

§854. Advance for expenses

1. Conditions. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors, if the individual delivers to the corporation:

A. A signed written affirmation of the individual's good faith belief that the individual has met the relevant standard of conduct described in section 852, subsection 1 or that the proceeding involves conduct for which liability has been eliminated under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph D; and [PL 2011, c. 274, §33 (AMD).]

B. The individual's signed written undertaking to repay any funds advanced if the individual is not entitled to mandatory indemnification under section 853 and it is ultimately determined under section 855 or 856 that the individual has not met the relevant standard of conduct described in section 852. [PL 2011, c. 274, §33 (AMD).]

[PL 2011, c. 274, §33 (AMD).]

2. Repayment obligation. The undertaking required by subsection 1, paragraph B must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

[PL 2003, c. 344, Pt. B, §68 (AMD).]

3. Authorization process. Authorizations under this section may be made:

A. By the corporation's board of directors:

(1) If there are 2 or more qualified directors, by a majority vote of all the qualified directors, a majority of whom for this purpose constitutes a quorum, or by a majority of the members of a committee of 2 or more qualified directors appointed by a majority vote of all the qualified directors; or

(2) If there are fewer than 2 qualified directors, by the vote necessary for action by the corporation's board of directors in accordance with section 825, subsection 3, in which authorization directors who do not qualify as qualified directors may participate; or [PL 2007, c. 289, §24 (AMD).]

B. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization. [PL 2007, c. 289, §24 (AMD).]

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SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B68 (AMD). PL 2007, c. 289, §§23, 24 (AMD). PL 2011, c. 274, §33 (AMD).

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