



III. Alaska

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III. Alaska

by

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A. Introduction

The following sections outline the process by which Alaska law allows corporations and limited liability companies (“LLCs”) established outside the state to do business in Alaska. The State of Alaska Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing (the “Division”) oversees corporate and LLC filings in the state.<sup>2</sup>

<sup>2</sup>The Division has two geographic mailing addresses: in Juneau, the mailing address is P.O. Box 110806, Juneau, AK 99811-0806 and the telephone number is (907) 465-2550; in Anchorage, the mailing address is 550 West Seventh Avenue, Suite 1500, Anchorage, AK 99501-3567, and the telephone number is (907) 269-8160. Information on corporations, LLCs, and other business entities, as well as certain required forms, are available on the Division's website: State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, <https://www.commerce.alaska.gov/web/cbpl/corporations.aspx>.

B. What Constitutes Doing Business in Alaska

1. Corporations —

The Alaska Corporations Code governs the activities of domestic and foreign corporations.<sup>3</sup> Article 10 of Chapter 6 specifically applies to foreign corporations.<sup>4</sup>

<sup>3</sup>The Alaska Corporations Code (the "Corporations Code") is set forth in [Alaska Stat. §§10.06.005 et seq.](#), as Chapter 6 of Title 10: Corporations and Associations.

<sup>4</sup>The provisions pertaining to foreign corporations are set forth in [Alaska Stat. §§10.06.705 – 10.06.788](#).

A foreign corporation may not transact business in Alaska until the Commissioner of the Department of Commerce, Community, and Economic Development ("the Department") has issued it a certificate of authority to do so.<sup>5</sup> The statute does not provide a definition of "transacting business"; however, the statute sets forth a list of activities that do *not* meet the definition of transacting business:

<sup>5</sup> [Alaska Stat. §10.06.705](#).

- (1) maintaining, defending, or settling an action, suit, or administrative or arbitration proceeding, or the settlement of claims or disputes;
- (2) holding meetings of corporate directors or shareholders, or carrying on other activities concerning the corporation's internal affairs;
- (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; or
- (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.<sup>6</sup>

<sup>6</sup>*Id.* §10.06.718.

This list of activities is not exhaustive—other unenumerated activities also may rise to the level of transacting business in the state.

Alaska has a very broad long-arm statute <sup>7</sup> for purposes of obtaining jurisdiction over persons or entities outside the state. <sup>8</sup> The Alaska Supreme Court has noted that the activities of a foreign corporation could be such that it would not be required to obtain a certificate of authority, but still be subject to service of process in the state. <sup>9</sup>

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<sup>7</sup> *Id.* §09.05.015.

<sup>8</sup> *Kennecorp Mortg. v. First Nat'l Bank*, 685 P.2d 1232, 1239 (Alaska 1984) (this court has construed Alaska's long-arm statute as a "broad one which we regard as an attempt by the legislature to establish jurisdiction to the maximum extent permitted by due process".); *See also*, *Volkswagenwerk v. Klippan*, 611 P.2d 498, 501, 502 (Alaska 1980).

<sup>9</sup> *Stephenson v. Duriron Co.*, 401 P.2d 423 (Alaska 1965) (noting that while defendant corporation was not required to obtain a certificate of authority, it still possessed the minimum contacts necessary for Alaska courts to exercise jurisdiction over the corporation; *See also*, *Kachemak Seafoods, Inc. v. Century Airlines, Inc.*, 641 P.2d 213, 216 (Alaska 1982); *Morrow v. New Moon Homes, Inc.*, 548 P.2d 29, 293 (Alaska 1976)); *See 84 CPS § III-G, Service of Process*, below.

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## 2. Limited liability companies —

Under the Alaska Revised Limited Liability Company Act (the "Revised LLC Act"), <sup>10</sup> a foreign LLC must register with the Department before "conducting affairs" in the state. <sup>11</sup> The statute does not define "conducting affairs," but does provide a list of actions that do *not* constitute the same:

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<sup>10</sup> [Alaska Stat. §§10.50.010 – 10.50.995](#).

<sup>11</sup> *Id.* §10.50.605.

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- (1) maintaining, defending, or settling a court action or other proceeding or claim;
- (2) holding meetings of the members or managers of the company;
- (3) maintaining bank accounts;
- (4) selling through independent contractors;
- (5) soliciting or procuring orders by mail, through employees, agents, or otherwise, if the orders require acceptance outside the state before becoming binding contracts;
- (6) creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property;
- (7) securing or collecting debts, or enforcing rights in property securing debts;

(8) conducting an isolated transaction that is completed within 30 days and that is not part of a course of repeated transactions of a similar nature; or

(9) conducting affairs in interstate commerce.<sup>12</sup>

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<sup>12</sup> *Id.* §10.50.720.

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In substance, the list of actions that are not considered to be “conducting affairs” for a foreign LLC are nearly identical to the list of actions that are not considered to be “transacting business” for a foreign corporation. However, the wording is slightly different.

### C. Qualifying to Do Business in Alaska

#### 1. Corporations —

A foreign corporation must apply to the Commissioner of the Department for a certificate of authority to do business in Alaska.<sup>13</sup> The application must be on the forms prescribed by the Commissioner, and executed by the corporation's president or vice president and secretary or assistant secretary.<sup>14</sup> A fee of \$350 is charged for processing the application for Certificate of Authority. The application must set forth:

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<sup>13</sup> [Alaska Stat. §10.06.728](#).

<sup>14</sup> *Id.* §10.06.733. To file the Certificate of Authority online, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees. To complete and print the Certificate of Authority, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Certificate of Authority Application, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-414.pdf> (2013).

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(1) the name of the corporation and the assumed name, if any, or if the name of the corporation does not contain the word “corporation,” “company,” “incorporated,” or “limited” or an abbreviation of one of these words, the name of the corporation with the word or abbreviation that it elects to use in the this state, and state or country under whose laws it is incorporated;

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

(3) the address of the principal office of the corporation in the state or country under whose laws it is incorporated;

(4) the address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(5) the purpose the corporation proposes to pursue in the transaction of business in this state <sup>15</sup>and the codes from the identification code established under Alaska Stat. §10.06.870 that most closely describe the activities in which the corporation will engage in this state;

(6) the names and addresses of the directors and officers of the corporation;

(7) a statement of the aggregate number of shares that the corporation may issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(8) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(9) a statement expressed in dollars of the amount of stated capital of the corporation;

(10) an estimate expressed in dollars of the (A) value of all property to be owned by the corporation for the following year; (B) value of the property of the corporation to be located in this state during the following year; (C) gross amount of all business that will be transacted by the corporation during the following year; and (D) gross amount of business that will be transacted by the corporation at or from places of business in this state during the following year; <sup>15</sup>

(11) additional information necessary or appropriate to enable the Commissioner to determine whether the corporation is entitled to a certificate of authority and to determine and assess the fees and taxes prescribed in this chapter that are payable;

(12) the name and address of each alien affiliate, <sup>17</sup>the percentage of outstanding shares controlled by each alien affiliate, and a specific description of the nature of the relationship between the foreign corporation and its alien affiliate; or a statement that there are no alien affiliates; and

(13) the name and address of each person owning at least five percent of the shares, or five percent of any class of shares and the percentage of the shares or class of shares owned by that person. <sup>18</sup>

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<sup>15</sup>To avoid the necessity of later amendments, the purpose may be stated broadly (e.g. "the transaction of all lawful business" similar to that authorized for domestic corporations in [Alaska Stat. § 10.06.208\(2\)](#)). However, the corporation must still designate an identification code which most closely describes the principal intended activity.

<sup>16</sup>These figures are obviously not ascertainable with any precision in most cases, and the Department is expecting only a very general best estimate.

<sup>17</sup>"Alien" is defined as (1) an individual who is not a U.S. citizen or national, or who is not lawfully admitted for permanent residence or pursuant to specific federal law, or (2) an entity not created or organized under the laws of the U.S or any U.S. state, or whose principal place of business is not located in any U.S. state. [Alaska Stat. §10.06.990\(3\)\(A\)](#), (B). The definition of "alien" also includes a U.S. entity controlled by one of the persons or entities described above. [Alaska Stat. §10.06.990\(3\)\(C\)](#). "Affiliate" is defined as a person that directly or indirectly controls, or is controlled by, or is under common control with, the corporation. [Alaska Stat. §10.06.990\(2\)](#).

<sup>18</sup> [Alaska Stat. §10.06.730](#).

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If not filing online, an original and one exact copy of the Application for Certificate of Authority must be delivered to the Commissioner for processing, together with the required fee.<sup>19</sup> The corporation may transact business in the state for the purpose set out in its application upon the issuance of the certificate of authority by the Commissioner.<sup>20</sup> Once the certificate of authority is issued, the foreign corporation enjoys the same rights and privileges as a domestic corporation until a certificate of withdrawal or revocation has been issued.<sup>21</sup> The foreign corporation is also subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic corporation.<sup>22</sup>

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<sup>19</sup> *Id.* §10.06.733.

<sup>20</sup> *Id.* §10.06.735.

<sup>21</sup> *Id.* §10.06.740.

<sup>22</sup> *Id.*

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If the foreign corporation changes its corporate name or corporate purposes, it must make an application for an amended certificate of authority.<sup>23</sup> The fee for this application is currently \$25.

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<sup>23</sup> *Id.* §10.06.738. The Amended Certificate of Authority is available online. State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-415.pdf>.

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## 2. Limited liability companies —

Foreign LLCs must also register prior to “conducting affairs” in Alaska by filing an application for registration signed by “a person who is authorized by the law of the state or other jurisdiction where the company was organized to sign the application.”<sup>24</sup> The current fee for the application is \$350. The application must contain:

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<sup>24</sup> [Alaska Stat. §§ 10.50.605](#); 10.50.610.

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- (1) the name of the foreign limited liability company and, if different, the name the company proposes to use in the state;
- (2) the state or other jurisdiction where the company was organized, and date of organization;
- (3) the name and address of the company's registered agent;
- (4) that the department is appointed the agent of the company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent;
- (5) the address of the office required by the state of the company's organization to be maintained in that state, or, if the state does not require an office to be maintained in that state, the principal office of the company;
- (6) the purpose the company proposes to pursue in the conduct of its affairs in this state and the codes from the identification code established under Alaska Stat. §10.06.870 of the Corporations Code that most closely describes the activities in which the company will engage in the state;
- (7) the names and addresses of the managers of the company, or, if the company is not managed by a manager, the names and

addresses of the members of the company;

(8) the name and address of each person owning at least a five percent interest in the company and the percentage of interest owned by that person in the company; and

(9) that the company is a foreign limited liability company.<sup>25</sup>

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<sup>25</sup> *Id.* §10.50.615(a). To submit the Certificate of Registration online, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees. To complete and print the Certificate of Registration, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Certificate of Registration, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-497.pdf> (2013).

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The application must also include proof from the jurisdiction of organization that the company was organized in that jurisdiction.<sup>26</sup>

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<sup>26</sup> [Alaska Stat. §10.50.615\(b\)](#).

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A foreign LLC may amend its registration by filing, along with a fee of \$25, an amendment of registration signed by a person with authority to do so under the law of the jurisdiction of organization.<sup>27</sup> The submission, accompanied by the fee, must include the name of the company, date of filing of the original application for registration, and the amendment.<sup>28</sup> The application for registration may be amended in any way as long as the amendment is limited to provisions permitted to be included in an application for registration at the time of amendment.<sup>29</sup>

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<sup>27</sup> *Id.* §10.50.625.

<sup>28</sup> *Id.* §10.50.630(a). State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Amended Certificate of Registration, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-498.pdf> (2012).

<sup>29</sup> [Alaska Stat. §10.50.630\(b\)](#).

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#### D. Name Registration by a Foreign Corporation or LLC

##### 1. Corporations —

A foreign corporation will not be issued a certificate of authority unless its name is available for corporate use under Alaska Stat. §10.06.105(d), meaning that it is distinguishable from the name of any other organized entity and from any reserved or registered corporate names.<sup>30</sup> Additionally, the name of a foreign corporation must contain the words “corporation,” “company,” “incorporated,” or “limited,” or an abbreviation of one of these words while doing business in the state.<sup>31</sup> The name must not contain any word or phrase that suggests that it is organized for a purpose other than that listed in its articles of incorporation and must not contain the words

“city,” “borough,” or “village,” or imply that the corporation is a municipality, except that the name of a city, borough, or village may be used in the name.<sup>32</sup> For a \$25 fee, a foreign corporation intending to apply for a certificate of authority may reserve a corporate name for a maximum of 120 days by filing an application with the Commissioner.<sup>33</sup>

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<sup>30</sup> [Alaska Stat. §10.06.720\(4\)](#).

<sup>31</sup> *Id.* §10.06.720(1).

<sup>32</sup> *Id.* §10.06.720(2) – (3).

<sup>33</sup> *Id.* §10.06.110(3); [Alaska Stat. §10.06.115](#). To file the Business or Corporation Name Reservation Application online, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees. To complete and print the application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Business Name Reservation, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-559.pdf> (2016).

A foreign corporation may register its corporate name by paying \$25 and filing the Foreign Corporate Name Registration, setting forth the corporation's name, the state or territory in which it was incorporated, the date of incorporation, a statement that it is doing business, and a brief statement of its business.<sup>34</sup> The application must include a certificate from an official of the state of organization with custody of corporate records stating that the corporation is in good standing under the laws of that state or territory.<sup>35</sup>

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<sup>34</sup> [Alaska Stat. §10.06.135\(1\)](#). To complete and print the application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Foreign Corporation Name Registration, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-558.pdf> (2016).

<sup>35</sup> [Alaska Stat. §10.06.135\(2\)](#).

If the corporation's name is impermissible under Alaska law, the corporation may select an assumed name under which to do business in the state.<sup>36</sup> If a foreign corporation authorized to transact business in the state changes its name to one under which the state would not grant a certificate of authority, the corporation's certificate is suspended and it may not transact business until it has changed its name “to a name available to it under the laws of this state.”<sup>37</sup>

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<sup>36</sup> *Id.* §10.06.723. The assumed name must meet the requirements of §10.06.720 of the Corporations Code.

<sup>37</sup> *Id.* §10.06.725.

## 2. Limited liability companies —

The name of a foreign LLC must contain the words “limited liability company,” “L.L.C.,” or “LLC,” and may not contain the words “city,” “borough,” or “village,” or imply that the company is a municipality.<sup>38</sup> The name must be distinguishable on the records of the Department from any other organized entity or reserved or registered name.<sup>39</sup>

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<sup>38</sup> *Id.* §§10.50.020; 10.50.620.

<sup>39</sup> *Id.* §§10.50.025; 10.50.620.

For a \$25 fee, a foreign LLC intending to submit an application for registration may apply to reserve its name for a maximum of 120 days.<sup>40</sup> A foreign LLC may register its name, thereby guaranteeing its exclusive use of same, by paying a \$25 fee and filing an application setting forth the LLC's name, the state or territory in which it was organized, the date of organization, a statement that it is

conducting affairs, and a brief statement of its principal affairs.<sup>41</sup> The application must include proof from the jurisdiction of organization that the LLC was organized in that jurisdiction.<sup>42</sup>

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<sup>40</sup> *Id.* §§10.50.030; 10.50.035. See State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Business or Corporation Name Reservation Application, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-559.pdf> (2016).

<sup>41</sup> [Alaska Stat. §§10.50.043](#); 10.50.048. See State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Foreign Corporate Name Registration, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-558.pdf> (2016).

<sup>42</sup> [Alaska Stat. §10.50.048](#).

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If the company's name is not available for use in the state, the company may use an available assumed name.<sup>43</sup> If the company changes its name to one that is not available, its registration is suspended and it may not conduct business in Alaska until it changes its name to one that is available.<sup>44</sup>

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<sup>43</sup> *Id.* §10.50.620.

<sup>44</sup> *Id.* §10.50.623.

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## E. Maintaining Authority to Do Business in Alaska

### 1. Duty to file biennial reports —

A foreign corporation or LLC authorized to transact business in Alaska must file with the Department a biennial report prior to January 2 of the filing year.<sup>45</sup> A newly authorized foreign corporation shall, upon receipt of a form from the Department, file a biennial report within six months from its authorization to transact business in Alaska. The filing fee for the biennial report is \$200.<sup>46</sup> For a foreign corporation, the biennial report must include:

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<sup>45</sup> [Alaska Stat. §§10.06.811\(a\)](#); 10.50.760(a).

<sup>46</sup> *Id.* §10.06.811(d).

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- the name of the corporation and state or country where it is incorporated;
- the address of the registered office of the corporation in this state, and the name of its registered agent at that address, and, the address of its principal office in the state or country where it is incorporated;
- a brief statement of the character of the business in which the corporation is engaged in this state and the codes from the identification codes<sup>47</sup> established under Alaska Stat. §10.06.870 that most closely describe the activities in which the corporation is engaged in this state;
- the names and addresses of the directors and officers of the corporation;
- a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

- a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
- the name and address of each alien affiliate, the percentage of outstanding shares controlled by each alien affiliate, and a specific description of the nature of the relationship between the corporation and its alien affiliates, or a statement that no alien affiliate exists; and
- the name and address of each person owning at least five percent of the shares, or five percent of any class of shares as of September 30 of the second year of the biennial reporting period, and the percentage of the shares or class of shares owned by that person.<sup>48</sup>

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<sup>47</sup> Alaska NAICS Codes, [https://www.commerce.alaska.gov/web/portals/5/pub/BUS\\_NAICS\\_Codes.pdf](https://www.commerce.alaska.gov/web/portals/5/pub/BUS_NAICS_Codes.pdf).

<sup>48</sup> [Alaska Stat. §10.06.808](#). To file the biennial report online or to complete and print the application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees.

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If the foreign corporation fails to file a biennial report on or before February 1 of the appropriate filing year, the report will be considered delinquent and the entity can be subject to penalties amounting to 10 percent of the amount of the corporation tax assessed against it for the period beginning January 1 of the year for which the report should have been filed.<sup>49</sup>

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<sup>49</sup> [Alaska Stat. §10.06.815](#).

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Likewise, a newly organized foreign LLC shall, upon receipt of a form from the Department, file a biennial report within six months after its original organization.<sup>50</sup> The filings fee for the biennial report is \$200. For a foreign LLC, the biennial report must include:

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<sup>50</sup> *Id.* §10.50.760(d).

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- the name of the company and the state or country where it is organized;
- the address of the registered office of the company in this state, and the name of its registered agent at that address, and the address of its principal office in the state or country where it is organized;
- the names and addresses of the managers of the company, or, if the company is not managed by a manager, the names and addresses of the members of the company; and
- the name and address of each person owning at least a five percent interest in the company and the percentage of interest owned by that person.<sup>51</sup>

<sup>51</sup> *Id.* §10.50.755. To file the biennial report online or to complete and print the application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees.

## 2. Duty to maintain registered office and agent

A foreign corporation or LLC authorized to do business in Alaska must continuously maintain both a registered office and registered agent. <sup>52</sup>The registered office may, but need not be, the same as its place of business in the state. <sup>53</sup>The registered agent may be either an individual resident whose business office is the same as the registered office, or a domestic or foreign corporation authorized to do business in the state whose business office is identical to that of the registered office. <sup>54</sup>

<sup>52</sup> [Alaska Stat. §§10.06.753](#); 10.50.635.

<sup>53</sup> *Id.* §§10.06.753(1); 10.50.635(1).

<sup>54</sup> *Id.* §§10.06.753(2); 10.50.635(2).

To change the registered office or registered agent, the corporation or LLC must file a signed statement with the Commissioner setting forth the name of the corporation or LLC, address of the registered office, address of the new registered office (if changed), name of the registered agent, name of the new registered agent (if changed), that the address of the registered office and the business office, if changed, will be identical, and that the change was authorized by a resolution of the corporation's board of directors, if a corporation, or by the company, if an LLC. <sup>55</sup>If a corporation, the statement must be executed by the president or a vice president. <sup>56</sup>

<sup>55</sup> *Id.* §§ 10.06.758; 10.50.637. To print the Statement of Change application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Statement of Change – Foreign LLCs, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-504.pdf> (2016).

<sup>56</sup> Alaska Stat. §10.06.760. To print the Statement of Change application, see State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Statement of Change – Foreign Business Corporation, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-420.pdf> (2016).

## F. Consequences of Doing Business in Alaska Without Having Qualified to Do So

### 1. Corporations —

If a foreign corporation fails to obtain a certificate of authority, it is liable to the state for an amount equal to all fees and corporation taxes that would have been imposed by the Alaska Corporations Code had it obtained the certificate of authority and filed all required reports, plus all penalties imposed for failure to pay the fees and taxes. <sup>56</sup>In addition, a penalty of up to \$10,000 per calendar year or portion thereof for each year in which the corporation transacts business in the state without a certificate may be imposed. <sup>57</sup>These provisions may be enforced in proceedings brought by the attorney general to recover amounts due. <sup>58</sup>

<sup>56</sup> [Alaska Stat. §10.06.710](#).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

In addition to liability for fees, taxes, and penalties, failure to obtain a certificate of authority prevents a foreign corporation from maintaining an action, suit, or proceeding in an Alaska court until the certificate is obtained.<sup>59</sup> A court may permit a foreign corporation to obtain the certificate after commencing suit as long as the statute of limitations on the underlying action has not yet run at the time the failure to comply with the corporate statutes has been cured.<sup>60</sup>

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<sup>59</sup> *Id.* §10.06.713.

<sup>60</sup> *Gratrix v. Pine Tree, Inc.*, [677 P.2d 1264](#) (Alaska 1984).

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The transaction of business without a certificate of authority does not affect the validity of contracts or other acts of the corporation, and does not prevent the corporation from defending an action, suit, or proceeding in an Alaska court.<sup>61</sup>

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<sup>61</sup> [Alaska Stat. §10.06.715](#).

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## 2. Limited liability companies —

A foreign LLC is subject to similar restrictions, fees, and penalties for failure to register with the state prior to conducting affairs. It may not maintain an action in state court until it has registered,<sup>62</sup> and is liable for the fees it would have paid if properly registered,<sup>63</sup> as well as a civil penalty not to exceed \$10,000 per year (including a partial year) for each year the company conducted affairs without registering with the Department.<sup>64</sup> In addition, a court may impose an injunction restraining the company from conducting further affairs in the state and from “further exercising the company’s rights and privileges in this state.”<sup>65</sup>

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<sup>62</sup> *Id.* §10.50.675.

<sup>63</sup> *Id.* §10.50.690.

<sup>64</sup> *Id.* §10.50.700.

<sup>65</sup> *Id.* §10.50.710.

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The Revised LLC Act expressly provides that a member or manager of a foreign limited liability company is not liable for the debts and obligations of the company solely because the company conducts affairs in the state without registration.<sup>66</sup>

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<sup>66</sup> *Id.* §10.50.715.

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## G. Service of Process

The registered agent appointed by the foreign corporation or LLC is an agent upon whom process, notice, or demand required or permitted by law to be served upon the corporation or LLC may be served.<sup>67</sup> The Commissioner of the Department is an agent upon whom process may be served if a foreign corporation or LLC transacting business in the state fails to appoint or maintain a registered agent in the state, if the registered agent cannot be found “with reasonable diligence” at the registered office, or if a foreign corporation’s certificate of authority,

<sup>68</sup>

or foreign LLC's registration, has been suspended or revoked. <sup>68</sup>The commissioner must be served with a copy of the process, notice, or demand and all documents required by law to be delivered therewith, along with a \$25 fee. <sup>69</sup>A notice of service on the commissioner must also be sent by certified mail to the corporation along with a copy of the papers to be served. <sup>70</sup>

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<sup>67</sup> [Alaska Stat. §§10.06.763](#); 10.50.640.

<sup>68</sup> *Id.* §§10.06.765; 10.50.645.

<sup>69</sup> *Id.* §§10.06.175(b); 10.50.065(b).

<sup>70</sup> *Id.* §§10.06.175(b); 10.50.065(b).

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The procedures set forth for service of process on a foreign corporation or LLC in the Corporations Code are non-exclusive, and do not affect the right to serve process as otherwise required or permitted by law. <sup>71</sup>

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<sup>71</sup> *Id.* §§10.06.770; 10.50.065(d).

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## H. Withdrawal/Cancellation of Authority to Do Business in Alaska

### 1. Corporations —

A foreign corporation must obtain a certificate of withdrawal in order to withdraw from doing business in the state. <sup>72</sup>Upon the issuance of the certificate, the corporation's authority to transact business in the state ceases. <sup>73</sup>An application for certificate of withdrawal must be accompanied by the required fee (currently \$25), and include:

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<sup>72</sup> [Alaska Stat. §10.06.778](#).

<sup>73</sup> *Id.* §10.06.788.

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- (1) the name of the corporation and the state or country of its incorporation;
- (2) a statement that the corporation is not transacting business in the state;
- (3) a statement that the corporation surrenders its authority to transact business in the state;
- (4) a statement revoking the authority of its registered agent to accept service of process in the state and consenting to acceptance of service of process by the Commissioner for proceedings arising in the state during the time the corporation was authorized to transact business;
- (5) a post office address for mailing copies of process served against the corporation on the commissioner;
- (6) a statement of the aggregate number of shares that the corporation may issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of the application;
- (7) a statement of the aggregate number of issued shares, itemized as in (6), above;

(8) a statement of the amount in dollars of stated capital of the corporation as of the date of the application; and

(9) additional information necessary or appropriate to enable the Commissioner to determine and assess any unpaid fees or corporate taxes payable.<sup>74</sup>

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<sup>74</sup> *Id.* §10.06.780. The Certificate of Withdrawal is available at State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Certificate of Withdrawal, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-418.pdf> (2012).

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The corporation must file an original and one exact copy of the application on a form prescribed by the commissioner and executed by the corporation's president or vice-president and secretary or assistant secretary.<sup>75</sup> However, if the corporation is in the hands of a receiver or trustee, the application should be executed on behalf of the corporation by the receiver or trustee.<sup>76</sup>

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<sup>75</sup> [Alaska Stat. §§10.06.783](#); 10.06.785.

<sup>76</sup> *Id.* §10.06.783.

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## 2. Limited liability companies

A foreign LLC registered to do business in Alaska may cancel its registration by filing a Certificate of Cancellation, along with the required fee (currently \$25).<sup>77</sup> The application must state:

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<sup>77</sup> *Id.* §10.50.655.

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(1) the name of the company and the state or other jurisdiction where the company was organized;

(2) that the company is not conducting affairs in the state;

(3) that the company cancels its registration in this state;

(4) that the company revokes the authority of the registered agent for service of process in the state and consents that service of process may be made on the Commissioner for causes of action arising in the state while the LLC was registered; and

(5) an address for mailing a copy of process to the company.<sup>78</sup>

<sup>78</sup> [Alaska Stat. §10.50.660](#). The Certificate of Cancellation is available at State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, Corporations Section, Forms and Fees, <https://www.commerce.alaska.gov/web/Portals/5/pub/08-502.pdf>.

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The application must be on the form provided by the state and must be signed by a person with authority to sign the application under the law of the jurisdiction of its organization, or, if the company is controlled by a receiver, trustee, or other court-appointed fiduciary, by that appointed person. <sup>79</sup>

<sup>79</sup> [Alaska Stat. §10.50.665](#).

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#### I. Revocation of Authority to Do Business in Alaska

The state may revoke a foreign corporation's certificate of authority (or a foreign LLC's registration) under the following circumstances:

- (1) the corporation or LLC fails to file its biennial report within the time required, or fails to pay fees, taxes, or penalties when they are due and payable;
- (2) the corporation or LLC fails to appoint and maintain a registered agent in the state;
- (3) the corporation or LLC fails, after a change of registered agent or office, to file a statement of change with the Commissioner;
- (4) if a corporation, the corporation fails to file an amendment to its articles of merger within the time specified in the Corporations Code;
- (5) there has been a material misrepresentation in an application, report, affidavit, or other document submitted by the foreign corporation or LLC; or
- (6) if a corporation, the corporation is a party to an illegal combination in restraint of trade. <sup>80</sup>

<sup>80</sup> [Alaska Stat. §§10.06.743](#); 10.50.650(a).

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A corporate certificate of authority or LLC registration may not be revoked unless, after 60 days' notice by certified mail to the corporation or LLC's registered office, the corporation or LLC fails to correct the deficiency specified. <sup>81</sup>

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<sup>81</sup> *Id.* §§10.06.745; 10.50.650(b).

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Upon the issuance of a certificate of revocation, the corporation's authority to transact business, or the LLC's authority to conduct affairs, in the state ceases.<sup>82</sup>

<sup>82</sup> *Id.* §§10.06.750; 10.50.650(d).

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