



Model Act Clarifies Foreign Entity Registration

Foreign State Qualifications

Though state laws vary, the Model Act as adopted by 24 states provides the following activities generally do not constitute doing business:

- (a) maintaining, defending, or settling a lawsuit;
- (b) holding directors or shareholders meetings;
- (c) maintaining a bank account;
- (d) maintaining offices or agencies for transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- (e) selling through independent contractors;
- (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (g) creating as borrower or lender, or acquiring, as borrower or lender, indebtedness, mortgages and security interests in real or personal property;
- (h) securitizing and collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) owning without more, real or personal property;
- (j) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature; and
- (k) transacting business in interstate commerce.

On the other hand, under the Model Act, a company is likely to be required to qualify to do business in a state if it intends to perform any of the following activities in that state:

- Maintain an office
- Hire employees
- Own real estate
- Serve as a general partner of a partnership organized in the state

Attached to this article is the list of states where your company is selling products/services but otherwise has no employees or office(s). Generally, most states have an exemption that foreign corporations do not have to qualify for soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, so long as orders require acceptance outside the particular state before they become contracts; and for conducting interstate business. *Such exemptions are not provided in New York and New Jersey law.*

In sum, the decision on whether or not to register a business as a foreign entity is a legal decision and may require a consultation with a qualified attorney. It is impossible to determine for certain if your company's lack of registration in a particular state would ever be called into question. To be absolutely certain qualification is not required would involve researching case law and attorney general opinions in each state. An attorney would be required to perform such research although we can tell you that in prior instances we have never actually located anything on point in Attorney General Opinions and no one has ever wanted to pay for the case law research. In addition to certain litigation risks, other things that may be considered in the decision-making in each state are:

- The amount of business conducted (dollar value of revenue in a given state could catch a state's attention).

- Some states, such as Illinois have significant penalties for failure to qualify, or qualifying after business has commenced and should be considered in the decision making process. In addition some states will require a tax clearance when filing after business has commenced, making the qualification process more time-consuming and difficult. The penalties for failure to qualify are listed in the chart to follow.

We hope this information will be helpful in facilitating the decision-making process.

Please contact our service representatives for any additional questions or assistance at 1-800-952-5696. Or contact us on our website, www.clasinfo.com.

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