

Corporation Law: Alabama

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A Q&A guide to for-profit 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 For-Profit Corporation and Corporate Actions

1. What is required to form and organize a for-profit 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 2A applies 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).)

Revised Alabama Business Corporation Law

On May 1, 2019, Alabama enacted the revised Alabama Business Corporation Law of 2019, which repealed Chapter 2 and replaced it with Chapter 2A. This act became effective for all corporations on January 1, 2021, regardless of date of incorporation (Ala. Code § 10A-2A-18.01).

Documents

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

Certificate of Incorporation

One or more persons may act as the incorporator or incorporators of an Alabama corporation. The incorporator must file a certificate of incorporation (also referred to as a certificate of formation in Chapter 1 of the Alabama Business and Nonprofit Code) with the [Alabama secretary of state](#) (ASOS) (Ala. Code § 10A-2A-2.01).

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

- The name of the corporation, which must satisfy the requirements of Ala. Code §§ 10A-1-5.01 to 10A-1-5.18.

- The number of shares of stock the corporation is authorized to 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 certificate of incorporation **may** also include provisions:

- Indicating the names and addresses of the initial directors.
- Regarding the purpose or purposes for which the corporation is organized.
- 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 stockholders.
- Regarding a par value for authorized stock or classes of stock.
- Imposing personal liability for the corporation's debts on the stockholders, to a specified extent and under specified circumstances.
- That are required or permitted to be set out in the bylaws (see Bylaws).
- That eliminate or limit the liability of a director or officer to the corporation or its stockholders for money damages for actions taken or failures to take action, as a director or officer, with certain exceptions.
- That permit or require the corporation to indemnify a director for liability to any person for an action taken, or a failure to take action, as a director, with certain exceptions.
- That limit or eliminate a director's or other person's duty to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunity, before the director or other person takes or pursues the opportunity, with certain requirements relating to application of the provision to officers or a person related to an officer.

(Ala. Code § 10A-2A-2.02(b).)

Bylaws

The incorporators or board of directors of the corporation must adopt initial bylaws. The bylaws can contain any provision not inconsistent with the law or the certificate of incorporation. (Ala. Code § 10A-2A-2.05.) Where a provision of the bylaws is inconsistent with the certificate of incorporation, the certificate of incorporation controls. Bylaws are not required to be filed.

Bylaws typically address:

- Procedures for the meetings of stockholders 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, an Alabama corporation may adopt bylaws that become effective only in an “emergency” unless the certificate of incorporation provides otherwise (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-2A-2.06(d)). The emergency bylaws, which are subject to amendment or repeal by the stockholders, 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-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-2A-2.06(b)).

Corporate Actions

After the certificate of incorporation is filed, the initial directors must hold an organizational 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 at the call of 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), (b).)

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 a Name Reservation Request Form to the ASOS for filing (Ala. Code § 10A-1-5.11). 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 of the reservation (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 \$25 when 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 certificate of incorporation to the ASOS to form a corporation.

Filing Requirements

The certificate 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 certificate of incorporation may be filed by mail or online at the [ASOS](#) (under “Domestic Formation”).

When presented for filing by mail, the signed original or digitally executed certificate of incorporation must be accompanied by:

- Filing fees.
- The Name Reservation certificate issued by the ASOS.
- If a copy is requested, an additional copy of the certificate of incorporation and Name Reservation certificate, together with a self-addressed, stamped envelope.

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

The fee for filing a certificate of incorporation with ASOS is \$208 when submitted online and \$200 when submitted by mail. Fees payable to the ASOS may be paid via credit card.

Federal Corporate Transparency Act

Although outside the scope of this Q&A, the federal Corporate Transparency Act (CTA) (31 U.S.C. § 5336), effective January 1, 2024, requires certain entities to report their beneficial ownership information (BOI)

and other information to the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). The CTA's application is intended to be broad but may principally impact small companies. Although exemptions exist, they are primarily for large operating companies or entities that are already highly regulated (for example, public companies, banks, and insurance companies).

Companies required to report must file their initial BOI report with FinCEN:

- By **January 1, 2025**, if created or registered before January 1, 2024.
- **Within 90 calendar days** of receiving actual or public notice of their creation or registration becoming effective if created or registered in 2024.
- **Within 30 calendar days** of receiving actual or public notice of their creation or registration becoming effective if created or registered on or after January 1, 2025.

Pursuant to an interim final rule issued March 21, 2025 and effective March 26, 2025, the scope of application of the CTA was significantly reduced (for more information see, [Legal Update, FinCEN Issues Interim Final Rule Amending Definition of Reporting Company Under the Corporate Transparency Act \(CTA\)](#)).

For more information on the CTA, including which entities are reporting companies, the BOI reporting requirements, and penalties for failure to comply, see the [Corporate Transparency Act \(CTA\) Toolkit](#).

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

Effective October 1, 2024, corporations are no longer required to file an Annual Report with the Alabama secretary of state ([Act 2024-213](#)).

All Alabama corporations must file an Alabama Business Privilege Tax Return with the [Alabama Department of Revenue](#) (ADOR), unless the corporation is subject only to the minimum privilege tax. 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) with the ADOR no later than 2.5 months after the beginning of each taxable year (Ala. Code § 40-14A-25(a)).

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 \$0 and the maximum is \$15,000. (Ala. Code § 40-14A-22(c), (d); [ADOR: Business Privilege Tax Incentives](#); [ADOR: Important Changes to the 2024 Business Privilege Tax Filing Requirements](#).)

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

Preliminary Requirements

Meeting Location

Alabama corporations must hold annual meetings of stockholders to elect directors at the time stated in or fixed by the certificate of incorporation or bylaws, unless the directors are elected by written consent in lieu of an annual meeting under Ala. Code § 10A-2A-7.04 (Ala. Code § 10A-2A-7.01(a)). The meeting may be held:

- Inside or outside of Alabama at the place stated in or fixed by the articles of incorporation or bylaws.
- If no fixed location is specified for the annual meeting, at the corporation's principal office.

(Ala. Code § 10A-2A-7.01(b).)

Additionally, unless the certificate of incorporation or the bylaws require the meeting to be held at a specific place, the board of directors may hold the annual meeting of stockholders solely by means of remote communication if certain measures under Ala. Code § 10A-2A-7.09(b) are implemented (Ala. Code § 10A-2A-7.09(c)).

Notice to Stockholders

The corporation must notify the stockholders 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 (Ala. Code § 10A-2A-7.05(a)). Unless the certificate 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-2A-7.05(b)).

A stockholder 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 stockholder, and delivered to the corporation. (Ala. Code § 10A-2A-7.06(a).) Unless the certificate of incorporation provides otherwise, action required or permitted to be taken at a stockholder meeting may be taken without a meeting if the action is taken by the stockholders having not less than the minimum number of votes required to authorize or take the action. The action must be evidenced by one or more written consents describing the action taken, signed by the stockholders approving the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. (Ala. Code § 10A-2A-7.04(a).)

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

Record Date

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

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

If the certificate of incorporation or 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-2A-7.07(a).)

This record date may not be more than 70 days before the meeting or action requiring a stockholder determination and may not be retroactive (Ala. Code § 10A-2A-7.07(b)). In the event of an adjournment of a meeting, the original determination of stockholders 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-2A-7.07(c).)

Quorum

Unless a provision in the certificate of incorporation or the Alabama Business Corporation Law provides otherwise, a majority of the votes that the voting group can cast on a matter is a quorum of that voting group (Ala. Code § 10A-2A-7.25(a)). The certificate of incorporation may provide for a greater quorum or voting requirement for stockholders, or voting groups of stockholders, than is otherwise required under the Alabama Business and Nonprofit Entities Code (Ala. Code §§ 10A-2A-7.25(a) and 10A-2A-7.27).

Any action requiring a specific quorum under the revised Alabama Business Corporation Law must be met regardless of lower quorum requirements contained in the certificate of incorporation (Ala. Code § 10A-2A-7.25(a)).

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-2A-7.01(c)).

Voting and Approval

Shares Entitled to Vote

Generally, unless the certificate of incorporation or the Alabama Business Corporation Law provide otherwise, each outstanding share of stock, regardless of class or series, is entitled to one vote on each matter voted on at a stockholders' meeting (Ala. Code § 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 if a quorum of those shares exists regarding that matter (see Action by Written Consent). Generally, if a quorum is present when a vote is taken, action on a matter by a voting group, other than the election of directors, is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the certificate of incorporation requires 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 certificate of incorporation.
- Calling of a special meeting (Ala. Code § 10A-2A-7.02).
- Election of directors (Ala. Code § 10A-2A-7.28).

- Action on plans of merger (Ala. Code § 10A-2A-11.04).
- Amendments to the certificate of incorporation (Ala. Code § 10A-2A-10.03).
- Amendments to the bylaws (Ala. Code §§ 10A-2A-10.21 and 10A-2A-10.22).

For more information on quorum requirements for classes and voting groups, see Question 3: Quorum.

Voting for Directors

Stockholders elect one or more directors at the first annual stockholders' meeting and, unless their terms are staggered, at each annual meeting thereafter (Ala. Code § 10A-2A-8.03(c)). Under the revised Alabama Business Corporation Law, 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)).

Unless the certificate of incorporation provides otherwise, stockholders may elect directors by written consent without a meeting. If the certificate of incorporation authorizes stockholders to cumulate their votes when electing directors, directors may not be elected by less than unanimous written consent. (Ala. Code § 10A-2A-7.04.)

A stockholder 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, or action by written consent in lieu of an annual meeting did not become effective within the earlier of:

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

(Ala. Code § 10A-2A-7.03(a).)

Cumulative Voting for Directors

By default, stockholders of an Alabama business corporation do not have a right to cumulate their votes for directors (Ala. Code § 10A-2A-7.28(b)). The certificate of incorporation, however, may provide all or a designated group of stockholders with the right to cumulate their votes for directors. A stockholder participating in cumulative voting may multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to

vote. The stockholder may cast all of these votes for a single candidate or distribute them among any number of candidates. (Ala. Code § 10A-2A-7.28(c).)

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

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

(Ala. Code § 10A-2A-7.28(d).)

Proxy Voting

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

- By signing an appointment form.
- By an electronic transmission containing or accompanied by information that allows the recipient to determine that the stockholder, agent, or attorney-in-fact authorized the transmission.

(Ala. Code § 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 inspector of elector or other officer or agent of the corporation authorized to tabulate votes.
- Valid for the term provided in the appointment form and, if no term is provided, is valid for a period of 11 months.
- 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-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 stock.
- 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-2A-7.31.

(Ala. Code § 10A-2A-7.22(d).)

When the interest with which the appointment is coupled is extinguished, the appointment is revoked (Ala. Code § 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 certificate 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-2A-7.05(b)). The Alabama Business Corporation Law requires prior notification regarding certain matters requiring a stockholder vote, including:

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

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

Stockholder 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 stockholder proposal

process, see [Rule 14a-8 Stockholder Proposal Process Flowchart](#).

Stockholders' Lists

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

- Be prepared alphabetically, by stockholder name.
- Be arranged by voting group and, within each voting group, by class or series of stock.
- Contain the address of each stockholder.
- Contain the number of shares of stock, and the class or series or the shares, held by each stockholder.
- Contain the email address or other electronic transmission address of the stockholder if the corporation uses electronic transmission to contact the stockholder.

(Ala. Code § 10A-2A-7.20(a).)

The corporation must make the list of stockholders available for inspection by any stockholder at least 10 days before each meeting of stockholders. On written demand, any stockholder (or their agent or attorney-in-fact) may inspect the list and, for a proper purpose, copy the list, during the inspection period. (Ala. Code § 10A-2A-7.20(b).)

The corporation may satisfy a stockholder's right to copy the list by providing copies to stockholders under Ala. Code § 10A-2A-16.03(b).

Under the revised Alabama Business Corporation Law, the shareholder list may be made available:

- On a reasonably accessible electronic network.
- At the corporation's principal office or at a place in the meeting notice in the city where the meeting will be held.

(Ala. Code § 10A-2A-7.20(b)(i), (ii).)

If a corporation refuses to allow a stockholder (or their agent or attorney-in-fact) to inspect or copy the list, then on application of the stockholder, 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.

(Ala. Code § 10A-2A-7.20(c).)

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

Use of Inspectors of Elections

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.)

Action by Written Consent

Under the revised Alabama Business Corporation 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).)

A written consent that is signed under Ala. Code § 10A-2A-7.04 has the effect of a meeting vote (Ala. Code § 10A-2A-7.04(c)). If nonvoting stockholders must be notified of a proposed action and the action is taken by written consent of the voting stockholders, then the corporation must provide written notice of the proposed action 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.

This notice must reasonably describe the action being taken and contain or be accompanied by the same materials that would have been sent to the nonvoting stockholders in a notice of meeting at which the proposed action otherwise would have been submitted to the stockholders. (Ala. Code § 10A-2A-7.04(d).)

A stockholder may waive any required notice (before or after the time stated in the notice) under a writing signed by the stockholder and delivered to the corporation for inclusion in the minutes or filing with corporate records (Ala. Code § 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 [Alabama secretary of state](#) (ASOS) or a judge of probate takes effect at filing (Ala. Code § 10A-1-4.11). The Alabama secretary of state's 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-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 (Ala. Code § 10A-2A-15.11(a)).

State Nexus Analysis

A foreign corporation transacting business in Alabama must not maintain any action or proceeding in any court of Alabama until it registers with the Alabama secretary of state (Ala. Code §§ 10A-1-7.21 and 10A-1-7.22).

The Alabama cases analyzing the meaning of “transacting business” by foreign corporations in Alabama all pre-date the repeal of Article XII, § 232 of the Constitution of Alabama 1901, effective January 1, 2014. In these cases, Alabama courts have made 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)).

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)). Foreign corporations must obtain a name reservation, which may be completed before or simultaneously with the corporation’s registration filing (see Question 1: Name Reservations).

After reserving the name, the corporation must submit the following to the ASOS online or by mail to obtain a certificate of authority to transact business in Alabama:

- A completed application for registration (in duplicate if by mail), which sets out:
 - certification that the corporation validly exists under the laws of its jurisdiction of formation;
 - the corporation’s legal name, type, 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.
- A \$156 filing fee to the ASOS if filing online, or \$150 filing fee if filing by mail.
- A self-addressed stamped envelope if filing by mail.

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

Alabama Business Privilege Tax Return

Effective October 1, 2024, corporations are no longer required to file an Annual Report with the ASOS ([Act 2024-213](#)).

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, unless the corporation is subject only to the minimum privilege tax. Afterwards, foreign corporations that do business in Alabama must file an Alabama Business Privilege Tax Return ([Form CPT](#) – for C-corporations or [Form PPT](#) – for S-corporations) 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).)

For taxable years beginning after December 31, 2023, corporations that are otherwise subject to the minimum privilege tax under Ala. Code §§ 40-14A-22(c)(1) or (c)(2) are exempted from the privilege tax and the associated filing requirement (Ala. Code § 40-14A-22(c)(3)).

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 \$25. 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 if filed by mail and \$156 if filed online. Both fees are payable to the ASOS. (ASOS: [Qualifying your Foreign Corporation in Alabama](#).)

Name Requirements

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

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 or officer:

- In good faith.
- In a manner the director believes to be in the best interests of the corporation (duty of loyalty).
- With the care that a person in a like position would reasonably believe to be appropriate under similar circumstances (duty of care).

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

The revised Alabama Business Corporation Law modified these duties by specifying that the director or officer must “reasonably” believe their actions meet each statutory duty (Ala. Code §§ 10A-2A-8.30(a) and 10A-2A-8.42(a)).

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 a person in a like position would use in similar circumstances (Ala. Code §§ 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-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 director reasonably believes the committee merits confidence.

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

A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter that makes reliance on the above information unwarranted (Ala. Code §§ 10A-2A-8.30(e) and 10A-2A-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 certificate of incorporation of an Alabama corporation may contain a provision eliminating or limiting the liability of a director or officer to the corporation or its stockholders for money damages for any act or failure to act, except regarding liability for:

- The amount of a financial benefit received by a director or officer to which the director or officer is not entitled.
- Intentional harm inflicted on the corporation or stockholders.
- In the case of a director, unlawful distributions in violation of Ala. Code § 10A-2A-8.32.
- Intentional violation of criminal law.
- In the case of an officer, any claim by or in the right of the corporation.

(Ala. Code § 10A-2A-2.02(b)(4).)

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 Cnty. 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 (see Business Judgment Rule).

Under the revised Alabama Business Corporation Law, if a director has a conflict of interest regarding a particular transaction, 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 stockholders approve of the transaction after being informed of the conflict.
- The transaction, as of the time it is authorized by the board of directors, a committee, or the stockholders, is fair to the corporation.

(Ala. Code § 10A-2A-8.60(a).)

Officers

Corporate officers are generally subject to the same duties, and entitled to the same presumptions, applicable to directors (Ala. Code § 10A-2A-8.42; see Duty of Care and Duty of Loyalty).

For-Profit Mergers

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

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

Under an approved plan of merger in Alabama, 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

Under the Alabama Business Corporation Law, 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-2A-11.04, by stockholders (Ala. Code § 10A-1-8.02(c)(1); see Board Actions and Stockholder Actions).

The plan of merger must 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 under 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-1-8.02(a)(1) and 10A-2A-11.02(b).)

Statement of Merger

Under the revised Alabama Business Corporation Law, after a plan of merger has been adopted by the boards of directors and approved by the stockholders (if required), each party to the merger must sign a statement of merger and deliver it to the [Alabama secretary of state](#) (ASOS) for filing (Ala. Code § 10A-2A-11.06(d)).

The statement of merger must set out:

- 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 ASOS, if any.
- The surviving organization's:
 - name, organization type, and principal office mailing address;
 - unique identifying number or other designation assigned by the ASOS, if any;
 - jurisdiction of governing statute; and

- a statement that the surviving organization is created under the merger, if applicable.
- 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).)

In addition, practitioners should consider any additional requirements for a statement of merger set out in Ala. Code § 10A-1-8.02(e), particularly in mergers involving both a corporation and one or more other types of entities.

Board Actions

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

Under the revised Alabama Business Corporation Law, a parent corporation owning at least 90% of a subsidiary corporation may, without approval of the subsidiary's 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).)

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 statement of merger with the ASOS (Ala. Code § 10A-2A-11.06(d)). The statement 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 statement of merger is delivered to the filing officer for filing.
- The specific time at which the statement of merger is 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-2A-11.06(d).)

If the statement of merger:

- Provides for a delayed effective date but does 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)).

Additional copies of the statement of merger must accompany those filed with the ASOS to allow the ASOS to transmit certified copies of the instrument to the office of the judge of probate of the county in which each domestic entity's certificate of formation (including the certificate of incorporation

of an Alabama corporation), if any, is filed (Ala. Code §§ 10A-1-4.02(c) and 10A-2A-11.06(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 statement 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 statement of merger.

The fee for filing the statement of merger with the ASOS is \$100. Once processed, the merger will be effective at the effective date, or the date the statement of merger was actually received by the ASOS. ([ASOS: Domestic Certificate of Merger](#); [ASOS: Foreign Certificate of Merger](#).)

Although outside the scope of this Q&A, effecting a merger may trigger reporting requirements under the Corporate Transparency Act, effective January 1, 2024 (see Question 1: Federal Corporate Transparency Act).

Stockholder Actions

Under the revised Alabama Business Corporation Law, stockholders of a surviving corporation are not required to approve a 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).)

In addition, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the stockholders of the subsidiary unless the certificate of incorporation or organizational documents of the parent corporation or the certificate of incorporation of that subsidiary corporation provide otherwise (Ala. Code § 10A-2A-11.05(a)).

If stockholder approval is required, and unless the certificate of incorporation requires 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 a majority of the votes that can be cast on the plan (Ala. Code § 10A-2A-11.04(e)).

The corporation must notify each stockholder (whether or not entitled to vote) of the proposed stockholder's meeting. 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-2A-11.04(d).)

Dissenter's Rights

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

- Stockholder approval is required by Ala. Code § 10A-2A-11.04 or the certificate of incorporation and the stockholder is entitled to vote on the merger.
- The corporation is a subsidiary that is merged with its parent or merged into another corporation of which its parent owns at least 90% voting power of each class and series of outstanding stock of eligible interest of voting power.

However, the law 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).)

For-Profit Asset Sales

7. What is required for a for-profit 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.
- Stockholder 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-2A-12.01 and 10A-2A-12.02).

Generally, a corporation wishing to sell assets enters into an asset purchase agreement with the buyer. An asset purchase agreement typically provides 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:

- The board of directors must recommend the transaction to the stockholders. 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 stockholders along with the submission for the proposed transaction.
- The stockholders entitled to vote must approve the transaction.

(Ala. Code § 10A-2A-12.02(a), (b).)

However, board action and stockholder approval are only required if the asset disposition would leave the corporation without a significant continuing business activity (Ala. Code § 10A-2A-12.02(a)). A corporation retains a "significant continuing business activity" if the corporation and its subsidiaries retain a business activity representing both of the following:

- 25% of total assets as of the most recent fiscal year end.

- 25% of operating income or revenues from continuing operations for the most recently completed fiscal year.

(Ala. Code § 10A-2A-12.02(a).)

The board of directors must notify each stockholder (whether or not entitled to vote) of the proposed stockholders' 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, including:

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

(Ala. Code § 10A-2A-12.02(d).)

Stockholder Actions

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)).

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/transferor corporation is not liable for the debts and liabilities of the seller/transferor 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).)

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 For-Profit Corporation

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

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

Documents

Under the revised Alabama Business Corporation Law, 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, and if approved by written consent, a copy of the written consent.
- The corporation's unique identifying number or other designation assigned by the ASOS.

(Ala. Code § 10A-2A-14.03(a).)

In addition, a majority of incorporators or initial directors may dissolve a corporation that has not issued stock or has not commenced business by delivering the certificate of dissolution to the ASOS. The certificate of dissolution must set out:

- The name of the corporation and the date of its incorporation.
- Either that:
 - the corporation has not issued any stock; 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 stockholders (if stock was issued).
- That a majority of the incorporators or initial directors authorize the dissolution.
- The corporation's unique identifying number or other designation assigned by the ASOS.

(Ala. Code § 10A-2A-14.01.)

A corporation is dissolved on the effective date of its certificate of dissolution (Ala. Code § 10A-2A-14.03(b)). Generally, a filing with the judge of probate or the ASOS takes effect on the date and time of the actual receipt by the filing officer (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 stockholder 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 stockholders.
- By written consent of all stockholders entitled to vote, without action by the corporation's board of directors.

(Ala. Code § 10A-2A-14.02(b), (f).)

In addition, the corporation must notify each stockholder, whether or not entitled to vote, of any proposed stockholders' 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-2A-14.02(d)).

Filing Requirements

The corporation must file the certificate of dissolution with the ASOS, either by online application or by hard-copy sent by mail (Ala. Code § 10A-2A-14.03). The fee for filing the certificate of dissolution with ASOS is \$104 if filing online and \$100 if filing by mail ([ASOS: Fee Schedule](#)).

Stockholder Action

A corporation may be dissolved by the unanimous written consent of all of the stockholders entitled to vote without the need for action by the board of directors (Ala. Code § 10A-2A-14.02(f)).

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

- The board of directors must recommend dissolution to the stockholders, 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 stockholders entitled to vote must approve the proposal to dissolve.

(Ala. Code § 10A-2A-14.02(b).)

Unless the certificate of incorporation or board of directors require a greater vote, a greater quorum, or a vote by voting groups, the proposal to dissolve must be approved by a majority of the votes that may be cast on the proposal (Ala. Code § 10A-2A-14.02(e)).

Activities Requiring Stockholder Consent

10. What activities require stockholder consent in your jurisdiction?

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

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

Preemptive Rights

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

Under the revised Alabama Business Corporation Law, 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)). If the certificate of incorporation contains a statement that "the corporation elects to have preemptive rights" or words to a 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. In a series, all shares of the same series must have the same preferences, limitations, and relative rights. (Ala. Code § 10A-2A-6.01(a).) Any limitations or restrictions on classes or series of capital stock must be specified in the certificate of incorporation, in a subsequent amendment to the certificate, or in a certificate of designations filed with the [Alabama secretary of state](#) (Ala. Code §§ 10A-2A-6.01 and 10A-2A-6.02).

The revised Alabama Business Corporation Law 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)).

Limitations on Dividends

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

Under Alabama law, subject to any restrictions in the certificate of incorporation and the limitation described below, the board of directors may authorize and the corporation may make distributions to stockholders (Ala. Code § 10A-2A-6.40(a)). Stockholder approval is not typically required for a corporation to declare and pay distributions but may be required in the certificate 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 certificate of incorporation permits 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 stockholders whose preferential rights are superior to those receiving the distribution.

(Ala. Code § 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 based on accounting practices and principles that are reasonable.
- A fair valuation.
- Another method that is reasonable under the circumstances.

(Ala. Code § 10A-2A-6.40(d).)

Indebtedness to a stockholder incurred by reason of a distribution made under this law is at parity with the corporation's indebtedness to its general, unsecured creditors (except to the extent subordinated by agreement) (Ala. Code § 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 Alabama business corporations must have at least one director, but the certificate of incorporation or bylaws may fix a higher number (Ala. Code § 10A-2A-8.03(a)).

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

The revised Alabama Business Corporation Law allows for 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)).

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?

Under Alabama law, 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 certificate of incorporation or bylaws provide otherwise (Ala. Code § 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 certificate of incorporation or bylaws to take action under Ala. Code § 10A-2A-8.24.

(Ala. Code § 10A-2A-8.25(b).)

To the extent specified by the board of directors or in the certificate of incorporation or bylaws, each committee may exercise the authority of the board

of directors (Ala. Code § 10A-2A-8.25(d)). However, a committee may not:

- Authorize or approve distributions, except according to a formula or method, or within limits prescribed by the board of directors.
- Approve or propose an action to stockholders that requires stockholder approval (see Question 10).
- Fill vacancies on the board of directors or board committees unless a replacement is needed due to a committee member's absence or disqualification.
- Adopt, amend, or repeal bylaws, or amend or restate the certificate of incorporation.

(Ala. Code § 10A-2A-8.25(d), (e).)

Indemnification

16. Please describe the for-profit 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 certificate of incorporation, bylaws, resolution of its stockholders or board, or in a contract or otherwise (Ala. Code § 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 the person 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.
- The director engaged in conduct for which the certificate of incorporation provides either permissible or obligatory indemnification.

(Ala. Code § 10A-2A-8.51(a).)

However, 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 regarding conduct where the director was adjudged liable based on 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).)

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

A corporation may not indemnify a director under Ala. Code § 10A-2A-8.51 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-2A-8.55(a)). 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).)

Mandatory Indemnification of Directors

If a director is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because they are or were a director, then the corporation must indemnify the director against expenses incurred in connection with the proceeding (Ala. Code § 10A-2A-8.52).

Advancement of Expenses to Directors

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).)

Directors and Officers Liability Insurance

A corporation may purchase and maintain insurance against liability asserted against or incurred by an individual in their capacity as or arising from their status as a director or officer on behalf of the individual who either:

- Is a director or officer of the corporation.
- 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.)

Officer

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).)

Amendment of Organizational Documents

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

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

Documents

Certificate of Incorporation

To amend a corporation's certificate of incorporation, the corporation must file a Certificate of Amendment with the [Alabama secretary of state](#) (ASOS). The amendment must set out:

- The name of the corporation.
- The text of each amendment adopted.
- The date of each amendment's adoption.
- The corporation's unique identifying number or other designation assigned by the ASOS.

(Ala. Code § 10A-2A-10.06(a)(1), (2), (4), (6).)

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

- 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)(3), (5).)

An Alabama corporation may also include one or more amendments in a restatement of its certificate of incorporation. Any duly adopted restated certificate of incorporation supersedes the original certificate of incorporation and all amendments to the certificate of incorporation. (Ala. Code § 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 stockholder resolutions (or unanimous written consent), as required by the corporation's certificate of incorporation or bylaws, or both, and applicable Alabama law.

Corporate Actions

Certificate of Incorporation

The requisite corporate action for effecting an amendment to the certificate 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 certificate of incorporation or bylaws.

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

Unless the certificate of incorporation provides otherwise, the board of directors may 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 ASOS.
- If the corporation has only one class of stock outstanding:
 - 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
 - increase the number of authorized shares of stock of the class as necessary to allow the issuance of stock as a stock dividend.
- Change the corporate name, if the new name complies with the naming requirements of the Alabama Business Corporation Law.
- Reflect a reduction in authorized stock when the corporation has acquired its own stock and the certificate of incorporation prohibits that stock's reissue.
- 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.
- Take actions expressly permitted by Ala. Code § 10A-2A-6.02 to be made without stockholder approval.

(Ala. Code § 10A-2A-10.05.)

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

Code § 10A-2A-10.03(d).) For the amendment to be adopted:

- The board of directors recommends the amendment to the stockholders, unless the board of directors determines that it cannot make a recommendation because of conflict of interest or other special circumstances or Ala. Code § 10A-2A-8.26 applies and communicates the basis for its determination to the stockholders.
- 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).)

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 certificate of incorporation or the Alabama Business Corporation Law reserves the power exclusively to the stockholders in whole or part.

- The stockholders, in amending, repealing, or adopting a particular bylaw, provide expressly that the board of directors may not amend, repeal, or adopt that bylaw.

(Ala. Code § 10A-2A-10.20(a).)

A corporation's stockholders 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-2A-10.20(a)). However, only the stockholders may amend a bylaw if, in amending or repealing that particular bylaw, the stockholders provide expressly that the board of directors may not amend, repeal, or adopt it (Ala. Code § 10A-2A-10.20(b)(2)).

The revised Alabama Business Corporation Law 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.)

A bylaw that increases the quorum or voting requirements for the board of directors or that requires a meeting of stockholders to be held at a place may be amended or repealed:

- Only by the stockholders, if originally adopted by the stockholders.
- By either the stockholders or the board of directors, if originally adopted by the board.

(Ala. Code § 10A-2A-10.21(a).)

Generally, stockholders vote on a resolution to amend the corporation's bylaws at either an annual or a special meeting of the stockholders. However, the stockholders may adopt a resolution amending the bylaws under unanimous written consent in lieu of the meeting.

Filing Requirements

Certificate of Incorporation

To amend its certificate of incorporation, the corporation must mail one signed original and one copy of the [Amendment to the Certificate of Incorporation](#), along with filing fee of \$100, to the ASOS (Ala. Code § 10A-2A-10.06; [ASOS: Fee Schedule](#)). Amendments may be filed online for limited purposes (such as a name change). If an

amendment is filed pursuant to a name change, the new name cannot be simultaneously reserved with the ASOS filing and must be reserved before filing the amendment with the ASOS.

Bylaws

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

Federal Corporate Transparency Act

Although outside the scope of this Q&A, amending organizational documents may trigger reporting requirements under the Corporate Transparency Act, effective January 1, 2024 (see Question 1: Federal Corporate Transparency Act).

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