CHAPTER 9

Bank Capital and Capital Stock

**SECTION 34‑9‑10.** Amount of capital stock to be paid in cash.

 No bank shall be organized as a banking corporation or company under the laws of this State unless there has been first paid in cash the full subscription price of so much of the authorized capital stock as shall have been required by the Board of Bank Control. No authorized but unissued capital stock of any state banking corporation shall be issued except with the prior approval of the Board of Bank Control. Notes of stockholders, and other notes and mortgages on property, real, personal or mixed, shall not be considered and accepted as cash in payment for shares of capital stock of any such bank.

HISTORY: 1962 Code Section 8‑141; 1952 Code Section 8‑141; 1942 Code Section 7831; 1932 Code Section 7835; 1926 (34) 953; 1928 (35) 1301; 1936 (39) 1484; 1973 (58) 672.

CROSS REFERENCES

Where stock in banks and bankers’ capital are to be returned for property tax purposes, see Section 12‑37‑890.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 62.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 35, Minimum Capital Stock Requirements; Organizational Expenses.

Attorney General’s Opinions

All of the authorized capital stock of a bank must be issued and fully paid for at the time of its application for a charter. 1969‑70 Op Atty Gen, No 2968, p 238.

**SECTION 34‑9‑20.** Additional ten per cent of capital shall be paid in.

 In addition to full payment for the capital stock proposed to be issued, the applicants for a charter for a banking corporation or company shall furnish satisfactory evidence to the State Board of Bank Control that an additional sum of ten per cent of the proposed capital of the bank is in hand and available for the purpose of defraying all organization expenses. The fees to be collected by the State shall be included within the meaning of the term organization expenses.

HISTORY: 1962 Code Section 8‑142; 1952 Code Section 8‑142; 1942 Code Section 7831; 1932 Code Section 7835; 1926 (34) 953; 1928 (35) 1301; 1936 (39) 1484.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 35, Minimum Capital Stock Requirements; Organizational Expenses.

S.C. Jur. Banks and Banking Section 51, Additional Ten Percent Paid in Requirement.

**SECTION 34‑9‑30.** Recovery of penalties for nonpayment of stock subscriptions and unpaid installments on subscriptions.

 The penalties for the nonpayment of any stock subscriptions as prescribed in Section 34‑3‑240, together with any unpaid installments on such subscriptions, may be recovered in any court having jurisdiction of the aggregate amount so due or the stock may be sold for cash after twenty days’ notice advertised in the nearest newspaper. If at any such sale the sum bid should not be sufficient to satisfy and discharge the amount so due, together with the cost and charges incident to such sale, the subscriber in default shall be liable for any deficiency, and it may be recovered in the name of the corporation in any court having jurisdiction.

HISTORY: 1962 Code Section 8‑143; 1952 Code Section 8‑143; 1942 Code Section 7845; 1932 Code Section 7874; Civ. C. ‘22 Section 4001; Civ. C. ‘12 Section 2663; Civ. C. ‘02 Section 1778; R. S. 1541; 1885 (19) 214.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 56, Penalties for Nonpayment of Subscriptions.

S.C. Jur. Banks and Banking Section 75, Extent of Liability.

**SECTION 34‑9‑40.** Minimum capital stock requirements.

 Every banking company or corporation hereafter organized shall have a minimum capital stock as follows:

 (1) In cities, towns and unincorporated communities having a population of three thousand or less a minimum of twenty‑five thousand dollars;

 (2) In cities, towns and unincorporated communities having a population of over three thousand and less than ten thousand a minimum of fifty thousand dollars; and

 (3) In cities having a population of more than ten thousand a minimum of one hundred thousand dollars.

 In determining the population for the purposes of this section the most recent Federal census will be considered as furnishing the official figures. If the bank is to be located outside of an incorporated area, the population within a radius of three miles, exclusive of any incorporated area therein, shall be considered. If the bank is to be located within an incorporated area, the population of any village or settlement or thickly inhabited area immediately adjacent to or not more than two miles distant from the incorporated limits of the town or city wherein the bank is proposed to be located shall be considered in counting the population under the terms of this section.

HISTORY: 1962 Code Section 8‑144; 1952 Code Section 8‑144; 1942 Code Section 7831; 1932 Code Section 7835; 1926 (34) 953; 1928 (35) 1301; 1936 (39) 1484.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 58‑60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 35, Minimum Capital Stock Requirements; Organizational Expenses.

S.C. Jur. Banks and Banking Section 52, Minimum Capital Stock Requirements.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 151, Oath, Bond, and Letters of Trusteeship.

NOTES OF DECISIONS

In general 1

1. In general

Deposits in branch bank not preferred over other debts of bank. Whether a bank be considered as a branch bank within the meaning of the South Carolina statute or a mere additional office of a branch maintained for the convenience of depositors, there is nothing in the banking law of South Carolina, or elsewhere, which would give to deposits made therein a status in any wise different from other deposits of the bank; even if it be regarded as a branch bank operated without legal authority, there is no reason why deposits in such a branch should be given preferred status over other debts of the bank. Poole v. Elliott, 1935, 76 F.2d 772.

**SECTION 34‑9‑60.** Paid‑in capital must meet Federal Deposit Insurance Fund requirements.

 In addition to all other requirements, no bank or banking institution of any nature shall be granted a charter by the Secretary of State unless and until the State Board of Bank Control has certified that the paid‑in capital of such bank or banking institution is sufficient to qualify such bank or banking institution for membership in the Federal Deposit Insurance Fund.

HISTORY: 1962 Code Section 8‑146; 1952 Code Section 8‑146; 1942 Code Section 7833; 1939 (41) 216; 1940 (41) 1774.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 35, Minimum Capital Stock Requirements; Organizational Expenses.

S.C. Jur. Banks and Banking Section 53, Paid‑In Capital Must Meet Federal Deposit Insurance Fund Requirements.

**SECTION 34‑9‑70.** Paid‑in capital must meet Federal Deposit Insurance Fund requirements; exceptions for transfer of existing charter.

 Notwithstanding the provisions of Section 34‑9‑60 the existing charter of any bank, banking institution or depository may be transferred to new owners proposing to operate a bank, banking institution or depository at a new location and with a new personnel. Operation by such transferees at such new location shall be legal and the provisions of Section 34‑9‑60 shall not apply thereto if the State Board of Bank Control shall first certify to the Secretary of State that the public interest will be promoted by the transfer and operation of such institution under the transferred charter at the proposed new location. In such instance the Secretary of State shall record the transfer and the certificate of the Board and shall amend the transferred charter as to the name and as to the principal place of business if he is petitioned so to do.

HISTORY: 1962 Code Section 8‑147; 1952 Code Section 8‑147; 1942 Code Section 7833; 1939 (41) 216; 1940 (41) 1774.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 53, Paid‑In Capital Must Meet Federal Deposit Insurance Fund Requirements.

**SECTION 34‑9‑80.** Issuance of preferred stock.

 Notwithstanding any other provisions of law, any banking institution organized under the laws of this State may, with the approval of the Commissioner of Banking and by vote of the stockholders owning a majority of the stock of such institution, upon not less than ten days’ notice given by registered mail pursuant to action taken by its board of directors, issue preferred stock of one or more classes in such amount and with such par value as shall be approved by the Commissioner of Banking and may make such amendments to its articles of incorporation as may be necessary for this purpose. In the case of any newly organized banking institution which has not yet issued common stock, the requirement of notice to and vote of stockholders shall not apply.

 No issue of preferred stock shall be valid: (1) until the par value of all stock so issued shall be paid in cash; or (2) unless, in connection with a plan of merger or consolidation (occurring prior to, or after, the enactment of this provision) such preferred stock be issued in exchange for stock of a corporation which is a party to the plan of merger or consolidation.

HISTORY: 1962 Code Section 8‑148; 1952 Code Sections 8‑148, 8‑149; 1942 Code Section 7835; 1935 (39) 493; 1960 (51) 1676, 1739; 1973 (58) 159.

CROSS REFERENCES

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 57 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 62, Issuance of Preferred Shares.

**SECTION 34‑9‑90.** Preferred stock shall be included in capital.

 Any preferred stock lawfully issued by a banking institution organized under the laws of this State shall be included in determining whether such banking institution has complied with the minimum capital stock requirements provided by law for banking institutions in this State.

HISTORY: 1962 Code Section 8‑150; 1952 Code Section 8‑150; 1942 Code Section 7835; 1935 (39) 493.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 52, Minimum Capital Stock Requirements.

S.C. Jur. Banks and Banking Section 62, Issuance of Preferred Shares.

**SECTION 34‑9‑100.** Issuance of capital notes or debentures.

 With the approval of the Commissioner of Banking any banking institution may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

HISTORY: 1962 Code Section 8‑151; 1952 Code Section 8‑151; 1942 Code Section 7836; 1935 (39) 464.

**SECTION 34‑9‑110.** Capital notes and debentures shall be included in capital.

 The term “capital” as used in the laws of this State relating to banking shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any banking institution. The capital stock of any such banking institution may be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceed the impairment as found by the Commissioner of Banking.

HISTORY: 1962 Code Section 8‑152; 1952 Code Section 8‑152; 1942 Code Section 7836; 1935 (39) 464; 1964 (53) 2058.

**SECTION 34‑9‑120.** Prerequisite of retirement of capital notes and debentures.

 Before any such capital notes or debentures are retired or paid by the bank any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the bank.

HISTORY: 1962 Code Section 8‑153; 1952 Code Section 8‑153; 1942 Code Section 7836; 1935 (39) 464.

**SECTION 34‑9‑130.** Reserve requirements of state banks.

 Every state bank which is not a member of the Federal Reserve System shall maintain the same reserves against deposits as required for a state bank which is a member of the Federal Reserve System. These reserves must be maintained in the same kind of assets as required for member banks.

HISTORY: 1962 Code Section 8‑154; 1952 Code Section 8‑154; 1942 Code Section 7844; 1932 Code Section 7863; Civ. C. ‘22 Section 3993; Civ. C. ‘12 Section 2655; 1909 (26) 81; 1923 (33) 159; 1933 (38) 296; 1936 (39) 1484; 1953 (48) 357; 1980 Act No. 456; 1991 Act No. 125, Section 1, eff June 4, 1991.

Effect of Amendment

The 1991 amendment rewrote this section.

CROSS REFERENCES

Section not applying to national banks, see Section 34‑3‑20.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 57 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 54, Surplus Account; Minimum Deposit Reserve.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Dunbar v. Fant (S.C. 1934) 174 S.C. 49, 176 S.E. 866.