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CHAPTER 11.

 MERGER AND SHARE EXCHANGE

**SECTION 33‑11‑101.** Merger.

(a) A business corporation may merge with or into:

(i) another business corporation, domestic or foreign;

(ii) a nonprofit corporation, to the extent authorized by Section 33‑31‑1101, if the board of directors of each corporation adopts and the shareholders of a business corporation or members of a nonprofit corporation approve the plan of merger, if required by Section 33‑11‑103 for business corporations or Section 33‑31‑1103 for nonprofit corporations;

(iii) a limited liability company, domestic or foreign;

(iv) a partnership, domestic or foreign; or

(v) a limited partnership, domestic or foreign.

(b) The plan of merger must include the:

(1) name of each entity planning to merge and the name of the surviving entity into which each other entity plans to merge;

(2) terms and conditions of the merger; and

(3) manner and basis of converting the shares of each business corporation into shares, obligations, other securities, or membership interests of the surviving entity or into cash or other property in whole or part.

(c) The plan of merger, when applicable, must set forth:

(1) amendments to the articles of incorporation, articles of organization, partnership agreement, or certificate of partnership of the surviving entity; and

(2) other provisions relating to the merger.

**SECTION 33‑11‑102.** Share exchange.

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by Section 33‑11‑103, approve the exchange.

(b) The plan of exchange must set forth the:

(1) name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) terms and conditions of the exchange;

(3) manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

**SECTION 33‑11‑103.** Action on plan.

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares are to be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (h)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) the board of directors must recommend the plan of merger or share exchange 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 plan; and

(2) the shareholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan. In addition, the notice must be accompanied by balance sheets of each corporation participating in the merger or share exchange showing in reasonable detail the financial condition of the corporation as of the close of the two preceding fiscal years and by income statements of each participating corporation for the three preceding fiscal years.

(e) Unless Chapters 1 thru 20 of this title or the articles of incorporation require a different vote or the board of directors (acting pursuant to subsection (c)) requires a greater vote than that specified by this subsection or the articles of incorporation, the plan of merger or share exchange to be adopted must be approved by: (1) two‑thirds of the votes entitled to be cast on the plan, regardless of the class or voting group to which the shares belong, and (2) two‑thirds of the votes entitled to be cast on the plan within each voting group entitled to vote as a separate voting group on the plan.

(f) The articles of incorporation may require a lower or higher vote for approval than that specified in subsection (e), 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.

(g) Separate voting by voting groups is required:

(1) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under Section 33‑10‑104;

(2) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(h) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) the articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in Section 33‑10‑102) from its articles before the merger;

(2) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after;

(3) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the merger.

(i) As used in subsection (h):

(1) “Participating shares” means shares that entitle their holders to participate without limitation in distributions.

(2) “Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

**SECTION 33‑11‑104.** Merger of subsidiary.

(a) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth the:

(1) names of the parent and subsidiary; and

(2) manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) In the case of a corporation which is not a public corporation, the parent may not deliver articles of merger to the Secretary of State for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in Section 33‑10‑102).

**SECTION 33‑11‑105.** Articles of merger or share exchange.

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring entity shall deliver to the Secretary of State for filing articles of merger or share exchange including:

(1) the plan of merger or share exchange;

(2) if shareholder approval was not required, a statement to that effect;

(3) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) 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 as to each corporation; and

(ii) either 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.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

**SECTION 33‑11‑106.** Effect of merger or share exchange.

(a) When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving entity and the separate existence of every corporation except the surviving entity ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving entity without reversion or impairment;

(3) the surviving entity has all liabilities of each corporation party to the merger;

(4) a proceeding pending against a corporation party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the corporation whose existence ceased;

(5) the articles of organization of the surviving entity are amended to the extent provided in the plan of merger; and

(6) the shares of each corporation party to the merger are converted into shares, obligations, or other securities of the surviving entity or into cash or other property as appropriate, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights pursuant to Chapter 13.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under Chapter 13.

**SECTION 33‑11‑107.** Merger or share exchange with foreign corporation.

(a) Foreign corporations may merge or enter into a share exchange with domestic corporations if:

(1) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) in a share exchange, the corporation whose shares are to be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) the foreign corporation complies with Section 33‑11‑105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) each domestic corporation complies with the applicable provisions of Sections 33‑11‑101 through 33‑11‑104 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with Section 33‑11‑105.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered to:

(1) appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) agree that it will pay promptly to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Chapter 13.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

**SECTION 33‑11‑108.** Merger of parent into subsidiary.

(a) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary without approval of the shareholders of the subsidiary if the plan of merger is submitted to and approved by the shareholders of the parent in accordance with Section 33‑11‑103.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth the:

(1) names of the parent and subsidiary; and

(2) manner and basis of converting the shares of the parent pro rata into shares of the subsidiary.

(c) The subsidiary shall mail a copy or summary of the plan of merger to each of its shareholders who does not waive the mailing requirement in writing.

(d) The subsidiary may not deliver articles of merger to the Secretary of State for filing until at least thirty days after the date it mailed a copy of the plan of merger to each of its shareholders who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the subsidiary corporation (except for amendments enumerated in Section 33‑10‑102).

**SECTION 33‑11‑109.** Conversion of partnership or limited partnership to corporation.

(a) A partnership or limited partnership may be converted to a corporation pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a corporation must be approved by all the partners or by the number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must include the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership into shares, obligations, or other securities in the converted corporation or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or both.

(d) After a conversion is approved pursuant to subsection (b), the partnership or limited partnership shall file with the Secretary of State articles of incorporation that satisfy the requirements of Section 33‑2‑102 and contain:

(1) a statement that the partnership or limited partnership is converted to a corporation from a partnership or limited partnership;

(2) its former name;

(3) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to subsection (b); and

(4) in the case of a limited partnership, a statement that the certificate of limited partnership is canceled as of the date the conversion takes effect.

(e) In the case of a limited partnership, the filing of articles of incorporation pursuant to subsection (d) cancels its certificate of limited partnership as of the date the conversion takes effect.

(f) A conversion takes effect when the articles of incorporation are filed in the Office of the Secretary of State or at a later date specified in the articles of incorporation.

(g) A general partner who becomes a shareholder of a corporation as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

(h) A limited partner who becomes a shareholder as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

(i) A partner’s liability for all obligations of the corporation incurred after the conversion takes effect is that of a shareholder of the corporation.

**SECTION 33‑11‑110.** When conversion takes effect; filing notice of name change as to real property.

(a) A partnership or limited partnership that is converted pursuant to Section 33‑11‑109 is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership vests in the corporation;

(2) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the corporation;

(3) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion has not occurred;

(4) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the corporation; and

(5) except as otherwise provided in the agreement of conversion pursuant to Section 33‑11‑109(c), all the partners of the converting partnership continue as shareholders of the corporation.

(c)(1) If a partnership or limited partnership that owns real property in South Carolina changes its name by amendment of its articles or by merger, reorganization, domestication, or conversion, the newly‑named surviving, acquiring, reorganized, domesticated, or converted entity must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located. If there is no office in that county, the notice of name change must be filed with the clerk of court of the county in which that real property is located.

(2) The filing must be by:

(i) affidavit containing the old name of the partnership or limited partnership and new name of the entity and describing the real property owned by that entity; or

(ii) filing a certified copy of the amendment to certificate of limited partnership, articles of merger, articles of domestication, or articles of conversion and including a description of the real property; or

(iii) a duly recorded deed of conveyance to the newly‑named surviving, acquiring, reorganized, domesticated, or converted entity.

(3) The affidavit, filed amendment, or articles must be duly indexed in the index of deeds.

(4) The purpose of this subitem is to establish record notice pursuant to Chapter 7 of Title 30. Failure to make the required filing of a partnership or limited partnership name change does not affect the legality, force, effect, or enforceability as between the parties of any conveyance or other transaction involving the real estate owned by the affected entity that is made after the change in name.

**SECTION 33‑11‑111.** Conversion of corporation to limited liability company; contents and filing of agreement of conversion.

(a) A corporation may be converted to a limited liability company pursuant to this section.

(b) After adopting a plan of conversion, the board of directors shall submit the plan of conversion for approval by its shareholders. For a plan of conversion to be approved:

(1) the corporation shall notify each shareholder of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice also must state that a purpose of the meeting is to consider a plan of conversion and must contain or be accompanied by a copy or summary of the plan;

(2) unless Chapters 1 through 20 of this title or the articles of incorporation require a different vote, the plan of conversion must be approved by:

(i) two‑thirds of the votes entitled to be cast on the plan, regardless of the class or voting group to which the shares belong; and

(ii) two‑thirds of the votes entitled to be cast on the plan within each voting group entitled to vote as a separate group on the plan;

(3) the articles of incorporation may require a lower or higher vote for approval than that specified in subitem (2), 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;

(4) separate voting by voting groups is required to approve the plan of conversion if the plan contains a provision that would require action by one or more separate voting groups if the provision were included in a proposed amendment to the articles of incorporation, pursuant to Section 33‑10‑104; and

(5) a shareholder may dissent from the plan of conversion and obtain payment of fair value of his shares as provided in Sections 33‑13‑101 through 33‑13‑310.

(c) An agreement of conversion must include the terms and conditions of the conversion of the shares of shareholders of a corporation into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the shares of the shareholders, or both.

(d) After a conversion is approved pursuant to subsection (b), the corporation shall file with the Secretary of State articles of organization that satisfy the requirements of Section 33‑44‑203 and contain:

(1) a statement that the corporation is converted to a limited liability company from a corporation;

(2) its former name;

(3) a statement of the number of votes cast by the shareholders entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to subsection (b);

(4) if voting by voting group is required, the information in subitem (3) must be provided for each voting group entitled to vote separately on the plan of conversion; and

(5) a statement that the articles of incorporation are cancelled as of the date the conversion takes effect.

(e) The filing of articles of organization pursuant to subsection (d) cancels the articles of incorporation of the corporation as of the date the conversion takes effect.

(f) A conversion takes effect when the articles of organization are filed in the Office of the Secretary of State or at a later date specified in the articles of organization.

(g) A shareholder’s liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A shareholder who becomes a member of a limited liability company as a result of a conversion remains liable only to the extent the shareholder was liable for an obligation incurred by the corporation before the conversion takes effect.

**SECTION 33‑11‑112.** When conversion takes place; notice of name change as to real property.

(a) A corporation that is converted to a limited liability company is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting corporation vests in the limited liability company;

(2) all debts, liabilities, and other obligations of the converting corporation continue as obligations of the limited liability company;

(3) an action or proceeding pending by or against the converting corporation may be continued as if the conversion has not occurred;

(4) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting corporation vest in the limited liability company; and

(5) except as otherwise provided in the agreement of conversion pursuant to Section 33‑11‑111(c), all the shareholders of the converting corporation continue as members of the limited liability company.

(c)(1) If an entity that owns real property in South Carolina is converted to a limited liability company, the newly‑named limited liability company must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located. If there is no office in that county, a notice of name change must be filed with the clerk of court of the county in which that real property is located.

(2) The filing must be by:

(i) affidavit containing the old name of the corporation and the new name of the limited liability company and describing the real property owned by that limited liability company; or

(ii) filing a certified copy of the articles of organization including a description of the real property; or

(iii) a duly recorded deed of conveyance to the newly‑named limited liability company.

(3) The affidavit, filed articles, or deed must be duly indexed in both the grantor and grantee indices to deeds in the index of deeds.

(4) The purpose of this subitem is to establish record notice pursuant to Chapter 7 of Title 30. Failure to make the required filing of a corporation name change does not affect the legality, force, effect, or enforceability as between the parties of any conveyance or other transaction involving the real estate owned by the affected limited liability company that is made after the change in name.

**SECTION 33‑11‑113.** Conversion of corporation to partnership or limited partnership; contents and filing of agreement of conversion.

(a) A corporation may be converted to a partnership or limited partnership pursuant to this section.

(b) After adopting a plan of conversion, the board of directors shall submit the plan of conversion for approval by its shareholders. For a plan of conversion to be approved:

(1) the corporation shall notify each shareholder of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice also must state that a purpose of the meeting is to consider a plan of conversion and must contain or be accompanied by a copy or summary of the plan;

(2) unless Chapters 1 through 20 of this title or the articles of incorporation require a different vote, the plan of conversion must be approved by:

(i) two‑thirds of the votes entitled to be cast on the plan, regardless of the class or voting group to which the shares belong; and

(ii) two‑thirds of the votes entitled to be cast on the plan within each voting group entitled to vote as a separate group on the plan;

(3) the articles of incorporation may require a lower or higher vote for approval than that specified in subitem (2), 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;

(4) separate voting by voting groups is required to approve the plan of conversion if the plan contains a provision that would require action by one or more separate voting groups if the provision was included in a proposed amendment to the articles of incorporation pursuant to Section 33‑10‑104; and

(5) a shareholder may dissent from the plan of conversion and obtain payment of the fair value of his shares as provided in Sections 33‑13‑101 through 33‑13‑310.

(c) An agreement of conversion must include the terms and conditions of the conversion of the shares of shareholders of a corporation into interests in the converted partnership or limited partnership or the cash or other consideration to be paid or delivered as a result of the conversion of the shares of the shareholders, or both.

(d) After a conversion is approved pursuant to subsection (b), the corporation shall file with the Secretary of State articles of conversion or certificate of limited partnership that satisfies the requirements of Section 33‑42‑210 and contains:

(1) a statement that the corporation was converted to a partnership or limited partnership from a corporation, as the case may be;

(2) its former name;

(3) a statement of the number of votes cast by the shareholders entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion pursuant to subsection (b);

(4) if voting by voting groups was required, the information in subitem (3) must be provided for each voting group entitled to vote separately on the plan of conversion; and

(5) a statement that the articles of incorporation are to be cancelled as of the date the conversion takes effect.

(e) The filing of articles of conversion or a certificate of limited partnership pursuant to subsection (d) cancels the articles of incorporation of the corporation as of the date the conversion takes effect.

(f) A conversion takes effect when the articles of conversion or certificate of limited partnership is filed with the Secretary of State or at a later date specified in the articles of conversion or certificate of limited partnership.

(g) A shareholder’s liability for all obligations of the limited partnership incurred after the conversion takes effect is that of a general partner or limited partner. A shareholder who becomes a partner of a partnership or limited partnership as a result of a conversion remains liable only to the extent the shareholder was liable for an obligation incurred by the corporation before the conversion takes effect.

**SECTION 33‑11‑114.** When conversion takes effect.

(a) A corporation that is converted to a partnership or limited partnership is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting corporation vests in the partnership or limited partnership;

(2) all debts, liabilities, and other obligations of the converting corporation continue as obligations of the partnership or limited partnership;

(3) an action or proceeding pending by or against the converting corporation may be continued as if the conversion has not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting corporation vest in the partnership or limited partnership; and

(5) except as otherwise provided in the agreement of conversion pursuant to Section 33‑11‑113(c), all of the shareholders of the converting corporation continue as either general partners or limited partners of the general or limited partnership and as specified in accord with the plan of conversion.

**SECTION 33‑11‑115.** Conversion under other law.

This chapter does not preclude an entity from being converted pursuant to other law.