CHAPTER 9

Domestication of a Foreign Corporation

**SECTION 33‑9‑100.** Articles of domestication; contents.

 (a) A foreign corporation may become a domestic corporation by filing with the Secretary of State:

 (1) articles of domestication that, upon filing, are the articles of incorporation for the corporation, and include the information required by Section 33‑2‑102(a)(1) through (3), any optional provisions desired and authorized by Section 33‑2‑102(b) and (e), and the certifications required by subsection (c) of this section; and

 (2) an initial annual report of the corporation as provided in Section 12‑20‑40.

 (b) A foreign corporation that becomes a domestic corporation must file, within five business days with the state where previously incorporated, articles of dissolution or the equivalent or other appropriate filing authorized by the law of that state.

 (c) The articles of domestication shall certify:

 (1) the date and jurisdiction of each state where the corporation has been incorporated before the filing of the articles of domestication;

 (2) the name of the corporation immediately before the filing of the articles of domestication, as well as the corporate name to be used pursuant to Section 33‑4‑101;

 (3) that the corporation shall file, within five business days with the state where previously incorporated, articles of dissolution or the equivalent, or such other appropriate filing as authorized by the law of such state;

 (4) that articles of domestication do not contain a provision that would require action by one or more separate voting groups on a proposed amendment pursuant to Section 33‑10‑104;

 (5) that the filing of the articles of domestication has been authorized by a majority of the votes cast by all shareholders entitled to vote on the proposal, unless a greater vote is required by the articles of incorporation or other charter documents existing immediately before the filing of the articles of incorporation; and

 (6) that the articles of dissolution or their equivalent or other appropriate filing as authorized by the law of the state where the corporation was previously incorporated, must be filed within five business days after these articles of domestication are filed.

 (d) Upon filing with the Secretary of State of the articles of domestication, the corporation is domesticated in this State, and after that is subject to the South Carolina Business Corporation Act. Notwithstanding the provision of Section 33‑2‑103, the existence of the corporation is considered to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being.

 (e) The filing of the articles of domestication does not affect the choice of law applicable to the corporation; however, from the date the articles of domestication are filed, the law of this State, including the South Carolina Business Corporation Act, applies to the corporation to the same extent as if the corporation had been incorporated as a corporation of this State on that date.

 (f)(1) If a foreign corporation that owns real property in South Carolina becomes a domestic corporation by domesticating in South Carolina pursuant to this chapter and changes its name pursuant to Section 33‑4‑101, the newly‑named surviving corporation 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 executed in accordance with the provisions of Section 33‑1‑200 and containing the old and new names of the corporation, and describing the real property owned by that corporation; or

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

 (iii) a duly recorded deed of conveyance to the newly‑named surviving corporation.

 (3) The affidavit or filed articles of domestication 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 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 corporation that is made after the change in name.

HISTORY: 2004 Act No. 221, Section 1.

Library References

Corporations 634.

Westlaw Topic No. 101.

C.J.S. Corporations Section 887.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 1:26 , Foreign Corporations.

**SECTION 33‑9‑110.** Effect of domestication.

 (a) A corporation that is domesticated pursuant to this chapter is for all purposes the same entity that existed before the domestication.

 (b) When a domestication is effective:

 (1) the title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

 (2) the debts, liabilities, and other obligations of the corporation remain the obligations of the corporation;

 (3) an action or proceeding pending against the corporation may be continued against the corporation as if the domestication had not occurred;

 (4) the articles of domestication are the articles of incorporation of the corporation;

 (5) the shares of the corporation issued and outstanding before the domestication are the shares issued and outstanding of the corporation; and

 (6) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the domesticating corporation remain vested in the corporation.

 (c) The owner liability of a shareholder in a foreign corporation that is domesticated in this State:

 (1) is not discharged as to owner liability pursuant to the laws of the foreign jurisdiction to the extent the owner liability arose before the effective time of the articles of domestication;

 (2) does not attach pursuant to the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication;

 (3) is governed by provisions of the laws of the foreign jurisdiction as to the collection or discharge of owner liability preserved by item (1), as if the domestication had not occurred; and

 (4) is subject to the right of contribution from other shareholders as provided by the laws of the foreign jurisdiction with respect to owner liability preserved by item (1), as if the domestication had not occurred.

 (d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the corporation as a result of its domestication in this State has owner liability only for those debts, obligations, or liabilities of the corporation that arise after the effective time of the articles of domestication.

HISTORY: 2004 Act No. 221, Section 1.

Library References

Corporations 634.

Westlaw Topic No. 101.

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RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 1:26 , Foreign Corporations.

Notes of Decisions

In general 1

1. In general

Under South Carolina law, California law controlled issue of whether German medical device manufacturer’s subsidiary, which was a California company that marketed and distributed manufacturer’s devices within the United States, was manufacturer’s alter ego, for purposes of determining whether federal court, sitting in diversity, in South Carolina, could exercise personal jurisdiction over manufacturer under derivative availment theory in patient’s products liability action against manufacturer; subsidiary had never been domesticated in South Carolina and California was state of subsidiary’s incorporation. Gourdine v. Karl Storz Endoscopy‑America, Inc., 2016, 223 F.Supp.3d 475. Federal Courts 2757