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CHAPTER 14.

 DISSOLUTION

ARTICLE 1.

 VOLUNTARY DISSOLUTION

**SECTION 33‑14‑101.** Dissolution by incorporators or initial directors.

The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either (i) that none of the corporation’s shares has been issued or (ii) that the corporation has not commenced business;

(4) that no debt of the corporation remains unpaid;

(5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

**SECTION 33‑14‑102.** Dissolution by board of directors and shareholders.

(a) A corporation’s board of directors may propose dissolution for submission to the shareholders.

(b) For a board of directors’ proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution 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; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (f).

(c) The board of directors may condition the submission of its proposal for dissolution on any basis.

(d) If the holders of at least ten percent of any class of voting shares of the corporation propose dissolution, the board of directors shall submit the proposal to the shareholders at the next possible special or annual meeting.

(e) 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 must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(f) Unless the articles of incorporation require a different vote or the board of directors (acting pursuant to subsection (c)) requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by two‑thirds of all the votes entitled to be cast on that proposal.

(g) The articles of incorporation may require a lower or higher vote for approval than that specified in subsection (f), but the required vote must be at least a majority of all the votes entitled to be cast on the proposal.

**SECTION 33‑14‑103.** Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) the name of the corporation;

(2) the names and addresses of its directors;

(3) the names and addresses of its officers;

(4) the date dissolution was authorized;

(5) if dissolution was approved by the shareholders:

(i) the number of votes entitled to be cast on the proposal to dissolve; and

(ii) 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.

(6) If voting by voting groups was required, the information required by item (5) must be provided separately for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

**SECTION 33‑14‑104.** Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) the name of the corporation;

(2) the effective date of the dissolution that was revoked;

(3) the date that the revocation of dissolution was authorized;

(4) if the corporation’s board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) if the corporation’s board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) if shareholder action was required to revoke the dissolution:

(i) the number of votes entitled to be case on the proposal to revoke the dissolution; and

(ii) either the total number of votes cast for and against revocation or the total number of undisputed votes cast for revocation and a statement that the number cast for revocation was sufficient for approval.

(7) If voting by voting groups was required, the information required by item (6) must be separately provided for each voting group entitled to vote separately on the proposal to revoke the dissolution.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

**SECTION 33‑14‑105.** Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) collecting its assets;

(2) disposing of its properties that will not be distributed in kind to its shareholders;

(3) discharging or making provision for discharging its liabilities;

(4) distributing its remaining property among its shareholders according to their interests; and

(5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) A dissolved corporation shall wind up and liquidate its business and affairs as expeditiously as practicable.

(c) Dissolution of a corporation does not:

(1) transfer title to the corporation’s property;

(2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation’s share transfer records;

(3) subject its directors or officers to standards of conduct different from those prescribed in Chapter 8;

(4) change quorum or voting requirements for its board of directors or shareholders, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;

(5) prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) terminate the authority of the registered agent of the corporation.

**SECTION 33‑14‑106.** Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice and the rejection notice stated that proceedings to enforce the claim must be commenced within ninety days.

(d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**SECTION 33‑14‑107.** Unknown claims against dissolved corporation.

(a) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published once in a newspaper of general circulation in the county where the dissolved corporation’s principal office (or, if none in this State, its registered office) is or was last located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation is barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within ten years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice pursuant to Section 33‑14‑106;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of the dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder’s total liability for all claims under this section may not exceed the total amount of assets distributed to him.

ARTICLE 2.

 ADMINISTRATIVE DISSOLUTION

**SECTION 33‑14‑200.** Grounds for administrative dissolution.

(a) The Secretary of State shall commence a proceeding under Section 33‑14‑210(a) to dissolve a corporation administratively if:

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

(2) the corporation does not deliver its annual report to the Department of Revenue when it is due;

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

(4) the corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation’s period of duration stated in its articles of incorporation expires.

(b) The Secretary of State shall dissolve a corporation pursuant to Section 33‑14‑210(c) 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 33‑14‑210.** Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that grounds exist under Section 33‑14‑200(a) for dissolving a corporation, he shall mail written notice of his determination to the corporation.

(b) If the corporation does not correct each ground for dissolution 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 dissolve the corporation administratively by signing a certificate of dissolution that recites the grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the 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 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 dissolve the corporation administratively by signing a certificate of dissolution that recites the grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the 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) A corporation dissolved administratively continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 33‑14‑105 and notify claimants under Sections 33‑14‑106 and 33‑14‑107.

(e) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**SECTION 33‑14‑220.** Reinstatement following administrative dissolution.

(a) A corporation dissolved administratively under Section 33‑14‑210 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

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

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

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

(4) contain a certificate from the South Carolina Department of Revenue reciting 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 dissolution 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 corporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

**SECTION 33‑14‑230.** Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative dissolution, he shall send a written notice that explains the reasons for denial to the 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.

(b) The corporation may appeal the denial of reinstatement to the circuit court for Richland County within thirty days after the notice of denial was received. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State’s certificate of dissolution, the corporation’s application for reinstatement, and the Secretary of State’s notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

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

ARTICLE 3.

 JUDICIAL DISSOLUTION

**SECTION 33‑14‑300.** Grounds for judicial dissolution.

The circuit courts may dissolve a corporation:

(1) in a proceeding by the Attorney General if it is established that the corporation:

(i) obtained its articles of incorporation through fraud; or

(ii) has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to 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;

(ii) 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 his capacity as a shareholder, director, or officer of the corporation);

(iii) 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;

(iv) the corporate assets are being misapplied or wasted;

(v) 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

(vi) the corporation’s period of duration stated in its articles of incorporation has expired;

(3) in a proceeding by a creditor if it is established that:

(i) the creditor’s claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor’s claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

**SECTION 33‑14‑310.** Procedure for judicial dissolution.

(a) Venue for a proceeding to dissolve a corporation lies in the county where a corporation’s principal office (or, if none in this State, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) In any action filed by a shareholder to dissolve the corporation on the grounds enumerated in Section 33‑14‑300, the court may make such order or grant such relief, other than dissolution, as in its discretion is appropriate, including, without limitation, an order:

(1) canceling or altering any provision contained in the articles of incorporation, or any amendment to the articles, or in the bylaws of the corporation;

(2) canceling, altering, or enjoining any act or resolution of the corporation;

(3) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

(4) providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders.

(e) The relief authorized in subsection (d) may be granted as an alternative to a decree of dissolution or may be granted whenever the circumstances of the case are such that the relief, but not dissolution, is appropriate.

**SECTION 33‑14‑320.** Receivership or custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint receivers to wind up and liquidate, or custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this State) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:

(1) the receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this State;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

**SECTION 33‑14‑330.** Decree of dissolution.

(a) If after a hearing the court determines that grounds for judicial dissolution described in Section 33‑14‑300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging any fee.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation’s business and affairs in accordance with Section 33‑14‑105 and the notification of claimants in accordance with Sections 33‑14‑106 and 33‑14‑107.

ARTICLE 4.

 MISCELLANEOUS

**SECTION 33‑14‑400.** Deposit with Department of Revenue.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them, must be reduced to cash and deposited with the Department of Revenue or other appropriate state official for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Department of Revenue or other appropriate state official shall pay him or his representative that amount.

**SECTION 33‑14‑420.** Claims against former shareholder of dissolved corporation.

Notwithstanding another provision of this title, a claimant may not commence a suit or other proceeding against a former shareholder of a dissolved corporation for any known or unknown claim arising from the liabilities of the corporation, acts or omissions of the corporation, or acts committed in its name if the corporation filed its articles of dissolution with the Secretary of State before January 1, 1989, or was otherwise judicially or administratively dissolved before January 1, 1989. Further, a claimant may not satisfy a judgment rendered against a dissolved corporation by proceeding against or joining an individual shareholder if the corporation filed its articles of dissolution with the Secretary of State before January 1, 1989, or was otherwise judicially or administratively dissolved before January 1, 1989.