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Corporation Law: South Carolina

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A Q&A guide to for-profit corporation law in South Carolina. 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

Incorporators must file articles of incorporation with the South Carolina secretary of state (SCSOS) (S.C. Code Ann. § 33-2-101). Any person may act as the incorporator of a corporation, but articles of incorporation must include a certification by an attorney licensed to practice in South Carolina that the articles of incorporation comply with S.C. Code Ann. § 33-2-102 (S.C. Code Ann. § 33-2-102(a)(6)). The articles of incorporation must also set out:

- A corporate name.
- The number of shares the corporation is authorized to issue, itemized by classes.
- The street address of the corporation's initial registered office and the name of the initial registered agent of the office.
- The name and address of each incorporator.
- The signature of each incorporator.

(S.C. Code Ann. § 33-2-102(a).)

The articles of incorporation may set out:

- The names and addresses of the initial directors.
- Provisions not inconsistent with the law concerning:
  - the corporation's purpose;
  - managing the business and regulating the corporation's affairs;
  - defining, limiting, and regulating the corporation's powers, its board of directors, and shareholders;
  - a par value for authorized shares or classes of shares; and
  - the imposition of personal liability on shareholders for the corporation's debts (to a specified extent and under specified conditions).
- Any provision required or permitted to be stated in the corporation's bylaws.

(S.C. Code Ann. § 33-2-102(b).)

Form articles of incorporation and other business registration forms can be found on the SCSOS website.

Initial Annual Report of Corporations on Form CL-1

The articles of incorporation must be accompanied by:

- The corporation's initial annual report on South Carolina Department of Revenue (SCDOR) Form CL-1.
- A minimum license fee.

(S.C. Code Ann. §§ 12-20-40 and 33-2-102(d).)

Bylaws

Customarily, the board of directors, or occasionally the incorporator, adopts bylaws containing provisions regarding the management of the business and the regulation of the corporation's affairs (S.C. Code Ann. § 33-2-106).

The bylaws of the corporation customarily address:

- The location of the corporation's principal offices or other locations.
- Rights of shareholders.
- Meetings of shareholders.
- Powers of directors.
- Number, qualifications, election, and terms of directors.
- Officers of the corporation.

A corporation is not required to file its bylaws with the SCSOS but should maintain them at its principal executive office.

Corporate Actions

Unless the articles of incorporation state a delayed effective date, corporate existence begins when the articles of incorporation are filed (S.C. Code Ann. § 33-2-103(a)). After incorporation, if the initial directors are named in the articles of incorporation, the initial directors must hold an organizational meeting or act by written consent to:

- Appoint officers.
- Adopt bylaws.
- Carry on any other necessary business.

(S.C. Code Ann. § 33-2-105(a)(1), (b).)

If the initial directors are not named in the articles of incorporation, then the incorporator must hold an organizational meeting or act by written consent to either:

- Elect directors and complete the organization of the corporation.
- Elect a board of directors who must complete the corporation's organization.

(S.C. Code Ann. § 33-2-105(a)(2).)

An organizational meeting may be held inside or outside of South Carolina (S.C. Code Ann. § 33-2-105(c)).

Name Requirements and Reservation Options

Naming a South Carolina Corporation

The name of a South Carolina corporation must contain one of the following as a separate word or abbreviation:

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

(S.C. Code Ann. § 33-4-101(a)(1).)

The following entities are exempt from including the above words or abbreviations in their names:

- Banks.
- Savings and loan associations.
- Building and loan associations.
- Insurance companies.
- Public utilities.
- Railroads.
- Nonprofit corporations.
- Corporations organized before January 1, 1964, that meet certain requirements.
- Professional corporations (S.C. Code Ann. §§ 33-19-101 to 33-19-700).

(S.C. Code Ann. § 33-4-101(f).)

The name may not state or imply that the corporation is organized for:

- A purpose other than the purpose stated in the articles of incorporation.
- An illegal or otherwise prohibited purpose.

(S.C. Code Ann. § 33-4-101(a)(2).)

With certain exceptions, the name must be sufficiently distinctive so that it may be distinguished from:

- Other domestic corporations, not-for-profit corporations, and limited partnerships.
- Official or fictitious names of foreign corporations qualified to transact business in South Carolina.
- Reserved names.
- Registered names.

(S.C. Code Ann. § 33-4-101(b).)

A corporation may use a name that is indistinguishable from that of another corporation if either:

- The corporation currently having the name:
  - consents to the use in writing; and
  - submits a satisfactory undertaking with the SCSOS that declares a change of its name to a distinguishable name.
- The applicant delivers to the SCSOS a certified copy of a final judgment from a court of competent jurisdiction establishing the applicant's right to use the name.

(S.C. Code Ann. § 33-4-101(c).)

Name Reservations

A person may reserve a name by delivering an application to the SCSOS for filing. The application must include:

- The name and address of the applicant.
- The proposed name to be reserved.

(S.C. Code Ann. § 33-4-102(a).)

If the name is available, the SCSOS reserves it for a non-renewable 120-day period. An applicant may also register the name of a foreign corporation and reserve a fictitious name for a foreign corporation whose corporate name is not available (S.C. Code Ann. § 33-4-102(a).)

Reserved names may be transferred to another person by filing a signed notice with the SCSOS that states the name and address of the transferee (S.C. Code Ann. § 33-4-102(b)).

Filing Requirements

The articles of incorporation and initial annual report of the corporation must be filed in duplicate with the SCSOS (S.C. Code Ann. § 33-1-200(i)). A total payment of $135 must be submitted to the SCSOS with the articles of incorporation and initial annual report of the corporation, which includes:

- A $10 filing fee for the articles of incorporation (S.C. Code Ann. § 33-1-220(a)(1)).
- A $25 filing fee for the initial annual report of the corporation (S.C. Code Ann. § 33-1-220(a)(23); see SCDOR: Initial Annual Report of Corporations). The SCSOS will later remit the $25 payment to the SCDOR.
- $100 in taxes for the articles of incorporation (S.C. Code Ann. § 33-1-220(d)(1)).

The articles of incorporation and initial annual report must be executed by an incorporator (S.C. Code Ann. § 33-1-200(f)). The articles of incorporation must be certified by an attorney licensed to practice law in South Carolina (S.C. Code Ann. § 33-2-102(a)(6)). A document accepted for filing by the SCSOS is effective on the date it is filed, as evidenced by the SCSOS's date and time endorsement (S.C. Code Ann. § 33-1-230(a)). The organizational documents may be filed electronically on the South Carolina Business One Stop website. The online filing process is generally completed within 24 hours.

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 was initially intended to be broad. FinCEN has since issued an interim final rule (IFR), effective March 26, 2025, which:

- Narrows the applicability of the CTA to only foreign entities.
- Exempts US entities and US persons from the requirement to report BOI to FinCEN.

For more information see, Legal Update, FinCEN Issues Interim Final Rule Amending Definition of Reporting Company Under the Corporate Transparency Act (CTA). On December 16, 2025, the U.S. Court of Appeals for the Eleventh Circuit upheld the constitutionality of the CTA, though the IFR exempting domestic entities remain in effect. FinCEN intends to issue a final rule in 2026.

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?

All South Carolina corporations and corporations qualified to do business in South Carolina must file an annual report (S.C. Code Ann. §§ 33-16-220 and 12-20-20(A)). The annual report must be filed on or before the 15th day of the fourth month following the close of the taxable year (S.C. Code Ann.§ 12-20-20(B)). In certain instances, for good cause, an extension for filing the annual report may be granted (S.C. Code Ann. § 12-20-20(C)). A corporation's initial annual report must be filed when the corporation files its articles of incorporation. For subsequent years, the corporate income tax return and the annual report are combined into one form.

The annual report must include the following information:

- The corporation's name.
- The state or country of incorporation.
- The address of the registered office in South Carolina.
- The name of the registered agent in South Carolina.
- The address of the corporation's principal office.
- The names and business addresses of the directors and principal officers.
- A brief description of the nature of the business.
- The total number of authorized shares of stock, itemized by class and series, if any, within each class.
- The total number of issued and outstanding shares of stock, itemized by class and series, if any, within each class.

(S.C. Code Ann. § 12-20-30(A).)

Corporations must also pay an annual license fee of $15 plus one dollar for each $1,000, or fraction of $1,000, of capital stock and paid-in or capital surplus of the corporation, as shown by the records of the corporation on the first day of the taxable year in which the annual report is filed. The minimum license fee is $25 and is due on or before the original due date for filing the annual report. (S.C. Code Ann. § 12-20-50.) An extension of time for filing the annual report does not extend the time for paying the license fee (S.C. Code Ann. § 12-20-20(c)).

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

Preliminary Requirements

Meeting Location

A South Carolina corporation must either:

- Hold an annual meeting to elect directors at a time and place stated in or fixed according to the bylaws.
- Take action by unanimous written consent.

(S.C. Code Ann. § 33-7-101(a).)

Shareholder meetings may be held either inside or outside of South Carolina. If no meeting place is stated in or fixed according to the bylaws, the meeting must be held at the corporation's principal office. (S.C. Code Ann. §§ 33-7-101(b) and 33-7-102(c).)

Shareholders and proxy holders not physically present at annual or special meetings may participate and vote by remote communication if authorized by the board of directors (S.C. Code Ann. §§ 33-7-101(d) and 33-7-102(e); see Proxy Voting).

Notice to Shareholders

The corporation must send notice of the annual meeting to its shareholders:

- Including the date, time, and place of the meeting.
- At least ten and not more than 60 days before the meeting date.

(S.C. Code Ann. § 33-7-105(a).)

Any shareholder may waive the required notice. The waiver must be:

- In writing.
- Signed by the shareholder entitled to the notice.
- Delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(S.C. Code Ann. § 33-7-106(a).)

A shareholder's attendance at the annual meeting waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting (S.C. Code Ann. § 33-7-106(b)(1)).

Record Date

The bylaws may fix or provide the manner of fixing the record date for one or more voting groups to determine which shareholders are entitled to:

- Notice of a shareholders' meeting.
- Demand a special meeting.
- Vote.
- Take any other action.

(S.C. Code Ann. § 33-7-107(a).)

If the bylaws do not fix or provide the manner of fixing the record date, the corporation's board of directors may fix a future date as the record date (S.C. Code Ann. § 33-7-107(a)).

The record date may not be more than 70 days before the meeting or action requiring a determination of shareholders (S.C. Code Ann. § 33-7-107(b)). If no record date is specifically set by the board or the bylaws, the record date is the day before notice is first delivered to shareholders (S.C. Code Ann. § 33-7-105(d)).

Quorum

The shares entitled to vote as a separate voting group may act on a matter at a meeting only if a quorum of those shares exists regarding that matter. Unless the articles of incorporation or South Carolina law provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitute a quorum of that voting group for action on that matter. (S.C. Code Ann. § 33-7-250(a).)

Failure to Hold Annual Meeting

Failure to hold an annual meeting according to the corporation's bylaws does not affect the validity of any corporate action (S.C. Code Ann. § 33-7-101(c)). However, a court may order that an annual meeting be held if, on application of any shareholder entitled to participate in an annual meeting, the court determines that an annual meeting was not held within the earlier of either:

- Nine months after the end of the corporation's fiscal year.
- Eighteen months after its last annual meeting.

(S.C. Code Ann. § 33-7-103.)

Voting and Approval

Shares Entitled to Vote

In South Carolina, the general rule is that, if a quorum is present, action on a matter (other than the election of directors) will be approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action (S.C. Code Ann. § 33-7-250(c)).

Unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting (S.C. Code Ann. § 33-7-210(a)).

However, the following exceptions apply:

- Absent special circumstances, the shares of a corporation are not entitled to vote if they are directly or indirectly owned by a second domestic or foreign corporation and the first corporation directly or indirectly owns a majority of the shares entitled to vote for directors of the second corporation. This does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- Redeemable shares are not entitled to vote after:
  - notice of redemption is mailed to the holders; and
  - a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(S.C. Code Ann. § 33-7-210(b), (c), and (d).)

Voting for Directors

Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. Shareholders may cumulate their votes for directors unless the articles of incorporation provide otherwise. The articles of incorporation may modify these voting rules. (S.C. Code Ann. § 33-7-280.)

Proxy Voting

A shareholder may vote their shares in person or by proxy. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the secretary or other officer or agent authorized to tabulate votes. (S.C. Code Ann. § 33-7-220(a), (c).)

The appointment is valid for eleven months unless otherwise provided in the appointment form (S.C. Code Ann. § 33-7-220(c)).

An appointment of a proxy is revocable unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointee is either:

- A pledgee.
- A person who purchased or agreed to purchase the shares.
- A creditor of the corporation who extended credit under terms requiring the appointment.
- An employee of the corporation whose employment contract requires the appointment.
- A party to a voting agreement created under S.C. Code Ann. § 33-7-310.

(S.C. Code Ann. § 33-7-220(d).)

A shareholder may revoke their proxy by any of the following means:

- Attending the meeting and voting in person.
- Signing and delivering a writing revoking the proxy.
- Issuing a new appointment form.

(S.C. Code Ann. § 33-7-220, cmt. 3.)

Both state and federal law govern proxy solicitations. In South Carolina, both written and oral proxy solicitations must not:

- Make false or misleading statements regarding a material fact.
- Omit material facts to make the statements made not false or misleading.

(S.C. Code Ann. § 33-7-220(i).)

Shareholders and proxy holders not physically present at an annual or special meeting may participate and vote by remote communication when authorized by the board of directors, if the corporation:

- Implements measures to verify that persons present and permitted to vote are either shareholders or proxy holders.
- Implements reasonable measures to allow shareholders or proxy holders to participate in the meeting and vote on matters submitted to the shareholders, including an opportunity to:
  - communicate; and
  - read or hear the proceedings substantially concurrently.
- Maintains a record of the shareholder or proxy holder votes or other action.

(S.C. Code Ann. §§ 33-7-101(d) and 33-7-102(e).)

Other Requirements

Ability to Raise Matters at a Meeting

Unless South Carolina law or the articles of incorporation require otherwise, notice of an annual meeting does not need to include a description of the purpose or purposes for which the meeting is called (S.C. Code Ann. § 33-7-105(b)).

Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called (S.C. Code Ann. § 33-7-105(c)).

Shareholders' Lists

After fixing a record date for a meeting, a corporation must prepare a list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must both:

- Be arranged by voting group, and by class or series of shares within each voting group.
- Show the address of and number of shares held by each shareholder.

(S.C. Code Ann. § 33-7-200(a).)

The shareholders' list must be available for inspection by any shareholder:

- Within two business days after notice of the meeting is given and continuing through the meeting.
- At the corporation's principal office or a place identified in the meeting notice in the city where the meeting will be held.

(S.C. Code Ann. § 33-7-200, cmt. 1.)

A shareholder, their agent, or attorney is entitled on written demand to inspect and copy the list (subject to S.C. Code Ann. § 33-16-102(c)) during regular business hours and at their expense, during the period it is available for inspection (S.C. Code Ann. § 33-7-200(b)).

The corporation must also make the shareholders' list available at the meeting, and any shareholder, their agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment (S.C. Code Ann. § 33-7-200(c)).

Refusal or failure to prepare or make the shareholders' list available does not affect the validity of action taken at the meeting (S.C. Code Ann. § 33-7-200(e)).

If a corporation wrongfully refuses to tender a list of shareholders, the shareholder, their agent, or attorney may petition the circuit court of the county where the corporation has its principal place of business. The court may order inspection and copying and, if necessary, postpone the meeting for a reasonable time. (S.C. Code Ann. § 33-7-200(d).)

Action by Written Consent

Action required or permitted by South Carolina law to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents:

- Describing the action taken.
- Signed by all the shareholders entitled to vote on the action.
- Delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(S.C. Code Ann. § 33-7-104(a).)

Shareholder proposals for publicly traded corporations incorporated in South Carolina are also governed by Rule 14a-8 under the 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 for-profit corporation incorporated under a jurisdiction other than South Carolina is a foreign corporation (S.C. Code Ann. § 33-1-400(12)). A foreign corporation must have a certificate of authority from the South Carolina secretary of state (SCSOS) before transacting business in South Carolina (S.C. Code Ann. § 33-15-101(a)). South Carolina defines "transacting business" by providing in S.C. Code Ann. § 33-15-101 a non-exhaustive list of activities that do **not** constitute transacting business in South Carolina, including:

- Maintaining, defending, or settling a proceeding.
- Carrying on internal corporate activities, such as board or shareholder meetings.
- Maintaining bank accounts.
- Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories regarding those securities.
- Selling through independent contractors.
- Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside South Carolina before they become contracts.
- Creating or acquiring any indebtedness, mortgages, or security interests in real or personal property.
- Securing or collecting debts or enforcing mortgages, security interests, or other rights in property securing debts.

- Owning, without more, real or personal property.
- Conducting an isolated transaction that is:
  - completed within 30 days; and
  - not one in the course of repeated similar transactions.
- Transacting business in interstate commerce.
- Owning a subsidiary corporation or limited liability company organized in or lawfully transacting business in South Carolina.

(S.C. Code Ann. § 33-15-101(b).)

Filing Requirements

Registration Documents

An application for a certificate of authority must be submitted to the SCSOS and include the following:

- The name of the foreign corporation or, if unavailable, a fictitious name (S.C. Code Ann. § 33-15-106).
- The name of the state or country under whose law the corporation is incorporated.
- The date of incorporation and period of duration.
- The street address of the principal office.
- The address of the proposed registered office in South Carolina and the name of the proposed registered agent at that office.
- The names and usual business addresses of its current directors and officers.
- A statement of the aggregate number of shares the corporation has authority to issue (itemized by class and series, if any).

(S.C. Code Ann. § 33-15-103(a).)

The foreign corporation must also include with its application:

- Its initial annual report.
- A duly authenticated certificate of existence (or a similar document).
- The board resolution authorizing the use of a fictitious name if necessary (see Name Requirements).
- The appropriate filing fee (see Fees).

(S.C. Code Ann. § 33-15-103(b), (c).)

The foreign corporation must obtain an amended certificate of authority from the SCSOS if it changes any of the following:

- The corporate name.
- The period of duration.
- The state or country of incorporation.

(S.C. Code Ann. § 33-15-104.)

A form application for a certificate of authority is provided on the SCSOS website.

Annual Report

Foreign corporations must file an annual report and pay an annual license fee (see Question 2).

Fees

A total payment of $135 must be submitted to the SCSOS with the application for a certificate of authority and initial annual report of the corporation, which includes:

- A $10 filing fee for the certificate of authority (S.C. Code Ann. § 33-1-220(a)(19)).
- A $25 filing fee for the initial annual report of the corporation (S.C. Code Ann. § 33-1-220(a)(23); see South Carolina Department of Revenue (SCDOR): Initial Annual Report of Corporations). The SCSOS will later remit this $25 payment to the SCDOR.
- $100 in taxes for the application for a certificate of authority (S.C. Code Ann. § 33-1-220(d)(4)).

An application for a certificate of authority may be filed electronically on the South Carolina Business One Stop website. The online filing process is generally completed within 24 hours.

Name Requirements

The name of a foreign corporation must satisfy the same requirements imposed on domestic corporations (see Question 1: Name Requirements and Reservation Options). This includes the requirement that, with certain exceptions, the foreign corporation's name be distinguishable on the records from the names of other domestic and foreign corporations registered with the SCSOS. (S.C. Code Ann. § 33-15-106.) If the foreign corporation's name does not satisfy these requirements, then the foreign corporation must either:

- Use a fictitious name that complies with the requirements.
- Add one of, or an abbreviation of, the following to its existing name to satisfy the requirements:
  - corporation;
  - incorporated;
  - company; or
  - limited.

(S.C. Code Ann. § 33-15-106(a).)

Fiduciary Duties

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

Directors

The directors of South Carolina corporations owe fiduciary duties to the corporation itself and to its shareholders and must perform their duties as a director:

- In good faith.
- With the care an ordinarily prudent person in a like position would use under similar circumstances (a duty of care).
- In a manner the director reasonably believes to be in the best interest of the corporation and its shareholders (a duty of loyalty).

(S.C. Code Ann. § 33-8-300(a).)

In discharging their duties, a director may rely in good faith on information, opinions, reports, and statements, including financial statements and other financial data, if prepared or presented by:

- Officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.
- Legal counsel, public accountants, investment bankers, or others on matters the director reasonably believes to be within the person's professional or expert 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.

However, if the director has knowledge concerning a matter in question that makes reliance on this information unwarranted, they cannot rely on it in good faith. (S.C. Code Ann. § 33-8-300(b), (c).)

A director is not liable for any action taken as a director, or any failure to take any action, if they discharged the duties of their office to comply with their fiduciary duties. A director may be personally liable if they fail to carry out their fiduciary duties. (S.C. Code Ann. § 33-8-300(d).)

Duty of Care

A director must use the level of care that an ordinarily prudent person would use (S.C. Code Ann. § 33-8-300(a)(2)). This label does not require a specific degree or certificate, but rather focuses on basic director attributes of:

- Common sense.
- Practical wisdom.
- Informed judgment.

The level of care expected is that of someone in a like position and under similar circumstances, which recognizes that there are varying factors to determine the amount of care required, for example:

- The information known at the time of the decision.
- Management responsibilities.
- The size, complexity, urgency, and location of activities carried on by the corporation.

Although the amount of information known to the director is considered, the director still has a duty of care to take necessary steps to gather information pertinent to the decision. (S.C. Code Ann. § 33-8-300, Official Comments.) Therefore, lack of information may not always justify a poor decision.

Duty of Loyalty

A director must always act in good faith for the benefit and best interests of the corporation and its shareholders, rather than in the director's own self-interest. Conflicts of interest arise in transactions with the corporation in which a director of the corporation has a direct or indirect interest (S.C. Code Ann. § 33-8-310(a)). A conflict-of-interest transaction is not voidable solely based on the director's interest if any of the following is true:

- The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee, and the board or committee authorized, approved, or ratified the transaction.
- The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote, and the shareholders authorized, approved, or ratified the transaction.
- The transaction was fair to the corporation.

(S.C. Code Ann. § 33-8-310(a).)

If the transaction was approved by the board, a committee, or the shareholders, the burden of proving the unfairness of the transaction is on the party claiming unfairness. Otherwise, the party seeking to uphold a conflict-of-interest transaction has the burden of proving that the transaction was fair. (S.C. Code Ann. § 33-8-310(a).) However, a director has a duty to disclose all conflicts of interest related to the corporation's transactions (*In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 197, n. 45 (Bankr. D.S.C. 2014)).

Officers

Officers have the same duties and are held to the same standards of conduct as directors (S.C. Code Ann. § 33-8-420; see Directors). This is true even if they do not hold a formal office and are de facto officers (*In re Congaree Triton Acquisitions, LLC*, 512 B.R. 578, 583 (Bankr. D.S.C. 2014)).

Mergers

6. What is required to complete a 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).

In South Carolina, a corporation may merge with or into:

- Another corporation.
- A nonprofit corporation, in some circumstances.
- A limited liability company.
- A partnership.
- A limited partnership.

(S.C. Code Ann. § 33-11-101(a).)

Mergers are customarily accomplished through and memorialized by a merger agreement.

Documents

The board of directors of each corporation party to the merger must:

- Submit to each corporation's shareholders a plan of merger for approval.
- File the plan of merger with the South Carolina secretary of state (SCSOS).

(S.C. Code Ann. §§ 33-11-103 and 33-11-105.)

The plan of merger must include all of the following:

- The name of each entity planning to merge and the name of the surviving entity into which each entity plans to merge.
- The terms and conditions of the merger.
- The manner and basis of converting the shares of each business corporation into:
  - shares, obligations, other securities, or membership interests of the surviving entity; or
  - cash or other property in whole or part.

(S.C. Code Ann. § 33-11-101(b).)

When applicable, the plan of merger must also include:

- Amendments to:
  - the articles of incorporation;
  - the articles of organization;
  - the partnership agreement; or
  - the certificate of partnership of the surviving entity.
- Other provisions relating to the merger.

(S.C. Code Ann. § 33-11-101(c).)

Board and Shareholder Actions

The board of directors of each corporation party to the merger must adopt the plan of merger. Following the adoption:

- The board of directors of each corporation must submit the merger plan to the shareholders for approval. The board of directors must recommend the plan of merger to the shareholders unless the board of directors:
  - determines it should make no recommendations because of conflict of interest or other special circumstances; and
  - communicates the basis for its determination to the shareholders with the plan.
- The shareholders entitled to vote must approve the plan.

(S.C. Code Ann. § 33-11-103(a), (b).)

The board may condition its submission of the proposed merger on any basis (S.C. Code Ann. § 33-11-103(c)).

The board must provide notice to each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting at which the merger is to be considered. The notice must include:

- A copy or summary of the plan of merger.
- Notice of dissenters' rights (S.C. Code Ann. § 33-13-200(a)).
- Balance sheets of each corporation participating in the merger for the preceding two fiscal years.
- Income statements of each corporation for the preceding three fiscal years.

(S.C. Code Ann. § 33-11-103(d).)

Unless South Carolina law or the articles of incorporation require a different vote, or the board of directors requires a greater vote, for the plan of merger to be adopted, approval must be obtained from at least two-thirds of:

- All the votes entitled to be cast on the plan, regardless of the class or voting group to which the shares belong.
- The votes entitled to be cast on the plan within each voting group entitled to vote as a separate voting group on the plan.

(S.C. Code Ann. § 33-11-103(e).)

The articles of incorporation may require a lower or higher vote for approval, but the required vote must be at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote separately on the plan (S.C. Code Ann. § 33-11-103(f)).

Generally, depending on the specific circumstances of the contemplated merger, the plan of merger does not require the approval of the shareholders of the surviving corporation (S.C. Code Ann. § 33-11-103(h)).

Filing Requirements

After the shareholders approve a merger plan, the surviving or acquiring entity must deliver articles of merger to the SCSOS for filing, including:

- The plan of merger.
- If shareholder approval was not required, a statement to that effect.
- If shareholder approval of one or more corporations' party to the merger was required:
  - the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan for each corporation; and
  - the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(S.C. Code Ann. § 33-11-105(a).)

A merger takes effect on the effective date of the articles of merger (S.C. Code Ann. § 33-11-105(b)).

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).

Appraisal Rights

Appraisal rights refer to a dissenter's rights to obtain a judicial appraisal and payment for their shares. South Carolina corporation law avoids the term "appraisal rights" altogether and encourages dissenters to receive fair value before seeking judicial appraisal (S.C. Code Ann. §§ 33-13-101 and 33-13-300(a)).

In South Carolina, a shareholder of a private company is entitled to dissent from and obtain payment for the fair value of their shares if in the event of a consummation of a plan of merger to which the corporation is a party either:

- Shareholder approval is required for the merger and the shareholder is entitled to vote on the merger.
- The corporation is a subsidiary that is merged with its parent, or the corporation is a parent that is merged with its subsidiary.

(S.C. Code Ann. § 33-13-102.)

A shareholder who wishes to assert dissenters' rights:

- Must give to the corporation, before the vote is taken, written notice of their intent to demand payment for their shares if the merger is effectuated.
- Must not vote their shares in favor of the merger.

(S.C. Code Ann. § 33-13-210.)

If a merger creating dissenters' rights is authorized at a shareholders' meeting, the corporation must deliver a written dissenters' notice containing certain information to all shareholders who satisfied the requirements of S.C. Code Ann. § 33-13-210(a) (S.C. Code Ann. § 33-13-220).

A shareholder sent a dissenters' notice under S.C. Code Ann. § 33-13-220 must:

- Demand payment.
- Certify whether they (or the beneficial shareholder on whose behalf they are asserting dissenters' rights) acquired beneficial ownership of the shares before the date set out in the dissenters' notice (S.C. Code Ann. § 33-13-220(b)(3)).
- Deposit their certificates according to the terms of the notice.

(S.C. Code Ann. § 33-13-230.)

If a demand for additional payment under S.C. Code Ann. § 33-13-280 remains unsettled, the corporation may, within 60 days after receiving the demand for additional payment, seek judicial appraisal of the fair value of the shares and accrued interest (S.C. Code Ann. § 33-13-300(a)).

Asset Sales

7. 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

No specific documents are required for asset sales in South Carolina. Generally, a buyer and seller enter into an asset purchase agreement that describes:

- The assets being sold.
- Any liabilities that are being assumed.
- The purchase price.
- Representations and warranties of the buyer and seller.
- Indemnification and certain other obligations of the parties.

Board Actions

A corporation may sell all or substantially all of its assets in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors (S.C. Code Ann. § 33-12-101(a)).

If the transaction involves the sale of all or substantially all of the corporation's assets outside of the usual and regular course of business, for the transaction to be authorized:

- The board of directors must recommend it to the shareholders unless the board of directors:
  - determines that because of conflict of interest or other special circumstances, it should make no recommendation; and

  - communicates the basis for its determination to the shareholders with the proposed transaction.
- The shareholders entitled to vote must approve the transaction.

(S.C. Code Ann. § 33-12-102(a), (b).)

The meeting notice to the shareholders must include a description of the transaction (S.C. Code Ann. § 33-12-102(d)). The board of directors may condition its submission of the proposed transaction on any basis (S.C. Code Ann. § 33-12-102(c)).

Shareholder Actions

Approval by the shareholders is not required for the sale of assets in the usual and regular course of business unless the articles of incorporation state otherwise (S.C. Code Ann. § 33-12-101(c)).

If the transaction involves the sale of all or substantially all of the corporation's assets outside of the usual and regular course of business, then a two-thirds of all the votes entitled to be cast must approve the transaction unless:

- The articles of incorporation require a different vote.
- The board of directors requires a greater vote or a vote by voting groups.

(S.C. Code Ann. § 33-12-102(e).)

The articles of incorporation may require a lower or higher vote for approval, but the required vote must be at least a majority of all the votes entitled to be cast on the transaction (S.C. Code Ann. § 33-12-102(f)).

Bulk Sales

In an asset purchase transaction, the buyer is not required to give notice of the transaction to the seller's creditors.

Successor Liability or De Facto Merger Analysis

Generally, a successor corporation that purchases the assets of another corporation is not responsible for its predecessor's debts and obligations. However, South Carolina courts may hold a buyer responsible for a seller's liabilities in the following circumstances:

- There was an agreement to assume any debts.
- The circumstances surrounding the transaction indicate a consolidation of the two corporations.
- The successor company was a mere continuation of the predecessor company.
- The transaction was fraudulently entered into for the purpose of wrongfully denying creditor claims.

(*Walton v. Mazda of Rock Hill*, 657 S.E.2d 67, 69 (S.C. Ct. App. 2008).)

Anti-Takeover Laws

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

South Carolina has adopted anti-takeover legislation applicable to control share acquisitions and business combinations (S.C. Code Ann. §§ 35-2-101 to 35-2-226).

Control Share Acquisitions

"Control shares" are shares that would have voting power regarding shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or for which that person may exercise or direct the exercise of voting power would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as part of a group), to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

- One-fifth or more but less than one-third of all voting power.
- One-third or more but less than a majority of all voting power.
- A majority or more of all voting power.

(S.C. Code Ann. § 35-2-101.)

"Issuing public corporations" includes domestic companies with:

- Shares registered under Section 12 of the Securities Exchange Act of 1934 (Exchange Act), or under similar laws.
- A principal place of business, a principal office, or substantial assets in South Carolina.
- Either:

  - more than 10% of the shareholders residing in South Carolina or more than 10% of the shares held by South Carolina residents; or
  - 10,000 or more of the shareholders residing in South Carolina.

(S.C. Code Ann. § 35-2-104(a).)

"Control share acquisition" is the acquisition (directly or indirectly) by any person of ownership of, or the power to direct the exercise of voting power regarding, issued and outstanding control shares (S.C. Code Ann. § 35-2-102(a)).

The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

- Before April 22, 1988.
- Under a contract existing before April 22, 1988.
- Under the laws of descent and distribution.
- Under the satisfaction of a pledge or other security interest created in good faith and not for circumventing South Carolina's control share law.
- Under a merger or plan of share exchange in compliance with law if the issuing public corporation is a party to the agreement of merger or plan of share exchange.

(S.C. Code Ann. § 35-2-102(d).)

In addition, the acquisition of shares of an issuing public corporation in good faith and not for circumventing South Carolina's control share law by or from either of the following does not constitute a control share acquisition unless the acquisition entitles any person (directly or indirectly, alone or as part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized:

- Any person whose voting rights had previously been authorized by shareholders in compliance with South Carolina's control share law.
- Any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for S.C. Code Ann. § 35-2-102(d).

(S.C. Code Ann. § 35-2-102(e).)

If a company is a covered control share company, a person who acquires 20%, 33.333%, or a majority of the company's shares must deliver an "acquiring person statement" to the target. Failure to file an acquiring person statement may lead to the control shares acquired being redeemed by the company at the fair value under the procedures adopted by the corporation. (S.C. Code Ann. §§ 35-2-101 and 35-2-110.)

The control shares are not given voting rights except on a majority vote of the "disinterested" shares and, in many cases, by a majority of each voting class (S.C. Code Ann. §§ 35-2-105 and 35-2-109).

A corporation may opt out of the control share restrictions by including an appropriate provision in the corporation's articles of incorporation or bylaws (S.C. Code Ann. § 35-2-105).

Business Combinations

Covered "business combination" companies include:

- Domestic companies with shares registered under Section 12 of the Exchange Act or similar laws.
- Foreign companies with shares registered under Section 12 of the Exchange Act or under similar laws, plus a principal place of business, principal office, or more than 40% of its assets in South Carolina, and either:
  - more than 10% of the shareholders reside in South Carolina or more than 10% of the shares are held by South Carolina residents; or
  - 10,000 or more of the shareholders are South Carolina residents.

(S.C. Code Ann. §§ 35-2-213 and 35-2-224(a).)

If a company is a covered "business combination" company, then for a period of two years the following is prohibited, unless the target's board of directors approves the share acquisition in advance:

- Mergers with the target.
- Sale, lease, exchange, mortgage, pledge, transfer, or other disposition of the target's assets.
- Receipt, except proportionately of the target's assets.
- Receipt, except proportionately as a shareholder, of any loans, advances, guarantees, pledges, or other financial assistance or tax credits from the target.
- Liquidation of the target.

(S.C. Code Ann. §§ 35-2-205, 35-2-218, and 35-2-219.)

A corporation may opt out of the foregoing restrictions on business combinations by including an express provision in its articles of incorporation (S.C. Code Ann. § 35-2-221(1), (2)).

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

Articles of Dissolution

At any time after dissolution is authorized, a corporation may dissolve by delivering articles of dissolution to the South Carolina secretary of state (SCSOS) for filing, setting out the following:

- The name of the corporation.
- The names and addresses of its directors.
- The names and addresses of its officers.
- The date dissolution was authorized.
- If the shareholders approved the dissolution:
  - the number of votes entitled to be cast on the proposal to dissolve;
  - either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and
  - if voting by voting groups was required, the information required above must be provided separately for each voting group entitled to vote separately on the plan to dissolve.

(S.C. Code Ann. § 33-14-103(a).)

When the incorporators or initial directors want to dissolve the corporation before any shares are issued, they can do so by filing the articles of dissolution with the SCSOS. The articles of dissolution must set out the following:

- The name of the corporation.
- The date of its incorporation.
- A statement that either:
  - none of the corporation's shares have been issued; or
  - the corporation has not commenced business.
- A statement that no debt of the corporation remains unpaid.
- A statement that the net assets of the corporation remaining after winding up have been distributed to the shareholders if shares were issued.
- A statement that a majority of the incorporators or initial directors authorized the dissolution.

(S.C. Code Ann. § 33-14-101.)

A corporation is dissolved on the effective date of its articles of dissolution (S.C. Code Ann. § 33-14-103(b)).

Board and Shareholder Actions

The dissolution of a corporation may be proposed by either the board of directors or, under certain circumstances, the shareholders (S.C. Code Ann. § 33-14-102). To propose dissolution, either:

- The board of directors must (absent a conflict of interest or other special circumstances) recommend the dissolution of the corporation to its shareholders, who are then entitled to vote on the proposed dissolution (S.C. Code Ann. § 33-14-102(b)(1)). The board may condition its proposal for dissolution on any basis (S.C. Code Ann. § 33-14-102(c)).
- The holders of at least 10% of any class of voting shares of the corporation may propose dissolution, and the board of directors must submit the proposal to the shareholders for consideration at the next possible annual or special meeting (S.C. Code Ann. § 33-14-102(d)).

Following any proposal to dissolve by the corporation's board or shareholders, the shareholders entitled to vote must approve the proposal to dissolve (S.C. Code Ann. § 33-14-102(b)(2)).

At least two-thirds of all the votes entitled to be cast on a proposal for dissolution must approve the dissolution unless:

- The articles of incorporation require a different vote.
- The board requires a greater vote or a vote by voting groups, in a board-proposed dissolution.

(S.C. Code Ann. § 33-14-102(f).)

The articles of incorporation may require a lower or higher vote for approval, but the required vote must be at least a majority of all the votes entitled to be cast on the proposal (S.C. Code Ann. § 33-14-102(g)).

If no shares of the corporation have been issued or the corporation has not commenced business, the board of directors (or the incorporators, if the corporation does not yet have directors) may dissolve the corporation without shareholder action (S.C. Code Ann. § 33-14-101).

Filing Requirements

The articles of dissolution must be filed with the SCSOS. The corporation must also pay a $10 filing fee. (S.C. Code Ann. § 33-1-220(13).)

Judicial Dissolution

A circuit court may dissolve a corporation in a proceeding by:

- The South Carolina attorney general, if it is established that the corporation:
  - obtained its articles of incorporation through fraud; or
  - has continued to exceed or abuse the authority conferred on it by law.
- A shareholder, if it is established that:
  - the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders cannot break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
  - the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder (whether in their capacity as a shareholder, director, or officer of the corporation);
  - the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;
  - the corporate assets are being misapplied or wasted;
  - the corporation has abandoned its business and has failed, within a reasonable time, to dissolve, to liquidate its affairs, or to distribute its remaining property among its shareholders; or
  - the corporation's period of duration stated in its articles of incorporation has expired.
- A creditor, if it is established that:
  - the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
  - the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.
- The corporation, asking to have its voluntary dissolution continued under court supervision.

(S.C. Code Ann. § 33-14-300.)

Activities Requiring Shareholder Consent

10. What activities require shareholder consent in your jurisdiction?

The following actions generally require shareholder approval under the South Carolina Business Corporation Act of 1988:

- Electing corporate directors (S.C. Code Ann. §§ 33-8-103 and 33-8-104).
- Amending the articles of incorporation, with some exceptions (S.C. Code Ann. § 33-10-103).
- Some amendments to the bylaws (S.C. Code Ann. § 33-10-200).
- Mergers or share exchanges (S.C. Code Ann. § 33-11-103).
- The sale of substantially all of the assets of the

corporation outside of the usual and regular course of business (S.C. Code Ann. § 33-12-102).

- Corporate dissolution (S.C. Code Ann. § 33-14-102).

Preemptive Rights

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

Section 33-6-300 of the South Carolina Code gives the shareholders of a corporation a preemptive right to acquire the corporation's unissued shares unless the articles of incorporation provide otherwise. Corporations may opt out of this provision by stating in the articles of incorporation that "the corporation elects not to have preemptive rights" (or by using similar words). (S.C. Code Ann. § 33-6-300(a), (b).)

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?

South Carolina does not limit the classes or series of stock that a corporation can issue. The articles of incorporation must describe the relative rights, preferences, and limitations of each class and series of stock and provide distinguishing designations for each class and series, or provide that the board of directors may determine at a later date, in whole or part, the preferences, limitations, and relative rights (within the limits in S.C. Code Ann. § 33-6-101) of either:

- Any class of shares before the issuance of any shares of that class.
- One or more series within a class before the issuance of any shares of that series.

(S.C. Code Ann. §§ 33-6-101 and 33-6-102.)

Limitations on Dividends

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

The following limitations may apply to a corporation's ability to pay dividends on capital stock in South Carolina:

- Restrictions within the corporation's articles of incorporation.
- The prohibition to issue dividends because otherwise the corporation cannot pay its debts as they become due in the usual course of business.
- The prohibition to issue dividends because the corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights on dissolution of shareholders holding shares with superior rights to those receiving the distribution.

(S.C. Code Ann. § 33-6-400(a), (c).)

In addition, shares of one class or series may not be issued as a share dividend regarding shares of another class or series unless either:

- The articles of incorporation authorize it.
- A majority of the votes entitled to be cast by the class or series to be issued approves the issuance.
- There are no outstanding shares of the class or series to be issued.

(S.C. Code Ann. § 33-6-230(b).)

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?

The articles of incorporation or bylaws may prescribe qualifications for directors in South Carolina. Unless they provide otherwise, a director is not required to be a resident of South Carolina or a shareholder of the corporation. (S.C. Code Ann. § 33-8-102.)

The board of directors must consist of at least one member, with the number specified in or fixed in accordance with the articles of incorporation or bylaws (S.C. Code Ann. § 33-8-103(a)).

If a board of directors has power under the articles of incorporation or bylaws to fix or change the number of directors, the board may increase or decrease, by 30% or less, the number of directors last approved by the shareholders. However, only the shareholders may increase or decrease, by more than 30%, the number of directors last approved by the shareholders (S.C. Code Ann. § 33-8-103(b)).

Additionally, the articles of incorporation or bylaws may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the range, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board, or vice versa. (S.C. Code Ann. § 33-8-103(c).)

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 South Carolina, unless the articles of incorporation or bylaws provide otherwise, a board of directors may create committees and appoint board members to serve on these committees. Each committee must have at least two members. (S.C. Code Ann. § 33-8-250(a).)

The creation of a committee and appointment of its members must be approved by the greater of:

- A majority of all the directors in office when the action is taken.
- The number of directors the articles of incorporation or bylaws require to approve the action.

(S.C. Code Ann. § 33-8-250(b).)

Each committee may exercise the authority of the board of directors to the extent specified by the board of directors, the articles of incorporation, or the bylaws (S.C. Code Ann. § 33-8-250(d)).

A committee may not:

- Authorize distributions.
- Approve or propose any actions that require shareholder approval (see Question 10).
- Fill vacancies on the board or any of its committees.
- Amend the articles of incorporation.
- Adopt, amend, or repeal bylaws.
- Approve a merger not requiring shareholder approval.
- Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.
- Authorize or approve the issuance, sale, or contract for the sale of shares or determine the rights, preferences, or limitations of a class or series of shares. However, the board may authorize a committee to do so within limits prescribed by the board of directors.

(S.C. Code Ann. § 33-8-250(e).)

Indemnification

16. Please describe a for-profit corporation's ability, and any requirements or limits on that ability, to indemnify its directors and officers in your jurisdiction.

Unless limited by its articles of incorporation, a South Carolina corporation must indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding (S.C. Code Ann. §§ 33-8-520 and 33-8-560).

A corporation may indemnify an officer or director made party to a proceeding if:

- They acted in good faith.
- They reasonably believed that:
  - while acting in their official capacity with the corporation, their conduct was in the corporation's best interest; or
  - if not acting in an official capacity, they reasonably believed that their conduct was at least not opposed to the corporation's best interest.
- In a criminal proceeding, they had no reasonable cause to believe their conduct was unlawful.

(S.C. Code Ann. §§ 33-8-510(a) and 33-8-560.)

A corporation may not indemnify a director in connection with either:

- A proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.
- Any other proceeding charging improper personal benefit to the director, whether or not involving action in their official capacity, in which they were adjudged liable on the basis that they improperly received personal benefits.

(S.C. Code Ann. § 33-8-510(d).)

The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* does not, on its own, indicate that the director did not meet the applicable standard of conduct (S.C. Code Ann. § 33-8-510(c)).

A corporation may not indemnify a director under S.C. Code Ann. § 33-8-510 unless authorized for a specific proceeding after a determination has been made that indemnifying the director is permissible because the director met the relevant standard of conduct specified. The determination must be made by any of the following:

- If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors. A majority of disinterested directors constitute a quorum.
- If there is no quorum of the board of directors, a committee designated by the board of directors by majority vote. The committee must consist solely of two or more disinterested directors.
- By special legal counsel:
  - selected by the board of directors; or
  - if a quorum of the board of directors cannot be obtained and a committee cannot be designated, selected by majority vote of the full board of directors in which selection directors who do not qualify as disinterested directors may participate.
- By the shareholders, excluding shares owned or controlled by directors who are parties to the proceeding.

(S.C. Code Ann. § 33-8-550(b).)

Amendment of Organizational Documents

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

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

Documents

Articles of Incorporation

The board of directors must file articles of amendment with the South Carolina secretary of state (SCSOS). The articles of amendment must include the following information:

- The corporation's name.
- The text of each amendment adopted.
- If the amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment.
- The adoption date of each amendment.
- If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- If the shareholders approved the amendment:
  - the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and the number of votes of each voting group indisputably represented at the meeting; and
  - either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group

and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

(S.C. Code Ann. § 33-10-106.)

Bylaws

South Carolina law does not require a specific document for a corporation to amend its bylaws.

Corporate Actions

Articles of Incorporation

A corporation may amend its articles of incorporation to:

- Add or change a provision that is required or permitted in the articles of incorporation.
- Delete a provision not required in the articles of incorporation.

Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment. (S.C. Code Ann. § 33-10-101.)

If a corporation has not yet issued shares, its board of directors may adopt amendments to the articles of incorporation by a unanimous vote (S.C. Code Ann. § 33-10-105).

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action to:

- Delete the names and addresses of the initial directors.
- Delete the name and address of the initial registered agent or registered office if a statement of change is on file with the SCSOS.
- Change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.
- Change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name.
- Make any other change expressly statutorily permitted without shareholder action.

(S.C. Code Ann. § 33-10-102.)

A corporation's board of directors may propose amendments to the articles of incorporation for submission to the shareholders (S.C. Code Ann. § 33-10-103(a)). The corporation must notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting under S.C. Code Ann. § 33-7-105. The notice of the meeting must state that one of the purposes of the meeting is to consider the proposed amendment and contain a copy or summary of the amendment. (S.C. Code Ann. § 33-10-103(e).)

For an amendment proposed by the board of directors to be adopted:

- The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the amendment.
- The shareholders entitled to vote on the amendment must approve the amendment by the statutorily required minimum voting percentage.

(S.C. Code Ann. § 33-10-103(a), (b), and (f).)

Bylaws

A corporation's board of directors may amend or repeal the corporation's bylaws unless:

- This power is reserved exclusively for the shareholders in the articles of incorporation or South Carolina law.
- The shareholders in adopting, amending, or repealing a particular bylaw provide expressly that the board of directors may not adopt, amend, or repeal that bylaw or any bylaw on that subject.

(S.C. Code Ann. § 33-10-200(a).)

A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws also may be amended or repealed by its board of directors (S.C. Code Ann. § 33-10-200(b)).

If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders than is required by South Carolina law. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same

vote and voting groups required to take action under the quorum and the voting requirement then in effect or proposed to be adopted, whichever is greater (S.C. Code Ann. § 33-10-210(a)).

A bylaw that fixes a greater quorum or voting requirement for shareholders may not be adopted, amended, or repealed by the board of directors (S.C. Code Ann. § 33-10-210(b)).

A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- Only by the shareholders if originally adopted by the shareholders.
- Either by the shareholders or by the board of directors if originally adopted by the board of directors.

(S.C. Code Ann. § 33-10-220(a).)

A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors (S.C. Code Ann. § 33-10-220(b)).

Action by the board of directors to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and the voting requirement then in effect or proposed to be adopted, whichever is greater (S.C. Code Ann. § 33-10-220(c)).

Filing Requirements

Articles of Incorporation

After a corporation amends its articles of incorporation, it must file articles of amendments in duplicate with the SCSOS (S.C. Code Ann. § 33-1-200(i)). A total payment of $110 must be submitted to the SCSOS with the articles of amendment, which includes:

- A $10 filing fee (S.C. Code Ann. § 33-1-220(a)(10)).
- $100 in taxes (S.C. Code Ann. § 33-1-220(d)(2)).

Bylaws

A corporation's bylaws are not filed with the SCSOS, and therefore any amendment to the bylaws does not need to be filed.

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).