JOHNSTON ALLISON HORD

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2025 THOUGHT LEADERSHIP

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JOHNSTON ALLISONHORD

January 14, 2025

HOW THE COMMERCIALITY DOCTRINE CAN AFFECT YOUR NON-PROFIT

When considering the type of income-producing activities your non-profit may want to engage in, a key consideration is whether each of these activities will support your exempt purpose and whether they fall under the Commerciality Doctrine guidelines.

What is the Commerciality Doctrine?

The Commerciality Doctrine is an operational test developed to support the statutory requirement that charitable organizations must operate in furtherance of their exempt purposes. Its underlying goal is to prevent non-profits from competing at an unfair tax advantage with for-profit businesses.

The operational test is applied to a non-profit's activities through a comparison of its activities to similar activities by for-profit businesses. The thought behind this is that a non-profit operating in a commercial manner has commercial activity as its primary purpose, meaning the commercial activities are substantial and unrelated to its exempt purpose.

When Should Non-profits be Concerned About the Commerciality Doctrine?

Engagement by a non-profit in commercial business activities will not by itself fail the Commerciality Doctrine operational test. The operational test requires that no more than an insubstantial part of an organization's activities further a non-exempt purpose. This means that a non-profit may operate a business as a substantial part of its activities as long as the business is in furtherance of the non-profit's exempt purpose. For example, a university may charge students tuition because those fees directly support the university's exempt purpose of providing education.

Any non-profit that carries out substantial commercial activities that are unrelated to its exempt purpose will fail the operational test. Factors that may point to a non-profit operating commercial activity for a non-exempt purpose are pricing to maximize profits, use of commercial and promotional methods, generating and accumulating unreasonable reserves, using paid staff instead of volunteers, selling to the general public instead of a charitable class, and not receiving donations as a substantial portion of your organization's total support.

What Are the Consequences of Violating the Commerciality Doctrine?

If the operational test shows your non-profit is operating like a for-profit business, there are a few consequences that can occur. At the very least, the income your organization generates from

unrelated activity may be subject to Unrelated Business Income Taxes ("UBIT"). Worst case, your organization can lose its tax-exempt status.

How Can Non-profits Manage Commerciality Doctrine Requirements?

The best way to avoid a violation of the Commerciality Doctrine is to ensure that all of your non-profit's income-producing activities are in furtherance of its exempt purpose. In doing so, it is important to note that just applying the income towards charitable activities is insufficient; the income-producing activity must further the exempt purpose.

Another way to avoid a violation is to not charge for the services or charge below cost. While charging at cost would appear to make an activity not commercial, the IRS may view it as being competitive by charging lower than the competition to increase business. So, when charging for services that are typical in the for-profit sector and unrelated to their exempt purpose, organizations should consider charging about 15% below or 85% of the cost to avoid a loss of their exempt status. The remaining cost should be subsidized with charitable contributions. This reliance on donations from the general public makes the activity look more charitable and less commercial. However, these percentages are subjective thresholds and not one size fits all. That is why it is vital to discuss intended operations with your attorney if you have concerns that you may run afoul of the commerciality doctrine.

JAH Can Help

The rules surrounding the Commerciality Doctrine for non-profit organizations are complex, and a violation can result in the non-profit losing its exempt status. The attorneys at JAH can navigate these complex matters so you don't have to. Contact a member of our **Non-profit Entities and Tax-Exempt Organizations Practice Group** or complete our **General Contact Form** if you need assistance.

JOHNSTON ALLISONHORD

February 10, 2025

CISG AND INTERNATIONAL SALES: SHOULD YOUR BUSINESS OPT OUT?

If your company buys or sells products, you may be subject to a unique set of laws governing the sale of goods under Article 2 of the Uniform Commercial Code ("Article 2"), a uniform set of laws that has been adopted in almost every state, subject to variation depending on the state. Normally, parties to a contract can agree to be governed by the laws of a certain state, including that state's Article 2, pursuant to a choice of law provision. If the parties do not agree on governing law beforehand, the court will determine which state's laws should apply. However, if the other party to your contract is not based in the United States of America ("U.S."), your contract may automatically be governed by an entirely different set of rules under the CISG – a situation in which parties often unknowingly find themselves, and which could have unintended consequences for your contract.

What is the CISG?

The CISG stands for the "United Nations Convention on Contracts for the International Sale of Goods". It is a treaty that has been ratified by 97 countries (including the U.S.) as of the date of this publication and, like Article 2, is intended to provide a uniform set of laws to govern the sale of goods. Unlike Article 2, which applies to U.S.-based companies, it applies to companies that are based out of separate countries.

The CISG applies to any contract for the sale of goods between at least two companies whose principal places of business are in differing countries. When these conditions are met, the CISG's application is automatic because the CISG is a self-executing treaty that supersedes state law, even if your contract states that a certain state's laws will govern, and even if both parties have a presence in the U.S. To circumvent the CISG's application, parties must affirmatively and expressly "opt-out" of the CISG by stating that the parties agree it will *not* apply to the contract.

Should You Opt Out of the CISG?

There are a few reasons why being governed by the CISG could put your company at a disadvantage, and why a state's Article 2 may be a better choice for your contract. First, attorneys across the U.S. are generally unfamiliar with the provisions of the CISG. U.S. courts also lack a repository of prior case law interpreting the CISG in comparison to Article 2. This case law, called precedence, provides attorneys and parties guidance when negotiating contracts and navigating contractual disputes. Uncertainty as to the CISG's provisions means additional time (and attorneys' fees) required to research and analyze the CISG, whether during the drafting process or after a dispute has arisen. Finally, the CISG conflicts with generally-accepted U.S. contract principles in

several ways. For example, customary rules of evidence for contracts interpreted under U.S. state law do not apply under the CISG [1].

Nevertheless, there may be times when the CISG is an appropriate compromise or to your advantage – for instance, if the other party insists on being governed by the laws of another country, or when a contract requires mandatory arbitration, as U.S. attorneys and arbitrators may be more likely to understand the CISG than the laws of a particular nation. The CISG also allows parties to opt out of certain portions of the CISG instead of opting out wholesale, so parties can pick and choose which provisions they want to apply to their contract [2].

JAH Can Help

Determining governing law is crucial to contract interpretation, and companies can find themselves in a bind if they do not preemptively opt out of the CISG. **The corporate attorneys at JAH** are here to help with your contracts, from negotiating to execution. **Click here to contact a member of our Corporate Group of you are in need of assistance**.

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[1]By way of illustration, the CISG has no equivalent to Article 2's statute of frauds, parol evidence rule, or perfect tender rule. The CISG also requires courts to consider the parties' subjective intent when interpreting a contract, in contrast to Article 2. *See, e.g.*, CISG art. 8(1), 8(2).

[2]*See* CISG art. 6.

JOHNSTON ALLISONHORD

February 26, 2025

CORPORATE TRANSPARENCY ACT BACK IN EFFECT: NEW FILING DEADLINE OF MARCH 21, 2025

On February 18, 2025, the U.S. District Court for the Eastern District of Texas reinstated the FinCEN **Corporate Transparency Act requirements** by lifting the nationwide preliminary injunction. *Smith, et al. v. U.S. Department of the Treasury, et al.*, 6:24-cv-00336 (E.D. Tex.). As of the date of this publication, all reporting companies must comply with the Corporate Transparency Act's reporting requirements. FinCEN has released a statement (FIN-2025-CTA1) that requires most reporting companies to file an initial, updated, or corrected BOI report by March 21, 2025. For reporting companies that were previously given a reporting deadline later than the March 21, 2025, deadline, they must file their initial BOI report by that later deadline. This would include any entities that were formed after February 19, 2025, or reporting companies that qualified for certain disaster relief extensions. FinCEN states that it will assess its options to further modify deadlines while prioritizing reporting for those entities that pose the most significant national security risks.

Visit **https://fincen.gov/** for additional updates.

JAH Can Help

If you have any questions regarding the reinstated Corporate Transparency Act reporting requirements, **contact a member of our Corporate & Non-profit Practice Group** or **watch our CTA explainer video**.

JOHNSTON ALLISONHORD

March 05, 2025

CORPORATE TRANSPARENCY ACT UPDATE: TREASURY DEPARTMENT SUSPENDS ENFORCEMENT

On March 2, 2025, the U.S. Treasury Department announced in a press release that it will not enforce any penalties or fines associated with the Corporate Transparency Act (CTA) reporting requirements for domestic reporting companies or U.S. citizens. The Treasury Department further stated that it intends to issue a proposed rulemaking that would narrow the scope of the CTA to apply to only foreign reporting companies. The Treasury Department's announcement follows a notice from the Financial Crimes Enforcement Network (FinCEN) issued on February 27, 2025, in which FinCEN stated it will not take any actions to enforce the upcoming reporting deadline until they revise the deadline and reporting requirements. As of the date of this publication, domestic reporting companies **will not be fined or penalized for not complying** with the CTA's reporting deadline. Until further development on the CTA, reporting companies may choose to report their beneficial ownership information or wait until further developments unfold. Domestic reporting companies who choose to wait to file will not be penalized for not filing beneficial ownership reports.

JAH Can Help

If you have any questions regarding the Corporate Transparency Act reporting requirements, **contact a member of our Corporate & Non-profit Practice Group** or **watch our CTA explainer video**.

JOHNSTON ALLISONHORD

March 20, 2025

FTC SIGNALS CONTINUED FOCUS ON NON-COMPETE AGREEMENTS

While a federal court enjoined the Federal Trade Commission's (FTC) prohibition on most non-compete agreements in August 2024, it appears that the new administration has not completely abandoned its focus on how such agreements may impact the American labor market. The prior administration appealed the nationwide injunction to the Fifth Circuit Court of Appeals in October 2024. On March 12, 2025, the Fifth Circuit granted the new administration's request to stay the appeal for 120 days. In moving to the 120 day stay, the FTC cited President Trump's position that "the Commission . . . basically needs to decide whether [the rule] is a good idea [and whether] it's in the public interest to continue defending this rule."

FTC Forms Joint Labor Task Force

On February 26, 2025, FTC Chair Andrew Ferguson released a memorandum directing the heads of the FTC's Bureaus of Competition, Consumer Protection, and Economics, as well as the Office of Policy Planning, to form a Joint Labor Task Force focused on scrutinizing certain labor-market practices that may harm American workers. More specifically, the directive called for the investigation and prosecution of unfair, deceptive, or anticompetitive labor conduct, including the investigation of non-compete clauses and agreements. Through this Joint Labor Task Force, the FTC Chair has made clear his intention to "ensure that the FTC prioritizes labor issues in both its consumer-protection and competition matters."

Next Steps

At this time, the future of the original FTC ban remains unknown, but announcement of the Joint Labor Task Force signals that the FTC will continue to focus on antitrust enforcement during the current administration and may continue to zero in on non-compete agreements as part of that broader effort. Along with monitoring these developments, companies should continue to think about ways to protect legitimate business interests that are alternative to non-compete agreements, including non-solicitation agreements and non-disclosure agreements.

JAH Can Help

The experienced **attorneys at Johnston Allison Hord** are tracking the updates to the FTC's focus on non-compete agreements and can assist your organization with any questions you may have. If you need assistance, contact a member of our **Employment Practice Group** by completing our **General Contact Form**.

JOHNSTON ALLISONHORD

April 11, 2025

BULK SALES LAWS AND BUSINESS PURCHASES

When buying a new business, you want to be sure you are only assuming liabilities you intend to undertake and are expressly set forth in the purchase agreement. However, some laws, like bulk sales laws, may create additional liability for purchasers.

What are Bulk Sales Laws?

Bulk sales laws require parties to notify the seller's creditors or any applicable taxing authority of the sale before its closing. These laws were initially enacted for two reasons:

- Protect creditors when a debtor engaged in a bulk sale or transfer of goods to a third party
- Ensure that sellers pay their tax liabilities before any significant sale

Do Bulk Sales Laws Apply to My Transaction?

Many states, including North Carolina, have repealed their bulk sales laws. Some states provide exemptions to these laws, and some states still have them in place. These exemptions often include sales of all or substantially all the assets of a company. However, even states that have adopted exemptions usually set out requirements to be met before a party may obtain the benefits of the exemption.

Failure to comply with these laws or the requirements of an exemption may subject purchasers to liability to the seller's creditors or to taxing authorities. Purchasers may become responsible for the seller's taxes. Additionally, some states place liens on the transferred assets. Consequently, it is pivotal to assess the laws of the state where the seller is located to avoid unexpected costs and liabilities.

JAH Can Help

The **attorneys** at JAH are available to advise you on the application of bulk sales laws and other aspects of your merger, acquisition, or sale. Our **corporate attorneys** are knowledgeable and can help navigate complications surrounding **M&A** deals. **Click here to contact a member of our Corporate Group if you need assistance**.

JOHNSTON ALLISONHORD

May 14, 2025

WHAT ARE DISCLOSURE SCHEDULES?

Disclosure schedules are attached to purchase agreements to supplement and qualify the representations and warranties made in the agreement. They disclose exceptions and are essential components in **M&A transactions**.

What are Disclosure Schedules?

A key component to all M&A deals is a strong asset or stock purchase agreement, as needed, and the disclosure schedules. Disclosure schedules are attached to the purchase agreement to supplement qualify and disclose exceptions to representations and warranties made within the purchase agreement. Although it is the due diligence process that largely acts as the opportunity for the buyer to obtain information about the inner workings of the seller's business, the disclosure schedules officially highlight key aspects of the business in a legally binding way. Therefore, having a strongly prepared and thorough disclosure schedule is of the utmost importance in all transactions.

Explained

Disclosures made or admitted by a seller in disclosure schedules have legal and practical consequences for both the seller and the buyer. From a seller's perspective, failure to disclose material information to the buyer could result in money damages or worse, and from a buyer's perspective, these schedules can alert buyers to potential red flags about the business and give the buyer an opportunity to negotiate additional protections and concessions. Further, the disclosure schedules help to carve out key exceptions for a seller such as excluded assets or contracts.

Examples

A disclosure schedule could be used to supplement a representation addressing material contracts of the seller by listing all material contracts that require notice to a third party prior to a change of control or the assignment of a certain contract. Alternatively, a disclosure schedule could be used to explain any potential environmental issues or permits that would be needed to properly run the acquired business.

A purchase agreement might warrant that except as disclosed within the disclosure schedules seller d oes not have any pending or threatened lawsuits against such seller and that there are no facts or circ umstances that could give rise to a potential action against the seller. Thus, if there were any events that seller is aware about that may give rise to a potential lawsuit such as a breach of contract claim from one of its customers or suppliers, then those facts would need to be added to the disclosure schedules so the buyer is provided vital details about the operations and potential risks that may arise post closing.

Importance

Disclosure schedules matter because they supplement and provide exceptions to the representations and warranties which themselves are linked to potential liability to the parties. As another example, the seller could warrant in the purchase agreement that it did not have any outstanding tax liability except as provided in a certain disclosure schedule. If the seller then properly lists any outstanding tax liabilities on the disclosure schedule, the seller would not be in breach of the warranty. If, however, the seller did not include that caveat to the warranty or included the caveat but failed to properly list all outstanding tax liabilities within the disclosure schedules, then the seller could be in breach of the warranty. Disclosure schedules are thus a powerful tool to protect a seller but only if properly utilized. From a buyer's perspective, disclosure schedules give the buyer a level of detail about the seller's business that cannot practically be included within the purchase agreement. Moreover, as discussed earlier, disclosure schedules give buyers grounds for recourse in the event that a seller omits or misrepresents information in connection with representations and warranties.

Pitfalls & Considerations

Many clients have the understandable misapprehension that information disclosed during due diligence does not need to also be included within the disclosure schedules, or that they do not need to provide duplicative information that the buyer already has access to. This is not the case. These schedules provide the crucial and final written record of key disclosed information. Accordingly, preparing these schedules can be time consuming and detail intensive but vitally important. Common mistakes include providing incomplete or outdated information, failing to coordinate with appropriate employees or others that could have relevant information, failing to understand the full scope of the representation or warranty, or simply overlooking responsive information. To avoid these pitfalls, it is helpful to work with experienced counsel in order to understand the purpose scope and implications of disclosure schedules and properly prepare them.

JAH Can Help

The **attorneys at Johnston Allison Hord** are available to counsel you on all aspects of your merger, acquisition, sale, or disposition including the preparation of disclosure schedules. Our **corporate attorneys** specialize in navigating the details with precision and tackling other complications surrounding M&A deals so that you don't have to.

June 09, 2025

WHEN CAN A DEBTOR TERMINATE A UNIFORM COMMERCIAL CODE FINANCING STATEMENT?

A lender engaging in a secured transaction with a debtor will most commonly file a Uniform Commercial Code (UCC) Financing Statement to "perfect" its security interest in collateral. UCC Financing Statements are filings used to establish a secured party's seniority concerning specified collateral, typically filed promptly after a debtor becomes contractually bound by the security agreement and other loan documents in connection with a secured lender's extension of credit.

In North Carolina, the UCC Financing Statement is recorded with the Secretary of State, unless the collateral involves fixtures, in which case the UCC Financing Statement is considered a fixture filing and recorded in the property records of the county where the real property is located (such as the Register of Deeds in Mecklenburg County or the equivalent recorder's office in another county).

UCC Statement Duration and Termination Requirements

UCC Financing Statements are valid for 5 years after which the UCC Financing Statement lapses and is no longer effective as to other secured lenders, unless a lender extends the effectiveness of a UCC Financing Statement by filing a continuation.

The Uniform Commercial Code does not require a secured party to automatically file a UCC termination after the debt obligation secured by the collateral is satisfied unless the collateral involves consumer goods (goods used or bought for use primarily for personal, family, or household purposes). In commercial secured transactions, a secured lender may take it upon itself to file a UCC termination, but that is not always the case.

When a Termination Statement Becomes Necessary

What happens if there is no longer any obligation by a debtor secured by the collateral; the UCC Financing Statement is still effective and has not lapsed; and the secured party has failed to file a UCC termination?

This situation may arise when a debtor attempts to secure financing with a subsequent lender, or during a buyer's due diligence investigation in an M&A transaction. In either case, a lien search may uncover an effective UCC Financing Statement where underlying debt obligations no longer exist, and the UCC Financing Statement needs to be formally terminated on record. UCC 9-513 addresses this situation where a secured party fails to file a UCC termination.

Debtor's Right to File Under UCC 9-513

Under UCC 9-513, a secured party is required to file a UCC termination or send the debtor a UCC termination for the debtor to file, within 20 days after receiving an "authenticated [signed] demand" from the debtor.

If there is no longer an obligation secured by the collateral covered by the UCC Financing Statement and no commitment to make an advance or give value, the secured party is required to either file the termination statement or send the debtor a termination statement for the debtor to file. If a secured party fails (or refuses) to take either action upon expiration of the 20 days, the debtor may file the UCC termination if there are no obligations owed to the secured party.

Other circumstances exist where a debtor may file a UCC termination, for example, if the debtor never authorized the secured party to file a UCC Financing Statement. However, that situation is less common because the initial loan and/or security agreement will almost certainly authorize the secured party to file a UCC Financing Statement against the debtor.

Penalties for Failing to Comply with Termination Requirements

A secured party who fails to file or send a UCC termination to the debtor is subject to damages under UCC 9-625(b) (including if that failure results in the debtor's inability to obtain, or increased costs from, alternative financing), in addition to a $500 penalty under 9-625(f).

A secured party should take any receipt of a demand by a debtor seriously, just as a debtor should be aware of its options if there is a need to terminate a UCC Financing Statement.

JAH Can Help

There is a specific process that secured parties and debtors must adhere to under the UCC, and best practices for handling such a situation. The **corporate attorneys** at JAH can assist if either party ever finds itself in this situation. **Click here to contact a member of our Corporate Group if you need assistance**.

JOHNSTON ALLISONHORD

August 08, 2025

WHY GENERAL CONTRACTOR LICENSING LEVELS MATTER

On July 16, 2025, the North Carolina Court of Appeals overturned, in part, the trial court's grant of summary judgment in *AC Developments, LLC v. Edwards*. Notably, the Court evaluated whether a general contractor of a residential home was entitled to recover all amounts he was allegedly owed by homeowners based on his general contractor licensing levels. This case therefore provides important insights into the need for general contractors to:

1. Employ the use of careful wording in their contracts
2. Ensure that their licensure is appropriate for any given project

Who Was the Contractor?

In this case, the homeowners asked Shawn Anderson to serve as their general contractor when constructing their residential home located in Hendersonville, North Carolina. Mr. Anderson agreed to do so under his business, Anderson Construction, which was licensed. However, he indicated that his other business, AC Developments, would officially take over the project, once that separate entity received the appropriate unlimited license.

Unfortunately for Mr. Anderson, his contract language was unclear. In some places the contract referred to the general contractor as "Contractor, Anderson Construction by Shawn Anderson," but in others it seemed like Mr. Anderson (and not just his business entities) was individually a party to the contract. Additionally, the contract was unclear as to the role of "AC Developments," as compared to "Anderson Construction" or Mr. Anderson individually.

Licensing Levels Can Be Updated Mid-Project

Importantly, the Court noted that while a contractor is only allowed to recover for work performed up to the limitation on its contracting license, the general contractor may increase its license limitation during the course of a project and still remain in compliance with the licensing requirements, so long as the license limitation is increased before the value of work performed exceeds the current license limitation. In other words, if the licensing limitation defect is cured before the contractor performs any work that exceeds in value the limitation amount of its license, then the contractor may still enforce the contract's full value and seek full payment for its work. However, the contract in this case was unclear about who was serving as the general contractor on the project, which caused the Court to determine that additional litigation was necessary before it could determine how much (and who) should be paid the alleged outstanding amounts owed for work performed on the project.

Takeaways for General Contractors

While the specific facts of this case may not have bearing on all residential or commercial construction disputes, the North Carolina Court of Appeals' opinion does send an important message to general contractors: **your licensing levels and contract language matter!**

To the extent you are prepared to begin working on-site as a general contractor, it is crucial that you make sure your licensing meets the appropriate standard before performing work on *that specific* project. Further, if you are currently working on a project where your license level might be exceeded, before the value of the work performed reaches your current license limitation amount, you should consider upping your license limitation asap. Additionally, a word to the wise: make sure your contract is crystal clear about which entity you are operating under and be sure that the entity you name in the contract is, in fact, appropriately licensed.

JAH Can Help

The experienced **litigators** at Johnston Allison Hord regularly counsel general contractors and construction companies on navigating licensing requirements and ensuring their contracts hold up to scrutiny. To the extent you have questions or concerns about your specific contract language and/or a project you are working on, please feel free to **reach out to our firm to discuss potential representation**.

JOHNSTON ALLISONHORD

September 30, 2025

DO YOU NEED FOREIGN QUALIFICATION FOR YOUR BUSINESS?

The ease of interstate travel, along with the internet, makes it easier than ever to conduct business across America. The ease of accessibility and interstate travel, along with the internet, it is easier than ever to conduct business across America. Due to this ease of accessibility, potential customers in California can find and transact with a business operating in New York at the click of a button. While this is a positive for most business owners, there are rules and regulations that need to be followed if a business is planning on selling goods or services in a state other than the state in which it was formed. The ability to qualify your business to do transactions within another state is known as a "Foreign Qualification."

Despite the name, Foreign Qualifications are a way for businesses within the United States to transact and do business in states other than the state in which it was formed. The state in which your business is formed is its "domestic" state, and any other state that your business qualifies to do business in would be classified as a "foreign" state. For example, a business formed in North Carolina upon filing Articles of Incorporation with the North Carolina Secretary of State would be domestic to North Carolina. If that same business obtained a Certificate of Authority to Transact Business within South Carolina, then that entity would be a "foreign" entity in South Carolina due to its state of formation being North Carolina.

When Does a Business Need to Qualify Within Another State?

The simple answer that most lawyers give to this question is – "it depends." Typically, states require a Foreign Qualification when an out-of-state business conducts activities within another state. The act of "conducting business" varies, with each state having a specific set of rules that may subject a business to meeting this threshold. With that said, a general rule of thumb is when an out of state business opens a branch/warehouse/office, hires employees, applies for a professional license, or is subject to tax filings within another state, then a Foreign Qualification should be obtained.

However, each state will have exceptions to this rule. For example, in North Carolina, the following activities **do not** rise to the level of conducting business within the state:

1. maintaining or defending an action or suit on behalf of the business;
2. maintaining bank accounts or borrowing money within the state; and
3. holding meetings of owners, directors or company officials related to internal affairs of the business within the state.

With that said, if your business were to open an office in North Carolina and then use that office to conduct business and hold meetings, then that **would** make the business subject to a Foreign Qualification filing.

Filing Process

Typically, the filing process to obtain a Foreign Qualification requires filing a form with the Secretary of State's office (or its equivalent), along with paying a fee, however, this standard process can vary from state to state. While some states require a simple form and payment, other states may require more detailed information on business activities in order to qualify. It is also beneficial for a business to obtain its Foreign Qualification **before** conducting business within the other state, as waiting until business activities occur could open that business up to potential fines and fees for operating in a state without having the authority to do so.

JAH Can Help

Determining whether your business is "conducting activity" such that a Foreign Qualification may be needed can be a nuanced discussion. If you need guidance, the experienced **corporate attorneys** at Johnston Allison Hord can help. **Click here to contact a member of our Corporate Practice Group**.