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CHAPTER 15.

 FOREIGN CORPORATIONS

ARTICLE 1.

 CERTIFICATE OF AUTHORITY

**SECTION 33‑15‑101.** Authority to transact business required.

(a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) maintaining, defending, or settling a proceeding;

(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation’s own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring any indebtedness, mortgages, and security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages, security interests, or other rights in property securing debts;

(9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(11) transacting business in interstate commerce;

(12) owning and controlling a subsidiary corporation incorporated in or transacting business within this State; or

(13) owning, without more, an interest in a limited liability company organized or transacting business in this State.

(c) The list of activities in subsection (b) is not exhaustive.

**SECTION 33‑15‑102.** Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this State without a certificate of authority may not maintain a proceeding in any court in this State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of ten dollars for each day but not to exceed a total of one thousand dollars for each year it transacts business in this State without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

**SECTION 33‑15‑103.** Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this State, a corporation name that satisfies the requirements of Section 33‑15‑106;

(2) the name of the state or country under whose law it is incorporated;

(3) its date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the address of its proposed registered office in this State and the name of its proposed registered agent at that office;

(6) the names and usual business addresses of its current directors and officers;

(7) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class.”

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody or corporate records in the state or country under whose law it is incorporated.

(c) The foreign corporation shall deliver with the completed application the initial annual report of the corporation as specified in Section 12‑20‑40.

**SECTION 33‑15‑104.** Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) its corporate name;

(2) the period of its duration; or

(3) the state or country of its incorporation.

(b) The requirements of Section 33‑15‑103 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**SECTION 33‑15‑105.** Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject, however, to the right of the State to revoke the certificate as provided in Chapters 1 thru 20 of this title.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by Chapters 1 thru 20 of this title is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This title does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

(d) By obtaining a certificate of authority, the foreign corporation agrees to be subject to the jurisdiction of the Department of Revenue and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with related interest and penalties, if any. Obtaining a certificate of authority is not an admission of tax liability.

**SECTION 33‑15‑106.** Corporate name of foreign corporation.

(a) Except as authorized by subsection (f), if the corporate name of a foreign corporation does not satisfy the requirements of Section 33‑4‑101, the foreign corporation to obtain or maintain a certificate of authority to transact business in this State may:

(1) add “corporation”, “incorporated”, “company”, or “limited” or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.” to its corporate name for use in this State; or

(2) use a fictitious name in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name which includes one or more of the words or abbreviations in item (1) of this subsection.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this State;

(2) a corporate name reserved or registered under Section 33‑4‑102 or 33‑4‑103;

(3) the fictitious name of another foreign corporation authorized to transact business in this State; and

(4) the corporate name of a not‑for‑profit corporation incorporated or authorized to transact business in this State.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this State the name of another corporation incorporated or authorized to transact business in this State that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.

(d) A foreign corporation may use in this State the name (including the fictitious name) of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation has:

(1) merged with the other corporation;

(2) been formed by reorganization of the other corporation; or

(3) acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of Section 33‑4‑101, it may not transact business in this State under the changed name until it adopts a name satisfying the requirements of Section 33‑4‑101 and obtains an amended certificate of authority under Section 33‑15‑104.

(f) If any foreign corporation authorized to transact business in South Carolina had filed, prior to the effective date of Chapters 1 thru 20 of this title, a certificate with the Secretary of State adopting an assumed name pursuant to Section 33‑5‑35 in Section 2 of Act 146 of 1981 which does not meet the requirements of either Section 33‑4‑101(a) and (b) or Section 33‑15‑106(a) through (e) of Chapters 1 thru 20 of this title, it may continue to use the assumed name as its name until December 31, 1994, at which time the name of the corporation must meet the requirements of Chapters 1 thru 20 of this title and, if necessary to meet them, must be adopted by an amended certificate of authority under Section 33‑15‑104. If any filed assumed name does not meet the requirements of Section 33‑4‑101(a) and (b), but does meet the requirements of this section, the corporation may continue to use the name in this State as its name and is not required to file the certificate mentioned in item (2) of subsection (a) of this section.

**SECTION 33‑15‑107.** Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this State must maintain continuously in this State:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent, who may be:

(i) an individual who resides in this State and whose business office is identical with the registered office;

(ii) a domestic corporation or not‑for‑profit domestic corporation whose business office is identical with the registered office; or

(iii) a foreign corporation or foreign not‑for‑profit corporation authorized to transact business in this State whose business office is identical with the registered office.

**SECTION 33‑15‑108.** Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business in this State may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) its name;

(2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of its new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of its new registered agent and the new agent’s written consent to the appointment either on the statement or attached to it; and

(6) that, after the changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing either manually or in facsimile and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

**SECTION 33‑15‑109.** Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is discontinued also.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty‑first day after the date on which the statement was filed.

**SECTION 33‑15‑110.** Service on foreign corporation.

Service of process on foreign corporations must be in accord with the applicable provision of Title 15.

ARTICLE 2.

 WITHDRAWAL

**SECTION 33‑15‑200.** Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in this State and that it surrenders its authority to transact business in this State;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;

(4) a mailing address to which the Secretary of State may mail a copy of any process served on him under item (3); and

(5) a commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

ARTICLE 3.

 REVOCATION OF CERTIFICATE OF AUTHORITY

**SECTION 33‑15‑300.** Grounds for revocation.

(a) The Secretary of State shall commence a proceeding under Section 33‑15‑310 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

(1) the foreign corporation does not deliver its annual report to the Department of Revenue when due;

(2) the foreign corporation does not pay, when they are due, any franchise taxes, taxes payable under Chapter 7 of Title 12, or penalties imposed by this act or other law;

(3) the foreign corporation is without a registered agent or registered office in this State;

(4) the foreign corporation does not inform the Secretary of State under Section 33‑15‑108 or 33‑15‑109 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) the Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(b) The Secretary of State shall proceed pursuant to Section 33‑15‑310(c) to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if he is notified by the Department of Revenue that the corporation has failed to file a required tax return within sixty days of the notice required by Section 12‑6‑5520.

**SECTION 33‑15‑310.** Procedure for and effect of revocation.

(a) If the Secretary of State determines that grounds exist under Section 33‑15‑300(a) for revocation of a certificate of authority, he shall mail written notice of his determination to the foreign corporation.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after the notice required by subsection (a) was mailed, the Secretary of State shall revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that recites the grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the foreign corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office.

(c) If the Secretary of State is notified by the Department of Revenue that the foreign corporation has failed to file a required tax return within sixty days of the notice required by Section 12‑6‑5520, the Secretary of State shall revoke the foreign corporation’s certificate of authority by signing a certificate of revocation that recites the grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the foreign corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office.

(d) The authority of a foreign corporation to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(e) The Secretary of State’s revocation of a foreign corporation’s certificate of authority appoints the Secretary of State as the foreign corporation’s agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if none is on file, in its application for a certificate of authority.

(f) Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.

**SECTION 33‑15‑320.** Appeal from revocation.

(a) A foreign corporation may appeal the Secretary of State’s revocation of its certificate of authority to the Richland County Circuit Court within thirty days after the certificate of revocation was received. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State’s certificate of revocation.

(b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court’s final decision may be appealed as in other civil proceedings.

**SECTION 33‑15‑330.** Reinstatement.

(A) A foreign corporation whose certificate of authority has been revoked administratively under Section 33‑15‑310 may apply to the Secretary of State for reinstatement at any time after the effective date of revocation. The application must:

(1) recite the name of the foreign corporation and the effective date of its administrative revocation;

(2) state that the grounds for revocation either did not exist or have been eliminated;

(3) state that the foreign corporation’s name satisfies the requirements of Section 33‑4‑101;

(4) contain a certificate from the South Carolina Department of Revenue stating that all taxes, penalties, and interest owed by the corporation, whether assessed or not, have been paid.

(B) If the Secretary of State determines that the application contains the information required by subsection (A) and that the information is correct, he shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and send a copy to the foreign corporation.

(C) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the foreign corporation may resume carrying on its business as if the administrative revocation had never occurred.