

Topic: Foreign Entity Types with No Domestic Law
 Question by: Jeff Harvey
 Jurisdiction: Idaho
 Date: May 14, 2012

Jurisdiction	Question(s)
	<p>The question that I have is, how does your state handle a foreign entity's request for authorization to do business, if your domestic statutes do not include that business entity type? As an example, a foreign statutory trust files for authorization within your state, but your state laws do not provide for a statutory trust. Do you have a method in place to provide foreign entities with authorization in this situation, or would you simply reject the filing? Current practice in Idaho is to reject the filing.</p>
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	
Arkansas	
California	<p>The California Secretary of State will not register/qualify a foreign entity unless there is express statutory authority to register that entity type. Generally, California law does not authorize the registration of foreign business entity types that are not authorized domestically, but there are a few circumstances where California statutes expressly authorize the qualification/registration of entity types with no domestic equivalent.</p>
Colorado	
Connecticut	
Delaware	
District of Columbia	<p>In the District of Columbia we would have rejected the filing. However, we have recently implemented the new Business Organizations Act that recognizes all the entity types.</p> <p>So, statutory trust in your example can register as a foreign entity or we can form it as a domestic entity.</p>

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Florida	<p>Florida is much like Minnesota. If there is no statutory authority to file the particular entity submitted, we would reject the document but inform the entity that it must register the name for public notice purposes, as a Fictitious Name. It is filed for notice purposes only, is good for 5 years, can be renewed if the entity is still transacting business in the state, and the fee is \$50.</p>
Georgia	
Hawaii	<p>Hawaii would also reject the filing.</p>
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	<p>Louisiana would reject the filing.</p>
Maine	
Maryland	
Massachusetts	<p>Without statutory authority Massachusetts would reject.</p>
Michigan	
Minnesota	<p>Minnesota would reject the filing, (presuming that it really was for a form we do not account for) as we have no general statute such as Texas has, but we would then ask the business to file a trade name under our assumed name statutes, Minn. Stat. 333.001 to 333.065, which does account for any business organization of whatever kind. That way we would have a record of the organization and a contact point, at the very least. See:</p> <p>https://www.revisor.mn.gov/statutes/?id=333.001</p>

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Mississippi	
Missouri	<p>We would reject the filing in Missouri.</p>
Montana	<p>In Montana we would reject the filing explaining that Montana law does not support the specific entity type.</p>
Nebraska	<p>Nebraska would reject the document</p>
Nevada	<p>Nevada would reject the filing.</p>
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	<p>North Carolina would reject it, and depending upon the entity type provide them information if they need to register with another state agency.</p>
North Dakota	<p>In North Dakota, we would reject the filing.</p>
Ohio	<p>In Ohio, we require business entities to file on our prescribed forms, therefore, we would not have a form for an entity type that we do not accept. Likely, the customer would contact our office to ask for information on how to file and we would explain the process. The only option for an entity type not permitted in Ohio is to file a trade name or fictitious name.</p> <p>If a document was received on a form not prescribed by our office, the document would be rejected.</p>
Oklahoma	<p>In Oklahoma, we would reject the filing since we would have no statutory authority to file it.</p>

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Oregon	<p>If it's an entity that Oregon does not recognize - and for which we have no authority to administer - we reject the submission. More commonly, however, we find foreign entity types that have different entity identifiers than we use. Oregon law allows us to accept them, even though they appear at first blush to be non-statutory entities.</p>
Pennsylvania	<p>Pennsylvania would reject.</p>
Rhode Island	
South Carolina	
South Dakota	
Tennessee	

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<p>Texas</p>	<p>Texas would file. Note that the Texas Business Organizations Code (which includes all business entity statutes under the Code) requires all foreign entities with limited liability to register with the Texas SOS.</p> <p style="padding-left: 40px;">Sec. 9.001. FOREIGN ENTITIES REQUIRED TO REGISTER. (a) To transact business in this state, a foreign entity must register under this chapter if the entity:</p> <p style="padding-left: 80px;">(1) is a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in this state, would require the filing under Chapter 3 of a certificate of formation; or</p> <p style="padding-left: 80px;">(2) affords limited liability under the law of its jurisdiction of formation for any owner or member.</p> <p style="padding-left: 40px;">(b) A foreign entity described by Subsection (a) must maintain the entity's registration while transacting business in this state.</p> <p style="padding-left: 40px;">9.201. BUSINESS OF FOREIGN ENTITY. (a) Except as provided by Subsection (b), a foreign entity may not conduct in this state a business or activity that is not permitted by this code to be transacted by the domestic entity to which it most closely corresponds, unless other law of this state authorizes the entity to conduct the business or activity.</p> <p style="padding-left: 40px;">(b) A foreign business trust may engage in a business or activity permitted by this code to be transacted by a limited liability company.</p> <p style="padding-left: 40px;">Sec. 9.202. RIGHTS AND PRIVILEGES. A foreign nonfiling entity or a foreign filing entity registered under this chapter enjoys the same but no greater rights and privileges as the domestic entity to which it most closely corresponds.</p>
<p>Utah</p>	<p>Utah would reject if we have no statutory authority to accept, but I like the idea of making them file an assumed name</p>

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Vermont	
Virginia	In Virginia, we will only file what the Code of Virginia authorizes to be filed with the Commission. Accordingly, before we adopted our Business Trust Act, we would not file a registration for a foreign business or statutory trust. I think these entities did need to file a fictitious name certificate, but that is still fundamentally at the local level in Virginia, with a duplicate filing with us when we have the entity of record.
Washington	In Washington State, we would reject the filing and explain that we do not have that entity.
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

William Mitchell College of Law:

This issue has a bit of a twist to it. If a state's entity laws do not identify a type of foreign entity as being required to register in order to transact business, then no such requirement exists. HUBOC addresses that issue by having a catch-all definition of entity, but most states still have entity-specific registration requirements.

Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program
 Co-Reporter, Uniform Law Conference Project for
 Harmonization of Business Entity Acts
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UTAH:

Utah's assumed name statute does pretty much tell anyone who uses an assumed name must register - <http://le.utah.gov/UtahCode/section.jsp?code=42-2>

William Mitchell College of Law:

Interesting, although not applicable if the foreign entity does business under its own name.

Professor Daniel S. Kleinberger | Founding Director, Mitchell Fellows Program

MINNESOTA:

Dan (and everyone)

That depends – in Minnesota, for the unspecified business organization, they would be required to file the assumed name if they did not have in their name the full name of the owner, see 333. 001, subd. 3:

Subd. 3. True name.

"True name" means the true full name of the natural person, if a proprietorship; the true full name of each partner, if a partnership; the full corporate name as stated in its articles, if a corporation; the full name of the limited liability company as stated in its articles of organization or certificate of authority; the full name of the limited partnership, if a limited partnership; the full name of the registered limited liability partnership; the true full name of at least one trustee, if a trust; **or the true full name of at least one beneficial owner, if any other form of business organization.**

Thus, simply using your legal entity name is not enough to exempt one from filing the assumed name in Minnesota, at least. If no one beneficial owner name appeared in the entity name, they would have to list all owners' names and addresses on the assumed name form. Presumably, the names of the beneficial owner can be Googled and information obtained, and the beneficial owners served with process, which is the main function of foreign registration – jurisdiction for legal purposes.

Bert Black, Legal Advisor

Office of the Secretary of State of MN

Full text of email:

Good morning everyone,

A committee within in the Idaho Bar is working toward enacting the Harmonized Uniform Business Organization Code (HUBOC). For those of you who may not know, HUBOC unifies all business entity statutes under one Title. This uniform law includes many business entities that are not applicable to every state, of course.

The question that I have is, how does your state handle a foreign entity's request for authorization to do business, if your domestic statutes do not include that business entity type? As an example, a foreign statutory trust files for authorization within your state, but your state laws do not provide for a statutory trust. Do you have a method in place to provide foreign entities with authorization in this situation, or would you simply reject the filing? Current practice in Idaho is to reject the filing.

When HUBOC is enacted in Idaho, we want to be sure that no foreign entity is restricted from doing business here. However, certain business entity laws are (currently, at least) not applicable to Idaho's business community. We hope to find a way to provide these foreign businesses with authority without enacting legislation for every business entity type throughout the country.

Thank you in advance for any information that you can provide.

Jeff Harvey

UCC Supervisor

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<http://www.sos.idaho.gov>

"The only man who never makes a mistake is the man who never does anything." ~ Theodore Roosevelt