

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 530

An Act to amend and reenact §§ 13.1-604, 13.1-614, and 13.1-661 of the Code of Virginia, relating to corporations; filing and meeting requirements.

[S 986]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-604, 13.1-614, and 13.1-661 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-604. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. To be entitled to be filed with the Commission, this chapter shall require or permit the document to be filed with the Commission.

C. The document shall contain the information required by this chapter and may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated by the official having custody of corporate records in the jurisdiction of formation of the foreign corporation, that are required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be signed in the name of the domestic or foreign corporation:

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers;

2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. Any annual report required to be filed by § 13.1-775 shall be signed in the name of the corporation by an officer or director listed in the report or, if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

H. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which the document is signed. The document may but need not contain a corporate seal, attestation, acknowledgment, or verification.

I. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

J. The document shall be delivered to the Commission for filing and shall be accompanied by the correct filing fee, and any franchise tax, charter or entrance fee, registration fee, or penalty required by this chapter to be paid at the time of delivery for filing.

K. The Commission may accept the electronic transmission of any document or other information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically transmitted information pursuant to § 59.1-496.

L. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

1. The plan or filed document shall specify the nationally recognized news or information medium in which the facts can be found or otherwise state the manner in which the facts can be objectively ascertained. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

2. The facts may include:

a. Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

b. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

c. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11 (§ 13.1-705 et seq.), 12 (§ 13.1-715.1 et seq.), 12.1 (§ 13.1-722.1:1 et seq.), 12.2 (§ 13.1-722.8 et seq.), 16 (§ 13.1-742 et seq.), or 22 (§ 13.1-782 et seq.); and

b. "Plan" means a plan of domestication, conversion, merger, or share exchange.

4. The following terms of a plan or filed document may not be made dependent on facts outside the plan or filed document:

a. The name and address of any person required in a filed document;

b. A purpose that is required to be set forth in a filed document;

c. The registered office address of any entity required in a filed document;

d. The name or qualification of the registered agent of any entity required in a filed document;

e. The number of authorized shares and the designation ~~and terms, including the preferences, rights, and limitations~~ of each class or series of shares;

f. The effective date of a filed document; and

g. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the filed document, and that fact is not objectively ascertainable by reference to a source described in subdivision 2 a or a document that is a matter of public record, nor has notice of the fact been given by the corporation to the affected shareholders, then the corporation shall file with the Commission articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

6. The provisions of subdivisions 1, 2, and 5 shall not be considered by the Commission in deciding whether the terms of a plan or filed document comply with the requirements of law.

§ 13.1-614. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and delivered to the corporation within 30 days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court in or outside of the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing or consummating any amendment, correction, merger, share exchange, domestication, conversion, dissolution, or termination of corporate existence or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection D C of § 13.1-661 or for fraud. No court in or outside of the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct, or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection, or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon articles of correction filed by the corporation pursuant to § 13.1-607 or upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation, or on the Commission's own motion to correct Commission records so as to eliminate the effects of clerical errors committed by its staff.

§ 13.1-661. Shareholders' list for meeting.

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under subsection E of § 13.1-660 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. Nothing contained in this subsection shall require the corporation to include on such list the electronic mail address or other electronic contact information of a shareholder.

B. The shareholders' list for notice shall be available for inspection by any shareholder, beginning ~~two~~ five business days after notice of the meeting is given for which the list was prepared and

continuing through the *close of business on the last business day before the meeting*, (i) at the corporation's principal office or at a place identified in the meeting notice in the county or city where the meeting will be held or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders of the corporation. A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting. The original share transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or to vote at any meeting of shareholders. A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of subsection D of § 13.1-771, to copy a list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

~~C. If the meeting is to be held at a place, the corporation shall make the list of shareholders entitled to vote available at the meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, then such list shall also be open to such inspection during the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.~~

~~D.~~ If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a shareholders' list before ~~or~~ at the meeting, or to copy a list as permitted by subsection B, the circuit court of the county or city where the corporation's principal office, or if none in the Commonwealth its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

~~E.~~ *D.* Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.