

Corporation Law: Alabama

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A Q&A guide to corporation law in Alabama. This Q&A addresses key areas of corporation law such as formation, foreign qualification, mergers, anti-takeover laws, and dissolution. Answers to questions can be compared across a number of jurisdictions (see Corporation Law: State Q&A Tool).

Forming a Corporation and Corporate Actions

1. What is required to form and organize a corporation in your jurisdiction? Please include information on:

- Documents.
- Corporate actions (board versus incorporator actions).
- Name requirements and reservation options.
- Filing requirements (including what must be filed and where, timing, electronic versus paper, and availability of expedited/rush services).

The formation and organization of corporations in Alabama is governed by:

- Article XII of the Alabama Constitution.
- Title 10A of the Alabama Code.
- Alabama case law.

Title 10A of the Alabama Code, referred to as the Alabama Business and Nonprofit Entity Code, is a “hub and spoke” statutory model. Chapter 1 of Title 10A applies to all types of entities generally, while other Chapters apply to specific types of entities (for example, Chapter 2 and Chapter 2A apply to business corporations). In the event of a conflict between Chapter 1 and an entity-specific Chapter, the provisions of the entity-specific Chapter supersede Chapter 1 to the extent of the conflict. (Ala. Code § 10A-1-1.02(c).)

Applicability of Revised Alabama Business Corporation Law

On May 1, 2019, Alabama enacted the revised Alabama Business Corporation Law of 2019, which repeals Chapter 2 and replaces it with Chapter 2A. This act is effective January 1, 2020 and applies:

- On January 1, 2020, to all corporations that:
 - opt in to be governed by the new law; or
 - incorporate after that date.
- On January 1, 2021, to all corporations, regardless of date of incorporation.

(Ala. Code § 10A-2A-17.01.)

Documents

Incorporators must obtain a Certificate of Name Reservation before filing formation documents (see Name Requirements and Reservation Options).

Articles of Incorporation

Any one or more persons may act as the incorporator or incorporators of an Alabama corporation. As of January 1, 2020, the incorporator must file articles of incorporation (also referred to as a certificate of formation) with the [Alabama secretary of state \(ASOS\)](#) (Ala. Code § 10A-2A-2.01).

Unless another chapter governing a filing entity provides otherwise, the articles of incorporation must include:



- The name of the corporation.
- A statement that the entity being formed is a corporation.
- The purpose for which the corporation is being formed (which may be or include the transaction of any lawful business for which corporations may be incorporated).
- The period of duration (if not perpetual).
- The name, street address, and, if different than the street address, the mailing address of the initial registered agent and office.
- The name and address of the organizer (unless formed under a plan of conversion or merger).
- The number of shares the corporation is authorized to issue.
- The names and addresses of the initial directors.

(Ala. Const. art. XII, §§ 220 to 242; Ala. Code §§ 10A-1-3.05 and 10A-2-2.02.)

The articles of incorporation may also include provisions:

- Reserving to the shareholders the right to adopt the initial bylaws of the corporation.
- Regarding the management of the business and regulation of the affairs of the corporation.
- That define, limit, or regulate the powers of the corporation, its board of directors, and shareholders.
- Regarding a par value for authorized shares or classes of shares.
- That must be or may be set out in the bylaws (see Bylaws).
- That eliminate or limit the liability of the directors or shareholders for money damages for actions taken or failures to take action, as a director.

(Ala. Const. art. XII §§ 220 to 242; Ala. Code §§ 10A-1-3.05 and 10A-2-2.02.)

As of January 1, 2020, the revised Alabama Business Corporation Law requires the certificate of incorporation to include:

- A corporate name that satisfies the requirements of Article 5 of Chapter 1 of the Alabama Code.
- The number of shares of stock the corporation may issue.
- The street and mailing addresses of the corporation's initial registered office, the Alabama county where those addresses are located, and the name of the corporation's initial registered agent.
- The name and address of each incorporator.

(Ala. Code § 10A-2A-2.02(a).)

The revised Alabama Business Corporation Law also allows, in addition to the authorized provisions listed in Ala. Code § 10A-2-2.02, the certificate of incorporation to include:

- The names and addresses of the initial directors.
- Provisions that:
 - impose liability for the corporation's debts on the stockholders, to a certain extent and under certain circumstances;
 - allow or require the corporation to indemnify a director's liability to any person for certain actions taken, or failures to take action, as a director; and
 - limit or eliminate a director or other person's duty to offer the corporation the right to have or participate in any business opportunity, or class or category of business opportunity, before the director or other person takes or pursues the opportunity, with certain restrictions.

(Ala. Code § 10A-2A-2.02(b).)

Bylaws

The directors of the corporation must adopt initial bylaws, unless the right is reserved to the shareholders in the articles of incorporation. The bylaws may contain any provisions for managing the business and regulating the affairs of the corporation that are not inconsistent with the articles of incorporation or law. (Ala. Code § 10A-2-2.06.) Where a provision of the bylaws is inconsistent with the articles of incorporation, the articles of incorporation control. Bylaws are not required to be filed.

For corporations subject to the revised Alabama Business Corporation Law, the incorporators or board of directors of the corporation must adopt the initial bylaws. The bylaws can contain any provision not inconsistent with the law or the certificate of incorporation. (Ala. Code § 10A-2A-2.05.)

Bylaws typically address:

- Procedures for the meetings of shareholders and directors, including:
 - the record date;
 - notice; and
 - voting.
- Officers, directors, and committees of the corporation.
- Issuance and transfer of stock certificates.
- Indemnification, advancement of expenses, and insurance (directors and officers).

In addition, the board of directors of an Alabama corporation may adopt bylaws that become effective only in an “emergency” unless the articles of incorporation provide otherwise (Ala. Code § 10A-2-2.07(a); Ala. Code § 10A-2A-2.06(a)). An “emergency” exists if a quorum of directors cannot readily be assembled because of some catastrophic event (Ala. Code § 10A-2-2.07(d); Ala. Code § 10A-2A-2.06(d)). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may include any provisions necessary for managing the corporation during an emergency, including:

- Procedures for calling a meeting of the board of directors.
- Quorum requirements.
- Designation of additional or substitute directors.

(Ala. Code §§ 10A-2-2.07(a) and 10A-2A-2.06(a).)

Any provisions of the regular bylaws that are consistent with the emergency bylaws remain in effect during the emergency (Ala. Code §§ 10A-2-2.07(b) and 10A-2A-2.06(b)).

Corporate Actions

After the articles of incorporation are filed, the initial directors must hold an organizational meeting (or, unless prohibited by the articles of incorporation, take action by meeting or written consent of all members of the board) to:

- Appoint officers.
- Adopt the bylaws, unless the power to adopt the initial bylaws has been reserved to the shareholders.
- Carry on any other necessary business, such as:
 - opening bank accounts;
 - issuing stock; and
 - approving tax elections, if applicable.

(Ala. Code §§ 10A-2-2.05 and 10A-2-8.21.)

For corporations subject to the revised Alabama Business Corporation Law, the initial directors must hold a meeting to complete the organization of the corporation by:

- Appointing officers.
- Adopting bylaws.
- Carrying on any other business.

(Ala. Code § 10A-2A-2.04(a)(1).)

If the certificate of incorporation does not name initial directors, the incorporators must either:

- Hold a meeting with the majority of incorporators to:
 - elect initial directors and complete the organization of the corporation; or
 - elect a board of directors who must complete the organization of the corporation.
- Act by one or more written consents signed by each incorporator.

(Ala. Code § 10A-2A-2.04(a)(2).)

Name Requirements and Reservation Options

Naming an Alabama Corporation

The name of an Alabama corporation must contain the word “corporation” or “incorporated” or an abbreviation of those words. The name cannot contain any word or phrase that indicates that the corporation is engaged in a business that it is not authorized by law to pursue. (Ala. Code §§ 10A-1-5.02 to 10A-1-5.04.) Unless the other entity consents in writing to the use of the name **and** changes its name to a name that is distinguishable, the name of the corporation must be different from the name of any:

- Existing Alabama filing entity.
- Foreign entity registered to do business in Alabama.
- Name that has been reserved with the [Alabama secretary of state](#) (ASOS).

(Ala. Code § 10A-1-5.12.)

Name Reservations

To form an Alabama corporation (or to register a foreign corporation), a person must first reserve a name for the exclusive use of the corporation by delivering an application (Name Reservation Request Form) to the ASOS for filing (Ala. Code § 10A-1-5.11). Additionally, name reservations may be obtained from the ASOS by submitting an application [online](#) (for immediate receipt of the name reservation) or by mail. Name reservations are valid for up to one year and can be renewed for successive one-year periods by filing an application and paying the requisite fee within the 90-day period before expiration (Ala. Code §§ 10A-1-5.14 and 10A-1-5.15). The fee for each name reservation and renewal is \$28 when submitted online (immediately available) or \$10 when submitted by for standard processing (with the processing timeline not guaranteed). If a party is unable to apply online, expedited processing (within 24 hours of receipt), for a \$25 fee, is recommended for applications that must be submitted by mail. (ASOS: [Secretary of State Domestic Name](#))

[Reservation](#); [ASOS: State of Alabama Name Reservation Request Form For Domestic Entities](#); [ASOS: State of Alabama Name Reservation Request Form For Foreign Entities](#).)

When the completed Name Reservation Request Form and fee are submitted, the ASOS processes the application and issues a Name Reservation certificate. The incorporator must submit the Name Reservation certificate along with the articles of incorporation to the ASOS to form a corporation.

Filing Requirements

The articles of incorporation (sometimes referred to as a “certificate of formation”) for an Alabama corporation must be executed and filed with the ASOS (Ala. Code § 10A-2A-2.01). The following items must accompany the signed original of the articles of incorporation when presented for filing:

- Filing fees.
- The Name Reservation certificate issued by the ASOS.
- One additional copy of the articles of incorporation and Name Reservation certificate.

([ASOS: Domestic Business Filing](#).)

Fees

The fee for filing articles of incorporation with ASOS is \$100. Where available, filers may choose to expedite the filing with the ASOS by submitting an additional \$100 expedited filing fee. Expedited filings are processed within 24 hours following receipt of the filing.

Fees payable to the ASOS may be paid via credit card.

2. What are the annual reporting or other filing requirements (including franchise tax amounts) for a corporation in your jurisdiction?

All Alabama corporations must file an Alabama Business Privilege Tax Return and Annual Report with the [Alabama Department of Revenue](#) (ADOR). Newly formed corporations must submit an initial Business Privilege Tax Return ([Form BPT-IN](#)), and pay the required tax shown on the return, within 2.5 months after organization. (Ala. Code § 40-14A-29(a).)

For all other taxable years, the corporation must file a Business Privilege Tax Return (Form CPT or Form PPT) no later than 2.5 months after the beginning of each taxable year.

Forms may be obtained [online](#) and corporations may elect to file the return and pay the taxes through the ADOR [website](#) or by mail. The minimum privilege tax is \$100 and the maximum is \$15,000. (ADOR: [Business Privilege Tax Incentives](#).)

3. What are the requirements for holding an annual meeting of shareholders in your jurisdiction?

Preliminary Requirements

Meeting Location

Alabama corporations must hold annual meetings of shareholders at the time stated or fixed by the bylaws, which may be held inside or outside of Alabama. If no location for the annual meeting is fixed by the bylaws, then it must be held at the corporation’s principal office. (Ala. Code §§ 10A-2-7.01 and 10A-2A-7.01(b).)

Under the revised Alabama Business Corporations Law, selectively effective January 1, 2020, annual meetings:

- Are not required if the directors are elected by written consent in lieu of the annual meeting under Ala. Code § 10A-2A-7.04.
- May be held entirely remotely if:
 - certain measures are implemented; and
 - the certificate of incorporation does not prohibit remote meetings.

(Ala. Code 10A-2A-7.01(a), (b); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Notice to Shareholders

The corporation must notify the shareholders in writing of the date, time, and place of each annual meeting at least ten days and no more than 60 days before the meeting date. Unless the articles of incorporation or the Alabama Business Corporation Law require otherwise, the notice of the annual meeting need not include a statement of the purpose of the meeting. (Ala. Code §§ 10A-2-7.05 and 10A-2A-7.05.)

A shareholder may waive notice of the annual meeting before or after the date and time stated in the notice. The waiver must be in writing, signed by the shareholder, and delivered to the corporation. (Ala. Code §§ 10A-2-7.06(a) and 10A-2A-7.05.) Unless the articles of incorporation provide otherwise, action required or permitted to be taken at a shareholder meeting may be taken without a

meeting if the action is taken by all shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. (Ala. Code §§ 10A-2-7.04(a) and 10A-2A-7.04(a).)

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, shareholder action may be taken without a meeting and without prior notice if:

- The certificate of incorporation does not provide otherwise.
- A written consent setting out the action taken is signed by stockholders having at least the minimum number of votes required to authorize or take the action at a meeting.

However, if stockholders are authorized to cumulate their votes, unanimous stockholder consent is required to elect directors. (Ala. Code § 10A-2A-7.04(a).)

Record Date

The bylaws may fix or provide the manner of fixing the record date of one or more voting groups to:

- Determine the shareholders entitled to notice of a shareholders' meeting.
- Demand a special meeting.
- Vote or take other action.

If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date. (Ala. Code §§ 10A-2-7.07(a) and 10A-2A-7.07(a).)

This record date may not be more than 70 days before the meeting or action requiring a shareholder determination (Ala. Code §§ 10A-2-7.07(b) and 10A-2A-7.07(b)). In the event of an adjournment of a meeting, the original determination of shareholders entitled to notice of or to vote at the meeting remains effective unless the board of directors sets a new record date. If the adjournment lasts for more than 120 days after the date of the original meeting, the board of directors must fix a new record date. (Ala. Code §§ 10A-2-7.07(c) and 10A-2A-7.07(c).)

Quorum

Unless a provision in the articles of incorporation or the Alabama Business Corporation Law provide otherwise, a majority of the votes that the voting group can cast on a matter constitutes a quorum of that voting group (Ala. Code §§ 10A-2-7.25(a) and 10A-2A-7.25(a)). The articles

of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is otherwise required under the Alabama Business and Nonprofit Entities Code, but a quorum may never consist of less than one-third of the votes that a voting group can cast on a matter (Ala. Code §§ 10A-2-7.25(a) and 10A-2-7.27). The revised Alabama Business Corporation Law removes the prohibition against a quorum consisting of less than one-third of the votes that a voting group can cast on a matter (Ala. Code §§ 10A-2A-7.25(a) and 10A-2A-7.27).

Beginning January 1, 2020, any action requiring a specific quorum under the revised Alabama Business Corporation Law must be met regardless of lower quorum requirements contained in the articles of incorporation (Ala. Code § 10A-2A-7.25(a); Question 1: Application of Revised Alabama Business Corporation Law).

Failure to Hold an Annual Meeting

The failure to hold an annual meeting at the time specified in a corporation's bylaws or certificate of incorporation does not affect the validity of any corporate action (Ala. Code §§ 10A-2-7.01(c) and 10A-2A-7.01(c)).

Voting and Approval

Shares Entitled to Vote

Generally, unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting (Ala. Code §§ 10A-2-7.21(a) and 10A-2A-7.21(a)). If shares are entitled to vote as a separate voting group, then action may only be taken on a matter at a meeting (see Action by Written Consent) if a quorum of those shares exists regarding that matter. Generally, if a quorum is present when a vote is taken, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the Alabama Constitution, articles of incorporation, or the Alabama Business Corporation Law require a greater number of affirmative votes (Ala. Code § 10A-2-7.25(c)). The revised Alabama Business Corporation Law provides the same requirements for taking action on matters other than the election of directors when a quorum is present, but does not reference the Alabama Constitution or the Alabama Business Corporation Law as a source for requiring a greater number of affirmative votes (Ala. Code § 10A-2A-7.25(c)).

Special voting requirements may exist for certain matters, including:

- Matters set out in the articles of incorporation.
- Calling of a special meeting (Ala. Code §§ 10A-2-7.02 and 10A-2A-7.02).
- Election of directors (Ala. Code §§ 10A-2-7.28 and 10A-2A-7.28).
- Action on plans of merger (Ala. Code §§ 10A-2-11.03 and 10A-2A-11.04).
- Amendments to the articles of incorporation (Ala. Code §§ 10A-2-10.03 and 10A-2A-10.03).
- Amendments to the bylaws (Ala. Code §§ 10A-2-10.21, 10A-2-10.22, 10A-2A-10.21, and 10A-2A-10.22).

For more information on quorum requirements for classes and voting groups, see Preliminary Requirements: Quorum.

Voting for Directors

Shareholders elect one or more directors at the first annual shareholder's meeting and, unless their terms are staggered, at each annual meeting thereafter (Ala. Code §§ 10A-2-8.03(d) and 10A-2A-8.03(c)). Directors are elected by a majority of votes cast by the shares entitled to vote (where a quorum is present when the vote is taken), unless otherwise provided in the articles of incorporation. Except as otherwise provided in the articles of incorporation or under Ala. Code § 10A-2-7.21(b) or (c), each outstanding share is entitled to one vote on each matter voted on at a shareholder's meeting. (Ala. Code §§ 10A-2-7.21(a) and 10A-2-7.28.) Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, directors are elected by a plurality of the votes cast by the shares entitled to vote (where a quorum is present when the vote is taken) unless the certificate of incorporation provides otherwise (Ala. Code § 10A-2A-7.28(a); Question 1: Applicability of Revised Alabama Business Corporation Law).

Unless the articles of incorporation state otherwise, shareholders can elect directors by unanimous written consent (Ala. Code §§ 10A-2-7.04 and 10A-2A-7.04).

A shareholder can apply to the circuit court of the county in which the corporation's principal office or registered office (if the corporation does not have an office in Alabama) is located, asking the court to order a meeting, if the annual meeting is not held within the earlier of:

- Twelve months after the end of the fiscal year.
- Fifteen months after the last annual meeting.

(Ala. Code §§ 10A-2-7.03(a) and 10A-2A-7.03(a).)

Cumulative Voting for Directors

By default, shareholders of an Alabama business corporation do not have a right to cumulate their votes for directors (Ala. Code §§ 10A-2-7.28(b) and 10A-2A-7.28(b)). The articles of incorporation, however, may provide all or a designated group of shareholders with the right to cumulate their votes for directors. In this case, the designated shareholders may multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote (the product of which may then be cast for a single candidate or distributed among two or more candidates). (Ala. Code §§ 10A-2-7.28(c) and 10A-2A-7.28(c).)

Even where the articles of incorporation provide for cumulative voting, shares may not be voted cumulatively at a particular meeting unless:

- The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.
- A shareholder who has the right to cumulate his votes gives notice of their intent to cumulate the shareholder's votes during the meeting to the corporation at least 48 hours before the time set for the meeting. If one shareholder gives this notice, all other shareholders in the same voting group participating in the election may cumulate their votes without giving further notice.

(Ala. Code §§ 10A-2-7.28(d) and 10A-2A-7.28(d).)

Proxy Voting

Shareholders of an Alabama business corporation may vote their shares by proxy (Ala. Code §§ 10A-2-7.22(a) and 10A-2A-7.22(a)). A shareholder, the shareholder's attorney-in-fact, or the shareholder's agent may appoint a proxy either:

- By signing an appointment form.
- By means of an electronic transmission containing or accompanied by information that would allow one to determine that the shareholder, agent, or attorney-in-fact authorized the transmission.

(Ala. Code §§ 10A-2-7.22(b) and 10A-2A-7.22(b).)

An appointment of a proxy is:

- Effective when the appointment form or electronic transmission of appointment is received by the secretary of the corporation or other officer or agent authorized to tabulate votes.
- Valid for a period of 11 months, unless a longer period is expressly provided in the appointment form.

- Revocable, unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest.

(Ala. Code §§ 10A-2-7.22(c), (d) and 10A-2A-7.22(c), (d).)

An appointment coupled with an interest includes the appointment of:

- A pledgee.
- A person who purchased or agreed to purchase the shares.
- A creditor of the corporation who extended its credit under terms requiring the appointment.
- An employee of the corporation whose employment contract requires the appointment.
- A party to a voting agreement created under Ala. Code § 10A-2-7.31.

(Ala. Code §§ 10A-2-7.22(d) and 10A-2A-7.22(d).)

When the interest with which the appointment is coupled is extinguished, the appointment is revoked (Ala. Code §§ 10A-2-7.22(f) and 10A-2A-7.22(f)).

Other Requirements

Ability to Raise Matters at a Meeting

Unless a provision of the Alabama Business Corporation Law or the articles of incorporation require otherwise, notice of an annual meeting need not include a statement of the purpose or purposes for which the meeting is called (Ala. Code §§ 10A-2-7.05(b) and 10A-2A-7.05(b)). The Alabama Business Corporation Law requires prior notification regarding certain matters requiring a shareholder vote, including:

- Amendments to the articles of incorporation (Ala. Code §§ 10A-2-10.03(d) and 10A-2A-10.03(d)).
- Action on a plan of merger (Ala. Code §§ 10A-2-11.03(d) and 10A-2A-11.04(d)).
- Sales of assets outside the regular course of business (Ala. Code §§ 10A-2-12.02(d) and 10A-2A-12.02(d)).
- Dissolution of the corporation (Ala. Code §§ 10A-2-14.02(d) and 10A-2A-14.02(d)).

A notice of a special meeting, however, must include a statement of the purpose for which the meeting is called and only business within the purpose may be conducted at the special shareholders' meeting. (Ala. Code §§ 10A-2-7.02(d), 10A-2-7.05(c), 10A-2A-7.02(d), and 10A-2A-7.05(c).)

Shareholder proposals for publicly traded corporations incorporated in Alabama are also governed by Rule 14a-8 under the Securities Exchange Act 1934. For more information on the shareholder proposal process, see [Rule 14a-8 Shareholder Proposal Process Flowchart](#).

Shareholders' Lists

After fixing the record date (see Record Date), an Alabama business corporation must make a list of all its shareholders who are entitled to notice of a shareholders' meeting. The shareholder list must:

- Be prepared alphabetically, by shareholder name.
- Be arranged by voting group and, within each voting group, by class or series of shares.
- Show the address of each shareholder.
- Show the number of shares held by each shareholder.

(Ala. Code §§ 10A-2-7.20(a) and 10A-2A-7.20(a).)

Beginning two business days after notice of a meeting is given and continuing through the meeting, the corporation must make the shareholders' list available for inspection by any shareholder. On written demand, any shareholder (or his agent or attorney-in-fact) may inspect the list and, for a proper purpose, copy the list, during the inspection period. (Ala. Code §§ 10A-2-7.20(b) and 10A-2A-7.20(b).) In addition, the corporation must make the shareholders' list available for inspection at the meeting (Ala. Code §§ 10A-2-7.20(c) and 10A-2A-7.20(c)).

Beginning January 1, 2020, under the revised Alabama Business Corporation Law, the stockholder list may be made available:

- On a reasonably accessible electronic network.
- If accessibility information is provided with the meeting notice.

(Ala. Code. § 10A-2A-7.20(b)(ii); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

If a corporation refuses to allow a shareholder (or his agent or attorney-in-fact) to inspect or copy the list, then on application of the shareholder, the circuit court of the county in which the corporation's principal office is located (or, if none in Alabama, the circuit court of the county in which its registered office is located):

- May order inspection or copying at the corporation's expense.
- May postpone the meeting for which the list was prepared until the inspection or copying is complete.

- Must order the corporation to pay the shareholder's costs (including attorneys' fees) incurred in connection with obtaining the order.

(Ala. Code § 10A-2-7.20(d).)

The revised Alabama Business Corporation Law removes the circuit court's authority to order the corporation to pay the shareholder's costs in connection with obtaining the order (Ala. Code § 10A-2A-7.20(d)).

Refusal or failure to prepare or make the shareholders' list available does not affect the validity of action taken at the meeting (Ala. Code §§ 10A-2-7.20(e) and 10A-2A-7.20(e)).

Use of Inspectors of Elections

Alabama law does not require the use of inspectors in a corporate meeting.

Beginning January 1, 2020, under the revised Alabama Business Corporation Law and in line with Delaware's General Corporation Law, unless the certificate of incorporation or bylaws provide otherwise, inspectors of elections are required if the corporation has a class of voting stock either:

- Listed on a national securities exchange.
- Authorized for quotation on an interdealer quotation system of a registered national securities association.
- Held of record by more than 2,000 stockholders.

(Ala. Code § 10A-2A-7.29; see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Action by Written Consent

Except as otherwise provided in the articles of incorporation, any action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting if the action is:

- Taken by all shareholders entitled to vote.
- Evidenced by one or more written consents:
 - describing the action taken;
 - signed by all the shareholders entitled to vote; and
 - delivered to the corporation for inclusion in the minutes or filing with corporate records.

(Ala. Code § 10A-2-7.04(a).)

The revised Alabama Business Corporation Law modifies this requirement. Under the revised law, unless the certificate of incorporation provides otherwise, any action required or permitted to be taken at a stockholder meeting can be taken without a meeting and without prior notice if one or more consents in writing:

- Describe the action taken.
- Are signed by stockholders approving the action that have at least the minimum number of votes necessary to authorize or take the action at a meeting where all shares of stock that can vote are present and vote.
- Are delivered to the corporation for filing with the minutes or corporate records.

(Ala. Code § 10A-2A-7.04(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

A written consent that is signed under Ala. Code § 10A-2-7.04 has the effect of a meeting vote (Ala. Code §§ 10A-2-7.04(c) and § 10A-2A-7.04(c)). If nonvoting shareholders must be notified of a proposed action and the action is taken by unanimous written consent of the voting shareholders, then the corporation must provide written notice of the proposed action at least ten days before the action is taken. This notice must contain or be accompanied by the same materials that would have been sent to the nonvoting shareholders in a notice of meeting at which the proposed action otherwise would have been submitted to the shareholders. (Ala. Code §§ 10A-2-7.04(d) and 10A-2A-7.04(d).) Under the revised Alabama Business Corporations Law, if notice to nonvoting stockholders is required and the action is taken by written consent, the company must send notice to the nonvoting stockholders no more than ten days after either:

- Enough written consents to take the action are delivered to the corporation.
- Any later date that tabulation of consents is completed under other authorization.

(Ala. Code § 10A-2A-7.04(d).)

A shareholder may waive any required notice (before or after the time stated in the notice) under a writing signed by the shareholder and delivered to the corporation for inclusion in the minutes or filing with corporate records (Ala. Code §§ 10A-2-7.06(a) and 10A-2A-7.06(a)).

Foreign Corporations

4. When and how does a corporation qualify to do business in your jurisdiction? Please include information on:

- State nexus analysis.
- Filing requirements.
- Fees.
- Name requirements.

Unless otherwise provided in Ala. Code § 10A-1-7.02, to transact business in Alabama, a foreign corporation must register (and maintain registration) to do business in the state (Ala. Code § 10A-1-7.01). Registration of a foreign corporation is effective when the application for registration takes effect (Ala. Code § 10A-1-7.05(a)). Generally, an instrument submitted to the secretary of state or a judge of probate takes effect at filing (Ala. Code § 10A-1-4.11). An acknowledgment that the corporation has filed an application for registration serves as conclusive evidence of the authority of the corporation to transact business in Alabama (Ala. Code § 10A-1-7.05(b)). All foreign registered corporations must maintain a registered office and registered agent in Alabama (Ala. Code § 10A-1-5.31).

However, Ala. Code §§ 10A-2-15.40 to 10A-2-15.45 and 10A-2A-15.10 to 10A-2A-15.15 provide that a foreign corporation may act in a “fiduciary” capacity within the state of Alabama without registering to do business in the state.

State Nexus Analysis

When analyzing the meaning of “doing business in this state,” regarding foreign corporations, Alabama courts make a distinction between purely incidental and preparatory acts by a corporation and those done in the exercise of its corporate function (the function or business for which the corporation was organized) (*Vines v. Romar Beach, Inc.*, 670 So. 2d 901, 903 (Ala. 1995)). In determining whether a foreign corporation is “doing business” within the meaning of a provision of the Alabama Constitution, the Alabama Supreme Court considered whether the corporation is engaged in the transaction of business, or any part of it, that it was created and organized to transact. If the corporation is engaged in that business, then it “does business” within the meaning of the Alabama Constitution. If the act is not within the general powers of the corporation, then it is not doing business within the meaning of the Alabama Constitution. (*Friedlander Bros. v. Deal*, 118 So. 508, 510 (Ala. 1928).)

However, a foreign corporation may not be required to register in Alabama under certain circumstances. For example, a foreign corporation is not required to register if federal law authorizes the entity to transact the particular business (Ala. Code § 10A-1-7.02(c)).

Filing Requirements

Registration Documents

Foreign corporations register to do business in Alabama by filing an application for registration under Ala. Code §§ 10A-1-4.01 to 10A-1-4.31 (Ala. Code § 10A-1-7.04(a)). Before

submitting the application, however, foreign corporations must first obtain a name reservation (see Question 1: Name Reservations).

After reserving the name, the corporation must submit the following to the [Alabama secretary of state \(ASOS\)](#) to obtain a certificate of authority to transact business in Alabama:

- Completed [application for registration](#) in duplicate, which sets out:
 - certification that the corporation validly exists under the laws of its jurisdiction of formation;
 - the corporation’s legal name, jurisdiction, and date of formation;
 - the name of the corporation for use in Alabama, if the corporation’s legal name is not available in Alabama or otherwise does not comply with article 5 of chapter 1 of Title 10A of the Alabama Code;
 - the date the corporation began or will begin doing business in Alabama;
 - the street and mailing address, if different, of the corporation’s principal office; and
 - the name, street address, and mailing address of the registered agent and office in Alabama.

(Ala. Code § 10A-1-7.04.)

- A copy of the name registration letter from the ASOS.
- \$150 filing fee to the ASOS (expedited processing for an additional \$100 is recommended).
- Self-addressed stamped envelope.

([ASOS: Qualifying your Foreign Corporation in Alabama.](#))

Alabama Business Privilege Tax Return and Annual Report

An Alabama Business Privilege Tax Initial Privilege Tax Return (Form BPT-IN), must be filed with the [Alabama Department of Revenue \(ADOR\)](#) within 2.5 months after the foreign corporation qualifies to do business in Alabama. Afterwards, foreign corporations that do business in Alabama must file an Alabama Business Privilege Tax Return and Annual Report (Form CPT of Form PPT) with the ADOR no later than 2.5 months after the beginning of each taxable year. (Ala. Code §§ 40-14A-25(a) and 40-14A-29(b).)

Forms may be obtained [online](#) and corporations may elect to file the return and pay the taxes through the ADOR [website](#) or by mail.

Fees

The fee for filing the application for name registration for a foreign corporation is \$10 (no guaranteed processing timeframe) or \$25 (approximately three business days from receipt). Additionally, name reservations may be obtained at the ASOS [website](#) (same day) for \$28. The fee for filing the application for qualification of a foreign corporation is \$150. Both fees are payable to the ASOS. ([ASOS: Secretary of State Foreign Name Registration.](#)) Expedited filing services, which are recommended, are available for an additional fee of \$100.

Name Requirements

The name of a foreign corporation must meet the same naming requirements for domestic corporations (see Question 1: Name Requirements and Reservation Options) (Ala. Code § 10A-1-5.04). The foreign corporation may satisfy the requirements by either:

- Adding the required words to its corporate name.
- Adopting a fictitious name that meets the naming requirements by delivering a copy of a resolution of its board of directors (certified by its secretary) adopting the fictitious name to the ASOS for filing. This resolution should be delivered when the name registration application is submitted.

(Ala. Code § 10A-1-7.07.)

Fiduciary Duties

5. Please summarize the fiduciary duties of directors and officers in your jurisdiction.

A director or officer of an Alabama corporation must discharge their duties as a director:

- In good faith.
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances (duty of care).
- In a manner the director believes to be in the best interests of the corporation (duty of loyalty).

(Ala. Code §§ 10A-2-8.30(a), 10A-2-8.42(a), 10A-2A-8.30(a), (b), and 10A-2A-8.42(a).)

The revised Alabama Business Corporation Law modifies these duties by specifying that the director or officer must “reasonably” believe their actions meet each statutory duty (Ala. Code 10A-2A-8.42(a); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Duty of Care

Directors and officers must abide by the duty of care in the discharge of their duties as directors or officers. The duty of care is defined as the care an ordinarily prudent person in a similar position would use in like circumstances (Ala. Code §§ 10A-2-8.30(a)(2), 10A-2-8.42(a)(2), 10A-2A-8.30(b), and 10A-2A-8.42(a)(2)). A director may avoid liability resulting from the actions of other directors by filing a dissent from action taken by the directors (Ala. Code §§ 10A-2-8.24(d) and 10A-2A-8.24(d)). Directors and officers are entitled to rely on information provided by one of the following:

- Officers and employees of the corporation who are reliable and competent in the matter.
- Legal counsel, accountants, or other persons about matters within the person’s professional or expert competence.
- For directors only, a committee of the board of directors of which the director is not a member, if the committee merits confidence.

(Ala. Code, §§ 10A-2-8.30(b) and 10A-2-8.42(b).)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, also authorizes directors and officers to rely on information provided by legal counsel, accountants, or persons about matters involving skills or expertise in which the particular person merits confidence (Ala. Code § 10A-2A-8.30(f); Question 1: Applicability of Revised Alabama Business Corporation Law).

A director or officer is not acting in good faith if he has knowledge concerning the matter that makes reliance on the above information unwarranted. (Ala. Code §§ 10A-2-8.30(c) and 10A-2-8.42(c).)

Business Judgment Rule

Absent fraud or improper administration that is destructive or injurious to the corporation, Alabama courts generally will not interfere with the internal business management of a corporation (*Jones v. Ellis*, 551 So. 2d 396, 400 (Ala. 1989)). A director may be held liable, however, for losses to a corporation resulting from their:

- Intentional departure from duty.
- Fraudulent breach of trust.
- Gross negligence.
- Ultra vires act.

Absent these circumstances, a director is not liable for losses suffered by the corporation if they act in good faith

(referred to as the “good business judgment rule”). (*Jones*, 551 So. 2d at 400-01.)

There is a presumption that directors of a corporation will do their duty, but this presumption is overcome by the presence of causes sufficient to influence them to do otherwise (*Ingalls Iron Works Co. v. Ingalls Found.*, 98 So. 2d 30, 39 (Ala. 1957)).

Exculpation

The articles of incorporation of an Alabama corporation may contain a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any act or failure to act, except regarding liability for:

- A financial benefit received by a director to which he is not entitled.
- Intentional harm inflicted on the corporation or shareholders.
- Unlawful distributions.
- Intentional violation of criminal law.
- Breach of the director’s duty of loyalty to the corporation or shareholders.

(Ala. Code § 10A-2-2.02(b)(3).)

Under the revised Alabama Business Corporation Law, there is no restriction against provisions that eliminate or limit a director’s liability for breach of duty of loyalty (Ala. Code § 10A-2A-2.02(b)(4); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Duty of Loyalty

The duty of loyalty requires directors and officers to manage the affairs of the corporation honestly and impartially, without personal advantage, profit, or gain from their position as an officer or director (*Jefferson Co. Truck Growers Ass’n v. Tanner*, 341 So. 2d 485, 487 (Ala. 1977)). The business judgment rule does not apply to an alleged violation of the duty of loyalty. Additionally, the articles of incorporation of an Alabama corporation cannot exculpate a director for liability for damages resulting from a breach of the duty of loyalty to the corporation or its shareholders (Ala. Code 1975, § 10A-2-2.02(b)(3)(E)).

If a director has a conflict of interest regarding a particular transaction, the transaction may be enjoined, set aside, or give rise to an award of damages, unless either:

- A majority of disinterested directors or a designated committee of disinterested directors approve the

transaction after the conflict of interest is disclosed to them.

- A majority of shareholders approve of the transaction after being informed of the conflict.
- The transaction, judged according to the circumstances when the commitment is made, is fair to the corporation.

(Ala. Code § 10A-2-8.61(b).)

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, the contract or transaction is void or voidable unless either:

- A majority of disinterested directors or a designated committee of disinterested directors approve the transaction after the conflict of interest is disclosed to them.
- A majority of shareholders approve of the transaction after being informed of the conflict.
- The transaction, judged according to the circumstances when the commitment is made, is fair to the corporation.

(Ala. Code § 10A-2A-8.60(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Officers

As described above, corporate officers are generally subject to the same duties, and entitled to the same presumptions, applicable to directors (see Duty of Care and Duty of Loyalty).

Mergers

6. What is required to complete a merger in your jurisdiction? Please include information on:

- Documents.
- Board actions.
- Filing requirements (including timing, electronic versus paper, and availability of expedited/rush services).
- Shareholder actions.
- Availability of appraisal rights (including requirements to exercise such rights).

Under an approved plan of merger, a corporation, limited partnership, limited liability company, general partnership, real estate investment trust, or any other entity may merge with any other entity or entities, regardless of whether the other entity or entities are the same or another form (Ala. Code § 10A-1-8.02(a)).

Documents

Plan of Merger

For one or more Alabama corporations to merge into another corporation, the board of directors of each corporation must adopt a plan of merger and, if required by Ala. Code § 10A-2-11.03, the plan of merger must then be approved by shareholders (Ala. Code § 10A-2-11.01(a); see Board Actions and Shareholder Actions).

Under the Alabama Business Corporations Law, selectively effective January 1, 2020, a corporation, other than a nonprofit corporation, that is a party to a merger must have a plan of merger that is approved by the board of directors and then, if required by Ala. Code §§ 10A-2-11.03 and 10A-2A-11.04, by stockholders (Ala. Code § 10A-1-8.02(a)(1)(a); see Question 1: Applicability of Revised Alabama Business Corporation Law).

The plan of merger must include the following:

- The name of each corporation or entity that is party to the merger.
- The name of the surviving corporation or entity into which the other corporations or entities plan to merge.
- The form of the surviving entity and the status in the surviving entity of each owner of an entity that is a party to the merger.
- The terms and conditions of the merger.
- The manner and basis of converting the shares of each corporation (or interests of each party to the merger) into shares (or interests), obligations, or other securities of any other corporation (or entity), or into money or other property.

(Ala. Code §§ 10A-1-8.02(b) and 10A-2-11.01(b).)

The Alabama Business Corporation Law, selectively effective January 1, 2020, requires the plan of merger to be in writing and include the following:

- Each entity that is a party to the merger's:
 - name, type of entity, and mailing address;
 - jurisdiction of the entity's governing statute; and

- unique identifying number or other designation assigned by the secretary of state, if any.

- The surviving entity's:
 - name, type of entity, and mailing address; and
 - organizational documents, if the merger will create the surviving entity.
- The terms and conditions of the merger, including the manner and basis for converting the interests in each entity that is a party of the merger into any combination of:
 - money;
 - interests in the surviving entity; and
 - other allowable consideration.
- Any amendments to be made by the merger to the surviving entity's organizational documents, if the merger will not create the surviving entity.

(Ala. Code § 10A-1-8.02(b)(1); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Articles of Merger

After the plan of merger has been adopted by the boards of directors and approved by the shareholders (if required) of each corporation, the surviving corporation must deliver articles of merger to the [Alabama secretary of state](#) (ASOS) for filing. The articles of merger must set out:

- The plan of merger.
- If shareholder approval was not required, a statement specifying that the approval was not required.
- If shareholder approval of any corporation party to the merger was required:
 - the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan for each corporation; and
 - either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- The county in which the articles of incorporation are filed for each Alabama corporation party to the merger.

(Ala. Code § 10A-2-11.05.)

In addition, practitioners should consider any additional requirements set out in Ala. Code § 10A-1-8.02(g), particularly in mergers involving both a corporation and one or more other types of entities. Under this provision, a certificate of merger must include:

- The names of each of the entities which will merge and their respective unique identifying numbers or other designations as assigned by the secretary of state, if any.
- The public office where the certificate of formation, if any, of each of the parties to the merger is filed.
- A statement that a plan of merger has been approved by each of the merging entities.
- If the surviving entity is one in which one or more owners lack limited liability protection (such as a general partnership), a statement that each owner of that entity has consented in writing to the merger.
- The name of the surviving entity.
- The date, or date and time, on which the merger will become effective, if it is not to be effective on the filing of the certificate of merger.
- That the plan of merger is on file at a place of business of the surviving entity, and the street address of the surviving entity.
- That a copy of the plan of merger will be furnished on request and without cost, to any owner of any entity that is a party to the merger.
- A statement of any amendments to the certificate of formation of the surviving entity provided for in the plan of merger.

(Ala. Code § 10A-1-8.02(g).)

Under the revised Alabama Business Corporations Law, selectively effective January 1, 2020, after a plan of merger has been adopted by the boards of directors and approved by the shareholders (if required), each party to the merger must sign a statement of merger and deliver it to the ASOS for filing (Ala. Code § 10A-2A-11.06(d); see Question 1: Applicability of Revised Alabama Business Corporation Law).

The revised law requires the plan of merger be in writing, and include:

- Each constituent organization's:
 - name, organization type, and principal office mailing address;
 - jurisdiction of governing statute; and
 - unique identifying number or other designation as assigned by the secretary of state, if any.

- The surviving organization's:
 - name, organization type, and principal office mailing address;
 - unique identifying number or other designation assigned by the secretary of state, if any;
 - jurisdiction of governing statute; and
 - a statement that the surviving organization is created pursuant to the merger, if applicable.
- The terms and conditions of the merger, including the manner and basis for converting each constituent organization's stock or eligible interest into any combination of money, stock, eligible interests in the surviving organization, and other consideration.
- The surviving organization's organization documents, if it is created by the merger.
- Any amendments to the surviving organization's organizational documents, if it is not created by the merger.

(Ala. Code § 10A-2A-11.02(b).)

Under the revised law, the statement of merger must also set out:

- For Alabama constituent organizations:
 - the date the certificate of formation and any earlier amendments were filed; and
 - the filing office or offices where they were filed.
- The merger's effective date.
- If the merger creates the surviving organization:
 - the certificate of incorporation, if it will be a corporation;
 - any organizational document that creates the organization that must be in a public writing; or
 - a statement of limited liability partnership, if it will be a limited liability partnership.
- If the surviving organization exists before the merger, any amendments authorized in the plan of merger for the organizational document.
- A statement from each constituent organization that the merger was approved.
- If the surviving organization is a foreign organization that cannot conduct business in Alabama, the street and mailing address of its office.
- Any additional information required by any constituent organization's governing statute.

- A statement that:
 - the plan of merger was duly approved by the stockholders of a constituent corporation and by each separate voting group, if required; or
 - the plan of merger did not require approval by the stockholders of a constituent organization, if that is the case.
- A statement that the surviving organization will provide the plan of merger to any owner of any constituent organization that is a party to the merger, on request and without cost.

(Ala. Code § 10A-2A-11.06(a).)

Board Actions

The board of directors of each constituent corporation must adopt a resolution that approves the plan of merger and, if shareholder approval is required, submit and recommend the plan of merger to the shareholders (Ala. Code §§ 10A-2-11.01(a), 10A-2-11.03, 10A-2A-11.02(a), and 10A-2A-11.04).

A parent corporation owning at least 80% of a subsidiary corporation may merge the subsidiary into itself without shareholder approval. Regarding these mergers, among other requirements, the board of directors of the parent corporation must adopt a plan of merger that sets out:

- The names of the parent and subsidiary.
- The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(Ala. Code § 10A-2-11.04.)

Under the revised Alabama Business Corporations Law, selectively effective January 1, 2020, a parent corporation owning at least 90% of a subsidiary corporation may, without approval of the board of directors or stockholders:

- Merge the subsidiary corporation into itself.
- Merge the subsidiary corporation into another corporation, foreign corporation, or eligible entity of which the parent corporation owns at least 90%.
- Merge itself into the subsidiary corporation.

However, these mergers cannot occur if either entity's certificate of incorporation prohibits them. (Ala. Code § 10A-2A-11.05(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.) After the effective date of a parent-subsidary merger under Ala. Code § 10A-2A-11.05(a), the parent entity must notify

each of the subsidiary corporation's stockholders that the merger is effective within ten days of the merger's effective date (Ala. Code § 10A-2A-11.05(b)).

Filing Requirements

The surviving corporation must file the articles of merger with the ASOS. The articles of merger may provide that the merger takes effect on a specified date and time, as opposed to the date of filing, if:

- The effective date is no more than 90 days after the date the articles are delivered to the filing officer for filing.
- The specific time at which the articles are to take effect is not specified as "12:00 a.m." or "12:00 p.m."

(Ala. Code §§ 10A-1-4.12(b)(1), (2) and 10A-2-11.05(b).)

If the articles of merger:

- Provide for a delayed effective date but do not specify a time, the merger takes effect at 12:01 a.m. on the specified date (Ala. Code § 10A-1-4.12(b)(3)).
- Does not specify the time zone or place where a date, time, or both is to be determined, the date, time, or both, of effectiveness is that at the place it is filed (Ala. Code. § 10A-1-4.12(c)).
- Is or must be delivered to two or more filing officers, the date it is delivered to the first officer is the date of delivery for determining the 90-day delayed effective date (Ala. Code. § 10A-1-4.12(d)).

Additional copies of the articles of merger must accompany those filed with the ASOS to allow the ASOS to transmit certified copies of the articles to the office of the judge of probate of the county in which each domestic entity's certificate of formation (including the articles of incorporation of an Alabama corporation), if any, is filed (Ala. Code § 10A-1-4.02(d)). If a foreign surviving corporation intends to transact business in Alabama, and it is not currently registered to do so, an application for registration, including name registration, should be submitted to the ASOS along with the articles of merger. If a domestic surviving corporation is changing its name, a color copy of the name reservation should be included in the package. If a previously registered foreign surviving corporation is changing its name, a new name registration and amended application for registration should be submitted with the articles of merger.

The fee for filing the articles of merger with the ASOS is \$100 and the fee to expedite the filing is \$100. Judge of probate fees vary by **county** and should be confirmed before filing with the ASOS. Once processed, the merger will be effective at the effective date, or the date the

articles of merger were actually received by the ASOS. However, if the filing is not expedited, confirmation of the merger may not be received for several months following the date the ASOS receives the articles of merger.

Shareholder Actions

The shareholders of the non-surviving corporation must approve the plan of merger. Shareholders of the surviving corporation must also approve the plan of merger, unless all of the following apply:

- The articles of incorporation of the surviving corporation will not substantially change in the merger.
- The shareholders will each hold the same number of shares, with identical designations, preferences, limitations, and relative rights after the merger.
- The number of voting shares outstanding after the merger, plus the number of voting shares issued in the merger, will not exceed the total number of voting shares immediately before the merger by more than 20%.
- The number of participating shares outstanding after the merger, plus the number of shares issuable as a result of the merger, will not exceed more than 20% of the total number of participating shares immediately before the merger.

(Ala. Code § 10A-2-11.03(a), (g).)

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, stockholders of a surviving corporation are not required to approve the plan of merger if both the following conditions apply:

- The certificate of incorporation will not change after the merger other than amendments under Ala. Code § 10A-2A-10.05.
- Each stockholder of the corporation whose stock was outstanding immediately before the effective date of the merger will hold the same number of shares of stock, with identical preferences, rights, and limitations, immediately after the effective date of the merger.

(Ala. Code § 10A-2A-11.04(h); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

In addition, a parent corporation owning at least 80% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary (Ala. Code § 10A-2-11.04(a)). The revised Alabama Business Corporation Law requires the parent corporation to hold 90% of the outstanding stock to merge the subsidiary into itself without a stockholder vote (Ala. Code § 10A-2A-11.05(a); see Question 1: Applicability of Revised Alabama Business Corporation Law).

If shareholder approval is required, and unless the articles of incorporation require a greater or lesser vote or a vote by voting groups, the plan of merger must be approved by each voting group entitled to vote separately by two-thirds of all the votes that voting group can cast on the plan (Ala. Code § 10A-2-11.03(e)). The revised Alabama Business Corporation Law modifies this requirement from two-thirds to a majority of the votes that can be cast on the plan (Ala. Code § 10A-2A-11.04(e)).

The corporation must notify each shareholder (whether or not entitled to vote) of the proposed shareholder's meeting, according to Ala. Code § 10A-2-7.05. The notice must state that the purpose of the meeting is to consider the plan of merger and include a copy or summary of the plan of merger. (Ala. Code §§ 10A-2-11.03(d) and 10A-2A-11.04(d).)

Dissenter's Rights

A shareholder may dissent from the merger and obtain fair value for the shareholder's shares when a plan of merger to which the corporation is a party is consummated if either:

- Shareholder approval is required by Ala. Code § 10A-2-11.03 or the articles of incorporation and the shareholder is entitled to vote on the merger.
- The corporation is a subsidiary that is merged with its parent.

(Ala. Code § 10A-2-13.02(a)(1).) However, the revised Alabama Business Corporation Law adds an exception that denies appraisal rights to a stockholder for stock of any class or series that remain outstanding after consummation of the merger (Ala. Code § 10A-2A-13.02(a)(1); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Asset Sales

7. What is required for an asset sale in your jurisdiction? Please include any distinctions for a sale of substantially all of the assets. In particular, please include information on:

- Documents.
- Board actions.
- Shareholder actions.
- Bulk sales compliance.
- Successor liability or de facto merger analysis.

Documents

Although Alabama law provides two statutory provisions directly addressing sales of assets by a corporation, it does not require any filings to consummate an asset sale (Ala. Code §§ 10A-2-12.01, 10A-2-12.02, 10A-2A-12.01, and 10A-2A-12.02). Generally, a corporation wishing to sell assets enters into an asset purchase agreement with the buyer. This agreement would provide for, among other things:

- The types of or specific assets that are to be purchased and sold.
- The types of or specific liabilities, if any, that will be assumed by the buyer.
- The type and amount of consideration for the assets and details of the sale process.
- Customary representations and warranties of the parties, and other provisions addressing indemnification or other obligations of the parties.

Board Actions

For a corporation to sell, lease, exchange, or otherwise dispose of all or substantially all of its property other than in the usual and regular course of business, then:

- The board of directors must recommend the transaction to the shareholders. However, if the board determines that it should not make a recommendation due to a conflict of interest or other special circumstances, the board must communicate the basis for the determination to the shareholders along with the submission for the proposed transaction.
- The shareholders entitled to vote must approve the transaction.

(Ala. Code §§ 10A-2-12.02(a), (b) and 10A-2A-12.02(a), (b).)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, only requires board action and stockholder approval if the asset disposition would leave the corporation without a significant continuing business activity (Ala. Code § 10A-2A-12.02(a), (b); see Question 1: Applicability of Revised Alabama Business Corporation Law). Under the revised Alabama Business Corporation Law, a corporation retains a “significant continuing business activity” if the corporation and its subsidiaries retains a business activity representing at least one of the following:

- Twenty-five percent of total assets as of the most recent fiscal year end.

- Twenty-five percent of operating income or revenues from continuing operations for the most recently completed fiscal year.

(Ala. Code § 10A-2A-12.02(b)(i), (ii).)

The board of directors must notify each shareholder (whether or not entitled to vote) of the proposed shareholders’ meeting to approve a sale, lease, exchange, or disposition of all or substantially all of the assets of a corporation. In addition to setting out the purpose for the meeting, the notification must contain or be accompanied by a description of the transaction. (Ala. Code §§ 10A-2-12.02(d).) The revised Alabama Business Corporation Law retains the same general notification requirements, but also expressly requires the notice to include a description of:

- The terms and conditions of the transaction.
- The consideration the corporation is to receive.

(Ala. Code § 10A-2A-12.02(d).)

Shareholder Actions

Unless the articles of incorporation require a greater or lesser vote or a vote by voting groups, or the board specifies a greater vote or a vote by voting groups, the proposed transaction must be approved by each voting group entitled to vote separately on the transaction by two-thirds of all the votes entitled to be cast by that voting group. However, the vote required for shareholder approval must be at least a majority of all votes that each voting group can cast. (Ala. Code § 10A-2-12.02(e).)

Under the revised Alabama Business Corporations Law, selectively effective January 1, 2020, unless the certificate of incorporation requires a greater vote or greater quorum, the proposed transaction must be approved by the stockholders at a meeting where a quorum exists that consists of a majority of the votes that can be cast on the transaction (Ala. Code § 10A-2A-12.02(e); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Bulk Sales

A buyer does not have to give notice to the seller’s creditors if it is acquiring a significant portion of the seller’s business or assets (Ala. Acts 1996, No. 96-523 (repealing the Bulk Transfers Article, effective May 17, 1996)).

Successor Liability or De Facto Merger Analysis

Under Alabama successor-corporation liability law, the purchaser/transferee of the assets of a seller/transferee

corporation is not liable for the debts and liabilities of the seller/transferee corporation, except in the following circumstances:

- There is an express agreement to assume the obligations.
- The transaction amounts to a de facto merger or consolidation of the transferor and transferee.
- The transaction is a fraudulent attempt to escape liabilities.
- The transferee is a mere continuation of the transferor.

(See *MPI Acquisition, LLC v. Northcutt*, 14 So. 3d 126, 128 (Ala. 2009) (citing *Brown v. Economy Baler Co.*, 599 So. 2d 1, 3 (Ala. 1992)).)

Anti-Takeover Laws

8. Please describe any state anti-takeover laws. Do corporations have the ability to opt in or out of these laws?

Alabama has no anti-takeover statutes.

Dissolving a Corporation

9. What is required to dissolve a corporation in your jurisdiction? Please include information on:

- Documents.
- Board actions.
- Filing requirements (including timing, electronic versus paper, and availability of expedited/rush services).
- Shareholder actions.

Documents

At any time after dissolution is authorized, a corporation may dissolve by delivering articles of dissolution to the judge of probate of the county in which the corporation was incorporated. The articles of dissolution must include:

- The name of the corporation.
- The date the dissolution was authorized.
- If the shareholders approved the dissolution:
 - the number of votes entitled to be cast on the proposal to dissolve; and

- either the total number of votes cast for and against dissolution or the total number of undisputed votes for dissolution and a statement that the number cast for dissolution was sufficient for approval.

- If voting by voting groups was required, the information required above must be separately provided for each group entitled to vote separately on the plan to dissolve.
- If dissolution was approved by written consent of all shareholders, a statement to that effect instead of the information required above and a copy of the consent signed by all shareholders of the corporation.

(Ala. Code § 10A-2-14.03.)

Under the revised Alabama Business Corporations Law, selectively effective January 1, 2020, the corporation must deliver the certification of dissolution to the [Alabama secretary of state](#) (ASOS). The certificate must include:

- The name of the corporation.
- The date the dissolution was authorized.
- If the dissolution was approved by the stockholders, a statement that the proposal to dissolve was approved by the stockholder in the manner required by Alabama law and by the certificate of incorporation.

(Ala. Code § 10A-2A-14.03(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

In addition, a majority of incorporators or initial directors may dissolve a corporation that has not issued shares or has not commenced business by delivering articles of dissolution to the judge of probate of the county of incorporation. The articles of dissolution must set out:

- The name of the corporation and the date of its incorporation.
- Either that:
 - the corporation has not issued any shares; or
 - the corporation has not commenced business.
- That no debt of the corporation remains unpaid.
- That the net assets of the corporation remaining after winding up have been distributed to shareholders (if shares were issued).
- That a majority of the incorporators or initial directors authorize the dissolution.

(Ala. Code § 10A-2-14.01.)

A corporation is dissolved on the effective date of its articles of dissolution (Ala. Code §§ 10A-2-14.03(b) and 10A-2A-14.03(b)). Generally, a filing with the judge

of probate or the ASOS takes effect on filing (Ala. Code § 10A-1-4.11).

Board Actions

To voluntarily dissolve a corporation, the dissolution must first be authorized in one of the following manners:

- By shareholder adoption of a proposal to dissolve that has been submitted and recommended by the board of directors. If the board of directors determines that because of a conflict of interest or other special circumstances that it should not make a recommendation, then the basis for the determination must be communicated to the shareholders.
- By written consent of all shareholders, whether or not entitled to vote, without action by the corporation's board of directors.

(Ala. Code §§ 10A-2-14.02(b), (f) and 10A-2A-14.02(b), (f).)

In addition, the corporation must notify each shareholder, whether or not entitled to vote, of any proposed shareholders' meeting at which a vote on dissolution will occur. This notice must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation (Ala. Code §§ 10A-2-14.02(d) and 10A-2A-14.02(d)).

Filing Requirements

The fee for filing articles of dissolution with the judge of probate varies by [county](#). The ASOS regular filing fee that must accompany the articles of dissolution when filed with the judge of probate is \$100. The fee to expedite the filing with the ASOS is an additional \$100.

Shareholder Action

A corporation may be dissolved by the unanimous written consent of all of the shareholders, whether or not entitled to vote, without the need for action by the board of directors (Ala. Code §§ 10A-2-14.02(f) and 10A-2A-14.02(f)).

A corporation may also be dissolved by the adoption of a board proposal to dissolve (Ala. Code §§ 10A-2-14.02(a) and 10A-2A-14.02(a)). To dissolve in this manner:

- The board of directors must recommend dissolution to the shareholders, unless the board determines that because of a conflict of interest or other special circumstances that it should not make a recommendation, in which case the board must communicate the basis for the determination.

- The shareholders entitled to vote must approve the proposal to dissolve.

(Ala. Code §§ 10A-2-14.02(b) and 10A-2A-14.02(b).)

Generally, unless the articles of incorporation require a greater or lesser vote or a vote by voting groups, the proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal by two-thirds of all the votes entitled to be cast on the proposal by that voting group. However, the requisite shareholder vote may never be set at less than a majority of all of the votes that can be cast. (Ala. Code § 10A-2-14.02(e).) The revised Alabama Business Corporation Law, selectively effective January 1, 2020, reduces the requirement for approval to a majority of the votes that may be cast on the proposal, absent a higher requirement in the certificate of incorporation or by the board of directors (Ala. Code § 10A-2A-14.02(e); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Activities Requiring Shareholder Consent

10. What activities require shareholder consent in your jurisdiction?

Generally, a corporation's articles of incorporation or bylaws may include provisions under which any type of corporate action would be contingent on shareholder approval. Certain fundamental corporate changes, however, always require some level of shareholder approval, including:

- Amendments to the articles of incorporation (Ala. Code §§ 10A-2-10.03 and 10A-2A-10.03).
- A merger or share exchange (Ala. Code §§ 10A-2-11.03 and 10A-2A-11.04).
- The sale of all or substantially all of a corporation's property or assets (Ala. Code §§ 10A-2-12.02 and 10A-2A-12.02).
- Dissolution of the corporation (Ala. Code §§ 10A-2-14.02 and 10A-2A-14.02).

Preemptive Rights

11. Is there a statutory provision for preemptive rights? Do corporations have the ability to opt in or out of this provision?

Unless the articles of incorporation provide otherwise, shareholders of a corporation have preemptive rights to acquire the corporation's unissued shares (Ala. Code § 10A-2-6.30(a)). Regarding preemptive rights, the following apply (unless the articles of incorporation expressly provide otherwise):

- Shareholders have a preemptive right to acquire proportional amounts of the corporation's unissued shares when the board of directors decides to issue the unissued shares.
- A shareholder may waive their preemptive rights, and any waiver evidenced by a writing is irrevocable, even if not supported by consideration.
- There is no preemptive right regarding shares:
 - issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;
 - issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates; or
 - sold otherwise than for money.
- Holders of shares of any class without voting rights but with preferential rights to distributions or assets have no preemptive rights regarding shares of any class.
- Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights regarding shares of any class with preferential rights (with certain exceptions).
- Shares subject to preemptive rights that are not acquired by shareholders may be issued for a period of one year after being offered to shareholders as long as the consideration set for the shares is not lower than that offered to the shareholders with the preemptive rights.

(Ala. Code § 10A-2-6.30(b).)

For purposes of the preemptive rights discussed above, the term "share" includes a security convertible into or carrying a right to subscribe for or acquire shares (Ala. Code § 10A-2-6.30(c)).

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, a corporation's stockholders do not have a preemptive right to acquire the corporation's unissued stock unless the certificate of

incorporation allows it (Ala. Code § 10A-2A-6.30(a); see Question 1: Applicability of Revised Alabama Business Corporation Law). If the certificate of incorporation contains a statement that "the corporation elects to have preemptive rights" or words to similar effect:

- The stockholders have a preemptive right to acquire proportional amounts of the corporation's unissued stock when the board of directors decides to issue the unissued shares.
- A stockholder can waive their preemptive right, and a waiver evidenced by a writing is irrevocable even if not supported by consideration.
- There is no preemptive right regarding stock:
 - issued as compensation to directors, officers, employees, or agents of the corporation, its subsidiaries, or its affiliates;
 - issued to satisfy conversion or option rights created to provide compensation to directors, officers, employees, or agents of the corporation, its subsidiaries, or its affiliates;
 - authorized in the certificate of incorporation that is issued within six months from the effective date of incorporation; or
 - sold otherwise than for cash.
- Holders of stock of any class or series without voting power but with preferential rights to distributions have no preemptive rights regarding stock of any class or series.
- Holders of stock of any class or series with voting power but without preferential rights to distributions have no preemptive rights regarding stock of any class or series with preferential rights to distributions (with certain exceptions).
- Stock subject to preemptive rights not acquired by stockholders may be issued to any person for a period of one year after being offered to stockholders at a consideration set by the board of directors that is at least the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the stockholders' preemptive rights.

(Ala. Code § 10A-2A-6.30(b).)

For the purpose of preemptive rights, stock includes a security convertible into or carrying a right to subscribe for or acquire stock (Ala. Code § 10A-2A-6.30(c)).

Limitations on Classes or Series of Stock

12. Are there any limits on the classes or series of stock that can be issued in your jurisdiction?

Alabama law does not impose any limits on the classes or series of stock that may be issued. However, all shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class, unless the class is divided into series (Ala. Code §§ 10A-2-6.01(a) and 10A-2A-6.01(a)). In a series, all shares of the same series must have the same preferences, limitations, and relative rights (Ala. Code §§ 10A-2-6.02(c) and 10A-2A-6.01(a)). Any limitations or restrictions on classes or series of capital stock must be specified in the articles of incorporation (Ala. Code §§ 10A-2-6.01, 10A-2-6.02, 10A-2A-6.01, and 10A-2A-6.02).

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, permits variances in terms of stock among holders of the same class or series if the variations are expressly set out in the certificate of incorporation (Ala. Code § 10A-2A-6.01(e); see Question 1: Applicability of Revised Alabama Business Corporation Law).

Limitations on Dividends

13. Please describe any limitations on the ability of a corporation to pay dividends on capital stock.

Subject to any restrictions in the articles of incorporation and the limitation described below, the board of directors may authorize and the corporation may make distributions to shareholders (Ala. Code §§ 10A-2-6.40(a) and 10A-2A-6.40(a)). Shareholder approval is not typically required for a corporation to declare and pay distributions but may be required in the articles of incorporation.

No distributions may be made if, after giving it effect:

- The corporation would not be able to pay its debts as they become due in the ordinary course of business.
- The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of distribution, to satisfy preferential rights

on dissolution of the shareholders whose preferential rights are superior to those receiving the distribution.

(Ala. Code §§ 10A-2-6.40(c) and 10A-2A-6.40(c).)

The board may judge whether these limitations apply using methods that are reasonable in the circumstances, including:

- Financial statements that are prepared on the basis of accounting practices and principles that are reasonable.
- A fair revaluation.

(Ala. Code §§ 10A-2-6.40(d) and § 10A-2A-6.40(d).)

Indebtedness to a shareholder incurred by reason of a distribution made according to Ala. Code § 10A-2-6.40 is at parity with the corporation's indebtedness to its general, unsecured creditors (except to the extent subordinated by agreement) (Ala. Code §§ 10A-2-6.40(f) and 10A-2A-6.40(f)).

Board of Directors

14. Please describe any minimum requirements to serve as a corporate director. What are the requirements for or limits on the size of the board of directors?

All business corporations must have at least one director, but the articles of incorporation or bylaws may fix a higher number (Ala. Code §§ 10A-2-8.03(a) and 10A-2A-8.03(a)).

While the articles of incorporation or bylaws may prescribe qualifications for directors, all directors must be a natural person at least 19 years old (Ala. Code §§ 10A-2-8.02 and 10A-2A-8.02).

If a board of directors has power to fix or change the number of directors, the board may increase or decrease the number of directors last approved by the shareholders by 30% or less, but only the shareholders may increase or decrease the number of directors last approved by the shareholders by more than 30% (Ala. Code § 10A-2-8.03(b).)

Additionally, the articles of incorporation or bylaws may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders, or, if the articles of incorporation so provide, by the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change

from a fixed to a variable-range size board or vice versa. (Ala. Code § 10A-2-8.03(c).)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, allows the increase or decrease of the number of directors by amendment to, or in the manner provided in, the certificate of incorporation or the bylaws (Ala. Code § 10A-2A-8.03(b); see Question 1: Applicability of Revised Alabama Business Corporation Law).

15. Please summarize the board of directors' ability to designate committees and subcommittees. Are there any limitations on the board of directors' ability to delegate authority to those committees?

A board of directors may create one or more committees and appoint members of the board of directors to serve on these committees unless the articles of incorporation or bylaws provide otherwise (Ala. Code §§ 10A-2-8.25(a) and 10A-2A-8.25(a)).

These actions must be approved by the greater of either:

- A majority of all the directors in office at the time.
- The number of directors required by the articles of incorporation or bylaws to take action under Ala. Code § 10A-2-8.24.

(Ala. Code §§ 10A-2-8.25(b) and 10A-2A-8.25(b).)

To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors (Ala. Code §§ 10A-2-8.25(d) and 10A-2A-8.25(d)). However, a committee may not:

- Authorize distributions.
- Approve or propose to shareholders an action required to be approved by shareholders (see Question 10).
- Fill vacancies on the board of directors or any of its committees.
- Amend the articles of incorporation under Ala. Code § 10A-2-10.02.
- Adopt, amend, or repeal bylaws.
- Approve a plan of merger not requiring shareholder approval.
- Authorize or approve reacquisition of shares, except according to formula or method prescribed by the board of directors.

- Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so within limits specifically prescribed by the board of directors.

(Ala. Code § 10A-2-8.25(e).)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, prohibits a board committee from:

- Authorizing or approving distributions, except according to a formula or method, or within limits prescribed by the board of directors.
- Approving or proposing an action to stockholders that requires stockholder approval (see Question 10).
- Filling vacancies on the board of directors or board committees unless a replacement is needed due to a committee member's absence or disqualification.
- Adopting, amending, or repealing bylaws, or amending or restating the certificate of incorporation.

(Ala. Code § 10A-2A-8.25(d); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Indemnification

16. Please describe the corporation's ability, and any requirements or limits on that ability, to indemnify its directors and officers in your jurisdiction.

While Alabama law authorizes a corporation to provide indemnification or advance expenses in certain circumstances, these provisions are not exclusive and are in addition to what is contained in the corporation's articles of incorporation, bylaws, resolution of its shareholders or board, or in a contract or otherwise (Ala. Code §§ 10A-2-8.58(a) and 10A-2A-8.58(a)).

Directors

Authority to Indemnify Directors

Subject to certain exceptions, a corporation may indemnify a person who is made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

- The director conducted themselves in good faith.
- The director reasonably believed:
 - in the case of conduct in the director’s official capacity with the corporation, that the conduct was in its best interests; and
 - in all other cases, that the conduct was at least not opposed to the corporation’s best interests.
- In the case of any criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful.

(Ala. Code §§ 10A-2-8.51(a) and 10A-2A-8.51(a)(1).)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, also permits a corporation to indemnify a director if the director engaged in conduct for which the certificate of incorporation provides either permissible or obligatory indemnification (Ala. Code § 10A-2A-8.51(a)(2); see Question 1: Applicability of Revised Alabama Business Corporation Law).

However, a corporation may not indemnify a director in connection with:

- A proceeding by or in the right of the corporation where the director was adjudged liable to the corporation.
- Any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, where the director was adjudged liable based on improper receipt of personal benefit.

(Ala. Code § 10A-2-8.51(d).)

Under the revised Alabama Business Corporation Law, a corporation may not indemnify a director in connection with:

- A proceeding by or in the right of the corporation, except for expenses incurred in connection with the proceeding if the director is determined to have met the relevant standard of conduct under Ala. Code § 10A-2A-8.51(a).
- Any proceeding with respect to conduct where the director was adjudged liable on the basis of improper receipt of a financial benefit, regardless of whether it involved action in the director’s official capacity.

(Ala. Code § 10A-2A-8.51(d); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* does not, on its own, indicate that the director did not meet the applicable standard of conduct (Ala. Code §§ 10A-2-8.51(c) and 10A-2A-8.51(c)).

A corporation may not indemnify a director under this law unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the applicable standard of conduct (Ala. Code §§ 10A-2-8.55(a) and 10A-2A-8.55(a)). This determination must be made by any of:

- The board of directors by majority vote of a quorum consisting of directors not party to the proceeding.
- A committee designated by the board of directors, by majority vote, if a quorum of directors cannot be obtained.
- Special legal counsel selected by the board of directors or the committee designated by the board of directors.
- The shareholders, excluding shares owned or controlled by directors party to the proceeding.

(Ala. Code § 10A-2-8.55(b).)

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, the determination must be made by any of the following:

- If there are two or more qualified directors, by:
 - the board of directors by a majority vote of all qualified directors; or
 - a majority of the members of a committee of two or more qualified directors appointed by a majority vote of qualified directors.
- By special legal counsel selected either:
 - by the board of directors by a majority vote of all qualified directors or by a majority of the members of a committee of two or more qualified directors appointed by a majority vote of qualified directors; or
 - if there are fewer than two qualified directors, selected by the board of directors, where directors who are not qualified directors can participate.
- By the stockholders, but stock owned by or voted under the control of a director who, at the time, is not a qualified director may not be voted on the determination.

(Ala. Code § 10A-2A-8.55(b); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Mandatory Indemnification of Directors

If a director is successful in the defense of any proceeding or of any claim, issue, or matter in the proceeding where the director was a party because

they are or were a director, then the corporation must indemnify the director against reasonable expenses incurred in connection with the defense (Ala. Code §§ 10A-2-8.52 and 10A-2A-8.52).

Advancement of Expenses to Directors

A corporation may (but is not required to) pay or reimburse the reasonable expenses incurred by a director who is a party to a proceeding, in advance of final disposition of the proceeding if:

- The director furnishes the corporation a written affirmation of good faith belief that the director has met the applicable standard of conduct.
- The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct, or is not otherwise entitled to indemnification under Ala. Code § 10A-2-8.51(d), unless indemnification is approved by the court under Ala. Code § 10A-2-8.54.
- A determination is made that the facts then known to those making the determination would not preclude indemnification under this division. This determination should be made in accordance with Ala. Code § 10A-2-8.55.

(Ala. Code § 10A-2-8.53(a).)

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, a corporation may advance funds to pay for or reimburse expenses in connection with the proceeding against a director who is a party because of the director's position if the director delivers a signed writing to the corporation agreeing to repay any advanced funds if both:

- The director is not entitled to mandatory indemnification.
- It is ultimately determined that the director is not entitled to indemnification.

(Ala. Code § 10A-2A-8.53(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Directors and Officers Liability Insurance

A corporation may purchase and maintain insurance or furnish similar protection (such as self-insurance reserves) on behalf of an individual who is or was a director, officer, employee, or agent of the corporation against liability asserted against or incurred by him in that capacity or

arising from their status as a director, officer, employee, or agent whether or not the corporation would have power to indemnify them against the liability under Ala. Code §§ 10A-2-8.51 or 10A-2-8.52 (Ala. Code § 10A-2-8.57).

This insurance or similar protections may extend to any individual who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture trust, employee benefit plan, or other enterprise (Ala. Code § 10A-2-8.57).

Under the revised Alabama Business Corporation Law, selectively effective January 1, 2020, a corporation may purchase and maintain insurance against liability asserted against or incurred by the individual in that capacity or arising from their status as a director or officer on behalf of an individual who is a director or officer of the corporation or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another corporation, foreign corporation, joint venture, trust, employee benefit plan, or other entity (Ala. Code § 10A-2A-8.57; see Question 1: Applicability of Revised Alabama Business Corporation Law).

Officer

An officer of a corporation is entitled to indemnification to the same extent as a director (Ala. Code § 10A-2-8.56). The revised Alabama Business Corporation Law allows a corporation to indemnify and advance expenses to an officer:

- To the same extent as a director.
- If the officer is not also a director, to any further extent provided by the certificate of incorporation or bylaws, or by a resolution or contract adopted by the board of directors or stockholders, except for liability:
 - in connection with a proceeding by or in the right of the corporation, other than for expenses incurred in connection with the proceeding; or
 - arising out of conduct that constitutes improper receipt of a financial benefit, intentional infliction of harm on the corporation or stockholders, or an intentional violation of criminal law.

(Ala. Code § 10A-2A-8.56(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

Amendment of Organizational Documents

17. What is required to amend the corporation's certificate of incorporation and by-laws? Please include information on:

- Documents.
- Corporate actions (board and shareholder actions).
- Filing requirements.

Documents

Articles of Incorporation

To amend a corporation's articles of incorporation, the corporation must file an Amendment to Formation/Articles (amendment) with the [Alabama secretary of state](#). The amendment must set out:

- The name of the corporation.
- The text of each amendment adopted.
- The date of each amendment's adoption.

(Ala. Code §§ 10A-2-10.06 and 10A-2A-10.06(a)(1), (2), and (4).)

In addition, the amendment must set out the following, depending on the nature of the amendment and the corporate action required:

- If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- If an amendment was adopted by the board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- If an amendment was approved by the shareholders:
 - the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and the number of votes of each voting group indisputably represented at the meeting; and
 - either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number

cast for the amendment by each voting group was sufficient for approval by that voting group.

(Ala. Code § 10A-2-10.06.)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, also requires the certificate of amendment to include:

- Provisions for implementing the amendment if the amendment:
 - provides for an exchange, reclassification, or cancellation of issued stock; and
 - does not contain the provisions for implementation within the amendment.
- A statement that the amendment:
 - was adopted by the incorporators or board of directors without stockholder approval, if that was the method of adoption;
 - was duly approved by the stockholders, if the amendment required stockholder approval; or
 - is being filed under Ala. Code § 10A-2A-1.20(c)(5), if that is the case.

(Ala. Code § 10A-2A-10.06(a); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

An Alabama corporation may also include one or more amendments in a restatement of its articles of incorporation. Any duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them. (Ala. Code §§ 10A-2-10.07(e) and 10A-2A-10.07(d).)

Bylaws

There is no particular document or filing required to amend a corporation's bylaws. Any amendment, however, should be made according to the applicable board or shareholder resolutions (or unanimous written consent), as required by the corporation's articles of incorporation or bylaws, or both, and applicable Alabama law.

Corporate Actions

Articles of Incorporation

The requisite corporate action for effecting an amendment to the articles of incorporation depends on several factors including:

- When the amendment is to be made.
- The nature of the amendment.

- The terms of the corporation's current articles of incorporation or bylaws.

If a corporation has not yet issued shares, its board of directors may adopt amendments to the articles of incorporation (Ala. Code §§ 10A-2-10.05 and 10A-2A-10.02).

Unless the articles of incorporation provide otherwise, the board of directors may adopt an amendment to the articles of incorporation, without shareholder action, to:

- Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
- Delete the names and addresses of the initial directors.
- Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.
- Change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.
- Change the corporate name by substituting the word "corporation" or "incorporated," or an abbreviation of either, for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.
- Make any other change expressly permitted to be made without shareholder action.

(Ala. Code § 10A-2-10.02.)

The revised Alabama Business Corporation Law, selectively effective January 1, 2020, allows the board of directors to adopt an amendment to the certificate of incorporation, without stockholder approval, to:

- Extend the duration of the corporation if it was incorporated when the law required a limited duration.
- Delete the names and addresses of the incorporators or initial directors.
- Delete the name and address of the initial registered agent or registered office if a statement of changes is on file with the secretary of state.
- If the corporation has only one class of stock outstanding:
 - to change each issued and unissued authorized share of stock of the class into a greater number of whole shares of stock of that class; or
 - to increase the number of authorized shares of stock of the class as necessary to allow the issuance of stock as a stock dividend.

- To change the corporate name, if the new name complies with the naming requirements of the Alabama Business Corporation Law.
- To reflect a reduction in authorized stock when the corporation has acquired its own stock and the certificate of incorporation prohibits that stock's reissue.
- To delete a class of stock from the certificate of incorporation when there is no remaining stock of the class because the corporation has acquired all stock of the class and the certificate of incorporation prohibits that stock's reissue.
- To take actions expressly permitted by Ala. Code § 10A-2A-6.02 to be made without stockholder approval.

(Ala. Code § 10A-2A-10.05; see Question 1: Applicability of Revised Alabama Business Corporation Law.)

For all other reasons not set out above, the board of directors may propose the amendment to the articles of incorporation for submission to the shareholders (Ala. Code §§ 10A-2-10.03(a) and 10A-2A-10.03(a), (b)). The corporation must notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. In addition to a statement that a purpose of the meeting is to consider the proposed amendment, the shareholder notice must also contain or be accompanied by a copy or summary of the amendment. (Ala. Code §§ 10A-2-10.03(d) and 10A-2A-10.03(d).) For the amendment to be adopted:

- The board of directors must recommend the amendment to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment.
- Unless otherwise required by law or the articles of incorporation, generally the amendment must be approved by:
 - a majority of the votes that any voting group for which the amendment would create dissenters' rights can cast on the amendment; and
 - the votes required by Ala. Code §§ 10A-2-7.25 and 10A-2-7.26, by every other voting group that can vote on the amendment.

(Ala. Code § 10A-2-10.03(b), (e).)

Under the revised Alabama Business Corporation Law, for an amendment to be adopted:

- The board of directors recommend the amendment to the shareholders, unless the board of directors determines that it cannot make a recommendation

because of conflict of interest or Ala. Code § 10A-2A-8.26 applies and communicates the basis for its determination to the shareholders.

- Unless the certificate of incorporation or a condition set by the board of directors requires a greater vote or quorum, the amendment generally must be approved by:
 - the stockholders at a meeting where a quorum of a majority of the votes that can be cast on the amendment exists; and
 - the approval of each separate voting group at a meeting where the quorum of the voting group exists consisting of a majority of the votes that the voting group can cast on the amendment.
- If the amendment causes one or more stockholder to become subject to new personal liability, each stockholder must sign a separate written consent to become subject to new personal liability, unless for a stockholder who already has personal liability the terms and conditions of the new liability are either:
 - substantially identical to the existing liability's terms and conditions; or
 - substantially identical to the existing liability's terms and conditions, except for changes that eliminate or reduce existing personal liability.

(Ala. Code § 10A-2A-10.03(b), (e), and (f); see Question 1: Applicability of Revised Alabama Business Corporation Law.)

New personal liability means personal liability resulting from an amendment of the certificate of incorporation if the person did not have personal liability before the amendment becomes effective or the person had personal liability before the amendment becomes effective, but the amendment changes the terms and conditions of the liability (Ala. Code § 10A-2A-10.03(g)).

Bylaws

A corporation's board of directors generally may amend or repeal the bylaws unless:

- The articles of incorporation or the Alabama Business Corporation Law reserve the power exclusively to the shareholders in whole or part.
- The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(Ala. Code §§ 10A-2-10.20(a) and § 10A-2A-10.20(a).)

Additionally, a board of directors may not adopt, amend, or repeal certain bylaws that fix a greater quorum or

voting requirement for shareholders (Ala. Code §§ 10A-2-10.21(b) and 10A-2A-10.21(a)). However, a bylaw provision that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed by the board of directors (if originally adopted by the board) or the shareholders (Ala. Code §§ 10A-2-10.22(a) and 10A-2A-10.21(a)).

A corporation's shareholders generally may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors (Ala. Code §§ 10A-2-10.20(b) and 10A-2A-10.20(a)). However, only the shareholders may amend a bylaw if, in amending or repealing that particular bylaw, the shareholders provide expressly that the board of directors may not amend or repeal it (Ala. Code §§ 10A-2-10.20(a)(2) and 10A-2A-10.20(b)(2)).

If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than otherwise required under Alabama law. To do so, the adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the quorum requirement and vote requirements under either the original bylaw or the proposed bylaw, whichever is greater. (Ala. Code § 10A-2-10.21(a).)

The revised Alabama Business Corporation law, selectively effective January 1, 2020, does not explicitly provide for amendments to bylaw provisions concerning stockholder voting or quorum requirements. While stockholders are authorized to amend or repeal the corporation's bylaws, matters concerning stockholder quorum and voting requirements, and amendments to these, appear only in the context of the certificate of incorporation. (Ala. Code §§ 10A-2A-7.25(a) and 10A-2A-7.27; see Question 1: Applicability of Revised Alabama Business Corporation Law.)

A bylaw that increases the quorum or voting requirements for the board of directors may be amended or repealed:

- Only by the shareholders, if originally adopted by the shareholders.
- By either the shareholders or directors, if originally adopted by the directors.

(Ala. Code §§ 10A-2-10.22(a) and 10A-2A-10.21(a).)

Generally, shareholders vote on a resolution to amend the corporation's bylaws at either an annual or a special meeting of the shareholders. However, the shareholders

may adopt a resolution amending the bylaws under unanimous written consent in lieu of the meeting.

Filing Requirements

Articles of Incorporation

To amend articles of incorporation, the corporation must mail one signed original and two copies of the Amendment to Formation/Articles Form, along with the appropriate filing fees, to the Office of the Judge of Probate in the county where the corporation's articles of incorporation are recorded. While the fees for filing with the Office of Judge of Probate vary by county, the fee for filing the amendment with the [Alabama Secretary of State](#) (ASOS) is \$50, which should be made payable to the ASOS by a separate check

or money order. The Judge of Probate's Office will transmit the fee along with a certified copy of the amendment to the ASOS within ten days after the filing is recorded.

It is further recommended that filers request expedited processing at the ASOS for an additional \$100 fee (which must be submitted along with the original filing with the Office of the Judge of Probate). If expedited processing is requested, the ASOS will index the filing within approximately three business days after the date of receipt from the Office of the Judge of Probate.

Bylaws

Corporations are not required to file either their original bylaws or any amendments.

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