



Corporation Law: Georgia

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This Article is published by Practical Law Company on its ^{PLC}Corporate & Securities web service at <http://us.practicallaw.com/7-519-3293>.

A Q&A guide to corporation law in Georgia. This Q&A addresses key areas of corporate law such as formation, foreign qualification, mergers, anti-takeover laws and dissolution.

FORMING A CORPORATION AND CORPORATE FORMALITIES

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

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

DOCUMENTS

Articles of Incorporation

The incorporator must file articles of incorporation with the Georgia Secretary of State. The articles of incorporation must include the following information:

- The name of the corporation.
- The number of shares of stock that the corporation is authorized to issue.

- The street address and county of the corporation's initial registered office and the name of its initial registered agent at that office.
- The name and address of each incorporator.
- The mailing address of the initial principal office of the corporation, if different from the initial registered office.

(*Ga. Code Ann. § 14-2-202*.)

Every Georgia corporation is presumed to be formed to engage in any lawful business unless a more limited purpose is set out in the articles of incorporation (*Ga. Code Ann. § 14-2-301*). The Georgia Business Corporation Code provides that the articles of incorporation may include other provisions not inconsistent with law regarding the management and regulation of certain aspects of the corporation. However, some optional provisions may be included only if they are first adopted.

By-laws

By-laws set out the governance rules of a corporation and may contain any provision for managing the corporation that is not inconsistent with law or with the articles of incorporation (*Ga. Code Ann. § 14-2-206*). If the by-laws conflict with the articles of incorporation, the articles of incorporation govern because the by-laws are secondary to the articles of incorporation. By-laws are not required to be filed with the state.

Typical areas covered by the by-laws include:

- The procedures for shareholder and director meetings (including record date, notice and voting).
- The officers and committees of the corporation.
- The issuance and transfer of stock certificates.

By-laws are adopted by either:

- The incorporators.
- The board of directors.

By-laws can usually be amended or repealed by either the directors or the shareholders unless the articles of incorporation:

- Reserve the power to amend or repeal the by-laws to the shareholders.
- Provide that a particular by-law cannot be amended or repealed by the directors.

CORPORATE ACTIONS

If the initial directors are named in the articles of incorporation, then they must hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by:

- Appointing officers.
- Adopting by-laws.
- Carrying on any other business brought before the meeting.

If the initial directors are not named in the articles of incorporation, the incorporators must hold an organizational meeting at the call of a majority of the incorporators to either:

- Elect directors and complete the organization of the corporation.
- Elect directors who must then complete the organization of the corporation.

(*Ga. Code Ann. § 14-2-205.*)

The completion of the corporate organization is customarily accomplished by holding an initial meeting of the directors (once elected), either in person or by written consent, to:

- Adopt the by-laws.
- Elect officers.
- Open bank accounts.
- Issue stock.
- Approve other actions necessary for the corporation's business at that time.

NAME REQUIREMENTS AND RESERVATION OPTIONS

The name of the corporation must include one of the following words or their abbreviations or equivalent words or their abbreviations in another language:

- Corporation.
- Company.
- Incorporated.
- Limited.

(*Ga. Code Ann. § 14-2-401.*)

The name may not:

- Contain language stating or implying that the corporation is organized for a purpose that would be beyond the scope of its legally permitted purpose.
- Exceed 80 characters (including spaces and punctuation).
- Contain anything that is, in the Secretary of State's reasonable judgment, obscene.

A corporate name must be distinguishable in the Secretary of State's records from the names of other entities on file with the Georgia Corporations Division. The issuance of a corporate name does not affect the commercial availability of the name, so names that are issued by the Corporations Division might not be available for use in the marketplace. Additionally, the issuance of a name by the Corporations Division does not necessarily give a person the exclusive right to use that name.

Corporations can reserve a name for a period of 30 days by submitting an application online through the Secretary of State's *website* or by mail. The fee for reserving a name is \$25. Name reservations can be renewed for another 30 days for a \$25 fee. (*Ga. Code Ann. § 14-2-402.*)

FILING REQUIREMENTS

The articles of incorporation must be filed with the Secretary of State. Many law firms and companies use a service company to file the articles of incorporation for a fee. Typically, the articles of incorporation can be submitted to the service company electronically. If a service company is not used, the articles of incorporation can be filed by mail or online, as detailed on the Corporations Division's *website*.

The fee for filing articles of incorporation is \$100. Articles of incorporation are effective on the date received by the Corporations Division unless a later date is specified. Expedited processing costs an additional \$100. Normal processing typically takes five to seven business days. Expedited processing typically takes one to 24 business hours, plus additional time for mailing, but it may take as long as three business days.

After receiving the articles of incorporation and fees, the Corporations Division certifies that the articles of incorporation were filed by endorsing the articles of incorporation with:

- The word "Filed."
- The date and time of its filing.

For the text of the Georgia Code, see the Georgia General Assembly *website*.



2. What corporate formalities are required annually? In particular, what are the:

- Annual filing requirements (including franchise tax amounts)?
- Requirements for holding an annual meeting of the shareholders (including the requirements for calling a meeting)?

ANNUAL REPORT AND FRANCHISE TAXES

Georgia corporations must file an annual registration with the Georgia Secretary of State. The initial annual registration form must be filed:

- Between January 1 and April 1 for corporations formed between October 2 and December 31 of the prior year.
- Within 90 days of incorporation for all other corporations.

Subsequent annual registrations must be filed between January 1 and April 1 of each year.

Annual registrations must set out:

- The name of the corporation and the state or country of incorporation.
- The street address and county of its registered office in Georgia and the name of its registered agent.
- The mailing address of its principal office.
- The names and addresses of three principal officers of the corporation.

(*Ga. Code Ann. § 14-2-1622.*)

The registration form should be filed *online*, along with a \$50 filing fee. There is a \$25 penalty if the annual report is not timely filed. Additionally, changes to a corporation's address or officers during the year require another registration form and payment of a \$50 filing fee.

A corporation that does not submit its annual registration within 60 days after it is due is subject to administrative dissolution (*Ga. Code Ann. § 14-2-1420*). There is a \$250 fee to reinstate an administratively dissolved corporation (*Ga. Code Ann. § 14-2-122*). An administratively dissolved corporation can be reinstated within five years after its dissolution date. Its name remains reserved during that time period (*Ga. Code Ann. § 14-2-1422*).

Georgia corporations must prepare financial statements annually. The financial statements must be prepared within four months after the close of the corporation's fiscal year and before the corporation's annual meeting of shareholders. They must consist of a:

- Reasonably detailed balance sheet.
- Profit and loss statement showing the results of the corporation's operations during the fiscal year.

The Georgia Business Corporation Code requires corporations to provide these financial statements to shareholders on their request (*Ga. Code Ann. § 14-2-1620*).

Georgia does not impose franchise taxes on corporations, but the Corporate Income Tax Section of the Georgia Department of Revenue handles corporate and S-corporation tax returns. Corporate income tax is a non-graduated percentage based on a corporation's federal taxable net income. Corporations that own property, do business in Georgia or receive income from Georgia sources are subject to corporate income tax. The rate of taxation is 6% of a corporation's Georgia taxable net income.

Certain corporations also pay a net worth tax. This tax is based on the net worth of a corporation and is levied in exchange for the privilege of doing business or exercising a corporate franchise in Georgia. The minimum tax is \$10 for a net worth less than \$10,001. The maximum is \$5,000 for a net worth of more than \$22 million.

ANNUAL MEETING OF SHAREHOLDERS

Georgia corporations must hold an annual meeting of shareholders at a time stated in, or fixed according to, its by-laws (*Ga. Code Ann. § 14-2-701*). Directors are elected by the shareholders at each annual shareholders' meeting unless their terms are staggered (*Ga. Code Ann. § 14-2-803(d)*). Because a statement of the purpose of the meeting is not required to be included in the notice of the annual meeting, any matters concerning the business of the corporation, other than those that require a special notice to shareholders (such as plans of merger or share exchange), may be considered at the annual meeting (*Ga. Code Ann. §§ 14-2-1103(d)* and *14-2-705(b)*).

Any action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by either:

- All of the shareholders entitled to vote on the action.
- If provided in the articles of incorporation, persons who would be entitled to vote at a meeting having voting power to cast at least the minimum number of votes necessary to authorize or take the action at a meeting in which all shareholders entitled to vote were present and voted.

(*Ga. Code Ann. § 14-2-704.*)

Certain other limitations and requirements apply (*Ga. Code Ann. § 14-2-704*).

Any shareholder may apply to the superior court of the county where the corporation's registered office is located to demand an order to hold a shareholders' meeting if the annual meeting is not held, or action by written consent in lieu of a meeting is not taken, within the earlier of:

- Six months after the end of the corporation's fiscal year.
- 15 months after the corporation's last annual meeting.

(*Ga. Code Ann. § 14-2-703.*)

For the text of the Georgia Code, see the Georgia General Assembly *website*.

FOREIGN CORPORATIONS

3. 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

To transact business in Georgia, a foreign corporation must obtain a certificate of authority from the Georgia Secretary of State. However, the following acts are not considered to be “transacting business” in Georgia:

- Maintaining or defending any action, administrative proceeding or arbitration proceeding, or settling claims or disputes.
- Holding meetings of directors or shareholders, or carrying on other internal affairs.
- Maintaining bank accounts.
- Maintaining offices or agencies for the transfer, exchange and registration of the corporation’s securities.
- Appointing and maintaining trustees or depositaries for its securities.
- Effecting sales through independent contractors.
- Soliciting or procuring orders, where the orders require acceptance outside of Georgia before becoming binding contracts and where the contracts do not involve local performance other than delivery and installation.
- Making loans or creating or acquiring evidences of debt, mortgages or liens on real or personal property.
- Securing or collecting debts or enforcing any rights in property securing them.
- Owning, without more, real or personal property.
- Conducting an isolated transaction not in the course of a number of repeated transactions of a similar nature.
- Transacting any business in interstate or foreign commerce.
- Serving as a trustee, executor, administrator, guardian or other fiduciary.
- Owning an interest in, or controlling, another entity organized under the laws of, or transacting business in, Georgia.
- Serving as a manager of a limited liability company organized under the laws of, or transacting business in, Georgia.

(*Ga. Code Ann. § 14-2-1501.*)

FILING REQUIREMENTS

Registration Documents

To qualify to do business in Georgia, a foreign corporation must file the following documents with the Secretary of State:

- An application for a certificate of authority to transact business in Georgia, setting out:
 - the name of the corporation (the corporation name must be available for use);
 - the jurisdiction under which it is incorporated;
 - its date of incorporation;
 - the mailing address of its principal and registered offices and the name of its registered agent; and
 - the names and business addresses of its chief executive officer, chief financial officer and secretary.
- A certificate of existence (or similar document) authenticated by the secretary of state (or similar authority) in its state or country of incorporation.

(*Ga. Code Ann. § 14-2-1503.*)

Annual Reports

Foreign corporations authorized to transact business in Georgia must file an annual registration with the Secretary of State. The first annual registration must be delivered to the Secretary of State between January 1 and April 1 of the year following the calendar year in which a foreign corporation became authorized to transact business in Georgia. Subsequent annual registrations must be delivered to the Secretary of State between January 1 and April 1 each year (*Ga. Code Ann. § 14-2-1622*). A foreign corporation that does not deliver its annual registration to the Secretary of State within 60 days after it is due may have its certificate of authority revoked (*Ga. Code Ann. § 14-2-1530*).

FEES

Registration Documents

The fee for filing an application for a certificate of authority is \$225. Normal processing typically takes seven to ten business days, plus additional time for mailing. Expedited processing costs an additional \$100 and typically takes one to 24 business hours, plus additional time for mailing. However, it may take as long as three business days. A foreign corporation must pay a \$500 penalty to the Secretary of State if it conducted business in Georgia more than 30 days before the date of its application for a certificate of authority. (*Ga. Code Ann. §§ 14-2-1502 and 14-2-122.*)

Annual Reports

Foreign corporations should file the annual report online at the Secretary of State’s *website*. The filing fee is \$50. Foreign corporations must pay a penalty of \$25 if the annual report is not timely filed.

NAME REQUIREMENTS

The name of a foreign corporation must comply with Georgia's rules on corporate names (see *Name Requirements and Reservation Options*). It must be different than the name of any existing Georgia entity, registered foreign entity or name that has been reserved with the Secretary of State, unless the other entity provides written consent (*Ga. Code Ann. § 14-2-1506*). If no consent is obtained, the foreign corporation can adopt a trade or fictitious name for doing business in Georgia. If a foreign corporation does adopt a trade or fictitious name, it should register that name with the clerk of the superior court of the county in which its principal office is located and in every county where it intends to conduct business.

For the text of the Georgia Code, see the Georgia General Assembly *website*.

FIDUCIARY DUTIES

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

Directors must generally discharge their duties:

- In a manner that they believe in good faith to be in the best interests of the corporation (*Ga. Code Ann. § 14-2-830(a)(1)*).
- With the care an ordinarily prudent person in a like position would exercise under similar circumstances (*Ga. Code Ann. § 14-2-830(a)(2)*).

Accordingly, each director of a Georgia corporation owes the typical fiduciary duties of:

- Duty of care.
- Duty of loyalty.
- If included in the articles of incorporation, a duty to protect the interests of other intracorporate parties.

Directors are not liable to the corporation or its shareholders for any action taken as a director, or any failure to take action, if they perform the duties of the office complying with the Georgia Business Corporation Code (*Ga. Code Ann. § 14-2-830(d)*).

DUTY OF CARE

A director must exercise the same degree of care an ordinarily prudent person in a like position would exercise under similar circumstances (*Ga. Code Ann. § 14-2-830(a)(2)*). Additionally, the statutory requirement that a director discharge his duties in a manner that he believes in good faith to be in the best interests of the corporation enables Georgia corporations to include a provision in their articles of incorporation that a director, in discharging his duties, may consider the effects of any action on:

- The corporation.
- Its subsidiaries.

- Its shareholders.
- Other intracorporate parties.

Directors are not expected to guarantee the corporation's success; instead, they are liable only for negligent acts or omissions in the performance of their duties. Directors who have breached the duty of care may be held personally liable only for losses suffered by the corporation as a direct and proximate result of the breach. Although the business judgment rule has not been fully articulated by Georgia courts, directors are generally insulated from liability if they acted:

- In good faith.
- With reasonable care and diligence.
- With the best interests of the corporation in mind.

A director is also entitled to rely on information, reports and statements of:

- Officers or employees of the corporation which the director reasonably believes to be reliable and competent in the manner presented.
- Legal counsel, public accountants, investment bankers or others on matters the director reasonably believes to be within the person's professional competence.
- A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

DUTY OF LOYALTY

A director's duty of loyalty is encompassed by the statutory standard that a director must discharge his duties in a manner that he believes in good faith to be in the best interests of the corporation (*Ga. Code Ann. § 14-2-830(a)(1)*). In addition to this statutory standard, Georgia has enacted extensive statutory provisions that address director conflicts of interest (*Ga. Code Ann. §§ 14-2-860 to 14-2-864*). Other statutory provisions prohibit:

- The appropriation, in violation of a director's duties, of any business opportunity of the corporation (*Ga. Code Ann. § 14-2-831(a)(1)(C)*).
- The making of unlawful conveyances, assignments or transfers of corporate assets or other unlawful transactions (*Ga. Code Ann. § 14-2-831(a)(2), (3)*).
- The voting for or assent to an unlawful distribution (*Ga. Code Ann. § 14-2-832*).

Additionally, statutory provisions permitting the limitation or elimination of liability for directors do not allow:

- The appropriation of business opportunities.
- Acts or omissions that involve intentional misconduct or a knowing violation of law.
- Voting for or assenting to an unlawful distribution.
- Any transaction from which the director receives an improper personal benefit.

(*Ga. Code Ann. § 14-2-202*.)

FIDUCIARY DUTIES OF OFFICERS

Officers have the same duties and are held to the same standards of conduct as directors (*Ga. Code Ann. § 14-2-842*).

For the text of the Georgia Code, see the Georgia General Assembly *website*.

MERGERS

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

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

DOCUMENTS

Plan of Merger

To complete a merger, the participating corporation must enter into a plan of merger. Also known as an agreement and plan of merger or a merger agreement, the plan of merger is the main transaction document in a merger. A plan of merger must set out:

- The name of each corporation or other entity that will be merged and the name of the surviving corporation or other entity into which each other corporation or other entity plans to merge.
- The terms and conditions of the merger.
- The manner and basis of converting the shares of each corporation and the shares, memberships or financial benefits or units in each of the entities into:
 - shares, other securities or obligations of the surviving corporation or any other corporation; or
 - cash or other property.
- Whether shares of any shareholder will be converted in a manner that is different from any other shareholder.

(*Ga. Code Ann. § 14-2-1101*.)

Articles of Merger

After approving a merger, the surviving corporation must file either articles of merger or a certificate of merger with the Georgia Secretary of State and pay a \$20 filing fee. The articles of merger must set out:

- The plan of merger.
- If shareholder approval was not required, a statement to that effect.

- If approval of the shareholders of one or more parties to the merger was required, a statement that the merger was approved by those shareholders.

(*Ga. Code Ann. § 14-2-1105*.)

Certificate of Merger

The Georgia Business Corporation Code (GBCC) allows the surviving corporation to file a certificate of merger in place of the articles of merger. Corporations typically choose to file a certificate of merger because certificates of merger allow corporations to preserve certain confidential information that may be in the plan of merger. The certificate of merger must set out:

- The name and state of incorporation of each corporation that is merging and the name of the surviving corporation.
- Any amendments to the articles of incorporation of the surviving corporation.
- The address of the surviving corporation's principal place of business and a statement that the executed plan of merger is on file at that address.
- A statement that a copy of the plan of merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any corporation that is a party to the merger.
- If shareholder approval was not required, a statement to that effect.
- If approval of the shareholders of one or more parties to the merger was required, a statement that the merger was approved by those shareholders.

(*Ga. Code Ann. § 14-2-1105(b)*.)

The plan of merger may set out:

- Amendments to the articles of incorporation or governing agreements of the surviving corporation or other entity.
- Other provisions relating to the merger.

Certificate of Publication

Together with the articles or certificate of merger, the surviving corporation must deliver a certificate of publication to the Secretary of State that:

- States that a request to publish a notice of the merger will be made to a newspaper in the county where the registered office of the surviving corporation is located.
- Is accompanied by a payment of \$40 to cover the publishing costs.

The publication certification can either be:

- Included in the articles or certificate of merger.
- Filed as a separate document if it is signed by an officer or other person authorized to act on the corporation's behalf.

The surviving corporation must make the request for publication to the newspaper by the next business day after filing the articles or certificate of merger. (*Ga. Code Ann. § 14-2-1105.1*.)



BOARD ACTIONS

The board of directors of each corporation that is a party to the merger must adopt a resolution that approves the plan of merger. If shareholder approval is required, the board of directors must also recommend and submit the plan of merger (or summary of its terms) to the shareholders for their vote (*Ga. Code Ann. § 14-2-1103(b)(1)*).

A parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself or another such subsidiary without the approval of the board of directors of the subsidiary (*Ga. Code Ann. § 14-2-1104*).

SHAREHOLDER ACTIONS

Generally, the plan of merger must be approved by the shareholders of the corporations that are party to the merger (*Ga. Code Ann. § 14-2-1103(b)(2)*). Shareholders must be given notice of the meeting at which the plan of merger will be considered no fewer than ten and no more than 60 days before the meeting date (*Ga. Code Ann. § 14-2-705*). The notice must:

- State the purpose of the meeting.
- Contain a copy or summary of the plan of merger.
- Provide notice on dissenters' rights, if applicable.

(*Ga. Code Ann. §§ 14-2-1103 and 14-2-1302*.)

A merger must be approved by:

- The shareholders of a majority of all outstanding shares entitled to vote (not merely a majority of the votes present at the meeting), voting as a single voting group.
- A majority of all the votes entitled to be cast by holders of the shares of each voting group entitled to vote separately on the plan of merger as a voting group (even if the class is otherwise non-voting stock).

(*Ga. Code Ann. § 14-2-1103(e)*.)

The articles of incorporation, by-laws or board of directors may provide that a greater percentage of the vote or a vote by voting groups must approve a plan of merger.

Shareholders of the surviving corporation are not, however, required to approve the plan of merger if:

- The articles of incorporation of the surviving or acquiring corporation will not be changed by the merger (except in a respect that can be amended by the directors without shareholder approval).
- Each share of stock of the surviving or acquiring corporation outstanding immediately before the effective date of the merger will be an identical outstanding or reacquired share immediately after the merger.
- The number and kind of shares outstanding immediately after the merger (including shares issuable as a result of the merger) will not exceed the total number and kind of shares of the surviving or acquiring corporation authorized by its articles of incorporation immediately before the merger.

(*Ga. Code Ann. § 14-2-1103(h)*.)

Additionally, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself or another such subsidiary without the approval of the shareholders of the subsidiary (*Ga. Code Ann. § 14-2-1104*).

MERGERS WITH FOREIGN CORPORATIONS

One or more foreign corporations may merge with one or more Georgia corporations if:

- The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated, and each foreign corporation complies with that law in effecting the merger.
- The foreign corporation complies with Section 14-2-1105 of the GBCC (Articles or Certificate of Merger) if it is the surviving corporation of the merger.
- Each Georgia corporation complies with the applicable provisions of Sections 14-2-1101 (Merger), 14-2-1103 (Action on Plan), 14-2-1104 (Merger with Subsidiary) and 14-2-1105 (Articles or Certificate of Merger) of the GBCC, if the Georgia corporation is the surviving corporation of the merger.

MERGERS WITH OTHER ENTITIES

Corporations may merge with non-corporate entities, such as domestic or foreign limited liability companies, joint stock associations and limited partnerships, if the board of directors of each corporation and the appropriate body of each non-corporate entity adopt a plan of merger according to:

- Each corporation's and non-corporate entity's governing agreements.
- The laws of the jurisdiction under which it was formed.

(*Ga. Code Ann. § 14-2-1109*.)

FILING REQUIREMENTS

The surviving entity must file with the Secretary of State either:

- Articles of merger, which must include the plan of merger.
- A certificate of merger (see *Documents*).

The articles or certificate of merger can be filed before the effective date of the merger if they specify a delayed effective date.

The fee for filing the articles or certificate of merger is \$20. Expedited processing costs an additional \$100.

APPRAISAL RIGHTS

The GBCC generally provides for appraisal rights in mergers if either:

- Approval of the shareholders is required.
- The corporation is a subsidiary that is merged with its parent.

(*Ga. Code Ann. § 14-2-1302*.)

Shareholders who own shares that were either listed on a national stock exchange or held by more than 2,000 shareholders do not have appraisal rights unless either:

- The holders of the shares must accept anything other than shares of the surviving corporation or another publicly held corporation that is listed on a national securities exchange or held of record by more than 2,000 shareholders as of the effective date of the merger.
- The articles of incorporation or board of directors provide otherwise.

For the text of the Georgia Code, see the Georgia General Assembly *website*.

ASSET SALES

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

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

DOCUMENTS

Although the Georgia Business Corporation Code (GBCC) 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

Unless shareholder approval is required by the articles of incorporation, a corporation may engage in the following transactions, on the terms and conditions determined by the board of directors, without seeking shareholder approval:

- Any mortgage, pledge or other encumbrance of any property of the corporation.
- The transfer of any or all of its property to a wholly-owned subsidiary of the corporation.
- The sale, lease, exchange or other disposition of less than all or substantially all of the corporation's property.

- The sale, lease, exchange or other disposition of all or substantially all of the corporation's property if:
 - the corporation is insolvent and a sale for cash or its equivalent is deemed advisable by the board; or
 - the corporation was incorporated for liquidating the property and assets.

(*Ga. Code Ann. § 14-2-1201.*)

Except as set out above, the sale, lease, exchange or other disposition of all or substantially all of a corporation's property requires the corporation's board to propose, and its shareholders to approve, the transaction (*Ga. Code Ann. § 14-2-1202*).

STOCKHOLDER ACTIONS

Unless the articles of incorporation, by-laws or board of directors require a greater vote or a vote by voting groups, a sale of all or substantially all of the property or assets of a corporation requires the approval of the majority of all votes entitled to be cast by shareholders (*Ga. Code Ann. § 14-2-1202*). Shareholders must be given notice of the meeting at least ten and no more than 60 days before the meeting date (*Ga. Code Ann. § 14-2-705*). The notice must:

- State the purpose of the meeting.
- Contain a description of the transaction.
- Provide notice on dissenters' rights, if applicable.

(*Ga. Code Ann. §§ 14-2-1202 and 14-2-1302.*)

BULK SALES

Unless a sale is subject to a statutory exception under Section 11-6-103 of the GBCC, the Bulk Sales Act applies to the following types of sales by companies whose principal business is the sale of merchandise from stock (including those who manufacture what they sell):

- A transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory of an enterprise.
- A transfer of a substantial part of the equipment of an enterprise if it is made in connection with a bulk transfer of inventory, but not otherwise.

(*Ga. Code Ann. § 11-6-102.*)

A bulk transfer is not effective against a creditor of the transferor corporation unless the creditor is notified within a specified time period (*Ga. Code Ann. §§ 11-6-105, 11-6-107*). Therefore, failing to provide creditors with proper notice would entitle those creditors to enforce a judgment against the seller by either:

- Putting a lien on the transferred assets.
- Seeking money damages from the buyer and the seller.

Except as limited by Section 11-6-103 of the GBCC, all bulk transfers of goods located within the State of Georgia are subject to the Bulk Sales Act (*Ga. Code Ann. § 11-6-102*).



SUCCESSOR LIABILITY OR DE FACTO MERGER ANALYSIS

Georgia courts follow the general rule that the buyer of assets in an asset sale is not liable for the debts and liabilities of the seller (see *Bullington v. Union Tool Corp.*, 328 S.E.2d 726 (Ga. 1985)). However, a buyer can be held responsible for the liabilities of a seller if a court determines that one of the following exceptions is met:

- The buyer expressly or impliedly assumed the liabilities.
- The transaction amounted to a consolidation or merger of the seller into the buyer.
- The buyer was merely a continuation of the seller under a different name.
- The transfer was fraudulent or intended to defraud creditors.

Georgia has also adopted a “product line” exception for when a successor:

- Continues to manufacture the same type of product.
- Carries over the experience and expertise of the transferor.
- Is in a better position to assume the liabilities of the product’s manufacture.

For the text of the Georgia Code, see the Georgia General Assembly *website*.

ANTI-TAKEOVER LAWS

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

The Georgia Business Corporation Code has two main anti-takeover provisions which:

- Prohibit mergers, other combinations and acquisitions of corporations with or by an acquirer of 10% or more of the corporation’s shares unless either:
 - the board of directors approves the transaction or combination; or
 - the interested shareholder becomes the owner of 90% or more of the corporation’s shares.

(*Ga. Code Ann. § 14-2-1132.*)

- Permit a 180-day dead-hand poison pill.

(*Ga. Code Ann. § 14-2-624(d)(2).*)

For more information on dead-hand poison pills, see *Practice Note, Poison Pills: Defending Against Takeovers and Protecting NOLs* (<http://us.practicallaw.com/3-386-0340>).

For the text of the Georgia Code, see the Georgia General Assembly *website*.

DISSOLVING A CORPORATION

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

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

DOCUMENTS

Generally, a corporation that wishes to dissolve must file the following documents with the Georgia Secretary of State:

- A notice of intent to dissolve and cease all business activity except as is necessary to wind up its affairs.
- Articles of dissolution signed by an authorized officer of the corporation.

The notice of intent to dissolve must include:

- The name of the corporation.
- The date the dissolution was authorized.
- If shareholder approval was required for dissolution, a statement that the dissolution was approved by the shareholders.

(*Ga. Code Ann. § 14-2-1403.*)

The articles of dissolution must include:

- The name of the corporation.
- The date on which a notice of intent to dissolve was filed and a statement that it has not been revoked.
- A statement that:
 - all known debts, liabilities and obligations of the corporation have been paid and discharged; or
 - adequate provision has been made for their payment and discharge.
- A statement that:
 - all remaining property and assets of the corporation have been distributed among its shareholders according to their respective rights and interests;
 - adequate provision has been made for a distribution; or
 - the property and assets have been deposited with the Office of Treasury and Fiscal Services.
- A statement that:
 - there are no actions pending against the corporation in any court; or
 - adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending action.

(*Ga. Code Ann. § 14-2-1408.*)

To dissolve a corporation that has not issued shares or that has not commenced business, the corporation must file articles of dissolution with the Secretary of State before beginning business. The articles of dissolution must be executed and acknowledged by a majority of the incorporators or directors and must state, among other things, that either:

- No shares of stock were issued.
- Business activity was not commenced.

(*Ga. Code Ann. § 14-2-1401.*)

BOARD ACTIONS

The board of directors must:

- Adopt a resolution that approves the dissolution of the corporation.
- Submit the proposal to the shareholders for their vote.

(*Ga. Code Ann. § 14-2-1402.*)

FILING REQUIREMENTS

Before a corporation can file its articles of dissolution, the corporation must publish a notice of intent to dissolve (*Ga. Code Ann. § 14-2-1403.1*). After the board and shareholders approve the dissolution and the notice of intent to dissolve has been filed with the Secretary of State, a corporation must begin the winding-up process before it can be dissolved. To wind-up its affairs, a corporation must:

- Send a notice of intent to dissolve to all creditors.
- Collect all of its assets.
- Discharge all of its obligations.
- Dispose of its property that will not be distributed to shareholders.
- Distribute the remainder of its assets to its shareholders.

After the corporation has finished winding up its affairs, it may file articles of dissolution with the Secretary of State. On filing the articles of dissolution, the corporation ceases to exist. At any time before filing the articles of dissolution, a corporation may revoke its intent to dissolve by both:

- Authorizing the revocation (following the same basic procedure needed to authorize the dissolution).
- Subsequently filing with the Secretary of State a:
 - notice of revocation of the intent to dissolve; and
 - copy of the notice of intent to dissolve.

The Secretary of State does not charge a filing fee for:

- A notice of intent to dissolve.
- Articles of dissolution.
- A notice of revocation of the intent to dissolve.

SHAREHOLDER ACTION

Unless the articles of incorporation, by-laws or board of directors require a greater vote or a vote by voting groups, a corporation must obtain the approval of a majority of all the votes entitled to be cast

by the shareholders on the proposal. Shareholders must be given at least ten days' notice of the meeting and the notice must state that the purpose of the meeting is to consider dissolving the corporation (*Ga. Code Ann. §§ 14-2-1402, 14-2-705*).

For the text of the Georgia Code, see the Georgia General Assembly *website*.

ACTIVITIES REQUIRING SHAREHOLDER CONSENT

9. What activities require shareholder consent in your jurisdiction?

Generally, a corporation can require shareholder approval for specific corporate actions by stating so in its articles of incorporation. However, for certain fundamental corporate changes, the Georgia Business Corporation Code (GBCC) requires a corporation to obtain shareholder approval. Fundamental corporate changes requiring shareholder approval include:

- Revival of a corporation after dissolution by expiration of period of duration (*Ga. Code Ann. § 14-2-1409*).
- A merger or share exchange with other corporations (*Ga. Code Ann. §§ 14-2-1101 to 14-2-1103*). Certain exceptions apply (see *Mergers*) (*Ga. Code Ann. § 14-2-1103(h)*).
- A voluntary dissolution of the corporation (*Ga. Code Ann. § 14-2-1402*).
- A sale, lease or exchange of all or substantially all of a corporation's property or assets (*Ga. Code Ann. § 14-2-1402*).
- The conversion of a corporation to a limited liability company or limited partnership (*Ga. Code Ann. § 14-2-1109.1*).
- The conversion of a corporation to a foreign limited liability company, foreign limited partnership or foreign corporation (*Ga. Code Ann. § 14-2-1109.3*).
- Amendments to the articles of incorporation (*Ga. Code Ann. § 14-2-1003*). However, unless the articles of incorporation provide otherwise, the board of directors may amend the articles of incorporation without shareholder action in certain limited circumstances (*Ga. Code Ann. § 14-2-1002*).

For these fundamental corporate changes, the GBCC requires a minimum approval of:

- The shareholders of a majority of all outstanding shares entitled to vote (not merely a majority of the votes present at the meeting), voting as a single voting group.
- For a plan of merger, a majority of all the votes entitled to be cast by holders of the shares of each voting group entitled to vote separately on the plan of merger as a voting group (even if the class is otherwise nonvoting stock).

However, all shareholders must approve a conversion of a corporation to another entity, domestic or foreign. The articles of incorporation or the board of directors may provide that a greater



percentage of the vote or a vote by voting groups must approve certain fundamental corporate changes.

For the text of the Georgia Code, see the Georgia General Assembly *website*.

PRE-EMPTIVE RIGHTS

10. Is there a statutory provision for pre-emptive rights? Do corporations have the ability to opt in or out of this provision?

Pre-emptive rights exist for:

- Close corporations (unless the articles of incorporation provide otherwise).
- Corporations in existence on July 1, 1989.
- Corporations that restated or amended their articles of incorporation after July 1, 1989 to include pre-emptive rights.

(*Ga. Code Ann. § 14-2-630(b)*.)

Shareholders of a corporation (other than a close corporation) formed after July 1, 1989 do not have pre-emptive rights unless those rights are provided in the articles of incorporation (*Ga. Code Ann. § 14-2-630(a)*).

Pre-emptive rights, even if applicable to a corporation, do not exist regarding the following (unless the articles of incorporation expressly provide otherwise):

- Shares issued as a dividend.
- Fractional shares.
- Shares issued to effect a merger, share exchange or plan of reorganization.
- Shares issued as compensation to corporate employees or to satisfy conversion or option rights created to compensate corporate employees.
- Shares authorized in the articles of incorporation that are issued within a year of the date of incorporation.
- Shares issued for consideration other than money.
- Shares released by waiver from pre-emptive rights by a vote of at least two-thirds of the shares of the class to be issued.

(*Ga. Code Ann. § 14-2-630(c)*.)

For the text of the Georgia Code, see the Georgia General Assembly *website*.

LIMITATIONS ON CLASSES OR SERIES OF STOCK

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

The Georgia Business Corporation Code does not impose any limits on the classes or series of capital stock that can be issued by a corporation. Any limitations or restrictions on any classes or series of capital stock must appear in the articles of incorporation or, if the articles of incorporation provide, in a board resolution authorizing the stock (*Ga. Code Ann. § 14-2-602*). However, before issuing any shares of a class or series, the corporation must file articles of amendment with the Georgia Secretary of State, which are effective without shareholder action. The board may also change the number of shares in a series and may amend the rights of unissued shares of the series by filing articles of amendment with the Secretary of State.

For the text of the Georgia Code, see the Georgia General Assembly *website*.

LIMITATIONS ON DIVIDENDS

12. 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, directors may declare and cause the corporation to make distributions to its shareholders out of cash, property or its own shares (*Ga. Code Ann. § 14-2-640(a)*). However, no distribution may be made if, after making the distribution, either:

- The corporation would not be able to pay its debts as they become due.
- The corporation's total assets would be less than the sum of:
 - its total liabilities; and
 - the amount that would be needed to satisfy preferential rights on dissolution.

(*Ga. Code Ann. § 14-2-640(c)*.)

A director who votes for or assents to an improper distribution is personally liable to the corporation for the amount that exceeds what could have been lawfully distributed (*Ga. Code Ann. § 14-2-832(a)*). Any director found liable for approving an improper distribution is entitled to contribution from every other director who could be held liable and from each shareholder who accepted the unlawful distribution with knowledge that the distribution was unlawful (*Ga. Code Ann. § 14-2-832(b)*).

For the text of the Georgia Code, see the Georgia General Assembly *website*.

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