Article 12.

Transfer of Assets.

§ 55-12-01. Disposition of assets not requiring shareholder approval and mortgage of assets.

(a) A mortgage of or other security interest in all or any part of the property of a corporation may be made by authority of the board of directors without approval of the shareholders, unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders.

(b) Unless otherwise provided in the articles of incorporation or in bylaws adopted by the shareholders, a corporation may, on the terms and conditions and for the consideration determined by the board of directors, and without approval by the shareholders, do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

(2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation.

(3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property. If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property. (1925, c. 235; 1929, c. 269; 1939, c. 279; G.S., s. 55-26; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2001-508, s. 1; 2013-153, s. 12.)

§ 55-12-02. Disposition of assets requiring shareholder approval.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) The following requirements shall be met for a transaction to be authorized:

(1) The board of directors shall recommend to the shareholders that the proposed transaction be approved unless one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the proposed transaction to the shareholders at the time it submits the proposed transaction to the shareholders:

a. The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the proposed transaction.

b. G.S. 55-8-26 applies.

(2) The shareholders entitled to vote must approve the proposed transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation, a bylaw adopted by the shareholders, Article 9 or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(g) A transaction that constitutes a distribution is governed by G.S. 55-6-40 and not by this section. (1925, c. 235; 1929, c. 269; 1939, c. 279; G.S., s. 55-26; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2013-153, s. 13.)

§ 55-12-03. Article 9 to control.

Nothing in this Article shall be construed to modify in any manner the provisions or applicability of Article 9. (1989, c. 265, s. 1.)