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Corporation Law: California

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A Q&A guide to for-profit corporation law in California. This Q&A addresses key areas of corporate 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).

Documents

Articles of Incorporation

The incorporator (or initial directors, if named in the articles) must file articles of incorporation with the California secretary of state (CASOS). The articles must include:

- The name of the corporation.
- The name (and street address if an individual) of the corporation's initial agent for process of service in California.
- The initial street address of the corporation (and mailing address, if different).
- A statement of corporate purpose as specified in Cal. Corp. Code § 202(b).
- The total number of shares of all classes or series of stock that the corporation may issue.
- For each class or series of stock:
  - the number of shares in the class or series and the rights, preferences, privileges, and restrictions for the class or series; or
  - a statement that the board is authorized to fix the number of shares and, within limits, set the rights, preferences, privileges, and restrictions.

(Cal. Corp. Code § 202.)

Bylaws

Bylaws set out the governance rules of a corporation but are secondary to the articles. If there is any conflict between the articles and bylaws, under the California Corporations Code, the articles govern. (Cal. Corp. Code § 212(b).) A corporation does not file bylaws with the state.

Typical areas covered by the bylaws include, but are not limited to:

- Procedures for meetings of shareholders and directors (including record date, notice, and voting).
- Officers and committees.
- Issuance and transfer of stock certificates.

(Cal. Corp. Code § 212.)

Bylaws may be adopted, amended, or repealed by:

- If initial directors have not been named in the articles of incorporation, the incorporators, until directors are elected.
- The board of directors, unless this power is limited in the articles or bylaws.
- Shareholders.

(Cal. Corp. Code §§ 210 and 211.)

In any case, the board alone cannot change the fixed or minimum number of directors (Cal. Corp. Code § 212(a)).

The authorized number of directors must be set out in the bylaws (or the articles). A corporation must have at least three directors unless the corporation has fewer than three shareholders. In that case, the number of its directors can be no less than the number of shareholders. If the bylaws set out an authorized range for the number of directors, the maximum number cannot be greater than one less than twice the minimum. (Cal. Corp. Code § 212(a).)

California's board gender law (S.B. 826) requires publicly held California corporations and foreign corporations with principal executive offices in California to have a specified number of female directors, and California's board diversity law (A.B. 979) requires these corporations to have a specified number of directors from underrepresented communities (Cal. Corp. Code §§ 301.3 and 301.4). However, these gender and diversity requirements have both been struck down due to violating the California constitution (*Robin Crest, et al. v. Alex Padilla (Crest II)*, 2022 WL 1073294, at *19-20 (Cal. Super. April 1, 2022) and *Robin Crest, et al. v. Alex Padilla (Crest I)*, 2022 WL 1565613, at *12 (Cal. Super. May 13, 2022)). For more information and updates on litigation involving gender and diversity requirements for directors, see Standard Document, Bylaws (CA): Drafting Note: Gender and Diversity Requirements.

Corporate Actions

After the articles are filed, typically the incorporator takes action to appoint directors. Once directors are appointed, it is customary to hold an initial meeting, either in person or by written consent, to transact further organizational business, including:

- Electing officers.
- Opening bank accounts.
- Issuing stock.

A corporation may also appoint its initial directors in the articles. In that case, the first meeting or unanimous written consent of the board replaces the organizational action of the incorporator. (Cal. Corp. Code § 200(b).)

Name Requirements and Reservation Options

Naming a California Corporation

Except for close corporations, there is no requirement to include a corporate ending, for example, "corporation," "incorporated," or "limited," in the name of a California corporation (Cal. Corp. Code § 202(a)).

California prohibits the use of "bank," "trust," or "trustee" in the name unless the corporation is qualified to engage in the business or activity suggested by those words. A corporation wishing to use those words in its name must attach a Certificate of Approval of Name from the California commissioner of Financial Protection and Innovation. (Cal. Corp. Code § 201(a); Department of Financial Protection and Innovation: FAQ, Corporate Names.)

A corporation's name cannot:

- Be likely to mislead the public.
- Be the same as, or resemble so closely that it tends to deceive, the name of any:
  - existing California corporation;
  - registered foreign corporation; or
  - name reserved at the CASOS.

(Cal. Corp. Code § 201(b).)

The CASOS has discretionary power to determine whether a proposed name violates any of these prohibitions (see *Cranford v. Jordan*, 7 Cal. 2d 465, 467 (1936)).

Note that names of limited liability companies are considered separately for these purposes.

Name Reservations

Corporations can reserve a name by submitting a name reservation request form to the CASOS (Cal. Corp. Code § 201(e)). The fee is $10 per name reservation, which reserves the name for 60 days (Cal. Corp. Code § 201(e); Cal. Gov't Code § 12186; CASOS: Business Entities Forms, Samples and Fees). Reservations can be renewed for another 60 days, but not for consecutive periods, for an additional $10 fee one day after the expiration of the previous reservation (Cal. Corp. Code § 201(e); CASOS: Name Reservations). A filer can set up a prepaid priority account with the state to check on availability and reserve the name via a priority telephone line (CASOS: Business Entities Forms, Samples and Fees). Filing in person requires a separate, nonrefundable $10 service fee (CASOS: Special Handling (Drop-Off) Service).

Filing Requirements

The articles of incorporation are filed with the CASOS (Cal. Corp. Code § 200). Use of a service company to file the articles (and most filings) for a fee is common, as this method decreases process time. Articles of incorporation

can be submitted to the service company electronically. If not using a service company, original signed articles may be submitted:

- For drop-off filing, which requires a separate, non-refundable $15 service fee.
- By mail.

(CASOS: Service Options: Business Entities.)

The fee for filing the articles of incorporation providing for shares is $100 (Cal. Gov't Code § 12186). Expedited filing services are also available for the following additional fees:

- Four-hour filing: $500 (document must be pre-cleared for an additional fee and approved to be eligible for this service).
- Same day filing: $750 (must be submitted by 9:30 a.m., response by 4 p.m.).
- 24-hour filing: $350.

(CASOS: Service Options - Business Entities.)

After receiving the articles and fees, the CASOS files the articles in the office of the CASOS (Cal. Corp. Code § 110). Certified copies of the articles can be requested from the CASOS.

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.

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?

Annual Statement of Information

All California taxable corporations must file an annual statement of information with the California Secretary of State (CASOS). The initial filing is due within 90 days of formation, with $25 in filing and disclosure fees. (Cal. Corp. Code § 1502(a); CASOS: Corporations - Statement of Information.) The statement of information must include:

- The name of the corporation.
- The corporation's CASOS file number.
- The names and business or residence addresses of the directors.
- The number of vacancies on the board, if any.
- The names and business or residence addresses of the corporation's:
  - chief executive officer;
  - secretary; and
  - chief financial officer.
- The street address of its principal executive office.
- The mailing address of the corporation, if different from the street address of its principal executive office.
- If the address of its principal executive office is not in California, the street address of its principal business office in California, if any.
- A valid email address for the corporation or its designee, if the corporation has chosen to receive renewal notices and other CASOS notifications by email.
- A statement of the general type of its business.
- The name (and address, if an individual) of its agent for service of process.
- A Corporate Disclosure Statement, if publicly traded.
- Whether any officer or director has an outstanding final judgment from a court or the Division of Labor Standards Enforcement based on the violation of any

wage order or provision of the California Labor Code, with no appeal pending.

(Cal. Corp. Code §§ 1502(a), (b) and 1502.1.)

Annual statements are due by the end of the month of incorporation. A $250 penalty is assessed on corporations that fail to file a statement of information (California Franchise Tax Board: Common Penalties and Fees).

Statements may be filed online through the CASOS website.

In addition, all corporations (excluding religious and charitable non-profit exempt corporations) must pay an annual minimum franchise tax of $800 after the first year (Cal. Rev. & Tax Code §§ 23151 and 23153(d)(1)). The tax rate applicable to corporations other than banks and financial corporations that are subject to the franchise tax or the corporation income tax is 8.84% (Cal. Rev. & Tax Code § 23151(e), (f)).

Climate Corporate Data Accountability Report

Entities doing business in California with total annual revenues exceeding one billion dollars must annually disclose certain types of greenhouse gas emissions by filing a report with the California Air Resource Board (CARB) and paying the related filing fee. An independent third-party assurance provider must review and verify the entity's report. The CARB must develop and adopt regulations for reporting on or before January 1, 2025. Annual reporting requirements begin:

- January 1, 2026, for Scope 1 and Scope 2 emissions.
- January 1, 2027, for Scope 3 emissions.

(Cal. Health & Safety Code § 38532.)

Climate-Related Financial Risk Report

Beginning January 1, 2026, entities doing business in California with total annual revenues exceeding 500 million dollars must file a biennial climate-related financial risk report and pay the related filing fee. The report must disclose the entity's:

- Climate-related financial risk according to the framework and disclosures in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures or an equivalent reporting requirement.
- Measures adopted to reduce and adapt to the disclosed climate-related financial risk.

(Cal. Health & Safety Code § 38533.)

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

Preliminary Requirements

Meeting Location

Under California law, a corporation must hold an annual meeting of shareholders for the election of directors on a date and at a time stated in or fixed under the bylaws (Cal. Corp. Code § 600(b)).

An annual meeting of shareholders may be held at any place within or outside of California as stated in or fixed under the bylaws. If the bylaws do not state or fix a place, shareholder meetings must be held at the corporation's principal executive office. (Cal. Corp. Code § 600(a).)

An annual shareholder meeting may also be conducted, in whole or in part, by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication (collectively, electronic means) if the corporation implements reasonable measures:

- To provide shareholders and proxyholders:
  - a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders; and
  - an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings.
- To maintain a record in the corporation's books and records of every shareholder or proxyholder vote or other action taken by electronic means at the meeting.
- To verify that each person participating remotely is a shareholder or proxyholder.

(Cal. Corp. Code § 600(e).)

Any request by a corporation to a shareholder for consent to conduct a meeting of shareholders electronically must include a notice stating that, absent consent of the shareholder, the meeting will be held at a physical location in compliance with the bylaws and California law (Cal. Corp. Code § 600(e)).

The corporation may not conduct a shareholders' meeting solely by electronic means unless one or more of the following conditions apply:

- All the shareholders consent.
- The board determines it is necessary or appropriate because of an emergency as defined in Cal. Corp. Code § 207(i)(5). For a description of the circumstances that are considered an emergency, see Standard Document, Bylaws: Drafting Note: Emergency Management of the Corporation. An emergency only exists as long as the event precipitating the emergency prevents a quorum of the board from readily convening.
- The meeting is conducted on or before December 31, 2025, and includes a live audiovisual feed for the duration of the meeting. Beginning January 1, 2024, in addition to the audiovisual feed, the corporation may also provide the shareholders or proxyholders the option of participating through audio-only means but may not impose barriers to either mode of participation.

(Cal. Corp. Code §§ 207(i)(5) and 600(e).)

A corporation holding a meeting under Cal. Corp. Code § 600(e)(C) may offer, in addition to the remote audiovisual feed, an audio-only means of participation for a shareholder or proxyholder if:

- The shareholder or proxyholder makes the choice between participating via the audiovisual or audio-only method.
- The corporation does not impose any barriers to either method of participation.

(Cal. Corp. Code § 600(e).)

Notice to Shareholders

A corporation must provide written notice of the annual shareholders' meeting to all shareholders entitled to vote at the meeting. The notice must specify:

- The place, date, and time of the meeting.
- The electronic means, if any, by which shareholders may participate in the meeting.
- Any matters that the board, at the time of mailing of the notice, intends to present for action by the shareholders.
- If directors are to be elected at the meeting, the names of nominees the board intends to present for election.

(Cal. Corp. Code § 601(a).)

Corporations must give notice to the shareholders either:

- Personally.
- By electronic transmission.
- By first-class mail.
- By third-class mail, or other means of written communication, if the corporation has outstanding shares of record held by 500 or more persons.

The corporation may give notice of a shareholders' meeting or any report through electronic or other remote communication if the board determines it is necessary or appropriate because of an emergency as defined in Cal. Corp. Code § 207(i)(5). (Cal. Corp. Code § 601(b); see Standard Document, Bylaws: Drafting Note: Emergency Management of the Corporation.)

Notice is deemed given at the time when delivered personally, sent by electronic transmission by the corporation, deposited in the mail, or sent by other means of written communication (Cal. Corp. Code § 601(b)).

Corporations must give notice at least ten and not more than 60 days before the date of the meeting. However, if notice is given by third-class mail, notice must be given at least 30 and not more than 60 days before the date of the meeting. (Cal. Corp. Code § 601(a).)

Record Date

The board of directors may fix, in advance, a record date that is at least ten days and no more than 60 days before the meeting, to determine the shareholders entitled to:

- Notice of any meeting.
- Vote at a meeting.
- Receive payment of any dividend or other distribution or allotment of any rights.
- Exercise any rights concerning any other lawful action.

(Cal. Corp. Code § 701(a).)

If no record date is fixed, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders must be either:

- At the close of business on the business day before the day that notice is given.
- If notice is waived, at the close of business on the business day before the day that the meeting is held.

(Cal. Corp. Code § 701(b).)

Quorum

Unless otherwise provided in the articles of incorporation, the holders of a majority of the shares entitled to vote is considered a quorum. The articles of incorporation:

- May provide for a lesser quorum of at least one-third of the votes of shares entitled to vote.

- May not provide for a greater quorum than a majority of the shares entitled to vote at the meeting, unless the corporation is a close corporation.

(Cal. Corp. Code § 602(a).)

Once a quorum is present at a meeting, shareholders may still take valid action even if enough shareholders withdraw to leave less than a quorum if the action is approved by:

- At least a majority of the shares required to compose a quorum.
- The vote of a greater number of voting by classes, if required by California law or by the articles of incorporation.

(Cal. Corp. Code § 602(b).)

Failure to Hold an Annual Meeting

Any shareholder can apply to the superior court of the proper county to order a meeting if either:

- The annual meeting is not held, or action by written consent in lieu of a meeting is not taken, for 60 days after the date designated for the annual meeting.
- No date has been designated within 15 months of:
  - the organization of the corporation; or
  - its last annual meeting.

(Cal. Corp. Code § 600(c).)

Voting and Approval

Shares Entitled to Vote

Unless the articles of incorporation or California law provide otherwise, each shareholder is entitled to one vote per outstanding share (Cal. Corp. Code § 700(a)).

Any shareholder entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares, or vote them against the proposal, other than in elections to office (Cal. Corp. Code § 700(b)).

Voting

The affirmative vote of a majority of the shares represented and voting at a duly held meeting where a quorum is present is the act of the shareholders, unless California law or the articles of incorporation provide for the vote of a greater number or voting by classes (Cal. Corp. Code § 602(a)).

In any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to vote for them are elected (Cal. Corp. Code § 708(c)).

California allows for cumulative voting in the election of directors, if:

- The candidates' names have been placed in nomination before the voting.
- At least one shareholder has given notice at the meeting before the voting of the shareholder's intention to cumulate the shareholder's votes.

(Cal. Corp. Code § 708(b).)

A shareholder participating in cumulative voting is entitled to a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled. The shareholder may cast all of those votes for a single candidate or distribute them among any number of candidates. (Cal. Corp. Code § 708(a).) A listed corporation may eliminate cumulative voting by amending its articles or bylaws (Cal. Corp. Code § 301.5(a)).

Unless the articles of incorporation state otherwise, shareholders can elect directors by unanimous written consent (except in the case of certain vacancies, which can be filled by the written consent of a majority) (Cal. Corp. Code § 603(d)).

Proxy Voting

A shareholder may vote their shares in person or by proxy (Cal. Corp. Code § 705(a)). A proxy is valid for 11 months from the date of the proxy, unless otherwise provided in the proxy (Cal. Corp. Code § 705(b)).

A shareholder may revoke a proxy at any time, unless it is an irrevocable proxy (Cal. Corp. Code § 705(b)). A proxy that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

- A pledgee.
- A person who purchased the shares, agreed to purchase them, or holds an option to purchase them.
- A person who has sold a portion of their shares in the corporation to the maker of the proxy.
- A creditor or creditors of the corporation or the shareholder who extended or continued credit to the corporation or shareholder in consideration of the proxy, if the proxy states:

  - that the proxy was given in consideration of the extension or continuation of credit; and
  - the name of the person extending or continuing credit.
- A person who has contracted to perform services as an employee of the corporation, if a proxy is required by the contract of employment, and if the proxy states:
  - that the proxy was given in consideration of the employment contract;
  - the name of the employee; and
  - the period of employment contracted for.
- A person designated by or under a voting agreement between two or more shareholders.
- A beneficiary of a trust regarding shares held by the trust.

(Cal. Corp. Code § 705(e).)

However, despite stating it is irrevocable, the proxy becomes revocable after, as applicable:

- The pledge is redeemed.
- The option or agreement to purchase is terminated or the seller no longer owns any shares of the corporation or dies.
- The debt of the corporation or the shareholder is repaid.
- The period of employment ends.
- The voting agreement terminates.
- The person stops being a beneficiary of the trust.

(Cal. Corp. Code § 705(e).)

A proxy may also be made irrevocable if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events that, by the proxy's terms, discharge the obligations it secures (Cal. Corp. Code § 705(e)).

A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, the corporation receives written notice of the death or incapacity (Cal. Corp. Code § 705(c)).

Other Requirements

Ability to Raise Matters at a Meeting

A corporation's bylaws may designate procedures for the calling and conduct of shareholder meetings (Cal. Corp. Code § 212(b)(2)).

Shareholders' Lists

Any shareholder or shareholders holding at least 5% of the outstanding voting shares of a corporation, or who hold at least 1% of those voting shares and have filed a Schedule 14A form with the US Securities and Exchange Commission, have a right to:

- Inspect and copy the record of shareholders' names and addresses and shareholdings during usual business hours, on five business days' previous written demand on the corporation.
- Obtain a shareholders' list from the transfer agent of the corporation on written demand and on tendering a fee.

(Cal. Corp. Code § 1600(a).)

The shareholders' list must also be open to inspection and copying by any shareholder or holder of a voting trust certificate:

- At any time during usual business hours on written demand on the corporation.
- For a purpose reasonably related to the holder's interests as a shareholder or holder of a voting trust certificate.

(Cal. Corp. Code § 1600(c).)

Use of Inspectors of Elections

In advance of any shareholders meeting, the board of directors may appoint inspectors of election to act at the meeting. If the board does not appoint inspectors, or if the appointed inspector fails to appear or refuses to act, the chairman of any shareholders' meeting may, and on the request of any shareholder or shareholder's proxy must, appoint inspectors of election at the meeting. The number of inspectors must be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares represented must determine whether one or three inspectors will be appointed. (Cal. Corp. Code § 707(a).)

The inspectors' duties are to:

- Determine:
  - the number of shares outstanding and the voting power of each;
  - the shares represented at the meeting;
  - the existence of a quorum; and
  - the authenticity, validity, and effect of proxies.
- Receive votes, ballots, or consents.

- Hear and determine all challenges and questions arising in connection with the right to vote.
- Count and tabulate all votes or consents.
- Determine when polls close.
- Determine the result of the vote.
- Take any actions that are proper to conduct the election or vote with fairness to all shareholders.

(Cal. Corp. Code § 707(b).)

Actions by Written Consent

Unless otherwise provided in the articles of incorporation, any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without advance notice by written consent. The written consent must:

- Set out the action to be taken.
- Be provided by holders of outstanding shares having at least than the minimum number of votes that would be necessary to authorize that action at a meeting of shareholders where all shares entitled to vote were present and voted.

(Cal. Corp. Code § 603(a).)

If consent is less than unanimous, prompt notice must be given to the shareholders who did not consent in writing, except that notice must be given at least 10 days in advance of the corporation consummating any of the following actions authorized by the consent:

- A contract between the corporation and either:
  - at least one of its directors;
  - an entity in which at least one of its directors has a material interest; or
  - an entity in which at least one of its directors is a director.
- Indemnification of a director, officer, employee, or other agent of the corporation.
- A plan of conversion.
- A reorganization other than one in which shareholders have dissenters' rights.
- A plan of distribution following the corporation's dissolution.

(Cal. Corp. Code § 603(b).)

Directors may not be elected by written consent except by unanimous written consent (except in the case of certain vacancies, which can be filled by the written consent of a majority) (Cal. Corp. Code § 603(d)).

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

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.

State Nexus Analysis

Any corporation organized under a jurisdiction other than California is a foreign corporation and must qualify to transact intrastate business (Cal. Corp. Code §§ 171 and 2105). A corporation transacts intrastate business when it enters into repeated and successive transactions of its business in California (other than interstate or foreign commerce) (Cal. Corp. Code § 191(a)).

The law does not consider foreign corporations to be transacting interstate business solely by carrying on any of the following activities in California, among others:

- Maintaining or defending any action, suit, or administrative or arbitration proceedings.
- Holding meetings of directors or shareholders.
- Maintaining:
  - bank accounts; or
  - offices or agencies for the transfer, exchange, and registration of its securities or depositories for its securities.
- Effecting sales through independent contractors.

- Soliciting or procuring orders, whether by mail or through employees or agents, where those orders require acceptance outside California before becoming binding contracts.
- Creating evidences of debt or mortgages, liens, or security interests on real or personal property.
- Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated similar transactions.

(Cal. Corp. Code § 191(c).)

Quasi-California Corporations under Cal. Corp. Code § 2115

A foreign corporation (excluding a foreign association or foreign non-profit corporation, but including a foreign parent corporation even if it does not transact intrastate business in California) is considered a "quasi-California corporation" and is subject to Cal. Corp. Code § 2115 if it both:

- Conducts more than 50 percent of its business in California during its latest full income year as determined by the average of:
  - the property factor as defined in Cal. Rev. & Tax Code § 25129;
  - the payroll factor as defined in Cal. Rev. & Tax Code § 25132; and
  - the sales factor as defined in Cal. Rev. & Tax Code § 25134.
- Has more than 50 percent of its outstanding voting securities held of record by persons having addresses in California on the record date of the last meeting of shareholders during its latest full income year or, if no meeting was held, on the last day of the latest full income year.

(Cal. Corp. Code § 2115(a).)

Quasi-California corporations are subject to certain sections of the California Corporations Code, including, but not limited to:

- Cal. Corp. Code § 301 (annual election of directors).
- Cal. Corp. Code § 303 (removal of directors without cause).
- Cal. Corp. Code § 305 (filling director vacancies).
- Cal. Corp. Code § 309 (relating to directors' standard of care).
- Cal. Corp. Code § 316 (joint and several liability of directors approving certain corporate actions).
- Cal. Corp. Code § 317 (relating to indemnification of directors, officers, and others).
- Cal. Corp. Code § 500 (conditions for distributions).
- Cal. Corp. Code § 600 (shareholder meetings).
- Certain subsections of Cal. Corp. Code § 708 (relating to shareholder rights to cumulate votes at any election of directors).
- Certain subsections of Cal. Corp. Code § 1101 (limitations on mergers).
- Cal. Corp. Code § 1151 (conversion).
- Chapter 12 of the Cal. Corp. Code (reorganizations).
- Chapter 13 of the Cal. Corp. Code (dissenter's rights).
- Chapter 16 of the Cal. Corp. Code (inspection rights).

(Cal. Corp. Code § 2115(b).)

However, a foreign corporation is not subject to Cal. Corp. Code § 2115 if either:

- The corporation is publicly listed on a national securities exchange.
- All of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to Cal. Corp. Code § 2115.

(Cal. Corp. Code § 2115(c).)

For more information, see Practice Note, Section 2115: California's Corporate Long-Arm Statute.

Filing Requirements

Registration Documents

To qualify to do business in California, a foreign corporation must file with the California secretary of state (CASOS):

- A certificate of existence and good standing from its state of incorporation.
- A statement and designation, on a form prescribed by the CASOS, stating:
  - the name and state or place of incorporation or organization;
  - the street address of its principal executive office;
  - the street address of its principal office within California, if any;
  - the mailing address of its principal office, if different from the street addresses of the principal executive office or principal office in California;

- the name (and street address if an individual) of the initial agent for service of process; and
- its irrevocable consent to service of process on its designated agent and on the CASOS if the agent or the agent's successor is no longer authorized to act or cannot be found.

(Cal. Corp. Code § 2105(a), (b).)

Annual Reports

A foreign corporation must file an annual statement of information with the CASOS by the last day of the month during which the corporation was registered in California. Initial filing is due within 90 days of registration, and statements may be filed online through the CASOS website. (Cal. Corp. Code § 2117(a).)

The statement of information must include:

- The name of the corporation as registered in California.
- The corporation's CASOS file number.
- The street address of its principal executive office.
- The street address of its principal business office in California, if any.
- The mailing address, if different from the street address of its principal executive office.
- The name and address of the corporation's CEO, CFO, and Secretary.
- The name (and address, if an individual) of its agent for service of process.
- A brief description of its business.
- A valid email address for the corporation or its designee, if the corporation has chosen to receive renewal notices and other CASOS notifications by email.
- Whether any officer or director has an outstanding final judgment from a court or the Division of Labor Standards with no appeal pending based on a violation of any wage order or provision of the California Labor Code.

(Cal. Corp. Code § 2117(a), (b).)

Fees

Registration Documents

On filing the statement and designation, the corporation must pay a fee of $100 to the CASOS. Expedited filing services are also available for the additional fees outlined above (CASOS: Corporations - Foreign; see Question 1: Filing Requirements).

Annual Reports

The fee for filing the statement of information is $25.00 (CASOS: Corporations - Foreign). Foreign corporations are assessed a penalty of $250 if the statement of information is not filed (California Franchise Tax Board: Common Penalties and Fees).

Name Requirements

Foreign corporations registering as foreign corporations are subject to the same name requirements as California corporations (see Question 1: Name Requirements and Reservation Options). If the foreign corporation's legal name is the same as an existing corporation, the foreign corporation may adopt an assumed name for purposes of doing business in California. (Cal. Corp. Code §§ 2101 and 2106(b).)

Fiduciary Duties

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

Directors

In California, a director stands in fiduciary relation to the corporation and must perform their duties as a director:

- In good faith.
- In a manner the director believes to be in the best interests of the corporation and its shareholders.
- With the care, including reasonable inquiry, that an ordinarily prudent person would use under similar circumstances.

(Cal. Corp. Code § 309(a).)

This duty requires a director not only act affirmatively to protect the corporation, but to refrain from acting to harm the corporation, as well (*English & Sons, Inc. v. Straw Hat Rests., Inc.*, 176 F. Supp. 3d 904, 927 (N.D. Cal. 2016) (applying California law)).

In performing their duties, a director is entitled to rely in good faith on information presented by:

- The corporation's officers and employees whom the director believes to be reliable and competent in the matters presented.

- Counsel, independent accountants, or other persons regarding matters the director believes are in the person's professional or expert competence.
- Directors' committees on which the director does not serve and in which the director has confidence, regarding matters in the committee's designated authority.

(Cal. Corp. Code § 309(b).)

In each case the director must make a reasonable inquiry, if indicated by the circumstances, and the director must have no knowledge that would cause reliance on the information to be unwarranted (Cal. Corp. Code § 309(b)).

California follows the business judgment rule and a director who performs the duties in compliance with the California Corporations Code is not liable for an alleged failure to discharge the person's obligations as a director (Cal. Corp. Code § 309(c); *Gaillard v. Natomas Co.*, 208 Cal. App. 3d 1250, 1264 (1989)).

The articles of incorporation may eliminate or limit director liability for monetary damages, except for the following enumerated actions:

- Acts and omissions that involve intentional misconduct or a knowing and culpable violation of law.
- Acts and omissions that a director believes to be contrary to the best interests of the corporation or its shareholders.
- Acts that involve the absence of good faith.
- Any transaction from which a director derived an improper personal benefit.
- Acts and omissions that show a reckless disregard for the director's duty to the corporation or its shareholders in circumstances where the director was aware or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its shareholders.
- Acts or omissions that comprise an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its shareholders.
- Acts that involve a conflict of interest.
- Acts relating to improper distributions, loans, or guaranties.

(Cal. Corp. Code § 204(a)(10).)

Officers

The California Corporations Code does not prescribe fiduciary duties for officers, although officers may still owe similar duties, depending on the circumstances. The fiduciary duties of an officer depend in part on:

- The level of the officer's involvement in a transaction.
- Whether the officer participates in the management of the corporation.

Officers are not, however, eligible for the exculpation potentially afforded to directors under Cal. Corp. Code § 204(a)(10).

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).
- Shareholder actions.
- Availability of appraisal rights (including requirements to exercise such rights).

Documents

In California, the merger agreement (sometimes called an agreement and plan of merger) is the main transaction document for a merger. To effect a merger, the surviving corporation must file with the California secretary of state (CASOS):

- The merger agreement.
- An officers' certificate from each constituent corporation certifying to, among other things:
  - the approval by the board; and
  - if required, the shareholders.

(Cal. Corp. Code § 1103.)

Where a subsidiary corporation merges into a parent that owns at least 90% of the outstanding shares of each class in the subsidiary, or where that parent merges with a subsidiary, the merger is considered a "short-form merger." A short-form merger requires both:

- A resolution or plan of merger adopted by the parent's board.
- The filing of a certificate of ownership.

(Cal. Corp. Code § 1110(a).)

Merger Agreement

The merger agreement must set out:

- The terms and conditions of the merger.
- Any amendments to the articles of the surviving corporation.
- The name and place of incorporation of each constituent corporation, and which constituent corporation is the surviving corporation.
- How the shares of each of the constituent corporations will be converted into shares or other securities of the surviving corporation.
- If any shares of any constituent corporations are not being converted, the consideration to be received in exchange for those shares.

(Cal. Corp. Code § 1101.)

Board Actions

The California Corporations Code requires the board of directors of each constituent corporation (and, in a triangular merger, any parent company whose shares are being issued in the merger) to approve the merger and the merger agreement (Cal. Corp. Code §§ 1101 and 1200(a)).

A short-form merger between a parent corporation and a subsidiary, where the parent owns at least 90% of each class of stock of the subsidiary:

- Does not require shareholder approval (by the parent or the subsidiary) if the parent is the surviving corporation.
- Requires approval by the parent's shareholders if the subsidiary is the surviving corporation if the parent's shareholders will receive shares in the surviving corporation that have different rights, preferences, privileges, or restrictions than the shares surrendered.

(Cal. Corp. Code § 1110(c).)

Shares in a foreign corporation received in exchange for shares in a domestic corporation are deemed to have different rights, preferences, privileges, or restrictions (Cal. Corp. Code § 1201(d)).

Filing Requirements

The surviving corporation must file either a full merger agreement or a short form merger agreement with the CASOS and an officers' certificate (see Documents). The agreement can be filed before the effective date of the merger if the agreement states the effective date. If the agreement is filed before the effective date, the board can terminate the merger before it is effective. (Cal. Corp. Code § 110(c).)

The fee for filing the agreement or certificate is $100. Rushed filing services are available for the additional fees as outlined above for the filing of articles of incorporation (CASOS: Business Entities Forms, Samples and Fees; see Question 1: Filing Requirements).

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).

Shareholder Actions

Direct Merger

For a direct merger, the shareholders of each corporation must approve the principal terms of the merger by a majority of the outstanding shares of each class, unless the articles of incorporation require a greater vote (Cal. Corp. Code § 1201(a)). However, shareholder approval is not required for a corporation if both:

- The corporation or its existing shareholders will own equity securities representing more than five-sixths of the voting power of the acquiring or surviving corporation or a parent party.
- There are no changes to the articles of incorporation that would otherwise require approval.

(Cal. Corp. Code § 1201(b), (c).)

Unless otherwise stated in the articles of incorporation, no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent is required unless there are changes to the articles that would otherwise require approval (Cal. Corp. Code § 1201).

Triangular Merger

In a triangular merger of a target corporation and a wholly owned subsidiary of the buyer corporation:

- The target must obtain approval by a majority of the outstanding shares of each class, unless the articles require a greater vote.
- The buyer corporation does not require shareholder approval unless there are changes to the articles that would otherwise require approval.

- As a formality, the wholly owned subsidiary of the buyer corporation must also get shareholder approval from its parent.

(Cal. Corp. Code § 1201.)

Parent-Subsidiary Merger

For a merger of a parent corporation and a subsidiary (at least 90% of each class of which is owned by the parent):

- Shareholder approval is not required if the parent is the surviving corporation.
- If the subsidiary is the surviving corporation, approval by the parent's shareholders is required if those shareholders receive shares in the surviving corporation that have different rights, preferences, privileges, or restrictions than the shares surrendered.

(Cal. Corp. Code § 1110(a), (c).)

Under the "50/90 rule," the nonredeemable common shares or nonredeemable equity securities of a constituent corporation may only be converted into nonredeemable common shares of the surviving party or a parent party if a constituent corporation or its parent owns, directly or indirectly, shares of another constituent corporation representing more than 50% of the voting power of the constituent corporation before the merger, unless all of the shareholders of the class consent (except for the cash-out of fractional shares) (Cal. Corp. Code § 1101).

The "50/90 rule" does not apply:

- In a short-form merger.
- In the merger of a corporation into its subsidiary where it owns at least 90% of the outstanding shares of each class.

(Cal. Corp. Code § 1101.)

Appraisal Rights

Subject to certain exceptions, the California Corporations Code provides dissenters' rights in mergers for shareholders that are entitled to vote on the merger. To qualify as dissenting shares, the shares cannot be voted in favor of the proposed transaction. This means that a shareholder must either:

- Refrain from voting.
- Vote against the transaction.

Dissenters' rights are not available for shares that were listed on a national securities exchange before the merger, unless the consideration paid for those shares is cash or includes restricted securities or other non-liquid consideration. (Cal. Corp. Code § 1300.)

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

Documents

The California Corporations Code does not require any filings to effect an asset sale. Generally, a corporation that wishes to sell its property or assets enters into an asset purchase agreement with the buyer. The asset purchase agreement sets out:

- What is being sold.
- Details of the sale process.
- The liabilities and obligations of the parties.

Board Actions

For a corporation to sell all, or substantially all, of its property or assets, the board of directors must approve the principal terms of the transaction (Cal. Corp. Code § 1001(a)). If the consideration for the sale consists of equity securities or certain debt securities, the transaction is considered a reorganization. In that case, the transaction must be approved by:

- The board of directors of the acquiring corporation.
- The board of directors of the selling corporation.
- Any parent of the acquiring corporation whose securities are issued in the transaction.

(Cal. Corp. Code § 1200.)

In addition, because directors generally have a duty to approve extraordinary transactions, a corporation may

need to obtain board approval to enter any asset purchase agreement, even if it is a purchase or sale of less than all or substantially all of a corporation's assets (Cal. Corp. Code § 300).

Shareholder Actions

For a corporation to sell all or substantially all of its property or assets, where the transaction is not in the usual and regular course of its business, the principal terms must be approved by a majority of the outstanding shares entitled to vote (Cal. Corp. Code § 1001(a)). If the transaction is considered a reorganization, the shareholders of any other corporation whose board must approve the transaction must also approve the reorganization (Cal. Corp. Code § 1201(a)). However, shareholder approval is not required if a corporation or its existing shareholders will own equity securities representing more than five-sixths of the voting power of the acquiring corporation after the transaction (Cal. Corp. Code § 1201(b)).

Bulk Sales

The California Commercial Code requires a buyer in a bulk sale to notify creditors of the selling corporation if both:

- The corporation's principal business is the sale of inventory from stock (including those who manufacture what they sell) or that of a restaurant owner.
- The corporation is selling more than 50% of its equipment and inventory.

The corporation must make this notice at least 12 days before the bulk sale by:

- Recording a notice in the county recorder in the counties where the tangible assets are located.
- Publishing notice in a newspaper of general circulation in the public notice district where the seller is located.
- Providing the notice to the county tax collector in the counties where the tangible assets are located.

(Cal. Com. Code §§ 6103(a), 6102(a)(3), 6104, and 6105.)

For sales where the consideration is $2 million or less and is substantially all cash, the buyer must apply the consideration to pay the due and payable debts of the selling corporation (Cal. Com. Code § 6106.2(a), (b)). A sale of assets with a value of more than $5 million is not subject to the bulk sales requirements (Cal. Com. Code § 6103(c)(12)(ii)).

Successor Liability or De Facto Merger Analysis

In general, California courts follow the rule that a buyer of assets in an asset sale is liable only for the liabilities of the seller that it expressly assumes. However, a buyer may be liable more generally for the liabilities of the seller if a court determines that one of the following exceptions is met:

- The buyer impliedly agrees to the assumption.
- The transaction amounts to a consolidation or merger of the two corporations.
- The buyer is merely a continuation of the seller, or in certain cases continues a product line of the seller.
- The transaction is entered into fraudulently to escape liability for debts.

(*Ray v. Alad Corp.*, 19 Cal.3d 22, 28 (1977).)

A buyer may also be found liable for certain environmental, tax, and labor matters.

Anti-Takeover Laws

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

The California Corporations Code has no express anti-takeover provisions.

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).
- Shareholder action.

Documents

Any California corporation may elect voluntarily to wind up and dissolve either:

- By the vote of shareholders holding at least 50% of the outstanding voting power.
- By the approval of the board of directors of the corporation, if the corporation has either:
  - issued no shares;
  - disposed of all assets and been inactive for the past five years; or
  - been adjudicated bankrupt.

(Cal. Corp. Code § 1900.)

When a corporation has been completely wound up without court proceedings, it must file a certificate of dissolution (signed by a majority of directors) with the California secretary of state (CASOS) (Cal. Corp. Code § 1905). The certificate of dissolution must state that:

- The corporation has been completely wound up.
- All known corporate debts and liabilities have been paid or adequately provided for.
- The known assets have been distributed to the persons entitled to them.
- A final franchise tax return, as described by Cal. Rev. & Tax. Code § 23332, has been or will be filed with the California Franchise Tax Board.
- The corporation is dissolved.
- If no certificate of election is to be filed, that the election to dissolve was made by the vote of all outstanding shares.

(Cal. Corp. Code § 1905(a).)

If the election to dissolve was not made by the vote of all outstanding shares, a certificate of election to wind up and dissolve must be filed before or together with the certificate of dissolution (Cal. Corp. Code § 1901). Acceptable forms for dissolution and the election to wind up and dissolve are available on the CASOS's website.

If a dissolving corporation has not issued shares or started business, it may file a short form certificate of dissolution within 12 months from the date the articles of incorporation were filed, which is either signed by:

- A majority of the directors.
- A majority of the incorporators, if no directors were named in the articles or were elected.

(Cal. Corp. Code § 1900.5.)

The short form certificate must state, among other things, that no shares have been issued and that business activity has not started (Cal. Corp. Code § 1900.5). An acceptable short form certificate is available on the CASOS's website.

Board Actions

The board alone can authorize the dissolution of a corporation in any of the following circumstances:

- The corporation has issued no shares.
- All assets have been disposed of and the corporation has been inactive for the past five years.
- The corporation has been adjudicated bankrupt.

(Cal. Corp. Code § 1900(b).)

If a corporation has not issued shares and has not started business, a majority of the directors, or a majority of the incorporators if no directors were named in the articles or have been elected, can agree to dissolve the corporation by filing a short form certificate of dissolution with the CASOS (Cal. Corp. Code § 1900.5).

Filing Requirements

The certificate of dissolution (or short form certificate of dissolution, if applicable) and certificate of election to wind up and dissolve, if required, must be filed with the CASOS. There is no filing fee. Rushed filing services are also available for the additional fees as outlined above for the filing of articles (CASOS: Business Entities Forms, Samples and Fees; see Question 1: Filing Requirements).

Shareholder Action

Any corporation may elect voluntarily to wind up and dissolve by the vote of shareholders holding at least 50% of the outstanding voting power (Cal. Corp. Code § 1900(a)).

Activities Requiring Shareholder Consent

10. What activities require shareholder consent in your jurisdiction?

Generally, a corporation can require shareholder approval for any specific corporate actions by so stating in the articles or bylaws. However, the California Corporations Code requires shareholder approval for certain corporate actions. These actions include, but are not limited to:

- Amendments to the articles of incorporation (Cal. Corp. Code § 903(a)).

- A merger, exchange reorganization, or sale of assets reorganization (Cal. Corp. Code §§ 1201 and 1202).
- The sale of all or substantially all of the corporation's property or assets, where the transaction is not in the usual and regular course of its business (Cal. Corp. Code § 1001).
- Dissolution of the corporation (Cal. Corp. Code § 1900).
- Election of directors (Cal. Corp. Code § 301 and 708.5).

The actions in the first three bullet points above generally require approval of a majority of outstanding shares entitled to vote. Dissolution of a corporation requires approval of shares representing 50% or more of the voting power, except in certain cases where the board alone may authorize the dissolution of a corporation (Cal. Corp. Code § 1900(a), (b)).

Generally, directors receiving the highest number of votes cast are elected. However, exchange-listed California corporations that eliminate cumulative voting may amend their articles or bylaws to require approval by a majority of shares (Cal. Corp. Code § 301.5(a)).

In some cases, the approval may require a class vote. The articles or bylaws may also require approval by a supermajority for certain actions.

Preemptive Rights

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

There is no statutory provision in the California Corporations Code that automatically provides for preemptive rights. However, a corporation may expressly provide for preemptive rights in its articles of incorporation (Cal. Corp. Code § 204(a)(2)).

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?

The California Corporations Code generally does not impose any limits on the classes or series of capital stock that a corporation can issue. A corporation may issue one or more classes or series of shares, or both, with full, limited, or no voting rights and with the other rights, preferences, privileges, and restrictions stated or authorized in the articles of incorporation. If a corporation issues shares with limited or no voting rights or limited or no dividend or liquidation rights, at least one class of shares must have full voting rights or unlimited dividend and liquidation rights, respectively. (Cal. Corp. Code § 400(a).)

Unless a class of shares is divided into a series, all shares of any one class must have:

- The same voting, conversion, and redemption rights.
- The same preferences, privileges, restrictions, and other rights.

(Cal. Corp. Code § 400(b).)

In a series, all shares within the series must have:

- The same voting, conversion, and redemption rights.
- The same preferences, privileges, restrictions, and other rights.

(Cal. Corp. Code § 400(b).)

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 or bylaws, in California, directors may declare and pay dividends on the shares of its capital stock (Cal. Corp. Code § 505). All dividends, except dividends solely in shares, are considered "distributions" (Cal. Corp. Code § 166).

A corporation cannot make a distribution if the corporation is, or because of the distribution would be, likely to be unable to meet its liabilities (except those whose payment is adequately provided for) as they mature (Cal. Corp. Code § 501).

Distributions must also satisfy the retained earnings test or the balance sheet test (Cal. Corp. Code § 500(a)).

Retained Earnings Test

The retained earnings test is satisfied if the amount of retained earnings of the corporation immediately before the distribution equals or exceeds the sum of:

- The amount of the proposed distribution.
- The preferential dividends arrears amount as defined in Cal. Corp. Code § 500(b).

(Cal. Corp. Code § 500(a)(1).)

Corporations may specify in the articles of incorporation that distributions under this test can be made without regard to the preferential dividends arrears amount (Cal. Corp. Code §§ 500(b) and 402.5(c)).

Balance Sheet Test

The balance sheet test is satisfied if the value of the corporation's assets immediately after the distribution equals or exceeds the sum of:

- Its total liabilities.
- The preferential rights amount as defined in Cal. Corp. Code § 500(b).

(Cal. Corp. Code § 500(a)(2).)

Corporations may specify in the articles of incorporation that distributions under this test may be made without regard to the preferential rights amount (Cal. Corp. Code §§ 500(b) and 402.5(c)).

Directors may base their determination that a distribution under either test is permitted based on:

- Financial statements that have been prepared in compliance with accounting practices and principles that are reasonable under the circumstances.
- A fair valuation.
- Any other method that is reasonable under the circumstances.

(Cal. Corp. Code § 500(c).)

Directors may be held jointly and severally liable for approving an unlawful dividend payment (Cal. Corp. Code § 316(a)(1)). However, Cal. Corp. Code § 309 protects directors who rely in good faith on financial information presented to the corporation by any of its officers or employees, directors' committees, or experts selected with reasonable care by the corporation.

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?

Director Requirements

California law does not set minimum requirements to serve as a corporate director. The articles of incorporation or bylaws may specify qualifications (Cal. Corp. Code §§ 204(d) and 212(b)(4)).

Minimum Number

A corporation's articles of incorporation or bylaws must either:

- State the number of directors.
- Set a minimum and maximum number of directors.

Any stated maximum may not be greater than twice the stated minimum minus one. (Cal. Corp. Code § 212(a).)

A corporation generally must have at least three directors, with the following exceptions:

- A corporation may have one or two directors if:
  - the corporation has not issued any shares; or
  - the corporation has only one shareholder.
- A corporation may have two directors if the corporation has only two shareholders.

(Cal. Corp. Code § 212(a).)

Once shares have been issued, a bylaw specifying or changing a fixed number of directors, or the maximum or minimum number, or changing the number of directors on the board from a fixed number to a range, or vice versa, may only be adopted by approval of a majority of the outstanding shares. However, a bylaw or amendment to the articles of incorporation reducing the fixed number or the minimum number of directors to less than five cannot be adopted if the votes cast against its adoption or the shares not consenting (in the case of action by written consent) are equal to more than 16 2/3% of the outstanding shares entitled to vote. (Cal. Corp. Code § 212(a).)

Female Directors

As of the close of the 2019 calendar year, any publicly held domestic or foreign corporation with principal executive offices located in California must have at least one female director on its board. A corporation may comply with this section by increasing the number of directors on its board. (Cal. Corp. Code § 301.3(a).)

By the close of the 2021 calendar year, a publicly held domestic or foreign corporation with principal executive

offices in California may be required to have additional female directors, depending on the size of its board. If the number of directors is:

- Six or more, the corporation must have at least three female directors.
- Five, the corporation must have at least two female directors.
- Four or fewer, the corporation must have at least one female director.

(Cal. Corp. Code § 301.3(b).)

Corporations that fail to appoint the requisite number of female directors for at least a portion of the calendar year may be subject to fines by the California secretary of state (CASOS) ranging from $100,000 to $300,000 (Cal. Corp. Code § 301.3(e)).

However, this gender quota requirement was found to be unconstitutional by a Los Angeles Superior Court on May 13, 2022, as a violation of the equal protection clause of the California constitution (*Robin Crest, et al. v. Alex Padilla (Crest I)*, 2022 WL 1565613, at *12 (Cal. Super. May 13, 2022)).

For more information and updates on litigation involving gender requirements for directors, see Standard Document, Bylaws (CA): Drafting Note: Gender and Diversity Requirements.

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?

In California, a board of directors may designate one or more committees to serve at the pleasure of the board by resolution adopted by a majority of the authorized number of directors. Each committee must consist of at least two directors. (Cal. Corp. Code § 311.)

Any committee, to the extent provided in the resolution of the board or in the bylaws, has all the authority of the board, except regarding:

- The approval of any action that also requires:
  - shareholders' approval; or
  - approval of the outstanding shares.
- The filling of vacancies on the board or in any committee.
- The fixing of compensation of the directors for serving on the board or on any committee.
- The amendment or repeal of bylaws or the adoption of new bylaws.
- The amendment or repeal of any resolution of the board which by its express terms cannot be amended or repealed in that manner.
- A distribution under Cal. Corp. Code § 166, except at a rate, in a periodic amount, or within a price range set out in the articles or determined by the board.
- The appointment of other committees of the board or the committee's members.

(Cal. Corp. Code § 311.)

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.

California's provisions on indemnification apply to a corporation's agents, which include:

- Current and former directors, officers, employees, or other agents of the corporation.
- A person serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise.
- Directors, officers, employees, or agents of a foreign or domestic corporation that was a predecessor corporation of the corporation or of another enterprise at the request of the predecessor corporation.

(Cal. Corp. Code § 317(a).)

Mandatory Indemnification

A corporation must indemnify an agent of the corporation against expenses actually and reasonably incurred in certain cases where the agent is successful on the merits in defense of any proceeding or in defense of any claim, issue, or matter (Cal. Corp. Code § 317(d)).

Permissive Indemnification

A corporation may indemnify a person who was or is a party or is threatened to be made a party to any

proceeding (excluding a proceeding by or in the right of the corporation) because the person is or was an agent of the corporation against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding if that person:

- Acted in good faith.
- Acted in a manner the person reasonably believed to be in the best interests of the corporation.
- In the case of a criminal proceeding, had no reasonable cause to believe their conduct was unlawful.

(Cal. Corp. Code § 317(b).)

A corporation also may indemnify a person who was or is a party or is threatened to be made a party to any proceeding by or in the right of the corporation because the person is or was an agent of the corporation against expenses actually and reasonably incurred by that person in connection with the defense or settlement of the action if that person acted:

- In good faith.
- In a manner the person reasonably believed to be in the best interests of the corporation and its shareholders.

(Cal. Corp. Code § 317(c).)

A corporation may not indemnify a person in connection with a derivative proceeding:

- If the person is adjudged liable to the corporation, unless the court determines that, in view of all the circumstances, the person is fairly and reasonably entitled to indemnity for expenses.
- For amounts paid in settling or otherwise disposing of a pending action without court approval.
- For expenses incurred in defending a pending action settled or otherwise disposed of without court approval.

(Cal. Corp. Code § 317(c)(1) to (3).)

Generally, a corporation's decision on whether to indemnify an agent must be authorized by one of the following:

- A majority vote of a quorum consisting of directors who are not parties to the proceeding.
- Independent legal counsel in a written opinion, if a quorum of disinterested directors is not obtainable.
- Approval of the shareholders, with any shares owned by the person to be indemnified not being entitled to vote.
- The court where the proceeding is or was pending, on application made by the corporation, the agent, the agent's attorney, or another person rendering services in connection with the defense.

(Cal. Corp. Code § 317(e).)

A corporation may not indemnify or advance funds to an agent where it appears:

- That the indemnification would be inconsistent with a provision of the articles of incorporation, bylaws, or shareholder resolutions, or with an agreement in effect at the time of the accrual of the cause of action where the expenses were incurred or other amounts were paid, that prohibits or otherwise limits indemnification.
- That the indemnification would be inconsistent with any condition imposed by a court in approving a settlement.

(Cal. Corp. Code § 317(h).)

Advancement of Expenses

Corporations may pay expenses incurred in defending any proceeding before the final disposition of the action if the agent provides an undertaking to repay the amount if it is ultimately determined that the agent is not entitled to indemnification (Cal. Corp. Code § 317(f)).

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 stockholder actions).
- Filing requirements.

Documents

Articles of Incorporation

To amend the articles of incorporation, a California corporation must file a certificate of amendment with the California secretary of state (CASOS) (Cal. Corp. Code §§ 905, 906, and 908).

For amendments adopted before a corporation has issued shares, the certificate must state:

- The wording of the amendment or amended articles.
- That the signers of the certificate of amendment constitute at least a majority of the incorporators or of the board.
- That the corporation has issued no shares.
- That the signers adopt the amendment or amendments as set out in the certificate.
- If applicable, a statement that directors were not named in the original articles and have not been elected.

(Cal. Corp. Code § 906.)

For amendments adopted after a corporation has issued shares, the certificate must state:

- The wording of the amendment or amended articles.
- That the board has approved the amendment.
- If the amendment is one for which shareholder approval is required:
  - that the amendment was approved by the required vote of shareholders;
  - the total number of outstanding shares of each class entitled to vote regarding the amendment; and
  - that the number of shares of each class voting in favor of the amendment equaled or exceeded the vote required, specifying the percentage vote required of each class entitled to vote.
- If the amendment is one that may be adopted with approval by the board alone, a statement of the facts entitling the board alone to adopt the amendment.

(Cal. Corp. Code § 905.)

Bylaws

California does not require a specific document to amend bylaws.

Corporate Actions

Articles of Incorporation

Amendments to the articles of incorporation must be approved:

- Before shares have been issued, by:
  - a majority of the incorporators, if directors have not been named and have not been elected; or
  - a majority of the directors, if directors were named in the original articles or have been elected.

  (Cal. Corp. Code § 901.)
- Once shares have been issued, by the board of directors and by a majority vote of the shareholders (Cal. Corp. Code § 902(a)).

However, once shares have been issued, the following amendments may be approved by the board alone:

- An amendment extending the corporate existence or making the corporate existence perpetual, for corporations organized before August 14, 1929.
- An amendment effecting only a stock split, unless the corporation has more than one class of shares outstanding.
- An amendment deleting the initial street address and initial mailing address of the corporation, the names and addresses of the first directors, or the name and address of the initial agent.

(Cal. Corp. Code § 902(b), (c), and (d).)

Whenever the articles require for corporate action the vote of a larger proportion or of all of the shares of any class or series, or of a larger proportion or of all of the directors, than is otherwise required by California law, the provision in the articles requiring the greater vote may not be altered, amended, or repealed except by that greater vote, unless otherwise provided in the articles (Cal. Corp. Code § 902(e)).

A proposed amendment must be approved by the outstanding shares of a class (whether or not that class is entitled to vote on the amendment by the provisions of the articles of incorporation) if the amendment would, among other things:

- Effect an exchange, reclassification, or cancellation of all or part of the shares of that class, including a reverse stock split but excluding a stock split.
- Change the rights, preferences, privileges, or restrictions of the shares of that class.
- Create a new class of shares having rights, preferences, or privileges prior to the shares of that class, or increase the rights, preferences, or privileges or the number of authorized shares of any class having rights, preferences, or privileges prior to the shares of that class.

(Cal. Corp. Code § 903(a).)

Bylaws

Bylaws may be adopted, amended, or repealed either by:

- Approval of the outstanding shares.
- Approval of the board, except for bylaws:

- specifying or changing a fixed number of directors;
- specifying or changing the maximum or minimum number of directors; or
- changing from a fixed to a variable board, or vice versa.

(Cal. Corp. Code § 211 and 212.)

The bylaws may restrict or eliminate the power of the board to adopt, amend, or repeal any or all bylaws (Cal. Corp. Code § 211).

Filing Requirements

Articles of Incorporation

The corporation must file the certificate of amendment with the CASOS (Cal. Corp. Code §§ 905, 906, and 908). The filing fee for a certificate of amendment is $30. CASOS provides expedited service options for an additional charge. (CASOS: Business Entities Forms, Samples and Fees.)

Bylaws

The California Corporations Code does not require corporations 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).