



CORPORATION SERVICE COMPANY

NORTH CAROLINA - ORGANIZATION SUMMARY

For more detailed information, see attached brochure
NORTH CAROLINA - DOMESTIC ORGANIZATION

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2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 - (302) 636-5400
(Intended for use by members of the Bar only)

DOCUMENTS TO BE FILED - Articles of Incorporation (unofficial form) - 1 executed original (signature may be "a facsimile") and 1 exact or conformed copy.

FEES AND COSTS - Filing with Secretary of State - \$125. Expedited service fees - \$100 for 24-hour service; \$200 for Same Day service. First Annual Report Fee - \$20.

MAXIMUM AUTHORIZED SHARES FOR MINIMUM ORGANIZATION TAX - Incorporation fees and fixed, not based on number of shares.

INCORPORATOR(S) - Minimum number - 1. Statutory residence requirements - None.

NAME REQUIREMENTS - Must contain "corporation," "incorporated," "company," "limited," "corp.," "inc.," "co.," or "ltd."

STATUTORY REPRESENTATION - Can be furnished by Corporation Service Company.

PREEMPTIVE RIGHTS - Denied in absence of grant in Articles of Incorporation.

CUMULATIVE VOTING - Denied unless authorized by Articles of Incorporation.

PURPOSE(S) - Specific statement optional.

DIRECTOR(S) - Minimum number - 1. Statutory residence requirements - None.

MINIMUM PAID-IN CAPITAL BEFORE BEGINNING BUSINESS - None.



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This brochure consists of 2 parts: I, an outline on organizational procedures for ordinary business corporations and II, an outline setting forth certain related information. It is suggested that the related information be examined in conjunction with the outline on organizational procedures. Unless otherwise indicated, any section numbers hereinafter refer to those in the North Carolina Business Corporation Act (the "Act"). This brochure and the annexed materials presuppose that the provisions of Section 55-7-31, authorizing a shareholders' agreement to relax certain corporate formalities otherwise required, do not apply.

STATUTORY REPRESENTATION

Statutory representation can be furnished by Corporation Service Company.

I. ORGANIZATIONAL PROCEDURES

ESTIMATED OFFICIAL DISBURSEMENTS

(Payable to the Secretary of State)

a) Upon incorporation:

Fee for filing Articles of Incorporation - \$125, there being no organization fee or tax on authorized or issued shares. (55-1-22)

Expedited Service fees - \$100 for 24 hour service; \$200 for Same Day Service.

b) Subsequent to incorporation:

Fee for filing first Annual Report - \$20 (due on 15th day of 3rd month following close of fiscal year). (55-1-22)

INCORPORATOR(S)

Only 1 incorporator is required. There is no statutory requirement that an incorporator be a U. S. citizen, a resident of North Carolina, or a subscriber for shares. The incorporator must be a "person".

(55-2-01) "Person' includes individual and entity." (55-1-40) "'Entity' includes [domestic] corporation and foreign corporation; nonprofit corporation; professional partnership, trust, and two or more persons having a joint or common economic interest; corporation; profit and nonprofit unincorporated association; business trust, estate, and state, United States, and foreign government." (55-1-40)

FORMAT; EXECUTION; FILING; CORPORATE EXISTENCE; INCORPORATORS' OR DIRECTORS' ORGANIZATIONAL MEETING OR ACTION BY WRITTEN CONSENT; FIRST ANNUAL REPORT REQUIREMENTS

Format - Past experience indicates that the Articles of Incorporation may be prepared on 8¹/₂ x 11 or legal-size paper. The document must be typewritten or printed. Good-quality xerographic or similarly reproduced copies have been acceptable for filing in the past. (55-1-20, administrative practice)

Execution - 1 executed original (signature may be "a facsimile") and 1 exact or conformed copy of the Articles of Incorporation are required for filing purposes. The name and capacity of the incorporator must be stated beneath or opposite his signature. There is no statutory or administrative requirement of an acknowledgment or verification. (55-1-20)

Filing - 1 executed original and 1 exact or conformed copy of the Articles of Incorporation are delivered to the Secretary of State, who endorses the date and time of filing on both the original and the copy, files the original, and returns the copy. See also caption Initial Annual Report Requirements, infra. (55-1-20, 55-1-25)

Corporate Existence - "Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed." (55-2-03) "A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed." (55-1-23)

Incorporators' or Directors' Organizational Meeting or Action by Written Consent - "After incorporation...If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting...If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators: (i) to elect directors and complete the organization of the corporation; or (ii) to elect a board of directors who shall complete the organization of the corporation...Action required or permitted by [the Act] to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator...An organizational meeting may be held in or out of this state." (55-2-05) For the general authority of directors to act in writing without a meeting, see Section 55-8-21. For the general authority of directors to waive notice of a meeting, see Section 55-8-23.

First Annual Report - First Annual Report is filed with Department of Revenue and is due with Franchise and Income Tax forms by 15th day of 3rd month following close of fiscal year. Forms must

be ordered by telephone from (919) 715-0347. Specify whether a C Corporation or an S Corporation. An extension of time to file the Franchise and Income Tax forms will be considered an extension of time to file the Annual Report. (51-16-22)

ARTICLES OF INCORPORATION - CONTENTS

Section 55-2-02 of the Act specifies the statements which must or may be set forth in the Articles of Incorporation; and said statements will be quoted and discussed, *infra*.

The Name

"a. A corporate name for the corporation that satisfies the requirements of G.S. 55-4-01;"

The name must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.,". (55-4-02)

The name must be distinguishable upon the records of the Secretary of State from the name of any domestic or authorized foreign profit or not-for-profit corporation, or any reserved or registered corporate name. (55-4-02)

An available name may be reserved for "a nonrenewable 120-day period" upon application to the Secretary of State and payment of a \$10 fee. (55-1-22, 55-4-02)

The Authorized Shares

"b. The number of shares the corporation is authorized to issue and any other information required by G.S. 55-6-01;"

Section 55-6-01 provides in part: "The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class unless the Articles of Incorporation divide a class into series. If a class is divided into series, all the shares of any one series must have preferences, limitations, and relative rights identical with those of other shares the same series. The requirement of identical rights within a class shall not be construed to conflict with any special voting rights specified elsewhere in [the Act]."

Sections 55-6-01 and 55-6-02 relate to the designations, preferences, limitations, and relative voting and other rights of the authorized shares, and Section 55-6-02 provides in part: "If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights (within the limits set forth in G.S. 55-6-01) of (1) any class of shares before the issuance of any shares of that class or (2) one or more series within a class before the issuance of any shares of that series." Section 55-6-02 provides that if the Articles of Incorporation authorize the directors to determine the preferences, limitations, and relative rights, the corporation must,

before issuing any of the shares of that class or series, file articles of amendment, effective without shareholder action, setting forth the prescribed information.

If desired, a provision establishing a "par value for authorized shares or classes of shares" may be set forth. (55-2-02)

OBSERVATION: The specimen form of Articles of Incorporation which CSC distributes to Counsel sets forth alternative provisions for shares with and without par value. Counsel will note that the laws of some jurisdictions impose a lower entrance fee on foreign corporations which have authorized shares of a low par value than would apply to the same number of no-par shares. Counsel will also note that the Act does not impose any minimum-consideration or minimum-stated capital requirements on par-value shares.

Initial Registered Office and Initial Registered Agent

"c. The street address, and the mailing address, if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of its initial registered agent at that office;"

"Each corporation must continuously maintain in this state both of the following: (1) A registered office that may be the same as any of its places of business; and (2) A registered agent, who shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; (iii) a foreign corporation or nonprofit foreign corporation authorized to transact business in this State whose business office is identical with the registered office." (55-5-01)

"A corporation's registered agent is an agent of the corporation for service of process, notice or demand required or permitted by law to be served on the corporation." (55-5-04)

The Incorporator(s)

"d. The name and address of each incorporator."

For the qualifications of the incorporator(s), see caption INCORPORATOR(S) at the beginning of this outline.

The Initial Director(s)

Section 55-2-02 provides that the Articles of Incorporation *may* set forth "The names and addresses of the individuals who are to serve as the initial directors."

The number of directors may be one or more individuals. (55-8-03) For additional information on directors, see Part II of this brochure.

The specimen organizational material which CSC distributes to Counsel does not provide for setting forth the names of the initial directors in the Articles of Incorporation.

For authority to dispense with or limit the authority of a board of directors, see Section 55-8-01.

The Purposes

Section 55-2-02 provides that the Articles of Incorporation *may* set forth the "purpose or purposes for which the corporation is organized."

Section 55-3-01 provides: "Every corporation incorporated under [the Act] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation....A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under [the Act] only if permitted by, and subject to all limitations of, the other statute."

The specimen form of Articles of Incorporation which CSC distributes to Counsel provides for setting forth a statement of both general and specific purposes, in addition to the statement of the authority of the corporation to engage in any lawful business.

For a grant of general powers, see Section 55-3-02. Section 55-2-02 provides: "The articles of incorporation need not set forth any of the corporate powers enumerated in [the Act]."

Regulatory Provisions

Section 55-2-02 provides that the Articles of Incorporation *may* set forth provisions regarding "managing the business and regulating the affairs of the corporation" and "defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders."

Shareholders' Personal Liability

Section 55-2-02 provides that the Articles of Incorporation *may* set forth a provision regarding the "imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions."

The specimen form of Articles of Incorporation which CSC distributes to Counsel does not contain such a provision.

Directors' Personal Liability

Section 55-2-02 provides that the Articles of Incorporation *may* set forth: "A provision eliminating or limiting the personal liability of a director arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of such breach know or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55-8-33; (iii) any transaction from which the director derived an improper personal benefit, or (iv) acts or omissions occurring prior to the date the provisions became effective."

The specimen form of Articles of Incorporation which CSC distributes to Counsel sets forth a provision

limiting the directors' personal liability, which Counsel may wish to modify or to omit.

FORMAT; EXECUTION; FILING; CORPORATE EXISTENCE; INCORPORATORS' OR DIRECTORS' ORGANIZATIONAL MEETING OR ACTION BY WRITTEN CONSENT; FIRST ANNUAL REPORT

See same caption at beginning of this outline.

II. RELATED ORGANIZATIONAL INFORMATION

AUTHORIZED SHARES

| | |
|--|--|
| Authorized Minimum/Maximum Amount | None. |
| Minimum Subscriptions Before Commencing Business | None. |
| Minimum Paid-in-Share Consideration Before Commencing Business | None. |
| Nature of Share Consideration | Any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation. |
| Who Evaluates Shares | Directors. |
| Uncertificated Shares | Directors may authorize. |

SHAREHOLDERS

| | |
|---------------------|--|
| Minimum Number | 1. |
| Preemptive Rights | Denied in absence of grant in articles of incorporation. |
| Meetings and Action | Meetings may be held anywhere. Place may be stated in or fixed in accordance with bylaws. All shareholders entitled to vote on an action may act in writing without a meeting. |
| Quorum | Majority of votes entitled to be cast unless articles of incorporation, a bylaw |

adopted by the shareholders, or Act provide for greater proportion.

Cumulative Voting

Denied unless authorized by articles of incorporation.

Voting Restrictions

May be limited or denied to any class except for adversely affected amendments, certain mergers and share exchanges, but directors may (?) require vote by non-voting shares on a given matter in the case of amendments, certain mergers, share exchanges, sales of assets, etc., dissolution.

Greater Voting Proportions

May provide for in articles of incorporation or in a bylaw adopted by the shareholders for all matters.

GENERAL VOTING PROPORTIONS

Election of Directors

Vote of plurality of votes cast by shares entitled to vote at duly organized meeting.

Removal of Directors

Vote of majority of votes favoring action over votes opposing action cast by shares entitled to vote at a duly organized meeting, unless cumulative voting is authorized.

Amendments

Majority of votes entitled to be cast by any adversely affected voting group at a duly organized meeting; by any other voting group if votes at a duly organized meeting favoring the action exceed those cast opposing the amendment, but directors can require a greater vote and (?) vote by non-voting shareholders on a given matter.

Certain Mergers, Share Exchanges,

Vote of majority of all votes entitled Sales of Assets, etc., Dissolution to be cast, but directors can require vote greater than otherwise required and (?) vote by non-voting shareholders on a

Other Matters Generally

given matter.

Vote of majority of votes favoring action over votes opposing action cast by shares entitled to vote represented at duly organized meeting.

Voting Record

Must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting, for which the list was prepared and continuing through meeting, at principal office or at place identified in meeting notice in city where meeting will be held.

DIRECTORS

Minimum Number

1.

Staggered Terms

May be authorized in articles of incorporation or bylaws.

Vacancies and Newly Created

Vacancies are filled by shareholders Directorships or directors unless articles of incorporation provide otherwise.

Qualifications

Need not be North Carolina residents or shareholders unless articles of incorporation provide otherwise. There is no statutory requirement that they be U. S. citizens.

Personal Liability

May be limited in articles of incorporation to extent provided by Act.

Indemnification

Statutory authorization for.

Self-Dealings

Statutory coverage for.

Meetings and Action

Meetings may be held anywhere. Directors may participate in meeting by conference telephone, etc. All of directors may act in writing without a

meeting.

Quorum and Act

Majority of full Board is quorum unless articles of incorporation or bylaws require greater or lesser (but not less than 1/3) number. Act of Board is generally that of a majority of directors present, a quorum being present, unless articles of incorporation or bylaws require greater proportion. Exception is creation of committee.

Removal

Shareholders may remove with or without cause unless articles of incorporation provide for removal only for cause.

Executive Committee

Authorized unless articles of incorporation or bylaws provide otherwise.

CONTROL OVER BYLAWS

Incorporators or directors adopt initial bylaws. Thereafter, directors or shareholders may amend or repeal bylaws unless articles of incorporation or Act reserve power to shareholders in whole or in part, or shareholders in amending or repealing a particular bylaw provide that directors may not amend or repeal that bylaw.