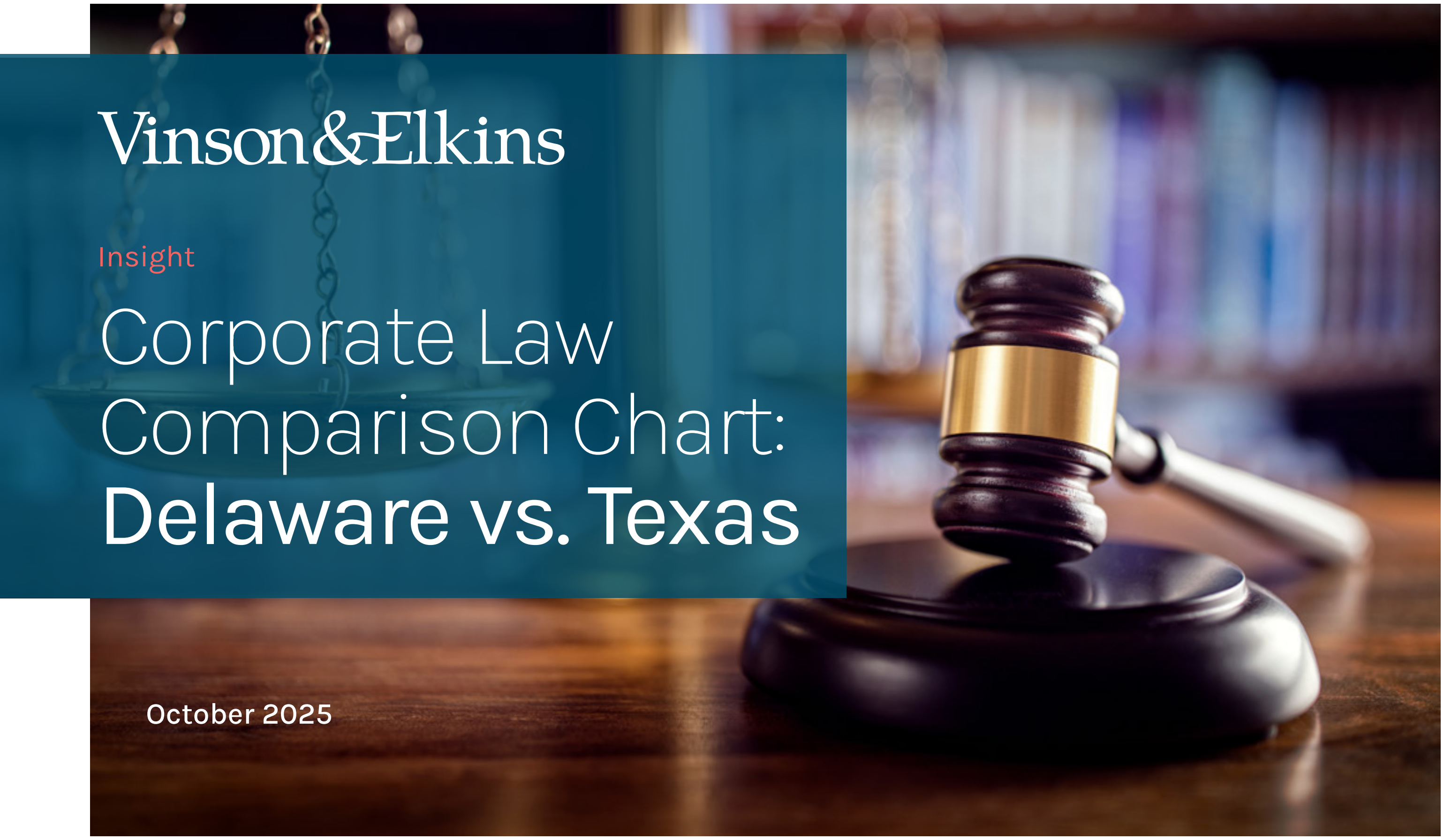


Vinson&Elkins

Insight

Corporate Law Comparison Chart: Delaware vs. Texas

October 2025

The following chart summarizes certain corporate matters affecting stockholders (including controlling stockholders), directors and officers under the corporate laws of Delaware and Texas as of September 2025. This survey focuses on the default statutory treatment of each topic, as such statutory framework has been supplemented through caselaw. This summary does not address the differences in costs, such as filing fees and taxes, resulting from incorporation in these States.

General

Delaware

Delaware is considered the leading corporate law jurisdiction in the United States of America because of the flexibility of its corporate laws, the expertise and quality of its judiciary and corporate bar, and the depth of its caselaw affecting corporate matters. More than half of U.S. publicly traded corporations are incorporated in Delaware, and typically about 80% to 90% of IPOs each year are companies incorporated in Delaware. However, Delaware has been subject to public criticism in recent years in response a number of judicial decisions that certain practitioners argued were overreaching. As discussed below, to address some of the criticisms regarding controlling stockholder transactions, Delaware recently amended Section 144 of the DGCL in March 2025 via Senate Bill 21 (“SB 21”).

Texas

Texas has recently received attention from a few high-profile redomicile (and attempted redomicile) transactions of companies from Delaware to Texas. Texas has a detailed corporate statute (the TBOC) that features some similarities and differences to Delaware’s DGCL, many of which are detailed below. In 2025, Texas significantly reformed the TBOC in an attempt to promote Texas as a preferred state of incorporation for both public and private companies. Among other benefits, the new amendments strengthen a Texas corporation’s defenses against meritless or nuisance lawsuits and provide greater certainty about the standard applied to actions taken by directors and officers when challenged in breach-of-duty lawsuits.

Judicial Review of Board Decisions & Codification of the Business Judgment Rule

Delaware

Delaware courts use three different standards of review when fiduciary decision making is challenged: the business judgment rule, enhanced scrutiny, and entire fairness. The business judgment rule – a standard deferential to fiduciaries – is the default standard used and protects board decisions from judicial second-guessing when the decision is informed, in good faith, and based on a belief that the action is in the company's best interest. The heightened standards of review of enhanced scrutiny and entire fairness apply based upon the specific facts/allegations underlying the dispute.

Texas

In May 2025, Texas codified the business judgment rule for public corporations and private corporations that opt into this provision by including in their governing documents a statement affirmatively electing to be governed by TBOC § 21.419. This new statute provides a rebuttal presumption that directors and officers of a covered corporation acted in good faith, on an informed basis, in furtherance of the corporation's interests, and in obedience to the law and the corporation's governing documents. The statute shields directors and officers from liability to the corporation and shareholders unless a claimant can rebut one of the four business-judgment presumptions, and allege a breach of duty, and allege (with heightened particularity) that the breach involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law. The codification of the business judgment presumption reinforces the significant deference afforded to directors and officers under Texas law. Moreover, no Texas court has applied a standard of review of board actions similar to Delaware's enhanced scrutiny or entire fairness, and the codification of the business judgment rule could make it less likely for these heightened standards of review to apply.

Derivative Litigation

Delaware

Stockholders must make a demand on the board before commencing derivative litigation, but they can bypass demand if they can adequately plead that demand would be futile because the directors are incapable of making an impartial decision regarding the demand. If a stockholder makes a pre-suit demand on the board that is denied, the board's refusal of that demand is generally reviewed under the business judgment rule and can be overridden by a Delaware court if the refusal was uninformed or in bad faith.

Further, any settlement or dismissal of a derivative suit requires court approval to ensure that the resolution is fair and reasonable to the corporation and its stockholders. Stockholders must be notified of any proposed settlement or dismissal, allowing them to object if they believe the terms are not in the corporation's best interest.

Texas

Texas limits derivative litigation in several major ways. TBOC §§ 21.553, 21.555, 21.556, 21.558. First, Texas requires a demand on the corporation (rather than Delaware's practice of pleading demand futility) and mandates a temporary stay of proceedings if the corporation chooses to investigate the matter. Second, the decision of independent and disinterested directors regarding the claim is binding on Texas courts. If a majority of a committee of independent and disinterested directors determines not to pursue the derivative claim, the plaintiff's challenge to that decision is limited to (1) facts relating to whether the directors making the decision are independent and disinterested; (2) the good faith of the inquiry and review; and (3) the reasonableness of the procedures followed by the person or group in conducting the review. Absent a problem in one of those areas, the decision of the independent and disinterested directors is binding on the court.

Notably, public corporations may adopt a minimum share ownership percentage for individual shareholders or groups of shareholders in order to institute or maintain a derivative proceeding. The threshold, set forth in a corporation's bylaws or certificate of formation, may not exceed three percent of a company's outstanding shares. Finally, court approval is generally not required for the discontinuance or settlement of a derivative proceeding. TBOC § 21.552.

Business Courts, Jury Trials, Exclusive Forum Provisions

Delaware

Delaware's judiciary is highly esteemed for its proficiency in corporate law and has repeatedly demonstrated that it is equipped to handle complex business disputes on an expedited timeline. The Delaware Court of Chancery and Supreme Court are highly respected and experienced business courts with an extensive body of caselaw. The trials in Delaware are held before expert corporate law judges without a jury. Delaware judges serve 12-year terms, are not elected, and are appointed and vetted through an extensive process (which ultimately results in an appointment from the Delaware governor).

The DGCL permits corporations to designate in their governing documents Delaware courts as the exclusive forum and venue for resolving internal entity claims (defined to include derivative claims, claims for breach of fiduciary duties, and other claims to which the DGCL grants the Court of Chancery jurisdiction).

Texas

Texas recently created its specialized Texas Business Court which has jurisdiction over internal affairs and governance matters of Texas entities. The Texas Business Court is already hearing cases but will need time to develop reputationally and build a body of caselaw that provides comparable levels of guidance to directors and officers as Delaware's. For reference, since the court's official launch in September 2024, just over 30 opinions have been released by the Texas Business Court, ranging in subject matters from jurisdictional challenges to fiduciary duties. The Texas Business Court judges are appointed by the Texas governor and serve two-year terms (though they may be re-appointed).

While Texas permits jury trials in corporate law cases, including i n the Texas Business Court, Texas corporations may amend their governing documents to waive the right to a jury trial for any internal entity claim (defined to include derivative claims and other claims that relate to the internal affairs of the corporation). TBOC § 2.116.

The TBOC permits corporations to designate in their governing documents a Texas court with jurisdiction over the matter, including the Texas Business Court, as the exclusive forum and venue for resolving internal entity claims. TBOC § 2.115

Controlling Stockholder Transactions

Delaware

There have been some recent significant opinions regarding the applicable standard of review of controlling stockholder transactions. Among these is the “TripAdvisor” opinion from February 2025, which involved a lawsuit in which minority stockholders alleged that TripAdvisor’s board of directors and controlling stockholder breached their fiduciary duties when they voted to redomicile the company in Nevada from Delaware. The Court of Chancery declined to dismiss the lawsuit after concluding that the entire fairness standard of review should apply to the redomicile decision, holding that potential insulation from litigation could conceivably confer a non-ratable benefit to the controller and directors. The Delaware Supreme Court reversed, holding that the business judgment rule (and its protective presumption) should apply.

According to the Supreme Court, the alleged benefit of the move (preventing unspecified future litigation and liabilities) was too speculative to warrant entire fairness review. The decision demonstrates that corporations can leave Delaware without probing judicial inquiries into the board’s business decision for doing so as long as the decision was not made to avoid any existing or threatened litigation or made in contemplation of another transaction.

In March 2025, the Delaware legislature passed SB 21, which established safeguards for controlling stockholder transactions that, if met, insulate directors and officers from equitable relief and damages awards based on alleged breaches of fiduciary duties. Specifically, DGCL § 144(b) provides a statutory safe harbor for acts or transactions involving a controlling stockholder (other than going private transactions) in which:

- the transaction is approved by a majority of disinterested directors serving on a committee in good faith and without gross negligence, where the committee is made up of at least two disinterested directors, has the express authority to negotiate and to reject the transaction, and all material facts about the transaction are disclosed to the committee; or
- the transaction is conditioned, at the time it is submitted to stockholders for their approval or ratification, on the approval of, or ratification by, disinterested stockholders, and is approved or ratified by an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders; or
- the transaction is fair as to the corporation and its stockholders.

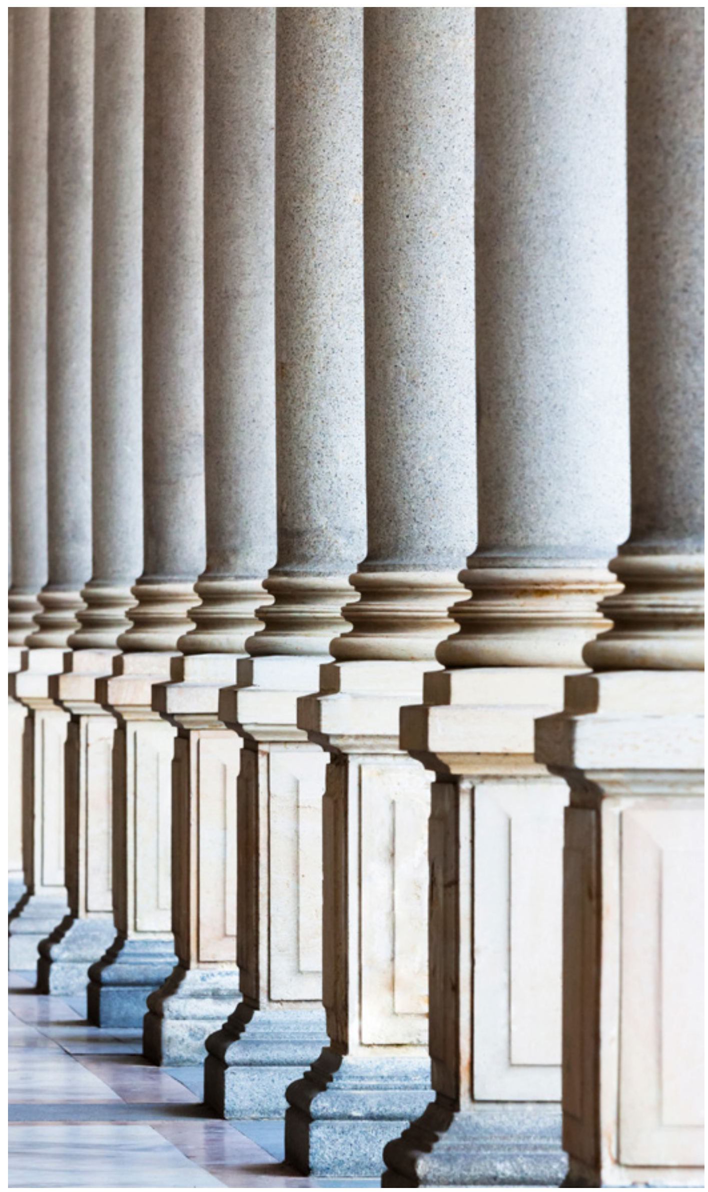
DGCL § 144(c) provides a safe harbor for going private transactions involving a controlling stockholder in which:

- there is both approval by a committee of at least two disinterested directors as described in DGCL § 144(b)(1) AND approval or ratification by an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders as described in DGCL § 144(b)(2); or
- the transaction is fair as to the corporation and its stockholders.

Texas

The TBOC authorizes the board of directors of public Texas corporations, as well as private Texas corporations that elect into the codified business judgment rule, to form a committee of independent and disinterested directors to review and approve transactions with a controlling shareholder, director or officer. Those corporations may also seek an advance judicial determination that the directors on the committee are independent and disinterested with respect to those transactions, which could be used as a potential tool to curb litigation. TBOC §§ 21.416, 21.4161.

While there are some minor differences, the primary approach to controlling shareholder transactions and the relative statutory safeguards in both Delaware and Texas are very similar. Both states have statutes that defer to the decision of an independent and disinterested committee.



Standard for Qualifying as a Disinterested Director

Delaware

Under DGCL § 144, a director is "disinterested" if they (1) are not a party to the act or transaction at issue, (2) do not derive any personal benefit from the act or transaction that is separate and distinct from any benefit that the corporation or all stockholders receive and (3) do not have a material relationship with a person that has a material interest in the act or transaction.

- "Material interest" means an actual or potential benefit, including the avoidance of a detriment, other than one which would devolve on the corporation or the stockholders generally, that, in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue.
- "Material relationship" means a familial, financial, professional, employment, or other relationship that, in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the negotiation, authorization, or approval of the act or transaction at issue.

Texas

Under TBOC § 1.003, a director will qualify as a "disinterested" as long as they are not a party to the contract or transaction, materially involved in the conduct that is subject to challenge, or have a material financial interest in the outcome of the contract or transaction.

However, a director does not have a material interest or material financial interest in a matter solely because they:

- were elected or nominated by someone who has an interest in the matter or is alleged to have an interest;
- receive normal fees or customary compensation, reimbursement for expenses, or benefits as a governing person of the corporation;
- have a direct or indirect equity interest in the entity;
- receive ordinary and reasonable compensation for reviewing and making recommendations on the disposition of the issue at hand;
- are named in the case as a defendant; or
- voted to approve or acquiesced to the act being challenged.

A material interest also does not arise merely because the entity has, or its subsidiaries have, an interest in the contract or transaction at issue.

Notably, the TBOC lists fewer items that lead to a finding that a director is interested than the DGCL. As a result, disinterested status is more readily met and protected in court in Texas than in Delaware.

Proxy Advisor Rules

Delaware

No special laws governing the voting recommendations of proxy advisors, such as ISS and Glass Lewis.

Texas

Texas SB 2337, which took effect September 1, 2025, requires significant disclosure obligations for proxy advisors, such as ISS and Glass Lewis, for their voting recommendations for Texas-based corporate issuers. If proxy advisors rely on nonpecuniary factors, such as environmental, social, and governance topics, to make certain disclosures about their voting recommendation, they must explain "with particularity, the basis of [their] advice … and that the advice subordinates the financial interests of shareholders to other objectives, including sacrificing investment returns or undertaking additional investment risk."

SB 2337 applies to corporations both incorporated and headquartered in Texas.

Shareholder Proposals

Delaware

In Delaware, shareholder proposal limitations are generally addressed in the corporation's bylaws.

Under federal law, to submit a shareholder proposal, Rule 14a-8 of the Securities Exchange Act of 1934 requires only that the shareholder proponent must have continuously held: (A) at least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or (B) at least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or (C) at least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Texas

For public corporations that either have their principal office in Texas or are listed on a Texas stock exchange that opt into this provision, shareholder proposals may only be submitted by shareholders who meet the following criteria:

- hold at least $1 million in market value or three percent of the corporation's shares entitled to vote on the proposal;
- have held such shares continuously for six months prior to the shareholder meeting; and
- solicit the holders of shares representing at least sixty-seven percent of the voting power of shares entitled to vote on the proposal.

Qualifying corporations may opt into this provision by amending their governing documents and providing notice to shareholders in their proxy statement. TBOC § 21.373.

Importantly, the criteria requirements of Texas' shareholder proposal law are more stringent than that of Rule 14a-8. Qualifying corporations that opt into this provision will enjoy greater protection from shareholder proposals than what federal law provides.

Special Meetings

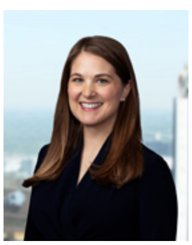
Delaware

Stockholders do not have a statutory right to call special meetings under the DGCL. However, the corporation's certificate of incorporation or bylaws may grant this right.

Texas

Under TBOC § 21.352, stockholders have a statutory right to call a special meeting. Specifically, the certificate of formation may set out the percentage of shares (not to exceed 50% of the shares entitled to vote) required to call the special meeting. If no percentage is specified, at least 10% of shares entitled to vote must call for the special meeting.

Key Contacts



Katherine Terrell Frank
Partner

Capital Markets and Mergers & Acquisitions +1.214.220.7869
kfrank@velaw.com

Meredith Jeanes Lyons
Partner

Litigation
+1.214.220.7763
mlyons@velaw.com

Vinson & Elkins LLP Attorneys at Law Austin Dallas Denver Dubai Dublin
Houston London Los Angeles New York Richmond San Francisco Tokyo Washington

velaw.com

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