Article 4A.

Foreign Limited Liability Partnerships.

§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership. (1999-362, s. 10.)

§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

(1) The name of the foreign limited liability partnership that satisfies the requirements of the state or other jurisdiction under whose law it is formed and meets the requirements of Article 3 of Chapter 55D of the General Statutes.

(2) The street address, and the mailing address if different from the street address, of the partnership's principal office, and the county in which the principal office is located.

(3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.

(4), (5) Repealed by Session Laws 2001-387, s. 157(b).

(6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the Secretary of State or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) Each foreign limited liability partnership maintaining a statement of foreign registration in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(c) through (g) Repealed by Session Laws 2001-387, s. 157(b).

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

(i) A foreign limited liability partnership becomes registered as a foreign limited liability partnership when its application for registration becomes effective.

(j) A foreign limited liability partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is

amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;
(2) The date of filing of the application for registration; and
(3) The amendment to the application for registration.

(k) A foreign limited liability partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

(1) The name of the foreign limited liability partnership under which it is registered in this State;
(2) The date of filing of the application for registration;
(3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;
(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
(5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the foreign limited liability partnership's registered agent to accept service of process, notice, or demand and appoints the Secretary of State as agent to accept such service on behalf of the foreign limited liability partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was registered in this State. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.2. Upon receipt of process, notice, or demand in the manner herein provided, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the foreign limited liability partnership at the mailing address designated pursuant to this subsection.

(l) Whenever a foreign limited liability partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under the laws of which the foreign limited liability partnership was organized. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State, the articles or certificate must be accompanied by an application which must set forth:

(1) The name of the foreign liability limited partnership [sic] authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;
(2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of

business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

(3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and

(4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(m) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

(1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;

(2) File the articles or certificate and the application, if required;

(3) Issue a certificate of withdrawal; and

(4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with a copy of the application, if required, affixed thereto.

(n) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (l) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.2. Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (l) of this section. (1999-362, s. 10; 2000-140, s. 54; 2001-358, ss. 40, 51(b); 2001-387, ss. 120, 157, 173, 175(a); 2001-413, s. 6.)

§ 59-92. Effect of failure to register.

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars ($10.00) for each day, but not to exceed a total of one thousand dollars ($1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. (1999-362, s. 10.)

§ 59-93. Activities not constituting transacting business.

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;

(5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;

(6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;

(7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;

(8) Transacting business in interstate commerce;

(9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;

(10) Selling through independent contractors; and

(11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State. (1999-362, s. 10.)

§ 59-94. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article. (1999-362, s. 10.)

§§ 59-95 through 59-100. Reserved for future codification purposes.