d 111 (Mich. App. 1973).

221. *Brown v. Sprague*, 229 Ill. App. 338 (1923); *Tiller Construction Corporation v. Nadler*, 637 A.2d 1183 (Md. 1994); *Shannon Sales Co., Inc. v. Williams*, 490 N.W.2d 436 (Minn. App. 1992); *Talbot Mills, Inc. v. Benezra*, 35 Misc. 2d 924, 231 N.Y.S.2d 229 (Sup. Ct. 1962); *Colonial Trust Co. v. Montello Brick Works*, 172 Fed. 310 (3rd Cir. [Pa.] 1909); In re Bell Lumber Co., 149 F.2d 980 (7th Cir. [Wisc.]1945).

222. *Republic Acceptance Corporation v. Bennett*, 189 N.W. 901 (Mich. 1922); *Finance Corporation of America v. Stone*, 54 S.W.2d 254 (Tex. Civ. App. 1932); *Bankers' Holding Corporation v. Maybury*, 297 Pac. 740 (Wash. 1932); *Dalton Adding Machine Sales Co. v. Lindquist*, 137 Wash. 375, 242 Pac. 643 (1926); *Kimball v. Sundstrom & Stratton Co.*, 80 W. Va. 522, 92 S.E. 737 (1917).

223. *Camaro Trading Company, Ltd. v. Nissei Sangyo America Ltd.*, 628 So.2d 463 (Ala. 1993); *Crawford v. Louisville Silo & Tank Co.*, 166 Ark. 88, 265 S.W. 355 (1924); *Belle City Mfg. Co. v. Frizzell*, 11 Ida. 1, 81 P. 58 (1905); *Thomas Mfg. Co. v. Knapp*, 101 Minn. 432, 112 N.W. 989 (1907); *Schwarz v. Sargent*, 197 N.Y.S. 216 (Sup. Ct., App. Term, 1st Dept. 1922); *Crisp v. Christian Moerlein Brewing Co.*, 212 S.W. 531 (Tex. Civ. App. 1919); *Cruncleton v. Chicago Portrait Co.*, 16 S.W.2d 851 (Tex. Civ. App. 1929); *John A. Dickson Pub. Co. v. Bryan*, 5 S.W.2d 980 (Tex. Comm'n App. 1928); *Brandtjen & Kluge, Inc. v. Nanson*, 9 Wash. 2d 362, 115 P.2d 731 (1941); *Greek-American Sponge Co. v. Richardson Drug Co.*, 124 Wis. 469, 102 N.W. 888 (1905).

224. *Alliston Hill Trust Co. v. Sarandrea* 134 Misc. 566, 236 N.Y.S. 265 (Sup. Ct. 1929), aff'd in part 236 App. Div. 189, 258 N.Y.S. 299 (3rd Dept. 1932); *Crisp v. Christian Moerlein Brewing Co.*, 212 S.W. 531 (Tex. Civ. App. 1919); *Cruncleton v. Chicago Portrait Co.*, 16 S.W.2d 851 (Tex. Civ. App. 1929).

225. *A.D. Dickerson, Inc. v. Levine*, 98 N.J.L. 313, 119 A. 783 (Supr. Ct. 1923); *Peterson v. Hoftiezer*, 35 S.D. 101, 150 N.W. 934 (1915); *Crisp v. Christian Moerlein Brewing Co.*, 212 S.W. 531 (Tex. Civ. App. 1919); *Cruncleton v. Chicago Portrait Co.*, 16 S.W.2d 851 (Tex. Civ. App. 1929); *Dr. Koch Vegetable Tea Co. v. Malone*, 163 S.W. 662 (Tex. Civ. App. 1914); *McCaskey Register Co. v. Mann*, 273 S.W. 1113 (Tex. Civ. App. 1923); *International Text-Book Co. v. Lynch*, 81 Vt. 101, 69 A. 541 (1908), affirmed per curiam 218 U.S. 664, 31 S.Ct. 225 (1910); *Catlin & Powell v.Schuppert*, 130 Wis. 642, 110 N.W. 818 (1907).

226. *Plibrico Jointless Firebrick Co. v. Waltham Bleachery and Dye Works*, 274 Mass. 281, 174

A New York court[227] held that an unlicensed foreign corporation was not doing business in the state by virtue of maintaining a loan production office. The court emphasized that a loan production office is not a branch office and may not approve loans or disburse funds. Instead, a loan production office is limited to such activities as soliciting loans, assembling credit information, and preparing applications.

Another court held that a foreign corporation was not doing business in Kansas by infrequently using an office in Kansas, where the office was not the focal point of the corporation's activities, and where its employees had to inquire about the availability of the office before using it.[228]

Maintaining and Defending Suits

Section 106(a) of the Model Business Corporation Act excludes from activities constituting doing business for purposes of qualification: "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." This provision appears in the statutes of California, Georgia, Louisiana, Minnesota, New Mexico, North Carolina, and Rhode Island.

Similar provisions appear in the statutes of Alaska, Maryland, New Jersey, New York, Pennsylvania, Texas, and Washington.

Section 15.01(b)(1) of the Revised Model Act states that "maintaining, defending, or settling any proceeding" will not constitute transacting business. The Model Act (2016), Sec. 15.05(a)(3) provides that "maintaining accounts in financial institutions" is not doing business. A similar provision has been adopted by Arizona, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Missouri, Nebraska , Nevada, New Hampshire, North Dakota, Oregon, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming. Tennessee is similar except it states "any proceeding, claim or dispute." District of Columbia, Florida, Idaho, Montana, Indiana, Utah, and Virginia include mediating and

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N.E. 487 (1931); *International Textbook Co. v. Connelly*, 67 Misc. 49, 124 N.Y.S. 603 (Monroe Count Ct. 1910), affirmed 206 N.Y. 188, 99 N.E. 722 (1912); *Pittsburgh Electric Specialties Co., Inc. v. Rosenbaum*, 102 Misc. 520, 169 N.Y.S. 157 (Sup. Ct. App. Term, 1st Dept. 1918); *Woodbridge Heights Const. Co. v. Gippert*, 92 Misc. 204, 155 N.Y.S. 363 (Sup. Ct., App. Term, 1st Dept. 1915); *National Cash Register Co. v. Ondrusek*, 271 S.W. 640 (Tex. Civ. App. 1925).

227. *Integra Bank North v. Gordon*, 624 N.Y.S.2d 344 (Sup. 1995).

228. *Woodmont Corp. v. Rockwood Center Partnership*, 852 F. Supp. 948 (D.Kan. 1994).

arbitrating. Wisconsin states "maintaining, defending, or settling any civil, criminal, administrative, or investigatory proceeding."

In addition to these provisions, some state statutes exclude from doing business the maintaining or defending of suits relating to debts secured by mortgages. In this connection, the statutes cited under the heading "Statutory 'Doing Business' Provisions Limited To Lending Money On Security" should be examined in the particular states involved.

Numerous decisions may be cited to support the principle that the mere bringing of a suit is not an activity that will require a foreign corporation to be qualified.[229]

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229. *Royal Insurance Co. v. All States Theatres*, 242 Ala. 417, 6 So.2d 494 (1942); *Western Loan and Building Co. v. Elias Morris & Sons Co.*, 43 Ariz. 88, 29 P.2d 137 (1934); *McKee v. Stewart Land & Live Stock Co.*, 28 Ariz. 511, 238 P. 326 (1925); *Chicago Title & Trust Co. v. Hagler Special School District*, 178 Ark. 443, 12 S.W.2d 881 (1928); *Republic Bank, Inc. v. Ethos Environmental, Inc.*, 2013 U.S. Dist. LEXIS (S.D. Cal. 2013); *Indian Refining Co. v. Royal Oil Co., Inc.*, 102 Cal. A. 710, 283 P. 856 (1929); *Greentech Consulting Co. v. Hilco IP Services, LLC*, 2022 Del. Super. LEXIS 188; *Loe v. Normalair, Limited*, 222 A.2d 643 (D.C. App. 1966); *Spa Creek Servs., LLC v. S.W. Cole, Inc.*, 239 So.3d 730 (Fla. App. 2017); *Overstreet v. Frederick B. Cooper Co., Inc.* 134 So.2d 225 (Fla. 1961); *Kay-Lex Co. v. Essex Insurance Co.*, 649 S.E.2d 602 (Ga. App. 2007); *Bonham National Bank of Fairbury v. Grimes Pass Placer Mining Co., Ltd.*, 18 Idaho 629, 111 Pac. 1078 (1910); *Hall v. Sencore, Inc.*, 691 S.E.2d 266 (Ga. 2010); *Frank Simpson Fruit Co. v. A.T. & S.F. Ry. Co.*, 245 Ill. 596, 92 N.E. 524 (1910); *Kytenn Oil & Gas Co. v. Parks*, 227 Ill. App. 95 (1922); *The Journal Co. of Troy v. F.A.L. Motor Co.*, 181 Ill. App. 530 (1913); *Tri-State Refining & Investment Co. v. Opdahl*, 481 N.W.2d 710 (Iowa App. 1991); *Borderland Coal Sales Co. v. Walker*, 270 S.W. 717 (Ky. Ct. App. 1925); *Edward Sales Co. v. Harris Structural Steel Co., Inc.*, 17 F.2d 155 (D. Me. 1927); *Turner v. Smalis, Inc.*, 622 F.Supp. 248 (D. Md. 1985); *Katz v. Simcha Company*, 251 Md. 227, 246 A.2d 555 (1968); *Hieston v. National City Bank of Chicago*, 132 Md. 389, 104 Atl. 281 (1918); *Mississippi Insurance Guaranty Ass'n. v. Harkins & Co.*, 652 So.2d 732 (Miss. 1995); *Swing v. B.E. Brister & Co.*, 87 Miss. 516, 40 So. 146 (1906); *Massey-Ferguson Credit Corp. v. Black*, 764 S.W.2d 137 (Mo. App. 1989); *Marks Mortuary v. Estate of Koeppel*, 740 S.W.2d 397 (Mo. App. 1987); *United Shoe Machinery Co. v. Ramlose*, 231 Mo. 508, 132 S.W. 1133 (1910); *Cadle Co., Inc. v. Wallach Concrete, Inc.*, 855 P.2d 130 (N.M. 1993); *Denver City Waterworks Co. v. American Water Works Co.*, 81 N.J. Eq. 139, 85 A. 826 (N.J. Chancery 1913); *DeRan Landscaping Service, Inc. v. DeRan Industries, Inc.*, 487 N.Y.S.2d 160 (1985); *General Knitting Mills, Inc. v. Rudd Plastic Fabrics Corp.*, 212 N.Y.S.2d 783 (Sup. Ct. 1961); *Harbin Yinhai Tech. Dev. Co. Ltd. v. Greentree Financial Group, Inc.*, 677 S.E. 2d 854 (N.C. App. 2009); *Westarc Leasing Corp. v. Capital Sign Service, Inc.*, 268 N.C. 601, 151 S.E.2d 204 (1966); *Quantum Corporate Funding, Ltd. v. Bryan Building Co., Inc.*, 623 S.E.2d 793 (N.C. App. 2006); *Jensen v. Zuern*, 523 N.W.2d 388 (N.D. 1994); *Freeman-Sipes Co. v. Corticelli Silk Co.*, 34 Okla. 229, 124 P. 972 (1912); *First Resolution Inv. Corp. v.Avery*, 246 P.3d 1136 (Or. App. 2010); *Major Creek Lumber Co. v. Johnson*, 99 Ore. 172, 195 P. 177 (1921); *Putney Shoe Co. v. Edwards*, 60 Pa. Super. 338 (1915); *Elliott Addressing Machine Co. v. Campbell*, 159 S.W.2d 967 (Tex. Civ. App. 1942); *Home Brewing Co. v. American Chemical & Ozokerite Co.*, 58 Utah 219, 198 P. 170 (1921); *Prudential F.S. & L. Assn. v. Hartford A. & I. Co.*, 7 Utah 2d 366, 325 P.2d 899 (1958); *Anglo-California Trust Co. v. Hall*, 61 Utah 223, 211 P. 991 (1922); *Taylor v. State*, 188 P.2d 671 (Wash. 1948).

Meetings in State

The Model Business Corporation Act, Revised Model Act, and Model Act (2016) provide that holding meetings of its directors or shareholders will not require a foreign corporation to qualify. Similar statutory provisions have been enacted in Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota (meetings of shareholders only), Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

In the absence of statute, it has been held that holding directors' or stockholders' meetings in a state will not, by itself, require qualification.[230]

Ordinarily, however, when such meetings are held in a state where the corporation is not authorized to do business, additional activities on the part of the corporation take place. In these cases, qualification may be required if the additional activities constitute doing business in the state.[231]

Preliminary Acts

Purely preliminary acts, which amount to mere preparation for doing business, will not require qualification. If, however, the particular preliminary act is part of a regular course of conduct, qualification will be required.

For example, it has been held that a foreign corporation, which entered into a contract, made loans, assembled demonstrators and appointed a local agent, all before it finally determined that it would engage in business under the contract, was not required to qualify.[232] Similarly, sending

230. *State v. Anniston Rolling Mills*, 125 Ala. 121, 27 So. 921 (1900); *Equitable Mut. Fire Ins. Co. v. McCrea*, 156 Ill. App. 467 (1910); *Scrivner v. Twin Americas Agricultural and Industrial Developers, Inc.*, 573 P.2d 614 (Kan. App., 1977); *Meir v. Crossley*, 305 Mo. 206, 264 S.W. 882 (1924); *Major Creek Lumber Co. v. Johnson*, 99 Ore. 172, 195 Pac. 177 (1921); *Wildwood Pavilion Co. v. Hamilton*, 15 Pa. Super. 389 (1900).

231. 2. *Erie & Michigan Ry. & N. Co. v. Central Ry. Equipment Co.*, 152 Ill. App. 278 (1909); *Flint v. Le Heup*, 199 Mich. 41 (1917); *Colonial Trust Co. v. Montello Brick Works*, 172 Fed. 310 (3rd Cr. [Pa.] 1909.)

232. *Automotive Material Co. v. American Standard Metal Products Corp.*, 327 Ill. 367, 158 N.E. 698 (1927).

an agent into a state to furnish contract forms to prospective customers, and to investigate their credit status, has been held not to require qualification.[233]

Numerous activities have been held by the courts to be preliminary to engaging in business and not to require qualification. Cited below are cases involving mine development contracts,[234] appointment of agents,[235] inspection of sites,[236] execution of contracts,[237] promotion of a corporation,[238] collection of data,[239] leasing of a building,[240] and holding meetings with state agencies.[241] In Virginia, it was held that signing a purchase agreement for land, hiring an architect and negotiating with a contractor to build a manufacturing plant were acts preliminary to doing the foreign corporation's usual and customary business and therefore did not require qualification.[242] A corporation operating out of an office in Ohio was not required to qualify in Alabama in order to find a purchaser for equipment located in Alabama. The court held that looking for potential customers did not constitute doing business.[243] In Kansas, a court held that a foreign corporation in the cable and telephone business, could seek required franchises from the cities in which it sought to operate, before registering to do business in the state.[244]

However, in Georgia, designing, surveying, and planning the construction of an alpine slide ride was held to indicate an intent to conduct a continuous business in the state and therefore required qualifica-

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233. *J.R. Watkins Co. v. Hamilton*, 26 So.2d 207 (Ala. App. 1946).

234. *Empire Milling & Mining Co. v. Tombstone M. & M. Co.*, 100 F. 910 (D. Conn. 1900).

235. *North Alabama Marine, Inc. v. Sea Ray Boats, Inc.*, 533 So.2d 598 (Ala. 1988); *State v. American Book Co.*, 69 Kan. 1, 76 P. 411 (1904); *Commonwealth v. Chattanooga Implement & Mfg. Co.*, 126 Ky. 636, 104 S.W. 389 (1907); *Alicanto, S.A. v. Woolverton*, 514 N.Y.S.2d 96 (1987).

236. *Louisville Trust Co. v. Bayer Steam Soot Blower Co.*, 166 Ky. 744, 179 S.W. 1034 (Ky. Ct. App. 1915).

237. *Hogan v. City of St. Louis*, 176 Mo. 149, 75 S.W. 604 (1903); *Fine Arts Enterprises, N.V. v. Levy*, 539 N.Y.S.2d 827 (A.D. 3 Dept. 1989); *Azuma, N.V. v. Sinks*, 646 F.Supp. 122 (S.D.N.Y. 1986); *International Fuel & Iron Corp. v. Donner Steel Co., Inc.*, 242 N.Y. 224, 151 N.E. 214 (1926); *Odell v. City of New York*, 206 App. Div. 68, 20 N.Y.S. 705 (1st Dept. 1923), affirmed 238 N.Y. 623, 144 N.E. 917 (1924); *Stoner v. Phillippi*, 41 Pa. Super. 118 (1909).

238. *Bellefield Co. v. Carlton Investing Co.*, 228 F. 621 (3rd Cir. [Pa.] 1916).

239. *Blackwell-Wielandy Co. v. Sabine Supply Co.*, 38 S.W.2d 654 (Tex. Civ. App. 1931); *Ford, Bacon and Davis, Inc. v. Terminal Warehouse Co.*, 207 Wis. 467, 240 N.W. 796 (1932).

240. *Friedlander Bros., Inc. v. Deal*, 218 Ala. 245, 118 So. 508 (1928).

241. *Tetra Technologies, Inc. v. Harter*, 823 F.Supp. 1116 (S.D.N.Y. 1993).

242. *Continental Properties, Inc. v. The Ullman Co.*, 436 F.Supp. 538 (E.D. Va. 1977).

243. *Carbon Processing Co. v. Lapeyrouse Grain Corp.*, 779 F.2d 1541 (11 Cir. 1986).

244. *Classic Communications, Inc. v. Rural Telephone Services Co., Inc.*, 956 F. Supp. 910 (D. Kan. 1997).

tion.[245] In Vermont, a foreign corporation that entered into a contract to purchase lands, obtained a survey, and applied for government permits was found to be doing business in the state.[246] An Alabama court would not allow a newly incorporated foreign real estate development company to enforce its rights to redeem property because it was exercising the business it was organized to do and not taking merely incidental steps towards doing business.[247]

The submission of a bid is usually regarded as a preliminary act prior to engaging in the business of contracting or construction. In this respect it is discussed under the heading "Contracting—Submitting Bids."

The West Virginia statute provides that "Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign corporation in another state" does not constitute doing business.[248]

Whether preliminary acts constitute doing business has been dealt with inconsistently in the decisions. A particular activity that is uniformly held not to constitute doing business may be described by different courts as an isolated transaction, a preliminary act, a secondary activity, etc. This should be borne in mind when researching this question, and all possible descriptions should be scrutinized.

Holding Interests in Resident Businesses

The following sections deal with whether a foreign corporation will be required to qualify in a state due to its relationship with another corporation or firm that is doing business in the state.

Specifically dealt with are the consequences of: (1) acting as a franchisor to a resident franchisee, (2) being formed to hold stock in a domestic corporation, (3) having subsidiary corporations operating in the state, and (4) acting as a partner, member, manager, or joint venturer in a partnership, limited liability company or joint venture doing business in the state.

245. *Barker v. County of Forsyth*, 248 Ga. 73, 281 S.E.2d 549 (1981).

246. *Pennconn Enterprises, Ltd. v. Huntington*, 538 A.2d 673 (Vt. 1987).

247. *Vines v. Romar Beach, Inc.*, 670 So.2d 901 (Ala. 1995).

248. West Virginia Code, Sec. 31D-15-1501.

Franchise Operations

The large number of companies operating through franchised dealers has raised questions of a foreign corporation's need to qualify in those states where its franchised dealers are located.

The degree of control exercised by a foreign corporation over its franchised dealers, and not the mere existence of the franchise agreement, will determine whether or not the corporation must qualify. The agreement itself will be evidence of the extent of such control, but the courts can be expected to look beyond the mere agreement for actual evidence of control.

A clause in an agreement between a foreign manufacturer and an independent dealer restricting the dealer from purchasing from other manufacturers has been held insufficient, without other evidence of control, to subject the corporation to a state's qualification requirements.[249]

Similarly, the temporary ownership of shares in a retail store to which the out-of-state wholesaler sold goods was held not to be doing business for qualification purposes.[250] However, in a Missouri case, a distributorship agreement gave the out-of-state seller control over the price at which its products were sold by a Missouri distributor, as well as how they were displayed, advertised, serviced and stored. The seller also authorized its representatives to inspect the distributor's financial records. The court found that the seller was doing business in Missouri through the distributor.[251]

A foreign corporation that authorized and established a franchise in Texas was held to be doing business in Texas. The corporation received franchise fees and required the franchisee to use the franchisor's forms, name, methods, and advertising materials.[252]

In a Michigan case, a franchise agreement gave a foreign corporation the right to use the licensee's machinery and equipment for demonstrations. Because these rights were never exercised, the court held that qualification was not required. The franchise agreement was an "isolated transaction," according to the court, and the only services rendered by the foreign corporation were "essential to this isolated agreement."[253]

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249. *Ranch House Supply Corp. v. Van Slyke*, 91 Ariz. 177, 370 P.2d 661 (1962).

250. *Golden Dawn Foods, Inc. v. Cekuta*, 1 Ohio App.2d 464, 205 N.E.2d 121 (1964).

251. *American Trailers, Inc. v. Curry*, 480 F.Supp. 663 (E.D. Mo. 1979).

252. *Kutka v. Temporaries, Inc.*, 568 F.Supp. 1527 (S.D. Tex. 1983).

253. *Dur-Ram Packaging Devices, Ltd. v. Self-Seal Containers, Inc.*, 18 Mich. App. 81, 170

In contrast to franchising, the typical wholesaler-dealer relationship does not require qualification because the element of control is absent. Generally, the foreign corporation ships goods to the dealer—an independent agent—who takes title and sells them in his own right. In some cases the dealer merely solicits orders and forwards them to the foreign corporation, which ships the goods directly to the purchaser. However, it may constitute doing business if the corporation steps in and becomes involved in a part of the operations, or exercises supervision over some of the dealer's activities.

Where a foreign corporation hired an "independent contractor" to sell its product in Ohio, the corporation was held to be doing business when it paid for the operating costs of its agent's office, appointed employees and allowed the agent to approve sales. The court found that an employer-employee relationship existed by virtue of the extensive control asserted over the so-called "independent contractor."[254] A contrary opinion was handed down in favor of an unlicensed foreign insurance agency which collected accounts and selected, supervised and removed agents for licensed insurance companies.[255] In a case involving a franchised employment agency, a split court held that the franchisee was an independent contractor.[256]

However, in another case involving the same employment agency and virtually identical facts, a North Carolina court held that the agency's actions in selling franchises, business forms and promotional materials, periodically inspecting the franchisees' premises, files, and financial records, training franchisees and exercising control over the franchisees' business methods, all took place in interstate commerce, and thus did not require qualification.[257] Similarly, a foreign corporation which entered into franchise agreements for growing and selling Christmas trees in Alabama was not required to qualify on the ground that its activities, including furnishing equipment and advice to its franchisees, were merely incidental to the interstate sale and delivery of tree seedlings.[258]

In Mississippi, a foreign corporation was held to be doing business in the state by virtue of its acts under a franchise agreement. Among other things, it approved the design of the store, specified what fixtures

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N.W.2d 473 (1969).

254. *L.C. Dortch, Inc. v. Goldstein*, 200 N.E.2d 828 (Mun. Ct. Bedford, Ohio 1964).

255. *J.H. Silversmith, Inc. v. Keeter*, 72 N.M. 246, 382 P.2d 720 (1963).

256. *T.E. McCutcheon Ent. Inc. v. Snelling & Snelling Inc.*, 212 S.E.2d 319 (Ga. 1974).

257. *Snelling & Snelling, Inc. v. Watson*, 254 S.E.2d 785 (N.C. Ct. App. 1979).

258. *First Investment Co. v. McLeod*, 363 So.2d 774 (Ala. Ct. Civ. App. 1978).

were needed and where they would be procured, supplied the store's merchandise and hired and trained personnel under a contract that gave it control of virtually the entire operation of the store. The court ruled that the interstate aspects of the transactions could not obviate the need for qualification where other aspects were purely intrastate.[259]

When the method of doing business was concededly interstate, but the foreign corporation establishing a distributorship became intimately involved in local recruiting activities, the corporation was subject to penalties for failure to qualify.[260]

Holding Companies

A holding company is incorporated for the purpose of owning stock in other corporations. Some courts have held that a foreign holding company will have to qualify in the state in which it votes the stock, holds meetings, directs its subsidiaries' affairs and does any other acts necessary to its function.[261] A Washington decision, upholding a penalty for failure to qualify, stated: "Where a foreign corporation is formed for a particular purpose, to wit, acquiring, owning, and voting a majority of the corporate stock of other banking institutions, and comes into this state and carries out the very purposes and objects for which it was created, it is 'doing business' within this state."[262]

An Iowa utility holding company that provided its Wisconsin subsidiary with accounting, managerial, financial and legal services, was held to be doing business and was required to qualify under the Business Corporation Law before it could enforce a contract in the state.[263]

A holding company negotiating a contract in Alabama to purchase shares of an Alabama corporation was held to be transacting business, and the foreign corporation was barred from enforcing the purchase agreement.[264]

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259. *Barbee v. United Dollar Stores, Inc.*, 337 So.2d 1277 (Miss. 1976).

260. *Thaxton v. Commonwealth*, 211 Va. 38, 175 S.E.2d 264 (1970).

261. *Central Life Securities Co. v. Smith*, 236 F. 170 (7th Cir. [Ill.] 1916); State ex rel. *City of St. Louis v. Public Service Commission*, 331 Mo. 1098, 56 S.W.2d 398 (1932); *Commonwealth of Pennsylvania v. American Gas Co.*, 352 Pa. 113, 42 A.2d 161 (1945); *Colonial Trust Co. v. Montello Brick Works*, 172 F. 310 (3rd Cir. [Pa.] 1909).

262. *Bankers' Holding Corporation v. Maybury*, 161 Wash. 681, 297 P. 740 (1931).

263. *Telephone Systems, Inc. v. Keating*, 309 F.Supp. 933 (E.D. Wis. 1970).

264. *Continental Telephone Co. v. M.G. Weaver, et al.*, Civil Action No. 67-180, N.D. Ala., May 17, 1968, aff'd 410 F.2d 1196 (5th Cir. 1969).

But a California court has held that in the absence of a statutory prohibition, a foreign corporation need not qualify in order to vote the stock it holds in a California corporation.[265] And a federal court in Mississippi held that ownership of stock by a holding company was not significantly different from ownership by an ordinary business corporation, and qualification was not required.[266] Similarly, a federal court in Ohio held that qualification statutes will not prevent a corporation "from exercising the right of a stockholder to vote stock or to assent to change in regulations."[267]

A Kansas court ruled that a foreign holding company was not doing business for the purposes of qualification merely because its transfer agent was located there. In response to the argument that a holding company's transfer agent has a more significant role than a business corporation's because a holding company's business is the buying, holding and selling of corporate stock, the court pointed out that the transfer agent deals only in transfers in the holding company itself, and not in transactions in the stock of other corporations that the holding company may own.[268] An Ohio court ruled that a foreign corporation was not doing business in Ohio where its sole function was to act as the shareholder of an individual's interest in another corporation that was doing business in Ohio.[269]

Parent and Subsidiary Corporations

A foreign parent corporation will not be required to qualify in a state merely because its subsidiary is doing business in the state.[270]

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265. *Farbstein v. Pacific Oil Tool Co.*, 15 P.2d 766 (Cal. App. 1932).

266. *Mid-Continent Telephone Corp. v. Home Telephone Co.*, 307 F.Supp. 1014 (N.D. Miss. 1969).

267. *Toledo Traction, Light & Power Co. v. Smith*, 205 F. 643 (N.D. Ohio 1913).

268. *Scrivner v. Twin Americas Agricultural and Industrial Developers, Inc.*, 573 P.2d 614 (Kan. App. 1977).

269. *Bracha Foundation v. Warren Steel Holding, LLC*, 2017 Ohio App. LEXIS 3871.

270. *Washburn v. Sardi's Restaurants*, 381 S.E.2d 750 (Ga. App. 1989); *Big Four Mills, Ltd. v. Commercial Credit Co., Inc.*, 307 Ky. 612, 211 S.W.2d 831 (1948); *United Merchants and Manufacturers, Inc. v. David & Dash, Inc.*, 439 F.Supp. 1078 (D.Md. 1977); *Aro Manufacturing Co., Inc. v. Automobile Body Research Corp.*, 352 F.2d 400 (1st Cir. [Mass.] 1965); cert. den. 383 U.S. 947, 86 S.Ct. 1199 (1966); *Bunge Corp. v. St. Louis Terminal Field Warehouse Co.*, 295 F.Supp. 1231 (N.D. Miss., 1969); *Compania Mexicana Refinadora Island S.A. v. Compania Metropolitana de Oleoductos, S.A.* 250 N.Y. 203, 164 N.E. 907 (1928); *State v. Swift & Co.*, 187 S.W.2d 127 (Tex. Civ. App. 1945).

"Voting the interest of an entity" the foreign corporation acquired is excluded by statute from what constitutes doing business in Texas.[271] The California qualification statute provides that "A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or merely because of its status as any one or more of the following:

(1) A shareholder of a domestic corporation,

(2) A shareholder of a foreign corporation transacting intrastate business..."[272]

Florida, Maine, and South Carolina have provisions which exempt from qualification "Owning and controlling a subsidiary corporation incorporated in or transacting business within this state."[273] Florida extends the exemption to "voting the shares of any such subsidiary which [the foreign corporation] has lawfully acquired." Georgia provides that "Owning (directly or indirectly) an interest in or controlling (directly or indirectly) another person organized under the laws of, or transacting business within, this state" will not constitute transacting business, West Virginia provides that "Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia. Provided, that the foreign corporation does not produce goods, services or otherwise conduct business in the State of West Virginia".[274] Mississippi law provides that "Being a shareholder in a corporation or a foreign corporation that transacts business in this state" does not constitute transacting business and Kansas provides that a person shall not be deemed to be doing busi-ness solely by reason of being a member, stockholder, limited partner or governor of a domestic or foreign entity.[275]

The District of Columbia, Idaho, and Utah provide that a person does not do business in the state solely by being an interest holder or governor of a foreign entity that does business in the state while Washington provides that a person does not do business in the state solely by being an interest holder or governor of a domestic or foreign entity that does business in the state, and Pennsylvania provides that being an interest holder or governor of a foreign association that does

271. Texas Business Organizations Code, Sec.9.251.

272. California Corporations Code, Sec. 191.

273. Florida Statutes Annotated, Sec. 607.1501; Maine Revised Statutes Annotated, title 13-C, Sec. 1501; Code of Laws of South Carolina 1976, Sec. 33-15-101.

274. Code of Georgia Annotated, Sec. 14-2-1501, West Virginia Code, Sec. 31D-15-1501.

275. Miss. Code Ann. Sec. 79-4-15.01; Kan. Stat. Sec. 17-7932

business in the state shall not constitute by itself doing business in the state.[276]

In one case, an unqualified foreign corporation financed homes built by a qualified foreign corporation, and had the same officers, directors and address. The unqualified lender was not barred from bringing a foreclosure suit by virtue of its relation to the other corporation and its activities in the state. The court held the lender was not doing business for the purposes of qualification since the two corporations were separate entities.[277]

There are few decisions on whether a corporation must qualify because of its subsidiary's activities. However, decisions on the state's right to subject the foreign parent to suit are pertinent. Since ordinarily less activity is required to subject a foreign corporation to suit than to state qualification requirements, such decisions are extremely persuasive. The general rule is that merely owning the controlling stock of a subsidiary is not a sufficient basis for asserting jurisdiction over the parent.[278]

The U.S. Supreme Court has stated that: "The fact that the company owned stock in the local subsidiary companies did not bring it into the State in the sense of transacting its own business there."[279]

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276. D.C. Code Sec. 29-105.05; Idaho Code Sec. 30-21-505; Utah Code Annotated, Sec. 16-1a-506; Revised Code of Washington Annotated, Sec. 23B.50.400; Pennsylvania Consolidated. Stat. Title 15, Sec. 403.

277. *Mid-State Homes, Inc. v. Knight*, 376 S.W.2d 556 (Ark. 1964).

278. *Cannon Mfg. Co. v. Cudahy Co.*, 267 U.S. 333, 45 S.Ct. 250 (1925); *Peterson v. Chicago, Rock Island & Pacific Ry. Co.*, 205 U.S. 364, 27 S.Ct. 513 (1907); *Conley v. Mathieson Alkali Works*, 190 U.S. 406, 23 S.Ct. 728 (1903); *Calvert v. Huckins*, 875 F.Supp. 674 (E.D. Cal. 1995); *In re MDC Holdings Securities Litigation*, 754 F.Supp. 785 (S.D. Cal. 1990); *Sears, Roebuck and Co. v. Sears PLC*, 752 F.Supp. 1223 (D. Del. 1990); *Milligan Elec. Co. v. Hudson Const. Co.*, 886 F.Supp. 845 (N.D. fla. 1995); *Akari Imeji Co. v. Qume Corp.*, 748 F.Supp. 588 (N.D. Ill. 1990); *Aquila Steel Corp. v. Fontana*, 585 So. 2d 426 (Fla. App. 3 Dist. 1991); *Idaho v. M.A. Hanna Co.*, 819 F.Supp. 1464 (D. Idaho 1993); *Jasper v. National Medical Enterprises, Inc.*, 657 So.2d 604 (La. App. 1 Cir. 1995); *U.S. v. M/V Mandan*, 744 F.Supp. 410 (E.D. La. 1991); *Velandra v. Regie Nationale Des Usines Renault*, 336 F.2d 292 (6th Cir. [Mich.] 1964); *Hoffman v. Carter*, 187 A. 576 (N.J. Supreme 1936), aff'd 118 N.J. Law 379, 192 A. 825 (N.J. Ct. Errors and Appeals 1937); *Escude Cruz v. Ortho Pharmaceutical Corp.*, 619 F.2d 902 (1st Cir. 1980); *Jemez Agency, Inc. v. Cigna Corp.*, 866 F.Supp. 1340 (D.N.M. 1994); *Huxley Barter Corp. v. Considar, Inc.*, N.Y.S. 2d 639 627 (A.D. 1 Dept. 1995); *Technograph Printed Circuits, Ltd. v. Epsco, Incorporated*, 224 F.Supp. 260 (E.D. Pa. 1963); *Steiner v. Dauphin Corporation*, 208 F.Supp. 104 (E.D. Pa. 1962); *State v. Humble Oil & Refining Co.*, 263 S.W. 319 (Tex. Civ. App. 1924); *Norfolk Southern Ry. Co. v. Maynard*, 437

279. *People's Tobacco Co., Ltd. v. American Tobacco Co.*, 246 U.S. 79, 38 S.Ct. 233 (1918).

The U.S. Supreme Court also rejected a Circuit Court's agency theory which subjected foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, calling it "an outcome that would sweep beyond even the sprawling view of general jurisdiction" that the Court had previously rejected.[280]

It has also been held that a foreign corporation is not doing business in a state for purposes of jurisdiction merely because it is a wholly owned subsidiary of a domestic corporation.[281]

Partnerships, LLCs, and Joint Ventures

Corporations are authorized by the corporation laws to enter into partnerships and joint ventures. Corporations can also own membership interests in limited liability companies (LLCs). However, most of the statutes are silent as to whether acting as a partner, joint venturer or LLC member constitutes doing business in the states in which the partnership, joint venture or limited liability company is doing business.

Some statutes address this issue directly. Florida's statute provides that "Owning a limited partnership interest in a limited partnership that is transacting business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner," and "owning and controlling a limited liability company formed in, or transacting business within this state ... or voting the membership interests of any such limited liability company, . . . which it has lawfully acquired" shall not constitute doing business in the state, Kansas provides that a person shall not be deemed to be doing business solely by reason of being a member, stockholder, limited partner or governor of a domestic or foreign entity, the District of Columbia and Idaho provide that a person does not do business in the state solely by being an interest holder or governor of a foreign entity that does business in the state, Washington provides that a person does not do business in the state solely by being an interest holder or governor of a domestic or foreign entity that does business in the state, and Pennsylvania provides that being an interest holder or governor of a foreign association that does business in the state shall not constitute by itself doing business in the state.[282]

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280. *Daimler AG v. Bauman,* 134 S. Ct. 746 (2014).

281. *Cannon Mfg. Co. v. Cudahy Packing Co.,* 267 U.S. 333, 45 S.Ct. 250 (1925); *Schenk v. Walt Disney Co.,* 742 F.Supp. 838 (S.D.N.Y. 1990); *Osborne v. City of Spokane,* 738 P.2d 1072 (Wash. App. 1987); *Williams v. Canadian Fishing Co.,* 509 P.2d 64 (Wash.App. 1973).

282. Florida Statutes Annotated, Sec. 607.1501; Kansas Stat., Sec. 17-7932; D.C. Code, Sec. 29-105.05; Idaho Code, Sec. 30-21-505; Revised Code of Washington Annotated, Sec.

Mississippi law provides that "Being a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state" and "Being a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state" does not constitute transacting business. However, Mississippi also provides that "A foreign corporation which is general partner of any general or limited partnership, which partnership is transacting business in this state, is hereby declared to be transacting business in this state."[283] Rhode Island's statute provides that "Acting as a general partner of a limited partnership which has filed a certificate of limited partnership . . . or has registered with the secretary of state . . ." and "Acting as a member of a limited liability company which has registered with the secretary of state shall not be considered doing business".[284] Virginia provides that it shall not be considered doing business to be "Serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership which does not otherwise transact business in this Commonwealth."[285] Arizona's statute states that "Being a limited partner of a limited partnership or a member of a limited liability company" is an activity that does not constitute doing business in Arizona.[286]

Furthermore, in Wyoming it is provided that "A foreign corporation. . .which is either an organizer, a manager or member of a [limited liability] company is not required to obtain a certificate of authority to undertake its duties in these capacities."[287] Georgia's law states that "serving as a manager of a limited liability company organized under the laws of, or transacting business within, this state" is not doing business, while California law states "A foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or merely because of its status as any one or more of the following: . . . (3) A limited partner of a domestic limited partnership, (4) A limited partner of a foreign limited partnership transacting intrastate business, (5) A member or manager of a domestic limited liability company, (6) A member or manager of a foreign limited liability company transacting intrastate business".[288]

23B.50.400; Pennsylvania Consolidated. Stat. Title 15, Sec. 403.

283. Mississippi Code of 1972 Annotated, Sec. 79-4-15.01.

284. General Laws of Rhode Island, Sec. 7-1.2-1401.

285. Code of Virginia, 1950, Sec. 13.1-757.

286. Arizona Revised Statutes, Sec. 10-1501.

287. Wyoming Statutes Annotated, Sec. 17-16-1501.

288. Code of Georgia Annotated, Sec. 14-2-1501, California Corporations Code, Sec. 191.

The Missouri Limited Liability Company Act states that "A foreign corporation shall not be deemed to be transacting business in this state for the purposes of section 351.572 [the qualification section] solely by reason that it is a member of a limited liability company."[289] The Delaware Revised Uniform Partnership Act states that a foreign corporation "shall not be deemed to be doing business in the state of Delaware solely by reason of its being a partner in a domestic partnership."[290]

The Ohio Attorney General stated that a foreign corporation that acts as a general partner in a general or limited partnership that is transacting business in Ohio is also considered transacting business in Ohio and required to qualify. However, a foreign corporation that acts as a limited partner in a limited partnership that is transacting business in Ohio would not be considered transacting business as long as it is not also a general partner and does not take part in controlling the partnership's business.[291] South Carolina's law states that "owning, without more, an interest in a limited liability company organized or transacting business in this state" is not doing business.[292]

Both general partnerships and joint ventures are contractual relationships that do not create separate legal entities, and it has long been settled that they are generally treated the same under the law.[293] The primary difference between the two is that a joint venture is generally formed to carry out a single transaction or series of transactions, but a partnership is usually a more permanent and continuing arrangement.

It has been held that where a foreign corporation is a member of a partnership doing intrastate business, none of the partners can bring suit in a partnership cause of action if a corporate partner is not qualified. Otherwise, a foreign corporation could do business in partnership with individuals and avoid qualification without fear of penalties.[294]

A foreign corporate partner was required to qualify where contracts to sell and install hotel equipment were entered into by a partnership

289. Missouri Statutes Annotated, Sec. 347.163.

290. Delaware Code, Title 6, Sec. 15-115.

291. Ohio Attorney General Opinion No. 89-081, October 16, 1989.

292. Code of Laws of South Carolina, Sec. 33-15-01.

293. *Ross v. Willett*, 27 N.Y.S. 785 (Sup. Ct. 1894). But see *Elting Center Corp. v. Diversified Title Corp.*, 306 So. 2d 542 (Fla. App. 1974), in which service of process on one joint venturer was held not to confer jurisdiction on another, and a joint venture was held not to be a legal entity in the same sense as a partnership.

294. *Harris v. Columbia Water & Light Co.*, 108 Tenn. 245, 67 S.W. 811 (1901); Ashland Lumber Co. v. Detroit Salt Co., 114 Wis. 66, 89 N.W. 904 (1902).

composed of the same individuals as the foreign corporation.[295] In that case, the court felt that the partnership, which lent its name to the deal but did not actually participate in the business transaction, was being used as a device to circumvent the qualification requirements.

In a Mississippi decision, it was held that "every member of a joint venture is transacting business in this State when one of the joint venturers is transacting in this State the business for which the joint venture was created."[296] In that case, three foreign corporations formed a joint venture to do work in Mississippi, and the one that failed to qualify was merely furnishing some of the capital. Because all members of a joint venture must join in a suit, the inability of the unqualified corporation to do so barred the joint venture from bringing a negligence action.

Since a joint venture generally is formed for a single transaction or series of transactions, it may well be exempt from qualification requirements as an isolated transaction.

There have been other decisions involving one or more facets of a joint venture that may be of interest to counsel.[297]

Contracting

Corporations engaged in the business of constructing, altering, remodeling or repairing structures are ordinarily required to qualify to carry on such work in a foreign state.[298] It is clear that, in these circumstanc-

295. *Mandel Bros., Inc. v. Henry A. O'Neil, Inc.* 69 F.2d 452 (8th Cir. [S.D] 1934).

296. *Scott Co. of California v. Enco Construction Co.*, 264 So. 2d 409 (Miss., 1972).

297. *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 62 S.Ct. 857 (1942); *L.M. White Contracting Co. v. St. Joseph Structural Steel Co.*, 15 Ariz. App. 260, 488 P.2d 196 (1971); *Drdlik v. Ulrich*, 21 Cal. Rptr. 642 (Cal. App. 1962); *1629 Joint Venture v. Dahlquist*, 770 P.2d 1352 (Colo. App. 1989); *Jackson v. Hooper*, 76 N.J. Eq. 592, 75 A.568 (Ct. of Errors and Appeals 1910); *Manacher v. Central Coal Co., Inc.*, 284 A.D. 380, 131 N.Y.S. 2d 671 (1st Dept. 1954); *Pierce v. Pierce*, 253 A.D. 445, 2 N.Y.S. 2d 641 (2d Dept. 1938), affirmed (mem.) 280 N.Y. 562, 20 N.E.2d 15 (1939); *Boag v. Thompson*, 208 A.D. 132, 203 N.Y.S. 395 (2d Dept. 1924); *Brady v. Erlanger*, 165 A.D. 29, 149 N.Y.S. 929 (1st Dept. 1914); *Marston v. Gould*, 69 N.Y. 220 (1877).

298. *J.W. Hartlein Construction Co., Inc. v. Seacrest Assoc., L.L.C.,* 749 So. 2d 459 (Ala. Civ. App. 1999).*Gray-Knox Marble Co. v. Times Building Co.*, 225 Ala. 554, 144 So. 29 (1932); *Computaflor Company v. N.L. Blaum Construction Co.*, 265 So. 2d 850 (Ala. 1972); *National Union Indemnity Co. v. Bruce Bros., Inc.*, 44 Ariz. 454, 39 P.2d 648 (1934); *Brogdon v. Exterior Design*, 781 F.Supp. 1396 (W.D.Ark. 1992); *Associated Comm. & Research Services, Inc. v. Kansas Personal Comm. Services, Ltd.,* 31 F.Supp.2d 949 (D. Kan. 1998); *Lewis v. Club Realty Co.*, 264 Mass. 588, 163 N.E. 172 (1928); *Haughton Elevator & Machine Co. v. Detroit Candy Co., Ltd.*, 156 Mich. 25, 120 N.W. 18 (1909); *Flinn v. Gillen*, 320 Mo. 1047, 10 S.W.2d 923 (1928); *Berkshire Engineering Corp. v.Scott-Paine*, 217 N.Y.S. 2d 919 (Columbia County Ct. 1961); *Dot Systems, Inc. v. Adams Robinson Ent. Inc.*, 587 N.E.2d 844 (Ohio App. 4 Dist. 1990); *Hoffman Construc-*

es, the corporation is carrying on some substantial part of its ordinary business in the state. In addition, the nature of the activity makes it difficult to find the elements of an interstate transaction.[299]

In deciding whether or not such corporations are doing business, the courts give weight to several factors that may indicate that qualification is required. For example, the fact that the foreign corporation employs local labor has been considered an additional reason to require qualification.[300] The fact that the same services are available within the state from competing local contractors may also indicate the corporation is required to qualify.[301] The length of time over which a construction contract extends may also be considered.[302] For example, a New York construction company that built two movie theaters in Maryland was found to have conducted business in Maryland based upon the fact that it paid local taxes, it rented a motel room in Maryland for five months, it maintained a back account, it engaged in pervasive management functions over the projects, and the projects accounted for more than 50% of its income during that period of time.[303]

Generally, the courts are reluctant to find that a corporation involved in contracting is not required to qualify because the project involves interstate commerce. Even where the actual construction work involves the installation of materials sold by the foreign contractor in interstate commerce, the courts appear to require qualification.[304] Apparently, the theory behind these holdings is that the installation is not so highly technical as to be a necessary part of the interstate sale.

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tion Co. v. Erwin, 331 Pa. 384, 200 A. 579 (1938); *Cost of Wisconsin, Inc. v. Shaw*, 357 S.E.2d 20 (S.C. 1987); *Anthony Miller, Inc. v. Taylor-Fichter Steel Const. Co.*, Inc., 139 S.W.2d 657 (Tex. Civ. App. 1940); *Interstate Const. Co. v. Lakeview Canal Co.*, 31 Wyo. 191, 224 P. 850 (1924).

299. *Computaflor Company, Inc. v. N.L. Blaum Construction Co.*, 265 So.2d 850 (Ala. 1972).

300. *Decorators' Supply Co. v. Chaussee*, 211 Mich. 302, 178 N.W. 665 (1920); *Hoffman Construction Co. v. Erwin*, 331 Pa. 384, 200 A. 579 (1938).

301. *Buhler v. E.T. Burrowes Co.*, 171 S.W. 791 (Tex. Civ. App. 1914).

302. *Berkshire Engineering Corp. v. Scott-Paine*, 217 N.Y.S. 2d 919 (Columbia County Ct. 1961).

303. *Tiller Construction Corporation v. Nadler*, 637 A.2d 1183 (Md. 1994).

304. *Brown v. Pool Depot, Inc.,* 853 So. 2d 187 (Ala. 2002); *S&H Contractors, Inc. v. A.J. Taft Coal Co., Inc.*, 906 F.2d 1507 (11th Cir. 1990); *Sanwa Business Credit Corp. v. G.B. "Boots" Smith Corp.*, 548 So. 2d 1336 (Ala. 1989); *Times Building Co. for the use of Gray-Knox Marble Co. v. Cline*, 233 Ala. 600, 173 So. 42 (1937); *State v. Arthur Greenfield, Inc.*, 205 S.W. 619 (Mo. 1918); *St. Louis Expanded Metal Fireproofing Co. v. Beilharz*, 88 S.W. 512 (Tex. Civ. App. 1905); *Kinnear & Gager Mfg. Co. v. Miner*, 89 Vt. 572, 96 A. 333 (1916). See, however: *Webb v. Knoxville Glass Co.*, 217 Ky. 225, 289 S.W. 260 (1926); *Davis & Rankin Building and Mfg. Co. v. Dix*, 64 Fed. 406 (W.D. Mo. 1894); and *DeWitt v. Berger Mfg. Co.*, 81 S.W. 334 (Tex. Civ. App. 1904).

A Missouri court held that the performance of construction work is not in interstate commerce, even if the materials or labor are brought in from outside the state.[305] An Alabama court also rejected the argument that the use of materials prefabricated outside the state and the out-of-state performance of accounting and engineering functions, rendered the construction job a part of interstate commerce.[306] The court stated, "If such were the case, the public policy of this state . . . could be flaunted by virtually any foreign corporation in the construction business." An environmental remediation company that contracted to provide structural drying services, labor and materials to buildings in Alabama was held to be doing intrastate business in Alabama.[307] In another Alabama case, the court held that in contracting to sell, deliver, assemble and install a pool at a residence in Alabama, a foreign corporation was engaged in intrastate business.[308]

However in another case, a Tennessee corporation entered into a construction management contract to develop an office complex in Mississippi. A suit was brought before any construction work had begun. The corporation had devoted 1400 hours of work to the project, reviewing designs, coordinating procedures and developing bid analyses. Only 100 hours of work had been performed in Mississippi. The court held that the corporation was not required to qualify to bring suit in Mississippi because it was transacting business in interstate commerce.[309] A court in Kansas held that a foreign corporation that supplied goods and services to subcontractors in connection with a bridge project in Kansas, that moved equipment to the construction site, and whose president and employees visited the site, was not doing business in Kansas as its activities were interstate in character.[310]

Although the interstate commerce exception can generally not be used to avoid qualifying, contractors may sometimes be able to use the isolated transaction exception. This exception is discussed in the section entitled "Isolated Transactions."

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305. *Whalen Construction and Equipment Co., Inc. v. Grandview Bank and Trust Co.*, 578 S.W.2d 69 (Mo. Ct. App. 1979).

306. *Sanjay, Inc. v. Duncan Const. Co., Inc.*, 445 So.2d 876, 877 (Ala. 1983).

307. *Tradewinds Environmental Restoration, Inc. v. Brown Bros. Construction, LLC*, 999 So.2d 875 (Ala. 2008).

308. *Brown v. Pool Depot, Inc.*, 853 So. 2d 187 (Ala. 2002). See also *New Concept Industries, Inc. v. Green*, 646 F.Supp. 1077 (M.D. Ala. 1986).

309. *Murray, East & Jennings, Inc. v. J & S Construction Co., Inc.*, 607 F.Supp. 45 (S.D. Miss. 1985).

310. *Trestle &Tower Engineering, Inc. v. Star Ins. Co.*, 13 F. Supp.2d 1166 (D.Kan. 1998)

One further comment should be made on contractors generally. Many states require contractors, corporate and otherwise, to obtain contractors' licenses before engaging in this activity in the state, and in some states a valid license cannot be obtained until the corporation has qualified.[311]

In addition, Montana law states that a foreign corporation is deemed to be transacting business in the state if it enters into a contract with the state of Montana, an agency of the state, or a political subdivision of the state, provided however, that this does not apply where goods or services were prepared out of state for delivery or use within the state.[312]

Kansas law states that selling, by contract consummated outside the state of Kansas, and agreeing, by the contract, to deliver into the state of Kansas machinery, plants or equipment, the construction, erection or installation of which within the state requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation, is not doing business.[313]

Federal Contracts

Whether or not a foreign contracting corporation is required to qualify in order to work under a contract with the federal government will be determined by the same rules applicable to contractors generally. It is well settled that such a "federal" contract gives rise to no immunity from compliance with qualification requirements.[314]

The United States Supreme Court has stated that: "It seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from state taxation either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time."[315]

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311. *Haskew v. Green*, 571 So. 2d 1029 (Ala. 1990); *ADC Construction Co. v. Hall*, 381 S.E.2d 76 (Ga. App. 1989); *Rehco Corp. v. California Pizza Kitchen, Inc.*, 383 S.E.2d 643 (Ga.App. 1989); *Bilt-More Homes Inc. v. French*, 373 Mich. 693, 130 N.W.2d 907 (1964).

312. Montana Code, Sec. 35-1-1026.

313. Kansas Statutes, Sec. 17-7932.

314. *Rainier National Park Co. v. Henneford*, 182 Wash. 159, 45 P. 2d 617 (1935), cert. den. (mem.) 296 U.S. 647, 56 S.Ct. 307 (1935); *Rainier National Park Co. v. Martin*, 18 F.Supp. 481 (W.D. Wash. 1937), aff. per curiam (mem.) 302 U.S. 661, 58 S.Ct. 478 (1938).

315. *Baltimore Shipbuilding and Dry Dock Company v. Baltimore*, 195 U.S. 375, 25 S.Ct. 50 (1904).

Similar reasoning led Arkansas' Supreme Court to hold that a foreign corporation operating in that state under a contract with the federal government was required to qualify.[316]

An opinion of North Carolina's Attorney General stated that the mere fact that a foreign corporation performed work under a contract with the federal government would not exempt the corporation from the state's qualification or domestication requirements.[317] Thus, where a foreign corporation was building government Post Offices in North Carolina under a government contract and then leasing them to the government, the corporation was required to secure a Certificate of Authority to do business in North Carolina.[318]

An entirely different situation is presented in the case of a foreign corporation that performs work under a contract with the federal government in a federal area. The Constitution provides that Congress shall have power: "To exercise exclusive legislation in all cases whatsoever. . .over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."[319]

Nevertheless, the question of whether or not a foreign corporation must qualify to perform work under a federal contract in a federal area will turn on the extent to which the state has ceded its authority to require such qualification.

In some decisions, the mere existence of state legislation ceding the area to the United States has been held sufficient to divest the state of all authority.[320] Other decisions have held that a law merely consenting to the purchase of the area by the United States is not sufficient to divest the state of all control, and that the federal government may indicate by its subsequent acts that it does not consider all state sovereignty to have been ceded.[321]

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316. *E.E. Morgan Co., Inc. v. State of Arkansas*, 150 S.W.2d 736 (Ark. 1941), App. dis. 314 U.S. 571, 62 S.Ct. 77 (1941), rehearsing den. 314 U.S. 711, 62 S.Ct. 174 (1941).

317. Opinion of the Attorney General of North Carolina, April 9, 1942.

318. Opinion of the Attorney General of North Carolina, January 18, 1966.

319. Art. 1, Sec. 8, Clause 17, U.S. Constitution.

320. *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S.Ct. 455 (1930) [Camp Pike, Ark.]; *Standard Oil Co. of Cal. v. California*, 291 U.S. 242, 54 S.Ct. 381 (1934) [The Presidio of San Francisco, Cal.]; *Murray v. Joe Gerrick & Co.*, 291 U.S. 315, 54 S.Ct. 432 (1934) [Puget Sound Navy Yard, Wash.]; *State v. Blair*, 191 So. 237 (Ala. 1939) [Maxwell Field, Ala.]; *Webb v. J.G. White Engineering Corp.*, 85 So. 729 (Ala. 1920) [Muscle Shoals, Ala.]. See also *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 77 S.Ct. 257 (1956).

321. *Atkinson v. State Tax Commission*, 303 U.S. 20, 58 S.Ct. 419 (1938) [Bonneville project, Ore.]; *Motor Transport Co. v. McCanless*, 189 S.W.2d 200 (Tenn. 1945) [Camp Tyson and Wolfe

In one decision, it was held that state laws enacted prior to the cession would remain in force until abrogated by the federal government, while those enacted subsequent to the cession would have no application to the area ceded.[322]

Subcontracting

Since it is common practice for a contracting corporation to subcontract part or all of the actual work, the question is frequently raised as to whether or not the foreign prime contractor is required to qualify under these circumstances. The general rule is that the prime contractor will be required to qualify, both because the prime contractor is ordinarily obliged to exercise a certain degree of supervision, and because the ultimate responsibility under the construction contract rests with the prime contractor.

Thus, a contracting company that sublet all of the actual work under a contract to install an automatic fire sprinkler system was required to qualify even though the subcontractor furnished the labor and materials and the necessary supervision.[323]

Similarly, the Alabama Supreme Court held that a foreign corporation, which engaged subcontractors to perform all of the work in the state under the contract, was "engaged in the exercise of its corporate functions in this state notwithstanding [the fact that] it employed independent subcontractors to do the actual work."[324] The court continued: "Does not a corporation engage in the performance of its corporate functions when it secures the doing of the thing it was chartered to do through the employment of contractors; and, if so, does it not transact business at the place where the work was done? We think so."

Where the foreign prime contractor performs some part of the contract itself, the fact that the rest of the work was subcontracted will be of no significance, and it will have to qualify, assuming that its activity cannot be considered an isolated transaction. Thus, a foreign corporation that contracted to erect a bridge in Arkansas, and subcontracted all of the work except the erection of the steel superstructure, was required to qualify.[325]

Creek Ordinance Plant].

322. *Pound v. Gaulding*, 187 So. 468 (Ala. 1939) [Fort McClellan].

323. *Phillips Co. v. Everett*, 262 Fed. 341 (6th Cir. [Mich.] 1919), cert. den 252 U.S. 579, 40 S.Ct. 344 (1920). But see *Richards-Wilcox Mfg. Co. v. Talbot & Meier*, 252 Mich. 622, 233 N.W. 437 (1930), in which the prime contractor was not required to qualify.

324. *Alabama Western R. Co. v. Talley-Bates Construction Co.*, 162 Ala. 396, 50 So. 341 (1909).

325. *Kansas City Structural Steel Co. v. State of Arkansas*, 269 U.S. 148, 46 S.Ct. 59 (1925).

The question of whether or not the subcontractor itself must qualify is determined by the same rules applicable to contractors generally. Thus, if a foreign subcontractor engages in construction work in a state, it will ordinarily be required to qualify.[326] A federal court in New York found that an Ohio subcontractor was not doing business in New York where its business dealings were temporary and irregular, where it did not maintain a permanent office in New York, did not advertise in New York, and where materials were constructed in Ohio and shipped to New York.[327]

Submitting Bids

Generally, contractors must submit a bid before obtaining a contract to do construction work. Thus, the question may arise as to whether or not the mere submission of a bid requires qualification.

In an Alabama case, a Tennessee subcontractor sought to obtain a subcontract on an Alabama project. The company traveled to Alabama on several occasions to discuss and solicit the contract and submitted a written bid. The court held the company's presence in Alabama never rose to the level of transacting business in the state and therefore it could maintain its breach of contract action.[328] The fact that a foreign corporation's name appears on a vendors' list as a possible supplier of commodities to a state institution does not amount to doing business, according to an opinion of the Florida Attorney General, and qualification is not required. However, if the furnishing of the commodities upon a proper bid results in the awarding of a contract for that purpose, the corporation will be required to qualify.[329] A Florida court later ruled that submitting a bid did not require qualification under the corporation law in effect at the time.[330] A California court held that simply submit-

326. *Gray-Knox Marble Co. v. Times Bldg. Co.*, 225 Ala. 554, 144 So. 29 (1932); *Loomis v. People's Construction Co.*, 211 Fed. 453 (6th Cir. [Mich. (Wis. law)] 1914; *Greene Plumbing & Heating Co. v. Morris*, 395 P.2d 252 (Mont. 1964); *Dot Systems, Inc. v. Adams Robinson Ent., Inc.*, 587 N.E.2d 844 (Ohio App. 4 Dist. 1990); *Mandel Bros. Inc. v. Henry A. O'Neil, Inc.*, 69 F.2d 452 (8th Cir. [S.D.] 1934). But see *Richmond Screw Anchor Co. v. E.W. Minter Co., Inc.* 156 Tenn. 19, 300 S.W. 574 (1927); *Consolidated Indemnity & Ins. Co. v. Salmon & Cowin, Inc.* 64 F.2d 756 (5th Cir. [Ala. (Tenn. law)] 1933); *John Williams, Inc. v. Golden & Crick*, 247 Pa. 397, 93 Atl. 505 (1915).

327. *Cleveland Marble Mosaic Co. v. Bette & Cring, LLC*, 2021 U.S. Dist. LEXIS 148488.

328. *Shook & Fletcher Insulation Co. v. Panel Systems, Inc.*, 784 F.2d 1566 (11th Cir. 1986).

329. Opinion of the Attorney General of Florida, No. 066-93, October 12, 1966.

330. *Marinair Freight Forward, Inc. v. Florida Dept. of Commerce*, 419 So.2d 1136 (Fla. App. 1982).

ting a bid for a contract with a state agency did not constitute transacting intrastate business.[331]

Even though submitting a bid may not constitute doing business so as to require qualification under the state's corporation law, it should be noted that some states require qualification before a contractor's license will be issued. And because a contractor's license is required before a bid may be submitted, in these states qualification would be required in order to submit a bid.

Several cases of interest in this field appear below.[332]

Credit

Collecting Debts

Section 106(h) of the Model Act declares that "Securing or collecting debts or enforcing any rights in property securing the same" by a foreign corporation does not by itself require qualification. The Model Act provision has been adopted by Alaska, Louisiana, Minnesota, New Mexico, and Rhode Island. The provisions in Delaware, Georgia, North Carolina, Oklahoma, and Texas are substantially similar. Maryland provides that "foreclosing mortgages and deeds of trust on property in this State" does not require qualification. The Revised Model Act, Section 15.01(b)(8) and Model Act (2016), 15.05(a)(8) states that "securing or collecting debts or enforcing mortgages and security interests in property securing the debts" does not constitute doing business. This provision, or a substantially similar one, has been adopted by Arizona, Arkansas, Colorado, Connecticut, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. The District of Columbia, Florida, Idaho, Montana, Pennsylvania, and Virginia statutes add "and holding, protecting, or maintaining property so acquired."

In an Alabama case, a foreign corporation engaged in the financing of inventories for boat dealers in Alabama. The corporation was per-

331. *United System of Arkansas v. Stamison,* 74 Cal.Rptr.2d 407 (Cal. App. 3 Dist. 1998)

332. *Ebinger v. Breese*, 240 Ill. App. 80 (1926); *State v. American Book Co.*, 69 Kan. 1, 76 P. 411 (1904); *Hogan v. City of St. Louis*, 176 Mo. 149, 75 S.W. 604 (1903); *Odell v. City of New York*, 206 App. Div. 68, 200 N.Y.S. 705 (1st Dept. 1923), affirmed 238 N.Y. 623, 144 N.E. 917 (1924); *Will v. City of Bismarck*, 36 N.D. 570, 163 N.W. 550 (1917); *Hoffman Construction Co. v. Erwin*, 331 Pa. 384, 200 A. 579 (1938).

mitted to maintain an action although it employed an agent in Alabama to receive monthly inventory payments. The court held that this activity "was relevant and appropriate to the providing of financing for interstate purchases."[333] In a Missouri case, the court held that an unqualified foreign corporation could bring an action for conversion of a machine in which it had a security interest, as a foreign corporation need not obtain a certificate of authority to secure or collect debts or enforce security interests in property securing the debt.[334] In a New Mexico case, an Ohio corporation that was in the business of buying distressed bank loans, was not required to qualify in New Mexico to sue to recover on a New Mexico resident's guarantee of a promissory note owned by the corporation. According to the court, the corporation's suit to enforce the guarantee clearly constituted debt collection—which is exempted from the definition of transacting business.[335]

A Georgia court held that a foreign corporation was not required to qualify to bring a garnishment action to satisfy a $1.4 million judgment and a Michigan court held that a foreign corporation providing financing solutions to the trucking industry could intervene in a garnishment proceeding as protecting a security interest and collecting a debt are not considered transacting business under the corporation law.[336]

In a case involving an LLC a court held that the LLC did not have to qualify to apply for entry of a sister state's judgment.[337] A Hawaii court ruled a foreign corporation was not required to obtain a certificate of authority to take assignment of a loan and mortgage or enforce its rights under the loan and mortgage.[338]

In addition, several states have enacted statutes specifically excluding from "doing business" the transaction of a mortgage business, including in most cases the enforcement of the mortgage. See "Statutory 'Doing Business' Provisions Limited To Lending Money On Security."

The mere collection of debt within a state by an ordinary business corporation has been held not to require qualification.[339] In connection

333. *North Alabama Marine, Inc. v. Sea Ray Boats, Inc.*, 533 So.2d 598 (Ala. 1988).

334. *Alpine Paper Co. v. Lontz*, 856 S.W.2d 940 (Mo. App. E.D. 1993).

335. *Cadle Co., Inc. v. Wallach Concrete, Inc.*, 855 P.2d 130 (N.M. 1993). See a lso *First Resolution Inv. Corp. v.Avery*, 246 P.3d 1136 (Or. App. 2010);

336. *Carrier411 Services, Inc. v. Insight Technology, Inc.,* 744 S.E.2d 356 (Ga. App. 2013); Domestic Uniform Rental v. Falcon Transport Co., 2020 Mich. App. LEXIS 7582.

337. *Conseco Marketing, LLC v. IFA and Insurance Services, Inc.,* 2013 Cal.App. LEXIS 946.

338. *La Salle Bank National Association v. Roth,* 323 P.3d 162 (Hawaii App. 2014).

339. *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 35 S. Ct. 57 (1914); Matter of Delta Molded Prod-

with the collection of accounts arising out of interstate shipments, the U.S. Supreme Court has said: "Where a corporation goes into a state other than that of its origin to collect, according to the usual or prevailing methods, the amount which has become due in transaction in interstate commerce, the State cannot, consistently with the limitation arising from the commerce clause, obstruct the attainment of that purpose."[340] Where a foreign corporation's sole activity in Pennsylvania was suing borrowers who failed to repay loans, the court held it would not be considered doing business in Pennsylvania.[341] Where the defendant could not refute the assertion that a foreign corporation's activities were limited to making and collecting loans, the foreign corporation was permitted to maintain an action to enforce its security interest in the defendant's crops.[342]

The collection of insurance premiums for insurance written by licensed insurance companies has been held not to require qualification by a foreign insurance agency.[343] Where, however the foreign corporation is in the business of collecting debts, as in the case of a collection agency, such activity will ordinarily require qualification.[344] An exception was made in the case of a New York credit corporation, not qualified in Louisiana, which sent representatives into the state to collect on the accounts out of which the cause of action arose. The corporation was held not to be doing business so as to bar it from maintaining the action.[345]

Extending Credit

If a sale possesses all of the elements of an interstate transaction, the fact that the foreign corporation's local representatives accept notes or mortgages in partial or full payment of the purchase price will not of

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ucts, Inc., 416 F.Supp. 938 (N.D. Ala. 1976), aff'd sub nom; *Sterne v. Improved Machinery, Inc.*, 571 F.2d 957 (5th Cir. 1978); *Moran v. Union Savings Bank & Trust Co.*, 97 S.W.2d 638 (Ark., 1936); *North American Mortgage Co. v. Hudson*, 168 So. 79 (Miss. 1936); *American Housing Trust, III v. Jones*, 696 A.2d 1181 (Pa. 1997); *Goss v. Bobby D. Associates*, 94 S.W.3d 65 (Tex-App-Tyler 2002).

340. *Furst and Thomas v. Brewster*, 282 U.S. 493, 51 S.Ct. 295 (1931).

341. *Education Resources Institute, Inc. v. Cole,* 827 A.2d 493 (Pa. Super. 2003).

342. *Fin Ag, Inc. v. Hufnagle, Inc.*, 700 S.W.2d 510 (Minn. App. 2005).

343. *J.H. Silversmith, Inc. v. Keeter*, 72 N.M. 246, 382 P.2d 720 (1963).

344. *Crites v. Associated Frozen Food Packers, Inc.*, 190 Ore. 585, 227 P.2d 821 (1951); *Horton v. Richards*, 594 P.2d 891 (Utah 1979).

345. *Equitable Discount Corporation v. Jefferson Television Sales and Service*, 169 So.2d 567 (La. Ct. App. 1964).

itself require qualification.[346] The extension of credit is considered part of the interstate transaction. This appears to be the rule whether or not the note is approved outside the state.

A Washington corporation shipped equipment to its Arkansas distributor on credit. The corporation was permitted to maintain an action against the distributor in Arkansas without qualifying because all of its contracts were made in interstate commerce.[347]

In another case, a foreign corporation leased telephone equipment to an Ohio corporation for five years. At the end of the lease, the Ohio corporation could purchase the equipment for $1. The Ohio court held that this transaction was actually a financed sale and the foreign corporation was actually a finance company. Because the loaning of money by a corporation engaged in that type of business constitutes transacting intrastate business, the corporation could not maintain a suit.[348]

An Alabama court held that an unqualified foreign corporation whose only relation to Alabama was financing an Alabama resident's purchase of an airplane, could utilize the state's courts, as the contact between the corporation and Alabama was minimal at best and did not amount to intrastate business.[349] However, where lenders financed the purchase of 13 vehicles at an auction in New York, they were unable to maintain a suit in New York on the grounds that they were foreign corporations doing business in New York without authority.[350]

Lending Money on Security

Section 106(g) of the Model Act provides that "Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property"[351] will not constitute doing busi-

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346. *Linograph Co. v. Logan*, 175 Ark. 194, 299 S.W. 609 (1927); *George H. Cox Co. v. Phonograph Co.*, 208 Ky. 398, 270 S.W. 811 (1925); *Refrigeration Discount Corp. v. Turley*, 189 Miss. 880, 198 So. 731 (1940); *General Excavator Co. v. Emory*, 40 S.W.2d 490 (Mo. App. 1931); *Abner Mfg. Co. of Wapakoneta, Ohio v. McLaughlin*, 41 N.M. 97, 64 P.2d 387 (1937); *William L. Bonnell Co., Inc. v Katz*, 196 N.Y.S.2d 763 (Sup. Ct. 1960); *Dahl Implement & Lumber Co. v. Campbell*, 45 N.D. 239, 178 N.W. 197 (1920); *Mergenthaler Linotype Co. v. Spokesman Pub. Co.*, 127 Ore. 196, 270 P. 519 (1928); *Mt. Arbor Nurseries v. Gurnsey Seed & Nursey Co.*, 46 S.D. 234, 191 N.W. 835 (1923); *Miller Brewing Co. v. Capitol Distributing Co.*, 72 P.2d 1056 (Utah, 1937); *American Timber Holding Co. v. Christensen*, 206 Wis. 205, 238 N.W. 897 (1931).

347. *Moore v. Luxor (North America) Corporation*, 742 S.W.2d 916 (Ark. 1988).

348. *Contel Credit Corp. v. Tiger, Inc.*, 520 N.E.2d 1385 (Ohio App. 1987).

349. *Wise v. Grumman Credit Corporation*, 603 So.2d 952 (Ala. 1992).

350. *Northway Exchange, Inc. v. Dufrane*, 685 N.Y.S.2d 848 (A.D. 3 Dept. 1999).

351. Prior to 1973, this subsection read: "Creating evidences of debt, mortgages or liens on real or personal property." A few states that adopted the Model Act before 1973 have

ness so as to require qualification. Section 15.01(b)(7) of the Revised Model Act and Model Act (2016), 15.05(a)(7) are similar. States that have enacted similar provisions include Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

In order to encourage investment in the state by foreign financial institutions, some states have enacted separate statutory provisions exempting such corporations from the qualification requirements. Citations to these statutes are set forth under the heading "Statutory 'Doing Business' Provisions Limited To Lending Money On Security." These provisions vary greatly from state to state, and must be examined to determine the activities exempted and the extent of the exemption.

If an unqualified foreign corporation is carrying on the business of lending money and taking mortgages on real property as security, and engages in repeated local transactions of this nature, the corporation, in the absence of statute, would probably be required to qualify.[352] However, a foreign corporation was not required to qualify in Georgia even though it had acquired a portfolio of real estate loans from a corporate predecessor and owned several subdivisions in the state, which it endeavored to develop and sell.[353] Of course, if the foreign corporation is also engaged in local business apart from its mortgage dealings, it will be required to qualify.

Where the foreign corporation is not engaged locally in the general business of lending money, the particular transaction involved being single or isolated, qualification will not ordinarily be required.[354] Factors

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not enacted the new language. For details, see "Statutory 'Doing Business' Definitions Applicable to Ordinary Business Corporation," supra.

352. *Chattanooga National Building & Loan Assn. v. Denson*, 189 U.S. 408, 23 S.Ct. 630 (1903); *Sullivan v. Vernon*, 121 Ala. 393 (1898); *John Hancock Mutual Life Ins. Co. v. Girard*, 64 P.2d 254 (Idaho 1936); *People's Building, Loan & Savings Assn. v. Markley*, 27 Ind. App. 128, 60 N.E. 1013 (1901); *National Mercantile Co., Ltd. v. Watson*, 215 Fed. 929 (D. Ore. 1914); *British-American Mortgage Co. v. Jones*, 58 S.E. 417 (S.C. 1907); *Dunn v. Utah Serum Co.*, 65 Utah 527, 238 Pac. 245 (1925).

353. *Homac Inc. v. Fort Wayne Mortgage Co.*, 577 F.Supp. 1065 (N.D. Ga. 1983).

354. *Worth v. Knickerbocker Trust Co.*, 171 Ala. 621, 55 So. 144 (1911); *National Bank of Wichita v. Spot Cash Coal Co.*, 98 Ark. 597, 136 S.W. 953 (1911); *Moran v. Union Sav. Bank & Trust*

that courts have considered to negate the need for qualification are: that the debt arose out of an interstate transaction, that the loan was payable outside the state, and that the mortgage was merely incidental to the loan.

Vermont's Attorney General stated that the taking and foreclosing of a mortgage on Vermont property by a foreign savings bank would not constitute "doing business" in Vermont for purposes of qualification if the mortgage was executed outside Vermont.[355]

These general rules are equally applicable to ordinary foreign business corporations and to finance companies. A foreign finance company that maintained a permanent local agent who carried on business in the company's name and consummated transactions without first obtaining approval from the company's home office was required to qualify.[356] Similarly, where such a local agent obtained approval from the home office, but the transactions were completed in the state where the agent was located, qualification was required.[357]

A contrary finding ordinarily results where a finance company maintains neither an office, agent nor representative within the state, but merely has agents who enter the state to solicit business which must be approved outside the state. Such companies ordinarily are not required to qualify, and the courts stress such facts as the necessity of out-of-state approval and the place of payment.[358]

Co., 97 S.W.2d 638 (Ark., 1936); *Ockenfels v. Boyd*, 297 Fed. 614 (8th Cir. [Ark.] 1924); *Equitable Trust Co. of N.Y. v. Western Land & Power Co.*, 176 Pac. 876 (Cal. App. 1918); *Roseberry v. Valley Building & Loan Assn.*, 35 Colo. 132, 83 P.637 (1905); *Continental Assurance Co. v. Ihler*, 25 P2d 792 (Idaho 1933); *City Ice Co. of Kansas City v. Quivira Development Co.*, 30 P.2d 140 (Kan., 1934); *Hughes v. R.O. Campbell Coal Co.*, 258 S.W. 671 (Ky. Ct. App. 1924); *American Freehold Land-Mortgage Co. of London, Ltd. v. Pierce*, 21 So. 972 (La. 1897); *Maxwell v. Hammond*, 234 Mich. 461, 208 N.W. 443 (1926); *Manhattan & Suburban Savings & Loan Assn. v. Massarelli*, 42 Atl. 284 (N.J. Ct. Chancery 1899); *Netherlands Ship-Mortgage Corp., Ltd. v. Madias*, 717 F.2d 731 (2d Cir. 1983), rev'g 554 F.Supp. 375 (S.D.N.Y. 1983); *U.S. Savings & Loan Co. v. Shain*, 8 N.D. 136, 77 N.W. 1006 (1898); *Dime Savings & Trust Co. v. Humphreys*, 53 P.2d 665 (Okla. 1936); *American Housing Trust, III v. Jones*, 696 A.2d 1181 (Pa. 1997); *People's Building, Loan & Savings Assn. v. Berlin*, 201 Pa. 1, 50 A. 308 (1901); *Erwin National Bank v. Riddle*, 79 S.W.2d 1032 (Tenn. App. 1934); *Security Co. v. Panhandle National Bank*, 93 Tex. 575, 57 S.W. 22 (1900); *Keene Guaranty Savings Bank v. Lawrence*, 32 Wash. 572, 73 P.680 (1903). See, however, an Alabama case in which a single act was held "doing business." *Farrior v. New England Mortgage Security Co.*, 88 Ala. 275, 7 So. 200 (1890).)

355. OAG, Vermont, 1958, No. 149.

356. *National Mercantile Co., Ltd. v. Watson*, 215 Fed. 929 (D. Ore. 1914); *Finance Corporation of America v. Stone*, 54 S.W.2d 254 (Tex. Civ. App. 1932).

357. *Republic Acceptance Corporation v. Bennett*, 189 N.W. 901 (Mich. 1922).

358. *Burr v. Renewal Guaranty Corporation*, 105 Ariz. 549, 468 P.2d 576 (1970); *Davis & Wor-*

The courts' approach under these circumstances is well illustrated in the language of the Arkansas Supreme Court in *Davis & Warrell v. General Motors Acceptance Corporation*.[359]

". . .we do not mean to say that a foreign corporation must have an agency established in this state to bring it within the operation of our statute regulating foreign corporations doing business in this state; but we do hold that in a case like this, where the foreign corporation had its place of domicile in another state and discounted commercial paper of parties with money paid out in such other state on applications made to it there through dealers in this state, such transactions do not constitute doing business in this state by such foreign corporation."

The volume of business done by a finance company may be the deciding factor in whether such a corporation will be required to qualify. This was the case where a corporation was soliciting small loan business by mail. The loan applications were executed by the borrowers and returned by mail, an independent contractor was engaged to conduct local credit investigations and the loans were approved and checks mailed from the company's office outside the state. The volume of business done was substantial enough to subject the company to the licensing and regulatory powers of the state.[360]

In Louisiana, under a statute exempting from the qualification requirements certain foreign corporations lending money on security, the Attorney General issued an opinion stating that the exemption did not extend to a federal savings and loan association that purchased only loans previously made by Louisiana insurers or other lending institu-

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rell v. General Motors Acceptance Corporation, 241 S.W. 44 (Ark. 1922); *Equitable Credit Co., Inc. v. Rogers*, 299 S.W. 747 (Ark., 1927); *Industrial Acceptance Corp. v. Haering*, 253 Ill. App. 97 (1929); *Jones v. General Motors Acceptance Corporation*, 265 S.W. 620 (Ky. Ct. App. 1924); *Big Four Mills, Ltd. v. Commercial Credit Co., Inc.*, 307 Ky. 612, 211 S.W.2d 831 (1948); *C.I.T. Corp. v. Stuart*, 187 So. 204 (Miss. 1939); *Refrigeration Discount Corp. v. Turley*, 189 Miss. 880, 198 So. 731 (1940); *Ross Construction Co., Inc. v. U.M.&M. Credit Corp.*, 214 So.2d 822 (Miss., 1968); *Yellow Manufacturing Acceptance Corp. v. American Oil Co.*, 2 So.2d 834 (Miss., 1941); *Snipes v. Commercial & Industrial Bank*, 83 So.2d 179 (Miss. 1955); *Minnehoma Fin. Co. v. Van Oosten*, 198 F.Supp. 200 (D.Mont. 1961); *New York Bankers, Inc. v. Bosworth*, 138 Atl. 509 (N.J. Supreme 1927); *Samuels v. Mott*, 29 Misc.2d 705, 211 N.Y.S.2D 242 (Sup. Ct. 1960); *Refrigeration Discount Corp. v. Metzger*, 10 F.Supp. 748 (M.D. Pa. 1935); *Com. v. American Sugar Refining Co.*, 47 Pa. D.&C. 276 (1942); *General Motors Acceptance Corp. v. Huron Finance Corp.*, 262 N.W. 195 (S.D. 1935); *Leake v. Equitable Discount Corporation*, 234 S.W.2d 114 (Tex. Civ. App. 1950); *General Motors Acceptance Corporation v. Shadyside Coal Co.*, 135 S.E. 272 (W.Va. Sup. Ct. App. 1926).

359. 241 S.W. 44, 47 (Ark. 1922).

360. *People v. Fairfax Family Fund, Inc.*, 235 Cal. App.2d 881, 47 Cal. Rptr. 812 (1964).

tions. He further indicated that such a company did not come within the exemption for banking institutions.[361]

Foreign corporations holding chattel mortgages on personal property located in a state have not been required to qualify: where the transaction was an isolated, independent transaction incidental to its business;[362] where the sale which resulted in the execution of the chattel mortgage was a transaction in interstate commerce;[363] where the foreclosure of the mortgage was not an "action" of the type prohibited by statute to unlicensed foreign corporations;[364] where the chattel mortgage was executed and payable in another state and its foreclosure could not be regarded as doing business;[365] where the contract by which the foreign corporation acquired rights to notes and a chattel mortgage was entered into another state;[366] and where the chattel mortgage was taken to secure a previously existing debt contracted outside the state.[367]

Where a chattel mortgage was executed in the state in which the property was located, the foreign corporation was held to be doing business, and the instrument was void and unenforceable by the corporation under the Alabama statute.[368] Where a foreign corporation organized for the purpose of financing the sale of mobile homes did substantial business with dealers in Alabama (at least two of which were its wholly owned subsidiaries), had a representative who traveled to Alabama servicing the accounts it financed and writing to and visiting delinquent debtors, and repossessed mobile homes and resold them through its dealers, it was doing business in Alabama without being qualified and could not enforce its contracts there.[369] However, where a foreign corporation merely purchased chattel paper secured by personal property, some of which was located in Alabama, and its contacts with Alabama residents were almost exclusively by mail and

361. Opinion of the Attorney General of Louisiana, April 20, 1965.

362. *Western Loan & Bldg. Co. v. Elias Morris & Sons Co.*, 29 P.2d 137 (Ariz. 1934); *Sigel-Campion Live Stock Commission Co. v. Haston*, 75 P. 1028 (Kan. 1904).

363. *Mergenthaler Linotype Co. v. Spokesman Pub. Co.*, 127 Ore. 196, 270 Pac. 519 (1928).

364. *Herald & Globe Assn. v. Clere Clothing Co.*, 84 A.23 (Vt., 1912).

365. *Largilliere Co. v. McConkie*, 210 Pac. 207 (Ida. 1922); *Land Development Corp. v. Canaday*, 258 P.2d 976 (Ida., 1953).

366. *Muldowney v. McCoy Hotel Co.*, 269 N.W. 655 (Wis., 1936); *Chickering-Chase Brothers Co. v. L.J. White & Co.*, 127 Wis. 83, 106 N.W. 797 (1906).

367. *Sunny South Lumber Co. v. Neimeyer Lumber Co.*, 38 S.W. 902 (Ark., 1896).

368. *Peters v. Brunswick-Balke-Collender Co.*, 60 So. 431 (Ala. App. 1912).

369. *Boles v. Midland Guardian Co.*, 410 So.2d 82 (Ala. Civ. App. 1982).

telephone from outside the state, it was not doing business for purposes of qualification.[370]

Where a corporation's principal activity, financing the purchase of airplanes, did not require qualification because of the exemption for lending money and collecting debts, certain other activities in the state were held to be incidental to and directly related to the permitted activity and not to require qualification. These "related activities" included advertising in the form of letters, leasing an advertising sign, having an employee who made trips to the state to solicit business, and holding two seminars for dealers in the state.[371]

A Texas court held that the phrase "evidences of debt" included all contractual obligations to pay in the future for consideration presently received. Thus, a ten-year lease agreement on farm equipment was an evidence of debt, and the lessor did not have to qualify in Texas.[372] Where a foreign corporation's contract to buy real estate included incurring a debt in the form of a promissory note for part of the purchase price and a deed of trust securing the note, the corporation was not required to qualify to bring a suit based on the contract. The court found that the corporation was exempt under the provision of Texas law exempting transactions creating evidence of debt.[373]

A New York court held that an unlicensed foreign banking corporation was not doing business in the state by virtue of its maintaining a loan production office—i.e., an office limited to the soliciting of loans on behalf of the corporation, the assembly of credit information, the making of inspections, securing of title information, and preparing of loan applications.[374] A Pennsylvania court held that it could not determine whether a foreign corporation that acquired an installment contract for the sale of land and sought to eject the buyer for failing to pay, was subject to the exception for acquiring and/or enforcing security interests in real property without evidence as to whether the property was held strictly for investment or fiduciary purposes, and whether the corporation had, or intended to engage in similar transactions.[375] A fed-

370. *Associates Capital Services Corp. v. Loftin's Transfer & Storage Co., Inc.*, 554 F.2d 188 (5th Cir. [Ala.] 1977).

371. *Cesna Finance Corp. v. Mesilla Valley Flying Serv., Inc.*, 462 P.2d 144 (N.M., 1969).

372. *Killian v. Trans Union Leasing Corp.*, 657 S.W.2d 189 (Tex. App. 4 Dist. 1983). At the time, Texas' Business Corporation Act, Art. 8.01(B)(7), provided that "Creating evidences of debt, mortgages, or liens on real or personal property" did not constitute transacting business in the state.

373. *Durish v. Panan Intern., N.V.*, 808 S.W.2d 175 (Tex. App.-Houston [14th Dist.] 1991).

374. *Integra Bank North v. Gordon*, 624 N.Y.S.2d 344 (Sup. 1995).

375. *American Housing Trust, III v. Jones*, 696 A.2d 1181 (Pa. 1997).

eral court in Mississippi held that a foreign corporation lending money to homeowners to refinance their mortgages did not need to qualify.[376]

Entertainment

Broadcasting

Due to the nature of the business transacted by most broadcasting companies, in general it would appear that such companies would be exempt from qualifying because they are engaged in interstate commerce.

In a U.S. Court of Appeals case, an Alabama corporation operated a radio station that broadcast in Mississippi. The corporation regularly conducted remote promotional broadcasts from Mississippi, held sales meetings there, leased cars and purchased supplies in Mississippi and hired Mississippi residents. The Fifth Circuit Court of Appeals found that the remote broadcasts were inseparable from the underlying interstate sale of air time and that the corporation's sales activities were insufficient to establish a localized business function since it was promoting interstate sales. Thus, the corporation could not be denied access to Mississippi's courts because it was not qualified.[377]

A federal court ruled that a company that owned a video programming service, which was distributed nationally and which agreed to air advertising spots on behalf of the defendant, was engaged in interstate commerce and could maintain its suit.[378]

The Ohio Attorney General rendered an opinion in 1935 to the effect that "a foreign corporation engaged in the business of broadcasting radio programs in this state is engaged solely in interstate commerce and exempt from" qualification.[379] There, an Ohio corporation, wholly owned by the foreign broadcasting corporation, leased the facilities of its Ohio station to the parent. This station was one of 20 located in 14 states, which made up the network of the foreign broadcasting corporation.

In a tax case,[380] the United States Supreme Court stated that "by its very nature broadcasting transcends state lines and is national in its scope

376. *Carson v. McNeal,* 375 F.Supp.2d 509 (S.D. Miss. 2005).

377. *Radio WHKW, Inc. v. Yarber*, 838 F.2d 1439 (5th Cir. 1988).

378. *Aspire Channel, LLC v. Penngood LLC,* 139 F.Supp.3d 382 (D.D.C. 2015)

379. Ohio OAG, 1935, p. 818.

380. *Fisher's Blend Station, Inc. v. The Tax Commission*, 297 U.S. 650, 56 S. Ct. 608 (1936).

and importance—characteristics which bring it within the scope and protection, and subject it to the control of the commerce clause."

Exhibition of Films

The shipment of films into a state by a foreign corporation may require qualification, depending on the extent of the corporation's activities. It has been held that a foreign corporation that contracts with local merchants for the manufacture and exhibition of advertising films in local theaters is required to qualify, even though the films are manufactured outside the state.[381]

Similarly, a film distributing corporation was held to be doing business when it sent a film into a state to be shown to a local censorship board and local distributors preliminary to the film's being distributed and shown in the state.[382] Where the foreign corporation merely manufactured and leased the film, the exhibition itself being handled by others, it was held that qualification was not required.[383]

Other decisions in this area that may be of interest are set forth below.[384]

Professional Sporting Exhibitions and Games

In a 1965 Attorney General's opinion, California's qualification provision was held applicable to professional baseball corporations "entering California for the specific purpose of engaging in baseball games."[385] The Attorney General stated that such a corporation was performing "repeated and successive transactions of its business in this State. . ." The determination was based on the substantial number of games played within the state and the revenue derived therefrom.

Although foreign baseball corporations are engaged in interstate commerce, their "exhibition remains purely a local affair" and, therefore, not exclusively in interstate commerce. The Attorney General also

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381. *State v. Tad Screen Advertising Co.*, 199 Ark. 205, 133 S.W.2d 1 (1939); *Ligon v. Alexander Film Co.*, 55 S.W.2d 1030 (Tex. Comm'n App. 1932).

382. *United Artists Corp. v. Board of Censors*, 189 Tenn. 397, 225 S.W.2d 550 (1949), cert. den. per curiam (mem.) 339 U.S. 952, 70 S.Ct. 839 (1950).

383. *Alexander Film Co. v. Lazeres & Morfesy*, 7 S.W.2d 599 (Tex. Civ. App. 1928).

384. *Alexander Film Co. v. State*, 201 Ark. 1052, 147 S.W.2d 1011 (1941); *Rex Beach Pictures Co., Inc. v. I. Garson Productions*, 209 Mich. 692, 177 N.W. 254 (1920); *Alexander Film Co. v. Pierce*, 46 N.M. 110, 121 P.2d 940 (1942); *Short Films Syndicate Co., Inc. v. Standard Film Service Co.*, 39 Ohio App. 79, 176 N.E. 893 (1931).

385. 45 Ops. Atty. Gen. (Cal.) II, January 20, 1965.

implied that, in his opinion, the professional baseball corporations' other activities, such as scouting, might also require qualification.

However, it should be noted that the basis for the Attorney General's opinion was *Toolson v. New York Yankees*,[386] in which the Supreme Court upheld its earlier decision in *Federal Club v. The National League*,[387] maintaining that "Congress had no intention of including the business of baseball within the scope of the Federal Anti-Trust laws." The Attorney General reasoned that if such activities are outside of interstate commerce for anti-trust purposes, they are intrastate and subject to a state's provisions for intrastate business, including its qualification requirements.

Production of Films and Shows

Virginia law provides that "For a period of less than ninety consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films which are sent outside of the Commonwealth for processing, editing, marketing and distribution" does not constitute doing business.[388] In Nevada, "the production of motion pictures" does not constitute doing business in the state.[389] "Motion pictures" is defined to include films to be shown in theaters and on television and video discs and tapes.[390]

Although the rule is not clear, it appears that a foreign corporation engaged in the business of staging shows, theatrical performances, sporting events, etc., is required to qualify in order to perform this activity.[391] This apparently is true because the corporation is doing a substantial part of its ordinary business in the state and because the elements of an interstate transaction are absent. The exemption from qualification usually afforded isolated transactions may not be available here if there is evidence of an intent to return or if the activity is one of long duration.

A foreign corporation that had provided riding devices, shows and concessions at fairgrounds in New York for many years was held to be doing business in the state for purposes of qualification.[392]

386. 346 U.S. 356, 74 S.Ct. 78 (1953).

387. 259 U.S. 200, 42 S.Ct. 465 (1922).

388. Code of Virginia, 1950, Sec. 13.1-757.

389. Nevada Revised Statutes, Sec. 80.015.

390. Nevada Revised Statutes, Sec. 231.020.

391. *Interstate Amusement Co. v. Albert*, 239 U.S. 560, 36 S.Ct. 168 (1916); *Wichita Film & Supply Co. v. Yale*, 194 Mo. App. 60, 184 S.W. 119 (1916).

392. *Continental Shows, Inc. v. Essex County Agricultural Society Inc.*, 62 A.D.2d 1103, 404

A foreign corporation that filmed a movie in Alabama entered into a contract with an Alabama resident who agreed to provide a dining etiquette lesson, which was filmed. The court held that the main purpose of the contract was for the resident to be filmed – which was an interstate activity — and not for her to provide the etiquette lesson — and that the corporation was not required to qualify before entering into the contract.[393]

Other cases of interest in this area are set forth below.[394]

Leasing

Leasing Personal Property

Leasing personal property across state lines is a common business practice. Generally, a foreign lessor corporation will not be required to qualify in order to lease its property to others in a foreign state, if the lease is executed outside the state. For example, in a Vermont case,[395] an unqualified foreign corporation entered into lease agreements with the defendant. The court held that because the agreements required the defendants to send the leases to New Jersey for acceptance and execution, the leases were made in New Jersey and not Vermont and the corporation's assignee was permitted to maintain its action. A federal court in the District of Columbia held that a Maryland corporation leasing printers, copiers, and other support to law firm's in the District, from its Maryland office was not doing business in the District as providing goods and services across state lines is a fundamental form of interstate commerce.[396]

Generally, the question of whether a foreign lessor must qualify does not turn on the existence of the lease but on the activities the foreign lessor actually performed in the state in connection with the lease.

N.Y.S.2d 418 (3rd Dept. 1978).

393. *Ex Parte Cohen*, 988 So.2d 661 (Ala. 2008).

394. *Federal Baseball Club v. National League of Professional Baseball Clubs*, 259 U.S. 200, 42 S.Ct. 465 (1922); *Metropolitan Opera Association, Inc. v. Metropolitan Opera Association of Chicago, Inc.*, 81 F.Supp. 217 (N.D. Ill. 1948); *Tri-State Amusement Co. v. Forest Park Highlands Amusement Co.*, 192 Mo. 404, 90 S.W. 1020 (1905); *Nasso v. Seagal,* 263 F.Supp.2d 596 (E.D.N.Y. 2003); *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. [N.Y.] 1949); *United Artists Corp. v. Board of Censors*, 189 Tenn. 397, 225 S.W.2d 550 (1949), cert. denied per curiam (mem.) 339 U.S. 952, 70 S.Ct. 839 (1950); *Eastman v. Tiger Vehicle Co.*, 195 S.W. 336 (Tex. Civ. App. 1917).

395. *Chase Commercial Corp. v. Barton*, 571 A.2d 682 (Vt. 1990).

396. *Maryland Digital Copier v. Litigation Logistics, Inc.*, 2019 U.S. Dist. LEXIS 142720 (D.D.C. 2019).

For example, a California corporation leased motion pictures in Missouri. The corporation inserted a stipulation in its leasing agreement that it had to be advised of the exact whereabouts of all movie prints, that the lessee could not change, revise or alter any of the prints without consent, and that the lessor's name must be conspicuously displayed on the lessee's office window or door. However, there was no evidence to show that the lessor ever enforced any of these provisions. No acts required under the agreement other than delivery of the film were actually performed. In holding that registration to do business in the state was not a prerequisite to lessor's bringing suit, the court stated: ". . . we are more concerned with what was done actually under a contract. What it 'could have done' is not sufficient to establish 'doing business' in the state of Missouri."[397]

In a Tennessee case, a New York corporation (lessor) was in the business of buying property from sellers, who would deliver the merchandise directly to lessees. A Florida seller entered into such an arrangement, selling postage stamp vending machines to lessor and delivering them to lessee. In upholding the nonqualified lessor's right to sue in Tennessee, the court noted that the lessor was "a mere property owner and investor; it invested in a lease contract providing for the payment to it periodically of a fixed amount of money. This investment was comparable to the holding of a promissory note of a Tennessee citizen to a nonresident payee."[398]

Where a New York corporation not qualified in Texas leased equipment in Texas, it was not doing business because there was no evidence that lessor had performed any acts in the state.[399] In another case, a foreign corporation entered into a ship leasing arrangement in New York. The corporation's activities in New York were limited to maintaining bank accounts, negotiating and executing agreements and sending default notices. The corporation was not required to qualify in New York to maintain its actions.[400]

Depending upon the facts of the case, when a corporation leases property in another state, the transaction may be considered to take place in interstate commerce, thereby not requiring qualification.

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397. *Filmakers Releasing Organization v. Realart Pictures of St. Louis, Inc.*, 374 S.W.2d 535 (Mo. App. 1964). See also *Western Outdoor Advertising Co. of Nebraska v. Berbiglia, Inc.*, 263 S.W.2d 205 (Mo. App. 1953).

398. *Rochester Capital Leasing Corp. v. Schilling*, 448 S.W.2d 64 (Tenn. 1969).

399. *Squyres Construction Co., Inc. v. Chemical Bank*, 596 S.W.2d (Tex. App. 1 Dist. 1980). See also *Killian v. Trans Union Leasing Corp.* 657 S.W.2d 189 (Tex. App. 4 Dist. 1983).

400. *Intermar Overseas, Inc. v. Argocean S.A.*, 503 N.Y.S.2d 736 (A.D. 1 Dept. 1986).

Thus, a federal court in Alabama permitted the assignee of a Georgia corporation that leased cranes in Alabama to maintain an action because its business was transacted in interstate commerce.[401] An Alaska court held that a Michigan corporation was not doing intrastate business in Alaska where its only activities there consisted of two brief visits by its president and the presence of its mechanics on two occasions, all of which were incidental to its interstate leasing of an airplane.[402] In an Ohio case, a foreign corporation leased equipment in Ohio and entered into a preventative maintenance and repair contract with its Ohio agent to keep the equipment at a functioning level. The court held that the leasing was in interstate commerce and the repair contracts did not preclude the corporation from bringing suit in Ohio.[403] An Alabama court held that an unlicensed foreign corporation that leased and shipped equipment to be used in the construction of a parking deck in Alabama, but that was not involved in the construction of the parking deck, was not engaged in intrastate commerce and not required to qualify.[404]

However, even if a corporation leases property in interstate commerce, if the lessor does further acts in the state in connection with the leased property, it may be considered to have done intrastate business. For example, a foreign corporation that based its shipping container leasing business in Florida, and maintained a full-time office, depot and staff there, was not thereby doing business because these activities were in interstate and foreign commerce. However, it also conducted in Florida "the servicing, handling, storage, repair, and maintenance" of shipping containers not then being leased. This was found to be intrastate business, and since the corporation had not qualified, it could not maintain an action challenging its property tax assessment.[405]

The lessor of an electric sign was held to be doing business in Alabama, where it installed the electric sign in Alabama and agreed to inspect, repair and maintain it. The court implied that the act of leasing and installing the sign, without more, would have been in interstate commerce, and would have enabled the lessor to maintain the action. The additional services of maintaining and repairing the sign were in

401. *Leasing Service Corporation v. Hobbs Equipment Company*, 701 F.Supp. 1276 (N.D. Ala. 1989). See also *XYOQUIP, Inc. v. Mims*, 413 F.Supp. 962 (N.D. Miss. 1976).

402. *Kachemak Seafoods, Inc. v. Century Airlines, Inc.*, 641 P.2d 213 (Alaska 1982).

403. *Saeilo Machinery, Inc. v. Myers*, 489 N.E.2d 1083 (Ohio Com. Pl. 1985). See also *Houston Canning Co. et al. v. Virginia Can Co.*, 100 So. 104 (Ala. 1924).

404. *SGB Construction Services, Inc. v. Ray Sumlin Construction Co., Inc.*, 644 So.2d 892 (Ala. 1994).

405. *Integrated Container Services, Inc. v. Overstreet*, 375 So.2d 1146 (Fla. App. 1979).

intrastate commerce and established the lessor as doing business.[406] In another Alabama case, a foreign corporation could not enforce an agreement to lease an MRI machine to an Alabama lessee where the foreign corporation moved an employee to Alabama to service the machine and train the lessee's employees to operate it and retained the right to collect unpaid bills generated by the machine and remove employees who operated the machines unsatisfactorily.[407]

In a Texas case, a California corporation not qualified in Texas but whose main office was located there shipped equipment from out of state to a Texas customer. After the customer went bankrupt, the corporation regained possession of the equipment and rented it to another company on an informal basis. When the lessor brought suit for the rental payment, the court ruled that the transaction was an intrastate one, notwithstanding the previous interstate shipment of the goods, and that it was not an isolated transaction because the rental extended for several months. Therefore, the corporation should have qualified in Texas and was not permitted to maintain the suit.[408]

In a Maryland case, a foreign corporation rented its trucks to Maryland corporations. The corporation was held to be doing intrastate business in Maryland.[409] In addition to renting its trucks it also delivered and sold goods in Maryland. However, a Massachusetts corporation that leased 24 truck tractors to a Georgia corporation was not doing business in Georgia because the lease contracts were solicited and accepted outside of Georgia.[410]

The length of time of the lease seems to be of little significance in determining whether qualification is necessary. In several of the cases cited above, the lease periods were three years or more. Yet each decision was based on the extent of services actually rendered under the lease rather than the length of the term. Even a lease of ten years' duration made no difference.

The number of leasing arrangements the foreign corporation enters into presents another question. In a Missouri case, a nonqualified foreign lessor had leased during a period exceeding ten years some 300 machines to various customers in Missouri. Lessor's employees

406. *Cadden-Allen, Inc. v. Trans-Lux News Sign Corp.*, 48 So.2d 428 (Ala. 1950).

407. *Phoenix City-Cobb Hospital Authority, Inc. v. Sun Pointe Property, Inc.*, 689 So.2d 797 (Ala. 1997).

408. *Jay-Lor Textiles, Inc. v. Pacific Compress Warehouse Co.*, 547 S.W.2d 738 (Tex. Ct. Civ. App. 1977).

409. *Snavely Inc. v. Wheeler*, 538 A.2d 324 (Md. App. 1988).

410. *Roberts v. Chancellor Fleet Corporation*, 354 S.E.2d 682 (Ga. App. 1987).

and agents installed, inspected, and repaired the machines. The court, noting the number and extent of lessor's activities in Missouri, denied its right to maintain the action.[411] But the court also discussed the lessor's continued inspection and repair of the property after it reached Missouri, and it is possible it would not have reached the same result in the absence of those services. In an Alabama case, an unqualified Virginia corporation leased equipment to Alabama residents. In finding that the corporation was doing intrastate business and therefore could not maintain its action for breach of the lease, the court noted that in the previous five years the corporation had been involved in 34 leasing transactions involving about $350,000.[412] A New York Court held that a corporation that rented scaffolding to contractors at eight construction projects in New York for storage of the scaffolding and accessories was doing business in New York.[413]

A federal court in California held that a foreign company was not transacting intrastate business by entering into a lease agreement for a horse for showing and breeding purposes where performance was contemplated outside of California and the horse was merely shipped to and from the state.[414] A Rhode Island court held that a Florida LLC was transacting business in Rhode Island where it entered into a lease agreement that stated that it "shall be deemed to have been made and delivered in the State of Rhode Island".[415]

Leasing Real Property

Connecticut's statute, at one time, provided that leasing real property did not constitute doing business for purposes of qualification.[416] A federal court ruled that under the Connecticut statute a foreign corporation was not doing business in the state so as to require qualification by reason of its assumption by assignment of lease rights to retail space in a shopping center. This result was not affected by the fact that the foreign corporation leased and in turn subleased three other facilities in Connecticut, and conducted certain business activities there in connection with those transactions. The court stated that "The

411. State ex rel. *Hays v. Robertson*, 271 Mo. 475, 196 S.W. 1132 (1917).

412. *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989). See also *All-state Leasing Corp. v. Trojan Restaurant*, 545 So.2d 810 (Ala. Civ. App. 1989).

413. *Scaffold-Russ Dilworth, Ltd. v. Shared Management Group, Ltd.* 682 N.Y.S.2d 765 (A.D. 4 Dept. 1998).

414. *Mazzei v. Sika Stables, LLC* 2020 U.S. Dist LEXIS 164557 (C.D. Cal. 2020).

415. *NACR Leasing, LLC v. Adena Corp.*, 2021 R.I. Super LEXIS 33.

416. Connecticut General Statutes Annotated, Sec. 33-397(a) (repealed, effective January 1, 1997).

standard for transacting business is qualitative, not quantitative."[417] The Massachusetts statute provides that leasing real estate in the commonwealth does constitute transacting business.[418]

In the absence of a statute, a foreign corporation will not ordinarily be required to qualify because it owns real property in the state that it leases to others, or because it leases real property in the state from others.[419] However, a New York court presumed that an unqualified foreign corporation that rented an apartment in New York City was doing business there, because "the corporation would not maintain a permanent apartment here unless [its] business consisted of more than a casual, isolated or occasional transaction."[420] Reasons given by the courts for holding that qualification was not required for leasing real property to or from others include the fact that the leasing transaction was isolated and that the leasing was incidental or preliminary to doing business.[421] A federal court in New York held that a foreign corporation was not doing business in New York by entering into a single contract for the leasing of showroom and office space, where all orders were sent out of New York for acceptance, its products were manufactured out of New York, and there were no employees in New York who could bind the corporation.[422] A court in Illinois held that an unqualified corporation that sublet premises to franchisees of a restaurant chain, and that had ten leasing transactions in Illinois, could sue for breach of lease there as it did not conduct a substantial amount of business in Illinois and was not required to qualify.[423]

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417. *Wards Co., Inc. v. Connecticut Post Limited Partnership*, 579 F.Supp. 282, 285 (D. Conn. 1984).

418. Massachusetts General Laws Annotated, Chap. 156D, Sec. 15.01.

419. *Friedlander Bros. Inc. v. Deal*, 218 Ala. 245, 118 So. 508 (1928); *Worcester Felt Pad Corp. v. Tucson Airport Authority*, 233 F.2d 44 (9th Cir. [Ariz.] 1956); *Linton v. Erie Ozark Mining Co.*, 147 Ark. 331, 227 S.W. 411 (1921); *3M Distributing Corporation v. Rugby Corporation*, 209 A.2d 790 (D.C. App. 1965); *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942); *Ferkel v. Columbia Clay Works*, 192 F. 119 (7th Cir. [Ill.] 1911); *Blodgett v. Lanyon Zinc Co.*, 120 F.893 (8th Cir. [Kan.] 1903); *North American Mortgage Co. v. Hudson*, 176 Miss. 266, 168 So. 79 (1936); *Broadway Bond St. Co. v. Fidelity Printing Co.*, 182 Mo. App. 309, 170 S.W. 394 (1914); *Dold Packing Co. v. Doermann*, 293 F. 315 (8th Cir. [Neb.] 1923); *Reynolds Offset Co., Inc. v. Summer*, 58 N.J. Super. 542 (1959); *Singer Mfg. Co. v. Granite Springs Water Co.*, 66 Misc. 595, 123 N.Y.S. 1088 (Sup. Ct. 1910); *Wm. G. Roe & Co. v. State*, 43 Misc.2d 417, 251 N.Y.S.2d 151 (Ct. Claims 1964); *Wilson v. Peace*, 38 Tex. Civ. App. 234, 85 S.W. 31 (1905).

420. *Girod Trust Co. v. Kingsdown Corp. N.V.*, 108 Misc.2d 759, 760, 438 N.Y.S.2d 894, 895 (Sup. Ct. 1981).

421. *Niederhiser v. Henry's Drive-In, Inc.*, 96 Ariz. 305, 394 P.2d 420 (1964).

422. *Storwal Intern., Inc. v. Thom Rock Realty Co.*, L.P., 784 F.Supp. 1141 (S.D.N.Y. 1992).

423. *Subway Restaurants, Inc. v. Riggs,* 696 N.E. 2d 733 (III. App. 1 Dist. 1998).

A different situation is presented where a foreign real estate corporation leases real property to or from others. Such a corporation is doing a part of its ordinary business, the business it was organized to do, and would likely be required to qualify. Thus, a corporation that owned and leased property upon which sat a hotel owned and operated by an affiliate, was doing business under the qualification statute. Leasing the property was a continuing transaction conducted in the ordinary course of its business.[424]

Where the foreign corporation carries on activities in the state in addition to the leasing, or where it makes a number of leases, qualification will probably be required.[425] Thus, the leasing of a building by a foreign corporation, which sublet it to others, was held to be doing business.[426] It was held in an Oklahoma case that a foreign corporation that leased space in an Oklahoma store to operate a shoe department was "doing business," requiring qualification.[427] An unqualified foreign corporation that leased space at an Alabama greyhound race track to keep its greyhounds and that housed and bred greyhounds at its Alabama farm, had localized its operations and could not assert a claim for breach of contract.[428]

Oil and Gas Leases

There are few decisions on whether acquiring, owning, dealing in or selling oil and gas leases constitutes doing business so as to require qualification. It would appear that a corporation organized for one or more of these purposes, and regularly engaged in such activities, would be required to qualify to carry on such business in a foreign state.

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424. *Moore v. McKibbon Bros., Inc.,* 41 F. Supp.2d 1350 (N.D. Ga. 1998).

425. *Woodward v. Fox West Coast Theatres*, 284 P. 350 (Ariz., 1930); *Truly Warner Co., Inc. v. Kaufman Hats, Inc.*, 352 Ill. 541, 186 N.E. 167 (1933); *Burroughs v. Southern Colonization Co.*, 96 Ind. App. 93, 173 N.E. 716 (1930); *Proctor Trust Co. v. Pope*, 12 So.2d 724 (La. App. 1943); *E. & G. Theatre Co. v. Greene*, 216 mass. 171, 103 N.E. 301 (1913); *Amalgamated Zinc & Lead Co. v. Bay State Zinc Mining Co.*, 120 S.W. 31 (Mo. 1909); *Foreman & Clark Mfg. Co. v. Bartle*, 125 Misc. 759, 211 N.Y.S. 602 (Sup. Ct. 1925); *Johnson v. Seaborg*, 69 Ore. 27, 137 P. 191 (1913).

426. *Cassidy's Ltd. v. Rowan*, 99 Misc. 274, 163 N.Y.S. 1079 (Sup. Ct., App. Term, 1st Dept. 1917). See also *Republic Power & Service Co. v. Gus Blass Co.*, 263 S.W. 785 (Ark. 1924), in which the purchase of a fractional undivided interest in oil and gas leases was held to constitute an intrastate transaction requiring qualification; *Bachman v. Doerrie*, 70 N.M. 277, 372 P.2d 951 (1962), holding the leasing of mining claims and equipment constitutes doing business and necessitates qualifying.

427. *Seidenbach's v. E.A. Little Co.*, 146 Okla. 247, 294 Pac. 126 (1930).

428. *Ex Parte Dial Kennels of Alabama, Inc.,* 771 So.2d 419 (Ala. 1999).

The purchase in Arkansas by a foreign corporation of a fractional undivided interest in Arkansas oil and gas leases has been held to constitute doing business.[429] Similarly, it was held that a foreign brokerage corporation which engaged in the business of dealing in mineral leases, and which sent its representatives to Texas to negotiate the sale of an oil lease on Texas land, was required to qualify.[430] This ruling was followed in a later decision involving the ownership and assignment of mineral leases in Texas.[431] It should be pointed out, however, that the Texas statute specifically excludes from doing business: "Investing in or acquiring, in transactions outside of this state, royalties and other non-operating mineral interests" and "the execution of a division order, contract of sale and other instrument incidental to the ownership of a non-operating mineral interest."[432] New Mexico's "doing business" provisions also exclude this activity from the qualification requirement.[433]

It would appear that where negotiations for a lease take place outside the state, qualification is not required. Thus, the assignment of an oil lease on Kentucky land which was made in Illinois was held not to require qualification.[434] And in a suit brought by the state of Arkansas to recover a monetary penalty from an Oklahoma corporation for doing business without qualifying, it was shown that the foreign corporation had supplied 1,500 feet of casing for an Arkansas well under a rental agreement made in Oklahoma, that it had preserved the right to reclaim the casing if the well did not produce oil, and that the foreign corporation took an assignment of the potential royalty interests. The Arkansas Supreme Court, in finding that the corporation could not be penalized, stated that: "At most the Oklahoma corporation was only looking after development of property in which it had an interest in expectancy, and the activities. . .were nothing more than precautionary supervision in respect of personal property. It was a speculative venture carried out pursuant to an Oklahoma contract."[435]

A foreign corporation engaged in the business of trading in oil and gas leases was doing business in interstate commerce when it sent a letter

429. *Republic Power & Service Co. v. Gus Blass Co.*, 263 S.W. 785 (Ark., 1924).

430. *Normandie Oil Corp. v. Oil Tranding Co., Inc.*, 163 S.W.2d 179 (Tex. 1942).

431. *Glo Co. v. Murchison*, 208 F.2d 714 (5th Cir. [Tex.] 1954), rehearing den. 210 F.2d 372 95th Cir. [Tex.] 1954), cert. den. 348 U.S. 817, 75 S.Ct. 27 (1954).

432. Texas Business Organizations Code, Sec 9.251.

433. New Mexico Statutes 1978 Annotated, Sec. 53-17-1 (K).

434. *Great Western Petroleum Corp. v. Samson*, 192 Ky. 814, 234 S.W. 727 (1921).

435. *Murray Tool & Supply Co. v. State ex rel. Crawford County*, 159 S.W.2d 71 (Ark. 1942).

to Alabama residents offering to buy their mineral royalty interests, buying those interests, and executing the deeds in Alabama.[436]

Manufacturing

A manufacturing corporation will be required to qualify in order to carry on its manufacturing activities in a foreign state.

Operating a manufacturing plant in a state involves presence of sufficient duration to eliminate any possibility of the activity being considered an isolated transaction.

Furthermore, although the manufactured product may ultimately be sold in interstate commerce, the manufacturing itself is by its nature clearly an intrastate activity. The fact that the corporation is or will be engaged in interstate commerce will not exempt it from having to qualify. It seems clear that even if all contracts for the purchase of raw materials, for the leasing of the plant itself, for the employment of personnel, payment of salaries, and for the sale of the finished product, are entered into in another state where the corporation has its principal place of business, the corporation would nevertheless be required to qualify by reason of the manufacturing alone.

In a Georgia case,[437] a New York corporation which manufactured carpets in Georgia claimed that this was a part of its business in interstate commerce. The court rejected this argument and, since the corporation had not obtained a Georgia certificate of authority, dismissed the complaint.

It is difficult to imagine a better application of the classic definition of doing business in a state, i.e., engaging in some substantial part of its ordinary business therein, than in the case of a manufacturing corporation engaging in manufacturing.

Performing Services

In General

A corporation in the business of rendering services may be required to qualify in order to engage in such business in a foreign state.[438] The

436. *Andrews v. Central Petroleum, Inc.*, 63 So.3d 650 (Ala. Civ. App. 2010).

437. *Durkan Enterprises, Inc. v. Cohutta Banking Co.*, 501 F.Supp. 350 (N.D. Ga. 1980).

438. *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 64 S.Ct. 967 (1944); *Interstate Amusement Co. v. Albert*, 239 U.S. 560, 36 S.Ct. 168 (1916); *Tradewinds Environmental Restoration, Inc. v.*

fact that the foreign corporation's agents cross state lines in order to perform the services is not sufficient to render the activity one in interstate commerce.[439] For example, a Missouri court held that a foreign corporation that provided advice on campaign matters to a candidate in Missouri was doing intrastate business where the corporation's president came to Missouri to provide personal consultation and advice and where the contract provided that services were to be rendered in Missouri.[440] An Ohio court held that a foreign corporation that contracted to provide property tax consulting services in Ohio and that represented the defendant at a valuation hearing in Ohio, was doing business in Ohio and should have obtained a license.[441] However, a New York court held that a foreign corporation that entered into a contract in New York to analyze a New York company's utility bills and determine if it was entitled to a refund was not doing business in New York where the foreign corporation had no New York office and where all of its analytical work was done outside of New York.[442]

In another case, a foreign corporation that engaged in the business of making detailed analyses of supermarket operations, contracted to install its system in California supermarkets. A California court found that the corporation, which visited the California stores, assisted in training their personnel, made recommendations and installed a computer program, was transacting intrastate business.[443]

Brown Bros. Construction, LLC, 999 So.2d 875 (Ala. 2008); Ex Parte Cohen, 988 So.2d 661 (Ala. 2008); *Vaccinol Products Corp. v. State*, 156 S.W.2d 250 (Ark. 1941); *Columbus Services Inc. v. Preferred Building Maintenance, Inc.*, 270 F.Supp. 875 (D. Mich. 1965); *Campaign Works, Ltd. v. Hughes*, 779 S.W.2d 305 (Mo. App. 1989); State ex rel. *Lay v. Arthur Greenfield, Inc.*, 205 S.W. 619 (Mo., 1918); *Applied Technologies Associates, Inc. v. Schmidt*, 362 F.Supp. 1103 (D. N.M. 1973); *Cocon, Inc. v. Botnick Bldg. Co.*, 570 N.E.2d 303 (Ohio App. 1989); *Elliot Electric Co. v. Clevenger*, 300 S.W. 91 (Tex. Civ. App. 1927); *Knights of Ku Klux Klan v. Commonwealth*, 138 Va. 500, 122 S.E. 122 (1924); Matter of Bell Lumber Co., 149 F.2d 980 (7th Cir. [Wis.] 1945); *MacDonald Bros., Inc. v. Quality Aluminum Casting Co.*, 251 Wis. 27, 27 N.W.2d 769 (1947).

439. *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200, 42 S.Ct. 465 (1922); *S & H Contractors, Inc. v. A.J. Taft Coal Co., Inc.* 906 F.2d 1507 (11th Cir. 1990); *Sanwa Business Credit Corp. v. G.B. "Boots" Smith Corp.*, 548 So.2d 1336 (Ala. 1989); *The Competitive Edge, Inc. v. Tony Moore Buick-GMC, Inc.*, 490 So.2d 1242 (Ala. Civ. App. 1986); *Gardella v. Chandler*, 173 F.2d 402 (2d Cir. [N.Y.] 1949).

440. *Campaign Works, Ltd. v. Hughes*, 779 S.W.2d 305 (Mo. App. 1989).

441. *Cocon, Inc. v. Botnick Bldg. Co.*, 570 N.E.2d 303 (Ohio App. 1989).

442. *Expense Reduction Services, Inc. v. Jonathan Woodner Co., Inc.* 720 F.Supp. 262 (S.D.N.Y. 1989).

443. *American Retail Management, Inc. v. Bakersfield Food City, Inc.* 247 Cal.Rptr. 689 (Cal. App. 5 Dist. 1988).

A Hong Kong corporation that agreed to act as the exclusive sales agent in Alabama, in order to sell the manufacturer's product to a plant located in Alabama, was found to be transacting business in Alabama.[444] A Louisiana corporation that supplied temporary contract workers to an employer in Alabama was also found to be doing business in Alabama and required to qualify.[445] An Arkansas court held that an Arizona corporation had to obtain a certificate of authority before maintaining an action where the corporation was engaged in the business of feeding and caring for cattle in Arkansas.[446] A Georgia corporation that performed consulting and accounting services for insolvent insurers pursuant to a contract with the Alabama Insurance Department could not recover payments due under the contract because it was not qualified to do business in Alabama.[447] A foreign corporation that owned and operated a nursing home in Alabama was held to be doing intrastate business, as the essence of its transactions was the providing of labor for the patients, which was an intrastate activity.[448]

On the other hand, a foreign corporation hired to recruit executives for a Nevada employer was not required to qualify in Nevada because the executives were recruited outside of Nevada, the foreign corporation had no offices in Nevada and did not solicit Nevada employers.[449] A mortuary corporation, not qualified in Missouri, was not required to qualify in order to transport a body from Illinois to Missouri.[450] A corporation in the business of providing travel and touring services to customers throughout the United States was not required to qualify in Alabama as its business was interstate in nature.[451] An Arkansas corporation that contracted to recruit Philippine workers for a company in California, through a Missouri recruiting agent, was not doing business in Missouri. The contract was not to be performed in Missouri, therefore the corporation's activities were incidental to interstate commerce.[452] A district court in California held that because an entity conducted its business of servicing student loans out of Pennsylva-

444. *Camaro Trading Company, Ltd. v. Nissei Sangyo America, Ltd.*, 628 So.2d 463 (Ala. 1993).

445. *Building Maintenance Personnel Inc. v. International Shipbuildings, Inc.*, 621 So.2d 1303 (Ala. 1993).

446. *Centennial Valley Ranch Mgt., Inc. v. Agri-Tech L.P.*, 832 S.W.2d 259 (Ark. App. 1992).

447. *Burnett v. National Stonehenge Corp.*, 694 So.2d 1276 (Ala. 1997).

448. *Community Care of America of Alabama, Inc. v. Davis*, 2002 WL 31045217 (Ala. 2002).

449. *RTTC Communications, LLC v. Saratoga Flier, Inc.*, 110 P.3d 24 (Nev. 2005). See also *Peccole v. Fresno Air Service, Inc.*, 469 P.2d 397 (Nev. 1970).

450. *Marks Mortuary v. Estate of Koeppel*, 740 S.W.2d 397 (Mo. App. 1987).See also *VBM Corp. v. Marvel Enterprises, Inc.*, 842 S.W.2d 176 (Mo. App. W.D. 1992)

451. Ex Parte Intern. Travel Services, Inc., 68 So.3d 823 (Ala. 2011).

452. *Ozark Employment Specialists, Inc. v. Beeman,* 80 S.W.3d 882 (Mo. App. W.D. 2002).

nia, any contact with California borrowers fell exclusively in interstate commerce and registration was not required.[453] A California court held that a Nevada LLC that marketed discount travel services was not doing business in California because it performed its fulfillment services through an independent California based company.[454]

The Supreme Court of Connecticut ruled that a New York accounting firm was not doing business in Connecticut even though it prepared Connecticut tax returns for a Connecticut resident where the firm derived minimal income from Connecticut, did not solicit business there and performed its services in New York.[455] In an Iowa case, the court held that a Nebraska corporation that assisted an Iowa corporation in hiring workers was not required to qualify where the transaction was conducted from Nebraska to Iowa via telephone communication and facsimile transmission of resumes, because the corporation was conducting interstate business.[456] A federal court in New York held that the defendant's showing that a Florida corporation monitored and chaperoned students in New York and entered into three or four contracts in New York was not sufficient to meet the burden of proving that the corporation's activities were so systematic and regular as to constitute doing business.[457]

A foreign corporation which sells its products in interstate commerce and performs services related to the sales, such as installation and repairs, may be required to qualify because of the services performed.[458]

Where a foreign corporation entered into a contract in Tennessee to sell furniture in Alabama and its only activities in Alabama consisted of delivery, set-up, repair work and making requests for payment, the court found that these activities were incidental to the interstate sales contract and did not constitute the transaction of intrastate

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453. *Wellish v. Pennsylvania Higher Education Assistance Agency,* 2017 U.S. Dist. LEXIS 40831.

454. *Elite Destinations, Ltd v. JD&T Enterprises, Inc.,* 2017 Cal. App. Unpub. LEXIS 4393.

455. *Ryan v. Cerullo*, 918 A.2d 867 (Conn. 2007).

456. *Corporate Recruiters Ltd. v. Norwest Financial, Inc.*, 489 N.W.2d 729 (Iowa 1992). See also *Buchhop v. General Growth Properties and General Growth Management Corp.*, 235 N.W.2d 301 (Iowa 1975)

457. *SD Protection, Inc. v. Del Rio*, 498 (F.Supp.2d 576 (E.D.N.Y. 2007).

458. *Green Tree Acceptance, Inc. v. Blalock*, 525 So.2d 1366 (Ala. 1988); *Case v. Mills Novelty Co.* 193 So. 625 (Miss. 1940); *Conklin Limestone Co. v. Linden*, 22 A.D.2d 63, 253 N.Y.S.2d 578 (3rd Dept. 1964); *Wolforth v. A.J. Deer Co., Inc.*, 293 S.W. 590 (Tex.Civ.App. 1927); *Penberthy Electromelt Co. v. Star City Glass Co.*, 135 S.E.2d 289 (W.Va. 1964).

business.[459] In another Alabama case the court stated that "simply overseeing the performance of contracts inside the state will not preclude a corporation engaged in interstate commerce from enforcing such contracts in our courts."[460] However, in another Alabama case, the court held that in contracting to sell, deliver, assemble and install a pool at a residence in Alabama, a foreign corporation was engaged in intrastate business.[461]

A Massachusetts statute provides that "engaging in any other activity requiring the performance of labor" is doing business in the state while Kansas law states that selling, by contract consummated outside the state of Kansas, and agreeing, by the contract, to deliver into the state of Kansas machinery, plants or equipment, the construction, erection or installation of which within the state requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation, is not doing business.[462]

On the other hand, an Ohio statute provides that qualification is not required of "corporations engaged in this state solely in interstate commerce, including the installation, demonstration, or repair of machinery or equipment sold by them in interstate commerce, by engineers, or by employees especially experienced as to such machinery or equipment, as part thereof. . ."[463] Thus a foreign corporation that entered into a preventative maintenance and repair contract with an Ohio agent to keep equipment sold at a functioning level, did no more than engage in interstate commerce under the terms of the Ohio statute.[464]

Where the foreign corporation merely collects data within a state to be analyzed in another state, qualification will not ordinarily be required.[465]

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459. *Billions v. White & Stafford Furniture Co.*, 528 So.2d 878 (Ala.Civ.App. 1988).

460. *North Alabama Marine, Inc. v. Sea Ray Boats, Inc.*, 533 So.2d 598 (Ala. 1988).

461. *Brown v. Pool Depot, Inc.*, 853 So. 2d 187 (Ala. 2002).

462. Massachusetts General Laws Annotated, Ch. 156D, Sec. 15.01; Kansas Statutes Sec. 17-7932.

463. Ohio Revised Code Annotated, Sec. 1703.02.

464. *Saeilo Machinery, Inc. v. Myers*, 489 N.E.2d 1083 (Ohio Com. Pl. 1985).

465. *Linton & Co., Inc. v. Robert Reid Engineers, Inc.*, 504 F.Supp. 1169 (M.D. Ala. 1981); *Utility Ecomony Co., Inc. v. Luders Marine Const. Co.*, 15 Conn.Supp. 213 (Ct.Com.Pleas, Fairfield Co. 1947); *Surveyors, Inc. v. Berger Bros. Co.*, 9 Conn.Supp. 175 (Super. Ct., New Haven Co. 1941); *Aero Service Corp. (Western) v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962); *Expense Reduction Services, Inc. v. Jonathan Woodner Co., Inc.*, 720 F.Supp. 262 (S.D.N.Y. 1989); *Alan Porter Lee, Inc. v. DuRite Prod. Co., Inc.*, 43 Berks Co. L.J. 49 (Ct. Com. Pleas 1948), reversed on other

A federal court in Virginia held that a foreign corporation providing professional recruiting services was not doing business in Virginia where it emailed information about possible job candidates to the defendant in Virginia. Whether the defendant offered a position to candidates was the defendant's business in Virginia, not the plaintiffs.[466] A federal court held that where a foreign corporation's activities in Louisiana were limited to the management of international ocean going vessels that went in and out of Louisiana's waters and which had no employees, offices, or operations in Louisiana was not transacting intrastate business in Louisiana.[467] A Nevada corporation in the business of producing concerts was doing business in California and could not maintain its action alleging losses suffered by a concert it put on in California.[468] Conducting operations or performing work or services in good faith in response to a disaster or emergency event does not constitute doing business in Pennsylvania.

Correspondence Schools

Where a foreign corporation operating a correspondence school limits its intrastate activities to the solicitation of students, the forwarding of the educational material, and the collection and for-warding of the fees, the corporation will not be required to qualify.[469]

However, if the corporation performs additional activities in this state, such as the sale of books, qualification probably will be required.[470]

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grounds 366 Pa. 548, 79 A.2d 218 (1951); *Ford, Bacon & Davis, Inc. v. Terminal Warehouse Co.*, 207 Wis. 467, 240 N.W. 796 (1932).

466. *Search Consultants of New England, Inc. v. Driver, Inc.*, 2020 US Dist LEXIS 84766 (ED Va. 2020).

467. *Kholkar Vishveshwar Ganpat v. Eastern Pacific Shipping, PTE, Ltd.*, 2020 U.S. Dist. LEXIS 13586 (D. N.D. Cal. 2020).

468. *Harmon v. Dirubio*, 2021 Cal. App. Unpub. Lexis 4914.

469. *International Textbook Co. v. Pigg*, 217 U.S. 91, 30 S.Ct. 481 (1910); *International Textbook Co. v. Lynch*, 218 U.S. 664, 31 S.Ct. 225 (1910), reversing per curiam 81 Vt. 101, 69 A. 541 (1908); *International Textbook Co. v. Peterson*, 218 U.S. 664, 31 S.Ct. 225 (1910), reversing per curiam 133 Wis. 302, 113 N.W. 730 (1907); *Air Conditioning Training Corp. v. Majer*, 324 Ill. App. 387, 58 N.E.2d 294 (1944); *International Text-Book Co. v. Gillespie*, 229 Mo. 397, 129 S.W. 922 (1910); *Federal Schools, Inc. v. Sidden*, 13 N.J. Misc. 892, 188 A. 446 (N.J. Supreme Ct. 1937).

470. *Refrigeration & Air Conditioning Institute, Inc. v. Hilyard*, 18 N.W.2d 548 (Neb. 1945); *International Textbook Co. v. Connelly*, 67 Misc. 49, 124 N.Y.S. 603 (Monroe Co.Ct. 1910), affirmed 206 N.Y. 188, 99 N.E. 722 (1912).

Field Warehousing

Field warehousing is a financial technique developed to aid manufacturers in securing working capital from banks. It was defined in a decision as "warehousing the owner's goods on the premises of the owner or of the former owner."[471] The scope of warehousing activities frequently includes the issuance of "warehousing receipts" to banks which effect loans to the owner upon the guaranty of the warehouse company that the volume and value of the merchandise will be maintained at an agreed level.[472] The warehouse company maintains legal custody of the goods and receives a fee for its services.

There can be little doubt that when a warehouse company carries on such activities in a foreign state, it is regarded as doing business there. It does so through those employees or agents who act for it and through its custody of the goods of others, for which it assumes responsibility and thus receives remuneration for activity carried on within the state.

Installation of Machinery and Equipment

A foreign corporation selling machinery or equipment in interstate commerce to a purchaser in a foreign state may be required to qualify if it installs the machinery or equipment.[473] The principal deter-

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471. *American Can Co. v. Erie Preserving Co.*, 183 Fed. 96 (2d Cir. [N.Y.] 1910).

472. "There are many cases upholding the validity of the so-called 'field storage' system for the warehousing of heavy or bulky material, the actual moving of which is inexpedient. In such cases it has been held that if the warehousman fully discharges his duty to negative ostensible ownership by the pledgor, withdrawal and substitution will not destroy the lien. *Philadelphia Warehouse Co. v. Winchester* (C.C.) 156 F. 600, 614 [D. Del. 1907]; *First National Bank v. Pennsylvania Trust Co.*, 124 F. 968 (C.C.A. 3) [3rd Cir. [Pa.] 1903]; *Bush v. Export Storage Co.*, 136 F. 918 (C.C.) [E.D. Tenn. 1904]; *Fidelity Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co.*, 81 F. 439 (C.C.) [W.D. Va. 1896]." *Manufacturers Acceptance Corp. v. Hale*, 65 F.2d 76, 78 (6th Cir. [Tenn.] 1933).

473. *Billions v. White & Stafford Furniture Co.*, 528 So.2d 878 (Ala.Civ.App. 1988); *Citizens' Nat. Bank v. Bucheit*, 14 Ala.App. 511, 71 So. 82 (1916); *Cobb v. York Ice Machinery Corp.*, 230 Ala. 95, 159 So. 811 (1935); *Vest v. Night Commander Lighting Co.*, 24 Ala.App. 549, 139 So. 295 (1931); *Crawford v. Louisville Silo and Tank Co.*, 166 Ark. 88, 265 S.W. 355 (1924); *American Bridge Co. v. Honstain*, 113 Minn. 16, 128 N.W. 1014 (1910); State, ex rel. *Hays v. Robertson*, 271 Mo. 475, 196 s.W. 1132 (1917), appeal dismissed 251 U.S. 256, 40 S.Ct. 133 (1920); *Abner Mfg. Co. of Wapakoneta, Ohio v. McLaughlin*, 41 N.M. 97, 64 P.2d 387 (1937); *Reese v. Harper Surface Finishing Systems*, 517 N.Y.S.2d 522 (A.D. 2 Dept. 1987); *International Fuel Service Corp. v. Stearns*, 304 Pa. 157, 155 A. 285 (1931); *A. Leschen and Sons Rope Co. v. Moser*, 159 S.W. 1018 (Tex.Civ.App. 1913); *Abner Mfg. Co. v. Nevels*, 118 S.W.2d 607 (Tex.Civ.App. 1938); *Levy v. National Radiator Corp.* 44 S.W.2d 999 (Tex.Civ.App. 1931).

minant is whether the installation was of a technical or non-technical nature.

If the installation is highly technical and requires special skill, qualification will generally not be required.[474] The statutes of Delaware, Kansas, Ohio and Oklahoma specifically provide that such technical installations will not require qualification.[475] In such cases, the installation is held to be an integral part of the interstate transaction since the transaction could not be completed without the seller's installation. A federal court in Kansas held that a corporation that manufactured finishing and processing equipment in Missouri and shipped and installed it in Kansas was not doing business in Kansas under the Kansas provision. Furthermore, its training of the buyer's employees to use the equipment did not constitute doing business because it was integral to the manufacture and installation.[476]

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474. *York Mfg. Co. v. Colley*, 247 U.S. 21, 38 S.Ct. 430 (1918); *Phenix City-Cobb Hospital Authority, Inc. v. Sun Pointe Property, Inc.*, 689 So.2d 797 (Ala. 1997); *Cobb v. York Ice Machinery Co.*, 30 Ala. 95, 159 So. 811 (1935); *Puffer Mfg. Co. v. Kelly*, 198 Ala. 131, 73 So. 403 (1916); *Weber Showcase and Fixture Co., Inc. v. Co-Ed Shop*, 47 Ariz. 415, 56 P.2d 67 (1936); *General Talking Pictures Corp. v. Shea*, 185 Ark. 777, 49 S.W.2d 359 (1932); *Gates Iron Works v. Cohen*, 7 Col. App. 341, 43 P. 667 (1896); *Black-Clawson Co. v. Carlyle Paper Co.*, 133 Ill.App. 322 (1914); *Vilter Mfg. Co. v. Evans*, 86 Ind.App. 144, 154 N.E. 677 (1927); *Palmer v. Aeolian Co.*, 46 F.2d 746 (8th Cir. [Iowa] 1931); *Kaw Boiler Works Co. v. Interstate Refineries Inc.*, 118 Kan. 693, 236 P. 654 (1925), petition for cert. dismissed, 269 U.S. 595, 46 S.Ct. 104 (1925); *United Iron Works Co. v. Watterson Hotel Co.*, 182 Ky. 113, 206 S.W. 166 (1918); *Moline Furniture Works v. Club Holding Co.*, 280 Mich. 587, 274 N.W. 338 (1937); *Richards-Wilcox Mfg. Co. v. Talbot & Meir*, 252 Mich. 622, 233 N.W. 437 (1930); *J.C. Boss Engineering Co. v. Gundeson Brick & Tile Co.*, 168 Minn. 183, 209 N.W. 876 (1926); *Fred Hale Machinery, Inc. v. Laurel Hill Lumber Co., Inc.*, 483 F.2d 58 (5th Cir. [Miss.] 1973); *Hess Warming and Ventilating Co. v. Burlington Grain Elevator Co.*, 280 Mo. 163, 217 S.W. 493 (1919); *General Fire Extinguisher Co. v. Northwestern Auto Supply Co.*, 211 Pac. 308 (Mont. 1922); *Metal Door & Trim Co. v. Hunt*, 170 Okla. 240, 39 Pac.2d 72 (1934); *John Williams, Inc. v. Golden and Crick*, 247 Pa. 418, 93 A.505 (1915); *Flint & Walling Mfg. Co. v. McDonald*, 21 S.D. 526, 114 N.W. 684 (1908); *Davis & Rankin Bldg. & Mfg. Co. v. Caigle*, 53 S.W. 240 (Tenn. Ct. Chancery App. 1899); *Friedman v. Georgia Showcase Co.*, 27 Tenn.App. 574, 183 S.W.2d 9 (1944); *Kimball-Krough Pump Co. v. Judd*, 88 S.W.2d 579 (Tex.Civ. App. 1935); *Wandel Western Inc. v. Caraway*, 105 F.Supp. 633 (N.D. Tex. 1952); *Advance-Rumely Thresher Co. Inc. v. Stohl*, 75 Utah 124, 283 P. 731 (1929); *Kinnear & Gager Mfg. Co. v. Miner*, 96 A. 333 (Vt., 1916); *Pfaudler Co. v. Westphal*, 190 Wis. 486, 209 N.W. 700 (1926); *S.F. Bowser & Co. v. Schwartz*, 152 Wis. 408, 140 N.W. 51 (1913); *Creamery Package Mfg. Co. v. Cheyenne Ice Cream Co.*, 55 Wyo. 277, 100 P.2d 116 (1940); *Penberthy Electromelt Co. v. Star City Glass Co.*, 135 S.E.2d 289 (W. Va. 1964).

475. Delaware Code, Tit. 8, Sec. 373; Kansas Statutes, Sec. 17-7932; Ohio Revised Code Annotated, Sec. 1703.02; Oklahoma Statutes Annotated, Tit. 18, Sec. 1132.

476. *Albers Finishing & Solutions v. RK, Inc.,* 2018 U.S. Dist. LEXIS 204858 (D. Kan.); *See also Matter of Delta Molded Products, Inc.*, 4416 F.Supp. 938 (N.D. Alabama, 1976), aff'd sub. nom. *Sterne v. Improved Machinery, Inc.*, 571 F.2d 957 (5th Cir. 1978).

If the installation is not technical and does not require special skill, the foreign corporation will be required to qualify.[477] The courts appear to reason that, since the installation is not technical and therefore need not be performed with the seller's expertise, it is not a necessary part of the interstate transaction. In these cases the installation is considered local in nature.

Although the courts have ordinarily given controlling significance to the technical or non-technical nature of the installation, other factors have been considered. For example, where the installation takes place over a long period of time, qualification has usually been required, sometimes in spite of the technical nature of the installation.[478] If the installation is not incidental to a sale but constitutes a substantial part of the foreign corporation's business, qualification may be required. For example, where an unqualified foreign corporation entered into a contract to assemble a machine at a site in Alabama and where the corporation was not involved in the interstate sale or delivery of the machine, the

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477. *Browning v. City of Waycross*, 233 U.S. 16, 34 S.Ct. 578 (1914); *Phenix City-Cobb Hospital Authority, Inc. v. Sun Pointe Property, Inc.*, 689 So.2d 797 (Ala. 1997); *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala.Civ.App. 1989); *Hogan v. Intertype Corp.*, 136 Ark. 52, 206 S.W. 58 (1918); *A.H. Andrews Co. v. Colonial Theatre Co.*, 283 F. 471 (D.Mich. 1922); *B.F. Sturtevant Co. v. Adolph Leitelt Ironworks*, 196 Mich. 552, 163 N.W. 13 (1917); *Phillips Co. v. Everett*, 262 F. 341 (6th Cir. [Mich.] 1919), cert.den. 252 U.S. 579, 40 S.Ct. 344 (1919); *Power Specialty Co. v. Michigan Power Co.*, 190 Mich. 699, 157 N.W. 408 (1916); *Loomis v. People's Const. Co.*, 211 F. 453 (6th Cir. [Mich. (Wis. law)] 1914); *Palm Vacuum Cleaner Co. v. B.F. Bjornstad*, 136 Minn. 38, 161 N.W. 215 (1917); *National Refrigerator Co. v. Southwest Missouri Light Co.*, 288 Mo. 290, 231 S.W. 930 (1921); *Mandel Bros., Inc. v. Henry A. O'Neil, Inc.*, 69 F.2d 452 (8th Cir. [S.D.] 1934); *Lummus Cotton Gin Co. v. Arnold*, 151 Tenn. 540, 269 S.W. 706 (1925); *Peck-Williamson Heating and Ventilating Co. v. McKnight & Merz*, 140 Tenn. 563, 205 S.W. 419 (1918); *Bryan v. S.F. Bowser & Co.*, 209 S.W. 189 (Tex.Civ.App. 1919); *Elliot Electric Co. v. Clevenger*, 300 S.W. 91 (Tex.Civ.App. 1927); *Western Gas Construction Co. v. Commonwealth*, 147 Va. 235, 136 S.E. 646 (1927).

478. *Kansas City Structural Steel Co. v. State of Arkansas*, 269 U.S. 148, 46 S.Ct. 59 (1925); *General Railway Signal Co. v. Commonwealth*, 246 U.S. 500, 38 S.Ct. 360 (1918); *Perkins Mfg. Co. v. Clinton Construction Co. of Cal.*, 295 Pac. 1 (Cal. 1930); *United States Construction Co. v. Hamilton National Bank of Ft. Wayne*, 73 Ind. App. 149, 126 N.E. 866 (1920); *Haughton Elevator & Machine Co. v. Detroit Candy Co. Ltd.*, 156 Mich. 25, 120 N.W. 18 (1909), *Case v. Mills Novelty Co.*, 187 Miss. 673, 193 So. 625 (1940); *National Refrigerator Co. v. Southwest Missouri Light Co.,* 288 Mo. 290, 231 S.W. 930 (1921); State ex rel. *Hays v. Robertson,* 271 Mo. 475, 196 S.W. 1132 (1917); *Ensign v. Christiansen*, 79 N.H. 353, 109 Atl. 857 (1920); *National Sign Corp. v. Maccar Cleveland Sales Corp.,* 33 Ohio App. 89, 168 N.E. 758 (1929); *Mandel Bros, Inc. v. Henry A. O'Neil, Inc.*, 69 F.2d 452 (8th Cir. [S.D.] 1934); *Bryan v. S.F. Bowser and Co.*, 209 S.W. 189 (Tex.Civ.App. 1919); *North American Service Co. v. A.T. Vick Co.*, 243 S.W. 549 (Tex.Civ.App. 1922); *S.R. Smythe Co. v. Ft. Worth Glass and Sand Co.*, 105 Texas 8, 142 S.W. 1157 (1912); *Western Gas Construction Co. v. Commonwealth*, 147 Va. 235, 36 S.E. 646 (1927); *Interstate Construction Co. v. Lakeview Canal Co.*, 31 Wyo. 191, 224 Pac. 850 (1924).

Alabama court held that the transaction was intrastate and would not allow the foreign corporation to enforce the contract.[479]

However, in another Alabama case, a foreign corporation sold and installed a complex and sophisticated machine in Alabama. The machine broke twice. The first time, the foreign corporation sent a repairman to Alabama. The second time, the buyer found a technician in Alabama to do the repairs. The court ruled that the foreign corporation's activities in assembling and installing the machine were essential to the basic interstate sale and would not require qualification. However, the subsequent repair was not merely incidental to the sale but a separate and distinct undertaking and because other sources in Alabama existed for these services, the foreign corporation's activities in repairing the machine were intrastate in nature.[480]

Where a corporation's business is not manufacturing and selling but rather contracting, engineering, or performing services, the installation of machinery and equipment may require qualification.[481]

The use by the foreign corporation of local labor to assist in the installation has been given weight by some courts.[482]

The following have also been regarded by the courts as indications of doing business: purchasing material locally;[483] obtaining building

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479. *S & H Contractors, Inc. v. A.J. Taft Coal Co., Inc.*, 906 F.2d 1507 (11th Cir. 1990).

480. *TSR, Inc. v. Quincy Compressor Division of Coltec Indus., Inc.,* 742 So.2d 792 (Ala. Civ. App. 1998)

481. *Sanwa Business Credit Corp. v. G.B. "Boots" Smith Corp.*, 548 So.2d 1336 (Ala. 1989); *Buffalo Refrigerator Mach. Co. v. Penn Heat & Power Co.,* 178 Fed. 696 (3rd Cir. [Pa.] 1910). (The cases cited in the discussions of "Contracting" may also be of interest in this area.)

482. *United States Const. Co. v. Hamilton Natl. Bank of Ft. Wayne*, 73 Ind.App. 149, 126 N.E. 866 (1920); A.H. *Andrews v. Colonial Theatre Co.*, 283 F. 471 (D.Mich. 1922); *General Highways System Inc. v. Dennis*, 251 Mich. 152, 230 N.W. 906 (1930); *Case v. Mills Novelty Co.*, 187 Miss. 673, 193 So. 625 (1940); *Portland Co. v. Hall & Grant Const. Co.*, 121 App.Div. 779, 106 N.Y.S. 649 (1st Dept. 1907), aff. (mem.) 124 App.Div. 937, 109 N.Y.S. 1142 (1st Dept. 1908).

483. *United States Const. Co. v. Hamilton Natl. Bank of Ft. Wayne*, 73 Ind.App. 149, 126 N.E. 866 (1920); *Haughton Elevator and Machine Co. v. Detroit Candy Co., Ltd.*, 156 Mich. 25, 120 N.W. 18 (1909); *Phillips Co. v. Everett*, 262 F. 341 (6th Cir. [Mich.] 1919), cert. den. 252 U.S. 579, 40 s.Ct. 344 (1919); In re Springfield Realty Co., 257 F. 785 (E.D. Mich. 1919); *Palm Vacuum Cleaner Co. v. B.F. Bjornstad*, 136 Minn. 38, 161 N.W. 215 (1917); *Viking Equipment Co. v. Central Hotel Co., Inc.*, 230 Mo.App. 304, 91 S.W.2d 94 (1936); *Portland Co. v. Hall & Grant Const. Co.*, 121 App.Div. 779, 106 N.Y.S. 649 (1st Dept. 1907), aff'd (mem.) 124 App.Div. 937, 109 N.Y.S. 1142 (1st Dept. 1908); *Peck-Williamson Heating and Ventilating Co. v. McKnight and Merz*, 140 Tenn. 563, 205 S.W. 419 (1918); *Bryan v. S.F. Bowser and Co.*, 209 S.W. 189 (Tex.Civ.App. 1919); *Elliot Electric Co. v. Clevenger*, 300 S.W. 91 (Tex.Civ.App. 1927); *Western Gas Construction Co. v. Commonwealth*, 147 Va. 235, 136 S.E. 646 (1927).

permits and negotiating leases in connection with the installation;[484] the availability of local persons or organizations capable of making the installation.[485]

Research Work

A corporation organized for the purpose of doing research for others which enters a foreign state to do such work will be required to qualify under the general rule that a foreign corporation is doing business in a state when it transacts some substantial part of its ordinary business there. For example, in a Missouri case,[486] a foreign corporation contracted to provide campaign services, including research and report preparation, to a candidate in Missouri. The court stated that if the corporation had merely given the product of its research to the candidate from its out-of-state office, it could have argued that qualification was not required. However, because the corporation sent its representatives into Missouri to consult with and advise the candidate, its activities were intrastate and it had to qualify.

If the research work consists merely of the collection of data in the foreign state, which data is analyzed and processed outside the state, the courts have held that qualification is not required.[487] Thus, a Texas corporation, which entered into a contract in New York to analyze the utility bills of a New York company and determine how it could obtain a refund was held not to be doing business in New York where it performed all of its analytical work in Texas.[488] A corporation was not doing business in Ohio when it conducted research into the activities of an Ohio university where it had only two Ohio focused efforts in 20 years,

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484. *General Highways System, Inc. v. Dennis*, 251 Mich. 152, 230 N.W. 906 (1930); In re Springfield Realty Co., 257 F. 785 (E.D. Mich. 1919); *Viking Equipment Co. v. Central Hotel Co., Inc.*, 230 Mo.App. 304, 91 S.W.2d 94 (1936); *Wolforth v. A.J. Deer Co., Inc.* 293 S.W. 590 (Tex.Civ. App. 1927).

485. *Bryan v. S.F. Bowser and Co.*, 209 S.W. 189 (Tex.Civ.App. 1919).

486. *Campaign Works, Ltd. v. Hughes*, 779 S.W.2d 305 (Mo.App. 1989).

487. *Linton & Co. Inc. v. Robert Reid Engineers, Inc.*, 504 F.Supp. 1169 (M.D. Ala. 1981); *Utility Economy Co., Inc. v. Luders Marine Const. Co.*, 15 Conn.Supp. 213 (Ct.Comm.Pleas, Fairfield Co. 1947); *Surveyors, Inc. v. Berger Bros. Co.*, 9 Conn.Supp. 175 (Super.Ct., New Haven Co. 1941); *Aero Service Corp. (Western) v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962); *Alan Porter Lee, Inc. v. Du-Rite Prod. Co., Inc.*, 43 Berks Co. L.J. 49 (Ct.Com.Pleas. 1948), reversed on other grounds 366 Pa. 548, 79 A.2d 218 (1951); *Ford, Bacon & Davis, Inc. v. Terminal Warehouse Co.*, 207 Wis. 467, 240 N.W. 796 (1932).

488. *Expense Reduction Services, Inc. v. Jonathan Woodner Co., Inc.*, 720 F.Supp. 262 (S.D.N.Y. 1989).

no offices or employees in Ohio and conducted nearly all of its activities from its Washington DC offices.[489]

Transportation Companies

Corporations engaged in the transportation of passengers or freight are not required to qualify in a state where their activities are exclusively interstate, even though they have offices and solicit orders in the state. However, if these corporations also engage in intrastate activities, they are required to qualify.

It is well established that the maintenance of an office solely to further interstate commerce does not subject a foreign corporation to qualification requirements.[490] A transportation company in this category would therefore not be required to qualify.

Carriers using navigable waterways may be exempt from state regulation by the fact that navigable waters are controlled by the federal government.[491] Some state qualification statutes have been held constitutionally inapplicable to such carriers.[492]

Carriers operating in navigable waters which do not operate outside the boundaries of the state may be required to qualify.[493] A shipping company whose agent in the state arranged for tugs and port facilities was held not subject to qualification requirements since these activities were incidental to interstate commerce.[494]

If a transportation company carries persons or property from one point to another within the same state it is probably doing intrastate business and required to qualify. The fact that the carrier crosses a second state in reaching its destination in the state of origin does not transform the activity into interstate commerce.[495]

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489. *State ex rel Physicians Committee for Responsible Medicine v. Board of Trustees of Ohio State Univ.*, 843 N.E.2d 174 (Ohio 2006).

490. *The Journal Company of Troy v. F.A.L. Motor Co.*, 181 Ill.App. 530 (1913); *Federal Schools, Inc. v. Sidden*, 14 N.J. Misc. 892, 188 Atl. 446 (N.J. Supreme 1937); *International Text Book Co. v. Tone*, 220 N.Y. 313, 115 N.E. 914 (1917); *Fruit Dispatch Co. v. Wood*, 42 Okla. 79, 140 Pac. 1138 (1914).

491. *Gibbons v. Ogden*, 9 Wheat 1, 6 L.Ed. 23 (1824).

492. *Ryman Steamboat Line Co. v. Commonwealth*, 101 S.W. 403 (Ky.Ct.App. 1907); *New Orleans & Memphis Packet Co. v. James*, 32 F. 21 (E.D. La. 1887).

493. *Independent Tug Line v. Lake Superior Lumber & Box Co.*, 146 Wis. 121, 131 N.W. 408 (1911).

494. *Upper Lakes Shipping, Ltd. v. Seafarers' Int'l Union of Canada*, 18 Wis.2d 646, 119 N.W.2d 426 (1963).

495. *New York ex rel. Cornell Steamboat Co. v. Sohmer*, 235 U.S. 549, 35 S.Ct. 162 (1915);

A foreign airline, which contracted in Nevada with a Nevada resort to fly its customers between two points in California, was not required to qualify in Nevada because the contract was in furtherance of interstate commerce.[496] An Ohio court held that a foreign company in the motor carrier business was not engaged solely in interstate business where it had a facility in Ohio and two of its eight employees worked in Ohio.[497]

Property Ownership

Personal Property Ownership

Sec. 15.01(b)(9) of the Revised Model Act provides that "owning, without more . . . personal property" does not constitute transacting business. This, or a provision with a similar effect, has been adopted by Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, West Virginia, and Wyoming. Montana's law states that owning personal property that is acquired incident to enforcing mortgages and security interests in property securing debts is not doing business "if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function." North Dakota's law states "any foreign corporation that owns income-producing . . . tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state." The Model Act (2016), Sec. 15.05(a)(10) provides that owning, protecting, and maintaining property does not constitute doing business. Florida, Iowa, Montana, and Virginia have adopted that provision.

Pennsylvania's statute provides that acquiring, owning, holding, leasing as a lessee, conveying and transferring, without more and whether as fiduciary or otherwise personal property and security interests therein — does not constitute doing business.

Ewing v. City of Leavenworth, 226 U.S. 464, 33 S.Ct. 157 (1913); *Lehigh Valley R.R. Co. v. Pennsylvania*, 145 U.S. 192, 12 S.Ct. 806 (1892).

496. *Peccole v. Fresno Air Service, Inc.*, 469 P.2d 397 (Nev. 1970).

497. *Stepp v. Proficient Transport, Inc.*, 2017 Ohio App. LEXIS 4324.

Minnesota's statute provides that "Holding title to and managing . . . personal property, or any interest therein, situated in this state, as executor of the will or administrator of the estate of any decedent, as trustee of any trust, or as guardian of any person or conservator of any person's estate" does not constitute doing business.

When a foreign corporation does more than just hold personal property, such as selling or shipping the property within the state, qualification may be required.

A foreign corporation that maintains a stock of goods within a state from which it makes delivery to customers in the state, is ordinarily regarded by the courts as doing business and required to qualify.[498] It does not appear to be significant whether the stock is large or small, or whether it is located in a public warehouse, storeroom, office, freight car or any other place. However, where there was testimony that a foreign corporation whose business was primarily in interstate commerce had warehoused products in Georgia during one Christmas sales

498. *Sonneborn Bros. v. Cureton*, 262 U.S. 506, 43 S. Ct. 643 (1923); *Dalton Adding Machine Co. v. Commonwealth of Virginia*, 246 U.S. 498, 38 S. Ct. 361 (1918); *Cheney Bros. v. Commonwealth of Massachusetts*, 246 U.S. 147, 38 S. Ct. 295 (1918); *Singer Sewing Machine Co. v. Brickell*, 233 U.S. 304, 34 S. Ct. 493 (1914); *Armour Packing Co. v. Lacy*, 200 U.S. 226, 26 S. Ct. 232 (1906); *Kehrer v. Stewart*, 197 U.S. 60, 25 S. Ct. 403 (1905); *Paul v. W.G. Patterson Cigar Co.*, 98 So. 787 (Ala. 1924); *Miellmier v. Toledo Scales Co.*, 193 S.W. 497 (Ark. 1917); *Reliance Fertilizer Co. v. Davis*, 169 So. 579 (Fla. 1936); *Adjustment Bureau of the Portland Ass'n of Credit Men v. Conley*, 255 Pac. 414 (Ida. 1927); *Union Cloak & Suit Co. v. Carpenter*, 102 Ill. App. 339 (1902); *Elliott v. Parlin & Orendorff Co.*, 81 Pac. 500 (Kan. 1905); *City of Newport v. French Bros. Bauer Co.*, 183 S.W. 532 (Ky.Ct. App. 1916); *R.J. Brown Co. v. Grosjean*, 189 La. 778, 180 So. 634 (1938); *Dominion Fertilizer Co. v. White*, 96 Atl. 1069 (Me. 1916); *E.A. Lange Medical Co. v. Brace*, 186 Mich. 453, 152 N.W. 1026 (1915); *Thomas Mfg. Co. v. Knapp*, 101 Minn. 432, 112 N.W. 989 (1907); *Singer Mfg. Co. v. Adams*, 165 Fed. 877 (5th Cir. [Miss.] 1909), appeal dismissed per curiam, 216 U.S. 617, 39 S. Ct. 577 (1910); *Wiley Electric Co. of Jackson v. Electric Storage Battery Co.*, 147 So. 773 (Miss. 1933); *M.A. Kelly Broom Co. v. Mo. Fidelity & Casualty Co.*, 191 S.W. 1128 (Mo. App. 1917); *Fay Fruit Co. v. McKinney*, 77 S.W. 160 (Mo. App. 1903); *Seneca Textile Corp. v. Missouri Flower & Feather Co.*, 119 S.W.2d 991 (Mo. app. 1938); *Watkins v. Donnell*, 179 S.W. 980 (Mo. App. 1915); *American Can Co. v. Grassi Contracting Co., Inc.* 102 Misc. 230, 168 N.Y.S. 689 (Sup. Ct. 1918); *Pittsburgh Electric Specialties Co., Inc. v. Rosenbaum*, 102 Misc. 520, 169 N.Y.S. 157 (Sup. Ct. 1918); *Bertolf Bros., Inc. v. Leuthardt*, 261 App. Div. 981, 26 N.Y.S.2d 114 (2d Dept. 1941); *Manhattan Terrazzo Brass Strip Co., Inc. v. A. Benzing and Sons*, 50 N.E.2d 570 (Ohio App. 1943); *Vermont Farm Machinery Co. v. Hall*, 156 Pac. 1073 (Ore. 1916); *The Milson Rendering & Fertilizer Co. v. Kelly*, 10 Pa. Super, 565 (1899); *National Cash Register Co. v. Ondrusek*, 271 S.W. 640 (Tex. Civ. App. 1925); *Barnhard Bros. & Spinder v. Morrison*, 87 S.W. 376 (Tex. Civ. App. 1905); *Mud Control Laboratories v. Covery*, 2 Utah 2d 85, 269 P.2d 854 (1954); *Dalton Adding Machine Co. v. Lindquist*, 137 Wash. 375, 242 Pac. 643 (1926); *State v. Richards*, 32 W. Va. 348, 9 S.E. 245 (1889); *Sprout, Waldron & Co. v. Amery Mercantile Co.*, 162 Wis. 279, 156 N.W. 158 (1916); *Duluth Music Co. v. Clancey*, 139 Wis. 189, 120 N.W 854 (1905).

season, and had made sales from that warehouse the court held that this was an isolated transaction under the statute and did not require qualification.[499]

It has also been held that qualification is required where the foreign corporation maintains "spot" stocks, strategically located so as to furnish customers with quick delivery.[500] This is true although the bulk of the orders are filled from outside the state.

A foreign corporation whose employees arranged "fashion shows" at which they took orders for costume jewelry for acceptance out of state was held to be doing intrastate business for purposes of qualification where the employees regularly sold jewelry on the spot from their sample kits. The court held that even if the sales were unauthorized and against company policy, the corporation ratified them by accepting their benefits. The corporation was not permitted to bring suit in Oklahoma.[501]

There is little difficulty in recognizing a stock of goods deposited at a fixed location as coming within these general rules. However, confusion has arisen in connection with "mobile" stocks, brought into a state on trucks and sold, from the trucks, door-to-door. The fact that the goods cross state lines, and that they are not set down at a permanent storehouse, should not properly exclude them from the general rule since they constitute a stock of goods within a state from which the foreign corporation makes deliveries to customers in the state; the foreign corporation so engaged will be required to qualify.[502]

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499. *Al & Dick, Inc. v. Cuisinarts, Inc.*, 528 F. Supp. 633 (N.D. Ga. 1981).

500. *Dalton Adding Machine Co. v. Commonwealth of Virginia*, 246 U.S. 498, 38 S. Ct. 361 (1918); *Union Cloak & Suit Co. v. Carpenter*, 102 Ill. App. 399 (1902); *Dominion Fertilizer Co. v. White*, 96 Atl. 1069 (Me. 1916); *E.A. Lange Medical Co. v. Brace*, 186 Mich. 453, 152 N.W. 1026 (1915); *Cohn-Hall Marx Co. v. Feinberg*, 214 Minn. 584, 8 N.W. 2d 825 (1943); *Thomas Mfg. Co. v. Knapp*, 101 Minn. 432, 112 N.W. 989 (1907); *Wiley Electric Co. of Jackson v. Electric Storage Battery Co.*, 147 So. 773 (Miss., 1933) M.A. *Kelly Broom Co. v. Mo. Fidelity & Casualty Co.*, 191 S.W. 1128 (Mo. App. 1917); *Pittsburgh Electric Specialties Co., Inc. v. Rosenbaum*, 102 Misc. 520, 169 N.Y.S. 157 (Sup. Ct. 1918); *Manhattan Terrazzo Brass Strip Co., Inc. v. A. Benzing & Sons*, 50 N.E.2d 570 (Ohio, 1943); *Barnhard Bros. & Spindler v. Morrison*, 87 S.W. 376 (Tex. Civ. App. 1905); *National Cash Register Co. v. Ondrusek*, 271 S.W. 640 (Tex. Civ. App. 1925); *Mud Control Laboratories v. Covey*, 2 Utah 2d 85, 269 P.2d 845 (1954).

501. *C.H. Stuart, Inc. v. Bennett*, 617 P.2d 879 (Okla. 1980).

502. *J.R. Watkins Co. v. Sanford*, 52 So.2d 325 (La App. 1951); *Baldwin Music Shop, Inc. v. Watson*, 102 S.W.2d 478 (Tex. Civ. App. 1937).

A foreign corporation in the business of leasing shipping containers was held doing business in Florida, where it serviced, handled, stored, repaired and maintained those containers it had not leased.[503]

An Alabama court held that ownership of equipment located in Alabama, which was rented to Alabama residents, was an intrastate activity and the foreign lessor corporation was not permitted to maintain its action because it was not qualified.[504]

Processing

When a foreign corporation sends raw materials to a processor or manufacturer in another state which, after processing, are to be returned to the foreign corporation, the question arises as to whether these activities require qualification. There can be no question that the processor or manufacturer is doing business in its own state and that the transaction would not be regarded as interstate commerce as to it.[505] But whether the corporation sending the raw materials for processing or manufacturing will have to qualify depends upon its activities in the state.

Where a Tennessee corporation contracted in Tennessee for the cultivation of certain crops in Mississippi, and sent an independent contractor into Mississippi to harvest the crop and deliver it to Tennessee, the Mississippi court held that the transactions in Mississippi were incidental to a contract in interstate commerce, and qualification was not required.[506] However, where a New York corporation sent materials to New Jersey to be processed, the court held that it was transacting business in New Jersey so as to require qualification.[507] The court further held that while the corporation was barred from maintaining an action in New Jersey because it was not qualified, no such disability existed as to the trustee in bankruptcy of the corporation.

Where the processor or manufacturer holds the goods for the foreign corporation after processing, awaiting receipt of orders for their sale and shipment, a different situation is presented. Under such circumstances, the processor or manufacturer could be considered the agent

503. *Integrated Container Services, Inc. v. Overstreet*, 375 So.2d 1146 (Fla. App. 1979).

504. *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989).

505. *Department of Treasury of Indiana v. Ingram-Richardson Mfg. Co. of Indiana, Inc.*, 313 U.S. 252, 61 S. Ct. 866 (1941), rehearing denied, 313 U.S. 600, 61 S. Ct. 1107 (1941).

506. *Humboldt Foods, Inc. v. Massey*, 297 F.Supp. 236 (N.D. Miss. 1968).

507. *Okin v. A.D. Gosman, Inc.*, 174 A.2d 650 (N.J. Super., Law Div. 1961).

of the foreign corporation, which might then be regarded as doing business and required to qualify.[508]

Purchasing

Purchasing is an essential part of a corporation's business. A manufacturing corporation cannot operate without purchasing raw materials. A retail seller must purchase merchandise. Therefore, it has been held that unless the purchases fall within one of the exceptions to doing business, a foreign corporation purchasing in a state will be required to qualify.[509]

Thus, a foreign corporation which established an agency for the regular and systematic purchase of goods has been required to qualify.[510] It is particularly clear that qualification will be required of a corporation which followed the purchase of the goods by sale and delivery to customers in the same state.[511] And if the purchases are followed by assembly and temporary storage of the goods before shipment outside the state, qualification is usually required.[512]

However, several decisions have suggested that merely ordering products or supplies in a state is not sufficient to find that a foreign corporation is transacting business in the state.[513] A court in Virginia held that a foreign corporation whose only in-state activities were seeking a source of supply for helicopter blades and negotiating service agreements and taking delivery was not doing business in Virginia.[514] In a Mississippi case,[515] it was held that qualification was not required of a food processing corporation, which had entered into contracts to purchase green beans from Mississippi planters and which assumed the additional obligation of harvesting and shipping the beans. The court in this case, after noting that qualification is required when a corpora-

508. *American Steel & Wire Co. v. Speed*, 192 U.S. 500, 24 S. Ct. 500 (1904); *Union Cloak & Suit Co. v. Carpenter*, 102 Ill. App. 339 (1902); *Town of Sellersburg v. Stanforth*, 198 N.E. 437 (Ind., 1935); *Milburn Wagon Co. v. Commonwealth*, 139 Ky. 330, 104 S.W. 323 (1907); *Loverin & Brown Co. v. Tansil*, 118 Tenn. 717, 102 S.W. 77 (1907).

509. *E.C. Artman Lumber Co. v. Bogard*, 191 Ky. 392, 230 S.W. 953 (1921).

510. *Billingslea Grain Co. v. Howell*, 205 S.W. 671 (Tex. Civ. App. 1918).

511. *R.J. Brown Co. v. Grosjean*, 189 La. 778, 180 So. 634 (1938).

512. *Sunlight Produce Co. v. State*, 183 Ark. 64, 35 S.W.2d 342 (1931); State ex rel. *Monroe County v. Pioneer Creamery Co.*, 211 Mo. App. 116, 245 s.W. 361 (1922); State ex rel. *Nelson v. S.P. Pond Co.*, 135 Mo. App. 81, 115 S.W. 505 (1909).

513. *Dickson v. Delhi Seed Co.*, 760 S.W.2d 382 (Ark. App. 1988); *Associates Capital Services Corp. v. Loftins Transfer & Storage Co., Inc.*, 554 F.2d 188 (5th Cir. 1977).

514. *Questech, Inc. v. Liteco*, AG, 735 F.Supp. 187 (E.D. Va. 1990).

515. *Humboldt Foods, Inc. v. Massey*, 297 F.Supp. 236 (N.D. Miss., 1968).

tion carries on a substantial part of its business in the state on a regular basis, said that the "main" business of the corporation was carried on in another state and that the transaction "as a whole . . . was interstate in nature and was initiated by the Mississippi residents." Similarly, a federal court in New York held that the "placement of orders" in New York did not require qualification even though the merchandise was delivered to the foreign corporation's independent contractor in the state.[516] And where a foreign corporation sent trucks and agents into Kansas to pick up hay it had purchased for delivery outside the state, it was not required to qualify.[517]

Single or occasional purchases may fall within the isolated tranaction exception.[518] And if it can be shown that the goods were purchased with the understanding that they would immediately be shipped outside the state, and that they were so shipped, qualification will probably not be required.[519] However, where a foreign corporation was formed for the purpose of acquiring other corporations, it was held that negotiating in Alabama a contract to purchase shares in an Alabama corporation constituted doing business, and the contract was held to be unenforceable.[520]

Real Property Ownership

Sec. 15.01(b)(9) of the Revised Model Act provides that "owning, without more, real . . . property" does not constitute doing business. This provi-

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516. *Stafford-Higgins Industries v. Gaytone Fabrics, Inc.*, 300 F.Supp. 65 (S.D.N.Y., 1969).

517. *Panhandle Agri-Service, Inc. v. Becker*, 231 Kan. 291, 644 P.2d 413 (1982).

518. *Hunter W. Finch & Co. v. Zenith Furnace Co.*, 245 Ill. 586, 92 N.E. 521 (1910); *Schultz v. Long-Island Machinery & Equipment Co., Inc.*, 173 So. 569 (La. App. 1937); *United Mercantile Agencies v. Jackson*, 351 Mo. 709, 173 S.W. 2d 881 (1943); *Dover Lumber Co. v. Whitcomb*, 54 Mont. 141, 168 P. 947 (1917).

519. *Flanagan v. Federal Coal Co.*, 267 U.S. 222, 45 S.Ct. 233 (1925); *Dahnke-Walder Milling Co. v. Bondurant*, 257 U.S. 282, 42 S.Ct. 106 (1921); *Eljam Mason Supply, Inc. v. The Donnelly Brick Co.*, 208 A.2d 544 (Conn. Sup. Ct. Errors 1965); *Logan-Pocahontas Fuel Co. v. Camp*, 197 Ky. 174, 246 S.W. 433 (1922); *J. Perez, S.A. v. Louisiana Rice Growers, Inc.*, 139 So.2d 247 (La. App. 1962); *Michigan Lubricator Co. v. Ontario Cartridge Co., Ltd.*, 275 F. 902 (6th Cir. [Mich.] 1921); *Union Cotton Oil Co. v. Patterson*, 116 Miss. 802, 77 So. 795 (1918); *MacNaughton Co. v. McGirl*, 20 Mont. 124, 49 P. 651 (1897); *Consolidated Pipe Line Co. v. British American Oil Co., Ltd.*, 163 Okla. 171, 21 P.2d 762 (1933); *Trans-Mississippi Grain Co. v. Spracher*, 47 S.D. 262, 197 N.W. 686 (1924); *Advance Lumber Co. v. Moore*, 126 Tenn. 313, 148 S.W. 212 (1912); *Italy Cotton Oil Co. v. Southern Cotton Oil Co.*, 13 S.W.2d 438 (Tex. Civ. App. 1929); *Kansas City Wholesale Grocery Co. v. Weber Packing Corp.*, 93 Utah 414, 73 P.2d 1272 (1937); *Jerome P. Parker-Harris Co. v. Kissel Motorcar Co.*, 165 Wis. 518, 163 N.W. 141 (1917); *Standard Sewing Equipment Corp. v. Motor Specialty, Inc.*, 263 Wis. 467, 57 N.W.2d 706 (1953).

520. *Continental Telephone Company v. M.G. Weaver, et al.*, Civil Action No. 67-180, N.D. Ala., May 17, 1968, aff'd 410 F.2d 1196 (5th Cir. 1969).

sion or one with a similar effect has been adopted by Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. Florida and Virginia provide that owning, protecting, and maintaining property does not constitute doing business. The Model Act (2016), Sec. 15.05(a)(10) provides that owning, protecting, and maintaining property does not constitute doing business. Florida, Iowa, Montana, and Virginia have adopted that provision. In Maine, "Owning real property, other than agricultural real estate" does not require qualification. Montana provides that a corporation is not doing business by virtue of its "owning real . . . property that is acquired incident to activities [related to enforcing mortgage and security interests in property securing debts] if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function."

Pennsylvania's statute provides that acquiring, owning, holding, leasing as a lessee, conveying and transferring, without more and whether as fiduciary or otherwise real estate and mortgages and other liens thereon does not constitute doing business.

Minnesota's statute provides that "Holding title to and managing real . . . property, or any interest therein, situated in this state, as executor of the will or administrator of the estate of any decedent, as trustee of any trust, or as guardian of any person or conservator of any person's estate" does not constitute doing business. Massachusetts provides that "the following activities, among others, do constitute transacting business . . . (1) the ownership . . . of real estate in the commonwealth."

In the absence of a statute, the general rule is that an ordinary foreign business corporation can acquire, hold and dispose of real property without qualifying.[521] Various reasons have been given in the decisions

521. *Wallace v. Brewer*, 315 F.Supp. 431 (M.D. Ala., 1970); *Friedlander Bros, Inc. v. Deal*, 218 Ala. 245, 118 So. 508 (1928); *Martin v. Bankers' Trust Co.*, 18 Ariz. 55, 156 P. 87 (1916); *Hooker v. Southwestern Improvement Assoc.*, 105 Ark. 99, 150 S.W. 398 (1912); *Davies v. Mt. Gaines Mining & Milling Co.*, 104 Cal. App. 730, 286 P. 740 (1930); *Hogue v. D.N. Morrison Const. Co. Inc. of Va.*, 115 Fla. 293 156 So. 377 (1933); *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942); *North Dakota Realty & Inv. Co. v. Abel*, 85 Ind. App. 563, 155 N.E. 46 (1927); *Blodgett v. Lanyon Zinc Co.*, 120 F. 893 (8th Cir. [Kan.] 1903); *Commonwealth Farm Loan Co. v. Caudle*, 203 Ky. 761, 263 S.W. 24 (1924); *Lake Superior Piling Co. Inc. v. Stevens*, 25 So.2d 1120 (La. App. 1946); *Electric Railway Securities Co. v. Hendricks*, 251 Mich. 602, 232 N.W. 367 (1930): *Sullivan v. Sheehan*, 89 F. 247 (D. Minn. 1898); *Long Beach Canning Co. v. Clark*, 141 Miss.

for holding that qualification is not required, including the fact that the particular real estate transaction was isolated, that it was preliminary to engaging in business, and that it was a necessary incident to the winding-up of business.

If the foreign business corporation owning the property engages in other local activities, qualification will probably be required. For example, a Pennsylvania corporation entered into a contract to purchase land in Vermont. It obtained a survey and applied for sewer and building permits. Although Vermont law provides that doing business does not include the mere ownership of real property, the Vermont Supreme Court found that the other activities did constitute doing business. On the other hand, an Idaho court allowed a foreign corporation to maintain an action seeking an easement where the only activity alleged was its ownership of land.[522]

Qualification probably will also be required where the corporation engages in repeated real estate transactions.[523] The statements above pertain to the acquiring, holding or disposing of real property by ordinary business corporations. An entirely different situation is presented where the foreign corporation is organized for the purpose of, and is actively engaged in, the real estate business. The acquiring, holding or

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177, 106 So. 646 (1926); *Parker v. Wear*, 230 S.W. 75 (Mo. 1921); *Uihlein v. Caplice Commercial Co.*, 39 Mont. 327, 102 P. 564 (1909); *Dold Packing Co. v. Doermann*, 293 F. 315 (8th Cir. [Neb.] 1923); *Manhattan & Suburban Savings & Loan Ass'n of New York v. Massarelli*, 42 A. 284 (N.J. Ct. Chancery 1899); *Goode v. Colorado Inv. Loan Co.*, 16 N.M. 461, 117.856 (1911); *Singer Mfg. Co. v. Granite Spring Water Co.*, 66 Misc. 595, 123 N.Y.S. 1088 (Sup. Ct. 1910); *Wm. G. Roe & Co. v. State*, 43 Misc. 2d 417, 251 N.Y.S.2d 151 (Ct. Claims 1964); *Dime Savings & Trust Co. v. Humphreys*, 175 Okla. 497, 53 P.2d 665 (1936); *Charles Friend & Son, Inc. v. Schmidt*, 57 S.D. 477, 233 N.W. 913 (1930); *Bouldin v. Taylor*, 152 Tenn. 97, 275 S.W. 340 (1925); *Glo Co. v. Murchison*, 208 F.2d 714 (5th Cir. [Tex.] 1954), cert. den. 348 U.S. 817, 75 S.Ct. 27 (1954); *Wilson v. Peace*, 38 Tex. Civ. App. 234, 85 S.W. 31 (1905); *Goldberry v. Carter*, 100 Va. 438, 41 S.E. 858 (1902); *Keene Guaranty Savings Bank v. Lawrence*, 32 Wash. 572, 73 P. 680 (1903); *Mortenson v. Morse*, 153 Wisc. 389, 141 N.W. 273 (1913); *Chittim v. Belle Fourche Bentonite Products Co.*, 60 Wyo. 35, 149 P.2d 142 (1944).

522. *Pennconn Enterprises, Ltd. v. Huntington*, 533 A.2d 673 (Vt. 1987); *Capstar Raio Operating Co. v. Lawrence,* 152 P.3d 575 (Idaho 2007).

523. *Alabama White Marble Co. v. Eureka White Marble Quarries*, 190 Ala. 595, 67 So. 505 (1914); *Republic Power & Service Co. v. Gus Blass Co.*, 165 Ark. 163, 263 S.W. 785 (1924); *John Hancock Mutual Life Ins. Co. v. Girard*, 57 Idaho 198, 64 P.2d 254 (1936); *Pennsylvania Co. for Insurance on Lives & Granting Annuities v. Bauerle*, 143 Ill. 459, 33 N.E. 166 (1892); *Greene v. Kentenia Corp.*, 192 S.W. 820 (Ky. Ct. App. 1917); *E. & G. Theatre Co. v. Greene*, 216 Mass. 171, 103 N.E. 301 (1913); *Weiser Land Co. v. Bohrer*, 78 Ore. 202, 152 P. 869 (1915); *American Housing Trust III v. Jones*, 696 A.2d 1181 (Pa. 1997); *Dunn v. Utah Serum Co.*, 65 Utah 527, 238 P. 245 (1925): *Midwest Sportswear Mfg. Co. v. Baraboo Chamber of Commerce*, 161 F.2d 918 (7th Cir. [Wis.] 1947).

disposing of real estate by such corporations constitutes doing business and requires qualification.[524] Thus, a Tennessee corporation organized to acquire, syndicate and operate residential and commercial real estate was held to be doing business in Alabama by entering into a contract with an Alabama apartment complex.[525] In a suit for breach of a contract to sell real estate, where the seller had a business relationship with a real estate agent who watched for and notified the plaintiff of properties it would be interested in, an issue of fact was created as to whether the plaintiff was owning property without more.[526]

Sales

Commission Merchants and Brokers

Where a foreign corporation performs the service of a broker or a commission merchant, such as a real estate or customhouse broker, it is ordinarily required to qualify in the state where it so acts, under the general rule requiring qualification where a corporation performs services,[527] and under the generally accepted definition of doing business as transacting "some substantial part of its ordinary business" in the state.

The United States Supreme Court has indicated that qualification is required of such brokers even though performing their part "in the comprehensive process of foreign commerce."[528] Thus, foreign real

524. *Vines v. Romar Beach, Inc.*, 670 So.2d 901 (Ala. 1995); In re Wellings' Estate, 192 Cal. 506, 221 P. 628 (1923); *Hoffstater v. Jewell*, 33 Idaho 439, 196 P. 194 (1921); *Greene v. Kentenia Corp.*, 194 S.W. 820 (Ky. Ct. App. 1917); *E.C. Vogt, Inc. v. Ganley Bros. Co.*, 185 Minn. 442, 242 N.W. 338 (1932); *S & A Realty Company v. Hilburn*, 249 So.2d 379 (Miss. 1971); *Singer Mfg. Co. v. Granite Spring Water Co.*, 66 Misc. 595, 123 N.Y.S. 1088 (Sup. Ct. 1910); see also *Laurendi v. Cascade Development Co., Inc.*, 5 Misc. 2d 688, 165 N.Y.S.2d 832 (Niagara Co. Ct. 1957), aff'd (mem.) 4 A.D.2d 852, 167 N.Y.S.2d 240 (4th Dept. 1957); *Brown v. John P. Smythe & Co.*, 98 N.J. Eq. 206, 129 Atl. 871 (Ct. Chancery 1925); *Walter E. Heller & Company of Cal. v. Stephens*, 79 N.M. 74, 439 P.2d 723 (1968); *Cassidy's Limited v. Rowan*, 99 Misc. 274, 163 N.Y.S. 1079 (Sup. Ct., App. Term, 1st Dept. 1917); *Weiser Land Co. v. Bohrer*, 79 Ore. 202, 152 P. 869 (1915); *Hanna v. Kelsey Realty Co.*, 145 Wis. 276, 129 N.W. 1080 (1911).

525. *Freeman Webb Investments, Inc. v. Hale*, 536 So.2d 30 (Ala. 1988).

526. *Serio v. Copeland Holdings, LLC*, 521 S.W.3d 131 (Ark. App. 2017)

527. *Warren v. Inter State Realty Co.*, 192 Ill. App. 438 (1915); *J.H. Silversmith, Inc. v. Keeter*, 72 N.M. 246, 382 P.2d 720 (1963); *Applied Technologies Associates, Inc. v. Schmidt*, 362 F.Supp. 1103 (D.N.M., 1973).

528. *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 64 S.Ct. 967 (1944).

estate brokerage corporations selling land in other states have been held to be doing business and required to qualify.[529]

If, however, the foreign corporation's brokerage activities amount to nothing more than soliciting orders, all other incidents of the transactions taking place outside the state, it will not ordinarily be required to qualify.[530]

Where a Pennsylvania real estate corporation found a purchaser for property in Delaware, the Delaware court permitted it to maintain an action for its commission even though it was not qualified. The court held that the transaction had been an isolated one which did not require qualification.[531]

Conditional Sales

When a foreign corporation ships goods into a state under a conditional sales contract, retaining title to the goods until some future time, first consideration should be given to the applicable state qualification statute. Utah exempts the "acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts . . ., collecting or adjusting of principal or interest payments on the contracts . . ., enforcing or adjusting any rights provided for . . ., and taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract . . ." Louisiana law provides that "disposing of property or a property interest, not as a part of any regular business activity" does not constitute doing business in the state.

It also appears that sales made under conditional sales contracts are entitled to the exemption granted to transactions in interstate commerce to the same extent as outright sales.[532]

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529. *Woods v. Interstate Realty Co.*, 337 U.S. 535, 69 S.Ct. 1235 (1949); *Marx & Bensdorf, Inc., v. First Joint Stock Land Bank of New Orleans, Louisiana*, 173 So. 297 (Miss. 1937).

530. *Morrison v. Guaranty Mortgage & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940); *Shemper v. Latter & Blum, Inc.*, 214 Miss. 113, 58 So.2d 359 (1952).

531. *Coyle v. Peoples*, 349 A.2d 870 (Del. Super. 1975).

532. *International Textbook Co. v. Pigg*, 217 U.S. 91, 30 S.Ct. 481 (1910); *Wise v. Grumman Credit Corporation*, 603 So.2d 952 (Ala. 1992); *Smith & Fay v. Montgomery Ward & Co.*, 96 So. 231 (Ala., 1923); *Coblentz & Logsdon v. L.D. Powell Co.*, 229 S.W. 25 (Ark. 1921); *L.D. Powell Co. v. Rountree*, 247 S.W. 389 (Ark., 1923); *McMillan Process Co. v. Brown*, 91 P.2d 613 (Cal. App. 1939); *Merganthaler Linotype Co. v. Gore*, 160 So. 481 (Fla. 1935); *Havens & Geddes Co. v. Diamond*, 93 Ill. App. 557 (1900); In re Harmony Theatre Co., 2 F.2d 376 (E.D. Mich. 1924); *Lu-Mi-Nus Signs Co. v. Regent Theatre Co.*, 250 Mich. 535, 231 N.W. 128 (1930); *Case v. Mills Novelty Co.*, 193 So. 625 (Miss., 1940); *Refrigeration Discount Corp. v. Turley*, 198 So. 731 (Miss., 1940); *Smith v. J.P. Seeburg Corp.*, 6 So.2d 591 (Miss., 1942); *General Excavator Co. v.*

Sales from Trucks

A foreign corporation that sends its trucks into a state to make sales directly from the trucks may be required to qualify. Some confusion has arisen from the fact that the trucks cross a state line, but this is not sufficient, by itself, to bring the subsequent sales within the protection of the interstate Commerce Clause.

It has been held that "an interstate transaction contemplates a consignor without and a consignee within a state."[533] It is clear that in this situation there is no consignee at the time the trucks enter that state, since at that time it is not known who will buy the goods.

The sale of goods from trucks under these circumstances is little different from the sale of goods to customers within a state from a fixed stock of goods, and in the latter case it is well settled that qualification is required.

Thus, a foreign corporation that sent trucks carrying pianos to be peddled from door to door in Texas was held to be doing business and required to qualify.[534] A corporation that sent its goods to its Louisiana agents who make door-to-door sales from vehicles was also required to qualify.[535]

In Louisiana, a foreign corporation may dispose of property, not as a part of any regular business activity. These statutory provisions may well be determinative here.

In addition to the qualification cases cited above and the pertinent statutory provisions, several cases have upheld license taxes as applied to sales from trucks and these may be of some help in this area.[536]

Emory, 40 S.W.2d 490 (Mo. App. 1931); *Funk & Wagnalls Co. v. Max Stamm*, 88 Atl. 1050 (N.J. Ct. Errors and App. 1913); *Chase-Hackley Piano Co. v. Griffen*, 149 N.Y.S. 998 (Sup. Ct., App. Term, 1st Dept. 1914); *Meisel Tire Co. v. Mar-Bell Trading Co.*, 155 Misc. 664, 280 N.Y.S. 335 (N.Y.C. Munic. Ct. 1935); *Cugley Incubator Co. v. Franklin*, 142 P.2d 125 (Okla. 1943); *Osgood Co. v. Bland*, 141 S.W. 2d 505 (Tenn. App. 1940); *Moore-Hustead Co. v. Joseph W. Moon Buggy Co.*, 221 S.W. 1032 (Tex. Civ. App. 1920); *Rock-Ola Mfg. Corp. v. Wertz*, 249 F.2d 813 (4th Cir. [Va.] 1957); *Minneapolis Securities Corp. v. Silevra*, 254 Wis. 129, 35 N.W. 2d 322 (1948); *Unitype Co. v. Schwittay*, 168 Wis. 489, 170 N.W. 651 (1919); *Regina Co. v. Toynbee*, 163 Wis. 551, 158 N.W. 313 (1916); *Creamery Package Mfg. Co. v. Cheyenne Ice Cream Co.*, 55 Wyo. 277, 100 P.2d 116 (1940).

533. *Hogan v. Intertype Corporation*, 136 Ark. 52, 206 S.W. 58 (1918).

534. *Baldwin Music Shop, Inc. v. Watson*, 102 S.W. 2d 478 (Tex. Civ. App. 1937).

535. *J.R. Watkins Co. v. Stanford*, 52 So.2d 325 (La. App. 1951).

536. *Caskey Baking Co., Inc. v. Commonwealth of Virginia*, 313 U.S. 117, 61 S.Ct. 881 (1941); *Wagner v. City of Covington*, 251 U.S. 95, 40 S.Ct. 93 (1919); *State v. Coca Cola Bottling Works, Inc.*, 198 So. 363 (Ala. App. 1940).

Sales of Repossessed Goods

There are occasions when an unqualified foreign corporation finds it necessary to repossess goods originally sold in interstate commerce. It is well settled that neither the repossession nor repossession coupled with a resale to a customer in the same state will require qualification.[537] The repossession and resale are looked upon as incidental to the original interstate sale.

A shipment of iron in cars to one customer, diverted upon arrival to other customers with whom the foreign corporation had entered into contracts prior to the shipment, was held not to constitute doing business.[538] Similarly, the repossession and resale of law books, sold originally under a conditional sale contract, was held not to constitute doing business.[539]

Such a second sale has been regarded as "an isolated and emergency transaction thrust upon the [foreign corporation] by the peculiar circumstances of the case."[540] It has been held that "the seller's right to enforce the sales contract remains even though the buyer's possession and rights be transferred to successive assignees with the knowledge of the seller."[541]

An Arkansas decision held that a foreign corporation was not doing business where it took over a bankrupt's entire stock and carried on its retail business for almost two months until the business could be sold.[542] A federal court in Michigan held that a foreign corporation, which leased equipment to a Michigan resident and sold the equip-

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537. *Weaver v. O'Meara Motor Company*, 452 P.2d 87 (Alaska, 1969); *Commonwealth v. Chattanooga Implement & Mfg. Co.*, 126 Ky. 636, 104 S.W. 389 (1907); *Yellow Mfg. Acceptance Corp. v. American Oil Co.*, 191 Miss. 757, 2 So.2d 834 (1941); *Chase-Hackley Piano Co. v. Griffen*, 149 N.Y.S. 998 (Sup. Ct., App. Term 1st Dept. 1914); *Sooner Beverage Co. v. G. Heileman Brewing Co.*, 194 Okla. 252, 150 P.2d 72 (1944); *American Soda Fountain Co. v. Hairston*, 69 S.W.2d 546 (Tex. Civ. App. 1934); *Harcrow v. W.T. Rawleigh Co.*, 145 S.W.2d 925 (Tex. Civ. App. 1940); *J.R. Watkins Co. v. Beyer*, 233 N.W. 442 (Wis. 1930); *Regina Co. v. Toynbee*, 163 Wisc. 551, 158 N.W. 313 (1916); *Unitype Co. v. Schwittay*, 168 Wis. 489, 170 N.W. 651 (1919).

538. *Rogers v. Union Iron & Foundry Co.*, 167 Mo. App. 228, 150 S.W. 100 (1913).

539. *L.D. Powell Co. v. Rountree*, 247 S.W. 389 (Ark. 1923); see also *Smith v. Mergenthaler Linotype Co.*, 58 S.W.2d 686 (Ark., 1933).

540. *Rashford Lumber Co. v. Dolan*, 260 Pac. 224 (Ore. 1927).

541. *Mergenthaler Linotype Co. v. Gore*, 160 So. 481 (Fla., 1935). See also *Phelps v. Jesse French & Sons Piano Co.*, 65 S.W.2d 374 (Tex. Civ. App. 1933); *Keating Implement & Machine Co. v. Favorite Carriage Co.*, 35 S.W. 417 (Tex. Civ. App. 1896); *North v. Merganthaler Linotype Co.*, 77 S.W.2d 580 (Tex. Civ. App. 1935); *Fate-Root Heath Co. v. Howard Kenyon Dredging Co.*, 117 S.W.2d 547 (Tex. Civ. App. 1938).

542. *Sillin v. Hessig-Ellis Drug Co.*, 26 S.W.2d 122 (Ark. 1930).

ment to a buyer in the state after the lease was forfeited, moving and repairing it in the process, was not doing business so as to require qualification in Michigan.[543] The court did not examine the sale by itself, but simply stated that the lease had been in interstate commerce, and that all other acts were incidental to it.

While the general rule is clear, there have been decisions holding that the foreign corporation is required to qualify in these circumstances.[544]

Where a foreign corporation organized for the purpose of financing the sale of mobile homes did substantial business with dealers in Alabama (at least two of which were its wholly owned subsidiaries), had a representative who traveled to Alabama servicing its accounts and visiting delinquent debtors, and repossessed mobile homes and resold them through its dealers, it was doing business in Alabama without authority and could not enforce its contracts.[545] Here, the reselling of the repossessed goods was just one part of the foreign corporation's activities in the state.

See also the discussions entitled "Lending Money on Security" and "Collecting Debts."

Repurchase agreements in which the foreign corporation buys back goods which its dealers have not sold, ordinarily will not require qualification.[546]

A similar situation exists in the case of rejected items. The courts have generally held that a foreign corporation may resell the goods without qualifying.[547]

Sales of Samples

It is well established that a foreign corporation, which sends salesmen equipped with samples into a state to secure orders through the exhibition of the samples, is not "doing business" and need not qualify where the orders are filled from without the state.[548] The more difficult

543. *Vulcan Steam Shovel Co. v. Flanders*, 205 F.102 (E.D. Mich. 1913).

544. *Cohn-Hall-Marx Co. v. Feinberg*, 214 Minn. 584, 8 N.W.2d 825 (1943); *Sprout, Waldron & Co. v. Amery Mercantile Co.*, 162 Wis. 279, 156 N.W. 158 (1916).

545. *Boles v. Midland Guardian Co.*, 410 So.2d 82 (Ala. Civ. App. 1982).

546. *Three States Buggy & Implement Co. of Cairo, Ill. v. Commonwealth*, 32 Ky. Law Rep. 385, 105 S.W. 971 (1907); *Watson v. J.R. Watkins Co.*, 188 Miss. 435, 193 So. 913 (1940).

547. *Kirkeby & Gundestrup Seed Co. v. White*, 168 Mo. App. 626, 153 S.W. 279 (1913); *Meaker Galvanizing Co. v. Charles E. McInnes & Co., Inc.* 272 Pa. 561, 116 A. 400 (1922); *Dempster Mill Mfg. Co. v. Humphries*, 202 S.W. 981 (Tex. Civ. App. 1918).

548. *Cannell & Chaffin, Inc. v. C.W.C. Deering*, 26 Hawaiian Reports 74 (1921); *Delta Bag Co. v.*

question is whether the sale of the samples themselves will require qualification.

It is clear that if the sale of samples amounts to regular sales from a local stock of goods, qualification will be required. Thus, where a foreign corporation furnishes its local salesmen with a stock of goods to be used not only as samples but also to fill orders, the courts have held that qualification is necessary.[549]

Delaware and Oklahoma do not require qualification of a foreign corporation "[i]f it employs salesmen, either resident or traveling, to solicit orders in this State, either by display of samples or otherwise (whether or not maintaining sales offices in this State), all orders being subject to approval at the offices of the corporation without this State, and all goods applicable to the orders being shipped in pursuance thereof from without this State to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this State are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this State. . ."[550]

Where samples are sold only occasionally and not as a regular course of business, the courts differ. In some decisions, the courts have held that such occasional sales constitute doing business and require qualification, although the number of sales may have influenced the deci-

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Kearns, 160 Ill. App. 93 (1911); *Hamilton Machine Tool Co. v. Mechanics' Machine Co.*, 179 Ill. App. 145 (1912); *Havens & Geddes Co. v. Diamond*, 93 Ill. App. 557 (1900); *Richard Young Co. v. Meyer-Rudolph Shoe Co.*, 261 Ill. App. 327 (1931); *City of Rushville v. Heyneman*, 186 Ind. 1, 114 N.E. 691 (1917); *Commonwealth v. Hogan McMorrow & Tieke Co.*, 25 Ky. Law Rep. 41, 74 S.W. 737 (1903); *Larkin Co. v. Commonwealth*, 172 Ky. 106, 189 S.W. 3 (1916); *Eagle Mfg. Co., Inc. v. Arkell & Douglas, Inc.* 197 App.Div. 788, 189 N.Y.S. 140 (1st Dept. 1921); affirmed 234 N.Y. 573, 138 N.E. 451 (1922); *Gilmer Bros. Co., Inc. v. Singer*, 149 N.Y.S. 904 (Sup. Ct., App. Term, 1st Dept. 1914); *L.C. Page & Co. v. Sherwood*, 146 App. Div. 618, 131 N.Y.S. 322 (1st Dept. 1911); *Wyman, Partridge Holding Co. v. Lowe*, 65 S.D. 139, 272 N.W. 181 (1937); *M.E. Smith & Co. v. Dickinson*, 81 Wash. 465, 142 Pac. 1133 (1914); *Underwood Typewriter Co. v. Piggott*, 60 W. Va. 532, 55 S.E. 664 (1906); *American Slicing Machine Co. v. Jaworski*, 179 Wis. 634, 192 N.W. 50 (1923).

549. *Dalton Adding Machine Co. v. Commonwealth*, 246 U.S. 498, 38 S.Ct. 361 (1918); *Clark v. J.R. Watkins Medical Co.*, 115 Ark. 166, 171 S.W. 136 (1914); *J.R. Watkins Medical Co. v. Williams*, 124 Ark. 539, 187 S.W. 653 (1916); *Metropolitan Discount Co. v. Pitsch*, 208 Ill. App. 407 (1917); *J.R. Watkins Co. v. Stanford*, 52 So.2d 325 (La. App. 1951); *Baldwin Music Shop, Inc. v. Watson*, 102 S.W.2d 478 (Tex. Civ. App. 1937); *Wolforth v. A.J. Deer Co., Inc.*, 293 S.W. 590 (Tex. Civ. App. 1927).

550. Delaware Code Annotated, Title 8, Sec. 373(a)(2). Oklahoma Statutes Annotated, Title 18, Sec. 1132 (2).

sions.[551] In others, the courts have ruled that such occasional sales will not require qualification.[552]

In an Oklahoma case, employees of a foreign corporation took orders for costume jewelry subject to acceptance out of state at "fashion shows" held for that purpose. The corporation provided demonstration kits of jewelry samples. The employees regularly made sales from the samples with the permission of their immediate superiors. The court held that these sales constituted intrastate business and the corporation was required to qualify.[553]

Sales of Securities

Today, the shares of most corporations are marketed initially through underwriters, so that a corporation does not normally encounter the question of whether the sale of its own securities requires qualification.[554] In Alabama,[555] South Dakota[556] and Wisconsin,[557] has the question been answered in the affirmative when an ordinary business corporation is involved, and only Alabama has gone so far as to hold that a foreign corporation which is selling its own stock in the state is required to qualify when the stock subscription is accepted outside the state.

In most states foreign corporations are not required to qualify in order to sell their own capital stock.[558] In one case the Kentucky Court of

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551. *Watters v. Michigan*, 248 U.S. 65, 39 S.Ct. 29 (1918); *Cohn-Hall-Marx Co. v. Feinberg*, 214 Minn. 584, 8 N.W.2d 825 (1943).

552. *Hamilton Machine Tool Co. v. Mechanics' Machine Co.*, 179 Ill. App. 145 (1912); *Richard Young Company v. Meyer-Rudolph Shoe Co.*, 261 Ill. App. 327 (1931); *Hattiesburg Mfg. Co. v. Pepe*, 140 So.2d 449 (La. App. 1962); *L.C. Page & Co. v. Sherwood*, 146 App. Div. 618, 131 N.Y.S. 322 (1st Dept. 1911); *Wyman, Partridge Holding Co. v. Lowe*, 65 S.D. 139, 272 N.W. 181 (1937); *Aeronautical Corp. of America v. Gossett*, 117 S.W.2d 893 (Tex. Civ. App. 1938); *American Slicing Machine Co. v. Jaworski*, 179 Wis. 634, 192 N.W. 50 (1923).

553. *C.H. Stuart, Inc. v. Bennett*, 617 P.2d 879 (Okla. 1980).

554. This discussion is limited to the question of whether the sale of its stock by a corporation constitutes doing business so as to require the corporation to qualify under the state business corporation law. It should be mentioned, however, that in practice some states may require corporations to state that they are qualified to do business in the state in order to obtain a permit under the blue sky law.

555. *Jones v. Martin*, 15 Ala. 675, 74 So. 761 (1917); *Langston v. Phillips*, 206 Ala. 174, 89 So. 523 (1921).

556. *Trip State Bank v. Jerke*, 45 S.D. 448, 188 N.W. 314 (1922).

557. *American Timber Holding Co. v. Christensen*, 206 Wis. 25, 238 N.W. 897 (1931); *Southwestern Slate Co. v. Stephens*, 139 Wis. 616, 120 N.W. 408 (1909); *Cox v. Hanson*, 200 Wis. 341, 228 N.W. 510 (1930).

558. *Edward v. Ioor*, 205 Mich. 617, 172 N.W. 620 (1919); *First National Bank v. Leeper*, 97 S.W. 636 (Mo. App. 1906); *Meir v. Crossley*, 305 Mo. 206, 264 S.W. 882 (1924); *Matter of Scheftel*, 274

Appeals remarked that in almost all jurisdictions the word "business" in foreign corporation statutes "means the business for which the corporation was organized, and not the taking of stock subscriptions to procure the capital necessary to carry on the business."[559] The court cited a large number of cases in support of this position.[560]

Only Alabama explicitly adopts the position that selling its own stock is one of the purposes for which an ordinary business corporation is organized.[561] South Dakota and Wisconsin, in the cases cited above, did not deal specifically with that question, but rather held generally that the sale of its own stock by a corporation did constitute doing business.

Another question is presented when investment trusts or mutual funds sell their own securities. In a 1918 Missouri case, the State Supreme Court of Missouri held that an investment trust which sold convertible stock in the state was required to qualify.[562]

Sales Through Brokers

Sales through brokers differ from sales on consignment through commission merchants or dealers in that brokers ordinarily do not have possession of the goods. The courts have treated sales through brokers

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N.Y. 135, 9 N.E.2d 809 (1937); *Denman v. Kaplan*, 205 S.W. 739 (Tex. Civ. App. 1918); *Peerless Fire Insurance Co. v. Barcus*, 227 S.W. 368 (Tex. Civ. App. 1920); *Cumberland Co-op Bakeries, Inc. v. Lawson*, 112 S.E. 568 (W. Va., 1922).

559. *Hauger v. International Trading Co.*, 214 S.W. 438, 439 (Ky. Ct. App. 1919).

560. Cases cited by the court include: *Green v. Chicago, Burlington & Quincy R. Co.*, 205 U.S. 530, 27 S.Ct. 595 (1907); *Cockburn v. Kinsley*, 25 Colo. App. 89, 135 Pac. 1112 (1913); *People v. C.I. & L. Ry. Co.*, 223 Ill. 581, 79 N.E. 144 (1906); *Bradbury v. The Waukegan & Washington Mining & Smelting Co.*, 113 Ill. App. 600 (1903); *Mandel v. Swan Land & Cattle Co., Ltd.*, 154 Ill. 177, 40 N.E. 462 (1895); *D.S. Morgan & Co. v. White*, 101 Ind. 413 (1884); *Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893 (8th Cir. [Kan.] 1903); *Boardman v. S.S. McClure Co.*, 123 Fed. 614 (D. Minn. 1903); *Clark v. Kansas Petroleum Co.*, 144 Mo. App. 182, 129 S.W. 466 (1910); *Hoevel Sand-Blast Mach. Co. v. Hoevel*, 167 App. Div. 548, 153 N.Y.S. 35 (1st Dept. 1915); *Union Trust Co. of Rochester v. Sickels*, 125 App. Div. 105, 109 N.Y.S. 262 (4th Dept. 1908); *Toledo Traction, Light & Power Co. v. Smith*, 205 Fed. 654 (N.D. Ohio 1913); *Galena Mining & Smelting Co. v. Frazier*, 20 Pa. Super. 394 (1902); *Wildwood Pavilion Co. v. Hamilton*, 15 Pa. Super. 389 (1900); *Caesar v. Capell*, 83 Fed. 403 (W.D. Tenn. 1897); *Brown v. Guarantee Savings Loan & Investment Co.*, 46 Tex. Civ. App. 295, 102 S.W. 138 (1907); *Philip A. Ryan Lumber Co. v. Ball*, 177 S.W. 226 (Tex. Civ. App. 1915); *S.R. Smythe Co. v. Ft. Worth Glass & Sand Co.*, 105 Tex. 8, 142 S.W. 1157 (1912).

561. *International Cotton Seed Oil Co. v. Wheelock*, 124 Ala. 367, 27 So. 517 (1899); *Sullivan v. Sullivan Timber Co.*, 103 Ala. 371, 15 So. 941 (1893); *Beard v. Union American Publishing Co.*, 71 Ala. 60 (1881).

562. *Booth v. Scott*, 276 Mo. 1, 205 S.W. 644 (1918).

similarly to sales through salesmen, and have held that such sales will not require the foreign corporation to qualify so long as all of the other elements of an interstate transaction are present.[563]

For example, an Alabama court held that an unqualified foreign insurance company was engaged in interstate activities where it sold insurance to Alabama customers through a local broker, mailed its contracts to the broker across state lines and received payments across state lines.[564]

A North Carolina court held that a foreign corporation was not required to qualify where it contracted with a resident company to act as its intermediary to sell goods to an out of state wholesaler where the contracts had to be accepted without the state by the wholesaler.[565]

The difficulties that arise from an attempt to label the various "doing business" activities are particularly evident here. A slight change in the elements of the relationship between the foreign corporation and its representative may be sufficient to require qualification. Labels, therefore, are not as important as the actual activities carried on by the representative.

Shipments on Consignment

Generally, it can be said that where a corporation consigns goods to an independent dealer in a foreign state, qualification is not required.[566] When the dealer sells the consigned goods it is viewed as

563. *Sleepy Eye Milling Co. v. Hartman*, 184 Ill. App. 308 (1913); *Dinuba Farmers' Union Packing Co. v. J.M. Anderson Grocer Co.*, 193 Mo. App. 236, 182 S.W. 1036 (1916); *Rogers v. Union Iron & Foundry Co.*, 167 Mo. App. 228, 150 S.W. 100 (1912); *Yerxa, Andrews & Thurston, Inc. v. Randazzo Macaroni Mfg. Co.*, 315 Mo. 927, 28 S.W. 20 (1926); *Eagle Mfg. Co. Inc. v. Arkell & Douglas, Inc.*, 197 App. Div. 788, 189 N.Y.S. 140 (1st Dept. 1921), aff'd 234 N.Y. 573, 138 N.E. 451 (1922); *Eatonton Cotton Mills, Inc. v. Goodyear Tire & Rubber Co.*, 124 Misc. 211, 208 N.Y.S. 218 (Sup. Ct. 1924), aff'd (mem.) 212 App. Div. 885, 208 N.Y.S. 857 (2d Dept. 1921); *Schwarz v. Sargent*, 197 N.Y.S. 216 (Sup. Ct. App. Term, 1st Dept. 1922); *Advance-Rumely Thresher Co., Inc. v. Stohl*, 75 Utah 124, 283 P. 731 (1929).

564. *Legion Ins. Co. v. Garner Ins. Agency, Inc.* 991 F. Supp. 1326 (M.D. Ala. 1997)

565. *Songwooyan Trading Co. v. Sox Eleven, Inc.*, 714 S.E.2d 162 (N.C. App. 2011).

566. *Furst & Thomas v. Brewster*, 282 U.S. 493, 51 S.Ct. 295 (1931); *Bethlehem Motors Corp. v. Flynt*, 256 U.S. 421, 41 S.Ct. 571 (1921); *City of Atlanta v. York Mfg. Co.*, 155 Ga. 33, 116 S.E. 195 (1923); *Great Western Live Stock Commission Co. v. Great Western Commission Co.*, 187 Ill. App. 196 (1914); *Three States Buggy & Implement Co. of Cairo, Ill v. Commonwealth*, 32 Ky. Law Rep. 385, 105 S.W. 971 (1907); *Ford Motor Company v. Chroma Graphics, Inc.*, 678 F.Supp. 169 (E.D. Mich. 1987); In re Monongahela Distillery Co., 186 Fed. 220 (E.D. Mich. 1910); *Kayser Roth Company v. Holmes*, 693 S.W.2d 907 (Mo. App. 1985); *Yerxa, Andrews & Thurston, Inc. v. Randazzo Macaroni Mfg. Co.*, 315 Mo. 927, 288 S.W. 20 (1926); *General Excavator Co. v. Emory*,

if the sales were made by the independent dealer and not the consigning foreign corporation. Section 106(e) of the Model Business Corporation Act, Section 15.01(b)(5) of the Revised Model Act, and Model Act (2016) Section 15.05(a)(5) provide that a foreign corporation does not have to qualify in order to make sales "through independent contractors." This provision has been adopted in Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

However, if the consignee is not an independent dealer but is the foreign corporation's agent for the general disposal of its goods within the state, and under its control as to his operations, qualification will be required.[567]

"An interstate transaction contemplates a consignor without and a consignee within a state or vice versa," and the transaction will be judged according to whether or not the corporation has relinquished control over the property through shipment to an independent dealer.[568]

Shipments on consignment, i.e., possession without title, may be made in various ways. The goods may be consigned to commission merchants, to factors, to purchasers on approval, or to independent dealers.

"A factor or commission merchant is one whose business is to receive and sell goods for a commission, being entrusted with the posses-

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40 S.W.2d 490 (Mo. App. 1931); *Republic Steel Corp. v. Atlas Housewrecking & Lumber Corp.*, 113 S.W.2d 115 (Mo. App. 1938); *Singer Mfg. Co. v. Hardee*, 4 N.M. 676, 16 Pac. 605 (1888); *Brookford Mills, Inc. v. Baldwin*, 154 App. Div. 553, 139 N.Y.S. 195 (1st Dept. 1913); *Badische Lederwerke v. Capitelli*, 92 Misc. 260, 155 N.Y.S. 651 (Sup. Ct. 1915); In re Columbus Buggy Co., 143 Fed. 859 (8th Cir. [Okla.] 1906); *Universal Oil Corp. v. Falls Rubber Co. of Akron, Inc.*, 110 P.2d 296 (Okla. 1941); *Mitchell Wagon Co. v. Poole*, 235 Fed. 817 (6th Cir. [Tenn.] 1916); In re Minor, 69 Fed. 233 (D. W.Va. 1895).

567. *Kansas City Structural Steel Co. v. State* of Arkansas ex rel. Ashley County, 269 U.S. 148, 46 S.Ct. 59 (1925); *Reliance Fertilizer Co. v. Davis*, 169 So. 579 (Fla., 1936); *Union Cloak & Suit Co. v. Carpenter*, 102 Ill. App. 339 (1902); *Town of Sellerburg v. Stanforth*, 198 N.E. 437 (Ind., 1935); *Milburn Wagon Co. v. Commonwealth*, 139 Ky. 330, 104 S.W. 323 (1907); *Manhattan Terrazzo Brass Strip Co., Inc. v. A. Benzing & Sons*, 50 N.E.2d 570 (Ohio, 1943); *Loverin & Brown Co. v. Tansil*, 102 S.W. 77 (Tenn., 1907); *Western Paper Bag Co. v. Johnson*, 38 S.W. 34 (Tex. Civ. App. 1896).

568. *Hogan v. Intertype Corp.*, 136 Ark. 52, 206 S.W. 58 (1918).

sion of the goods to be sold, and usually selling in his own name."[569] A foreign corporation will ordinarily not have to qualify in order to ship goods to factors or commission merchants.[570]

The decisions to the contrary usually involve some additional intrastate activities.[571] Where it can be shown that the factor or commission merchant served others in the same capacity, there is even less likelihood that qualification will be required.[572]

The general rule that qualification will not be required has been applied where the foreign corporation shipped goods on consignment to a wholly owned subsidiary under a factor's agreement, title remaining in the parent until sale,[573] where the commission merchants themselves made conditional sales to the ultimate customers,[574] and where the consignor established the conditions and prices of the ultimate sale.[575]

A shipment on consignment may be made directly to a customer in the foreign state on approval, title remaining in the foreign corporation until the sale is completed. It would appear from the decisions that the

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569. *L.J. Cooper Rubber Co. v. Johnson*, 182 S.W. 593 (1916).

570. *Bartling Tire Co. v. Coxe*, 228 F.314 (5th Cir. [Ala.] 1923); *Tyson v. Jennings Produce Co.* 77 So. 986 (Ala. App. 1917); *Butler Bros. Shoe Co. v. U.S. Rubber Co.*, 156 Fed. 1 (8th Cir. [Colo.] 1907), cert. den. 212 U.S. 577, 29 S.Ct. 686 (1908); *Hessig-Ellis Drug Co. v. Sly*, 109 P. 770 (Kan., 1910); *Dinuba Farmers' Union Packing Co. v. J.M. Anderson Grocer Co.*, 193 Mo. App. 236, 182 S.W. 1036 (1916); *Zion Cooperative Mercantile Ass'n v. Mayo*, 55 P. 915 (Mont. 1899); *Eatonton Cotton Mills, Inc. v. Goodyear Tire & Rubber Co.*, 124 Misc. 211, 208 N.Y.S. 218 (Sup. Ct. 1924), aff'd (mem.) 212 App. Div. 885, 208 N.Y.S. 857 (2d Dept. 1925); *Sucker State Drill Co. v. Wirtz Bros.*, 17 N.D. 313, 115 N.W. 844 (1908); *International Fuel Service Corp. v. Stearns*, 304 Pa. 157, 155 Atl. 285 (1931); *Stein Double Cushion Tire Co. v. Wm. T. Fulton Co.*, 159 S.W. 1013 (Tex. Civ. App. 1913).

571. *Clark v. J.R. Watkins Medical Co.*, 115 Ark. 166, 171 S.W. 136 (1914); *J.R. Watkins Medical Co. v. Williams*, 124 Ark. 539, 187 S.W. 653 (1916); *Tennessee Packing & Provision Co. v. Fitzgerald*, 140 Ill. App. 430 (1908); *Elliott v. Parlin & Orendorff Co.*, 81 P. 500 (Kan., 1905); *Commonwealth v. Parlin & Orendorff Co.*, 82 S.W. 791 (Ky. Ct. App. 1904); *Dominion Fertilizer Co. v. White*, 96 A. 1069 (Me. 1916); *E.A. Lange Medical Co. v. Brace*, 186 Mich. 453, 152 N.W. 1026 (1915); *Thomas Mfg. Co. v. Knapp*, 101 Minn. 432, 112 N.W. 989 (1907); *Farrand Co. v. Walker*, 169 Mo. App. 602, 155 S.W. 68 (1913); *Wilson-Moline Buggy Co. v. Priebe*, 100 S.W. 558 (Mo. App. 1907); *Bailey v. Parry Mfg. Co.*, 158 P. 581 (Okla. 1916); *Rufo v. Bastian-Blessing Co.*, 405 Pa. 123, 173 A.2d 123 (Pa., 1961).

572. *National Pumps Corp. v. Bruning*, 1 So.2d 320 (La. App. 1941); *Schwarz v. Sargent*, 197 N.Y.S. 216 (Sup. Ct., App. Term, 1st Dept. 1914); *Eagle Mfg. Co. v. Arkell & Douglas, Inc.*, 197 App. Div. 788, 189 N.Y.S. 140 (1st Dept. 1921), aff'd 234 N.Y. 573, 138 N.E. 451 (1922).

573. Opinion of the Atty. Gen. of Maryland, 1929, 140 A.G. 82.

574. *Chase-Hackley Piano Co. v. Griffen*, 149 N.Y.S. 998 (Sup. Ct., App. Term, 1st Dept. 1914); Opinion of the Atty. Gen. of North Carolina, March 26, 1925.

575. *Southwest General Electric Co. v. Nunn Electric Co.*, 283 S.W. 781 (Tex. Comm'n App.1926).

fact that the shipment was made on approval does not have the effect of removing the sale from interstate commerce.[576] When qualification is required, it is because of additional considerations which take the transaction out of interstate commerce.[577]

Goods may be consigned to an independent dealer who purchases the goods at that time and later sells them. It is clear that this is a completed sale to an independent dealer with the foreign corporation exercising no control over the dealer's subsequent activities and qualification is not required.[578] A Missouri court stated that "In the context of foreign supplier-Missouri distributor, the test that controls the fact issue of 'transacting business' is . . . whether the distributor has a 'bona fide and independent status and operation' and is not the 'alter ego or servant' of the foreign supplier."[579] In one case, an Idaho corporation delivered seed on consignment to a Washington company. The Washington Court of Appeals noted that, while the corporation had numerous contacts with the Washington company, it neither controlled its sales nor had any direct contractual or common law agency relationship with it. The court noted that the relationship between the consignor and consignee did not create the type of agency that constitutes doing business for the purposes of the qualification requirement.[580]

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576. *Smith & Fay v. Montgomery Ward & Co.*, 96 So. 231 (Ala., 1923); *Wolff Dryer Co. v. Bigler*, 192 Pa. St. 466, 43 A. 1092 (1899); *American Slicing Machine Co. v. Jaworski*, 179 Wis. 634, 192 N.W. 50 (1923).

577. *Dalton Adding Machine Co. v. Commonwealth*, 88 S.E. 167 (Va., 1916), aff'd 246 U.S. 498, 38 S.Ct. 361 (1918); *Indiana Road Machine Co. v. Town of Lake*, 149 Wis. 541, 136 N.W. 178 (1912).

578. *Ranch House Supply Corp. v. Van Slyke*, 91 Ariz. 177, 370 P.2d 661 (1962); *Shores-Mueller Co. v. Palmer*, 216 S.W. 295 (Ark. 1919); *Geer Company v. District Court Tenth Judicial Dist.*, 469 P.2d 734 (Colo., 1970); *Lawson Products, Inc. v. Tifco Industries, Inc.*, 660 F.Supp. 892 (M.D. Fla. 1987); *Budget Premium Co. v. Motor Ways, Inc.*, 400 N.W.2d 60 (Iowa App. 1986); *J.R. Watkins Co. v. Waldo*, 230 P. 1051 (Kan., 1924); *Three States Buggy & Implement Co. of Cairo, Ill. v. Commonwealth*, 32 Ky. Law Rep. 385, 105 S.W. 971 (1907); *J.R. Watkins Co. v. Goudeau*, 63 S.2d 161 (La. App. 1953); *Bank of America Nat'l Trust & Savings Ass'n v. Lima*, 103 F.Supp. 916 (D. Mass. 1952); *W.T. Rawleigh Co. v. Trerice*, 224 Mich. 420, 195 N.W. 79 (1923); *Defender Auto-Lock Co. v. W.H. Schmelzel Co.*, 157 Minn. 285, 196 N.W. 263 (1923); *J.R. Watkins Co. v. Flynt*, 220 Miss. 871, 72 So.2d 195 (1954); *General Excavator Co. v. Emory*, 40 S.W.2d 490 (Mo. app. 1931); *Minnehoma Financial Company v. Van Oosten*, 198 F.Supp. 200 (D. Mont. 1961); *Levine v. Wallitzer*, 130 N.Y.S.2d 346 (Sup. Ct. 1953); *J.R. Watkins Medical Co. of Winona, Minn. v. Coombes*, 166 P. 1072 (Okla. 1917); *Pharmaceuticals, Inc. v. Hess Brothers, Inc.*, 24 Pa. Dist. & Co. Repts. 2d 299 (1960); *State v. W.T. Rawleigh Co.*, 174 S.E. 385 (S.C., 1934); *Item Co., Ltd. v. Munn*, 293 S.W. 670 (Tex. Civ. App. 1927); *Standard Sewing Equipment Corp. v. Motor Specialty, Inc.*, 263 Wis. 467, 57 N.W.2d 706 (1953).

579. *VBM Corporation v. Marvel Enterprises, Inc.*, 842 S.W.2d 176, 181 (Mo. App. W.D. 1992).

580. *Green Thumb, Inc. v. Tiegs*, 726 P.2d 1024 (Wash. App. 1986).

In another case, a foreign corporation was held not to be doing intrastate business in Missouri even though it retained a security interest in the goods after it sold them to a Missouri distributor and retained contractual authority to control sales terms and prices, manner of display, and product servicing and storage. The corporation also agreed to advertise the goods and retained contractual authority to review the distributor's performance and inspect its financial records. The court held that the distributor was not the alter ego or servant of the foreign corporation and had a bona fide independent status and operation. Therefore, it was a commission agent and was not simply carrying on the supplier's business in the state.[581] In Georgia, a Connecticut corporation was found not to be doing intrastate business where it sold products through an independent dealer, requiring out-of-state acceptance of purchase orders.[582]

On the other hand, a Rhode Island court held that a foreign corporation that consigned goods to an independent dealer was required to qualify because it sent its employees into the state to solicit orders.[583] Where a foreign corporation's sole employee had been coming to North Carolina for over 30 years, each time bringing merchandise which he sold or consigned to jewelry stores, and where the sales were finalized in North Carolina, the foreign corporation was doing business in North Carolina.[584]

Show Rooms

A foreign corporation which maintains a show room for exhibiting its goods in a state in order to promote orders will not ordinarily be required to qualify if it carries on no other intrastate activity.[585]

The Ohio statute provides that "corporations engaged in this state solely in interstate commerce, including the . . . demonstration of machinery or equipment sold by them in interstate commerce . . . are not required to qualify." Thus, an Ohio court held that a foreign corporation that leased equipment in Ohio was not doing business in the state by virtue of having a local office for demonstration purposes.[586]

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581. *American Trailers, Inc. v. Curry*, 621 F.2d 918 (8th Cir. [Mo.] 1980).

582. *Al & Dick, Inc. v. Cuisinarts, Inc.*, 528 F.Supp. 633 (N.D. Ga. 1981).

583. *Star Crest Baking Co., Inc. v. Cangemi*, 178 A.2d 299 (R.I., 1962).

584. *Harold Lang Jewelers, Inc. v. Johnson*, 576 S.E.2d 360 (N.C. App. 2003).

585. *Larkin Co. v. Commonwealth*, 172 Ky. 106, 189 S.W. 3 (1916); *Storwal Intern., Inc. v. Thom Rock Realty Co., L.P.*, 784 F.Supp. 1141 (S.D.N.Y. 1992); *Eastman v. Tiger Vehicle Co.*, 195 S.W. 336 (Tex. Civ. App. 1917).

586. *Saeilo Machinery, Inc. v. Myers*, 489 N.E.2d 1083 (Ohio Com. Pl. 1985).

If, however, additional activities are carried on in the state, such as the sale and delivery of the display goods to local customers, qualification may be required.[587]

Solicitation

Several states have adopted Section 106 (f) of the Model Business Corporation Act which excludes from the definition of doing business "soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts." Others have adopted the substantially similar Section 15.01(b)(6) of the Revised Model Act), Model Act (2016) Section 15.05(a)(6) or a similar provision. These states include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. Georgia has a similar provision except that the words "and where such contracts do not involve any local performance other than delivery and installation" are added. The Louisiana statute adds "including all preliminary incidents thereto" to the Model Act provision.

In Nevada, a foreign corporation is not considered doing business by reason of its "Soliciting or receiving orders outside of this state through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this state and filling them by shipping goods into this state."

Delaware and Oklahoma do not require qualification of a foreign corporation "[i]f it employs salesmen, either resident or traveling, to solicit orders in this State, either by display of samples or otherwise (whether or not maintaining sales offices in this State), all orders being subject to approval at the offices of the corporation without this State, and all goods applicable to the orders being shipped in pursuance thereof from without this State to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this State are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this State . . ."

Courts generally regard solicitation as a part of interstate sales and thus outside the qualification statutes. However, solicitation is often only a part of the corporation's operations. When soliciting orders is

587. *Dalton Adding Machine Co. v. Commonwealth*, 246 U.S. 498, 38 S.Ct. 361 (1918).

mingled with other activities, such as the taking of orders, the shipment of goods, and advertising, qualification may be required.

Where a foreign corporation sends salaried salesmen or sales agents on commission into a state to solicit orders for acceptance outside the state, shipping and billing being done from outside the state and payment sent outside the state, the courts have consistently held that the activities are in interstate commerce and qualification is not required.[588] However, if the local agent has authority to bind the corporation, qualification may be required, even if the authority is only rarely, or never, exercised.[589]

The method of sales, the type of sales agent employed in the state and the amount of control exercised over the sales agent are all factors that might take a case out of the ordinary solicitation rule and require qualification. The recruiting of hostesses for parties at which the foreign corporation's products were displayed and orders taken was held by a Connecticut court to be more than mere solicitation. Intrastate business was transacted there by agents in the state who made and accepted a large volume of sales and over whom the corporation exercised substantial control. The court looked beyond the corporation's agreements with the agents, which designated them as independent contractors, to the actual arrangements between these agents and the corporation. The court's conclusion was that such transactions require qualification.[590]

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588. *Swicegood v. Century Factors, Inc.*, 280 Ala. 37, 189 So.2d 776 (1966); *Hargrove Displays, Inc. v. Rohe Scientific Corp.*, 316 A.2d 330 (D.C. App. 1974); *Al & Dick, Inc. v. Cuisinarts, Inc.*, 528 F.Supp. 633 (N.D. Ga. 1981); *Ely & Walker v. Dux-Mixture Hardware Co., Inc.*, 582 F.Supp. 285 (N.D. Ga. 1982), aff'd on basis of District Court's opinion 732 F.2d 821 (11th Cir. 1984); *Textile Fabrics Corp. v. Roundtree*, 39 Ill.2d 122, 233 N.E.2d 376 (1968); *Charles Pfizer & Co., Inc. v. Tyndall*, 287 So.2d 552 (La. Ct. App. 1973); *Hattiesburg Mfg. Co., Inc. v. Pepe*, 140 So.2d 449 (La. Ct. App. 1962); *G.E.M. Inc. v. Plough, Inc.*, 228 Md. 484, 180 A.2d 478 (1962); *Premier Industrial Corp. v. Nechamkin*, 403 F.Supp. 180 (D. Md. 1977); *Vulcan Steam Shovel Co. v. Flanders*, 205 F. 102 (E.D. Mich., 1913); *Central Woodwork Inc. v. Steele Supply Company*, 358 S.W.2d 447 (Mo. App. 1962); *Vernon Company v. Reed*, 78 N.M. 554, 434 P.2d 376 (1967); *Manhattan Fuel Co., Inc. v. New England Petroleum Corp.*, 422 F.Supp. 797 (S.D.N.Y.) 1976); *Stafford-Higgins Industries v. Gaytone Fabrics, Inc.*, 300 F.Supp. 65 (S.D.N.Y. 1969); *Invacare Corp. v. John Nageldinger & Sonc, Inc.*, 576 F.Supp. 1542 (E.D.N.Y. 1984); *Local Trademarks, Inc. v. Derrow Motor Sales Inc.*, 201 N.E.2d 222 (Ohio App. 1963); *Carolina Components Corp. v. Brown Wholesale Co., Inc.*, 250 S.E.2d 332 (S.C. 1978); *Lawyers Cooperative Publishing Company v. Kuntz*, 440 P.2d 813 (Wash., 1968); *The House of Stainless, Inc. v. Marshall & Ilsley Bank*, 75 Wis.2d 264, 249 N.W.2d 561 (1977).

589. *Materials Research Corp. v. Met Inc.*, 64 N.J. 74, 312 A.2d 147 (1973); *Brown Fintube Co. v. North Star Coal Co.*, 28 Beaver Co. (Pa.) L.J. 131 (1967); *West-Nesbitt, Inc. v. Randall*, 236 A.2d 676 (Vt., 1967).

590. *Armor Bronze & Silver Co., Inc. v. Chittick*, 221 F.Supp. 505 (D. Conn. 1963).

A foreign corporation that solicited potential customers in Maryland, accepted orders in Maryland, did 2% of its total business in Maryland and made deliveries in Maryland was held to be doing intrastate business by a Maryland court.[591]

An Alabama corporation sold its products in Colorado through independent dealers and a company sales representative who maintained an office in the state. However, his territory covered other states as well, and he spent only 30% of his time in Colorado. He did no collection work on company accounts, all orders were subject to acceptance and payment outside the state, and all merchandise was shipped f.o.b. out-of-state factories. The federal court held that these activities were in interstate commerce and did not require qualification.[592]

In an Alabama decision, an unlicensed foreign corporation selling its products through dealers in the state also had full-time salaried employees in the state who supervised its dealers. Some of the dealers handled the plaintiff's merchandise exclusively; all were required to pay a percentage of gross income to the corporation and to make periodic sales reports. These activities together with the holding of meetings and product demonstrations in the state were sufficient to constitute doing business and prevented the unqualified foreign corporation from enforcing a contract in the Alabama courts.[593] In another case, a foreign corporation's sales were solicited in Alabama by a commissioned non-exclusive sales representative and by a salaried employee who traveled to Alabama to meet with the representative and to solicit orders from a few large customers. All orders were accepted outside the state. The federal court applying Alabama law held that the corporation was not doing intrastate business and did not have to qualify.[594]

A Massachusetts corporation maintained an office in Georgia for a sales representative who solicited orders for equipment leases that had to be accepted in Massachusetts. The corporation contracted to lease 24 truck tractors to a Georgia corporation. The Georgia Court of Appeals held that the corporation was exempt from qualifying under the statutory exemption for soliciting orders that require acceptance outside the state.[595] In a Maryland case, a foreign corporation that solicited business only through ads in national magazines and that had

591. *J.C. Snavely & Sons, Inc. v. Wheeler*, 538 A.2d 324 (Md. App. 1988).

592. *Cement Asbestos Products Co. v. Hartford Accident & Indemnity Co.*, 592 F.2d 1144 (10th Cir. [Colo.] 1979).

593. *Marcus v. J.R. Watkins Company*, 279 Ala. 584, 188 So.2d 543 (1966).

594. *Foxco Industries, Ltd. v. Fabric World, Inc.*, 595 F.2d 976 (5th Cir. [Ala.] 1979).

595. *Roberts v. Chancellor Fleet Corporation*, 354 S.E.2d 628 (Ga. App. 1987).

no office, property, bank accounts or employees in Maryland was not doing business in Maryland.[596]

A Pennsylvania court held that the qualification exception for foreign corporations soliciting or procuring orders did not apply to corporations that were soliciting charitable donations and not orders for goods. The court also found that even if the exception did apply, it would not apply in this case because the foreign corporations did their soliciting by making phone calls to Pennsylvania residents and therefore their agreements did not become final outside of Pennsylvania.[597] Where a corporation organized in Dominica as an institution of higher education solicited students in Pennsylvania and maintained business relationships with several hospitals in the state to allow its students to serve clinical rotations, and where the corporation's pleadings admitted that it was doing business in Pennsylvania, it had to qualify in order to maintain suit in a Pennsylvania court.[598]

A New Jersey court stated that "the process of soliciting advertising business from a New Jersey corporation and then placing ads in New Jersey newspapers is an intrastate process."[599]

A federal court held that a corporation that sent employees into Alabama to discuss and solicit a contract to supply certain goods did not transact intrastate business in Alabama.[600]

In a Georgia case, a foreign corporation brought suit for a breach of contract. The defendant argued that because an officer of the corporation attended yearly trade shows in Georgia where he displayed goods and obtained orders, the corporation was required to qualify and therefore could not maintain the suit. The Georgia Court of Appeals disagreed, noting that the corporation's activities fell within the exemption for soliciting or procuring orders that require acceptance outside the state.[601]

The Alabama courts have stated that their general rule is that "a single act of business is sufficient to bring a foreign corporation within the

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596. *Yangming Marine Transport Corp. v. Revon Products U.S.A., Inc.*, 536 A.2d 633 (Md. 1988).

597. *Commonwealth by Preate v. Events International, Inc.*, 585 A.2d 1146 (Pa. Cmwlth. 1991).

598. *University of Dominica v. Pennsylvania College of Podiatric Medicine*, 301 Pa. Super. 68, 446 A.2d 1339 (1982).

599. *Davis & Dorand, Inc. v. Patient Care Medical*, 506 A.2d 70 (N.J. Super. L. 1985).

600. *Shook & Fletcher Insulation Co. v. Panel Systems, Inc.*, 784 F.2d 1566 (11th Cir. 1986).

601. *Work Clothes Outlet, Inc. v. M & S Purchasing*, Inc., 372 S.E. 2d 509 (Ga. App. 1988).

purview of doing business in Alabama, though acts such as . . .soliciting business are generally not enough to constitute doing business."[602]

Several other cases involving the solicitation exception are cited below.[603]

Specialty Salesmen

Specialty salesmen, or missionary men, differ from other salesmen in that they are not sent into a state to solicit orders directly, but to promote or induce orders from local dealers to the foreign corporation's local wholesalers. A 1961 United States Supreme Court decision on qualification, *Eli Lilly & Co. v. Sav-On Drugs, Inc.*,[604] aroused considerable interest in the activities of these specialty salesmen.

The plaintiff in that case, one of the largest dealers of pharmaceutical products in the country, distributed its products throughout the United States and in foreign countries. Its office and principal place of business was in Indiana. Plaintiff's products were not sold directly to the retail trade, but to wholesale distributors who, in turn, sold the products to the retail trade. Plaintiff owned no real estate and maintained no warehouse in New Jersey. It did have an office in New Jersey with its name on the door and on the tenant registry in the lobby of the building, and it was listed in the local telephone directory. The lessee of the office was plaintiff's district manager in charge of its marketing division for the area. There was a secretary in the office, as well as 18 "detailmen" under the plaintiff's district manager's supervision.

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602. *Green Tree Acceptance, Inc. v. Blalock*, 525 So.2d 1366 (Ala. 1988). See also *Allstate Leasing Corp. v. Scroggins*, 541 So.2d 17 (Ala. Civ. App. 1989).

603. *SGB Construction Service, Inc. v. Ray Sumlin Construction Co., Inc.*, 644 So.2d 892 (Ala. 1994); *Bassett v. Hobart Corporation*, 732 S.W.2d 133 (Ark. 1987); *Lawson Products, Inc. v. Tifco Industries, Inc.*, 660 F.Supp. 892 (M.D. Fla. 1987); *Kar Products, Inc. v. Acker*, 217 So.2d 595 (Fla. App. 1969); *Imex Intern., Inc. v. Wires Engineering,* 583 S.E.2d 117 (Ga. App. 2003); *Budget Premium Co. v. Motorways, Inc.*, 400 N.W.2d 60 (Iowa app. 1986); *Cinder Products Corp. v. Schena Constr. Co. Inc.*, 492 N.E.2d 744 (Mass. App. 1986); *Bailey v. Georgia Cotton Goods Co.*, 543 So.2d 180 (Miss. 1989); *Massey-Ferguson Credit Corporation v. Black*, 764 S.W.2d 137 (Mo. App. 1989); *Kayser-Roth Company v. Holmes*, 693 S.W.2d 907 (Mo. App. 1987); *Sierra Glass & Mirror v. Viking Industries, Inc.*, 808 P.2d 512 (Nev. 1991); *Bayonne Block Co., Inc. v. Porco*, 654 N.Y.S.2d 961 (N.Y. City Civ. Ct. 1996); *Maro Leather Co. v. Argentinas*, 617 N.Y.S.2d 617 (Sup. 1994); *Expense Reduction Services, Inc. v. Jonathan Woodner Co., Inc.*, 720 F.Supp. 262 (S.D.N.Y. 1989); *Commonwealth by Preate v. Watson & Hughey Co.*, 563 A.2d 1276 (Pa. Cmwlth. 1989); *Waterworks Industries Inc. v. Aplex Industries Inc.*, 802 P.2d 894 (Wyo. 1990).

604. 366 U.S. 276, 81 S.Ct. 1316 (1961).

The detailmen, many of whom resided in New Jersey, were paid on a salary basis, but received no commissions. Their functions were promotional and informational, including visiting retail pharmacists, physicians and hospitals in order to acquaint them with the products of the plaintiff, examining the inventories of retailers and making recommendations relating to supply, and distributing promotional material. As a service to the retailer, a detailman might receive an order for plaintiff's products for transmittal to a local wholesaler. All of plaintiff's Fair Trade contracts, however, and all orders from the wholesalers for its products, were subject to acceptance in Indiana.

Mr. Justice Black, delivering the opinion of the Court, reaffirmed at the outset the immunity of foreign corporations engaged exclusively in interstate commerce from state qualification requirements: "It is well established that New Jersey cannot require Lilly to get a certificate of authority to do business in the State if its participation in this trade is limited to wholly interstate sales to New Jersey wholesalers."

An examination of the facts, however, convinced the Court that Lilly was doing intrastate business. "To hold under the facts above recited that plaintiff is not doing business in New Jersey is to completely ignore reality." The Court pointed out that the eighteen detailmen, "working out of a big office in Newark, New Jersey, with Lilly's name on the door and in the lobby of the building, and with Lilly's district manager and secretary in charge, have been regularly engaged in work for Lilly which relates directly to the intrastate aspects of the sale of Lilly's products. These eighteen 'detailmen' have been traveling throughout the state of New Jersey promoting the sales of Lilly's products, not to the wholesalers, Lilly's interstate customers, but to the physicians, hospitals and retailers who buy those products in intrastate commerce from wholesalers."

The fact that the "inducing" of intrastate sales engaged in by Lilly was primarily promotional and not actual solicitation of orders, the Court concluded, went to the nature of the intrastate business and not to the question of whether or not intrastate business was being carried on. Thus, a foreign corporation, which engages in promotional activities, "inducing" purchases of its products indirectly from its wholesalers, may be required to qualify even though all its own sales are interstate.

A Maryland case held that missionary men were not doing business in the state for purposes of qualification.[605] The court stated that *Lilly* "would permit Maryland broader jurisdictional limits had it chosen

605. *Champion Spark Plug Company v. T.G. Stores, Inc.*, 356 F.2d 462 (4th Cir. [Md.] 1966), aff'd in part and revs'd in part 239 F.Supp. 941 (D.Md., 1965).

to exercise its constitutional right to the maximum, but it was not required to do so," and that in the earlier case "a more restrictive view of what constitutes intrastate business was taken." A New York court refused to allow a Pennsylvania corporation to bring suit until it qualified. It sold its products in New York through independent distributors but also maintained a salesman in the state who sold its products and serviced accounts, and who "also regularly called upon major ultimate users of papers to promote specification of plaintiff's products when they ordered . . ." Relying on *Lilly*, the court held that this constituted doing intrastate business and required qualification.[606] The activity of representatives on commission, sent into a state merely to estimate the needs and demands for the foreign corporation's products within the state, but who made no direct sales, has been held not to subject the corporation to the requirements of qualification.[607]

A New Jersey court found that a foreign corporation that sent representatives into New Jersey and offered its services to a New Jersey corporation was doing intrastate business. The court held that the case was analogous to *Lilly* and therefore the foreign corporation could not maintain an action.[608]

Subscription Sales

The fact that merchandise is sold on a continuing subscription basis would not appear to remove the sale from interstate commerce. As long as all of the other elements of an interstate sale are present, i.e., solicitation of orders in the state, acceptance and payment made outside the state, and delivery of the product from without the state, the fact that the product is sold on a continuing subscription would not require qualification.[609]

Selling over the Internet

Many corporations sell their products over the Internet. There is little statutory or case law addressing the issue of whether selling over the Internet constitutes doing business for qualification purposes. However, the fact that a sale was made over the Internet rather than by telephone, mailed catalogs, or in a brick and mortar store is not determinative, in and of itself, of whether the seller was doing busi-

606. *Paper Mfrs. Co. v. Ris Paper Co., Inc.*, 86 Misc.2d 95, 381 N.Y.S.2d 959 (N.Y.C. Civ. Ct. 1976).

607. *Mays v. Mansaver Industries, Inc.*, 196 F.Supp. 467 (E.D. Pa. 1961).

608. *Davis & Dorant, Inc. v. Patient Medical Care*, 506 A.2d 70 (N.J. Super. L. 1985).

609. *L.D. Powell Co. v. Rountree*, 247 S.W. 389 (Ark. 1923); *Traphagen v. Lindsay*, 95 Neb. 832, 146 N.W. 1026 (1914).

ness in a state. “Doing business” has to do with the foreign corporation’s activities in a state. It asks what the corporation is doing, not how it is doing it.

In determining if an Internet seller was doing business, each case must be decided on its own facts, merits, and circumstances. The totality of the seller’s activities must be considered. Courts are likely to look at factors such as how many sales were made to state residents, what percentage of the corporation’s overall sales or revenues were derived from the state, whether contracts had to be approved by the seller outside of the state before becoming valid agreements, whether the seller installed, inspected, or repaired its products in the state after the sale, whether it maintained a stock of goods within the state, or maintained a bank account, office or employees in the state.

A physical presence is not required to consider a corporation doing business. A transaction that would otherwise be considered intrastate does not become interstate because the sale was made over the Internet. Thus, for example, a foreign corporation entering into a series of contracts with a state citizen that required the corporation to perform local acts that were not merely incidental to the interstate nature of the transaction could be considered doing business even though the sales were completed over the Internet.

The statutory exemptions may also come into play. For example, a single sale may be exempted as an isolated transaction. The exemption for transactions in interstate commerce will also be relevant.

Doing business in

Canada

Corporations are required to "qualify" to do business in the Canadian provinces, although the procedures for qualification differ somewhat from those used in the states. In some provinces, non-Canadian corporations are subject to different qualification requirements than Canadian foreign corporations.

Corporations organized under the Canada Corporation Act or Canada Business Corporation Act (referred to as federal companies), cannot be forced to qualify in a province in the ordinary sense. The Privy Council, the highest court to which appeals from Canadian courts were then taken, ruled in 1921, in *Great West Saddlery Co., Ltd. v. The King*,[610] that the Provinces of Ontario, Manitoba and Saskatchewan could not, by legislation, prohibit a federal company from carrying on business without first obtaining a license. The court indicated that such legislation was invalid because it encroached upon the prerogatives of the Canadian parliament. The companies involved could not be penalized for carrying on business and exercising their powers in these provinces without being licensed. As a result of this decision, federal companies do not have to be "licensed" before doing business in any of the provinces.

A federal company, however, may be required to "register" in a province. The Privy Council, in the *Great West Saddlery* case, indicated that a province could properly require a federal company, within a reasonable time after commencing to carry on business in the province, to register its name and other particulars in the provincial register and to pay fees not exceeding those payable by provincial companies, and could impose a penalty for failure to comply. This type of registration is applied to federal companies in the provinces today.

In addition, federal companies entering a province become subject to the general laws of the province, including those relating to mortmain, i.e., the holding of real property.[611]

Generally, corporations organized in one province or territory must qualify before doing business in another province or territory. However, some provinces do not require corporations organized in certain other

610. 58 Dom. L.R. (1921).

611. *John Deere Plow Co. v. Wharton*, 18 Dom. L.R. 353 (1915).

provinces to qualify. For example, under Ontario law, corporations organized in the other Canadian provinces and territories are not required to qualify to do business in Ontario.[612] Non-Canadian corporations must qualify, however.

The statutes enacted by the Canadian provinces and territories dealing with doing business are set forth in this book and should be examined before engaging in any activities in Canada. In addition to the statutory definitions, the reported cases on what constitutes doing business should be examined before engaging in activities in Canada.

Guam

Guam has the status of an unincorporated territory of the United States and is governed under an Act of Congress known as the Organic Act of Guam. Guam has adopted the Revised Model Business Corporation Act provision except that subsection (10)states:

"(10)conducting an isolated transaction that is completed within sixty (60) days and that is not one in the course of repeated transactions of a like nature." (Title 18, Sec. 7102(c), Guam Code Annotated)

Guam also provides:

"(b) Without excluding other activities which may not be considered to be transacting business, a foreign corporation shall not be considered to be transacting business merely because its subsidiary transacts business in Guam, or merely because of its status as any one (1) or more of the following:

(1) a shareholder of a domestic corporation;

(2) a shareholder of another foreign corporation transacting business;

(3) a limited partner of a foreign limited partnership transacting business;

(4) a limited partner of a domestic limited partnership;

(5) a member or manager of a foreign limited liability company transacting business;

(6) a member or manager of a domestic limited liability company;

(7) a limited partner of a foreign limited liability partnership transacting business; or

612. Extra Provincial Corporations Act, S.O. 1990, c. E.27, Sec. 2, 4.

(8) a limited partner of a domestic limited liability partnership." (Title 18, Sec. 7102(b), Guam Code Annotated)

Puerto Rico

Puerto Rico has a status "intermediary between the territorial status and statehood."[613] The General Corporation Law of Puerto Rico requires all foreign corporations to qualify before doing business.

The statutory doing business "definition" in Puerto Rico is set forth under the heading "Statutory Doing Business Definitions."

The decisions of the U.S. state and federal courts are persuasive with Puerto Rico's courts. There appears to be a line of decisions indicating that the Commerce Clause does not extend to Puerto Rico,[614] and these should be considered as a general background to doing business questions in Puerto Rico.

The Virgin Islands

The United States Virgin Islands has the status of an unorganized but incorporated territory of the United States, and is governed under an Act of Congress known as the Revised Organic Act of the Virgin Islands. (Public Law No. 517, 83rd Congress, 68 Stat. 497)

The Virgin Islands District Court has the dual jurisdiction of a United States District Court and of an insular possession or territorial court. There are two judicial divisions. Appeals from the District Court lie to the United States Court of Appeals for the Third Circuit (Philadelphia) and then to the U.S. Supreme Court. For this reason, Supreme Court decisions relating to "doing business" apply, as far as pertinent, to doing business questions in the Virgin Islands.

The Virgin Islands corporation law's doing business provision is set forth under the heading "Statutory Doing Business Definitions."

613. *Mora v. Torres*, 113 F.Supp. 309, 314, aff'd sub nom. *Mora v. Mejias*, 206 F.2d 377 (1953).

614. *Lugo v. Suazo*, 59 F.2d 386 (1932); *Buscaglia v. Ballester*, 162 F.2d 805; *Mora v. Torres*, 113 F.Supp. 309, aff'd sub nom. *Mora v. Mejias*, 206 F.2d 377 (1953).

Limited liability companies doing business — limited liability companies

A limited liability company (LLC) that does business outside of its state of formation may also be required to qualify to do business in that state. Doing business without authority will subject the LLC to statutory penalties. Most states have statutory provisions requiring qualification before the transaction of intrastate business and many have provisions listing activities that do not constitute doing business. These statutes tend to be similar to those found in the corporation laws.

As with corporations, the issue of whether an LLC was doing business without authority frequently arises when the LLC attempts to bring or maintain an action in the foreign state. These cases have resulted in a growing body of case law precedent.

Below are the statutory citations for each jurisdiction dealing with the penalties for a failure to comply with the qualification requirement and the doing business definitions, as well as cites to selected relevant case law where available.

Alabama

Penalties — Sec. 10A-1-7.21, Code of Alabama.

Doing business definitions — no statutory provision.

Case law — *CS Assets, LLC v. H&H Real Estate Dev., Inc.,* 353 F.Supp.2d 1187 (N.D. Ala. 2005); *CAG MLG, LLC v. Smelley, 163 So.3d 346 (Ala. 2014).*

Alaska

Penalties — Sec. 10.50.700, Alaska Statutes.

Doing business definitions — Sec. 10.50.720, Alaska Statutes.

Arizona

Penalties — Sec. 29-3902, Arizona Revised Statutes.

Doing business definitions — Sec. 29-3905, Arizona Revised Statutes.

Arkansas

Penalties — Sec. 4-38-902, Arkansas Code of 1987 Annotated.

Doing business definitions — Sec. 4-38-905, Arkansas Code of 1987 Annotated.

Case law — *Serio v. Copeland Holdings, LLC, 521 S.W.3d 131 (Ark. App. 2017)*

California

Penalties — Sec. 17708.07, California Corporations Code.

Doing business definitions — Sec. 17708.03, California Corporations Code.

Case law — *Debonne v. Debonne*, 2022 Cal. App. Unpub. LEXIS 6834; *Johnson v. Johnson*, 2023 Cal. App. Unpub. LEXIS 2130; *Mazzei v. Sika Stables*, LLC, 2020 U.S. Dist LEXIS 164557 (C.D. Cal. 2020); *Hurst v. Buczek Enterprises, LLC*, 870 F.Supp.2d 810 (N.D. Cal. 2012); *Conseco Marketing, LLC v. IFA and Insurance Services*, *Inc*., 2013 Cal.App. LEXIS 946.

Colorado

Penalties — Sec. 7-90-802, Colorado Revised Statutes.

Doing business definitions — Sec. 7-90-801, Colorado Revised Statutes.

Connecticut

Penalties — Sec. 34-275a, Connecticut General Statutes.

Doing business definitions — Sec. 34-275d, Connecticut General Statutes.

Case law — *Williamsburg Developers LLC v. J. Jill LLC,* 2010 Conn. Super. LEXIS 590; *N. Star Capital Acquisition, LLC v. Murillo*, 2008 Conn. Super. LEXIS 2878.

Delaware

Penalties — Title 6, Sec. 18-907, Delaware Code.

Doing business definitions — Title 6, Sec. 18-912, Delaware Code.

Case law — *Greentech Consultancy Co. v. Hilco IP Services, LLC,* 2022 Del. Super. LEXIS 188.

District of Columbia

Penalties — Secs. 29-105.02, 29-101.06, District of Columbia Code.

Doing business definitions — Sec. 29-105.05, District of Columbia Code.

Case law — *Aspire Channel, LLC v. Penngood, LLC*, 139 F.Supp.3d 382 (D.D.C. 2015).

Florida

Penalties — Sec. 605.0904, Florida Statutes Annotated.

Doing business definitions — Sec. 605.0905, Florida Statutes Annotated.

Case law — *Tuscan River Est., LLC v. US Bank Trust, NA*, 351 So.3d 1233 (Fla. App. 2022); *Spa Creek Servs., LLC v. S.W. Cole, Inc.*, 239 So.3d 730 (Fla. App. 2017); *Super Prods., LLC v. Intracoastal Envtl., LLC*, 252 So.3d 329 (Fla. App. 2018).

Georgia

Penalties — Sec. 14-11-711, Code of Georgia Annotated.

Doing business definitions — Sec. 14-11-702, Code of Georgia Annotated.

Case law — *Powder Springs Holdings, LLC v. RLB BB Acq. II-GA PSH, LLC,* 754 S.E.2d 655 (Ga. App. 2014).

Hawaii

Penalties — Sec. 428-1008, Hawaii Revised Statutes.

Doing business definitions — Sec. 428-1003, Hawaii Revised Statutes.

Case law — *McCarty v. GCP Management, LLC*, 2012 U.S. App. LEXIS 22885

Idaho

Penalties — Sec. 30-21-502, Idaho Code.

Doing business definitions — Sec. 30-21-505, Idaho Code.

Illinois

Penalties — Ch. 805, Sec. 180/45-45, Illinois Compiled Statutes Annotated.

Doing business definitions — Ch. 805, Sec. 180/45-47, Illinois Compiled Statutes Annotated.

Case law — *Rice v. Palisades Acquisition XVI, LLC,* 2008 U.S. Dist. LEXIS 13951 (N.D. Ill.); *Highway Traffic Safety Assocs., LLC v. Gomien & Harrop*, 857 N.E.2d 877 (Ill. App. Ct. 2006).

Indiana

Penalties — Sec. 23-0.5-5-2. Burns Indiana Statutes Annotated.

Doing business definitions—Sec. 23-0.5-5-5. Burns Indiana Statutes Annotated.

Iowa

Penalties — Sec. 489.902, Iowa Code Annotated.

Doing business definitions — Sec. 489.905, Iowa Code Annotated.

Kansas

Penalties — Sec. 17-76,126, Kansas Statutes Annotated.

Doing business definitions — Sec. 17-7932 Kansas Statutes Annotated.

Case law — *Douglas Landscape and Design, LLC v. Miles,* 355 P.3d 700 (Kan. App. 2015); *Meyer v. Christie,* 2009 U.S. Dist. LEXIS 9891 (D. Kan. 2009).

Kentucky

Penalties — Sec. 14A.9-020, Kentucky Revised Statutes.

Doing business definitions — Sec. 14A.9-010, Kentucky Revised Statutes.

Case law — *Modern Motors, LLC v. Yelder*, 2010 Ky. App. Unpub. LEXIS96.

Louisiana

Penalties — Sec. 12:1354, Louisiana Statutes Annotated.

Doing business definitions — Sec. 12:1343, Louisiana Statutes Annotated.

Maine

Penalties — Title 31, Sec. 1629, Maine Revised Statutes Annotated.

Doing business definitions — Title 31, Sec. 1623, Maine Revised Statutes Annotated.

Maryland

Penalties — Sec. 4A-1007, Annotated Code of Maryland, Corps. & Ass'ns.

Doing business definitions — Sec. 4A-1009, Annotated Code of Maryland, Corps. & Ass'ns.

Case law — *Willow Groves Citizens Ass'n v. City Council of Prince County*, 175 A.3d 852 (Md. App. 2017); *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colorado, LLC,* 135 A.3d 492 (Md. 2016).

Massachusetts

Penalties — Ch. 156C, Sec. 54, Massachusetts General Laws Annotated.

Doing business definitions—Ch. 156C, Sec. 48, Massachusetts General Laws Annotated.

Case law — BoylstonD3 LLC v. Galvin, 496 F. Supp.3d 692 (D. Mass. 2020)

Michigan

Penalties — Sec. 450.5007, Michigan Compiled Laws Annotated.

Doing business definitions — Sec.450.5008, Michigan Compiled Laws Annotated.

Case law — *Salom Enters., LLC v. TS Trim Indus., Inc.*, 464 F.Supp.2d 676 (E.D. Mich. 2006).

Minnesota

Penalties — Sec. 322C.0808, Minnesota Statutes Annotated.

Doing business definitions — Sec. 322C.0803, Minnesota Statutes Annotated.

Mississippi

Penalties — Sec. 79-29-1013, Mississippi Code 1972 Annotated.

Doing business definitions — Sec. 79-29-1015, Mississippi Code 1972 Annotated.

Missouri

Penalties — Sec. 347.163, Missouri Statutes Annotated.

Doing business definitions — Sec. 347.163, Missouri Statutes Annotated.

Case law — *New LLC v. Bauer*, 586 S.W.3d 889 (Mo.App. 2019)

Montana

Penalties — Sec. 35-8-1002, Montana Code Annotated.

Doing business definitions — Sec. 35-8-1001, Montana Code Annotated.

Nebraska

Penalties — Sec. 21-162, Nebraska Revised Statutes.

Doing business definitions — Sec. 21-157, Nebraska Revised Statutes.

Case law — *Blues Events, LLC v. Lincoln Professional Baseball, Inc.*, 2014 U.S. Dist. LEXIS 11518 (D. Neb. 2014).

Nevada

Penalties — Sec. 86.548, Nevada Revised Statutes.

Doing business definitions — Sec. 86.5483, Nevada Revised Statutes.

New Hampshire

Penalties — Sec. 304-C:180, New Hampshire Statutes Annotated.

Doing business definitions — Sec. 304-C:174, New Hampshire Statutes Annotated.

New Jersey

Penalties — Sec. 42:2C-65, New Jersey Statutes Annotated.

Doing business definitions — Sec. 42:2C-59, New Jersey Statutes Annotated.

Case law — *Fahs Rolston Paving Corp. v. Pennington Dev. Corp*., 2007 U.S. Dist. LEXIS 59283 (D. N.J.).

New Mexico

Penalties — Sec.53-19-53, New Mexico Statutes Annotated.

Doing business definitions — Sec.53-19-54, New Mexico Statutes Annotated.

New York

Penalties — Sec. 808, New York Limited Liability Company Law.

Doing business definitions — Sec. 803, New York Limited Liability Company Law.

Case law — *RMS Res. Props. LLC v. Naaze,* 903 N.Y.S.2d 729 (Nassau County 2010); *Star201, LLC v. Martinez*, 2026 NY Slip Op 02144

North Carolina

Penalties — Sec. 57D-7-02, General Statutes of North Carolina.

Doing business definitions — Sec. 57D-7-01, General Statutes of North Carolina.

Case law — *JDG Environmental, LLC v. BJ & Associates, Inc.*, 253 (N.C. App. 2023)

North Dakota

Penalties — Sec. 10-32.1-84,North Dakota Century Code.

Doing business definitions — Sec. 10-32.1-82, North Dakota Century Code.

Ohio

Penalties — Sec. 1706.515, Page's Ohio Revised Code Annotated.

Doing business definitions — Sec. 1706.512,. Page's Ohio Revised Code Annotated.

Case law — *ProMac Techs., LLC v. Fabrication Automation, LLC*, 181 N.E.3d 630 (Ohio App. 2021); *Capital Source Bank v. Hnatiuk,* 2016 Ohio App. LEXIS 2314; *Premier Capital, LLC v. Baker,* 972 N.E.2d 1125 (Ohio App. 11 Dist. 2012); *Columbus Steel Castings Co. v. Transp. & Transit Assocs., LLC,* 2007 Ohio App. LEXIS 5825 (Ohio App. 2007); *Ferron v. Search Cactus, LLC,* 2007 U.S. Dist LEXIS 44473 (E.D. Ohio).

Oklahoma

Penalties — Title 18, Sec. 2048, Oklahoma Statutes Annotated.

Doing business definitions — Title 18, Sec. 2049, Oklahoma Statutes Annotated.

Case law — *Wells Fargo Bank, NA v. Housing Foundation*, 2011 U.S. Dist. LEXIS 49034.

Oregon

Penalties — Sec. 63.704, Oregon Revised Statutes.

Doing business definitions — Sec. 63.701, Oregon Revised Statutes.

Pennsylvania

Penalties — Title 15, Sec. 411, Pennsylvania Consolidated Statutes Annotated.

Doing business definitions — Title 15, Sec. 403, Pennsylvania Consolidated Statutes Annotated.

Rhode Island

Penalties — Sec. 7-16-54, Rhode Island General Laws.

Doing business definitions — Sec. 7-16-54, Rhode Island General Laws.

Case law — NACR Leasing, LLC v. Adena Corp., 2021 R.I. Super LEXIS 33.

South Carolina

Penalties — Sec. 33-44-1008, Code of Laws of South Carolina.

Doing business definitions — Sec. 33-44-1003, Code of Laws of South Carolina.

South Dakota

Penalties — Sec. 47-34A-1008, South Dakota Codified Laws.

Doing business definitions — Sec. 47-34A-1003, South Dakota Codified Laws.

Tennessee

Penalties — Sec. 48-249-913, Tennessee Code Annotated.

Doing business definitions — Sec. 48-249-902, Tennessee Code Annotated.

Texas

Penalties — Secs. 9.051, 052, Texas Business Organizations Code.

Doing business definitions — Sec. 9.251, Texas Business Organizations Code.

Case law — *Alliance Transp. & Logistics, LLC v. G&J Truck Sales, Inc.*, 2021 US Dist. Lexis 185040 (N.D. Tex. 2021).

Utah

Penalties — Sec. 16-1a-503, Utah Code Annotated.

Doing business definitions — Sec. 16-1a- 506, Utah Code Annotated.

Vermont

Penalties — Title 11, Sec. 4119, Vermont Statutes Annotated.

Doing business definitions — Title 11, Sec. 4113, Vermont Statutes Annotated.

Virginia

Penalties — Sec. 13.1-1057, Virginia Code Annotated.

Doing business definitions — Sec. 13.1-1059, Virginia Code Annotated.

Case law — *SAF Funding, LLC v. Taylor*, 2017 Va. Cir. LEXIS 316; *Nolte v. MT Technology Enterprises, LLC,* 726 S.E.2d 339 (Va. 2012).

Washington

Penalties — Sec. 23.95.505, Revised Code of Washington Annotated.

Doing business definitions — Sec. 23.95.520, Revised Code of Washington Annotated.

Case law — *Glacier Water Co. LLC v. Earl*, 2009 U.S. Dist LEXIS 22649 (W.D. Wash. 2009).

West Virginia

Penalties — Sec. 31B-10-1008, West Virginia Code Annotated.

Doing business definitions — Sec. 31B-10-1003, West Virginia Code Annotated.

Wisconsin

Penalties — Sec. 183.0902, Wisconsin Statutes Annotated.

Doing business definitions — Sec. 183.0905, Wisconsin Statutes Annotated.

Case law — *Ijs Storage, LLC v. Fagan*, 2026 Wisc. App. Lexis 622.

Wyoming

Penalties — Sec. 17-16-1502, Wyoming Statutes Annotated.

Doing business definitions — Sec. 17-16-1501, Wyoming Statutes Annotated.



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