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CHAPTER 6.

SHARES AND DISTRIBUTIONS

ARTICLE 1.

SHARES

**SECTION 33‑6‑101.** Authorized shares.

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by Section 33‑6‑102.

(b) The articles of incorporation must authorize (1) one or more classes of shares that together have unlimited voting rights, and (2) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by Chapters 1 through 20 of this Title;

(2) are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(4) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

**SECTION 33‑6‑102.** Terms of class or series determined by board of directors.

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in Section 33‑6‑101) of (1) any class of shares before the issuance of any shares of that class or (2) one or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) the name of the corporation;

(2) the text of the amendment determining the terms of the class or series of shares;

(3) the date it was adopted; and

(4) a statement that the amendment was duly adopted by the board of directors.

**SECTION 33‑6‑103.** Issued and outstanding shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to Section 33‑6‑400.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

**SECTION 33‑6‑104.** Fractional shares.

(a) A corporation may:

(1) issue fractions of a share or pay in money the value of fractions of a share;

(2) arrange for disposition of fractional shares by the shareholders;

(3) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by Section 33‑6‑250(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including that the:

(1) scrip is void if not exchanged for full shares before a specified date; and

(2) shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

ARTICLE 2.

ISSUANCE OF SHARES

**SECTION 33‑6‑200.** Subscription for shares before incorporation.

(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 33‑6‑210.

**SECTION 33‑6‑210.** Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, written contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) Except as otherwise provided in subsection (f), the corporation must place in escrow shares issued for a contract for future services or benefits or for a promissory note. Any share dividends in respect of the shares escrowed also must be placed in escrow. Distributions in respect of escrowed shares must be escrowed or credited against their purchase price. The shares and distributions escrowed must remain in escrow until the services are performed, the note is paid, or the benefits are received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed and the distributions credited may be canceled in whole or in part and the distributions escrowed may be reclaimed by the corporation.

(f) A corporation subject to the registration requirements of Section 12 of the Securities Exchange Act of 1934 may issue shares for a contract for future services without having to place the shares and share dividends and distributions in respect of the shares in escrow and without having to credit distributions against their purchase price if the shares are issued or authorized pursuant to a plan that has been approved by the shareholders of the corporation.

**SECTION 33‑6‑220.** Liability of shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (Section 33‑6‑210) or specified in the subscription agreement (Section 33‑6‑200).

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

**SECTION 33‑6‑230.** Share dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation’s shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approves the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**SECTION 33‑6‑240.** Share options; restrictions and conditions for owners of specified percentage of shares.

(A) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

(B) In the case of a public corporation, the terms and conditions of such rights, options, or warrants may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by the holder or holders or beneficial owner or owners of a specified number or percentage of the outstanding voting shares of the public corporation or by any transferee or any such holder or owner, or that invalidate or void the rights, options, or warrants held by the holder or owner or by the transferee. Determinations by the board of directors whether to impose, enforce, waive, or otherwise render ineffective any such restrictions or conditions may be judicially reviewed in an appropriate proceeding.

**SECTION 33‑6‑250.** Form and content of certificates.

(a) Shares may be represented by certificates, but need not be so represented, subject to the provisions of Section 33‑6‑260(a). Unless Chapters 1 through 20 of this Title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum, each share certificate must state on its face:

(1) the name of the issuing corporation and that it is organized under the laws of this State;

(2) the name of the person to whom issued; and

(3) the number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

**SECTION 33‑6‑260.** Shares without certificates.

(A) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates to the extent that investment securities not evidenced by certificates are authorized by Chapter 8 of Title 36 of the South Carolina Uniform Commercial Code. The authorization does not affect shares already represented by certificates until the shares or certificates are surrendered to the corporation.

(B) Within a reasonable time after the issue or transfer of shares to a shareholder without certificates, the corporation must send the shareholder a written statement containing the information required on a certification by Section 33‑6‑250(b) and (c) and Section 33‑6‑270, if applicable.

**SECTION 33‑6‑270.** Restriction on transfer or registration of shares or other securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by Section 33‑6‑260(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to maintain the corporation’s status when it is dependent on the number or identity of its shareholders;

(2) to preserve exemptions under federal or state securities law;

(3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

(2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

(3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

(4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

**SECTION 33‑6‑280.** Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

ARTICLE 3.

SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

**SECTION 33‑6‑300.** Shareholders’ preemptive rights.

(a) The shareholders of a corporation have a preemptive right to acquire the corporation’s unissued shares except to the extent the articles of incorporation otherwise provide.

(b) Unless a statement is included in the articles of incorporation that ‘the corporation elects not to have preemptive rights’ (or words of similar import), the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation’s unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates;

(iii) shares authorized in the articles of incorporation that are issued within six months from the effective date of incorporation;

(iv) shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders’ preemptive rights.

(c) For purposes of this section, “shares” includes a security convertible into or carrying a right to subscribe for or acquire shares.

(d) The sale or other disposition by the corporation of shares or securities not subject to a preemptive right under this section, or under the articles of incorporation as permitted by this section, shall not impair any remedy which any shareholder may have for a breach of duty by the board of directors.

**SECTION 33‑6‑310.** Corporation’s acquisition of own shares.

(a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the Secretary of State for filing. The articles must set forth:

(1) the name of the corporation;

(2) the reduction of the number of authorized shares, itemized by class and series; and

(3) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

ARTICLE 4.

DISTRIBUTIONS

**SECTION 33‑6‑400.** Distributions to shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a repurchase or reacquisition of shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) 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 upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) The effect of a distribution under subsection (c) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of the corporation’s shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed;

(3) in all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation’s indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation’s indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.