

Topic: LLC Domestications
 Question by: Earl B. Weaver, Jr.
 Jurisdiction: Illinois
 Date: March 23, 2015

Jurisdiction	Question(s)
	I would like to know how many jurisdictions allow for domestications of foreign LLC's by statute. Also any comments about how this has fared in your state. Please share volume in filings and any difficulties experienced.
Manitoba	
Corporations Canada	
Alabama	Alabama has removed the term domestication from our Code for the most part (I think there is still one hiding in NonProfits but that one is being reworked). What we do allow is conversion in and out. Foreign to Domestic and Domestic to Foreign.
Alaska	
Arizona	<p>Arizona's version of the Model Entity Transactions Act, called the Arizona Entity Restructuring Act (AERA), became effective this year. The Act does allow LLC domestication to and from Arizona, where before, our law did not allow LLCs to domesticate either way.</p> <p>I think we've had some domestications go both ways (to Arizona and from Arizona), but I don't have hard numbers on that. In general, the conversions allowed under the Act are much higher in volume than domestications.</p> <p>No real difficulties, except with computer programming. The existing, old, system had to be programmed to show the trail for these restructuring transactions, and to accept one from an entity that isn't already registered here, e.g., a "no record" entity converts to or domesticates to Arizona. We are, in fact, still working out some bugs on this point.</p>
Arkansas	
California	<p>California law permits a foreign limited liability company to convert to a California limited liability company as long as the foreign jurisdiction permits the conversion and the filing requirements are met. One of the reasons for rejection, is that the laws of the foreign jurisdiction do not expressly permit the conversion.</p> <p>Due to current system limitations, the California Secretary of State is unable to track or provide the volume of filings by conversion type.</p>
Colorado	

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Connecticut	CT's version of the Model Entity Transaction Act, CETA (CT Entity Transaction Act), became effective just last year. So far there have not been many domestications. Most have been domestications OUT OF CT, as opposed to domestications INTO CT. We have not had any problems in administering LLC domestications to date.
Delaware	
District of Columbia	In DC we allow domestications as long as law of the state of domicile permits domestications. We allow both outgoing and incoming domestications for all entity types. We got about 100 domestications during the last two years, both coming and leaving DC.
Florida	In Florida, a non-US entity may become a Florida Limited Liability Company, (605.1051, F.S.), if the non-US entity's jurisdiction provides for such.
Georgia	
Hawaii	Hawaii does not have domestications of foreign entities.
Idaho	
Illinois	
Indiana	<p>In Indiana Domestications only apply to corporations (both domestic and foreign). Originally it did not include nonprofit corporations, but we amended the statute last year to included them.</p> <p>Indiana does allow all entity types to file Conversions (except nonprofits). See Indiana Code 23-1-38.5 for both domestications and conversions. I do not recommend following our statute as a guideline. I find it confusing as does the legal community. The citation is within the Indiana Business Corporation Law and the different filings acts each point to 23-1-38.5. No, I did not write this and was not here when it was enacted.</p>
Iowa	
Kansas	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	How do you define "domestications"? In Michigan a foreign would qualify here to do business.

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Minnesota	Minnesota allows a Foreign LLC to convert to a Minnesota LLC (and MN LLC to Foreign LLC) as long as it's home jurisdiction also allows for it.
Mississippi	
Missouri	
Montana	The State of Montana does not allow for domestication of Foreign LLC's. If you have any further questions please let me know.
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	

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Texas	<p>Our business statute allows conversions from one domestic entity type to another domestic entity type, as well as the conversion of a foreign entity to a domestic entity (or vice versa). This has been authorized for a number of years. We don't keep separate statistics on those conversions that represent domestications (foreign entity converting to domestic entity of the same type), but do have some statistics on registered foreign entities that have filed a Certificate of Conversion to effect a conversion to a domestic entity (of any filing type). —Of the 1,205 conversion transactions filed in FY 2014, 69 were conversions where the foreign entity that was registered converted to a domestic entity. So, approximately, 5.7% of registered foreign entities filed a Certificate of Conversion to convert to a domestic entity.</p> <p>One of the initial logistic difficulties under prior law that was addressed by our Business Organizations Code involved the similarity in name issue faced when a registered foreign entity converted to a domestic entity using the same name. Rather than requiring a simultaneous withdrawal of the foreign entity's registration before filing the conversion, Sec. 9.012 of the Business Organizations Code provides that the registration of a foreign entity is automatically withdrawn on the filing of a Certificate of Conversion that converts the foreign entity to a domestic filing entity.</p>
Utah	
Vermont	
Virginia	See additional comments below
Washington	<p>Washington State does allow re-domestication of LLC's, however we don't track them specifically, they are categorized the same as a conversion. Mostly what we see (and is on the increase) are entities re-domesticating in other states, then amending the foreign filing with Washington State to reflect the change.</p> <p>Here is a link to our conversion page: http://www.sos.wa.gov/corps/Entity-Conversions-available-June-12.aspx</p>
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

VIRGINIA:

Our Code authorizes a foreign LLC to domesticate as a Virginia LLC. It also authorizes our Virginia LLCs to domesticate out. These domestications are also authorized for Virginia and foreign corporations. In all instances, the domestication is only authorized if the laws of the foreign jurisdiction also authorize the domestication, and the articles need to recite that the entity complied with those laws in effecting the domestication. In 2014, 106 foreign LLCs domesticated as a Virginia LLC, and 59 Virginia LLCs became a foreign LLC.

In Virginia, a “domestication” involves changing the state under whose laws a business entity is incorporated or organized. A “conversion,” on the other hand, involves changing entity type, which is only available to Virginia entities. Many jurisdictions, however, include the domestication concept within their conversion provisions. In those states, a foreign LLC can convert to a domestic corporation (etc.).

We have seen some unsettling transactions in this area recently where the entity does not comply with the laws of both jurisdictions, or attempts to do so in an incompatible way. For example, a Delaware LP, incident to its application to register to transact business in Virginia, presented a Delaware certificate of conversion indicating that it had converted from a Virginia LLC. But our law does not allow that transaction. (The Virginia LLC should have domesticated as a Delaware LLC and then converted to a DE LP under Delaware law.) We also had a Florida corporation, of record in Virginia, convert to a Delaware LLC under Florida law, but it did not file a certificate of conversion in Delaware; it only filed a certificate of organization, ostensibly forming a new Delaware LLC. As a result, we would not link our records of the Florida corporation to the Delaware LLC when the latter attempted to register to transact business in Virginia.

Since our law requires the laws of the foreign jurisdiction to authorize the domestication (regardless of what it is called), and since we have learned from experience that we cannot rely on the assertions of customers in this regard, we maintain a list of the foreign law authorizations, which is attached. Please feel free to provide me with updated information.

One last consideration - Virginia law currently does not require a foreign entity to register to transact business in Virginia before domesticating as a like-kind Virginia entity, but maybe we should. This would help us make sure we know who is coming on board as a Virginia entity, and would provide additional confirmation that the domestication is authorized under Virginia law.

Full text of email:

Greetings from Illinois,

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Thanks.

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